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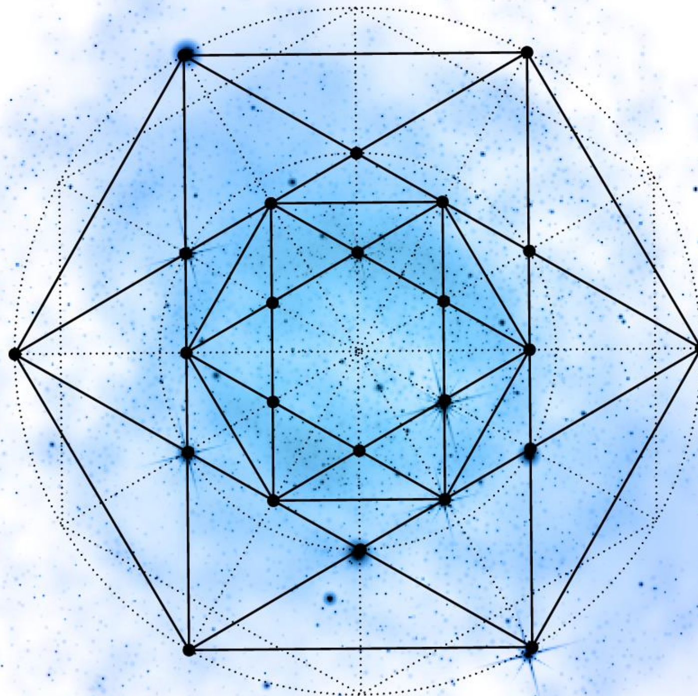

Final Report - JUST/2020/JCOO/FW/CIVI/0186

Study to support the preparation of an impact assessment on a potential EU initiative increasing convergence of national insolvency laws

25 May 2022

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Abstract

As the current insolvency framework in the European Union is partially harmonised through different legislative actions, the European Commission aims a determining whether the current framework is sufficient or if further legal action at the EU level is needed to reinforce cross-border investments within the EU and ensure the convergence and stability of the Capital Market Union. This study ascertains whether there is justification and the need for legislative action, and determine the impacts of the palette of solutions. To do so, this Report compiles a number of data and information to define and validate the problems that have been raised, support the development of possible policy options to address the identified problems and compare the different solutions and analyse the possible impacts of the policy options for the stakeholders.

1 Executive summary

The scope of this Report is to help the European Commission assess and compare several policy options to address the major discrepancies in national corporate insolvency laws and estimate their economic and social impacts.

The main objectives of this Report are to: i) collect data and information to define and validate the main problems that have been raised from the current discrepancies in national corporate insolvency laws; ii) support the development of possible policy options to address the identified problems and compare the different options; and iii) identify, analyse and measure the possible impacts of the policy options, quantifying the benefits and costs to the extent possible for potentially affected stakeholders.

The Report is organised in different sections, each of which provides different inputs to reach the main conclusion of this impact assessment study. Indeed, the purpose of this impact assessment study is to provide data-based evidence on the impacts that can be determined by appropriate insolvency convergence measures on the facility of cross-border capital circulation in the EU.

As per the methodology followed, this impact assessment moves the study of the relevant discipline concerning national, as well as EU insolvency law. The field research undertaken for this impact assessment support study includes desk and document research, experts' and stakeholders' surveys as well as conducting interviews. It also includes the results of the open public consultation completed by the European Commission in 2020. The different instruments provide evidence on the different evaluation criteria, providing hard data and insights on the status of current needs and feedback on the perception of the evolution of the scenarios of insolvency procedures and the changes in the behaviour of cross-border investors.

In Section 3 it has been provided for an overview of the EU framework regulating insolvency. Indeed, Regulation 2015/848 on insolvency proceedings ('Recast EIR'), which also applies to pre-insolvency restructuring, as well as Directive 2019/1023 on preventive restructuring frameworks, which harmonized various substantive insolvency rules across Europe to allow for a smoother application of the Recast EIR, are analysed.

On the other hand, Section 4 moves from the consideration elaborated in section 3 concerning the relevant legal framework for insolvency proceedings, pointing out that creditors are not adequately protected in cross-border insolvency proceedings with regard to the quantification of the risk they are taking. It further presents that because insolvency is a node linking many areas of law (such as labour law, company law), it is not possible to reach a high level of harmonisation without an intervention at other relevant areas of law.

The main problems that have been raised concern the actual lack of harmonisation in the field of insolvency are analysed from three different perspectives: i) debtors' perspective; ii) creditors' perspective; iii) insolvency practitioners' perspective. Debtors, Creditors and Insolvency practitioners are in fact the main actors in the insolvency landscape and are bearers of different and sometimes conflicting interests.

Overall, it was found that the EU's policy objectives of insolvency convergence and cross-border capital movement can benefit from a gradual convergence of national regulations in the Union. However, it has been recognized that significant divergences between national insolvency regimes create potential structural obstacles to cross-border investment. A convergence of national insolvency rules could increase legal certainty by making it easier for banks to price loans in advance in case an exposure goes into default. Similarly, better risk pricing makes loans, including cross-border loans, more attractive to banks and other potential credit providers.

Section 5 moves away from the issues highlighted in the previous section to provide sound policy options. Using data collected from stakeholders on different options in relation to the various building blocks, several options were formulated. These options aim to introduce convergence measures in different areas of cross-border insolvency. The policy options are linked to the 14 building blocks identified by the Commission.

In conclusion, the judgment stakeholders and experts have provided on the different impact assessment study dimensions of the policy initiative allow us to identify conclusions on the associated impacts on the circulation of investment capital across borders and thus the operation of the Union of Capital Markets.

Fragmentation in insolvency regulations creates uncertainty for investors and for businesses as well. Both actor groups need certainty about their investment and about their business continuity in certain contingencies as well. They need efficient insolvency procedures, which are positively resolved at a reasonable cost and within a reasonable timeframe, protecting the values of the lenders and the assets of the businesses creating value.

Insolvency is an extremely diversified and a multi-faceted area, which grows in complexity when considering the differences between the national systems, not only in terms of insolvency law, but also in terms of the relevant associated infrastructure, which is a key element in determining costs and most of all timing of procedures.

Certainly, investors have established approaches and procedures to do their business in a fragmented insolvency regulatory setting. This does not mean that investment operations in Member States and cross-border will not be facilitated by a convergence process.

Despite the complexity of the insolvency scenario, which was fully recognised, a number of insolvency building blocks, which can contribute to convergence, have been identified and characterised.

A better insolvency framework contributes to a more efficient allocation of capital within and across Member States; more efficient and predictable insolvency frameworks are expected to facilitate cross-border investments and flows of market-based finance. The legal basis for a proposal for harmonization of national insolvency laws is mainly represented by Article 114 TFEU (and possibly Art. 81 TFEU).

The harmonisation of the insolvency framework has the full potential to create EU added value, improving the outcomes expected by the adoption of the 2019 EU Directive on Restructuring and Second Chance.

For what concerns policy recommendations, in general terms the European Commission should push for the harmonization of cross-border insolvency procedures, providing, inter alia, applications and platforms concerning: (i) Standardised models for filing claims; (ii) Authentication and validation of claimants to ensure legitimacy of access and claims filing and (iii) Cross-border access to registries of initiated insolvency procedures.

2 Introduction

2.1 Study Objectives and scope

The impact assessment's scope ("Impact Assessment Study" or "IA") is to help the European Commission (EC) assess and compare several policy options ("Policy Option") to address the major discrepancies in national corporate (i.e., non-banking) insolvency laws, and estimate their economic and social impacts (benefits and costs, direct and indirect).

The main objectives of this Impact Assessment are the following:

1. collect data and information to define and validate the main problems that arise from the current discrepancies in national corporate insolvency laws;
2. support the development of possible policy options to address the identified problems and compare the different options; and
3. identify, analyse and measure the possible impacts of the Policy Options, quantifying the benefits and costs to the extent possible for potentially affected stakeholders.

The scope of this Impact Assessment Study is to identify how and whether the more critical aspects related to cross-border insolvency regime could be harmonised and what the impacts at the EU level might be. The material scope will consist of national and European insolvency laws across all EU Members States. International standards and instrument also make the object of this study.

In order to meet the objective and purposes listed above, the most problematic issues have been unbundled, and analysed in depth. This Report intends to focus on an in-depth analysis of all the Building Blocks which are extensively analysed in the following chapters (Chapter 6) and have been subject to consultation with the stakeholders involved. From the analysis carried out, it appeared that problems raising from current divergencies can be traced back to three general macro problems that are underlined in Chapter 3.3 below.

For sake of clarity, this Study concerns non-bank insolvency law for businesses (companies or entrepreneurs). Hence, insolvency proceedings specifically designed for consumers (individuals not exercising an independent business or professional activity) will not be covered by this study.

2.2 Report purpose and structure

The Report provides a technical input to support the Impact Assessment. It provides the assessment of the feedback and emerging findings from the data collection activities.

This Report is structured as follows:

- **Section 1** – Executive summary which provides an overview of the problem and objectives definition and a summary of the policy options identified

- **Section 2** – Introduction. An outline of the study objectives and scope, of the purpose and structure of the final report and an overview of the activities carried out.

- **Section 3** – Background of the insolvency convergence initiative and Capital Market Union which includes the insolvency scenario and economic context and an overview of the current EU framework and of the status of implementation of the directive (EU) 1023/2019 based on available information although the assessment of the transposition of the directive (EU) 1023/2019 is out of the scope of the study.

- **Section 4** – Composed of the:

- Problem definition and baseline assessment. An assessment of the problem definition, problem drivers and consequences for different stakeholders. The report then describes the baseline scenario, i.e. no initiative would be undertaken to increase convergence in national insolvency laws and the impacts this could potentially have on affected stakeholders.

- Objectives tree and policy options. An assessment of how the current EU insolvency framework might be updated to address problems identified under Section 6, including the identification of a hierarchy of general and specific objectives that the initiative should target.

- **Section 5** – Policy Options. Different policy options are presented, which aim to address the objectives and to ensure that any future updated legislation strikes an appropriate balance between the interests of creditors and debtors. The approach to the analysis of the policy options is then provided.

- **Section 6** – Results and discussions.

- **Section 7** – Conclusions and recommendation

The annexes have been structured as follows:

- Annex A – Overview of current framework in EU and Member States
- Annex B – Methodologies
- Annex C – Report on interviews
- Annex D – Report on stakeholder survey
- Annex E – Explanatory note on the macroeconomic model
- Annex F – Report on public consultation
- Annex G – List of sources
- Annex H – List of acronyms and key terms
- Annex I – Equations of the economic model

2.3 Key project activities

Data collection has been finalised. In particular, the following activities can be reported:

- Finalization of methodology and preliminary assessment. These include:
  - the definition of a methodological approach following a technical meeting with the DG Just and the consequent refinement of the Policy Options;
  - the assessment and the analysis of the Building Blocks;
  - the finalisation of the survey to be addressed to the stakeholders, as part of the field research activities, based on the building blocks and comments received by DG Just to the version of the survey drafted without the building blocks, and related additional materials shared by DG Just.
- Extensive literature review, wider academic literature, studies and reports have been consulted. The results from the desk research have been integrated into the report.
- Identification and assessment of problems that may necessitate an intervention at EU level.
- Stakeholder mapping and refinement of contacts database for the survey and the interviews. These include: selection of interested category of stakeholders belonging to the categories affected by any EU initiative increasing convergence in national insolvency laws (i.e. insolvency judges, insolvency practitioners, banks and financial institutions, labour unions, associations of enterprises, experts insolvency); a review of the stakeholders identified for the survey, such as to be able to select 76 interviews for the interview programme from a long list of more than 800 targets.
- A number of meetings with the EC.[1]
- Launched the targeted consultation (online survey) on 7 January 2022. The online survey was extended at the request of stakeholders who asked more time to complete it and after the 8 March workshop to allow the attendants to complete the survey. The survey closed on 23 March with over 100 answers received.
- Interviews with stakeholders.[2]

Regarding the dissemination of the targeted survey, the survey has been circulated to the identified targets in the contact database including the following categories:

- The survey was launched on 7 January by Grimaldi using a platform elaborated for the purpose of this Study. An initial list of 791 stakeholders was identified to send the survey to. This was complemented by the identification of additional contacts based on further contacts collected during the research phase. This boosted the total survey target audience to 808 (plus memberships organisations were encouraged to circulate it further);

The study team has been provided with 120 completed stakeholder surveys.

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[1] 29 September 2021 kick off meeting; 11 October 2021, discussion on planning following DG Just requests; 27 October 2021: refinement of the POs, request for clarification on building blocks, approach to the economic modelling; 9 December 2021: first questionnaires points raised by DG Just, use of the additional documentation, principles of impact modelling; 12 January 2022: status of the field research, structure and timing of the interim report. 9 February 2022: outcome of the EC meeting with the RSB. 8 March 2022: workshop organized by the EC with interested stakeholders. 21 March 2022: workshop on the economic model.

[2] 30 interviews with experts coming from Croatia, Denmark, Estonia, France, Hungary, Germany, Italy, Ireland, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovenia, Sweden, the United Kingdom.

3 Background of the insolvency convergence initiative and the Union of Capital Markets

This section provides a brief overview and assessment of the existing EU legislation on cross-border insolvency and restructuring, against the backdrop of previous international instruments and harmonization at the EU level.

More than twenty years ago, in May 2000, the then-European Community adopted the first regulation harmonising rules on cross-border insolvency within the European Union (EU). Regulation 1346/2000 ('first EIR')[3] thus filled the void left by 1968 Brussels Convention,[4] later converted into Regulation 44/2001 (Brussels I),[5] which exempted insolvency proceedings from its scope of application. Although the first EIR did not harmonise substantive insolvency law, it became a key instrument of private international law that harmonized Member State rules on jurisdiction, applicable law, recognition and enforcement of judgments in insolvency matters.[6]

Regulation 1346/2000's multilateral approach has been a global focal point for attempts to replicate it at a regional or international level.[7] As such, it complemented the UNCITRAL Model Law on Cross-Border Insolvency (MLCBI) (1997),[8] while building on previous experience with the draft Bankruptcy Convention (1970)9 and the Convention on Insolvency Proceedings (1995). In fact, the 1995 Convention nearly succeeded in becoming law, failing only to be ratified by the United Kingdom, which resulted in its use as a blueprint for the first EIR. The regulation's *travaux préparatoires* would implicitly acknowledge it by making the Virgos-Schmit report[10] a key point of reference.

Despite its limited geographical reach, excluding Denmark, Ireland, and the United Kingdom, Regulation 1346/2000 achieved a considerable degree of coordination in cross-border insolvency, where assets of the insolvent debtor are located in different Member States. At the same time, proceedings involving non-EU jurisdictions were partly harmonised by the MLCBI due to its non-binding nature and the fact that only a handful of EU Member States followed its recommended rules. Still, this does not seem to have caused major difficulties in practice.[11]

On balance, the key provisions of the first EIR have operated effectively, ensuring a level-playing field for businesses, and preventing forum shopping by implementing the principle of mutual recognition. In particular, the regulation applied to insolvency proceedings involving debtors with

[3] Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings [2000] OJ L160/1.
[4] 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters [1972] OJ L299/32.
[5] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2001] OJ L12/1.
[6] Geert van Calster, COMIng, and Here to Stay, Review of the European Insolvency Regulation (2015), available at https://ssrn.com/abstract=2637003.
[7] *Ibid.*, p. 2
[8] United Nations Commission on International Trade Law (UNCITRAL), Model Law on Cross-Border Insolvency (1997), available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/1997-model-law-insol-2013-guide-enactment-e.pdf
[9] Draft Convention on bankruptcy, winding-up, arrangements, compositions and similar proceedings, Bull. EC, Suppl. 2/82, available at http://aei.pitt.edu/5480/1/5480.pdf
[10] Miguel Virgos and Etienne Schmit, Report on the Convention on Insolvency Proceedings (unofficial and never formally adopted) (1988), available at http://aei.pitt.edu/952/1/insolvency_report_schmidt_1988.pdf
[11] European Commission, Report on the application of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings [2012] COM(2012) 743 final, p. 8.

their 'centre of main interest' (COMI) within the EU. This jurisdictional concept has been clarified by the Court of Justice[12] and needs to be determined on a case-by-case basis, in a manner that is objectively ascertainable by third parties. On the other hand, the regulation did not apply to insolvent debtors with their COMI outside the EU. However, even where the COMI is established in the EU, there were limitations regarding assets, creditors or undertakings in third countries.

After fifteen years of application, a number of issues and shortcomings have led the EU legislator to repeal and replace Regulation 1346/2000. These include notably its inadequate scope, which excluded, per Annex A, pre-insolvency and hybrid proceedings as well as personal insolvency and such for undertakings operating in capital markets, certain rules on jurisdiction regarding multi-national groups of companies, the relationship between main and secondary insolvency proceedings, the publicity of insolvency-related judgments and lodging of claims.

The current legislative framework aims to remedy these shortcomings by further harmonizing national rules beyond jurisdiction in cross-border insolvency matters. It is the direct result of the so-called 'insolvency package', which was adopted in December 2012. Therefore, the remainder of this section presents and analyses Regulation 2015/848 on insolvency proceedings ('recast EIR'),[13] which also applies to pre-insolvency restructuring, and Directive 2019/1023 on preventive restructuring frameworks,[14] which harmonized various substantive insolvency rules across Europe to allow for a smoother application of the recast EIR.

3.1 Regulation 2015/848 on insolvency proceedings (Regulation (EU) 2015/848)

The recast EIR fits fully into the new European approach to insolvency, which views business rescue favourably by including pre-insolvency proceedings and those that do not involve debtor dispossession in the scope of the uniform rules. Clearly, the success of this approach depends on the moment in which there is an awareness of the need for intervention, which will be more likely to succeed if initiated in time.

The notion of COMI has been clarified for individuals and professionals, while for businesses, certain definitions and clarifications contained in various interpretative rulings of the Court of Justice, particularly in the Eurofood[15], Interedil[16], and Burgo[17] cases, have been codified. In addition, some provisions have been included that, by requiring the court to carefully assess its jurisdiction through the examination of the circumstances proving the location of COMI, aim to reduce or at least discourage forum shopping and fraudulent or abusive transfer of COMI. In this regard, Parliament has argued very strongly and succeeded in imposing a minimum period, different for companies and individuals, that must elapse before the court of the country to which the COMI has been transferred can assert jurisdiction. This is a choice that does not seem to fully comply with the principle of free movement and may prove detrimental when prompt and urgent action is needed to rescue companies in difficulty, which will instead have to wait until this period has elapsed. On the other hand, it cannot be ignored that the competition between jurisdictions and the current push to modernize insolvency law have led to the introduction of very similar procedures in member states,

[12] E.g. Case C-341/04, *Eurofood*, ECLI:EU:C:2006:281 and Case C-396/09, *Interedil*, ECLI:EU:C:2011:671.
[13] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings [2015] OJ L141/19.
[14] Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency) [2019] OJ L172/18.
[15] https://curia.europa.eu/juris/showPdf.jsf?text=&docid=56604&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8339094
[16] https://curia.europa.eu/juris/document/document.jsf?text=&docid=111587&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8340853
[17] https://curia.europa.eu/juris/document/document.jsf?text=&docid=157359&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8341366

which may reduce the incentives to transfer COMI, even when it is not abusive but is carried out with the consent of creditors seeking a favourable legal environment for rescue.

Still on the subject of jurisdiction-and as an exception to the favour expressed by the Court of Justice for the centralization of disputes at the court of the opening of the main proceedings, which nevertheless finds a place in the new text-Regulation (EU) 2015/848 provides that claims brought under Regulation (EU) No. 1215/2012 (Brussels I-bis), as well as those based on Regulation (EU) 2015/848 itself, can be brought before the court of the defendant's domicile. Although the intent of the provision is supportable, it is unclear whether it will also apply in the case of claims brought against a plurality of defendants based on Article 8 No. 1 of the Brussels I-bis Regulation.

The recast EIR introduces new provisions on the coordination between main and secondary proceedings, which take up the criticism voiced against the latter, which are accused of preventing or otherwise making more complex the management of the debtor's assets and consequently the best satisfaction of creditors. The solution adopted is to ensure the precedence of the main procedure and the satisfaction of the claims of creditors located in other member states, which could have been satisfied in secondary procedures, on the basis of the laws of these states, as if the secondary procedures had been opened. This is referred to as "synthetic" or "virtual" secondary proceedings.

Some aspects of these new provisions will be clarified by practice, especially with regard to the nature of the commitments that the administrator of the main proceedings may make to creditors located in other member states and the law applicable to them.

Regarding cooperation between procedures, it is worth noting the new provisions on cooperation between judges and the recognized role of protocols between procedure administrators, which can follow models and best practices adopted by European and international organizations or associations. In particular, the principles promoted by the American Law Institute and the International Insolvency Institute: Global Principles for Cooperation in International Insolvency Cases[18] and the European Communication and Cooperation Guidelines for Cross-border Insolvency[19], developed within the framework of Insol Europe, are under consideration.

On the other hand, with regard to the publicity of proceedings, the recast EIR requires that public registers, available on the Internet and interconnected through the e-Justice portal, be established in all member states, in which the opening of insolvency proceedings will be recorded, and key information will be provided to enable creditors to learn about them and to exercise their rights, including the right to appeal the opening decision.

3.2 Directive 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency, and discharge of debt

In 2019, the Directive (EU) 2019/1023[20] on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency, and discharge of debt, also called European Restructuring Directive ("ERD" or "Directive") was approved.

The ERD aims to strengthen in Europe through similar rules in national legislations the culture of recovery of the failing company and therefore prevention. Overall, it intends to facilitate the restructuring of companies in financial difficulty, even if does not exclude interventions in the case of companies in difficulty for other reasons. Indeed, Recital 28 specifies that proceedings may be initiated even if the debtor is experiencing difficulties of a non-financial nature, but there is "a real

[18] https://www.iiiglobal.org/sites/default/files/ALI-III%20Global%20Principles%20booklet_0.pdf
[19] https://www.insol-europe.org/download/documents/1113
[20] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32019L1023

and serious threat to the debtor's actual or future ability to pay its debts as they fall due". This provision considerably broadens the scope of application of the ERD, especially in comparison with the EIR and Regulation (EU) 2015/848.

The ERD amended certain aspects of Regulation (EU) 2015/848 and represented the latest attempt from the European legislators to harmonise the discrepancies among national insolvency frameworks. Regulation (EU) 2015/848 regulates jurisdiction, recognition, enforcement, applicable law and cooperation in cross-border insolvency proceedings as well as preventive proceedings that promote the rescue of healthy debtors and exoneration proceedings for entrepreneurs. However, it does not address the existing disparities between national rules regulating these procedures. Indeed, the ERD intends to go beyond the mere judicial cooperation (established by Regulation (EU) 2015/848) and to establish minimum substantive rules for procedures of preventive restructuring as well as for procedures leading to the exoneration of debts incurred by entrepreneurs. Still, the ERD Directive did not harmonise some crucial features of substantive insolvency law; it did not give a common definition of insolvency, it did not clarify common rules for the launch of insolvency proceedings, it did not legislate on "the ranking of claims, avoidance actions, the identification and tracing of assets belonging to the insolvency estate" [21].

The ERD does not affect the scope of application of Regulation (EU) 2015/848 but aims at complementing it by obliging Member States to provide for preventive restructuring procedures that respect certain minimum principles of effectiveness, aimed at supporting and as far as possible assisting the debtor before bankruptcy proceedings. Therefore, the purpose of the ERD is not only to protect cross-border creditors in recovering their legitimate claims but also to help the debtor/entrepreneur to recover from the situation of distress. This approach is aimed at protecting the entire European market.

The origins of the ERD are to be found in the EC Recommendation of 2014 (2014/135/EU)[22] which sets a new approach to business failure and insolvency. Indeed, the EC Recommendation stated that "a higher degree of harmonisation in the field of restructuring, insolvency, discharge of debt and disqualifications is indispensable for a well-functioning internal market in general and for a working Capital Markets Union in particular, as well as for the resilience of European economies, including for the preservation and creation of jobs".

Specifically, the ERD's aim is the harmonization of the Member States' procedures available to debtors in financial distress and to restructure their business. It is true that, until the approval of the ERD Directive, some Member States had not yet established restructuring tools or procedures that allowed the restructuring of companies only at a later stage. The Directive itself specified that "some Member States have a limited range of procedures that allow the restructuring of businesses only at a relatively late stage, in the context of insolvency procedures" and that "in other Member States, restructuring is possible at an earlier stage but the procedures available are not as effective as they could be, or they are very formal[23]".

The focus on preventive restructuring was driven by an analysis conducted by the EC itself which, in the impact assessment[24] accompanying the proposal for the ERD directive, underlined that within the EU there was a huge discrepancy over the ways in which business in crisis could trigger appropriate restructuring measures. Indeed, there were European countries where it was not possible to restructure businesses before they became insolvent. These difference in the approach caused a general inefficiency of the insolvency system and the diffusion of abusive forum shopping practices.

[21] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=PI_COM:Ares(2020)6591479
[22] EUR-Lex - 32014H0135 - EN - EUR-Lex (europa.eu)
[23] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32019L1023
[24] 15122020_proposal_directive_resilience_critical_entities_impact_assessment_summary_swd-2020-359_en.pdf (europa.eu)

The ERD Directive was also a reaction to the forum shopping phenomenon which continued to happen despite previous regulations. The harmonizing aim of the ERD directive was then that of obliging all EU member states to offer a "preventive restructuring framework" for companies in financial distress to prevent insolvency and ensure the viability of the company. According to this reasoning, companies in financial difficulty should have the possibility to restructure their debt.

To this end, the ERD introduces an obligation for Member States to ensure a regime to facilitate the prior restructuring of the firm where there is (only) an insolvency likelihood. The Directive does not provide for a complete regulation of the restructuring procedure, but regulates only some aspects of it: (i) the provision of early warning tools; (ii) the possibility to grant and revoke the suspension of enforcement actions; (iii) the content and the rules of the restructuring plan; (iv) the regime for the formation of classes, including equity holders; (v) the interventions, on the one hand limited and on the other mandatory, of the court and/or of the administrative authority which in some jurisdictions are allowed to intervene.

Overall, to provide a proper analysis of the ERD directive it is useful to clarify its main pillars, as better detailed below[25].

Early Warning

Among the general principles informing the preventive restructuring frameworks, the Directive requires that in each Member State debtors have access to one or more clear and transparent early warning tools capable of identifying situations that may involve the likelihood of insolvency and of alerting the debtor to the need to act without delay.

The ERD aims to offer instruments and incentives for early identification of debt distress, with the goal of preventing company insolvency by permitting corrective action at the earliest feasible time[26]. However, the provisions on early warning systems are limited since the Directive only requires countries to establish an early warning system[27], but without defining it or giving precise prescriptions on how such systems should work and look like.

In effect, the Directive merely provides a set of examples of such early warning tool(s), and Member States must implement one or more of those provided for in the ERD. This means that Member States have wide discretion in providing for the content of early warning tools, which may, but need not necessarily, include: (i) obligations to inform public or private entities when a debtor has failed to perform certain types of payments, (ii) mechanisms to incentivise third parties that are in possession of relevant information on the debtor, including accountants and tax; and (iii) social security authorities, to report negative developments in the debtor's business. Thus, the information may come from parties internal to the company (such as accountants, which may include the control functions entrusted to auditors) or from external parties.

It should be noted, however, that the text of the Directive is significantly different from the original text of the Proposal submitted by the Commission on 22 November 2016. In that text, early warning tools were defined as the set of tools that can highlight the start of a deterioration in the company's

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[25] JOSE M GARRIDO, CHANDA M DELONG, AMIRA RASEKH, ANJUM ROSHA "*Restructuring and Insolvency in Europe: Policy Options in the Implementation of the EU Directive*", (2021) International Monetary Fund Working papers, available at: https://doi.org/10.5089/9781513573595.001

[26] Indeed, recital 22 points out that "*It is appropriate (...) to provide one or more early warning tools to encourage debtors who are beginning to experience financial difficulties to act at an early stage. Early warning tools in the form of **alert mechanisms** indicating when a debtor has failed to make certain types of payment could be activated, for instance, by non-payment of taxes or social security contributions. Such instruments could be developed either by Member States or by private entities, provided that the objective is achieved*".

[27] Article 3(1) of the Directive provides that "*Member States shall ensure that debtors have access to clear and transparent **early warning tool(s)** capable of identifying situations which may involve the likelihood of insolvency and of alerting the debtor to the need to act without delay*". The second paragraph adds that "*Early warning tools may include the following: (a) alert mechanisms when the debtor has defaulted on certain types of payments; (b) advisory services provided by public or private organisations; (c) incentives under national law to third parties with relevant information on the debtor, such as accountants and tax and social security authorities, to report negative developments to the debtor*".

performance and alert the entrepreneur to the need to take urgent action (Art. 3). Furthermore, the 16th recital clarified that "early warning tools could be represented by obligations in the preparation of financial statements and in the monitoring of the activity as well as in the duty of third parties in possession of relevant information, such as auditors, tax and social security authorities to report negative developments". These parties could have been incentivised or obliged to as provided for in the domestic regulations of individual states.

The ERD is the result of the need to consider the needs of the various Member States, many of which did not have alert mechanisms in their legislation. This discrepancy led to the drafting of a milder text, which leaves much room for Member States in defining the early warning tools.

Preventive Restructuring Framework

The Directive introduces an obligation for Member States to ensure a regime, defined as a framework for preventive restructuring, aimed at facilitating the restructuring of the company where there is a likelihood of insolvency. This regime, which is reserved for debtors in financial difficulties to prevent insolvency and to ensure the viability of the debtor[28], is however not defined in its structure. In fact:

- Article 4 merely specifies that the preventive restructuring framework must enable the debtor to restructure his debts or his business, restore the operation of the company and avoid insolvency. The European legislator does not specify, however, what in concrete terms this preventive framework may consist of. It may take the form of one or more procedures or even just appropriate measures or provisions.

- Member States are allowed to provide for other provisions to avoid insolvency, provided that, pursuant to Article 4(5) of the Directive, they grant equal or superior guarantees to the parties involved.

- Member States are given the possibility to limit the involvement of the court or administrative authority only to cases where such intervention is necessary and required.

The content of the restructuring framework is therefore very broad and general. However, the Directive lays down some stricter rules that must be respected when adopting restructuring frameworks. Specifically, it regulates: (i) the adoption of a restructuring plan, its content and approval; (ii) the formation of classes of creditors for the purpose of voting on the plan; (iii) the intervention - in certain cases mandatory - of the judge; (iv) the appointment of a professional to assist the debtor and the creditors or to supervise or manage the restructuring; and finally (v) the suspension of enforcement actions which may concern all or only some of the creditors. In addition, the Directive regulates the regime of pre-deduction and stability of new finance, the non-subjection to an action for nullity, annulment and revocation of contracts entered by the entrepreneur during the period of the plan, as well as the duties of managers when there is a likelihood of insolvency.

To better understand the scope of the Directive, it should be added that the European legislator understood the term "restructuring" in very broad terms. The definition given in Article 2(a) makes it clear that "restructuring" means measures that "are intended to restructure the debtor's assets, which include changes in the composition, conditions or structure of the debtor's assets and liabilities or any other part of the debtor's capital structure, including any other part of the capital structure of the debtor, such as the sale of assets or parts of the undertaking, and, if provided for by national law, the sale of the undertaking on a going concern basis, as well as any necessary operational changes, or a combination of those elements".

Recital 24 states that the restructuring framework must be available before the debtor becomes insolvent under national law where insolvency normally entails the appointment of a liquidator and the complete divestiture of the debtor. To avoid abuse of restructuring frameworks, it is added that

[28] Art. 1(1)(a)) of the Directive.

the financial difficulties of the debtor should present a likelihood of insolvency and that the restructuring plan should be such as to prevent insolvency and ensure the viability of the company. It is therefore sufficient that there is a probability of insolvency as an objective condition for access. However, it must be stressed that Article 2(2) of the Directive leaves the definitions of "insolvency" and "likelihood of insolvency" to the national law of the Member States.

Article 5 provides that a debtor "who enters into prior restructuring procedures shall retain full or at least partial control over his assets and the day-to-day management of the undertaking", in line with the debtor in possession principle. Recital 30 clarifies that the rationale of the rule is to avoid unnecessary costs, to facilitate early restructuring and to encourage debtors to apply for restructuring, and to prevent the debtor from losing control of the company. Consequently, the appointment of a professional to carry out supervisory functions or to assume partial control of ongoing operations should be made on a case-by-case basis according to the specific circumstances or needs of the debtor. Likewise, the opening of proceedings will not require a court order, provided that the rights of third parties are not affected (Recital 18). In certain cases, however, Article 5 (and to some extent Recital 30) consider that Member States may always require the appointment of the professional: (i) when the debtor benefits from a general suspension of individual enforcement actions; (ii) when the restructuring plan has to be approved by means of a cross-sectional debt restructuring; (iii) when the appointment is requested by the debtor or by a majority of the creditors provided that the creditors cover the costs and fees of the professional. Recital 30 adds the further assumption (not repeated in Article 5): (i) the plan includes measures affecting employees' rights; (ii) or the debtor or his management has acted or the debtor or its management has acted in a criminal, fraudulent or detrimental to business relations.

Subjective and objective requirements for pre-insolvency proceedings

The Directive does not offer a definition of the "debtor" who, according to Article 4 is eligible for access to preventive restructuring frameworks. Nor does the Directive offer a definition of "debtor" who is entitled to access the early warning tools.

However, Article 1(2)(h) specifies that the Directive does not apply to certain types of undertakings (such as banks, insurance undertakings, collective investment undertakings) and to natural persons who are not entrepreneurs. Furthermore, Recital 20 notes that Member States may restrict access to preventive restructuring frameworks to legal entities, as the financial difficulties of entrepreneurs should also be able to be addressed through debt relief or formal restructuring based on contractual arrangements. Accordingly, Article 1(4), second paragraph, allows Member States to limit the application of preventive restructuring frameworks to legal entities.

Moreover, to some extent, the Directive provides for the possibility for Member States to lay down special rules for micro, small and medium-sized enterprises, the definition of which is, however, left to national law[29]. However, Recital 18 notes that Member States could take due account of Directive 2013/34/EU of the European Parliament and of the Council or the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

As regards the objective premise of the preventive restructuring framework, it is the "likelihood of insolvency", as provided for in Article 4 of the Directive. However, this is a concept which, under Article 2(2) of the Directive, is left to national law.

Preliminary overview of Directive 2019/1023's implementation by the Member States

Other than the provisions on using electronic means of communication in restructuring, bankruptcy and discharge-of-debt proceedings,[30] ERD Directive was due to be transposed at the national level

[29] Art. 2(2)(c)) Like the possibility to exclude the small and medium-sized enterprises from the cross-class cram down, *i.e.* the procedure provided for in Article 11 which, since it does not require the approval of all classes, requires the approval of the plan by the court. In this case, a "*majority of the classes with voting rights of the interested parties is sufficient, provided that at least one of them is a class of secured creditors or ranking higher than the class of unsecured creditors*" (Art. 11(1)(b)(i)).

[30] Article 28 of Directive 2019/1023, which is scheduled for transposition by 17 July 2024 and 17 July 2026 at the latest.

by 17 July 2021, when all relevant laws, regulations, and administrative provisions had to be adopted and published. However, considering the impact of the Covid-19 pandemic,[31] most Member States opted for a one-year extension of that deadline and have yet to complete the transposition.[32] Belgium,[33] Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, Ireland, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia,[34] Spain, and Sweden are still in the process of amending their legislations or have postponed the entry into effect of national transposition measures to 17 July 2022. While Estonia and Latvia were to finalize the process in January 2022, Italy's new Code of Business Crisis and Insolvency and Hungary's Law on Restructuring Procedures are expected to become law on 16 May 2022 and 1st July 2022 respectively. Austria,[35] France,[36] Germany,[37] Greece[38] already have effective legislation implementing the Directive in its entirety, while the Netherlands did so in part, with respect to the preventive restructuring framework.[39]

In terms of transposition techniques, some Member States issued detailed government reports, with (Ireland) or without (Sweden) public consultation, prior to introducing draft legislation. Amending existing laws, e.g. in Czechia, seems to be as preferable as introducing new comprehensive legislation, e.g. in Germany or the Netherlands. A combination of the two approaches is also possible, as Bulgaria considered a proposal for Law on insolvency of natural persons[40] in addition to any amendments of the Commerce Act regarding business entities.

Anticipating the substantive-law harmonization by Directive 2019/1023, Member States such as Italy and Poland introduced major reforms, conforming national rules to key provisions of the then-draft Directive. Already in 2016, the objective of giving entrepreneurs a second chance became part of the new Polish legislation on restructuring proceedings, including pre-insolvency restructuring. Furthermore, it created and regulated the profession of "restructuring adviser" to ensure the mandatory appointment of practitioners in charge of restructuring.

In Italy, the 2019 Code of Business Crisis and Insolvency,[41] which was intended to replace the Bankruptcy Act of 1942, differentiated for the first time "state of crisis" from "state of insolvency" and introduced an "assisted negotiation procedure" which an out – of – court proceedings, voluntary at the initiative of the debtor which is in a situation of economic - financial imbalance which makes its crisis or insolvency probable. In line with the Directive 2019/1023, the Code set out this possibility aimed at raising the financial distress on an early stage, with limited expensed trough the appointment of an external independent expert, and act without delay to prevent insolvency.

Member States which have completed the transposition, such as France, Germany, and the Netherlands, took advantage of Article 2(2) of the Directive to define "likelihood of insolvency" according to their national legal traditions.[42] Thus, access to preventive restructuring in Germany is limited to imminent illiquidity, even in the absence of over indebtedness. By contrast, the Netherlands requires a reasonably expected inability to service debts. In France, a fast-track "accelerated safeguard" procedure is available to debtors who have financial difficulties but are not yet insolvent, participate in ongoing restructuring (*procédure de conciliation*), and submit a plan to

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[31] *Supra*, para. 4.4.
[32] This overview is based on information from the following sources: DLA Piper, Dictionary of Insolvency Terms in EU Member States (as of January 2022), available at https://www.dlapiper.com/en/belgium/focus/dictionary-european-insolvency-terms/introduction [last accessed 15 March 2022]
[33] Law of 21 March 2021 (effective on 16 July 2022)…
[34] Slovenian Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act (*Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju*) (ZFPPIPP).
[35] 22 February 2021 ("Restructuring Regulation") (effective 17 July 2021)
[36] Ordinance 2021-1193 of September 15, 2021, which transposes into French law the European directive on preventive restructuring frameworks, and applies to proceedings opened as of October 1, 2021.
[37] Act on the Further Development of Restructuring and Insolvency Law (Gesetz zur Fortentwicklung des Sanierungs – und Insolvenzrechts – SanInsFoG) (effective 1st January 2021, except for provisions regarding public restructuring matters, which will enter into force on 17 July 2022).
[38] Law 4738/2020, effective as of 1st March 2021
[39] Wet Homologatie Onderhands Akkoord (WHOA) (effective 1st January 2021).
[40] The proposal was based on Article 1(4) of Directive 2019/1023, which allows Member States to extend the application of discharge-of-debt procedures to insolvent natural persons. It has not been adopted yet by the Bulgarian parliament.
[41] Legislative Decree No. 14 of 12 January 2019
[42] For an overview, see Ashurst, New restructuring tools in Europe: keeping up with the competition, available at https://www.ashurst.com/en/news-and-insights/insights/new-restructuring-tools-in-europe-keeping-up-with-the-competition/

ensure the viability of their business.[43] This procedure may be restricted to debt owed to financial, credit or similar institutions, which are otherwise excluded from the scope of Directive 2019/1023.

Overall, where the Directive does not provide for detailed or exhaustive harmonization, variations in implementation at the Member State level will need to be assessed upon the adoption or entry into effect of national transposition measures.

3.3 The ongoing policy processes

Discrepancies between the insolvency laws of the EU Member States create barriers to the free movement of capital in the internal market and make EU cross-border investments more uncertain: if it cannot be anticipated at reasonable cost what will happen with an investment during insolvency proceedings, there is a risk that such investment will not be made at all.

An effective insolvency law should help to liquidate non-viable firms and restructure (within insolvency proceedings) speedily and efficiently those that can be led back to viability and thus enable them to continue operating. Insolvency rules should also preserve the value that can be received by all concerned parties, whilst ensuring an adequate balance of interests of different stakeholders. A better insolvency framework contributes to a more efficient allocation of capital within and across Member States; more efficient and predictable insolvency frameworks are expected to facilitate cross-border investments and flows of market-based finance.

For the above reasons, in the new CMU Action Plan adopted in September 2020, the Commission announced that it will take an initiative (legislative or non-legislative) for minimum harmonisation (or, alternatively, increased convergence) in targeted areas of non-bank insolvency law, so as to make the outcomes of insolvency proceedings more predictable. This initiative is currently planned for the second quarter of 2022.

Some of the areas that the Commission considers harmonising in its inception impact assessment, include the following:

(i) prerequisites for when insolvency proceedings should be initiated (including a definition of insolvency and provisions on who is entitled to file for insolvency);

(ii) conditions for determining avoidance actions and effects of claw-back rights;

(iii) directors' duties related to handling imminent/actual insolvency proceedings;

(iv) position of secured creditors in insolvency taking into account specific needs for the protection of other creditors (e.g. employees, suppliers);

(v) court capacity when it comes to expertise and necessary training of judges; and

(vi) asset tracing which would be relevant, in particular in the context of avoidance actions.

The Union of Capital Markets and the rationale of the policy intervention

The objective of the CMU is to create a truly single market for capital across the EU to sustain investment and savings across all Member States, generating benefits for the EU's economy to grow in a sustainable way and be more competitive.

[43] Art. L. 628-1 Commerce Code

The outcomes of the CMU are essential for delivering on all of the EU's key economic policy objectives: post-COVID-19 recovery, an inclusive and resilient economy, the transition towards a digital and sustainable economy, and strategically-open autonomy in an increasingly complex global economic context.

The CMU has become more urgent in light of the crisis induced by COVID-19 but progress on some controversial issues has been slow and there are still significant barriers, including supervision, taxation and insolvency laws. These barriers are driven by history, customs, and culture. They are deep-rooted and will take time to tackle. Therefore, the European Parliament has called on the Commission and Member States to take decisive action to deliver on the CMU and to exploit its potential for the Union's economic and social growth as well as for the specific recovery from the COVID-19 pandemic.

The way to progress towards the CMU is to move step by step in all areas where barriers to the free movement of capital still exist. Among the 16 actions under Capital Markets Union Action Plan, Action 11 on insolvency pertains to taking a legislative or non-legislative initiative for minimum harmonisation or increased convergence in targeted areas of non-bank insolvency law and explore possibilities to enhance data reporting for a regular assessment of the effectiveness of national loan enforcement regimes.

The measures announced in this action plan will further transform the EU financial system and contribute to addressing the political and economic challenges ahead. This requires support from the European Parliament and Member States at the highest level and from technical experts in public administration. In its future work on the actions, the Commission will act in full compliance with better regulation rules and the simplification objective.

The specific issue of insolvency in the Capital Market Union

The CMU action plan points at the stark divergence between national insolvency regimes as a structural barrier to cross-border capital flows, making it difficult for cross-border investors to anticipate the length and outcome of value recovery proceedings in cases of bankruptcy, rendering it difficult to adequately price the risks, in particular for debt instruments.

Coherently with Action 11, the Commission will assess the measures to make convergent the diverse and sometimes inefficient national regimes Harmonisation of certain targeted areas of national insolvency rules or their convergence could enhance legal certainty. A concerted action to regularly monitor the efficiency of national insolvency regimes and allow Member States to benchmark their insolvency regimes against the other regimes in the EU and support their reform.

3.4 Final Report of the High-Level Forum on the Capital Markets Union

To support the CMU development process, in November 2019, the Commission set up an expert group of 28 senior industry executives, experts, consumer representatives and scholars in a high-level forum on the CMU. The final report[44] published in June 2020 issues 17 recommendations to the Commission and Member States to advance the CMU, presented in the section below.

[44] 5 Final report of the high-level forum on the Capital Markets Union 'A new vision for Europe's capital markets' https://ec.europa.eu/info/files/200610-cmu-high-level-forum-final-report_en.

The recommendations

The final report prepared by the High-Level Forum brings forward the following recommendations:

- The adoption of a legislative proposal for minimum harmonisation of **certain targeted elements of core nonbank corporate insolvency laws**, including a definition of triggers for *insolvency proceedings*, harmonised rules for the *ranking of claims* (which comprises legal convergence on *the position of secured creditors* in insolvency), and further core elements such as **avoidance actions**.

- Set up an expert group tasked with elaborating common terminology for principal features of the various national insolvency laws.

- Analyse how the current **bank supervisory reporting framework** should be modified so to provide supervisors the data on non-performing exposures that allows the analysis of the effectiveness of Member States' national insolvency systems. On the basis of this supervisory reporting data, EBA should start providing the Commission with bi-annual monitoring reports on the effectiveness of national insolvency systems.

- **Insolvency laws need to become more efficient** and more harmonised across the EU as a prerequisite for a fully-fledged Capital Markets Union **to increase confidence in cross-border financing**. Creditors tend to invest in jurisdictions where they are confident that insolvency frameworks will protect their interests in case of debtors' defaults and where they understand the insolvency frameworks.

The Forum emphasises that, from a bank creditor's perspective, **efficient insolvency proceedings could avoid the further build-up of nonperforming loans**. Efficiency of insolvency schemes is important also for the Banking Union to tackle non-performing loans. Inefficient and diverging insolvency proceedings also render it difficult to anticipate the **length and outcome of value recovery and therefore to adequately price in the risk**.

Therefore:

- Efficient insolvency regimes are significant for the Capital Markets Union to prevent a home bias and lead to transparent legal risks and costs in a fragmented scenario of insolvency law od diverse efficiency, making legal convergence in insolvency – aiming at its efficiency – a key element of the Capital Markets Union.

- Increased efficiency is more important for the Banking Union, harmonisation is more important from a Capital Markets Union perspective.

The Forum proposes:

- **A new stand-alone Directive on insolvency**, namely definition of insolvency/trigger of proceedings and creditors' ranking.

- **A new recommendation** on certain other insolvency issues to complement the Directive.

- Possible revisions to bank supervisory reporting framework on non-performing exposures.

The feasibility and implementation process

In respect to the feasibility and the implementation process and possible risks, the Forum advises that

- By early 2022, the Commission is invited to present a **legislative proposal for a Directive setting out minimum harmonisation rules** for the above referenced areas.

- Should the preliminary work result in some areas being better suited to be addressed, in an initial stage, through a Recommendation, the Commission is invited to present a proposal for a **Council Recommendation** to complement the proposed Directive.

- CRD/R supervisory **reporting requirements on non-performing loans** might be amended so that prudential information provided by banks on non-performing loans could contribute to the assessment of the effectiveness of national loan enforcement and insolvency systems.

- Establish an academic **Expert Group on insolvency, tasked with arriving at a common terminology** that allows for a meaningful comparison between various jurisdictions and could prepare long-term discussions about future harmonisation.

- The Commission is also invited to work on a set of questions to turn **the insolvency benchmarking** into a repeat **bi-annual exercise with the involvement of the European Banking Authority**.

- The above-mentioned initiatives should be flanked by measures to incentivise Member States **to enhance judicial capacity** in the field of insolvency through training and specialisation.

The expected benefits are:

- Harmonisation of core areas will **increase legal certainty** in areas significant to investors who price the risks of cross-border investments.

- The choice of a legislative vehicle (Directive or Recommendation) should reflect the **nature of a measure and its political feasibility**.

- The expert group set up by the Commission will have the task to provide the necessary terminological discussions with a view to long-term harmonisation, to create a sounder basis of the exchange of regulatory harmonisation pathways between such different jurisdictions hampers any progress.

- The repeated and regular benchmarking will increase transparency of national insolvency framework and incentivise national reforms.

4 Problem definition and baseline assessment

This section outlines the problems definition and its causes as well as its drivers.

Based on the analysis, it has emerged that, although international insolvency cases are not particularly numerous, the insolvency phenomenon (especially at EU level) involves different branches of law, declining in different ways in the individual Member States, creating a situation that directly or indirectly restricts the granting of credit and thus cross-border investments at European level. Creditors (which certainly include the tax authorities of the Member States as well as employees) are not adequately protected in cross-border insolvency proceedings with regard to the quantification of the risk they are (voluntarily or involuntarily) taking.

In addition, it should be emphasised that insolvency law is a node linking many other areas of law, such as labour law and secured credit law, and, therefore, mere harmonisation of insolvency law in the EU may not be sufficient without touching other branches of law. Moreover, harmonisation of a well-established insolvency mechanism (in some Member States) may meet with the objection of local insolvency practitioners, as they are reluctant to accept an unfamiliar and untested concept, as well as to adapt it appropriately to the national business environment.

As a preliminary result of evidence gathered during the desk research (see Annex 1 and 2 for a complete list of sources) and input received from various stakeholders, the project team has identified three main perspectives that can be used to represent an organic view of the major cross-border issues that constitute the main obstacles to insolvency law harmonization, namely:

1. From debtors' perspective, unsustainably high indebtedness creates a debt overhang problem, which weighs on investment and consumption decision;
2. From creditors' perspective, the lack of well-defined and predictable risk allocation rules weighs on their ability/ possibility to provide financing to the economy;
3. From insolvency practitioners' perspective, the difficulty of accessing information, as well as the specific nature of the subject matter (which inevitably requires transversal technical expertise, also from an economic point of view) determines the difficulty of fairly protecting both creditors (domestic and foreign) and debtors.

The problems for each of these three stakeholders groups are assessed below.

4.1 Debtor's perspective

From the analysis that has been conducted it emerges that from the point of view of debtors, excessive debt (as well as the concrete difficulty of accessing new or intermediate financing) and the difficulty of accessing simplified procedures (especially with regard to SMEs) produces an inability to resume their businesses. Therefore, the greatest problems which have emerged concern precisely the need to safeguard the debtor's second chance in the market, according to the aim of the Directive.

In the classical architecture of insolvency systems, the prevailing view is that the debtor admitted to insolvency proceedings is stripped of his assets and is an actor "*outside*" the proceedings. Thus, once admitted to insolvency proceedings, the debtor - in general - can no longer dispose of his assets and cannot even pay claims that arose before the opening of the proceedings. In insolvency

proceedings, the debtor is thus the "*passive*" claimant in the proceedings[45]. A dilemma then might arise: those who caused the crisis, and who should therefore be removed from the management of the company, are necessary for it to continue its activities at least in the initial stages.

Beyond the dual nature of the debtor in insolvency and restructuring proceedings as a "*passive*" and "*necessary*" player respectively, the main problems that emerged from the analysis conducted concern: simplified procedures for SMEs and the difficulty of accessing new funds to ensure business continuity.

SMEs – Debtor's perspective

The lack of an adequate and harmonized insolvency framework for SMEs can generate various costs for EU and these companies both from an ex-ante and ex post perspective. Ex ante, an inefficient allocation of assets in insolvency can lead to an increase in the cost of debt, harming firms' access to finance and, in the worst-case scenario, the lack of an attractive exit for SMEs may prevent many entrepreneurs from even starting a new business. Ex-post value can be destroyed if viable firms end up in a piecemeal liquidation or the assets of non-viable firms are not quickly reallocated toward more productive activities[46].

In many Member States, insolvency laws are designed with the complexity and sophistication of large companies in mind, not to address issues relevant to micro and small businesses. The complexity of insolvency proceedings often becomes a disincentive for small business owners facing financial distress to seek timely access to the insolvency system.

Yet, SMEs are often the largest users of insolvency systems, because they often don't have sufficient access to credit and can have difficulties weathering financial shocks. When approaching financial distress, small businesses face challenges such as limited information and lack of sophistication to navigate the complex insolvency system, lack of sufficient internal control mechanisms, as prescribed by general corporate law for large corporations, few financing options, and overlaps between business and personal debt further to the stigma related to personal responsibility in the case of failure. In this latter respect, even when the insolvency framework appears suitable for small businesses, when an effective discharge of debts for individuals is not granted honest but unfortunate sole traders and shareholders/managers of small companies will not find the insolvency system appealing despite the potential attractiveness of the corporate insolvency framework, as they do not enjoy an effective discharge of debts under the personal insolvency regime.

Moreover, traditional insolvency proceedings can be particularly costly, especially taking into account the fact that many of these firms might not even have assets to fund the costs of the procedure. Even in case these companies may afford the proceedings' costs, they face a second problem: the insolvency procedure may not be suitable for them in light of its complexity for SMEs.

As a consequence of the challenges above, many SMEs that meet the criteria for commencement of insolvency proceedings are never formally declared bankrupt and liquidated. Often, this is because SMEs tend to wait too long to file an insolvency petition, to the point that when the petition is filed, the remaining funds are insufficient to cover even the administrative costs and fees, let alone provide any meaningful recovery to creditors. Indeed, many SME insolvency filings are classified as no-asset cases and insolvency laws differ in their approach to their administration. Despite the prevalence of no-asset cases in judicial practice across a number of jurisdictions, few insolvency laws provide a

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[45] This conclusion was based on the prohibition, once an entrepreneur had been admitted to insolvency proceedings, to make payments that were detrimental to the "*par condicio creditorum*", both because the entrepreneur's assets during the proceedings constitute a guarantee for the satisfaction of all creditors (according to the rule of equal treatment) and because if the legal system does not allow the entrepreneur to make payments that are detrimental to the "par condicio creditorum", the debtor is not allowed to make payments that are detrimental to the "par condicio creditorum", and because if the law prohibits enforcement actions by creditors, this further prohibition also implies the prohibition to pay earlier debts because it would be incongruous that what the creditor cannot obtain by way of enforcement, he can obtain by virtue of sPolicy optionsntaneous performance by the debtor himself.

[46] Aurelio Guerrea Martinez, ' Implementing an insolvency framework for micro and small firms' 30 (1) (2021) International Insolvency Review < https://onlinelibrary.wiley.com/doi/full/10.1002/iir.1422 >

mechanism for their administration. While creditors (especially unsecured) would prefer to open proceedings and pursue the recovery of hidden or transferred assets in order to maximize their chances of meaningful recovery, this can entail significant costs (e.g., the remuneration of insolvency practitioners and experts, court fees, etc.) that exceed the potential benefits. In many instances, only a close examination of these cases can uncover the debtor's full financial situation, possibly enable the avoidance of transactions or allow creditors to hold the debtor liable for malfeasance, and request compensation.[47] Indeed, debtors may take unreasonable risk as they approach insolvency, gambling for their recovery in an attempt to avoid an insolvency filing and continue the operation of their business. The absence of assets may also be the result of fraud, with debtors taking money out of a business for personal use, concealing or transferring assets to related parties, and engaging in similar practices that might contribute directly to the failure of the business. Thus, no-asset cases not only present issues relating to the preservation of economic value and creditor recovery, but also relate to the integrity of the insolvency system as a whole and its role in setting the right incentives for debtors by promoting responsible risk taking and encouraging fair commercial conduct. Non assets proceedings may create issues and are difficult to regulate. To address the issue, Greece and Poland for example opted for not opening insolvency proceedings if the debtor's assets are not sufficient to cover the costs and thus debtors are not declared bankrupt and remain in the Business Registry.

Efficient insolvency regimes also allow for a "fresh start" for entrepreneurs and rehabilitation of viable businesses tends to enhance creditor recoveries and confidence. In turn, they can stimulate greater volumes of lending, at longer maturity periods, at lower cost and lower levels of collateral. Such mechanisms can also offer an effective framework for the creation of new business activity and encourage small businesses - particularly micro enterprises – which often are "informal" to formalise themselves improving their economics and financial inclusion.

Since most SMEs facing acute financial distress are more likely to liquidate, legal frameworks should focus on fast liquidation mechanisms that permit a rapid reallocation of assets to productive activities.[48] Countries should also consider providing out-of-court assistance to small business owners such as mediation, debt counselling and financial education.

New financing – Debtor's perspective

Obtaining new finance for an entrepreneur in "*crisis*" is crucial to enable a resumption and/or continuity of business. Indeed, to continue operating, the insolvent company will need access to additional funds both internal and external.

New funding provided to an insolvent company after the start of insolvency proceedings is known as "*post commencement finance*". It can become necessary at different stages of insolvency proceedings—immediately after the application for insolvency, during the preparation and approval of a reorganization plan or before the sale of assets in a liquidation. Besides paying for goods and services essential to continued operation, new funds are often used to cover labour costs, insurance, rent and other expenses necessary to maintain the value of the assets. But it is important that post-commencement finance mechanisms be used judiciously. To avoid restricting the availability of credit in regular commercial transactions, the use of post-commencement finance should be limited to supporting the reorganization of viable firms or enabling the sale of businesses as a going concern in liquidation— and only if new credit would lead to higher returns to existing stakeholders in the distressed business.

However, research has shown that many creditors (especially banks and credit institutions) are reluctant to provide new finance to entrepreneurs in crisis because the risk they take (in providing

[47] World Bank, 'Report on the Treatment of MSME Insolvency' (2017) <https://documents1.worldbank.org/curated/en/973331494264489956/pdf/114823-REVISED-PUBLIC-MSME-Insolvency-report-low-res-final.pdf >

[48] World Bank, 'Helping Small Businesses Handle Insolvency: World Bank Group Report Insolvency Treatment' <https://www.worldbank.org/en/news/feature/2017/06/28/helping-small-businesses-handle-insolvency-world-bank-group-report-insolvency-treatment >

new finance) is not adequately compensated. On the one hand, creditors who provide new finance are not always sure that the credit will be repaid (often an ex-post approval of the credit by a court is required) and the risk taken is not adequately compensated. In addition, entities providing new finance to distressed entities often also risk criminal sanctions for "*wrongful lending*".[49]

Indeed, the data gathered from the analysis showed that well-structured post-commission funding provisions are important to allow for adequate restructuring of the distressed enterprise. Certainly, by establishing predictable and enforceable rules on lending during insolvency proceedings, these provisions can encourage creditors to lend to companies that are able to reorganise and to do so on better terms. They may also encourage creditors to provide the bridging finance necessary to enable the sale of companies as a going concern. When companies in financial difficulty have access to new funds, they may be more likely to attempt a reorganisation and to emerge from the process successfully, in line with the aims of the Directive.

The evidence from the analysis has indeed validated the emphasis on the continuation of business operations (including through new or bridge financing) during insolvency or restructuring proceedings to facilitate reorganisation and to preserve and maximise the value of the debtor's assets.

4.2 **Creditor's perspective**

From the analysis that has been conducted it emerges that from the point of view of creditors, the most significant problem is the lack of a clear and precise quantification of the risk in the event of insolvency. And therefore, the general uncertainty as to their right to recover (and in which rank) the credit granted to them is not clearly regulated.

One of the most important questions in the design of corporate insolvency procedures is the ranking of claims in general and the position of secured creditors. Jurisdictions worldwide differ significantly in their approach to this question, not least because it is perceived to involve highly "political" judgments, and the scholarly work, if it exists, does not provide clear guidance. It is not surprising, then, that harmonization efforts in this area face significant challenges.

The issue of ranking of claims was also on the table in preparing the Proposal for Directive on Preventive Restructuring Frameworks and Second Chance. The issue of ranking of claims or more specific the ranking of shareholder loans is however not addressed in the directive.

In the context of the Capital Markets Union, it must be considered that the treatment of secured creditors in insolvency proceedings has a significant effect on lending practice. One would assume that the higher the ranking of secured creditors in insolvency proceedings is, the cheaper credit will be for debtors, and the higher debt levels/lending volume will be in a particular jurisdiction. This is exactly what is confirmed by the available evidence: using a sample of small firms that defaulted on

[49] A recent order of the Italian Court of Cassation, no. 18610 of 30 June 2021, has clearly defined the discipline of the abusive granting of credit, focusing mainly on the liability of the lender and the legitimacy to act of the trustee in bankruptcy. Defining the abusive use of credit according to Article 218 of the Bankruptcy Law (Article 325 of the new Code). The Court of Cassation defined abusive recourse to credit under article 218 of the bankruptcy law (article 325 of the new business crisis and insolvency code) as the recourse to credit by a company "by concealing its bankruptcy or state of insolvency", and then identified the specular behavior of the lender, i.e. the person who recklessly grants or continues to grant credit to an entrepreneur who is insolvent or in a state of crisis. This last aspect is relevant to the lender's liability. The latter is in fact required to comply with the principles of sound and proper management, verifying, in particular, the creditworthiness of the client on the basis of adequate information. The case, thus considered, is supplemented by some particular provisions, above all the primary and secondary regulations of the sector and the international agreements on sound and proper management and the general rule under Article 1176, second paragraph, of the Civil Code, for which "in the performance of the obligations inherent in the exercise of a professional activity, diligence must be assessed with reference to the nature of the activity exercised." As pointed out by the Court of Cassation, the regulations governing the banking system impose partly typified conduct, the breach of which may constitute "*culpa in omittendo*", thus constituting a breach of the duties incumbent on the "bank" subject by reason of its status. The company and third parties could therefore hold the lender liable for the granting or repeated granting of the credit. The behavior typified in this sense is obvious: it is the bank's conduct, whether intentional or negligent, aimed at artificially keeping alive a failing entrepreneur, thus causing damage to the latter's assets, damage equal to the worsening of the failure, or of the losses generated by the new favored transactions. It is clear, in fact, how such conduct could result in a decrease in the assets of the financed party and the worsening of the losses favored by the continuation of the business activity.

their bank debt in France, Germany, and the UK, it was found that large differences in creditors' rights across countries lead banks to adjust their lending and reorganization practices to mitigate costly aspects of bankruptcy law[50]. French banks respond to a code that is "*unfriendly*" to secured creditors by requiring more collateral than lenders elsewhere, and by relying on forms of collateral that minimize the statutory dilution of their claims in bankruptcy. These effects say something about the empirical importance of how secured creditors in particular are treated in insolvency proceedings. A very different matter is whether according to secured creditors full priority in insolvency proceedings is a defendable policy choice. This is a normative question, and it is one of the most controversial ones in the scholarly and political debate about the design of (corporate) insolvency proceedings. Even if, in principle, secured creditors are given this priority position, the question arises of whether certain limits may be justified vis-à-vis all other creditors and the debtor. It is easy to see that the immediate realization of a secured claim upon the opening of an insolvency proceeding may have detrimental effects on the going concern value of a distressed firm. No apparent efficiency rationale exists why certain unsecured creditors, for example tax, wage and pension claims, should be given priority over the claims of other, general unsecured creditors. It is rather fairness or distributional concerns that are instrumental in this regard, as with the wage or pension claims of workers, or the clout that certain stakeholders have in the political process, as with claims of tax authorities, i.e. the state.

An interesting and important case for the design of corporate insolvency laws is the ranking of shareholder loans vis-à-vis other unsecured creditors. Debt finance by shareholders is an important source of financing for closed corporations or in group structures. It is driven primarily by tax considerations. Some jurisdictions subordinate shareholder loans relative to the claims of other unsecured creditors. It is relatively easy to come up with a justification for provisions that subject payments on shareholder loans to the avoidance provisions of an insolvency code (within certain time limits): shareholders are insiders, and they may enrich themselves to the detriment of other creditors by such payments in the vicinity of insolvency. However, it is much more difficult to identify a convincing rationale for subordination rules if no such payments have taken place. Clearly, a subordination rule discourages debt financing by shareholders if the company is in financial distress, and the shareholders may be the only available financing source in such a setting. As a consequence, the prospects for a restructuring of the firm might be greatly reduced. On the other hand, one can argue that distressed firms might (ab)use funds made available by shareholder loans to "gamble for resurrection", further diluting existing claims of outside creditors. At the same time, it would appear that a liability rule for wrongful trading addresses this concern more directly and efficiently than a rule that subordinates all shareholder loans – whatever their purpose. The one remaining advantage of such a subordination rule might then lie in the lower risk costs imposed on shareholders/managers compared to a liability regime: the loss from the shareholders' perspective is limited to the amount of the loan under a subordination regime, whereas they face a potentially unlimited personal liability under a liability regime.

4.3 **Insolvency Practitioner's Perspective**

From the analysis that has been conducted it emerges that from the point of view of IPs, the practical difficulties of coordination or (sometimes) the lack of specific cross-border technical expertise led to situations that do not always make it possible to adequately safeguard the interests involved.

Insolvency practitioners (IPs) are experts with background in law, economics, or accounting who are likely to play an even more prominent role in administering insolvency and restructuring following the harmonization of pre-insolvency restructuring by Directive 2019/1023. At the same time, despite a growing number of studies, reports, and recommendations calling for a common European approach to regulating their profession, IPs perform their duties under greatly heterogenous national rules. That creates various practical difficulties for ensuring consistency and coordination in cross-border procedures. Thus, inadequate qualifications, licensing and registration, discrepancies in

[50] Davydenko/Franks, Do Bankruptcy Codes Matter? A Study of Defaults in France, Germany and the U.K., 63 J. Fin. 565 (2008).

professional or ethical rules, ambiguous or conflicting remuneration practices, insufficient technical expertise and experience in cross-border matters might prevent IPs from effectively safeguarding the interests of all parties to the procedures they are in charge of administering.

Already in 2004, the UNCITRAL Legislative Guide on Insolvency Law emphasized the need that IPs are "appropriately qualified and possess the knowledge, experience and personal qualities that will ensure not only the effective and efficient conduct of the proceedings but also that there is confidence in the insolvency regime." Accordingly, IPs should be subject to either licensing or registration, specific conditions for which need to meet a certain minimum standard. This is so because some Member States restrict IP appointments to (fully-) qualified lawyers, while others are more flexible and allow experts with broader business background to administer insolvency and restructuring procedures, provided they are licensed, e.g. by a professional body. In most Member States, only individuals may be appointed as IPs, whereas corporate IPs can do so in jurisdictions such as Hungary and Spain, subject to strict conditions (e.g., having at least one fully-qualified lawyer or licenced auditor).

Although certain stakeholders, including professional associations of IPs,[51] argued that harmonization of minimum qualifications, deontology, and relevant powers is unnecessary in the absence of further harmonization of the applicable substantive and procedural rules, the recast EIR as well as Directive 2019/1023 seem to have made this argument moot. Many stakeholders are now favourable to regulating the profession at the EU level by setting out a list of minimum qualifications and powers of IPs, preferably in a directive to allow for flexibility. However, dissenting voices point out the risk of reducing the number of IPs at times when they might be in particular demand. Moreover, consolidation of the profession around a few corporate IP might ensure expertise and specialisation, but it could also be detrimental to less developed economies.

As for professional deontology, discipline, and continuing training, coordination of national laws could come in the form of recommendations, guidelines and best practices. Alternatively, a light-touch harmonization by a directive might be a good choice as well. Finally, a few stakeholders have suggested investing in training and specialization of judges to minimize the risk for the parties to insolvency proceedings as a result of IPs' deficient qualifications or inadequate powers.

Finally, to address language barriers or facilitate access to information about assets as well as their traceability and recovery in cross-border insolvencies, the harmonization of national registers in terms of content and electronic accessibility could be supplement by a single European register along the lines of IRI (insolvency registers' interconnection) and BRIS (business registers' interconnection system). This would be particularly useful for tracing assets upon sale of claims, and eventually, helping judges decide in insolvency cases.

4.4 Problem Drivers

The problems identified from the debtor's, creditor's and IP's perspective gathered during the desk research and exchanges with the European Commission were further mapped out into 14 Building Blocks. Building Blocks are a helpful tool in policy development, which enables the examination and identification of appropriate policy measures to tackle in a proportional manner the issues identified. From the debtor's perspective, the problem of obtaining new financing and the challenges concerning SMEs in insolvency proceedings were profiled into Building Blocks 'Treatment of interim or new financing (in case of restructuring)' and 'Specificities of micro- and small enterprises (SMEs)'.

From the creditor's perspective, the problems identified with regards to the ranking of claims and the position of secured creditors were further transposed into the following Building Blocks: 'Priority

[51] European Parliament, Harmonization of insolvency law at EU level (2010), PE 419.633, p. 23, available at https://www.europarl.europa.eu/meetdocs/2009_2014/documents/empl/dv/empl_study_insolvencyproceedings_/empl_study_insolvencyproceedings_en.pdf

/ preferences of privileged creditors over general creditors'; 'Priority / preferences to certain types of general unsecured creditors'; 'Distinction between adjusting and non-adjusting creditors' and 'Transaction avoidance'.

From the Insolvency Practitioners' perspective, the problems related to divergent national rules that govern their profession and language barriers formed the Building Blocks of 'Role and powers of insolvency practitioners in asset tracing and recovery, including access to registers'; 'Role of the courts – training of judges' and 'Regulating insolvency practitioners' professional conditions'.

Overall, the Problem Drivers were grouped into the following Building Blocks:

1. **Sales on a going concern basis**, including pre-package sales ('pre-packs');
2. **Creditors' committees**;
3. **Definition** of 'insolvency';
4. **Lodgement of claims**;
5. Specificities of **micro- and small enterprises (MSMEs)**;
6. Priority/ preferences of **privileged creditors over general creditors**;
7. Priority / preferences to **certain types of general unsecured creditors**;
8. Distinction between '**adjusting**' and 'non adjusting' creditors;
9. Treatment of interim or new **financing** (in case of restructuring);
10. **Transaction avoidance**;
11. Role and powers of **insolvency practitioners in asset tracing and recovery**, including access to registers;
12. Role of the courts – **training of judges**;
13. Regulating **insolvency practitioners' professional conditions**;
14. **Directors' duties and liability** in the vicinity of insolvency.

For the sake of consistency, the Problem Drivers can be grouped into three categories, whether they relate more to process/procedures or to the general effectiveness and transparency of cross-border procedures. A third category relates to the peculiarities of the SMEs (as defined below).

Hence the following analysis is constructed on three macro categories:

1. Insolvency procedures' Problem Drivers (Section 4.4.);
2. General effectiveness and transparency of cross-border procedures' Problem Drivers (Section 4.4);
3. Specific measures for the SMEs (Section 5.3).

Insolvency liquidation procedure

The first category of Problem Drivers focuses on all those Buildings Blocks that are more closely related to insolvency cross border procedures and, therefore, that relate – directly and/or indirectly - to the protection of debtors and creditors' right, as better specified in the previous Section 6.1.

Overall, in this macro-category the project team has identified 7 critical issues, and namely:

1. Conditions for filing insolvency (definition of insolvency);
2. Provisions relating creditors' committee;
3. Time limit for lodgement of claims;
4. Sales on a going concern basis including pre-package sales;
5. Ranking of claims:
    a. The treatment of interim or new financing in case of restructuring;
    b. Priority/ Preferences of privileged creditors over general creditors;
    c. Priority/ Preferences to certain type of general unsecured creditors;
    d. Distinction between "adjusting" and "non adjusting" creditors;
6. Avoidance actions;

7. Directors' duties in the vicinity of insolvency.

The Problem Drivers as listed above have been deeply analysed by the Project Team in the sub-sections below.

Conditions for filing insolvency – definition of insolvency

According to UNCITRAL, insolvency occurs "when a debtor is generally unable to pay its debts as they mature or when its liabilities exceed the value of its assets"[52]. This can happen due to a company making a bad investment, misjudging business risk, or making mistakes in pricing. However, general market changes or an economic downturn can also drive a company to insolvency. Thus, the reasons that in the abstract can lead to a situation of insolvency can be both internal (for instance bad management of funds) to the company and external (for instance disruptive change in the markets).

Regardless the causes that lead to insolvency, there is no unambiguous definition of "Insolvency" for all Member States (numerically identifiable and therefore easily predictable or monitored). In fact, concepts such as "insolvency" or "vicinity to insolvency", as well as "crisis", which are often used in the European regulatory framework as well as in individual national laws, do not have a specific definition that is valid for all Member States. Some Member States adopt a simple form of the general cessation of payments test, requiring that the debtor be unable to meet its obligations as they fall due; others adopt that test but add further requirements, for example, that the cessation of payments must reflect a difficult financial situation that is not temporary, that the creditworthiness of the debtor must be at stake and that it be just and equitable for the debtor to be liquidated. Different Member States use the general cessation of payments test and the balance sheet test in different combinations to establish a commencement standard. Lastly, a combination of the cessation of payments test with the balance sheet test is adopted. An approach that combines the two tests may support commencement where there is a lack of information as to the existence of a general default and provide a more complete picture of the debtor's present and prospective financial situation[53].

The divergencies, especially in cross border insolvency proceedings, may create – directly and/or indirectly – both a barrier for foreign investors and a disruptive uncertainty for the debtor/entrepreneur.

On one hand, putting uniform (and mathematically quantifiable) criteria would not be possible to encompass the differences of the different markets involved.

On the other hand, the interviews conducted with stakeholders showed that a univocal definition of "insolvency" or "crisis" is not even required to satisfy the rights of the debtor's creditor and, indirectly, to facilitate the movement of capital in Europe. In fact, what has emerged is that it does not matter that there is a uniform starting point of the insolvency process (which coincides with the declaration of insolvency of the debtor) but what really matters is that there are fast, streamlined and very simple procedures and consequences of insolvency are clearly identified. In effect, the standard to be met for commencement of insolvency proceedings is central to the design of an insolvency law. Thus, as a general principle it is desirable that these standards are transparent and certain, facilitating access to insolvency proceedings conveniently, cost-effectively and quickly to encourage financially distressed or insolvent businesses to voluntarily commence proceedings. At the same time, ease of access needs to be balanced with proper and adequate safeguards to prevent improper use of proceedings.

As far as the definition of insolvency is concerned, it is clear that the more elements are added to the commencement standard, the more difficult it will be to satisfy, especially where the elements included are subjective. By contrast, tests that are relatively simple and straightforward may have

[52] Uncitral, United Nations Commission on International Trade Law, Legislative Guide on Insolvency Law, 2005.
[53] Uncitral, United Nations Commission on International Trade Law, Legislative Guide on Insolvency Law, 2005.

a tendency to include more cases, but this may be balanced by the increased ease of application that results from such tests[54].

Only through such clear and fast procedures can the rights of creditors and debtors be sufficiently protected and the aim of making capital markets in the European Economic Area more fluid be achieved.

Creditors' Committee

In all insolvency proceedings, it is essential to ensure a fair balance between the interests of the debtor's business and those of the relevant creditors. In order to ensure that the common interest of creditors is adequately protected (and, therefore, regardless of individual subjective positions that are protected based on the ranking of claims), almost all Member States provide for the establishment of committees representing creditors[55]. These committees are responsible for verifying that collective insolvency or restructuring proceedings are managed in a way that protects their interests and ensures the involvement of individual creditors, who might otherwise not participate in the proceedings due to their lack of importance in the decision-making process. Although creditors' committees are provided for in almost all member states, the rules for them do not appear to be standardized, either in terms of their constitution and composition, or in terms of their powers and voting rules.

However, irrespective of any differences in individual national laws, an adequate participation of committees in insolvency and restructuring proceedings appears to be necessary for the purpose of maximising the recovery. At the same time, the participation of committees in proceedings should not hamper swiftness of the proceedings. In fact, being an instrument apt to guarantee one of the subjective positions involved, i.e. the creditors' position, its existence shall be adequately balanced with the other subjective positions involved and, more generally, with the effectiveness of the procedure. In this sense, it is worth mentioning that there are those rules that tend to exclude or limit the presence of such a body when the company is small and/or the number of creditors is limited. In such cases, the position of the creditors does not require any guarantee body, as it is already subject to protection by ordinary means. For example, in France, the committee is provided only for companies exceeding certain thresholds of turnover and number of employees, unless the judge orders otherwise; similarly, in Austria, even if there are no pre-established thresholds, the committee is envisaged only where the nature and size of the company make it appropriate; in Portugal, the judge may decide that it is not appropriate to appoint a committee "due to the small size of the insolvent estate, the simplicity of the liquidation or the limited number of insolvency creditors". In other Member States, such as Germany, the above-mentioned requirement applies the other way round, in the sense that there are no restrictions as to the appointment of a creditors' committee, but if the undertaking exceeds certain size criteria, the insolvency court has to appoint a provisional creditors' committee even before the opening of the insolvency proceedings.

Leaving aside any considerations as to whether it is appropriate to make a distinction between cases where a committee is necessary or not (see also Specificities of MSEs), its participation in insolvency or restructuring proceedings should certainly be facilitated by using electronic means of communication (email, PEC, etc.), and the method based on which votes are cast at meetings and the method by which documents and information are shared should also be simplified[56]. Furthermore, the creditors' committee should not only be entrusted with the tasks of monitoring and implementing the plan, and, more generally, supervising the performance of the company being restructured, but its approval should also be required for any decisions and/or transactions that may

[54] Uncitral, United Nations Commission on International Trade Law, Legislative Guide on Insolvency Law, 2005.

[55] The establishment of committees is left to the decision of the general meeting of creditors, which expresses its will, to the debtor or to the Court, to have its interests represented by such a committee. The establishment of such a committee has no purpose in the event that the insolvency office holder is able to adequately guarantee the interests of the creditors, and in all cases where participation of such a committee is not justified by the complexity of the procedure (e.g. in case of restructuring procedures regarding SMEs). ELI Instrument - Rescue of Business in Insolvency Law, Wessels, Madaus, Boon, 6 September 2017, paragraph 4.4.3, no. 438.

[56] ELI Instrument – Rescue of Business in Insolvency Law, cit., Recommendation 4.07.

have a significant impact on the performance or outcome of the restructuring process (e.g. the decision to sell or discontinue the debtor's business, the distribution of assets, etc.)[57]. This is the case, for example, in Austria where for certain important transactions (e.g. sale of the business), the consent of the creditors' committee is a precondition for validity. This type of decision, in fact, is meant to have a direct impact on the position of creditors who, in such cases, may not find adequate satisfaction. In Germany, for transactions of particular importance, such as entering into a loan contract with considerable burdens on the insolvency estate, the insolvency administrator needs the approval of the creditors' meeting or of an appointed creditors' committee. In Finland, when preparing the draft restructuring programme, the insolvency practitioner must negotiate with the committee of creditors. In Romania, the creditors' committee can request the removal of the debtor's right to manage its affairs.

The fact that such decision-making power is solely limited to decisions having a particular impact on the performance or outcome of the proceedings appears to be an appropriate solution apt to avoid unjustified delays in the proceedings. It is understood that when the creditors' committee is vested with such a decision-making power, subject to consent of the Court, the support of a professional specializing in restructuring procedures should also be envisaged, whose fees shall be borne by the proceedings.

Once it has been established, also because of the specific characteristics of each procedure, it appears useful to provide that the creditors' committee itself should be entrusted with establishing, in agreement with the Court or the insolvency practitioner, the rules and majorities for implementing its activities and, more generally, the operating procedures. If these rules and majorities are not adopted, the Court should intervene in the absence of an autonomous decision, having regard to the procedure as a whole[58].

Lodgement of claims

The possibility of lodging claims in insolvency proceedings is of paramount importance for creditors, as it is their main way of obtaining what is owed to them (or at least part of it).

According to article 53 of Regulation (EU) 2015/848, "any foreign creditor may lodge claims in insolvency proceedings by any means of communication[59], which are accepted by the law of the State of the opening of proceedings. Representation by a lawyer or another legal professional shall not be mandatory for the sole purpose of lodging of claims."

Thus, article 53 establishes the right of a foreign creditor to lodge a claim in insolvency proceedings. This right is a necessary consequence of the principle of equal treatment of creditors and the principle of universality[60]. Article 53 can also be seen as a specific enactment of the general prohibition of discrimination on grounds of nationality in Article 18 of the Treaty on the Functioning of the European Union (TFEU). This provision has been interpreted by the CJEU to mean that it also prohibits discrimination on the basis of residence, as persons residing in a Member State are predominantly nationals of that State.

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[57] ELI Instrument – Rescue of Business in Insolvency Law, cit., Recommendation 4.08.

[58] [*cfr. Art. 6. - Draft Fragment test for EU Instrument – to assess how to cite, provided by the EC*]

[59] Cfr. Commentary on the European Insolvency Regulation (p. 566). OUP Oxford. Kindle Edition. - Claims can be lodged 'by any means of communication' which are accepted by the law of the state of opening of proceedings. This wording was introduced by Regulation (EU) 2015/848 and replaced the requirement to lodge claims 'in writing' which featured in Article 39 of the EIR 2000. The aim of the change in language was to make the Regulation 'future-proof' by clarifying that national law can allow creditors to file their claims electronically, for example, by e-mail. The Regulation does not establish a substantive law rule permitting electronic filing but relies on the trend in Member States towards an increased use of electronic means of communication in legal proceedings. Information on the means of communication accepted by a Member State will have to be communicated to the Commission and be made available on the e-Justice Portal in line with Article 86. The information may also be contained in the standard notice form to be established under Article 54.

[60] Riedemann in Pannen Art. 39, para. 2. - Commentary on the European Insolvency Regulation (p. 568). OUP Oxford. Kindle Edition.

Article 53 applies to any insolvency proceedings opened against the debtor, whether main, secondary or territorial. The provision grants the right to "lodge claims", which means that the lodgement of a claim cannot be rejected on the sole ground that the creditor is located in another member state. Therefore, a claim cannot be rejected on the grounds that it is governed by a foreign law, which determines that the right to lodge claims also applies to foreign tax authorities. Overall, the provision of Article 53 concerns only the location of the creditor and applies to all claims of foreign creditors irrespective of the applicable law; recital 63 clarifies that the creditor does not necessarily have to lodge the claim personally: if national law so provides, the insolvency practitioners may lodge claims on behalf of certain groups of creditors, e.g. employees.

To ensure compliance with these principles, Article 54 of Regulation (EU) 2015/848 provides for that "As soon as insolvency proceedings are opened in a Member State, the competent court of that State or the insolvency administrator appointed by that court shall inform known foreign creditors." Such information shall concern, among other things, "the time limits, the penalties provided for in relation to such time limits, the body or authority empowered to receive the lodgement of claims and any other measures provided for (...)". Such notice, for purposes of simplification, shall also contain "a copy of the standard form for the lodgement of claims (...) or an indication of where such form is available." And according to Article 56 of Regulation (EU) 2015/848, claims must be presented within the term provided for by the law of the State in which the proceedings are opened (which may, of course, change depending on the law applicable in the Member State in which the proceedings are opened); but in order to better protect foreign creditors' interest, European Regulation provides that "such time limit may not be less than 30 days from the publication of the opening of the insolvency proceedings in the insolvency register of the State of the opening of the proceedings".[61]

Overall, Regulation (EU) 2015/848 has brought three main improvements to Chapter IV: it prohibits any domestic law requirement that creditors be legally represented in the process of lodging claims (Article 53, second sentence), introduces standard forms for the notification of information concerning the opening of insolvency proceedings and the lodging of claims (Articles 54 and 55), and establishes a minimum period for the filing of claims by foreign creditors (Article 55(6)). These changes were intended to reduce the cost of filing foreign claims and were intended to work particularly to the benefit of small creditors who are often discouraged by the disproportionately high costs of filing their foreign claims.

However, even though Regulation (EU) 2015/848 seeks to simplify the procedures for the lodgement of claims (e.g., by providing for pre-established forms, or the unnecessary presence of a lawyer, or even the possibility for workers to lodge with classes of shares), according to some stakeholders, the most critical issue concerns the time limit for lodgement.

In fact, although Article 55(6) provides for a time limit of "not less than 30 days", such time limit would not be appropriate and would not allow foreign creditors to easily protect their claims. Indeed, even though Regulation (EU) 2015/848 in Articles 53-55 provides mechanisms to simplify the procedure of lodging a bankrupt's claim, the period of "not less than 30 days" would not be very "generous to foreign creditors", being a term close to the minimum period generally applied to domestic procedures. In France, for example, creditors not domiciled in France are granted an additional period of two month, so to file their claim[62]. Consequently, foreign creditors are granted a four-month time period.

Based on preliminary interviews carried out, in principle the time limit can also be considered as appropriate – also for foreign creditors – if creditors have access to a complete set of information

[61] This principle of extending the time limit for proceedings when a foreign subject is involved is provided for in almost all legal systems and in relation to all proceedings before a court. For example, Article 163 bis of the Italian Code of Civil Procedure provides that if the defendant is resident abroad, the time limit for the first hearing must be extended from 90 days to 150 days.
[62] Article R.622-24 of the French commercial code.

regarding the opened procedures. In addition, this information should be not only available, but also updated and understandable to whom is not used to deal with insolvency proceedings.

Sales on a going concern basis including pre-packages sales

Should there be no insolvency issue, the principle of contractual autonomy applies in all Member States, whereby the parties are, in principle, free to negotiate and to reach any agreement, at any time, having any possible content and form. Usually, there are two methods based on which the transfer of business activities takes place, i.e., either by transferring the shares of the company running the business, or by selling the entire business or a substantial part thereof (a substantial part of the assets, including contractual positions and liabilities, goodwill, etc.).

However, the transfer of a business or a business branch can also be used as a tool for restructuring or reorganising the business[63].The purpose of such a transfer would be to keep the business running, by separating the activities, that can still be profitable, from the debtor while the latter shall be left with those activities that are not viable anymore. The expression sale on a going concern basis means "a liquidation of debtor by the sale of the whole or a significant part of the business as an operating and functioning entity".

The opposite of this approach of transferring assets is the so-called piece-meal liquidation, consisting of a sale in which "individual assets of the business are sold separately", a sale that may come into play in the event of a business liquidation. In the context of bankruptcy practice in Europe, sales on a going concern basis were already regulated in several Member States already in 2003[64].

Sales on a going concern basis are governed differently in different Member States depending on whether or not bankruptcy law prevails and, therefore, whether or not the sale of an asset takes place in the context of formal insolvency proceedings.

By way of example, in Belgium the Business Continuity Act (BCA) of 2009 provides debtors in a state of financial crisis with three tools apt to reorganise their business, i.e.: (i) an amicable settlement; (ii) a collective reorganisation plan or (iii) a transfer of the enterprise or of its activities, in whole or in part, to third parties under court supervision.

In the second and third scenarios, the Court may order to transfer of all or part of the debtor's business, with or without the debtor's consent, and a representative of the Court shall manage the sale and transfer. Once a valid offer for the selected business assets has been chosen, the Court shall hear all the different stakeholders, including creditors, and approve, under certain conditions if deemed necessary, or reject the sale. Following completion of the business sale, creditors shall be entitled to exercise their rights over the proceeds arising from the sale and the moratorium shall end. By legislative choice, this type of sale is not only open to debtors in a state of crisis, but also to any debtor who meets the conditions for opening bankruptcy proceedings.

In England and Wales, the administrator has broad powers to perform “anything that is necessary or expedient for the management of affairs, business activities and the assets of the company”. In particular, the administrator is granted the powers provided under Schedule 1 of the Insolvency Act 1986, including the power to sell or otherwise dispose of the assets of the company by means of a public auction or private negotiation. In practice, administrators commonly sell all the assets of the company on a going concern basis and most often by way of a pre-pack sale.

[63] UNCITRAL uses the term reorganization as well, to which the following definition applies: “*a reorganisation is the process whereby the financial well-being and viability of a debtor’s business can be restored and the business can continue to operate, using various means possibly including debt forgiveness, debt rescheduling, debt-equity conversions and, our focus in this chapter, sale of the business (or parts of it) as a going concern*”.

[64] The principles of European insolvency law (2003) under Section 12.1 provide that: *“If and to the extent that there is no reorganisation, the administrator converts the debtor’s assets into money and distributes it among the creditors. The assets can be realised separately or together, whether or not as a going concern”.*

In France, the sale of the entire assets of a debtor on a going concern basis is only possible outside of court, and only through a pre-packaged plan within conciliation proceedings, or otherwise this could be possible within the framework of insolvency proceedings. However, this type of sale must achieve three objectives: (i) continuation of the business of the transferred company, (ii) preservation of working places and (iii) repayment of creditors. In the event of safeguard proceedings, the sale may only be intended for a part of the company's business and may only take place with the consent of the debtor.

In Germany, Article 160(2)(1) of the German insolvency act provides for rules concerning sales intended to liquidate the assets of debtors. In practice, many IPs resort to their powers with the aim of restructuring the business, by separating the business from the debtor so as to transfer the same to a third-party purchaser and distribute the proceeds within the insolvency proceedings (meaning that the agreement is negotiated in advance and implemented once the insolvency procedure has been initiated).

In Italy, Article 186-bis of the bankruptcy law regulates compositions with creditors ("*concordato preventive*") on a going concern basis, which provides for continuation of the business by the same distressed company, or the relevant transfer or contribution to one or more companies, without prejudice to the possibility of liquidating the assets that are not required for performing the business activities. In 2015, Article 163 of the bankruptcy law introduced the possibility for creditors to submit competing offers in order to maximise the value of the debtor's assets to be distributed to creditors. In Greece, in the context of extraordinary administration procedures, the highest bidder is entitled to purchase all assets free of any shares and liens, and the proceeds of the auction are used to satisfy creditors.

Sales on a going concern basis are also used in other Member States (e.g. Hungary, the Netherlands, Latvia, Poland, Spain, Sweden), and in some cases the sale may also entail transfer of a part of the debtor's liabilities so as to write off tax debts or transform them into equity.

Further to the sales on a going concern basis another instrument may be envisaged in cases where there is a risk that the value of the debtor's assets will decrease significantly in a short period of time[65], i.e. the prepack sales. INSOL, for example, mentioned that the introduction of such in instrument can be easily acceptable by the Member States considering that it is not yet present in most of them.

It can be noted, also, that the Prepack is considered a liquidation procedure and is acknowledged under Annex A of EIR. Furthermore, based on Council Directive 2001/23/EC of 12 March 2001, the Pre-pack is also considered as a bankruptcy or insolvency procedure initiated with a view to liquidating the assets of the transferor under the supervision of the competent public authority.

The procedure consists in an accelerated winding-up procedure, which allows for the sale of the debtor's business (in whole or in part), as a going concern, to the highest bidder selected during a competitive sale procedure ("Preparation Phase") preceding the formal opening of the liquidation ("Winding-up Phase")[66]. This liquidation procedure is without prejudice to the other aspects of the insolvency law, i.e. the ranking of claims and distributional rules, that continue to apply as long as they are compatible.

The Pre-Pack should have, at least, the following three distinctive features:

- the selection by the Court of the natural or legal person to be appointed as IP whenever any Liquidation Phase is initiated;

[65] ELI Instrument – *Rescue of Business in Insolvency Law*, cit., Recommendation 7.02.
[66] ELI Instrument – *Rescue of Business in Insolvency Law*, cit., Recommendation 7.03.

- during the Preparation Phase, the debtor shall continue to possess its business and the advisor shall have the role of making sure that the competitive sale process is carried out appropriately and consistently with market standards (i.e. open, competitive and transparent process) with a preference for the selection of the best offer based on the price offer which should ensure the highest recovery of the debt. Furthermore, in order to prevent any harm to the value of the Pre-pack business precautional measures should be adopted;

- when the liquidation phase is initiated, and subject to any exceptions, the Court shall appoint the advisor as the IP and shall authorise the sale of the debtor's assets to the perspective buyer, provided that the IP has given a favourable opinion on the competitive sale procedure carried out during the Preparation Phase.

In events where there are situations such as to ensure that the direct appointment is not detrimental to creditors' interests, Member States may either allow debtors and/or creditors (or creditors' committees) to directly choose the advisor without the involvement of a Court or allow the IP to directly authorise and execute the sale of the assets without the involvement of a Court. Member States shall ensure that IPs participating in Pre-pack procedures have relevant experience and expertise, retain liability in case of failure to perform their duties and receive appropriate remuneration, proportionate to their potential responsibilities[67]. On the other hand, the Court shall have exclusive jurisdiction over any dispute arising in the course of the Pre-pack procedure, any action against the advisor subsequently appointed as the IP and over urgent operational measures that may be instrumental to the success of the Pre-pack procedure, such as termination or amendment of employment agreements. Member States shall ensure that, during the Preparation Phase, the Pre-pack applicant should be entitled to apply for a stay or moratorium of enforcement measures[68] also in order to facilitate the Pre-pack procedure and provided that the advisor approves such an application for a stay.

Ranking of claims

According to ERBD "The insolvency law should respect the agreements reached between creditors and the debtor before the occurrence of insolvency, subject to clear rules relating to the ranking of creditor claims and the avoidance of certain transactions"[69].

The issue of ranking claims is at the heart of insolvency law. It can be resolved in as many ways as there are purposes of insolvency law. A simple comparison highlights this interrelationship: In France, the purpose of insolvency law is, among other things, but above all, to save as many jobs as possible, whereas in Germany the equivalent purpose is to provide creditors with the best possible satisfaction.

Consequently, in France the ranking system is tailored to the purpose of saving jobs, while in Germany secured credit enjoys a status of (near) sanctity.

In sum, the ranking of claims in insolvency is an intricate and highly political issue that is intertwined with a multitude of other factors within a given jurisdiction. Germany, for example, could afford to keep workers in the same rank as all other unsecured creditors because its law and social safety net are tight enough to prevent a debtor's other creditors from paying them. The general lesson to be drawn from this example is that liens should not be granted by insolvency law, but by those laws - social security law, labour law, etc. - that are responsible for that particular protection (as is the case in Denmark, for example).

Notwithstanding, the principle of *pari passu* (alternatively: par condicio creditorum), seems to constitute a fundamental principle of equity which implies that in a common situation (such as an insolvency procedure) where the debtor's existing assets are insufficient to satisfy all his creditors

[67] ELI Instrument – *Rescue of Business in Insolvency Law*, cit., Recommendation 7.04.
[68] As provided for in Articles 6 and 7 of Directive 2019/1023
[69] EBRD Core Principles of an Effective Insolvency System, September 2020.

in full, losses are shared proportionally and equitably. However, this principle has rarely - if ever - been applied without friction. The history of insolvency law can be written in terms of an ongoing struggle for privileged status, i.e., a higher rank.

Indeed, Member States have systems for "raking claims" because the priority ranking typically reflects the rights established in the local jurisdiction and the different goals that the system itself is intended to achieve. If one distinguishes between different types of claims, one can distinguish between administrative expenses (i.e., claims arising from the administration of a debtor's assets), secured creditors, and unsecured creditors. The latter include tax claims, wages and pensions, and shareholder loans. Despite this distinction, in some member states, such as Italy, France and Spain, tax claims have a preferential status in insolvency proceedings.

Below we provide an overview of the main aspects of credit classification that, based on current national frameworks as well as our research, are most promising in terms of future harmonization.

Priority/Preferences of privileged creditors over general creditors

It is a fundamental principle of insolvency law that pre-insolvency entitlements of creditors should be respected by insolvency and restructuring rules unless there are legitimate grounds to a post-commencement redistribution of value[70]. Almost all the Member States ensure a preferential treatment of secured credit. More specifically, security rights can be vested both on movables and immovable individually – by perfecting mortgages and pledges (as happens in Austria, Belgium, France, Germany, Greece, Hungary, Italy, Lithuania, Latvia, Netherlands, Poland, Spain, Sweden), property liens (France, Italy, Poland, Sweden), other consensual securities (France, Italy) like the transfer of property and the assignment of rights for security purposes (Austria, Germany, Italy)– or collectively by way of floating charges (Belgium, Hungary, Sweden, Italy) or collective transfers for security purposes.

More specifically insolvency regimes respect security rights arrangements of the debtor as long as they are permitted under local civil/contract law and do not constitute a fraudulent transfer of assets under respective insolvency law provisions. Indeed, secured transactions play a key role in a well-functioning market economy and discrepancies and uncertainties in the legal framework governing security rights are the main reasons for the high costs and unavailability of credit[71].

As a consequence, post-commencement preferences should be justified on the basis of a specific legitimate interest defined in advance to allow each creditor to calculate ex ante their risks in view of the legal position in a possible future insolvency of their debtor.

Thus, to ensure a proper functioning of the market, having regards to the creditors' perspective, what matter is to identify which are the legitimate interests which justify these preferences interference with the pre-commencement entitlements. It is obvious that these legitimate interests have to be identified in the interests of all the creditors in so far they provide a priority over the ordinary claims (i.e., so called super -priority).

A first legitimate interest is to guarantee orderly procedures by securing the payment of costs of proceedings. The proper and correct functioning of the systems ultimate safeguards the interests and rights of all the stakeholders.

A second legitimate interest is in securing the going concern (in a going concern sale as well as in a piecemeal auction process, i.e., prepack sale) which is possible only of if the assets forming the business are not torn apart at the outset of proceedings by secured creditors who enforces their pre-commencement entitlements. In effect, a going concern sale or a prepack sale usually means a higher return for creditors than the receivables from a piecemeal liquidation.

[70] ELI, Rescue of Business, cit.

[71] World Bank, Principles for Effective Insolvency and Creditor/Debtor Regimes, cit. See principles A2; A3.

Following from the above, administrative expenses (i.e., claims resulting from the debtors' estate) should be granted with a priority as well considering that they are costs resulting from the efforts to organise and orderly liquidate all assets in the estate or reorganise the debtor's business in the interest of all creditors.

Lastly, a further legitimate interest may be identified in the protection of interim and/or new financing as far as it sustains the restructuring proceedings or the sales as a going concern (see para below on treatment of interim or new financing). As of today, claims from interim finance enjoy the priority of administrative expenses, which means they usually rank ahead of pre-commencement creditors, but not affect the rights of secured creditors. In Belgium, however, interim finance may rank ahead of secured creditors. when and to the extent that secured creditors have benefited from such finance themselves. In France, for example, a super-priority is reported meaning that claims deriving from confirmed new finance arrangements in a safeguard proceeding or a judicial reorganization even rank above other secured and unsecured creditors. In Italy, in arrangement with creditors and in debt restructuring agreements, both interim and new finance – consequential to these agreements – are ranked ahead of secured creditors.

If the foregoing exhausts the list of legitimate interests that would justify a super-priority, any further preferences for specific groups of creditors such as tax authorities or employees do not seem justified. Indeed, that liens should not be granted by insolvency law, but by those laws - social security law, labour law, etc. - that are responsible for that particular protection.

Where securing the claim induces creditors to invest more funds, ultimately encouraging the credit system, providing super-priorities not grounded in the interests of all creditors makes it extremely difficult to ex ante assess the extent of super-preferred claims and, thus, almost impossible to precisely calculate credit risks which usually makes credit more expensive.

Priority/Preferences to certain type of general unsecured creditors – Distinction between "adjusting" and "non-adjusting" creditors

As mentioned above, the principle of *pari passu* is a fundamental principle of equity but among the general unsecured creditors, it may be appropriate to provide for certain preferences[72] having regards to the specific position of the unsecured creditors. In particular, what may be relevant to this end is the awareness and wilfulness of assuming the risk of insolvency. Thus, a modification of the *pari passu* principle may be envisaged by subordination of voluntary (adjusting creditors)[73] to involuntary (non – adjusting) creditors. More specifically non-adjusting creditors means involuntary creditors (tort and public creditors) and operating creditors that hold claims that are not investments in the capital structure (and therefore do not alter the terms on which they extend credit in response to the variations in the debtor's insolvency risk) but which stem from executory contracts entered into with the debtor company (typically workers and suppliers). Adjusting creditors means investors that hold claims in the capital structure (generally banks and bond-holders), due to having voluntarily advanced funds, and that are willing to incur the transaction costs (like information gathering, monitorization and negotiation) necessary to adjust the terms upon which credit is extended so as to compensate them appropriately for the risk they bear, namely the insolvency risk.

In compliance with the above, shareholder loans should be subordinated to other general creditors in view of their status. In effect, either shareholders manage the business or invest into it, they voluntarily buy the risks of the insolvency[74].

The case for the seniority of non-adjusting creditors over adjusting creditors may be endorsed with both economic and legal arguments. From an economic perspective, the nature of adjusting creditors

[72] Contrary to both Recommendation ELI 4.04, and the 2021 WB Principles C 12.3: "... *Public interests, in general, should not take precedence over private rights. The number of priority classes should be kept to a minimum*".

[73] Except for the interim and new financing procedures, the treatment of which is referred to herein.

[74] This is also the case in ordinary liquidation. In addition, subordination may also be applied to other persons such as directors or the debtor's relatives. In this sense, please also refer to the 2021 WB Principles C 12.5.

is closer to the nature of investors (like shareholders) than to the nature of creditors (understood as counterparties to executory contracts, typically workers or suppliers), therefore, adjusting creditors contract on insolvency risk. From a legal perspective, non-adjusting creditors would already be protected by their seniority and adjusting creditors would bargain on risks of insolvency between themselves and with shareholders, using insolvency proceedings as simple mechanisms to enforce priorities.

In any event, it is however necessary to enable each creditor to foresee and or calculate in advance their own legal position in a possible future insolvency status of the debtor. Furthermore, the above distinction may imply that adjusting creditors may increase the financing costs. In addition, starting from the premise that security interests are nothing but inter-creditor agreements between adjusting creditors, a further possibility may be the introduction of a specific sub-type of company with inactivated security interest (ISI) providing that only in case insolvency proceedings are opened, such security interests should be not opposable to non-adjusting creditors, which additionally should as a rule be ranked as senior to adjusting creditors[75]. Such a regime may incentivize banks to grant credit based on the genuine creditworthiness of the debtor's businesses, instead of focusing on particular security interests. However, bearing in mind that the effectiveness of such a measure should be tested on market, stakeholders do not appear to much confident in the success of this potential company in view of previous experiences with EU companies.

The treatment of interim or new financing in case of restructuring

The availability of financing is a key attribute of any successful restructuring plan.

Financing may initially be needed by the debtor to continue its business operations while restructuring negotiations (interim financing) are underway. The availability of this interim financing allows the debtor to cover its major operating costs (payments to crucial suppliers of goods and services, employees, rent, etc.). The financing can also be requested later for the implementation of the restructuring plan (new financing).[76] Without the willingness of creditors to waive or provide financing, it may not be possible to save potentially viable businesses.

The risks of interim and new financing require that their treatment be clearly established by the legal framework so as to provide certainty and appropriate incentives for its grantors. Creditors will only be willing to finance in a distressed debtor if they are confident that their claim will be sufficiently protected and prioritized over other claims. It is therefore important that the permissibility and ranking of post-petition financing be clearly established by the legal framework. Otherwise, it could be extremely difficult for distressed debtors to attract the financing they need for the survival of their businesses. The need for new financing must be balanced against increased risks for pre-existing creditors.[77]

As a general principle, the Directive requires Member States to ensure that both new and interim financings are adequately protected. As minimum protections in the event of subsequent insolvency of the debtor, the Directive provides for the protection of new and interim loans from being declared void, voidable or unenforceable and of the grantors of such loans from civil, administrative or criminal liability. This is on the basis of whether the financing is detrimental to the body of creditors.

[75] Without prejudice to the application, only between adjusting creditors, of the relevant inter – creditor agreements – including security interests.

[76] The Directive distinguishes between new and interim financing at article 2 para. 7 and 8, respectively. Cfr. Art 2 para. 7 and 8 "*New financing means any new financial assistance provided by an existing creditor or a new creditor for the purpose of implementing the restructuring plan and included in such restructuring plan; Temporary financing means any new financial assistance provided by an existing creditor or a new creditor that provides, at a minimum, for financial assistance during the pendency of individual enforcement actions and that is reasonable and immediately necessary for the debtor's business to continue to operate, or maintain or increase its value*".

[77] IMF Working Paper – Restructuring and Insolvency In Europe: "*Policy Option in the Implementation of the EU Directive*" By Josè Garrido, Chanda DeLong, Amira Rasekh, and Anjum Rosha.

However, the number of options provided by the Directive likely leads to divergence in the scope and coverage of these protections among Member states. For example, the directive does not preclude the exclusion of these protections based on other grounds that may be established by Member states' national laws, such as fraud, bad faith, and conflict of interest in related party transactions. It also allows the limitation of these minimum protections to new and interim financings that meet certain requirements, for example, to cases where the restructuring plan has been confirmed by a judicial or administrative authority (in the case of new financings) and interim financings that have been subject to ex ante control. It also allows interim financings made after the debtor has become unable to pay its debts when due to be excluded from these protections.[78]

Avoidance actions

Transaction Avoidance is a standard part in insolvency regimes and aims to protect the insolvency estate from illegitimate alienation in the vicinity of insolvency, by providing for recovery on various grounds. The transaction avoidance rules aim at rescinding or offsetting transactions that are detrimental to creditors and that were made prior to the opening of insolvency proceedings with a fraudulent intent. More specifically, the general aim of the avoidance rules is to protect the collective scheme of insolvency and that the creditors must have suffered a detriment from a transaction[79].

To date, EU legislation refers the regulation of such procedures to the national law of each individual member state. The landscape in Member States is very differentiated, in all aspects of the conditions allowing for the avoidance of transactions: the legal acts to be considered (types of avoidable transactions), the legal conditions (objective - subjective), the length and calculation of the "suspect periods", i.e. period within which such acts can be challenged ("limitation periods"), and the consequences vary from Member state to Member state.

Literature provides multiple and different recommendations for the possible harmonisation of transaction avoidance[80]. Based on research carried out, the most promising approach appears a principle-based approach and, more specifically an approach based on the principles of equal treatment of creditors, and protection of trust[81].

Transaction avoidance laws partly seeks to enforce the principle of equal treatment of creditors by enabling the insolvency practitioner to challenge preferential treatment given to a creditor in a specific period prior to the application for, or opening of, insolvency proceedings. Hence, the scope of the principle of equality is extended to include a period prior to the opening of insolvency proceedings. However, the principle of equal treatment cannot justify the avoidance of transactions at an undervalue and of intentionally fraudulent acts nor it can be enforced where the defendant was not a creditor prior to the transaction.

Based on the above, it is obvious that conflicting principles must be weighed against each other and balanced also with the principles of predictability (legal certainty) and optimal realisation of the debtor's assets. whenever EU transaction avoidance rules are adopted or amended.

In this context the first basic question that should be answered is how to group the extremely diverse types of detrimental legal acts. In certain Member States like France, Germany, Poland, Portugal and Sweden all legal acts are subject to avoidance rules, regardless of whether they were performed by the debtor, the defendant or a third party, provided that they are detrimental to the general body of creditors. In other Member States, like Czech Republic, Malta, the Netherlands, Slovenia and

[78] IMF Working Paper – Restructuring and Insolvency In Europe: "*Policy Option in the Implementation of the EU Directive*" By Josè Garrido, Chanda DeLong, Amira Rasekh, and Anjum Rosha.

[79] M Bridge, 'Collectivity, Management of Estates and *Pari passu* in Winding up' in J Armour and H Bennett (eds), Vulnerable Transactions in Corporate Insolvency (Hart 2003) 18.

[80] Ex multis. Keay, A. Harmonisation of Avoidance Rules in European Union Insolvencies: The Critical Elements in Formulating a Scheme. Northern Ireland Legal Quarterly, 69 (2). pp. 85-106. ISSN 0029-3105, (2018). M Bridge, 'Collectivity, Management of Estates and *Pari passu* in Winding up' in J Armour and H Bennett (eds), Vulnerable Transactions in Corporate Insolvency (Hart 2003) 18; Rolef de Weijs, Towards an objective European rule on transaction avoidance in insolvencies, Centre for the Study of European Contract Law Working Paper Series No. 2011/06.

[81] Approach adopted in the following studies: REPORT ON TRANSACTIONS AVOIDANCE LAWS (CERIL REPORT 2017/1), 26 September 2017, Rebecca Parry in Rebecca Parry/James Ayliffe/Sharif Shivji (eds.), Transaction Avoidance in Insolvencies, Oxford University Press, 2nd edn., Oxford 2011, para. 2.20

Spain only transactions of the debtor that have disadvantaged the general body of creditors are considered. In an attempt to proceed with a categorization is possible to distinguish[82]: i) legal acts compromising the estate of the debtor, further distinguishing between transactions at an undervalue and transactions not an undervalue but detrimental to creditors; ii) legal acts in which the counterparty is already a creditors (preferences) distinguishing between payments of undue debts and payments of a debt due at the time and in the manner already agreed; and iii) legal acts with the parties closely related to the debtors, including shareholders in view of the privileged position they have and closely related party.

It is clear that both subjective and objective criteria play a key role in the above categorisations and distinctions. Indeed, while for example, for the consideration of payments of an undue debt an objective criterion may be applied, subjective criteria are needed in many instances both to protect competing interests and to properly consider acts intentionally prejudicing creditors' rights.

Lastly, current divergencies in the suspected periods and in the limitation periods could be seen as producing inequality and unfairness. Differently, adopting a common suspected periods and point from which the time starts, i.e. such as for example the stating of the insolvency proceedings or the appointment of the IP, and providing a reasonable length limitation period would, on the one hand, force the IP to focus on avoidance actions early in the administration, avoiding procrastination in ascertaining whether transactions may be revoked, and, on the other hand, enable the IP to collect the right evidence and being sufficiently meticulous in its investigation[83].

Directors' duties in the vicinity of insolvency

It is well established that directors owe a series of duties to the companies to which they are appointed. Overall, beside their general duties, directors are subject to other duties enshrined in insolvency law, such as fraudulent trading and wrongful trading.[84]

Member States take different strategies to protect creditors in the vicinity of insolvency by imposing varying duties on directors. According to our desk research, most EU countries require directors to file for insolvency proceedings when the companies experience financial difficulties, as defined by law; some counties have wrongful trading; some countries make it clear that in the vicinity of insolvency, the focus of directors should shift to creditors' interest.

No matter which approach is adopted, one common thread is that creditors interests are blended into creditors' duties before the commencement of insolvency proceedings[85]. World Bank Principle B.2. clearly states that "Laws governing directors' obligations in the period approaching insolvency should promote responsible corporate behaviour while fostering reasonable risk taking and encouraging business reorganization. The law should provide appropriate remedies for breach of directors' obligations, which may be enforced after insolvency proceedings have commenced"[86].

Overall, article 19 of the ERD illustrates what directors need to do if there is a likelihood of insolvency: (i) to take immediate steps to minimize the loss for creditors, workers, shareholders; (ii) to have due regard to the interests of creditors and other stakeholders; (iii) to take reasonable steps to avoid insolvency; (iv) to avoid deliberate or grossly negligent conduct that threatens the viability of business.

[82] Rolef de Weijs, Towards an objective European rule on transaction avoidance in insolvencies, cit.

[83] Keay, A. Harmonisation of Avoidance Rules in European Union Insolvencies: The Critical Elements in Formulating a Scheme. Northern Ireland Legal Quarterly, 69 (2). pp. 85-106. ISSN 0029-3105, (2018)

[84] Carsten Gerner Beuerle and Edmund – Philipp Schuster, „*The evolving Structure of Directors' Duty in Europe*" (2014) *European Business Organisation Law review 15, p. 224*

[85] Daoning Zhang "*Insolvency Law and Multinational Groups – Theories, solution and recommendations for business failure"*

[86] The World Bank, Principles for Effective Insolvency and Creditor/Debtor regimes, 2021.

In a significant number of Member States[87], directors must file insolvency proceedings within a certain period of time of their company becoming insolvent, or else they could be held liable personally in tort for losses sustained by their company and its creditors. Other states provide, as Germany does, that if the company becomes insolvent or over- indebted, the board may not make any payments[88]. Furthermore, the German public company legislation provides a duty for the directors if "upon preparation of the annual balance sheet or an interim balance sheet it becomes apparent, or if in the exercise of proper judgment, it must be assumed that company has incurred a loss equal to one half of the share capital, the management board shall promptly call a shareholders' meeting and advise the meeting thereof"[89].

The German approach is representative of the legislation found in the majority of Member States and put into effect as a result of Article 58 of the Company Law Directive (EU) 2017/1132[90]. It merely provides that the directors must call a meeting of shareholders in case of "serious loss of the subscribed capital" to take the better measures to safeguard both the interests of the company and its creditors. Some Member States (like Italy[91]) requires that, in case, of "serious loss of the subscribed capital", the board to call a meeting and have the company decide, upon losing half of its subscribed share capital, whether to recapitalise or wind down the company's business and liquidate it.

However, what jurisdictions across Europe require of directors when their companies are in the vicinity of insolvency differs quite substantially. In most EU jurisdictions, the existence of a near insolvency situation does not lead to any marked change in the general duties of directors. The only jurisdictions where a change is noticeable are Cyprus, Denmark, Estonia, Hungary, Ireland, Latvia, and Malta. Denmark, for example, addresses the proximity of insolvency by providing that directors must exercise special care when this situation exists. But the directors have duties to all those who have a claim on the company at all times and this would include creditors, so it is therefore questionable whether there is any real duty due to the "likelihood of insolvency" to protect creditors.

In Hungary the change in duty involves the interests of creditors as a priority, and directors could be held liable for a form of wrongful trading. Where jurisdictions place less emphasis on shareholders and more on a range of stakeholders, if a company is on the verge of insolvency, it has been suggested that it could be left to the courts to balance the interests of stakeholders and consider the financial position of the company[92].

However, in jurisdictions where the obligation of directors does not change with the advent of vicinity to insolvency, directors are not free to do as they wish. Many of these jurisdictions - in fact - provide that director can be held liable for a form of wrongful trading, i.e., continuing to operate without mitigating their actions to minimize losses to creditors[93]. In other jurisdictions, while directors of a company are not subject to specific corporate or bankruptcy law restrictions, they can be held liable for wrongful trading by creditors of the company. For example, in the Netherlands, directors could be subject to tort action by a creditor with whom they contracted on behalf of the company when

[87] In most common law jurisdictions, there is no obligation on the directors to file proceedings it if their company becomes insolvent. Many companies in the UK, for instance, are at any one time insolvent and they are not, per se, breaching the law. The directors are not liable merely for running the affairs of an insolvent company. Some boards will effectively file insolvency proceedings by taking their companies into administration or liquidation, but they are not required to do so.

[88] Aktiengesetz article 92(2)

[89] Aktiengesetz article 92(1)

[90] Art. 58 "*In the event of a serious loss of the subscribed capital, the shareholders' meeting must be convened within the period prescribed by the States' legislation, in order to examine whether it is necessary to dissolve the company or take other measures. 2. The laws of a Member State shall not fix the amount of the loss at more than half of the subscribed capital considered to be serious within the meaning of paragraph* 1."

[91] Article 2474 Italian Civil Code

[92] Alessandra Zanardo "*Fiduciary Duties of Directors of Insolvent Corporations: A comparative Perspectives*" (2018) Chicago-Kent Law review 93.

[93] Article 2394 and 2086 Italian civil Code.

the directors knew or should have known that the company would not be able to meet its obligations to the creditor or have sufficient assets to discharge the obligation to the creditor[94].

Generally speaking, directors of companies have a duty to: (i) to act in the best interests of the company, seeking to avoid insolvency (Article 19 of the ERD); (ii) to convene the shareholders' meeting to take the best appropriate action in the event of a "serious loss of the subscribed capital" (pursuant to Article 58 of Company Law Directive (EU) 2017/1132). And in the "likelihood of insolvency", even if there are no actual duties, according to most stakeholders, directors should change their point of view and consider within their duties also the interests of the creditors (considering also in some Member States directors can be sued for wrongful trading).

General effectiveness of the procedures

The second macro category of Problem Drivers focuses on overall efficiency as well as transparency of cross-border insolvency proceedings. In this macro-category the problems related to the operators of insolvency proceedings (or "IP") are addressed and namely:

1. The role of the Court in cross border insolvency proceedings;
2. The need to regulate IP's conditions;
3. The Role and powers of IP in asset tracing and recovery, including access to register.

The Problem Drivers as listed above have been deeply analysed by the Project Team in following sub-sections.

Role of the courts – training of judges

Specialization in insolvency proceedings has multiple meanings: first of all, courts should be aware economic mechanisms, macro-and micro-economics and accounting to understand balance sheets and appreciate insolvency data. When a court has to determine the best solution for an insolvent company, it is quite difficult to do so without understanding its cost accounting and its estimated budget. Training is also necessary in financial rules, to assist in decisions whether or not to approve composition or rehabilitation plans and should focus on technical matters[95]. Lastly, because of the effects of insolvency on unemployment, competition regulation, corporate law, wider legal competence and training is absolutely necessary to ensure the appropriate balance of all the interests involved at the time the decision is taken.

In most Member States, insolvency proceedings are administered by a judicial authority, through commercial courts, courts of general jurisdiction or through specialised insolvency courts. This means that sometimes judges have specialised knowledge and responsibility for insolvency matters, while in other cases insolvency matters are just one of the wider judicial responsibilities. These differences have consequences on the quality of procedures that may significantly differ across regions[96]. However, the proper functioning of the courts and the high quality of judges can significantly contribute reducing the length of proceedings[97] and increase the ability to distinguish viable from non-viable firms[98]. As the figure below indicates, economies with training programs for judges score better and are closer to the best regulatory practice[99]. The figure below shows thus the

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[94] The relevant rule in the Netherlands is called the "Beklamel-rule" and named after the case that decided that directors could be liable on the basis discussed in the article: C. Garner-Beuerle, P. Paech and E. Schuster, "Study on Directors' Duties and Liability" April 2013, London, LSE, and prepared for the EC, at p351.

[95] UNCITRAL/INSOL/IBA, Global insolvency colloquium 4 th – 6th december 2000, Vienna evaluation and synthesis session wednesday 6th December.

[96] Harmonising insolvency law in the Euro Area: rationale, stock-taking and challenges. What role for the Eurogroup? Valiante, 13 July 2016, European Parliament Study.

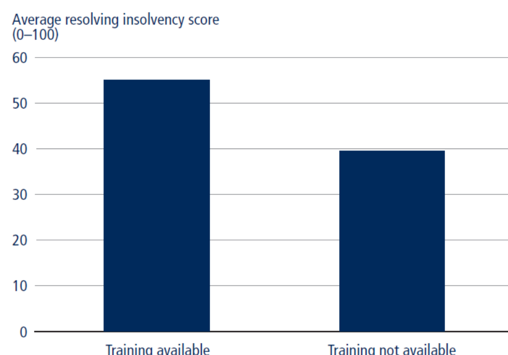
97 The relation between duration of insolvency proceedings and their efficiency (with a particular emphasis on Polish experiences), Joanna Kruczalak-Jankowska,Monika Maśnicka,Anna Machnikowska, 4 September 2020

[98] Matching Bankruptcy Laws to Legal Environments, *The Journal of Law, Economics, and Organization*, Volume 25, Issue 1, May 2009, Pages 2–30, 25 October 2007.

99 Enforcing Contracts and Resolving Insolvency, Training and efficiency in the judicial system, Doing Business 2019.

positive association between economies with training programs and a higher resolving insolvency score.

Figure 1. Positive association between economies with training programs and a higher resolving insolvency score



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Regulating insolvency practitioners' conditions

Despite the existing differences in national insolvency law across the EU, the IP are at the heart of the insolvency systems[101]. Their roles and duties depend on the type of insolvency procedures and fully implementation of the ERD may lead to an additional role in national insolvency systems.

A State Agency would provide a more active regulation of the profession. In UK, for example, a public consultation is ongoing in view of the Government proposal to "modernise the existing regulatory framework by creating a single independent government regulator to sit within the Insolvency Service and introducing the regulation of firms that provide insolvency services"[102]. However, the introduction of such an Agency highly depends on the Member State resources.

Regardless the entrustment of a specified body in charge of regulating the IP profession, based on a 2014 ERBD assessment[103] and subsequent analysis, an increased competition among insolvency practitioners would raise standards of performance and investment in more trained and qualified insolvency practitioners would be beneficial for the efficiency of the entire insolvency system. Indeed, the considerations above provided in respect to the Courts also apply to the IP. The Directive already sets forth minimum standards for training, appointing, remunerating, and supervising insolvency representatives. However, based on the above assessment there is still room for further improvement in light of the significant impact of the IP decisions on both the debtor and the creditor.

Role and powers of insolvency practitioners in asset tracing and recovery, including access to register

Effectiveness of asset tracing and recovery has a direct impact in the insolvency proceedings and it contributes more broadly to the objectives of the rule of law, good governance and sustainable development.

A common definition of asset tracing and recovery does not exist. However, according to UNCITRAL, 'asset tracing' is a legal process of identifying and locating misappropriated assets or their proceeds (values) belonging to the debtor's estate; 'asset recovery' instead follows the asset tracing process and can be understood as the process of returning the assets to their legitimate claimant(s), which

[100] Enforcing Contracts and Resolving Insolvency - Training and efficiency in the judicial system, Doing Business 2019

[101] EBRD Insolvency Office Holder Principles. ERBD Principles for an Effective Professional and Regulatory Framework for Insolvency Office Holders, 2021.

[102] See https://www.gov.uk/government/consultations/the-future-of-insolvency-regulation/the-future-of-insolvency-regulation

[103] ERBD, Assessment of insolvency office holders, Review of the profession in the EBRD region, 2014.

includes both preservation (freezing) of the assets identified and the repatriation (if the asset is to be found in another State)[104].

Different EU regulations enable taking evidence and other asset tracing and recovery measures in civil or commercial matters across EU Member States[105], although excluding the insolvency proceedings. It is true that nothing prevent the IP from making use of the European Preservation Order Procedure ("EAPO")[106] to trace and recover assets above at least in relation to detrimental payments the debtor made to third parties, but many aspects of EAPO implementation are governed by national laws and the main use of the instrument appears limited to tracing banking accounts[107].

The EIR does not specifically address the issue of asset tracing and recovery in the context of cross – border insolvency proceedings and it provides that the powers of the IP are governed by the *lex fori concursus*[108] . Thus, the EU landscape is very fragmented in this respect and each Member State has its own rules and entrust the IP of different powers in respect to the asset tracing. Furthermore, in certain Member States like Netherland is not only the IP that may obtain the relevant information.

From the substantive standpoint, the current framework implies that IP powers may not include coercive measures if they are not provided by the applicable law, unless ordered by a court of the specific Member State or the right to rule on legal proceedings or disputes. However, both the recognition of the powers of the IP to act in relation to the assets located in another Member State[109] and the recognition of injunction and interim courts orders[110] are well established. Preservation measures, instead, may be adopted only where an IP has been appointed[111] which means that prior to the commencement of the insolvency proceedings provisional measures may be only ordered by the court upon the request of the debtor, creditors or third parties or the foreign representative[112].

From the procedural point of view, the absence of common rules including interim and conservative measures weaken the efficiency of the actions to be taken to trace and recovery misappropriated assets, whilst minimum common rules would facilitate the cross- border recognition of these measures.

Lastly, in respect to the publicity of the information regarding assets, there is a need to facilitate and speeding up the process of tracing assets for the efficiency of insolvency proceedings, in compliance with fundamental rights and data protection requirements, relying on IT tools. The EU has already taken significant steps: the EIR requires Member States to establish insolvency registers interconnected via the European e-Justice portal and to publish certain mandatory information establishing the insolvency registers' interconnection ("IRI"); the Business Registers Interconnection System ("BRIS") aims at facilitating the access to information on EU companies for the public and ensure that all EU business registers can communicate to each other; the Beneficial ownership registers interconnection system ("BORIS") serves as a central search service making available all information related to the beneficial ownership operating as a decentralised system interconnecting the national beneficial ownership registers of the Member States and the European e-Justice Portal through the European Central Platform. Lastly, there is a Proposal for a Regulation on a computerized

[104] UNCITRAL, *Civil asset tracing and recovery in insolvency proceedings. Note by the Secretariat*, 4 October 2021 (A/CN.9/WG.V/WP.175), § 29. See previously the *Report of the Colloquium on Civil Asset Tracing and Recovery* (Vienna, 6 December 2019) (A/CN/9/1008). The documents are available at www.uncitral.org.
[105] Regulation (EC) No 1206/2001; Regulation (EU) No 805/2004; Regulation (EC) No 1896/2006; Regulation (EC) No 861/2007.
[106] Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters.
107 Antonio Leandro, Asset Tracing and Recovery in European Cross-border Insolvency Proceedings, 21 December 2021.
[108] Art. 7 EIR.
[109] France, Cass. Com. No. 17-16.200, Dalloz 2020, 1799, note R. Damman/A.Sallou.
[110] France, Cass. Civ. No. 15-14.664, Rev. Sociétés 2017, 303 note N. Morelli. See R. Damman/M. Guermonprez, BJE February 2018.
[111] Art. 52 EIR.
[112] Note of the Secretariat of the UNCITRAL Working Group V, 4 Ocotber 2021 (A/CN.9/WG.V/W)

system for communication in cross-border civil and criminal proceedings[113] (e-Codex system) which includes both the EIR and the ERD into its scope.

Notwithstanding the above efforts, stakeholders pointed out that, on the one hand, essential information for the purpose of asset tracing are included in national registers and these registers are either not accessible and/or are not comprehensible by the IP (due to language barriers). Furthermore, what matters is that any information is updated, and this does not occur in practice. On the other hand, in the context of the insolvency proceedings it is not mandatory for the IP to make use of the above systems and this discretion may significantly reduce the usefulness of the tools and broadly the efficiency of the proceedings.

Specificities for small and medium enterprises

This sub-section is intended to provide, beside the two macro categories analysed above, whether simplified and partially tailor-made regimes are needed for SMEs.

Indeed, traditionally, special treatment for the so called "small and medium-sized enterprises" has always been highly recommended, for instance, providing for a simplified application of restructuring or insolvency proceedings. Indeed, beyond such response by legislators, legal practice has underlined the need for the enterprises that do not meet certain thresholds to establish a preferred channel, due to their sizes.

A closer look at our analysis reveals that existing national regulations limit such privileges to businesses that do not exceed certain thresholds. While these thresholds are different across jurisdictions, the overall picture reveals that a special treatment is commonly only available for small, but not for medium sized businesses. Indeed, for medium sized businesses common insolvency and restructuring rules and procedures appear designed and applicable (although with some differences in the different member State).

Notwithstanding at European Level recommendation n. 2003/361/CE[114] set forth specific criteria to define the "small and medium-sized enterprises", our analysis shows that is close to impossible to provide for a definition of classes of business that can labelled micro or small-sized that would fit all European jurisdictions[115]. For instance, Greece and Spain, as well as Italy, provide for simplified SME insolvency proceedings, but the threshold established diverges widely: Greece requires that the value of the company's business be less than €100,000[116]; Spain requires that the company's creditors be less than 50, its debts 'value and its assets be a maximum of €5 million[117]; and Italy requires that the company has less than €300,000 in assets, have no more than €200,000 of gross revenue and a debt of maximum €500,000[118]. Moreover, a global scale research has shown that such a "one size fits all" definition of SME does not exist either[119].

Instead of focusing on numbers (ex multis, revenue, employees, debt level) the scope of a privilege for SME should be adopted to the characteristic which justify a special treatment in insolvency and restructuring. The definition should purport to cover businesses that are unable to access or successfully complete regular insolvency and/or restructuring proceedings. Such inability is not

[113] Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a computerised system for communication in cross-border civil and criminal proceedings (e-CODEX system), and amending Regulation (EU) 2018/1726, 2.12.2020.

[114] The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million. Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million. Within the SME category, a microenterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

[117] Spanish Insolvency Code Article 190

[118] Italian Insolvency Law article 1.2 set forth that for those company Insolvency law does not apply but instead they are considered as "natural persons" and therefore not subject to bankruptcy but only to exdebitation.

[119] Eli – European Law Institute "*Rescue of business in insolvency law*", 2017

necessarily linked with certain level of debt or a form of incorporation, but rather in the business' lack of resources both to finance regular proceedings and relevant professional advice. In fact, because of a large fixed-cost component (lawyers, judges, courts), these costs can make formal insolvency proceedings particularly unattractive for small firms[120]. The main obstacle to pursuing regular restructuring or insolvency proceedings in a small business case is the lack of resources.[121] The limited resources present in a MSE insolvency cause a financing problem that should not be solved by denying such businesses access to proceedings. Based on our consultations, a large number of Member States do not even open (i.e. Austria, Germany, Greece and Italy) or immediately terminate proceedings (i.e. Belgium and Spain) if the debtor does not have sufficient resources to cover at least the proceedings' expenses.

Hence the privilege and or the special regime should address the failing business with very limited resources only. This approach would make it possible to satisfy two opposing needs; on the one hand, it would make it feasible to design a simplified insolvency regime based on "objective difficulty criteria" (including sole proprietorships, MSEs with unlimited liability and MSEs with limited liability) and, on the other hand, to exclude companies that comply with defined quantitative limits but are subject to ordinary procedures because, for example, they are controlled by a corporate group.

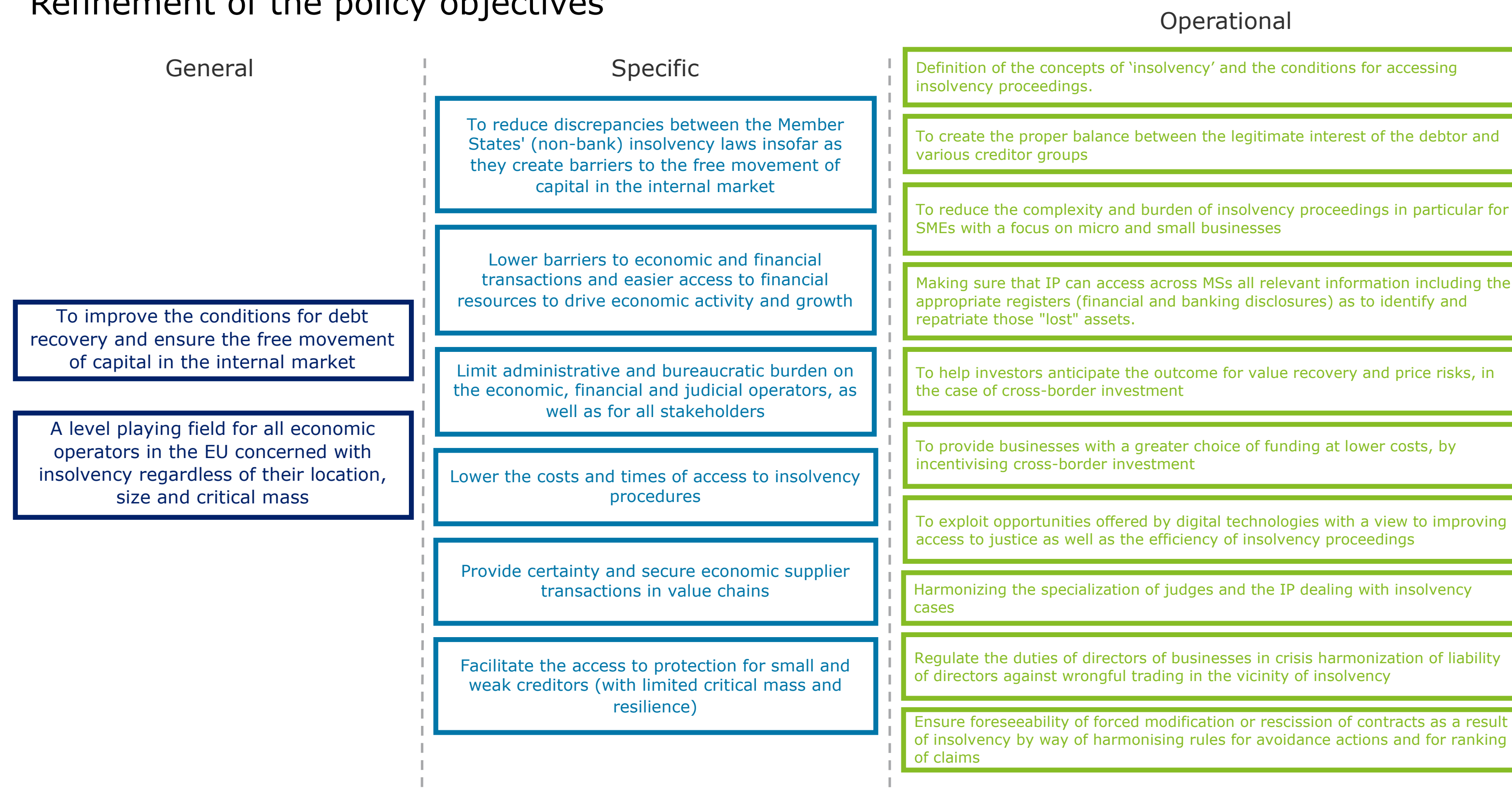
4.5 The objectives tree

EU policy goals for insolvency convergence and cross-border capital circulation may benefit from a progressive convergence of national regulations in the Union[122]. Still, significant divergences between national insolvency regimes have been recognized creating potential structural barriers to cross-border investments. Such convergence of national insolvency rules could enhance legal certainty, making it easier for banks to price loans in advance and in case an exposure becomes non-performing. Likewise, better risk-pricing makes lending, also across borders, more attractive for banks and other potential providers of credit.

The figure below presents the objectives tree:

[120] Bo Becker Martin Oehmke, Preparing for the post-pandemic rise in corporate insolvencies, ASC Insight, No 2 / January 2021
[121] Donald R. Korobkin, "*Vulnerabilty, Survival, and the problem of small business bankruptcy*", 23 cap.
[122] After an initial phase when cross-border insolvency was addressed by the EU through the coordination of Member State legal regimes and not through harmonisation, the first insolvency regulation adopted in 2001 created uniform rules in the EU on applicable law and international jurisdiction and coupled them with tools enabling the mutual recognition and enforcement between the Member States of judgments. In this context, the Commission issued a Recommendation in 2014 introducing a broader group of interests in insolvency procedures, including those of creditors, employees and other stakeholders, as well as the economy as a whole. A directive on preventive restructuring frameworks was adopted in 2019, including discharge of debt and disqualifications and measures to increase the efficiency of procedures.

Figure 1 - Objectives tree



The purpose of this impact assessment study is to provide data-based evidence on the impacts that can be determined by appropriate insolvency convergence measures on the facility of cross-border capital circulation in the EU. By means of a system dynamics-based cost-benefit analysis, the Impact Assessment support study will determine the impacts of a convergent regulatory framework on:

1. the investment behaviour of economic operators (as potential "voluntary creditors")
2. the relationships between involuntary creditors (workers, employees, tax authorities, etc.)

Through:

1. reduced costs of cross-border insolvency;
2. reduced time of cross-border insolvency;
3. increased certainty of outcome of cross-border insolvency;
4. faster and less formal resolution of enterprise crises, intrinsic and also due to exogenous shocks (out-of-court resolution).

5 Policy options

The following section provides an overview of the policy options developed in response to the problems and problem drivers identified. The policy options address one or more of the specific objectives highlighted in the section above.

For the data collection from stakeholders on the different options in relation to the different building blocks and on the impacts, a number of options were formulated. These options introduce convergence measures in different areas of cross-border insolvency.

The options include a no-action, business as usual option, relying on existing regulations without any policy measure to pursue convergence. The baseline scenario represents the situation if no action were to be taken at EU level, and thus, no changes would occur to the EU's insolvency framework. In this option, the provisions currently included in the EU insolvency framework would stay the same in the future, with no adaptation in response to the challenges identified in the problem.

For this study, the current baseline scenario represents Policy Option 0, namely the benchmark against which the other policy options will be compared. Given the expected increase in insolvency procedures due to the ease of the emergency measures adopted to face the pandemic (see para 4.4. above), the study assumes that the baseline scenario would lead to the persistence and worsening of the issues that have been identified in the previous paragraphs.

Policy options have been developed having regards to each building block and grouped according to the abovementioned Problem Drivers. Based on exchanges with the EC in respect to the prioritization of the building blocks, definition of insolvency and lodgement of claims are not considered for the policy options below.

5.1 Policy options relating the insolvency liquidation procedure

The first category of policy options focuses on all those building blocks more closely related to insolvency cross border procedures.

5.1.1 Creditors' committees

This building block concerns the regulation of creditor's committees in cross-border insolvency procedures to create convergence and act as a facilitating factor for cross border investment, improving the risk rating, the pricing of credit. Available options are as follows:

0. Creditors' committees should be ruled according to Member State laws, without any further EU intervention;
1. Creditors' committees should be ruled by means of an EU Recommendation with some principles on formation of creditors' committees;
2. Creditors' committees should be ruled by means of an EU Recommendation with some principles on formation of creditors' committees and by means of a EU Directive providing rules on working method (rules on electronic voting) and rules on determination of majority;
3. Creditors' committees should be ruled by means of a Directive providing specific rules on formation, composition, powers and governing certain aspects of majority voting in those committees.

5.1.2 **Sales on a going concern basis including prepack sales**

This building block concerns the regulation of sales on a going concern basis including pre – packs to create convergence and act as a facilitating factor for the rescue of the business and/or to ensure the higher redistribution rates. Available options are as follows:

0. Sales on a going concern and pre-pack sales should according to Member State laws, when existing, without any further EU intervention. In this case we need to consider that the instrument of pre-pack sale is not very diffused among EU Member States.
1. Sales on a going concern and pre-pack sales should be regulated by means of a EU Recommendation including some principles but no further regulatory instrument shall be adopted.
2. Sales on a going concern should be regulated by a EU Directive setting forth rules on certain aspects
3. Sales on a going concern and pre-pack sales should be regulated by a EU Directive, including – in respect to pre – packs – the main features of the instrument (i.e., the minimum transparency and standards in relation to the negotiation process) and the assignment or termination of civil and commercial executory contracts.
4. Sales on a going concern and pre-pack sales should be regulated by a EU Directive, precisely defining all the key aspects of going concern and the features of the pre-packs (the role of the Advisor and its appointment as an IP, the assignment or termination of civil and commercial executory contracts, the criteria to choose the best bid, and the measures to maximize the value of the business subject to pre – pack), displacing existing national provisions.

5.1.3 **Ranking of claims**

Based on the problem drivers above, possible policy options in respect to the ranking of claims should distinguish between options available for introducing post commencement privilege and options available for introducing preferences to certain types of unsecured creditors.

Pre – commencement entitlements and identification of potential grounds to a post commencement privilege

With reference to the introduction of EU rules on post-commencement privileges, available options are as follows:

0. Regulation according to Member State laws, without any further EU intervention;
1. Regulation according to a EU Recommendation stating priority preferences for privileged creditors to general unsecured creditors and listing in NON – exhaustive manner the positive priority preferences for privileged creditors (cost of proceedings, administrative expensive, interim or new financing) and negative priority preferences (tax claims and employees);
2. Regulation by means of a Directive stating priority preferences for privileged creditors to general unsecured creditors and listing in NON – exhaustive manner the positive priority preferences for privileged creditors (cost of proceedings, administrative expensive) and extending current protection granted by the EU framework to interim or new financing;
3. Regulation by means of a Directive stating priority preferences for privileged creditors to general unsecured creditors and listing in NON – exhaustive manner the negative priority preferences;
4. Regulation by means of a Directive stating priority preferences for privileged creditors to general unsecured creditors and listing in NON – exhaustive manner the positive priority preferences and the negative priority preferences (tax claims and employees).

Preferences to certain type of unsecured creditors – amendments to the *pari passu*

With reference to the introduction of EU rules on preferences to certain type of unsecured creditors, available options are as follows:

0. *Pari passu* and any modifications to be ruled according to Member States laws, without any further EU intervention;
1. Recommendation stating the *pari passu* principle as to general unsecured creditors with the defined preferences and in particular i) subordination of adjusting - creditors to non – adjusting creditors, reinforcing the position of non-adjusting creditors in the context of insolvency proceedings; and ii) subordination of shareholders loans to other general creditors;
2. Directive stating the *pari passu* principle as to general unsecured creditors with the defined preferences and in particular subordination of adjusting - creditors to non – adjusting creditors, reinforcing the position of non-adjusting creditors in the context of insolvency proceedings;
3. Directive stating the *pari passu* principle as to general unsecured creditors with the defined preferences and in particular i) subordination of adjusting – creditors to non – adjusting creditors reinforcing the position of non-adjusting creditors in the context of insolvency proceedings, and ii) subordination of shareholders loans to other general creditors;
4. Directive stating the *pari passu* principle as to general unsecured creditors with the defined preferences and in particular: i) subordination of adjusting – creditors to non – adjusting creditors, by introducing a specific sub – type of company with inactivated security interest based on the premise that security interests are nothing but inter – creditor agreements between adjusting creditors and therefore, only in case insolvency proceedings are opened, such security interests should be not opposable to non – adjusting creditors, which additionally should as a rule be ranked as senior to adjusting creditors ; and ii) subordination of shareholders loans to other general creditors. In this case the Directive would reinforce the position of non-adjusting creditors.

5.1.4 Transaction avoidance

This building block concerns the regulation of transaction avoidance to create convergence on legal acts to be considered, suspect period and limitation period for claims in cross-border insolvency as a facilitating factor for cross border investment, improving the risk rating and the pricing of credit. Available options are as follows:

0. Regulation according to Member State laws, without any further EU intervention;
1. Regulation by means of an EU Recommendation but no further regulatory instrument;
2. Regulation by means of a Directive providing general rules on transaction avoidance;
3. Regulation by means of a Directive providing a non-exhaustive set of specific rules on transaction avoidance displacing conflicting national law;
4. Regulation by means of a Directive providing an exhaustive specific set of rules on transaction avoidance displacing conflicting national law.

5.1.5 Director's duties and liabilities

This building block concerns the regulation of directors' duties and liabilities in the vicinity of insolvency to create convergence as a facilitating factor for cross border investments. Available options are as follows:

0. Regulation according to Member State laws, without any further EU intervention;

1. Regulation by means of an EU Recommendation;
2. Regulation by means an EU Directive on the directors' duties and liability in the vicinity of insolvency (including details on the decisions to be taken once the shareholders meeting has been convened, conditions under which insolvency should be filed and liability against wrongful trading;
3. Regulation by means of a EU Directive on the directors' duties and liability in the vicinity of insolvency (including details on the decisions to be taken once the shareholders meeting has been convened, conditions under which insolvency should be filed and liability against wrongful trading, displacing national conflicting law.

5.2 Policy options relating the overall efficiencies of the procedure

The second category of policy options focuses on all those building blocks more closely related to the overall efficiencies of the insolvency cross border procedures.

5.2.1 Specialisation of insolvency courts and training of judges

This building block targets the introduction of EU rules on specialisation of insolvency courts and training of insolvency judges and more concrete requirements for insolvency practitioners' when it comes to conditions for eligibility, appointment, suitable, training, or necessary expertise. Available options are as follows:

0. Regulation according to Member State laws, without any further EU intervention;
1. Regulation by means of an EU Recommendation setting forth principles on specialization of insolvency courts and training of judges and principles on requirements for insolvency practitioners' when it comes to conditions for eligibility, appointment, suitable, training, or necessary expertise;
2. Regulation by means of an EU Directive with more concrete rules on specialization of insolvency courts and training of judges and on requirements for insolvency practitioners' when it comes to conditions for eligibility, appointment, suitable, training, or necessary expertise;
3. Regulation by means of an EU Directive with a more detailed set of rules regarding the various aspects of the insolvency practitioners' profession.

5.2.2 Roles and powers of insolvency practitioners, with regard to asset tracing and asset recovery in cross-border insolvency procedure

This building block and the relevant enabling options concern the empowerment and effectiveness, as well as the role of IPs, in particular in relation to the preservation of assets in cross-border insolvency. Available options are as follows:

0. Regulation according to Member State laws, without any further EU intervention;
1. Regulation by means of an EU Recommendation on these powers, including how insolvency practitioners can have access to information on assets but no further regulatory instrument;
2. Regulation by means of a Directive providing a non-exhaustive set of specific rules on asset tracing and recovery, including granting access to national registers across borders;
3. Regulation by means of a Directive reconsidering the current logic of powers granted to the insolvency practitioners in cross – border cases and in particular: disregarding the limitation of the law in the State of the opening of the proceedings; including granting access to

insolvency practitioners to national registers across borders and on granting full access to BORIS for the purposes of insolvency cases;

4. Regulation by means of a Directive providing an exhaustive list of powers and tools for insolvency practitioners asset tracing and recovery in cross border insolvency cases

5.3 Policy options relating to the specificities of SMEs

The third category of policy options focuses on the specificities of MSEs which may envisaged to introduce specific instruments taking into account their operational and concrete needs, their limited scale and scope, the limited critical mass and resilience in respect to financial dimensions, functions, cash flow, client diversification, etc. Possible available options are the following:

0. Regulation according to Member State laws, without any further EU intervention;
1. Regulation by means of an EU Recommendation, with no further regulatory instrument, on specific treatment for SMEs including:
    - definition of the scope of special provisions; access to orderly proceedings regardless available assets to cover the cost of the proceedings;
    - postponement of the payment of procedural costs;
    - the possible public funding of procedural costs; lowering the complexity and duration of the MSEs cases;
    - providing for a scrutiny of the honesty of the debtor in the course of the proceedings instead of imposing heavy tests on the first day of the proceedings or setting forth extensive filing requirements;
    - reflecting the rational creditor passivity in the rules on the decision about the restructuring plan, a sale of the business, or a piecemeal liquidation by a deemed approval rule;
    - considering having proceedings outside the courts systems and involving courts only for appeals or objections;
    - limiting the administrative burden by using mandatory templates and IT tool;
    - providing for a very short periods of a stay of a plan proposal;
2. Regulation by means of a Directive providing specific regime and/or exemptions from general insolvency requirements in case of SMEs in the form of targeted modifications of the general insolvency system including the following:
    - definition of the scope of special provisions; access to orderly proceedings regardless available assets to cover the cost of the proceedings;
    - postponement of the payment of procedural costs;
    - the possible public funding of procedural costs; lowering the complexity and duration of the SMEs cases;

- providing for a scrutiny of the honesty of the debtor in the course of the proceedings instead of imposing heavy tests on the first day of the proceedings or setting forth extensive filing requirements;

- reflecting the rational creditor passivity in the rules on the decision about the restructuring plan, a sale of the business, or a piecemeal liquidation by a deemed approval rule;

- considering having proceedings outside the courts systems and involving courts only for appeals or objections;

- limiting the administrative burden by using mandatory templates and IT tool;

- providing for a very short periods of a stay of a plan proposal.

3. Regulation by means of a Directive providing for a specific separate system for SMEs and outside the ordinary insolvency system, which is flexible and cost-effective and composed of a core procedure with two possible outcomes:

    - entry into liquidation, with short period and reduced formalities, or

    - restructuring where the debtor remains in control of its assets and the day - to - day operation of its business under the supervision and assistance of the competent authority.

6 Results and discussions

6.1 Introduction

Impact assessments assess the evaluation criteria of effectiveness, efficiency, coherence, relevance and EU added value of the intervention, and provide relevant justifications. This impact assessment study addresses the five issues. Overall, it shall be recognized that the whole scenario of the convergence of insolvency law in EU Member States is still in progress and that the comprehensive harmonization of insolvency in the EU has important ramifications and connections with other body of law regulating neighbouring fields such as company law and commercial law.

As this stage of the intervention cycle on insolvency convergence, the judgment stakeholders and experts have provided on the different impact assessment dimensions of the policy initiative allow to draw conclusions on the associated impacts on the circulation of investment capital across borders and thus the operation of the Union of Capital Markets.

The field research undertaken for this impact assessment support study includes desk and document research, an expert and stakeholder survey as well as interviews. It has also included the results of the open public consultation completed by the European Commission in 2020.

The different instruments provide evidence on the different evaluation dimensions, providing hard data, insights and feedback of the status of current needs and feedback on the perception of the evolution of the scenarios of insolvency procedures and the changes in the behaviour of cross-border investors.

The evaluation criteria of our analysis are as follows:

- EU right to act and subsidiarity: the European Union can only act in those areas where its member countries have authorised it to do so, via the EU treaties. Further, the principle of subsidiarity means that, in areas which do not fall within its exclusive competence, the EU can act only if, and insofar as, the objectives of the proposed action cannot be sufficiently achieved by the member states.
- Effectiveness analysis considers how successful EU action has been in achieving or progressing towards its objectives, determining the progress made and the role of the EU action in delivering the observed changes. Effectiveness analysis identifies the factors driving or hindering progress and how they are connected to the EU intervention.
- Efficiency considers the relationship between the resources used by an intervention and the changes generated by the intervention.
- Relevance focuses on the specific needs and problems associated with cross-border insolvency procedures and the logical, practical and behavioural connection with cross-border investment capital flows.
- The evaluation of coherence considers how well or not different actions work together, considering whether there are synergies or objectives which are potentially contradictory, or approaches which are causing inefficiencies.
- EU-added value looks for changes which are due to the EU intervention, over and above what could reasonably have been expected from national actions by the Member States. It

includes the assessment of the principle of subsidiarity and presents the arguments on causality and draws conclusions about the performance of the EU intervention

On the basis of the empirical research undertaken, this support study assesses:

- The correctness of assumptions
- The appropriate identification of the "problem drivers"
- The appropriateness of the cause-effect relationships between in this case the insolvency framework and the cross-border investment behaviour
- The dynamics of the scenario and of the circumstances and the changes in the problems.

The remaining of the section is structured along the aforementioned evaluation criteria.

6.2 EU right to act and subsidiarity

Concerning the legal basis, EU's action in harmonizing insolvency regimes is justified by the legal basis enshrined in the Treaty on the Functioning of the European Union.[123] The legal basis for a proposal for harmonization of national insolvency laws is mainly represented by Article 114 TFEU (and possibly Art. 81 TFEU). In accordance with Art. 114 TFEU, the European Union shall contribute to the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

Article 81 TFEU offers the legal basis for judicial cooperation in civil matters. It may be relied on to the extent that the proposal for harmonization will contribute to the development of judicial cooperation.

The study assessed important discrepancies between Member State legal frameworks in insolvency, which create significant obstacles to the single market. The proposal of harmonization of insolvency laws falls within the scope of Art. 114 TFEU as it will reduce the barriers to capital flows between the Member States and will improve the Capital Market Union.

As for subsidiarity, due to the economic interconnection between businesses at the European level, insolvency has a trans-boundary nature that needs to be addressed at the EU level. Cross-border investments and flow of capitals are a common aspect of today's business climate. Up to the point, disparities in Member States' legislation have raised barriers to the single market, increasing the time and costs of the parties and therefore reducing the efficiency of the procedures.

EU action is necessary in order to address those challenges. The introduction of an EU-wide harmonized legal instrument will create a common and uniform framework for practitioners, increasing the effectiveness of the procedures and reducing disparities.

Should insolvency rules not be applied in a uniform way, it would lead to a further market fragmentation, increase in disparities in terms of rules and barriers to capital movements.

Further considerations stem from the fact that the fragmentation of insolvency law across the EU is a matter of fact. It is long recognised that European Insolvency Law is still searching for patterns of interactions between the two systems of national laws and EU law, and the coherence within the law of the EU itself. Researchers indicate that "Approach to insolvency laws diverge across the EU, with insolvency proceedings that are more employee-friendly in countries like France or more punitive

[123] Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, accessible at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT.

for natural persons like in Italy."[124] The approach is diverse due to the nature of regulation and the underlying juridical and business "culture". The increasing exchange in terms of capital, investment, goods and services increased cross-border economic relationships and the landscape of insolvency law is too fragmented to leave to the initiatives of individual Member States, who would not address the cross-border element in any case, also due to the difference in core approaches.

On the other hand, the European Union is constantly evolving in its integration and the cross-border of the social and economic aspects of society. Special competences enable the EU to play a particular role in the coordination of economic and employment policies.

It is recognised that the EU has a special role in coordinating and promoting those cross-border aspects of insolvency. As provided for by Article 114 TFEU, the European Parliament and the Council can after consulting the Economic and Social Committee, adopt the measures for the for the approximation of laws, regulations or administrative provisions of the Member States that directly affect the establishment or functioning of the internal market, as the topic of cross-border insolvency.

The objective of converging insolvency laws and thereby promoting the internal market for the benefit of businesses and financial players cannot be adequately achieved by Member States. Each Member State individually would not be able to ensure the overall coherence of its legislation with other Member States' legislations. Only a coordinated intervention at Union level aiming at removing existing diverging national approaches in the EU consumer laws by way of full harmonisation can contribute to the completion of the internal market by solving this problem.

6.3 Effectiveness

Results from simulations clearly show that harmonization of building blocks (all or in part) has a huge impact on effectiveness.

Table 1 – Simulation on the harmonisation of building blocks

	Baseline (no harmonisation)	**Full harmonisation of: Pre-pack sales; Transaction avoidance; Role and powers of insolvency practitioners in asset tracing and recovery; Pre – commencement entitlements and identification of potential grounds to a post commencement privilege**		**Harmonisation of all the building blocks**	
	Average value per year	***Average***	***Delta % vs baseline***	***Average***	***Delta % vs baseline***
Amount of investments with debt-to-equity ratio <= 2 (€)	219B	265B	21,00%	290B	32,42%
New cross-border intra-EU investment (€)	111B	134B	20,72%	144B	29,73%

[124] Diego Valiante, Centre for European Policy Studies. 2016.

Expected Recovery Rate (%)	34%	39%	15%	40%	17%
Time to close insolvency procedures (years)	3,3	1,62	-51%	0,29	-82%

Specifically, the results show that a direct improvement in capital market circulation can be estimated as positive and equal to 31,52% in a simulation run over 15 years (adding the amount of cross border investments with debt-to-equity ratio <= 2 plus the new cross-border intra-EU investment at the 15th year and comparing the result with the same elements in the baseline scenario).

Further results show that:

- The harmonization of the insolvency framework increases the effectiveness of the proceedings and reduce time and costs, thus producing a reduction in debts not recovered, which means that the gross recover rate is higher (although not directly measured), and most of all that the business that will be efficiently liquidated and the ones that will be recovered are at least the 15% per year more than in the baseline (i.e. no harmonization foreseen) scenario.
- The harmonization also increases the number of cross-border investments generated (+29,73% if compared with the baseline), because the investors experience a greater confidence and more business recovered continue to survive in the market producing more resources to invest.

Such results are confirmed by the survey, which makes clear that the harmonization of the cross-border insolvency procedures for the elected building blocks leads to an increase in the overall success of a cross-border insolvency procedure, as well as a decrease in the overall timing of a cross-border insolvency procedure.

Table 2 – Effect of the harmonisation on building blocks

Building block	Effect on success of a cross-border insolvency procedure	Effect on overall timing of a cross-border insolvency procedure
Change determined by the introduction of EU rules on pre-pack sales	70% of respondents foresee an increase in effectiveness, with a relative majority (37.5%) foresee a fair increase in effectiveness for the creditor	67.5% of respondents foresee a decrease in timing, with a relative majority (21.7%) foreseen a decrease in timing greater than 20/40%
Change determined by the introduction of common rules regarding transaction avoidance	82.5% of respondents foresee an increase in effectiveness, with a relative majority (43.3%) foresee a fair increase in effectiveness for the creditor	54.2% of respondents foresee a decrease in timing, with a relative majority (20.8%) foreseen a decrease in timing greater than 20%
Change determined by the introduction of a special regime of MSEs	53.3% of respondents foresee an increase in effectiveness, with a relative majority (14.2%) foresee a minor increase in effectiveness for the creditor, and 29.2% foreseeing no change in effectiveness	52.5% of respondents foresee a decrease in timing, with a relative majority (11.7%) foreseen a decrease in timing greater than 20/30%. Further, 30% of respondents foresee no changes
Change determined by the introduction of common rules for roles and powers of insolvency practitioners, with regard to asset tracing and asset recovery	85.83% of respondents foresee an increase in effectiveness, with a majority (50.8%) foresee a fair increase in effectiveness for the creditor	65% of respondents foresee a decrease in timing, with a relative majority (21.7%) foreseen a decrease in timing greater than 30%
Change determined by harmonization in relation to pre-commencement entailments and identification of potential grounds to a post commencement privilege	51.67% of respondents foresee an increase in effectiveness, with a relative majority (25.8%) foresee a minor increase in effectiveness for the creditor, and 29.2% foreseeing no change in effectiveness	37.5% of respondents foresee a decrease in timing, with a relative majority (16.7%) foresee a decrease in timing greater than 20%
Change determined by harmonization in relation to preferences to pre–commencement entitlements	61.67% of respondents foresee an increase in effectiveness, with a relative majority (28.3%) foresee a minor increase in effectiveness for the creditor, and 24.2% foreseeing no change in effectiveness	32.5% of respondents foresee a decrease in costs, while 42.2% see no changes
Change determined by harmonization in relation to preferences to certain types of unsecured creditors	53.33% of respondents foresee an increase in effectiveness, with a relative majority (25%) foresee a	20.9% of respondents foresee a decrease in costs, while 56.7% see no changes, and 20% of respondents foresee an increase in timing

	minor increase in effectiveness for the creditor, and 31.7% foreseeing no change in effectiveness	
Change determined by the provision of more concrete rules on specialisation of insolvency courts and training of insolvency judges and more concrete requirements when it comes to conditions for eligibility, appointment, suitable training or necessary expertise	71.67% of respondents foresee an increase in effectiveness, with a relative majority (36.7%) foresee a fair increase in effectiveness for the creditor	60.8% of respondents foresee a decrease in timing, with a relative majority (14.2%) foreseen a decrease in timing greater than 40%;
Changes determined by the introduction of standards at EU level in respect to directors' duties and liability in the vicinity of the insolvency	74.17% of respondents foresee an increase in effectiveness, with a relative majority (43.3%) foresee a fair increase in effectiveness for the creditor	46.7% of respondents foresee a decrease in timing, with a relative majority (20%) foreseen a decrease in timing greater than 10%. Further, 35.8% see no decrease in timing

From the results it appears clear that harmonization is more effective with improving success of a cross-border procedure for the following building blocks:

- Change determined by the introduction of common rules regarding transaction avoidance. Among the arguments in favour of a harmonized approach are the existence of divergent legislations with negative effects on cross border insolvencies, the resulting decrease in costs and the facilitation of proceedings in favour of creditors. Stakeholders underlined that the introduction of a harmonized 'suspect period' would be welcomed. Harmonized rules on the 'suspect period' and the types of acts that can be annulled, would ease cross border proceedings and make them less time consuming. Moreover, some stakeholders pointed out that having common rules on will increase the legal certainty of procedures. As such, the debtors will be aware of the risks of annulment and the creditors will have a clearer picture upon the extent of transaction avoidance.
- Change determined by the introduction of common rules for roles and powers of insolvency practitioners, with regard to asset tracing and asset recovery. As pointed out by many stakeholders, common rules and instruments in insolvency proceedings are necessary. Indeed, sometimes in insolvency proceedings it is problematic to identify the correct register of different MSs and to access it into a different language. The lack of harmonization concerning the register and other IT instruments make it more difficult for IPs to find information in case of cross-border insolvency, making the procedure time consuming. A better access to information, increase of transparency and an increase of prerogatives of IPs will reduce the time spent, increase the effectiveness of proceedings and allow for a better recovery of assets.
- Changes determined by the introduction of standards at EU level in respect to directors' duties and liability in the vicinity of the insolvency. Although the identification of duties and responsibilities is a difficult element to harmonise since it is strongly linked with company law, tradition and other elements of the MSs, stakeholders pointed out that a major level of harmonisation in this respect may be useful to ease cross-border insolvency proceedings. Managers should have common duties especially in cross border insolvency so that it would reduce uncertainty as to when to file for insolvency before it is too late.

By the same token, harmonization is more effective with decreasing the overall timing of a cross-border insolvency procedure for the following building blocks:

- Change determined by the provision of more concrete rules on specialisation of insolvency courts and training of insolvency judges and more concrete requirements when it comes to conditions for eligibility, appointment, suitable training or necessary expertise. Most of the experts favouring the intervention consider that the further training of judges is necessary, especially in the economics domain. There should be training of judges and specialised courts. Not only on the legal side but also on the economic and general business side. If judges are not trained, they will be under the influence of IPs and lawyers, which is undesirable. Indeed, as pointed out by many stakeholders, insolvency proceedings involve more than the simple legal knowledge, hence there is the need for more specialised judges with a good understanding of economics. A background in economics was stressed by the majority of interviewees as recommended in order to enhance the quality of procedures.
- Change determined by the introduction of EU rules on pre-pack sales. Among the arguments in favour of the use of the instrument are the avoidance of costs and time lost during insolvency proceedings. Safeguards should be put in place to ensure that the rights of other creditors are respected considering that arguments against the use of pre-pack sales refer

to the need to safeguard other creditors as well as employees. Stakeholders from Member States which have pre-pack witnesses the instruments functions properly.

- Change determined by the introduction of common rules for roles and powers of insolvency practitioners, with regard to asset tracing and asset recovery

In the table below are depicted the results related to the applications and platforms facilitating cross-border creditor action.

Table 3 - Results related to the applications and platforms facilitating cross-border creditor action

Applications and platforms facilitating cross-border creditor action	Results
Cross-border access to registries of insolvent business actors	89% of respondents report an increase in effectiveness for the creditor, with the relative majority (33.3%) reporting a significant increase in effectiveness for the creditor
Cross-border access to registries of initiated insolvency procedures	90.5% of respondents report an increase in effectiveness for the creditor, with the relative majority (40.0%) reporting a significant increase in effectiveness for the creditor
Cross-border access to registries for the purpose of asset tracing	89.2% of respondents report an increase in effectiveness for the creditor, with the relative majority (41.7%) reporting a significant increase in effectiveness for the creditor
Change determined by the introduction of common rules for roles and powers of insolvency practitioners, with regard to asset tracing and asset recovery	85.83% of respondents foresee an increase in effectiveness, with a majority (50.8%) foresee a fair increase in effectiveness for the creditor
Development of a glossary of insolvency terms and of the equivalent professional figures in different jurisdictions to aid translation of claims filing	87.5% of respondents report an increase in effectiveness for the creditor, with the relative majority (37.5%) reporting a fair increase in effectiveness for the creditor
Standard ontologies (a set of concepts and categories in the insolvency subject area and domain showing their properties and the relations between them)	77.4% of respondents report an increase in effectiveness for the creditor, with the relative majority (35.8%) reporting a fair increase in effectiveness for the creditor
Standardised models for filing claims	93.4% of respondents report an increase in effectiveness for the creditor, with the relative majority (33.3%) reporting a significant increase in effectiveness for the creditor
Insolvency-dedicated automated translation tools for documents, inscriptions into registries, insolvency proceedings	89.2% of respondents report an increase in effectiveness for the creditor, with the relative majority (37.5%) reporting a fair increase in effectiveness for the creditor
Authentication and validation of claimants to ensure legitimacy of access and claims filing	91.7% of respondents report an increase in effectiveness for the creditor, with the relative majority (34.2%) reporting a fair increase in effectiveness for the creditor

Clearly harmonization has an impact on every application and platform, and especially for what concerns:

- Standardised models for filing claims
- Authentication and validation of claimants to ensure legitimacy of access and claims filing
- Cross-border access to registries of initiated insolvency procedures

Interviewees have provided inputs on supporting instruments, tools and platforms, which would aid cross-border insolvency from an operational point of view. Experts indicate that the handling of cross border insolvency and claims would benefit from Language support, translating terms, procedures, claim forms. Such instruments and tools would in many cases make unnecessary the hiring of a local lawyer, thus leading to lower costs for the claimant. In other terms, the individual creditor should be helped to access claim procedures.

A harmonised cross-border insolvency framework would also include a general standardisation and harmonisation and the use of tools such as emails would facilitate the cross-border handling of claims, possibly setting up registers and portals for claims and for asset tracing. Existing Registers of assets publicity of insolvency procedures should be based on Interconnected European platforms, providing the relevant necessary judicial capacity and a reliable access to information regarding the financial situation of companies in financial difficulty and on near insolvency proceedings. Also a register of ownership should be implemented which should include the main assets that a company has. The creditors would then be able to assess whether they can gain a security over certain assets to provide additional financing.

By way of example, it would be very effective to be able to lodge claims online with no physical signature needed, which would be cheaper and more streamlined. It would be advisable that each Member State would set-up building a one-stop portal for all for the insolvency proceedings and the EU would be responsible just for the interconnection.

Overall, introducing the above tool would reduce the timing needed for the practicalities related to the proceedings leading to an increased effectiveness

6.4 Efficiency

Results from simulations show that harmonization of building blocks (all or in part) has a huge impact on the insolvency judicial costs.

Table 4 – Results from simulation on building blocks

	Baseline (no harmonisation)	Full harmonisation of: Pre-pack sales; Transaction avoidance; Role and powers of insolvency practitioners in asset tracing and recovery; Pre – commencement entitlements and identification of potential grounds	Harmonisation of all the building blocks

			to a post commencement privilege			
	Average value per year		*Average*	*Delta % vs baseline*	*Average*	*Delta % vs baseline*
Insolvency judicial costs (€)	56,9B		32,9B	-42,18%	2,2B	-96,13%

In particular, Although time to recovery decreases, which could produce more work in process (because the judicial system is able to elaborate more insolvencies proceedings in a year), the expected reduction in the overall costs is significative (-96,13%, if compared with the baseline). In this model the reduction in costs do not produce any feedback on the amount of cash available for new cross-border investments, because we did not investigate such cause-effect relationship, but in general this produce an increase in the EU GDP, thus probably providing more resources to be invested to incentivise the capital circulation.

By the same token, analysing the results of the survey, efficiency can be assessed by looking at the effect on overall costs of a cross-border insolvency procedure resulting from the harmonization of rules at EU level.

Table 5 - Effect on overall costs of a cross-border insolvency procedure resulting from the harmonisation of rules at EU level.

Building block	**Effect on overall costs of a cross-border insolvency procedure**
Change determined by the introduction of EU rules on pre-pack sales	58.4% of respondents foresee a decrease in costs, with a relative majority (20.8%) foreseen a decrease of costs greater than 20%
Change determined by the introduction of common rules regarding transaction avoidance	57.4% of respondents foresee a decrease in costs, with a relative majority (23.3%) foreseen a decrease of costs greater than 10%
Change determined by the introduction of a special regime of MSEs	52.5% of respondents foresee a decrease in costs, with a relative majority (15.8%) foreseen a decrease of costs greater than 10%. Further, 31.7% of respondents foresee no changes
Change determined by the introduction of common rules for roles and powers of insolvency practitioners, with regard to asset tracing and asset recovery	60% of respondents foresee a decrease in costs, with a relative majority (19.2%) foreseen a decrease of costs greater than 30%
Change determined by harmonization in relation to pre-commencement entailments and identification of potential grounds to a post commencement privilege	28.3% of respondents foresee a decrease in costs, while 46.7% see no changes

Change determined by harmonization in relation to preferences to certain types of unsecured creditors	25% of respondents foresee a decrease in costs, while 54.2% see no changes
Change determined by the provision of more concrete rules on specialisation of insolvency courts and training of insolvency judges and more concrete requirements when it comes to conditions for eligibility, appointment, suitable training or necessary expertise	46% of respondents foresee a decrease in costs, with a relative majority (17.5%) foreseen a decrease of costs greater than 20%. Further, 27.5% of respondents foresee no changes
Changes determined by the introduction of standards at EU level in respect to directors' duties and liability in the vicinity of the insolvency	47.5% of respondents foresee a decrease in costs, with a relative majority (21.7%) foreseen a decrease of costs greater than 10%. Further, 36.7% of respondents foresee no changes

From the results it appears clear that harmonization is more effective with decreasing the overall costs of a cross-border insolvency procedure for the following building blocks:

- Change determined by the introduction of common rules for roles and powers of insolvency practitioners, with regard to asset tracing and asset recovery;
- Change determined by the introduction of EU rules on pre-pack sales;
- Change determined by the introduction of common rules regarding transaction avoidance.

6.5 EU Value added

The EU added value dimension captures the additional impacts generated by intervening at the EU level, as opposed to leaving the issues addressed by the harmonization of the identified building blocks solely in the hands of Member States.

The harmonisation of the insolvency framework has the full potential to create EU added value, improving the outcomes expected by the adoption of the 2019 EU Directive on Restructuring and Second Chance. In fact, successful implementation of minimum standards will require consistent adoption at member state level with a closer harmonisation of insolvency standards across the EU to embed key elements of effective insolvency laws and practices into national systems. This perspective clearly emerges from the stakeholders' consultations analysed in this study: a piecemeal approach to cross-border insolvencies resolutions by Member States may result in additional barriers to the functioning of the Internal Market with a negative impact on scaling-up opportunities

In particular, the survey reveals that an EU intervention is the preferred course of action, as shown in the table below, which reports the option preferences for each building bloc. The preferred option is the number 4 (means building block ruled by means of a Directive providing specific rules) for 4 building blocks (i.e. Pre-pack sales; Transaction avoidance; Role and powers of insolvency practitioners in asset tracing and recovery; Pre – commencement entitlements and identification of potential grounds to a post commencement privilege), while is the number 2 or 1 (means building block regulated by means of a EU Recommendation including some principles but no further regulatory instrument shall be adopted) for the others.

Table 6 – Preferred Policy Option

Building blocks	Preferred Policy Option				
Pre-pack sales	Option 4	Option 2	Option 1	Option 0	Option 3
Transaction avoidance	Option 4	Option 2	Option 3	Option 1	Option 0
Specificities of MSEs	Option 2	Option 1	Option 3	Option 0	
Role and powers of Ips	Option 4	Option 3	Option 2	Option 1	Option 0
Creditor's committee	Option 1	Option 2	Option 3	Option 0	
Pre – commencement entitlements	Option 4	Option 2	Option 1	Option 0	Option 3
Preferences to certain types of creditors	Option 0	Option 3	Option 4	Option 1	Option 2
Role of the courts	Option 2	Option 1	Option 3	Option 0	
Directors' duties and liability	Option 2	Option 3	Option 1	Option 0	

Further to that, it appears that the stakeholder categories "bank or other financial institutions", "legal experts and practitioners, insolvency lawyers", and "accountants", are more eager for EU intervention as shown in the table below, reporting the preferences for the options stratified per stakeholder.

Table 7 – Preferred Option per Stakeholder

Building block	Preferred option per stakeholder								
	Bank or other financial institutions	*Legal experts and practitioners, insolvency lawyers*	*Judges in commercial or civil courts*	*Accountants*	*Member of public administrations handling insolvency*	*Insolvency practitioners as identified by the Regulation*	*Labour Unions*	*Academic*	*Enterprise and other association representative*
Pre-pack sales	Option 0	Option 2	Option 1	Option 0	Option 1	Option 1	Option 0	Option 1	Option 1
Transaction avoidance	Option 4	Option 4	Option 2	Option 4	Option 1	Option 4	Option 0	Option 2	Option 3
Specificities of MSEs	Option 4	Option 2	Option 2	Option 2	Option 1	Option 2	Option 3	Option 1	Option 2
Role and powers of Ips	Option 4	Option 4	Option 3	Option 4	Option 3	Option 4	Option 3	Option 3	Option 3
Creditor's committee	Option 1	Option 1	Option 1	Option 1	Option 1	Option 1	Option 0	Option 1	Option 1
Pre – commencement entitlements	Option 2	Option 4	Option 3	Option 4	Option 2	Option 2	Option 0	Option 2	Option 2

Preferences to certain types of Creditor	Option 0	Option 3	Option 2	Option 2	Option 2	Option 2	Option 3	Option 2	Option 2
Role of the courts	Option 0	Option 2	Option 2	Option 3	Option 1	Option 0	Option 0	Option 1	Option 2
Directors' duties and liability	Option 0	Option 3	Option 2	Option 0	Option 0	Option 0	Option 0	Option 2	Option 3

6.6 Relevance

In the case of insolvency and cross-border capital circulation, the points of comparison used for relevance are qualitative. Our analysis assesses the real needs and objectives behind the EU intervention and compares them to the current situation. The analysis also attempts to consider how in the near future something is expected to develop (based on anticipated or upcoming technological/social/economic changes).

The issue of relevance has been grounded in the expert interviews, not only taking into account the expert views of legal practitioners, but specifically involving experts from the financial sectors and specifically investors.

A report on the interviews is provided in Annex C of this report, while Annex D provides the detailed results of the stakeholder survey.

The majority of the legal and financial experts interviewed **confirms that the convergence of insolvency rules will undoubtably help capital circulation, as investors would have a better understanding and appreciation of the risks attached to their actions**.

Also, the public consultation confirmed that EU-level action is relevant. The vast majority (96%) of respondents believe to a certain extent that differences in insolvency frameworks in EU Member States deter cross-border investment/lending (Fig 1), as well as that differences in corporate (non-bank) insolvency frameworks in EU Member States pose a problem for the functioning of the internal market (Fig 2). When asked which of the existing differences between the laws of the Member States most affect the functioning of the Internal Market, the most important ones are (Fig 3-9): asset tracing of the insolvency estate; triggering of insolvency procedures; avoidance action; ranking of claims; insolvency-related duties and liabilities of directors; definition of insolvency; duties and liabilities of insolvency practitioners.

The convergence process will impact on all elements of cross-border investment, such as financial risk assessment, level of interest applied, assumption of capital investment risk, including the assumption of risk in **the relationships with trading partners in cross-border value chains**, not having a direct impact on interest rates but affecting contracts in their value and conditions.

A full harmonisation of insolvency laws is not necessary to favour cross-border investment flows, according to the majority of experts, and full harmonisation of insolvency law would also require the harmonisation of company law and tax law. A convergence process should address not only specific parts of insolvency law but also the rules for secure credits, which is – politically speaking – really difficult in the current EU setting.

The feasibility of insolvency convergence policies is paramount: for example, the restructuring directive will not be easily implemented because of its characteristics due to a political compromise. It leads to the effect of "race to the court", so any adviser, liquidator or insolvency practitioner tries to get a proper restructuring regime in his own local jurisdiction.

Legal experts feel no need to harmonise the legal definition of insolvency, even if determining a convergent start of the insolvency would be beneficial in cross-border procedures. Several interviewees have pointed out that credit priority and ranking make secured creditors concerned,

convergence across the EU would be welcome in principle, but investors – in particular banks – fear that their current practices and processes may be disrupted by different rankings.

Experts recognised that convergence may facilitate cross-border capital circulation, but no real breakthroughs are expected. Some of them have stated that it is not harmonisation or convergence that will boost cross border investment, since the relevant legal framework has only a limited impact on the overall process.

Large companies are subject to no major impact on their cross-border operations, their critical mass allows them to operate safely and with a satisfactory control of risk. Micro and Small Enterprises take the most impact from the efficiency/inefficiency of insolvency procedures in cross-border investment and capital transfer. However, some legal experts do not deem a special insolvency regime for MSMEs as necessary and that they shall be supported by other, specific industrial and investment policies, outside the domain of

Banks check how a jurisdiction handles securities and privileges on assets. Also, in the case of banks, interviewees have confirmed that the legal framework of insolvency plays only a minor role in investment decisions. Banks are interested in making sure that their credit contractual arrangements are clear and their priorities on the assets can be secured and that their own credit assessment and risk rating processes can be fully and effectively run.

Furthermore, legal experts have pointed out that convergence and harmonisation is not only about rules, but also about judicial capacity: the functioning of insolvency is not just a matter of rules and laws, but also, and for a significant part, a matter of law enforcement capacity (judicial capacity, i.e., the organisation of in-court and out of-court processes and of the organisations and individuals, e.g.: the insolvency practitioners).

Converging insolvency laws should help viable companies do early restructuring and be able to make an arrangement with creditors and at the same time enable creditors to collect their debts as quickly as possible, either restoring the profitability of the business or liquidating the assets.

When it comes to ranking of cross-border claims, bank representatives are comfortable with the current classification of claims and would advise against the introduction of a subjective element.

Banks advocate a convergence of rules concerning non-disruptive loans securitisation, investment control, credit recovery, and prevention of the circumvention of legislation shortcomings, as well as the access to registers to have a full picture of assets and their movement. Experts confirm that banks do not only respond to their stakeholders but need to monitor the status of their credits, which affects their bank credit rating and their balance sheets and financial standing.

In general, experts expect an increase of cross-border insolvency with the increasing integration of economic transactions in the Union. They were in general unable to indicate precise numbers and statistics on cross-border insolvency would be available, but not readily accessible. It is also excessively difficult to represent procedural costs for insolvency and for cross-border insolvency. High costs are normally associated with the assessment of the target regulatory system against the organisations' procedures for cross-border investment appraisal. Insolvency administration claims a significant share of the asset recovery value.

Some of them indicate that there is no real correlation of risk assessment and interest rates, bankers focus more on the debtor’s ability to pay more than at the bankruptcy dividend. For the sophisticated investor the cross-border insolvency scenario is clear and predictable. The sophisticated investor knows how to handle such cases and does not consider the lack of harmonisation of insolvency a hampering factor.

On the other hand, unsophisticated investors are mainly driven by expected returns and don't have procedures in place which allow them to differentiate their investment procedures.

Asset tracing is still very fragmented across the EU, with every MS following their own rules. A stronger convergence would be welcome.

Interviewees have provided inputs on supporting instruments, tools and platforms, which would aid cross-border insolvency from an operational point of view. Experts indicate that the handling of cross border insolvency and claims would benefit from Language support, translating terms, procedures, claim forms. Existing Registers of assets publicity of insolvency procedures should be based on Interconnected European platforms, building up the necessary judicial capacity and a reliable access to information regarding the financial situation of companies in financial difficulty and on near insolvency proceedings.

Overall, since the importance of convergent insolvency law was recognised by experts engaged in the impact assessment research, the intervention is still relevant and will deliver positive impacts on cross-border investment capital circulation in the EU. The complexity of the scenario and the setting, however, make it a developing domain where not all the actions are feasible at the same time and some convergent lines are connected with other bodies of law (commercial, company, tax law) that open up completely different convergence issues.

The original objectives are well established, also considering the elaborate and complex process of their formation. The solutions to achieve these problems, however, are in-progress and require important policy action and negotiation in the EU.

Technology, as a horizontal enabler and facilitator, is a very important factor of convergence. Also in this case the complexity of the integration will require major work to achieve the required and expected interconnection to build the appropriate judicial capacity to handle cross-border insolvency to favour intra-EU investment and capital circulation.

7 Conclusions and recommendations

This impact assessment support study demonstrates that there is scope for action on the part of the EU, confirming that discrepancies between the insolvency laws of the EU Member States create barriers to the free movement of capital in the internal market and make EU cross-border investments more uncertain. Furthermore, the European union of capital markets is a key element of the construction of the internal market. It is recognised by many expert groups and even though there are differences in the estimation of impacts of convergent insolvency laws in EU member states and that harmonised a legal framework has positive impacts on the circulation of investment capital within the union. An effective insolvency law should help to liquidate non-viable firms and restructure (within insolvency proceedings) speedily and efficiently those that can be led back to viability and thus enable them to continue operating. Insolvency rules should also preserve the value that can be received by all concerned parties, whilst ensuring an adequate balance of interests of different stakeholders. A better insolvency framework contributes to a more efficient allocation of capital within and across Member States; more efficient and predictable insolvency frameworks are expected to facilitate cross-border investments and flows of market-based finance.

A number of recommendations were issued by the high-level forum on the capital markets union include minimum harmonisation of certain targeted elements of core nonbank corporate insolvency laws including avoidance actions through a new standalone directive on insolvency focusing in particular on the definition of insolvency and identifying the trigger of proceedings and creditors ranking.

EU's action in harmonizing insolvency regimes is justified by the legal basis enshrined in the Treaty on the Functioning of the European Union.125 The legal basis for a proposal for harmonization of national insolvency laws is mainly represented by Article 114 TFEU (and possibly Art. 81 TFEU). In accordance with Art. 114 TFEU, the European Union shall contribute to the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market. It is recognised that the EU has a special role in coordinating and promoting those cross-border aspects of insolvency.

Results from simulations clearly show that harmonization of building blocks (all or in part) has a huge impact on effectiveness. Specifically, the results show that a direct improvement in capital market circulation can be estimated as positive and equal to 31,52% in a simulation run over 15 years (adding the amount of cross border investments with debt-to-equity ratio <= 2 plus the new cross-border intra-EU investment at the 15th year and comparing the result with the same elements in the baseline scenario).

Furthermore, results from simulations show that harmonization of building blocks (all or in part) has a huge impact on the insolvency judicial costs. In particular, although time to recovery decreases, which could produce more work in process (because the judicial system is able to elaborate more insolvencies proceedings in a year), the expected reduction in the overall costs is significative (-

[125] Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, accessible at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT.

96,13%, if compared with the baseline). In this model the reduction in costs do not produce any feedback on the amount of cash available for new cross-border investments, because we did not investigate such cause-effect relationship, but in general this produce an increase in the EU GDP, thus probably providing more resources to be invested to incentivise the capital circulation.

The harmonisation of the insolvency framework has the full potential to create EU added value, improving the outcomes expected by the adoption of the 2019 EU Directive on Restructuring and Second Chance. The convergence process will impact on all elements of cross-border investment, such as financial risk assessment, level of interest applied, assumption of capital investment risk, including the assumption of risk in **the relationships with trading partners in cross-border value chains**, not having a direct impact on interest rates but affecting contracts in their value and conditions.

For what concerns policy recommendations, in general terms the European Commission should push for the harmonization of cross-border insolvency procedures. More specifically, what follows is a prioritization of the building blocks and related policy instruments preferred by the respondents.

Table 8 - Preferred policy option per building block

Building block	Preferred Policy Option
Change determined by the introduction of common rules for roles and powers of insolvency practitioners, with regard to asset tracing and asset recovery	Regulation by means of a Directive providing an exhaustive list of powers and tools for insolvency practitioners asset tracing and recovery in cross border insolvency cases
Change determined by the introduction of common rules regarding transaction avoidance	Regulation by means of a Directive providing an exhaustive specific set of rules on transaction avoidance displacing conflicting national law
Change determined by the introduction of EU rules on pre-pack sales	Regulation by means of a Directive precisely defining all the key aspects of going concern and the features of the pre-packs (the role of the Advisor and its appointment as an IP, the assignment or termination of civil and commercial executory contracts, the criteria to choose the best bid, and the measures to maximize the value of the business subject to pre – pack), displacing existing national provisions.
Change determined by the provision of more concrete rules on specialisation of insolvency courts and training of insolvency judges and more concrete requirements when it comes to conditions for eligibility, appointment, suitable training or necessary expertise	Regulation by means of an EU Directive with more concrete rules on specialization of insolvency courts and training of judges and on requirements for insolvency practitioners' when it comes to conditions for eligibility, appointment, suitable, training, or necessary expertise
Changes determined by the introduction of standards at EU level in respect to directors' duties and liability in the vicinity of the insolvency	Regulation by means an EU Directive on the directors' duties and liability in the vicinity of insolvency (including details on the decisions to be taken once the shareholders meeting has been convened, conditions under which insolvency should be filed and liability against wrongful trading

Further, the European Commission should increase harmonization concerning the following applications and platforms:

- Standardised models for filing claims
- Authentication and validation of claimants to ensure legitimacy of access and claims filing
- Cross-border access to registries of initiated insolvency procedures

Annex A | Overview of current framework in EU and in Member States

This annex provides the overview of current framework in EU and in the different Member States.

This section is an overview of the main features of the Regulation 2015/848

Table 9 - Main features of the Regulation 2015/848

REGULATION 2015/848 ON INSOLVENCY PROCEEDINGS (REGULATION (EU) 2015/848)
Although the first EIR was repealed upon the entry into force of Regulation 2015/948, it continued to apply to insolvency proceedings falling within its scope that had been opened prior to 26 June 2017.[126] Unlike its predecessor, the recast EIR applies not only to main and secondary insolvency proceedings, but also to (i) pre-insolvency proceedings that are aimed at restructuring a financially distressed debtor at a pre-insolvency stage; and (ii) hybrid proceedings aimed at a collective debt restructuring where existing management is left in place. Furthermore, the Regulation (EU) 2015/848 only applies to public proceedings, to protect the general interest of creditors; therefore, it does not apply to proceedings whose opening decision has not be published. Indeed, only public proceeding allow creditors to become aware of the proceedings and lodge their claims, and, thus, to give creditors the opportunity to contest the jurisdiction of the court which opened the proceedings. Therefore, insolvency proceedings of a reserved nature should be excluded from the scope of the Regulation (EU) 2015/848. Although such proceedings may play an important role in some Member States, their confidential nature means that a creditor may not be able to rely on them. The confidential nature of such proceedings means that a creditor or a court situated in another Member State cannot in any way be aware of their aware of their opening, thus making it difficult to envisage the recognition of their effects across the Union. Similar to the EIR Regulation, insolvency proceedings under the Regulation (EU) 2015/848 do not necessarily involve a court. Therefore, the term "court" used in this Regulation should, in specific cases, have a broad meaning so as to include any person or body empowered by national law to open insolvency proceedings. For the avoidance of doubt as to the persons who are empowered to open and conduct insolvency proceedings (listed exhaustively in Annex A), the administrators of insolvency proceedings have already been defined in the Regulation (EU) 2015/848 and listed in Annex B[127]. The exclusions provided for in the Regulation (EU) 2015/848 are relatively similar to those provided for in the EIR. Indeed, the provisions of the Regulation (EU) 2015/848 do not apply to insurance undertakings, credit institutions, investment firms and other institutions or companies covered by Directive 2001/24/EC[128], as well as to collective investment undertakings. Regulation (EU) 2015/848 includes several changes to the regime set by the EIR. More specifically, its purpose is to provide rules to better determine: (i) the proper jurisdiction for a debtor's insolvency proceedings, (ii) the applicable law to be used in those proceedings, and the mandatory recognition of those proceedings in other EU Member State[129].
(i) THE PROPER JURISDICTION FOR A DEBTOR'S INSOLVENCY PROCEEDINGS
Regulation (EU) 2015/848 makes several subtle but important changes to jurisdiction, including a definition of COMI. The "centre of main interests" is a crucial criterion within the Regulation (EU) 2015/848: on the one hand, it is useful for establishing the competent seat and applicable law in respect of the Main Insolvency Proceedings with universal effect. On the other hand, it establishes the scope of the Regulation (EU) 2015/848, which is only applicable to insolvent debtors whose "centre of main interests" is located in the EU (except Denmark which has decided not to adopt the Regulation (EU) 2015/848, as well as the EIR). Therefore, Member States may maintain national connecting factors on debtors who have their "centre of main interests" outside the EU. The Regulation (EU) 2015/848 contains a number of provisions aimed at avoiding forum shopping, i.e., attempts by debtors to transfer their "centre of main interests" just before filing insolvency proceedings or between the filing of the request and the decision of the competent court opening the proceedings, in order to change the law and jurisdiction applicable to such insolvency proceedings (lex concursus): • Article 3 introduces "cooling-off periods" in which the general presumption that the "centre of main interests" of a debtor is at the place of the registered office does not apply if the registered office has been transferred to another Member State in the period of three months preceding the request for the opening of proceedings. Similar provisions apply to natural persons. The presumption, in the case of a natural person pursuing a commercial activity, that the "centre of main interests" is located at the principal place of business does not apply if this has been

[126] Any *conflit mobile* which might arise from the time between a debtor's acts giving rise to insolvency and the subsequent insolvency proceedings are governed by Article 84(1) of Regulation 2015/848 (previously Article 43 of Regulation 1346/2000).

[127] Administrators in insolvency proceedings who are appointed without the involvement of a judicial authority should, in accordance with under national law should be appropriately regulated and authorised to act in insolvency proceedings. operate in the context of insolvency proceedings. The national regulatory framework should provide for adequate The national regulatory framework should include adequate provisions to address potential conflicts of interest.

[128] Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganization and winding-up of credit institutions (OJ L 125, 5.5.2001, p. 15).

[129] To this end and to prevent any abuse by the Member States, EIR's annex A contains an exhaustive list of the types of national proceedings to which the regulation applies. Therefore, national procedures contained in Annex A of Regulation (EU) 2015/848 must apply the Regulation without the need for the national courts of another Member State to further examine the fulfilment of the conditions laid down therein: national procedures which are not included in Annex A should not be covered by Regulation (EU) 2015/848.

transferred to another Member State in the three months preceding the request to open proceedings. In the case of natural persons not pursuing a commercial activity, the presumption that the "centre of main interests" is at their place of habitual residence does not apply if this has been moved to another Member State in the six months preceding the request to initiate proceedings;

- Article 4 establishes that national courts should verify ex officio that the debtor's "centre of main interests" is indeed situated in their territory while according to Article 5, any creditor or debtor must always have an effective remedy under national law (judicial or semi judicial) against the decision to open a Main Insolvency Proceedings.

Regarding the definition and the scope of itself, there have been many debates on "centre of main interests" transfers and forum shopping. Some commentators[130] have noted for instance that Regulation (EU) 2015/848 condemns only a certain kind of forum shopping. This because recitals (5) and (29) seems to prevent only the "fraudulent or abusive forum shopping". Indeed, recitals (5) and (29) state, respectively, that:" It is necessary for the proper functioning of the internal market to avoid that parties have an incentive to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position to the detriment of all creditors" and "…this Regulation should contain a number of safeguards to prevent fraudulent or abusive forum shopping"[131].

Indeed, given that forum shopping implies (almost exclusively) the search for a favourable law for the debtor and also that the advantages that may result from it may be of a different nature (and are not easily determinable beforehand), it is reasonable to assume that Regulation (EU) 2015/848 intends to prevent any instrumental relocation of the registered office and, therefore, of the change of the law applicable to the insolvency proceedings. To this end, Regulation (EU) 2015/848 requires, in its recital (28), the courts of the Member States to ascertain in concrete terms whether the debtor pursues its main business there (i.e. has the "centre of main interests"), even in the face of the (current) correspondence of the registered office, even in the abovementioned "cooling-off periods".

Regulation (EU) 2015/848 also makes it possible, like the EIR, to open Secondary Proceedings alongside the Main Insolvency Proceedings to protect all the different interests involved. More specifically:

- the Main Insolvency Proceedings should be opened in the Member State in which the centre of the debtor's main interests is situated, according to the abovementioned "centre of main interests" criteria. The Main Insolvency Proceedings are universal and tend to cover all the debtor's assets; and
- where the Main Insolvency Proceedings concerning a legal person or a company have been opened in a Member State other than that in which it has its registered office, it should be possible to Secondary proceedings in the Member State of the registered office, provided that the debtor pursues an economic activity by human means and with assets in that State, in accordance with the case-law of the Court of Justice of the European Union. Secondary proceedings are limited to assets situated in that State.

Overall, if the circumstances give rise to doubts as to the jurisdiction of the court, the court should require the debtor to provide further evidence in support of its claims and, if permitted by the law applicable to the insolvency proceedings, give the debtor's creditors the opportunity to express their views on the question of jurisdiction. Moreover, any creditor of the debtor should have access to effective remedies against the decision to open insolvency proceedings. The consequences of challenging the decision to open insolvency proceedings are governed by national law.

Once the jurisdiction of the court for the Main Insolvency Proceedings has been established, the court has also jurisdiction to hear actions arising directly out of the proceedings and closely related to them. Such actions should include actions for revocation against defendants in other Member States and actions relating to obligations arising during the insolvency proceedings, such as an advance payment of the costs of the proceedings. Actions for the enforcement of obligations arising from a contract entered by the debtor before the opening of the proceedings, on the other hand, do not arise directly from the proceedings.

Where an action is related to another action under general civil law or commercial law, the administrator of the insolvency proceedings should be able to obtain the joinder of the two actions before the court of the defendant's domicile if he considers it more efficient to bring the action before that court. This could be the case, for example, if the administrator of the insolvency proceedings wishes to combine an insolvency law action for liability of the directors of the company with a company law or general non-contractual liability action.

In any case, the courts having jurisdiction to open Main Insolvency Proceedings should have the power to order provisional and conservatory measures as from the request to open proceedings. Preservation measures before and after the opening of Main Insolvency Proceedings may be relevant to ensure the effectiveness of such proceedings. Regulation (EU) 2015/848 provides for several possibilities: (i) on the one hand, the court competent for Main Insolvency Proceedings should also be able to order provisional and protective measures also with regard to assets situated in the territory of other Member States; (ii) on the other hand, a provisional insolvency administrator, appointed prior to the opening of the Main Insolvency Proceedings in the States where the debtor has an "establishment", should be able to apply for any preservation measure under the law of that Member State.

Prior to the opening of Main Insolvency Proceedings, the right to request the opening of Secondary proceedings where the debtor has an "establishment" are available only to local creditors and creditors of the local establishment or are limited to cases where Main Insolvency Proceedings cannot be opened under the law of the Member State where the "centre of main interests" of the debtor's is situated. The purpose of that restriction is to limit to the minimum the cases in which the opening of Secondary proceedings is requested before the Main Insolvency Proceedings are opened.

After the opening of the Main Insolvency Proceedings, Regulation (EU) 2015/848 does not restrict the right to request the opening of Secondary insolvency proceedings in the Member State in which the debtor has an "establishment": the insolvency administrator in the main insolvency proceedings or any person empowered to do so under the national law of that Member State may request the opening

[130] *Ex multis* Andrea Csőke, EIR Recast. Some tiny, interesting details, Eurofenix spring, 2016, 29 ss.

[131] Like for example art. 3 with the introduction of the so called "*cooling-off periods*".

of Secondary insolvency proceedings. Secondary insolvency proceedings may also be requested by the administrator in the Main Insolvency Proceedings if that is necessary for the effective management of the insolvency estate.

Secondary insolvency proceedings may also hinder the efficient administration of the insolvency estate. Therefore, Regulation (EU) 2015/848 sets out specific situations in which the court seized with the opening of Secondary insolvency proceedings should be able, upon request of the administrator of the main insolvency proceedings, to postpone or refuse the opening of such proceedings.

Main insolvency proceedings and secondary insolvency proceedings may contribute to the efficient management of the debtor's insolvency estate or to the efficient realisation of all the assets if there is adequate cooperation between the actors involved in all parallel proceedings. Adequate cooperation implies close collaboration between the different insolvency administrators and courts involved, through sufficient exchange of information.

In the light of such cooperation, insolvency administrators and courts should be able to conclude agreements and protocols with a view to facilitating cross-border cooperation in the event of multiple insolvency proceedings in different Member States concerning the same debtor or companies belonging to the same group of companies, where this is compatible with the rules applicable to each proceeding.

(II) THE APPLICABLE LAW TO BE USED IN THOSE PROCEEDINGS, AND THE MANDATORY RECOGNITION OF THOSE PROCEEDINGS IN OTHER EU MEMBER STATE[132]

The law applicable to insolvency proceedings (primary or secondary), according to article 7 of Regulation (EU) 2015/848 is the law of the place of the opening of proceedings (lex concursus). Therefore, in the case of Main Insolvency Proceedings, the law of the place where the “centre of main interests” shall apply, whereas for Secondary proceedings should be applied the law of where the debtor has an “establishment”. The lex concursus is aimed at governing both procedural and substantive aspects of the proceedings. Therefore, it governs the conditions of opening, and the conduct, as well as the closure of the insolvency proceedings and all the different rights and obligations that may arise during or after the proceedings. The law determined under Article 7 has a universal impact on the entire proceedings[133]. In particular, it determines: (i) the debtors who, by reason of their capacity, may be the subject of insolvency proceedings; (ii) the assets forming part of the insolvency estate and the treatment of assets acquired by the debtor after the opening of the insolvency proceedings; (iii) the powers of the debtor and of the administrator of the insolvency proceedings, respectively; (iv) the conditions under which set-off may be relied on; (v) the effects of the insolvency proceedings; (vi) the claims to be lodged in the debtor's bankruptcy estate and the treatment of claims arising after the opening of insolvency proceedings; and (vii) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.
For certain special situations Regulation (EU) 2015/848 provides for special criteria that derogate the lex concursus in favour of the lex situs. For example, special connecting factors which derogate from the law of the opening State for rights in rem are particularly necessary because such rights are of great importance for the granting of credit. The creation, validity and scope of rights in rem should, as a rule, be governed by the law of the place where the assets are located (lex situs) and should not be affected by the opening of Main Insolvency Proceedings. Therefore, the holder of a right in rem should still be able to enforce the right to separate the collateral from the estate. Where assets are subject to rights in rem under the lex situs of one Member State while the Main Insolvency Proceedings are conducted in another Member State, the administrator in the Main Insolvency Proceedings should be able to request the opening of Secondary insolvency proceedings in the jurisdiction where the rights in rem arise, provided that the debtor has an “establishment” in that State.
The decisions issued by the competent courts are directly applicable and recognised in all EU countries, according to the general principle of automatic recognition of foreign judgments set out in Regulation (EU) No 1215/2012[134].
Regulation (EU) 2015/848 distinguished two types of decisions, detailed in article 19 and 32, respectively:

- The first category includes the decisions for opening of Main as well as of Secondary insolvency proceedings issued by a competent court of Member States; according to Article 19, “any judgment opening insolvency proceedings (…) shall be recognised in all other Member States from the moment that it becomes effective in the State of the opening of proceedings”;
- The second category includes all the other judgments relating to the conduct and closure of insolvency proceedings as well as to the framework of insolvency proceedings. Indeed, according to Article 32, judgments relating to the conduct and closure of insolvency proceedings handed down by a court whose judgment is recognised pursuant to Article 19, as well as the composition proceedings approved by that court, shall also be recognised without further formality. Such judgments shall be enforced in accordance with Regulation (EU) No 1215/2012[135].

[132] To this end and to prevent any abuse by the Member States, EIR’s annex A contains an exhaustive list of the types of national proceedings to which the regulation applies. Therefore, national procedures contained in Annex A of Regulation (EU) 2015/848 must apply the Regulation without the need for the national courts of another Member State to further examine the fulfilment of the conditions laid down therein: national procedures which are not included in Annex A should not be covered by Regulation (EU) 2015/848.

[133] J. Brodec, *Determination of applicable law in international insolvency proceedings* in *European and national perspectives on the application of the European insolvency regulation* (eds. I. Queirolo and S. Dominelli), Rome, 2017.

[134] Regulation (EU) 1215/2012 (also known as Recast Brussels Regulation) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters has replaced Regulation (EC) 44/2001 (Brussels Regulation) and it is applicable to all the legal proceedings commenced on or after 10 January 2015 and to settlements concluded.

[135] Indeed, according to Article 39 of the Directive (EU) 1215/1012 “*A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required*”.

Since Regulation (EU) 2015/848 does not expressly limit the subjects who are entitled to ask for recognition and since it does not require any special national procedure for recognition, any person with legal interest is empowered to rely on the foreign decision for opening of insolvency proceedings and the recognition will be automatic.

This section is an overview of the existing regulation in the different MS concerning the most critical profiles of this Report, called Building Blocks

Table 10 - Table on insolvency regulations in EU Member States

<table>
<tr><th colspan="3"><u>TABLE ON INSOLVENCY REGULATIONS IN EU MEMBER STATES[136]</u></th></tr>
<tr><th colspan="3">AUSTRIA</th></tr>
<tr><td colspan="2">Insolvency</td><td>Austrian insolvency law is not confined to entrepreneurs. Capacity for insolvency is in fact defined as a part of legal capacity under private law. Indeed, any person who can hold rights and obligations has capacity for insolvency.

There is only one type of standard insolvency proceedings under Austrian law.

Insolvency proceedings are known as bankruptcy proceedings, if no restructuring plan is available when the proceedings are opened.

Insolvency proceedings are termed reorganisation proceedings if a restructuring plan already exists when the proceedings are opened.

A request for opening insolvency proceedings must be made either by the debtor or by the creditor. In the case of reorganisation proceedings, a request must in any case be made by the debtor and a restructuring plan must exist.

The commencement of any proceedings under the Austrian Insolvency Act (AIA)[137] is dependent on the existence of certain factual predicates.

In the case of corporate entities, these are:
• illiquidity (cash flow insolvency or zahlungsunfähig; Sec 66, para 1 of the AIA);
• over-indebtedness (balance sheet insolvency or überschuldet; Sec 67, para 1 of the AIA).</td></tr>
<tr><td colspan="2">Pre-pack sales</td><td>Under the new draft legislation[138] (entered in force in July 2021), Austria will implement the pre-pack sales via a ‘simplified’ restructuring plan proceeding. According to the draft, the debtor agrees the restructuring measures (potentially including sale of assets/business and debt cut) and – together with the required majority of financial creditors – applies for the court's approval of the restructuring plan.</td></tr>
<tr><td>Creditors’ committees</td><td>General</td><td>A creditors’ committee is not necessarily to be always appointed in insolvency proceedings. In some case is mandatory and in general where it seems advisable on account of the nature or the particular scale of the business.

If the sale or lease of the business or part of the business is pending (Sec 117(1), number 1, AIA), a creditors’ committee must always be appointed. It serves to supervise and assist the insolvency administrator (Sec 89(1) AIA). The administrator must consult the creditors’ committee in respect of important arrangements (Sec 114(1) AIA). For certain important transactions (e.g. sale of the business), the consent of the creditors’ committee is a precondition for validity.

A creditors’ committee consists of three to seven members. The appointment is made by the court of its own motion or on application. Not only creditors, but also other natural or legal persons may be appointed as members.</td></tr>
</table>

[136] Sources used: e-justice.europa.eu; practicallaw.thomsonreuters.com; International Comparative Legal Guides; European Law Institute – Rescue of Business in Insolvency; Expert MSs Reports (for: Belgium, Croatia, Cyprus, Czech Republic, Finland, Greece, Hungary, Luxembourg, Poland, Portugal, Romania, Slovenia, Sweden).
[137] The Insolvency Act (Konkursverfahren).
[138] The Restructuring Code (Restrukturierungsordnung*).*

	Voting rights	Information not available.
Lodging claims	**Deadline national creditors**	Insolvency claims must be lodged within the time limit for lodging claims which is indicated in the insolvency edict. If a creditor lodges a claim late, they may have to pay the associated costs of a special verification meeting. The first meeting of creditors usually takes place 14 days after the opening of insolvency proceedings and the general examination hearing 60 to 90 days after such opening. The period in which claims have to be filed ends, generally speaking, 14 days before the examination hearing is scheduled to take place. Claims lodged later than 14 days prior to the meeting for the verification of the final accounts will not be considered (Sec 107(1), last sentence, IO).
	Deadline foreign creditors	Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings[139] (EU Insolvency Regulation / Regulation 2015/848) applies to claims lodged by foreign creditors (before the examination hearing is scheduled to take place or 30 days, whichever is longest). A standard form is provided in the Implementing Regulation; if the creditor does not use that form the claim lodged must still contain the information listed in the Insolvency Regulation.
Existence of special rules for SMEs		Not existent.
Classes of creditors & priority claims		There are two classes of creditors: • secured (or preferential), and; • unsecured creditors. Priority claims are defined as claims against the insolvency estate that are satisfied prior to all other insolvency creditors. Priority claims are reduced to certain kinds of claims and include: • costs of the proceedings, • costs regarding administration, sustainment and supply of the insolvency estate, • claims of the employees for current salary, • claims in connection with the termination of certain kinds of employees, • claims resulting from the fulfilment of certain contracts, • claims based on transactions processed by the insolvency administrator, • claims based on unjust enrichment of the insolvency estate, and • compensation for the members of privileged associations for the protection of creditors' rights. Filing priority claims with the insolvency court separately is not required. These claims are filed directly with the insolvency administrator.
Transaction avoidance		Certain legal acts which have been undertaken before the insolvency proceedings were opened and which are detrimental to creditors are voidable (Sec 27 et seq. AIA). The prerequisite for a successful challenge is for the legal transaction to be detrimental to the insolvency creditors. This is the case if the legal act caused a loss of satisfaction for the other creditors, for instance by reducing the assets or increasing the liabilities. A

[139] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R0848

<table>
<tr><td colspan="2"></td><td>further condition for a successful challenge is that, as a result of the challenge, the prospects for satisfaction of the creditors are improved.

Among the types of acts that can be subject to transaction avoidance are:

• voidability on account of intention to disadvantage creditors (Sec 28, numbers 1-3, AIA);
• voidability on account of squandering of assets (Sec 28, number 4, AIA);
• voidability on account of disposals free of charge (Sec 29 AIA);
• voidability on account of preferential treatment (Sec 30 AIA);
• voidability on account of knowledge of insolvency (Sec 31 AIA).</td></tr>
<tr><td colspan="2">Rules on directors’ duties</td><td>If the managing directors (or certain other legal representatives) of the entity fail to file for the commencement of insolvency proceedings in time, they face exposure to claims by creditors and the insolvent entity.

Under the Austrian Company Reorganisation Act, managing directors are liable vis-à-vis the company for liabilities not covered by the eventual insolvency estate if, within the last 2 years before the insolvency filing, they:

• have received a report from the company’s auditor stating that the equity ratio (Eigenmittelquote) is less than 8% and the notional debt repayment period (fiktive Schuldentilgungsdauer) exceeds 15 years, and they have not immediately filed for reorganisation proceedings or have not properly continued them, or;
• have not prepared annual financial statements, or have not done so in a timely manner, or have not immediately commissioned the auditor to audit the annual financial statements.</td></tr>
<tr><td rowspan="2">Insolvency Practitioners</td><td>Trustee in bankruptcy proceedings</td><td>• the practical conduct of the insolvency proceedings;
• reviews the financial position of the debtor;
• continues to run the business if it is not yet closed on opening the proceedings and no disadvantage from continuation arises for the creditors;
• examines the claims lodged;
• examines whether a restructuring plan is in the interests of the creditors and whether it is likely to be executable;
• establishes and disposes of the assets;
• administers and represents the insolvency estate;
• exercises the right of challenge for the insolvency estate;
• distributes the proceeds from the estate.</td></tr>
<tr><td>Administrator in restructuring proceedings</td><td>• supervises the debtor and the debtor’s business management;
• grants or refuses authorisation for legal acts which are not carried out in the normal course of business;
• represents the debtor in all matters in which the debtor does not have power of disposal;
• ascertains the financial position of the debtor;
• examines whether the restructuring plan is executable and whether reasons exist for withdrawal of possession;
• examines the claims lodged;
• exercises the right of challenge for the insolvency estate.</td></tr>
<tr><td colspan="2">Role of the courts</td><td>The insolvency court has to supervise the activities of the insolvency administrator. It can issue the insolvency administrator with written or oral instructions, obtain reports and explanations, inspect accounts and other documents and conduct the necessary</td></tr>
</table>

		inquiries. The court may also order the insolvency administrator to obtain instructions from the creditors' committee on individual matters. The insolvency administrator must notify the court of certain transactions prior to concluding them (Sec 116 AIA); other transactions require approval of the creditors' committee and the insolvency court (Sec 117 AIA).
BELGIUM		
Insolvency		According to Art. 2 of the Book XX 'Insolvency of undertakings' of the Belgian Code of Economic Law (BCEL), insolvency proceedings are 'a procedure for judicial reorganization by mutual agreement or by collective agreement or by transfer under judicial authority or bankruptcy.' The two conditions for opening insolvency proceeding are: (i) the persistent failure to pay its debts, and; (ii) the company has lost the confidence of its creditors (Art. XX.99 BCEL). A company is deemed to have generally lost all creditworthiness when it can show that it cannot receive credit on the market (typically with financial institutions) at reasonable conditions for an amount that is sufficient to pay the company's debts as they fall due.
Pre-pack sales		Not existent.
Creditors' committees	**General**	Creditors' committees are not defined. However, creditors influence certain aspects during proceedings as an assembly. For example, under Art. XX.37 of the BCEL, all creditors or at least two of them may accept the debtor's proposal to conclude an amicable agreement. They can also cast a vote upon the reorganization plan, in accordance with Arts. XX.67 to XX.83. of the BCEL.
	Voting rights	According to Art. XX.78 of the BCEL, '*the reorganization plan is deemed to have been approved by the creditors when it obtains the favourable vote of the majority of them, represented by their claims and half of all the sums due in principal (double majority).'* The creditor can take part in the vote in person, by written power of attorney, deposited in the register, or through their lawyer who can act without a special power of attorney. For the calculation of the majorities, the creditors and the amounts due appearing on the list of creditors filed by the debtor in accordance with article XX.77 (only the suspended creditors whose plan affects the rights can take part in the vote) are taken into account, as well as the creditors whose claims have subsequently been provisionally admitted in application of Articles XX.68 and XX.69. Creditors who did not take part in the vote and the claims they hold are not considered for the calculation of majorities.
Lodging claims	**Deadline national creditors**	According to Art. XX.104 BCEL, the creditors must declare their claims in 30 days.
	Deadline foreign creditors	The obligation to make the declaration of claim and to file the annexes in the register does not apply to natural persons or legal persons who are established abroad, unless they are represented by a third party who provides assistance judiciary in a professional capacity (Art XX.155 BCEL).
Existence of special rules for SMEs		In Belgium, in the framework of the transposition of the EU Directive 2019/1023, the Federal Parliament commissioned a group of experts to submit a transposition text for legislative approval. In the framework of the discussions in this expert group, the question of the treatment of SMEs is central and is being debated. Initially, it was planned to not apply the exemption for SMEs in Article 9(4)(3) of Directive 2019/1023, but recent discussions have brought this issue back into the spotlight.

Classes of creditors & priority claims		Under Art. 2 of BCEL, the following categories of creditors can be distinguished, each subsequent category holding a lower priority against the previous one:
		• Preferential creditors:
		   ✓ Special privilege,
		   ✓ General privilege,
		• Ordinary creditors.
		The competing claims to the estate in bankruptcy occur automatically under law. The bankrupt debtor's assets are used exclusively to satisfy creditors existing on the day of bankruptcy and whose claim is fixed on the day of bankruptcy. In principle, an equal distribution among the creditors will take place, except when the regime of mortgages and liens allows for derogations. When a bankrupt's property is realised, liens and mortgages entitle the lien holder to be paid preferentially from the proceeds with priority over other unsecured creditors.
		The '*debts of the bankruptcy estate'* (management costs and expenses, taxes, environmental debts, debts arising from the trustee in bankruptcy's initiatives or quasi-contracts) constitute preferential claims on the estate in bankruptcy.

Transaction avoidance		Insolvency occurs from the time of the declaratory judgment of bankruptcy. The judge may advance this date by six months, if serious and objective circumstances show that the payments have already ceased before the judgment. This is called the '*suspect period*'. The trustee in bankruptcy will be able to call into question transactions that occurred within this time limit and that caused any damage to the mass. The penalty consists of the transactions not being enforceable against the mass in bankruptcy. If the judge considers, at the request of the curator, that certain acts are 'suspicious' and are therefore not opposable to the mass, the person who has received the goods or has acquired them at a derisory price must return them to the mass.
Rules on directors' duties		In case the company is declared bankrupt, the directors can be held liable: • for a part or all the debts of the bankruptcy, if it can be demonstrated that they made a gross error that contributed to the bankruptcy; • for a part or all debts of the bankruptcy, if the directors did not file for bankruptcy although it was clear that there was no reasonable prospect of continuing the activities and avoiding a bankruptcy (wrongful trading); • for certain social and tax debts, if the directors during the last 5 years prior to the bankruptcy were involved in at least two other bankruptcies in which there were unpaid social and tax debts.
Insolvency Practitioners	**General**	The concept of '*insolvency practitioner'* (IP) is defined in Article I.22, 7° of the BCEL. Belgium listed persons that, under national law, are to be considered as insolvency practitioners because they perform at least one of the tasks listed in Article 2(5) of the Regulation. The list includes: • the receiver; • the delegated judge; • the judicial representative; • the debt mediator; • the liquidator; • the provisional administrator.

		The core of the matter is set out in Article XX.20 of BCEL, which regulates the profile of insolvency practitioners, the insurance of their professional liability, the obligation to appear on the lists of practitioners provided for by the law, the methods for determining and collecting fees, the procedures for increasing or replacing fees, the procedures for increasing their number or replacing them, as well as matters relating to the end of their mandate.
	Receiver	The day on which the bankruptcy is declared by the Company Court, a receiver is appointed to assume all responsibilities from the board of directors and other corporate organs. The court has absolute discretion regarding the identity and the number of receivers appointed; however, the receiver has to be a licensed insolvency practitioner registered on the list of receivers held by the court. For bankruptcies of large companies, it is not unusual to appoint a committee of receivers. The receiver has full control over the company, only subject to the oversight of the court and the judge-commissioner.
	Delegated judge	If the delegated judge is included among the insolvency practitioners listed in Annex B, this does not imply that he will be subject to the rules applied by Book XX to insolvency practitioners in general. His status (like that of the judge-commissioner, who is not included in Annex B) is different from that of genuine insolvency practitioners. It is also apparent that he is not primarily responsible for any of the tasks listed in Article 2, 5 of Regulation 2015/848.
	Judicial representative	The judicial representative is, in the context of a judicial reorganisation by transfer under judicial authority, the person responsible for organising the transfer of all or part of the undertaking. In the context of a judicial reorganisation procedure by collective agreement, a judicial representative may be appointed to facilitate the conclusion of an amicable settlement.
Role of the courts	**Data collection, companies in difficulty.**	The Commercial Court keeps an updated registry on companies in difficulty. The investigation chambers (*chambres d'enquête*) monitor the situation of debtors in difficulty. They can forward cases to the public prosecutor, if the debtor is clearly in a state of bankruptcy.
	Court-supervised restructuring procedure	The court-supervised restructuring procedure is initiated on the basis of a petition filed by the debtor at the registry of the bankruptcy and court-supervised restructuring service (the Commercial Court). The company in difficulty is monitored during the court-supervised restructuring procedure by the appointed judge, who is a magistrate (usually a consular judge) of the court.
	• **Dissolution/liquidation by the court**	The dissolution of a company leads to its liquidation. Judicial dissolution can be requested by either the Public Prosecutor or any interested party, or by the chamber of companies in difficulty. The court appoints a liquidator who will be accountable to it, with the management body having no say.
	• **Bankruptcy procedure**	The purpose of this procedure is to place the debtor's assets under the management of a trustee in bankruptcy, who is responsible for administering the bankrupt's assets, liquidating them and distributing the liquidation proceeds among the creditors. Bankruptcy is declared by judgment of the insolvency court seized, either by admission of the debtor or by summons from one or more creditors, the Public Prosecutor, the provisional administrator or the trustee in bankruptcy (*curateur*) of the main proceedings (in the case of territorial insolvency proceedings, according to *Regulation (EU) 848/2015 on insolvency proceedings (recast)).* The trustee in bankruptcy is assisted in the bankruptcy by a bankruptcy judge (*juge commissaire*) appointed by the court. Certain transactions (for example, the sale of real estate) must also be authorised by the court.
BULGARIA		
Insolvency		There are two triggers for insolvency proceedings:

		• insolvency (inability to pay), and; • over-indebtedness (of a limited liability company, a joint-stock company or a limited stock partnership). These triggers are not cumulative. Insolvency and over-indebtedness are objective factual conditions, which have legal definitions in the Bulgarian Commerce Act (BCA). Under Art 608 of the BCA, insolvency is assumed when the debtor has stopped his payments and may be present when the debtor has paid or is in position to pay partially or in full only the claims of individual creditors. According to Art 742 of the BCA, a trade company shall be deemed overindebted, provided its assets are insufficient to meet its financial liabilities.
Pre-pack sales		Not existent.
Creditors' committees	**Appointment**	According to Art. 672 of the BCA, the first meeting of creditors shall elect a creditors' committee comprising at least three and not more than nine members. The creditors' committee must comprise members who represent the secured and non-secured creditors, except those referred to in Article 616 2co of the Commerce Act. The creditors' committee duties are (Art 681 BCA): • to assist and supervises the actions of the receiver in relation to the management of the debtor's assets; • to conduct checks on the commercial records of the debtor and available cash funds; • to give opinions on the continuation of the business of the debtor's enterprise and on the remuneration of the provisional and ex officio receiver, the actions taken in relation to estate conversion into cash and on the liability of the receiver in other cases.
	Meeting of creditors	Under Art. 677 of the BCA, the meeting of creditors shall: • hear a report of the receiver in bankruptcy about his activities; • hear a report of the creditors' committee; • elect a receiver in bankruptcy, if none has been elected; in such case Art. 672, Para 2 shall apply; • pass a resolution for the removal of the receiver in bankruptcy and his substitution; • determine the amount of the current remuneration of the receiver in bankruptcy, any alteration thereof, as well as the amount of his final remuneration; • elect a creditors' committee, if none has been elected, or change its members; • propose to the court the amount of the support money for the debtor and his family; • determine the order and the way of conversion of the property of the debtor into cash, the method and terms for evaluation of the property, the choice of assessors and the determination of their remuneration.
	Meeting of creditors voting rights	According to Art, 676 BCA, the meeting of creditors shall be held, regardless of the number of persons present and shall be chaired by the judge responsible for the case. Resolutions shall be passed by simple majority, unless the law prescribes otherwise.
Lodging claims	**Deadline national creditors**	According to article 685 of the BCA, creditors shall claim their receivables in writing before the court of jurisdiction over bankruptcy within one month after the advertisement on the start of the bankruptcy proceedings.

	Deadline foreign creditors	One month according to Art. 616 of the BCA, which states that foreign creditors shall have equal rights with the domestic ones in the bankruptcy proceedings.
Existence of special rules for SMEs		Not existent.
Classes of creditors & priority claims		Creditors are divided into several classes according to Art. 722 of the BCA, each subsequent class having a lower priority against the previous one: • Secured creditors (mortgage, property subject to lien etc.); • Privileged creditors: employment, bankruptcy costs etc.; • Unsecured creditors. The following procedure for settling claims by way of making distributions from the estate converted into money, stipulated in Article 722 of the Commerce Act, is followed: • claims secured by a pledge or mortgage, garnishment or distraint, registered in accordance with the Liens Act — from the proceeds from security realisation; • claims in respect of which the right to lien is exercised — from the value of the asset subject to lien; • expenses incurred in the insolvency proceedings (stamp duty payable upon filing and all other expenses incurred until the entry into force of the ruling opening insolvency proceedings; the receiver's remuneration; the claims of workers and employees when the debtor's enterprise has not ceased trading; the costs incurred on augmentation, administration, valuation and distribution of the insolvency estate; and the maintenance payments in favour of the debtor and their family); • claims arising from employment contracts that existed before insolvency proceedings were opened; • statutory compensation payable to third parties by the debtor; • public-law debts to the central government or municipalities, including but not limited to those arising from taxes, customs duties, fees and mandatory social security contributions, if they arose before the date on which insolvency proceedings were opened; • claims that arose after the commencement of insolvency and unpaid by the respective due date; • any remaining unsecured claims that arose before insolvency proceedings were opened; • statutory or contractual interest on unsecured debts due after the date on which insolvency proceedings were opened; • loans granted to the debtor by a business partner or shareholder; • donations; • the expenses incurred by the creditors in connection with the insolvency proceedings, except for the expenses under Article 629b of the Commerce Act (prepaid initial litigation expenses).
Transaction avoidance		BCA provides for a number of safeguards that protect creditors of the insolvency estate against actions taken and transactions entered into by the debtor with a view to depleting the insolvency estate and harming creditors' interests. The law introduces the concept of a '*suspect period'* — an irrefutable presumption that creditors' interests have been harmed, if certain actions have been taken or certain transactions have been entered into during this period.

		The suspect period commences from the date of insolvency or over indebtedness, but not earlier than one year before the petition for opening insolvency proceedings was filed, and ends on the date of the ruling opening insolvency proceedings. In other cases, it can extend to three years. A number of transactions become automatically void under article 646 BCA (*e.g.* settlement of a debt incurred before the ruling opening insolvency proceedings, pledge or mortgage created on a right or an asset of personal property from the insolvency estate). Other transactions can be invalidated by the court (*e.g.* transactions for no consideration, transactions at undervalue etc.).
Rules on directors' duties		There are no specific provisions with regards to liability and the responsibilities of directors during insolvency proceedings. General rules apply. According to Art. 237 of the BCA, 'the members of the boards shall be obliged to perform their functions with the care of a diligent merchant in the interest of the company and all stockholders.' Under Art. 240 of the BCA, the members of the boards shall be jointly and severally liable for any damages caused through a fault of theirs.
Insolvency Practitioners	**Receivers**	Under Art. 655 of BCA, natural persons must fulfil certain conditions in order to become receivers (*e.g.* to have passed successfully the examination for acquiring qualification). The bankruptcy court shall appoint the receiver in bankruptcy elected by the first meeting of the creditors. The receiver in bankruptcy shall exercise his powers with the care of a prudent merchant. Under Art. 658 of BCA, the receiver in bankruptcy shall have the power to represent the undertaking and to manage its affairs. This include (the right to supervise the debtor's business, to obtain and keep the books and handle the business correspondence, to make enquiries and identify the debtor's assets, to request that contracts to which the debtor is a party be terminated, cancelled or annulled, to propose a recovery plan etc.).
	Liquidators	Under Art. 266 *et subseq*. of the BCA, liquidators must be registered in the commercial register. Liquidators shall bear the same liability for their activities related to the liquidation as the managers and the other executive bodies of the trade companies. The liquidator shall be obliged to exercise his competencies with the care of a diligent merchant. The liquidators shall be obliged to complete any pending transactions, to collect debts due, to convert the remaining company's property into cash and satisfy the creditors.
Role of the courts		The competent insolvency court is the provincial court with jurisdiction over the area in which the trader has its head office at the time of the application to open insolvency proceedings. An application to open insolvency proceedings is heard by the Court. The court can institute bankruptcy proceedings, if under Art. 630 BCA it establishes illiquidity or over-indebtedness. The court may reject the application, should it establish that the debtor's difficulties are temporary, or his assets are sufficient to meet the debts without threatening the creditors' interests. Insolvency courts have the power to impose anticipatory or precautionary measures (such as appointing a receiver, establishment of a security, stay of enforcement etc.). After the court's ruling, the debtor continues to trade under the supervision of the receiver and may conclude new contracts only with the prior consent of the receiver and on condition that it continues to comply with the measures ordered in the ruling opening insolvency proceedings. The court may strip the debtor of the right to manage and dispose of its property and grant that right to the receiver, if it finds that the actions of the debtor are detrimental to the interests of creditors.
CROATIA		

<table>
<tr><td colspan="2">Insolvency</td><td>Under the Croatian Bankruptcy Law (CBL),[140] there are two general regimes for debtors that are insolvent:
• the pre-bankruptcy settlement procedure, and;
• bankruptcy procedure (ordinary and shortened).
At the moment, a legal framework for preventive restructuring does not exist in Croatia, i.e. Directive (EU) 2019/1023 on preventive restructuring frameworks has not yet been implemented.
Insolvency incurs when a debtor:
• becomes insolvent (incapable of payment), or;
• becomes over-indebted.
A debtor shall be deemed insolvent (incapable of payment) if, in the Register of the order of priority of payment liabilities kept by the Croatian Financial Agency, it has one or more registered unsettled liabilities, due for more than 60 days, for which there is a valid basis for payment.
A debtor is considered to be over-indebted if the value of his assets does not cover the existing obligations.
In Croatia there are two general regimes for entrepreneurs that are insolvent:
• the pre-bankruptcy settlement procedure and;
• bankruptcy procedure in its two forms:
✓ ordinary, and;
✓ shortened.</td></tr>
<tr><td colspan="2">Pre-pack sales</td><td>Pre-bankruptcy agreement exists and operates in a reversed manner – pre-bankruptcy court proceedings are opened and aim at the conclusion of a pre-bankruptcy settlement with the creditors outside of bankruptcy proceedings, which will enable the reorganisation of the debtor. However, the court is involved – it verifies whether the conditions for confirmation of pre-bankruptcy arrangement have been met.</td></tr>
<tr><td rowspan="2">Creditors' committees</td><td>Appointment</td><td>Creditors committee can be appointed by the court, prior to the first hearing of creditors. Creditors with the claims with in the highest amount and creditors with small claims must both be represented in the committee of creditors. Also, a representative of the debtor's former employees must be represented in the committee of creditors unless they as creditors participate in the proceedings with insignificant claims.
Creditors with the right to seek separate satisfaction (razlučni vjerovnici) and persons who are not creditors, but who might contribute to the work of the committee with their expert knowledge, may be appointed members of the committee of creditors.
The committee of creditors must have an odd number of members, nine at the most. If the number of creditors is less than five, all creditors are awarded the powers of the committee of creditors.</td></tr>
<tr><td>Voting rights</td><td>Information not available</td></tr>
</table>

[140] Croatian Bankruptcy Law (Stečajni zakon) – Croatian official gazzette nr. 71/15, 104/17.

	Powers	The committee of creditors must oversee the liquidator and aid them in pursuit of business activities, as well as monitor operations pursuant to Article 217 of the CBL, examine the books and other records related to the business, and order verification of turnover and the amount of cash. Among its responsibilities, the committee can: • examine reports by the liquidator on the course of the bankruptcy proceedings and on the condition of the bankruptcy estate; • review business ledgers and the entire documentation that has been taken over by the liquidator; • lodge objections with the court against acts of the liquidator; • grant approval of the cost estimates for the bankruptcy proceedings; • give the court an opinion on liquidation of the debtor's assets, at the request of the court; • give the court an opinion on the continuation of ongoing business operations or on the activities of the debtor, at the request of the court; • give the court an opinion on recognition of justified losses that were established in the inventory of assets, at the request of the court.
Lodging claims (time)	**National creditors**	The deadline for creditors to report claims in pre-bankruptcy proceedings is of 21 days. The deadline commences from the publication of the decree of opening of the proceeding on the official notice board in Croatia (*e-oglasna ploča*). If the creditor fails to lodge a claim but the claim has been stated in the proposal to open pre-bankruptcy proceedings, such a claim is deemed lodged.
	Foreign creditors	There is no different treatment for foreign creditors. Under the EU Insolvency Regulation the deadline will be of 30 days.
Existence of special rules for SMEs		Currently, Croatian legislative framework does not provide for a specific treatment of SMEs. Special treatment has been reserved at this stage only for the companies of systemic importance for Republic of Croatia under the Law on the procedure of extraordinary administration in commercial companies of systemic importance for Republic of Croatia[141]. Companies of systemic importance are defined as joint stock companies (*dionička društva*), excluding credit and financial institutions, who cumulatively meet the following criteria: • average of more than 5,000 employees in a calendar year, including its affiliated companies, and • debt of more than HRK 7,500,000,000 (approx. EUR 1 billion), including its affiliated companies.
Classes of creditors & priority claims		As a general rule, bankruptcy creditors are classified in payment ranks according to their claims. Creditors of subsequent payment rank cannot be settled until the creditors from the previous rank have been completely settled. Creditors of the same payment rank will be settled proportionally to their claims. Pursuant to the CBL, claims and their creditors are ranked respectively as it follows: • bankruptcy estate – claims of the bankruptcy estate include bankruptcy proceedings costs and other claims of the bankruptcy estate (attorney claims etc.); • creditors with separate satisfactory right– are not bankruptcy creditors and they may request extraction of objects to which they are entitled out of the bankruptcy estate;

[141] Zakon o postupku izvanredne uprave u trgovačkim društvima od sistemskog značaja za Republiku Hrvatsku – Croatian official gazzette nr. 32/17.

		• secured creditors– their claims are satisfied from secured assets. Secured creditors are also bankruptcy creditors only if the debtor is personally liable to them, and they are entitled to satisfy their claims from the bankruptcy estate only if they waived their right of satisfaction from the secured assets or are unable to do so; • regular bankruptcy creditors– are unsubordinated and unsecured creditors whose claims are classified into ranks depending on the particular claim as follows: ✓ first rank – claims of employees and of former employees of the bankruptcy debtor which arose from employment until the opening of the bankruptcy proceedings and certain related claims, ✓ second rank – all the other claims towards the bankruptcy debtor, except for the subordinated claims, • subordinated bankruptcy creditors– are the last in line for settlement and their rank within the group depends on the type of their claim.
Transaction avoidance	**General**	Legal acts undertaken prior to the opening of the bankruptcy proceedings that disrupt the uniform settlement of bankruptcy creditors (causing harm to creditors) or that favour certain creditors over others (preferential treatment of creditors) may be contested by the liquidator on behalf of the debtor, and the creditors in bankruptcy. There are several types of transaction avoidance: • Congruent settlement; • Non-congruent settlement; • Legal actions by which creditors are directly damaged; • Intentional damage; • Legal action free of charge or with an insignificant fee; • A loan which replaces capital; • Secret company.
	Congruent settlement	Legal acts adopted in the last three months prior to the filing of a motion for opening of the bankruptcy proceedings / after the filing of the proposal to open bankruptcy proceedings, which provides or allows a creditor security or satisfaction in a manner and at a time that is congruent with the substance of their rights, may be challenged if, at the time of the act, the debtor was insolvent, and the creditor knew of this insolvency / knew of the insolvency or of the proposal for bankruptcy.
	Non-congruent settlement	A legal act that provides or allow security or satisfaction to a creditor that did not have the right to make a claim, or had no right to make a claim in that manner or at that time, may be contested: • if it was undertaken within the last month prior to the filing of the proposal to open bankruptcy proceedings or after the proposal had been filed, or ; • if it was undertaken within the third or second month prior to the filing of the proposal to open bankruptcy proceedings and the debtor was insolvent at the time, or; • if the act was undertaken within the third or second month prior to the filing of the proposal to open bankruptcy proceedings and the creditor knew at the time the act was undertaken that it would cause harm to the bankruptcy creditors.
	Legal actions by which creditors are directly damaged	A legal act of the debtor that directly results in harm to the creditors may be contested: • if it was undertaken within three months prior to the filing of the proposal to open bankruptcy proceedings, if the debtor was insolvent at the time of the act and if the other party knew of the insolvency, or;

		• if it was undertaken after the proposal to open bankruptcy proceedings had been filed and if the other person knew, or ought to have known, at the time of the legal act, of the insolvency or of the proposal to open bankruptcy proceedings.
	Intentional damage	A legal act undertaken by the debtor during the last ten years prior to the filing of the proposal to open bankruptcy proceedings, or thereafter, with the intention of causing harm to creditors, may be contested if the other party knew of the debtor's intent at the time of the act.
	Legal action free of charge or with an insignificant fee	A legal act of the debtor without compensation or with insignificant compensation may be contested unless it was undertaken four years prior to the filing of the proposal to open bankruptcy proceedings. In the case of an occasional gift of insignificant value, the act may not be contested.
	A loan which replaces capital	A legal act by which a member of the company makes a claim for repayment of loan used for substituting capital, or some similar claim is void: • if it provides security and if the act was undertaken within the last five years prior to the filing of the proposal to open bankruptcy proceedings or thereafter; • if it guarantees the settlement and if the act was undertaken in the last year prior to the filing of the proposal to open bankruptcy proceedings or thereafter.
	Secret company	The return of the stake of the silent partner in a company, in full or in part, or the waiving of their share of the incurred loss, in full or in part, may be subject to challenge, if the contract on which such an act is based was concluded during the last year prior to the filing of the proposal to open bankruptcy proceedings against the company or thereafter. The same applies if the silent partner is wound up in accordance with the contract.
Rules on directors' duties		The CBL rendered more stringent rules on directors' liability for insolvency related duties, *i.e.* for a timely filing of the petition to open bankruptcy proceedings. Directors are required to initiate bankruptcy proceedings within 21 days from the moment the bankruptcy reason occurred. In certain cases the liquidator, supervisory board members and each shareholder are also required, to file request for opening bankruptcy proceeding. Failure to initiate bankruptcy proceedings when required is considered a criminal offence under the Croatian law. Furthermore, failure to initiate bankruptcy proceedings within the set time frame by the responsible person means he/she shall be personally liable for damages caused to creditors for failure to fulfil his/her duty. There are no obligations to initiate pre-bankruptcy or extraordinary administration proceedings.
Insolvency Practitioners	**Trustee**	The trustee of the pre-bankruptcy proceeding is appointed by a decision of the court. The trustee has a number of duties, such as examining the business operations, the assets and liabilities of the debtor and the credibility of registered claims. Among others, he/she may contest claims, supervise the business operations of the debtor and file complaints to the court in cases of breaches of the CBL.
	Liquidator	The liquidator in bankruptcy proceedings is selected at random and appointed by the court in the decision on opening bankruptcy proceedings. The liquidator is vested with the rights and obligations of the corporate bodies of the debtor, unless otherwise specified in the CBL. S/he is obliged to put the accounting records in order, compile a preliminary cost estimate and send it to the committee

		of creditors for approval, ensure the realisation of the debtor's claims, to prepare distribution to creditors and execute distribution after approval, to deliver a final account to the committee of creditors, to make subsequent distributions to creditors etc.
Role of the courts	**Pre-bankruptcy settlement proceedings**	Bankruptcy proceedings and pre-bankruptcy proceeding are conducted before the Commercial courts. The court in the pre-bankruptcy settlement proceedings has the following competences (art. 22 of the Bankruptcy Law): • decides on the opening of pre-bankruptcy proceedings; • appoints and dismisses the trustee and supervises his work; • supervises the work of the Financial Agency; • decides on established and disputed claims; • decides on the suspension of the pre-bankruptcy proceedings; • decides on all other issues of pre-bankruptcy proceedings, unless the competence is of another body of the pre-bankruptcy procedure.
	Bankruptcy proceedings	The court in the bankruptcy proceedings has the following competences (art. 76 of the CBL): • decides on initiating a preliminary procedure for the purpose of determining the existence of a bankruptcy ground and conducts that proceeding; • decides on the opening of bankruptcy proceedings; • appoints and dismisses the bankruptcy commissioner, supervises his work and gives him mandatory instructions, in accordance with the Bankruptcy Law; • oversees the work of the creditors' committee; • determines the started business to be completed during the bankruptcy procedure, in accordance with the Bankruptcy Law; • determines the award to the bankruptcy commissioner; • approves the payment of the creditor; • makes decisions on concluding and suspending bankruptcy proceedings • decides on all other issues of bankruptcy proceedings, if under the Bankruptcy Law is not to be decided by another body of the bankruptcy procedure.
CYPRUS		
Insolvency		There are two types of insolvency proceedings: • Bankruptcy; • Winding-up (by the court, by creditors, under the court's supervision, receivership, arrangement or settlement or restructuring and examinership). • According to Cyprus Company Law (CCL), a company will be deemed to be insolvent if: • the company fails to pay for more than 3 weeks a debt of more than five thousand euros, or; • the company fails to execute in full a judgement/order/decree given by the court in favour of a creditor of the company, or; • the court is satisfied that the company is unable to pay its debts as they become due, taking into account the company's future or possible obligations, or; • the court is satisfied that the value of the company's assets is less than its debts, taking not account future or possible debts.

		For individuals, under the Cyprus Bankruptcy Law (CBL) and the Individuals Insolvency Act, a bankruptcy proceeding can be initiated if the debtor owes more than 15.000 EUR, the debts are unsecured and if they must be paid immediately or soon.
Pre-pack sales		Pre-packaged sales are not common in Cyprus though they may be implemented through receivership.
Creditors' committees	**General**	Creditors may appoint a '*supervisory committee'* if they wish to do so. There are certain actions for which the liquidator needs the permission from the court or from the supervisory committee, and there are some other actions that remain vested with the court (for instance the preparation of the contributors list, order a contributor to pay etc.). In addition, a board of creditors may vote upon the company's winding up during the voluntary winding-up by creditors procedure.
	Voting rights	Information not available.
Lodging claims	**Deadline national creditors**	When a bankruptcy order is made, each creditor must, within 35 days of the date of publication of the order, submit proof of debt to the official receiver or administrator in writing. The proof must give details of the debt, state the names of all guarantors and indicate whether the creditor has security. The official receiver or administrator must, within 10 days, admit or reject the proof, in writing, for purposes of the dividend. A creditor or guarantor who is unhappy with the decision of the official receiver or administrator may challenge it in court within 21 days. Winding up: When a winding-up order is made, each creditor must, within 35 days of the date of publication of the order, submit proof of debt to the official receiver or liquidator in writing. The same rules apply to voluntary winding up.
	Deadline foreign creditors	No special rules for foreign creditors. According to Art. 55 of Regulation 2015/848 - 35 days.
Existence of special rules for SMEs		There is no specific treatment of SMEs in insolvency regimes, except in the coordinated repayment plan, which is only available to company's employing less than 10 persons (this is the only requirement).
Classes of creditors & priority claims		In Cyprus, creditors are divided in: • secured creditors; • preferential creditors, and; • unsecured creditors. The order of distribution of assets in all forms of winding-up and in receivership is as follows: • the costs of the winding-up; • the preferential debts. Preferential claims are defined in section 300 of the Companies Law and comprise: ✓ all government and local taxes and duties due at the date of liquidation and having become due and payable within 12 months before that date and, in the case of assessed taxes, not exceeding one year's assessment; ✓ all sums due to employees, including wages, up to one year's accrued holiday pay, deductions from wages (such as provident fund contributions) and compensation for injury. ✓ Claims of employees who are shareholders or directors may not rank as preferential depending on the nature of the shareholding or directorship (*section 300(1), Companies Law, Cap. 113*). ✓ A person who has advanced funds to pay employees will have a subrogated preferential claim to the extent that the employees' direct preferential claims have been diminished because of the advances (*Sec 300(2), CCL*). • any amount secured by a floating charge;

<table>
<tr><td></td><td></td><td>the unsecured ordinary creditors;
any deferred debts such as sums due to members in respect of dividends declared but not paid;
any share capital of the company. Where there are different classes of share capital, such as preference shares, their respective rankings will be determined by the terms on which they were issued.</td></tr>
<tr><td colspan="2">Transaction avoidance</td><td>There are a number of provisions that may invalidate a charge granted by a company or any other disposition it has made, for example:
A charge that has not been properly registered is void against the liquidator and any creditor of the company (Sec 90(1), CCL) ;
Any act relating to property made or done by or against a company within six months before the commencement of its winding up may be deemed a fraudulent preference if any such charge or delivery or conveyance or assignment or otherwise is a fraudulent preference of one of its creditors and such act will be invalid (Sec 301, CCL);
Any gift, sale, pledge, mortgage or other transfer or disposal of any movable or immovable property made by any person with the intent to hinder or delay his/her creditors from recovering from him/her. Under these circumstances, the debts will be deemed to be fraudulent, and will be invalid and the property purported to be transferred or otherwise dealt with may be seized and sold in satisfaction of any judgment debt due (Fraudulent Transfers Avoidance Law, Cap 62);
Where any part of the property of a company which is being wound up consists of immovable property burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the company to the performance of any onerous act or to the payment of any sum of money, the liquidator may disclaim the property (Sec 304, CCL).</td></tr>
<tr><td colspan="2">Rules on directors' duties</td><td>If, during liquidation, a director is proved to be involved in fraudulent trading under Section 311 of the CCL or some other offence (such as misappropriation of assets under section 312 of the CCL), the court may make an order for him/her to be personally liable for the company's debts or to pay compensation. However, in the absence of severe misconduct such as this, there are no provisions for lifting the corporate veil.</td></tr>
<tr><td rowspan="3">Insolvency Practitioners</td><td>Compulsory winding-up by the court cases</td><td>If the court considers it appropriate, it can appoint a temporary liquidator, for the period after the submission of the petition before it and before it delivers the order of the compulsory winding-up, to protect the company's assets. The powers and responsibilities of a temporary liquidator are those that the court will give him at his appointment. The liquidator (not a temporary one) in this procedure has to ensure that the company's assets are gathered, realized, and distributed to the company's creditors, and if there is a remainder to the people entitled to it. For this reason, he has the power to proceed with almost any actions necessary to do this. There are certain actions for which the liquidator needs the permission of the court or of the supervisory committee, and there are some other actions that remain vested to the court (for instance the preparation of the contributors list, order a contributor to pay etc). The powers of the liquidator in compulsory winding-up are subject to the supervision and control of the court.</td></tr>
<tr><td>Voluntary winding-up</td><td>The liquidator in a voluntary winding-up has all the powers and responsibilities that the liquidator has in compulsory winding-up. In addition, he can proceed with certain actions relating to liquidation without the court's or the supervisory committee's permission, for which a liquidator in compulsory winding-up would need such permission. Moreover, he can perform some actions that in a compulsory winding-up would be vested to the court. However, there remain some actions for which the liquidator still needs the approval of the court or the supervisory committee.</td></tr>
<tr><td>Winding-up under the court's supervision</td><td>The liquidator's powers and responsibilities remain the same as in a voluntary winding-up, unless the court imposes restrictions.</td></tr>
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	Receivership	The powers and responsibilities of the receiver depend on and are contained in the agreement that had been previously made by the debtor and the secured creditor.
	Examinership	The Examiner has all the powers that are afforded to auditors. Moreover, s/he has the right to call for meetings and participate in them and to take measures to stop, prevent or rectify an action/omission/decision made by the company, or its creditors, or its members or its stakeholders, or by any other person, that is harmful to the company as a going concern. With the court's approval he can verify claims against the company and reach agreements for their settlement. His most important task is to prepare proposals for a scheme of arrangement or settlement or restructuring, so that insolvency can be prevented and the viability of the company as a going concern secured.
Role of the courts		The insolvency procedures are subject to the oversight of the court. Besides, the court has a number of other prerogatives, such as the power to extend certain deadlines (ex: the time for registration or to register a charge out of time – Sec 96 CCL), the power to appoint IPs, etc.
CZECH REPUBLIC		
Insolvency		The individual types of insolvency proceedings (bankruptcy, reorganisation, debt relief) differ from each other in terms of the entities they are intended for. Insolvency proceedings are judicial proceedings that address a debtor's insolvency or impending insolvency and how to deal with it. The basic premise is therefore the existence of a state of insolvency or impending insolvency. A debtor is insolvent if *(these are cumulative conditions)*: • the debtor has multiple creditors; • the debtor has pecuniary liabilities that are more than 30 days overdue; • is not able to perform those commitments.
Pre-pack sales		The option of pre-packed insolvency ('*pre-pack*') is perceived as a fast and effective way of reorganisation in the Czech Republic. Reorganisations, in general, are subject to the size and other constraints set out in Section 316 Article 4 of the Czech Republic Insolvency Law (CRIL). The pre-pack is the only case in which these criteria do not have to be met, which means that the reorganisation procedure is also open to SMEs when their creditors agree with the rehabilitation procedure and a suggested reorganisation plan. The pre-pack prepares the ground for further derogations in distressed companies' behaviour and has the advantage that the creditors already agree with the suggested reorganisation plan before the insolvency proposal. This avoids the negotiation processes during the insolvency proceedings and can potentially shorten the insolvency proceedings and achieve other positive effects.
Creditors' committees	**General**	Creditor bodies are: • the creditors' meeting; • the creditors' committee (or the creditors' representative).
	Creditors' meeting	The creditors' meeting is responsible for electing and removing members and alternate members of the creditors' committee (or a creditors' representative). The creditors' meeting may reserve for its competence anything falling within the remit of creditor bodies.

		If no creditors' committee or creditors' representative is appointed, the creditors' meeting acts in that capacity instead, unless otherwise provided by law. If more than 50 creditors are registered, the creditors' meeting must set up a creditors' committee. If it is not obliged to do this, a creditors' representative may take the place of the committee.
	Creditors' committee	The creditors' committee exercises the powers of creditor bodies, except in matters that are within the remit of the creditors' meeting or have been reserved by the creditors' meeting for its own competence. In particular, the creditors' committee supervises the insolvency practitioner's activities and is entitled to submit proposals to the insolvency court regarding the insolvency proceedings. The creditors' committee protects the common interest of creditors and, in cooperation with the insolvency practitioner, helps to achieve the purpose of the insolvency proceedings. The provisions on creditors' committees apply *mutatis mutandis* to creditors' representatives.
	Voting rights	Information not available.
Lodging claims	**Deadline national creditors**	Creditors lodge their claims with the insolvency court using a prescribed form, and may do so from the opening of insolvency proceedings until expiry of the time limit set in the insolvency decision, which is identical for all types of proceedings. Claims lodged after the deadline are disregarded by the insolvency court, and not settled in insolvency proceedings.
	Deadline foreign creditors	Foreign creditors from EU member states may register their claims later, usually within one to two months from the delivery of an invitation on a special form by the court or by the trustee.
Existence of special rules for SMEs		There are no special treatments for SMEs.
Classes of creditors & priority claims		There are three categories of creditors: • secured creditors; • preferential creditors; e.g. insolvency administrator, state authorities, employees, suppliers delivering their supply after decision on insolvency; • unsecured creditors. After the decision approving the final report becomes final, the insolvency practitioner submits a draft order on the distribution of the estate to the insolvency court, stating how much should be paid for each claim in the revised list of registered claims. On that basis, the insolvency court issues an order on the distribution of the estate, in which it determines the amounts to be paid to creditors. All creditors included in the distribution schedule are satisfied in proportion to the ascertained amount of their claim. Before the distribution, as yet unpaid claims which may be met at any time during the bankruptcy proceedings are met, specifically: • claims against the estate – the cash expenses and fee of the insolvency practitioner, costs associated with the maintenance and administration of the debtor's estate, taxes, charges, social security contributions, the state employment policy contribution, public health insurance contributions, etc.; • equivalent claims – the labour-law claims of the debtor's employees, creditors' claims to compensation for damage to health, government claims, etc.; • secured claims.

Transaction avoidance		Legal acts by the debtor to reduce the chances that creditors will be satisfied or to favour certain creditors over others are unenforceable. Any omission by the debtor in this respect is also treated as a legal act. There are three categories of such unenforceable acts: • legal acts without adequate consideration; • preferential legal acts resulting in a situation where one creditor, to the detriment of other creditors, receives greater satisfaction than they would otherwise have obtained in the bankruptcy proceedings; • legal acts where the debtor intentionally curtails the satisfaction of a creditor, if this intention was known to the counterparty or, in view of all of the circumstances, must have been known to it. The unenforceability of the debtor's legal acts is established by an insolvency court ruling on an action brought by the insolvency practitioner protesting the debtor's legal acts (an action to set a transaction aside). The insolvency practitioner may bring an action to set a transaction aside within one year from the date on which the insolvency decision takes effect. If an action is not brought within that time limit, the title to have a transaction set aside lapses. The debtor's consideration from unenforceable legal acts forms part of the estate once the ruling upholding the action to set a transaction aside becomes final.
Rules on directors' duties		The management of the debtor is under a duty to file an insolvency petition on behalf of the debtor without undue delay after it learns or with due diligence ought to have learnt about the debtor's insolvency. The management (the executives and directors) is personally liable for a failure to file the insolvency petition on time. The law gives a presumption that the damage that a creditor is entitled to recover corresponds to the entire unsatisfied portion of the creditors' claims. The liability is strict, and mitigation is possible only if the defendant proves that the delay had no adverse effect on the extent of the creditor's satisfaction or if the petition was not filed due to circumstances beyond the defendant's control.
Insolvency Practitioners	**General Insolvency administrator**	General Insolvency administrator's powers: • Review of the registered receivables; • Drafting the list of insolvency estate (assets); • Right to challenge insolvency debtor's legal actions and payments in the period up to 5 years before commencement of the insolvency proceedings; • Notification of foreign EU creditors (in cooperation with insolvency court); • Cooperation with the creditors' committee; • Informing creditors of the economic situation of the insolvency debtor; • Fulfilment of other duties imposed by the court in preliminary injunction;
	Insolvency administrator powers in bankruptcy	• In general – all powers of the insolvency debtor's management; • Administration of the assets; • Enforcement of the debtor's receivables; • Sale of the assets; • Payments to the creditors; • Right to terminate the contracts; • Administration of accounting;

	Insolvency administrator powers in reorganisation	• Supervision of the management of the company; • Supervision of fulfilment of the reorganisation plan.
Role of the courts		The insolvency court issues decisions in insolvency proceedings that are expressly provided for by the Insolvency Act (such as the declaration of insolvency, decision on the insolvency resolution method, approval of reorganisation plan, etc). The court also continuously supervises the process and activities of the trustee and other stakeholders in the process and decides on related matters. The same judge usually hears most of the disputes precipitated by the insolvency, such as disputes as to the validity of registered claims, as to the debtor's title to assets and claw-back actions.
DENMARK		
Insolvency		Bankruptcies and restructurings (reorganisations) are governed by the Danish Bankruptcy Act (DBA), which provides for the following regimes: • Restructuring; • Bankruptcy; • Rescheduling of debt. The restructuring and bankruptcy regime is available to insolvent individuals as well as legal entities (companies), whereas the rescheduling of debt regime is only available to individuals. Pursuant to the DBA, a debtor is insolvent when it is unable to meet its liabilities as and when they fall due, unless such inability must be deemed to be only temporary. The final decision is based on an assessment of the debtor's liquidity (a cash flow test). The fact that the debtor's liabilities exceed its assets is not generally of importance.
Pre-pack sales		Pre-packed sales are allowed, but the trustee must ensure that the sale is made on arm's-length terms.
Creditors' committees	**General**	In bankruptcy proceedings, a qualified minority of creditors may require the formation of a creditors' committee, consisting of up to three members. The insolvency court decides how the members of such a committee are to be elected, in order to ensure a diverse representation of the general body of creditors. The trustee must inform the creditors' committee of any significant actions taken and of any particularly significant actions that are planned to be taken, unless doing so would be detrimental for the estate. The creditors' committee is strictly of an advisory nature to the trustee and the insolvency court, and has no special powers. In addition, where a consensual restructuring is feasible, major creditors can form an ad hoc 'steering committee', as the success of the restructuring is dependent upon all creditors acceding to the restructuring plan.
	Voting rights	Information not available.

<table>
<tr><td rowspan="2">Lodging claims</td><td>Deadline national creditors</td><td>The creditors file their documented claim with the estate within four weeks following issuance of the bankruptcy order. However, it is possible for a creditor to file a claim against the estate after expiry of the four-week period. When filing the claim, the creditor must provide documentation substantiating the claim and a legal advisor's assistance may be needed.</td></tr>
<tr><td>Deadline foreign creditors</td><td>There are no special procedures or impediments that apply to foreign secured creditors.</td></tr>
<tr><td colspan="2">Existence of special rules for SMEs</td><td>Not existent.</td></tr>
<tr><td colspan="2">Classes of creditors & priority claims</td><td>Danish insolvency law does not divide creditors into classes, apart from (fully) secured and unsecured creditors. Creditors with valid and enforceable security do not form part of the ranking. However, if the security does not fully cover a creditor’s claim, they are viewed as an unsecured creditor in relation to the unsecured part of their claim.

The order of priority of the creditors is governed by the DBA. The order is the following:
• Costs and fees related to the administration of the estate;
• Costs related to a vain restructuring attempt or vain attempts at an overall arrangement with the debtor’s creditors prior to the bankruptcy;
• Employees’ claims;
• Duties on goods that are subject to duty, e.g. alcoholic and tobacco goods;
• Unsecured creditors, e.g. an ordinary receivable based on an invoice, tax and VAT claims etc.;
• Claims for interest after the issue of the bankruptcy order, gifts and fines.</td></tr>
<tr><td colspan="2">Transaction avoidance</td><td>On certain conditions, the debtor’s pre-insolvency transactions may be avoided by the insolvent estate. Avoidance means that an otherwise valid transaction made by the debtor is reversed if the transaction in question has defeated the assets of the estate or increased the debtor’s debt.

If the trustee believes that that debtor’s actions are contrary to the avoidance rules of the DBA, the estate in bankruptcy must no later than 12 months from the issue of the bankruptcy order institute legal proceedings against the third party or creditor that was given preference by the debtor’s voidable transaction.

The debtor’s voidable transactions under the DBA include:
• gifts from the debtor;
• payment of debt;
• transactions giving preference to a creditor over the other creditors;
• transactions that mean that the debtor’s assets avoid being included in the assets of the estate in bankruptcy;
• transactions that mean that the debtor’s debt increases.

If the trustee is successful in the claim for avoidance against a third party, the third party must give up and return the preference to the estate in bankruptcy that s/he has obtained through the debtor’s voidable transaction, but not more than the loss of the estate.</td></tr>
<tr><td colspan="2">Rules on directors’ duties</td><td>Once a company reaches the point-of-no-return, its management has an obligation to cease the operations of the company, ensure the equal treatment of creditors and initiate the necessary insolvency proceedings.</td></tr>
</table>

		If it is considered gross negligence on the part of management to allow a company to continue trading beyond the point-of-no-return, then management can be held liable for any losses suffered by creditors as a result thereof. Such a claim against management can be brought by either the trustee or an affected creditor. Also, if management is deemed to have grossly mismanaged its duties, it risks being put into bankruptcy quarantine – *i.e.*, prohibited from participating in the management of any limited liability company for a given timeframe (usually three years).
Insolvency Practitioners		The trustee has to sell the assets of the bankrupt and investigate the dispositions made in the company and thereby recover as much money as possible. The trustee is first to cover his outstanding salary for his work and then the creditors will divide the rest according to the rules in the DBA. The trustee must manage the interests of the estate to the widest extent possible, in order to ensure that the outcome of bankruptcy is as favourable as possible.
Role of the courts		The Danish bankruptcy court carries out estate administration, including especially the administration of estates of deceased persons and insolvent estates etc., according to Section 14 and part 58 of the DBA. Bankruptcy courts are found in the district courts and the Maritime and Commercial Court, which only deals with insolvent estates etc., according to Section 9(3), of the Administration of Justice Act.
ESTONIA		
Insolvency		Estonian legislation prescribes three different insolvency proceedings: bankruptcy proceedings, reorganisation proceedings and debt restructuring proceedings. Bankruptcy proceedings are governed by the Bankruptcy Act (BA), the rules covering reorganisation are set out in the Reorganisation Act (RA) and the debt restructuring rules are set out in the Debt Restructuring and Debt Protection Act (DPA). The first main precondition for the opening of bankruptcy proceedings is the fact that the debtor is insolvent. A debtor is insolvent if the debtor is unable to satisfy the creditors' claims and, due to the debtor's financial situation, that inability is not temporary. The second main precondition for the opening of bankruptcy proceedings is the filing of a bankruptcy petition, which may be filed by the debtor or a creditor. The aim of reorganisation proceedings is to take account of the interests and protect the rights of undertakings, creditors and third parties in the course of the reorganisation of an enterprise. The conditions to open reorganisation proceedings according to RA are: • the debtor is likely to become insolvent in the future; • the enterprise requires reorganisation; • sustainable management of the enterprise is likely after the reorganisation.
Pre-pack sales		No information.
Creditors' committees	**General**	Not *per se*. There is a general meeting of creditors, who participates in the conduct of bankruptcy proceedings The general meeting of creditors can decide to elect a '*bankruptcy committee'*. In accordance with BA, the bankruptcy committee shall protect the interests of all the creditors, monitor the activities of the trustee and perform other duties provided by law in bankruptcy proceedings.

<table>
<tr><td></td><td>Voting rights</td><td>Information not available.</td></tr>
<tr><td rowspan="2">Lodging claims</td><td>Deadline national creditors</td><td>Creditors are required to notify the trustee of all their claims against the debtor that had arisen before bankruptcy was declared, regardless of the grounds or due dates for fulfilling the claims, no later than within two months of the date of publication of the bankruptcy notice in the Official Gazette.</td></tr>
<tr><td>Deadline foreign creditors</td><td>No special rules for foreign creditors. According to Art. 55 of Regulation 2015/848 – 2 months.</td></tr>
<tr><td colspan="2">Existence of special rules for SMEs</td><td>No special rules for SMEs.</td></tr>
<tr><td colspan="2">Classes of creditors & priority claims</td><td>The creditors are divided into:
• secured creditors;
• unsecured creditors.
Before money is paid on the basis of distribution ratios, payments relating to bankruptcy proceedings are made out of the bankruptcy estate in the following order:
• claims arising from the consequences of exclusion or recovery of assets;
• maintenance support payable to the debtor and their dependants;
• consolidated obligations;
• costs and expenses incurred in the bankruptcy proceedings.
After these payments have been made, the creditors’ claims are satisfied in the following order:
• admitted claims secured by a pledge;
• other admitted claims that were lodged within the term set;
• other claims that were not lodged within the term set, but that were admitted.</td></tr>
<tr><td colspan="2">Transaction avoidance</td><td>After bankruptcy is declared, any dispositions by the debtor with regard to objects forming part of the bankruptcy estate are null and void. A debtor who is a natural person may dispose of the bankruptcy estate with the trustee’s consent. Any dispositions without the trustee’s consent are null and void.
The court will revoke, by way of recovery procedure, any transaction or other act by the debtor that was concluded or performed before bankruptcy was declared and that damages the creditors’ interests. If a transaction subject to recovery has been concluded or any other act subject to recovery has been performed during the period from the appointment of an interim trustee to the declaration of bankruptcy, the transaction or act is deemed to have damaged the creditors’ interests.</td></tr>
<tr><td colspan="2">Rules on directors’ duties</td><td>Members of the management board or of a body substituting for the management board are liable for the failure to submit a bankruptcy petition.</td></tr>
<tr><td colspan="2">Insolvency Practitioners</td><td>A trustee in bankruptcy enters into transactions relating to the bankruptcy estate and performs other acts. The rights and obligations arising as a result of the trustee’s actions belong to the debtor. A trustee, in accordance with their duties, participates in court as a party to disputes relating to the bankruptcy estate in lieu of the debtor.</td></tr>
</table>

	The trustee has the following prerogatives: • determines the creditors' claims, administers the bankruptcy estate, organises its formation and sale and satisfaction of the creditors' claims out of the bankruptcy estate; • ascertains the causes of the debtor's insolvency and the time when the insolvency arose; arranges for the debtor's business activities to continue, where necessary; • conducts the liquidation of the debtor who is a legal person, where necessary; • provides information to the creditors and the debtor in the cases prescribed by law; • reports on their activities and provides information concerning the bankruptcy proceedings to the court, the supervisory official and the bankruptcy committee; • performs other obligations provided for by law. If the debtor's insolvency was caused by a grave error in management, the trustee is required to lodge a claim for damages against the person liable for the error immediately after sufficient grounds for lodging a claim become evident. In addition to the trustee's rights provided for by law, a trustee also has the rights of an interim trustee. The trustee must perform their obligations with the care expected of a diligent and honest trustee and take into account the interests of all the creditors and the debtor.
Role of the courts	Courts shall exercise supervision over the lawfulness of bankruptcy proceedings and perform other duties provided by the law. They shall supervise the activities of trustees in bankruptcy. A court may require a trustee to submit information concerning the course of the bankruptcy proceedings and the activities of the trustee at any time.
FINLAND	
Insolvency	In Finland, insolvency laws regulate: • corporate restructuring; • bankruptcy; • distraint; and • restructuring of private debts. For companies, Finnish law recognises two statutory forms of insolvency proceedings, corporate restructuring (*i.e.* company administration) and bankruptcy (*i.e.* compulsory winding-up). Restructuring proceedings may be initiated by the court if: • at least two creditors whose total claims represent at least one fifth of the debtor company's known debts and who are not related to the debtor company file a joint application with the debtor company or declare that they support the debtor company's application; • the debtor company faces threat of insolvency; or • the debtor company is already insolvent but can be rehabilitated
Pre-pack sales	Not existent. Distressed debtors and their creditors may enter into voluntary contractual agreements out of the court proceedings. However, the contract must focus on debt restructuring (ex: extending the repayment period or cutting the outstanding amount).

Creditors' committees	**General**	The most important decision-making body is the creditors' meeting, but other decision-making procedures may also be applied. The court may appoint a committee of creditors to represent the creditors and to act as an advisory body to assist the insolvency practitioner in the performance of their duties. The committee represents all groups of creditors, and its duties are to assist the insolvency practitioner in the performance of their duties and to monitor the activities of the insolvency practitioner on behalf of the creditors. The committee makes its decisions by simple majority.
	Voting rights	Under Sec 52 of the Restructuring Act (RA), the restructuring programme is confirmed by a majority vote in each class of creditors. The programme may be confirmed even if minority creditors vote against it. Generally, a class of creditors is deemed to have approved the restructuring programme, if the programme is supported by: • more than 50% of the creditors that took part in the vote in a class of creditors; and • creditors representing more than 50% of the total monetary value of the claims represented in the vote for that class of creditors.
Lodging claims	**Deadline national creditors**	The court sets a deadline for creditors to confirm their claims to the extent not already included in the information provided by the debtor. The purpose of this measure is to discover the relevant claims in order to properly draw up a restructuring programme allowing the debt arrangement to be allocated to the creditors' claims equally in proportion to the amount of their claims. If a creditor does not notify its claim within the deadline set by the court and the claim is not known to the administrator, the creditor may lose its right to payment.
	Deadline foreign creditors	Finnish insolvency proceedings treat foreign and domestic creditors equally. Notices to foreign creditors and public summons abroad must be made in accordance with the procedures set out in the EU Insolvency Regulation or other applicable international treaty. In conclusion, deadline for foreign creditors will be set up by the court, but cannot be less than 30 days in accordance with the EU Insolvency Regulation.
Existence of special rules for SMEs		There are no provisions on specific treatment of small and medium-sized enterprises (SMEs) within the Finnish insolvency regimes and the provisions on restructuring and bankruptcy proceedings are applicable to all Finnish entities regardless of their size.
Classes of creditors & priority claims		The three typical creditor classes are secured creditors, unsecured creditors and floating charge holders. According to Ranking Act, the priority order of creditors is, as follows: • Secured creditors to the extent of the value of the secured asset; • Preferential claims: court fees, the bankruptcy trustee's fees, debt incurred during the proceedings, i.e. after the court's decision; • Priority claims: creditors holding a business mortgage; • The claims that are satisfied last according to the Act on the Ranking of Claims are: • interest and penalty for late payment for the period after the commencement of the bankruptcy; • certain public penalties imposed on the debtor as a result of a criminal offense or illegal proceedings; • a claim based on a bond issued by the debtor company if the terms of the loan provide a lower priority than the other obligations of the issuer;

	• a claim based on a loan that may be paid with its interest in the event of bankruptcy only with a lower priority to all other creditors; and • a claim based on the Gift Promises Act (625/1947, as amended).
Transaction avoidance	The RA sets out the general grounds for revocation of inappropriate and preferential transactions, as well as specific grounds for revocation of certain types of transactions. The RA applies in all insolvency proceedings under Finnish law, as well as in foreclosure proceedings. A transaction or any other action can be revoked where it was made during the applicable suspect period before the filing of the relevant proceedings. Under the general grounds for revocation set in Section 5 of the Recovery Act, any action made within a five-year suspect period can be revoked if: • The action favours a creditor to the detriment of the other creditors, removes assets from the reach of the other creditors, or increases debt to the detriment of the other creditors; • The debtor company was insolvent when undertaking the action or became insolvent as a result of it; • The action was improper or inappropriate, in particular from the point of view of the other creditors of the transacting party, and the counterparty of the transacting party knew, or should have known, of the insolvency and the improper nature of the arrangement. Transactions that did not take place during the suspect period can only be revoked if they were made with related parties. Under the RA, a related party means a party closely related to the debtor company, including immediate family members, entities that have common (financial) interests (for example, due to shareholding or partnership), or persons that have a significant influence over the debtor due to a management or a supervisory status (RA, Section 3). For related parties, the above time limit is extended to two years.
Rules on directors' duties	The general duties of the board of directors and the managing director of the company (together the 'Management') are set out in the Companies Act (CA). According to the CA, the board of directors of a debtor company has a general duty of care towards the company's stakeholders (CA, Chapter 1, Section 8). In addition, the board of directors is responsible, together with the managing director, for ensuring that the company's accounting and financial affairs of the company have been arranged in accordance with the law and in a reliable manner (CA, Chapter 6, Sections 2 and 17). The managing director must provide information on the company's financial standing to the board of directors, which, in accordance with the general duty of care, shall assess the need to file for insolvency proceedings in the event of the company being in financial distress. Trading should be discontinued where continuing is likely to worsen the company's financial distress or cause insolvency. In addition, the board of directors has an obligation to act in case the shareholders' equity is adversely impacted (CA, Chapter 6, Section 2). When considering the interests of the company and its stakeholders, the company's management should also take into account the interests of the company's creditors to a certain extent. According to the CA (CA, Chapter 22, Section 1), members of the board of directors and the managing director may become personally liable for the loss or damage caused to the stakeholders by a delay or failure to file for insolvency. A member of the board of directors may be held personally liable for a wilful or negligent breach of the general duty of care or the company's articles of association. In a distressed situation, actions by the board of directors that diminish the assets or increase the liabilities of the company without a business rationale, are particularly susceptible to trigger liability.

		The liability may be civil liability for the loss or damage caused, or in certain cases, criminal liability.
Insolvency Practitioners	**Trustee in bankruptcy**	The trustee has a central role in the administration of an estate in bankruptcy. The duties of the estate administrator include representing the insolvency estate, seeing to the current management of the estate, drawing up the estate inventory and the debtor description, receiving the lodgement of claims, and drawing up the draft disbursement list and the final disbursement list. The trustee also sees to the management and sale of assets belonging to the estate and disbursement of the funds. When bankruptcy starts, the debtor loses their authority over the assets of the insolvency estate.
	Insolvency practitioner	The insolvency practitioner is responsible for realising the purpose of the restructuring proceedings and for protecting the interests of the creditors. The insolvency practitioner draws up a report of the debtors' assets and liabilities and a proposal for a restructuring programme (some other parties, such as the debtor, are also entitled to draw up their own proposal for a restructuring programme). The insolvency practitioner also supervises the debtor's activities.
Role of the courts		Courts have an overseeing role in the proceedings. Courts initiate the insolvency proceedings and affirm the restructuring plan once approved by the creditors. The bankruptcy process is managed by a court-appointed trustee of the bankruptcy estate. Courts are also involved in ending the bankruptcy proceedings and approving the distribution list, as well as resolving various disputes, such as the existence of a creditor's debt or the enforceability of a security given to a creditor. Courts also rule on objections made to individual creditor's debts.
FRANCE		
Insolvency		Any person exercising a commercial or craft activity, any farmer, any other natural person exercising a self-employed activity, including a liberal profession, and any private law entity may be the subject of safeguard, judicial reorganisation or judicial liquidation proceedings. Safeguard proceedings are opened if the debtor is experiencing insurmountable difficulties but has not yet reached the stage of cessation of payments. Judicial reorganisation proceedings are opened if the debtor is unable to meet his current liabilities with his available funds and has reached the stage of cessation of payments. Judicial liquidation proceedings are opened when the business has reached the stage of cessation of payments and when judicial reorganisation is clearly impossible.
Pre-pack sales		The law of 22 October 2010 on banking and financial regulations, effective as of 1 March 2011, and its implementing decree of 3 March 2011, created a type of accelerated safeguard inspired by the US Chapter 11 pre-pack. The purpose of this expedited financial safeguard process (*sauvegarde financière accélérée*) is to restructure financial debt in a very short time frame, assuming the consent of at least two-thirds of financial creditors and of bondholders.
Creditors' committees	**General**	Where the debtor has a workforce of more than 150 employees and turnover exceeding EUR 20 million, a creditors' committee is set up which will give its opinion on the draft plans to clear the liabilities. The court may also decide to apply these provisions below those thresholds. The creditors' committees convene different categories of creditors at separate meetings in order to submit to them proposals which they will be able to discuss and on which they will decide collectively, *i.e.* minority creditors will have to abide by the decision of majority creditors.

		There is a credit institutions committee composed of finance companies and credit or similar institutions, and a committee composed of the principal suppliers of goods or services. Where there are bondholders, a general meeting of all creditors holding bonds issued in France or abroad is convened in order to discuss the draft plan adopted by the creditors' committees. Creditors' committees must be consulted by the court-appointed administrator on the draft plan and vote in favour of a plan before the court can take its decision. Where creditors' committees exist, any creditor who is a member of a committee can propose alternatives to the draft plan presented by the debtor.
	Voting rights	Information not available.
Lodging claims	**Deadline national creditors**	All creditors whose claim arises prior to the judgment opening the proceedings are required to declare their claims to the court-appointed receiver in the case of safeguard or judicial reorganisation proceedings or the liquidator in the case of liquidation. The time limit for declaration is two months from the legal publication of the judgment opening the proceedings. The debtor may also himself declare the claim of one of his creditors under the same conditions.
	Deadline foreign creditors	The deadline for submitting proof of claims is of four months in the case of foreign creditors.
Existence of special rules for SMEs		No information regarding a special insolvency procedure for SMEs. There is a simplified form of liquidation proceedings available for SMEs, which last for a maximum of 6 or 12 months, depending on the size.
Classes of creditors & priority claims		The creditors are divided into: • preferential creditors (both secured and preferential rights), or; • unsecured creditors. A creditor may thus have preferential status: • because he is in possession of a guarantee granted by his debtor or obtained from a court decision, or • because a preferential right is conferred on him by law due to his status. Preferential creditors are not all equal. Where several preferential creditors compete, they are paid in an order fixed by law, but still before the unsecured creditors. The unsecured creditors are paid from the debtor's remaining assets, after payment of the preferential creditors. The distribution is carried out on a pro rata basis. The following ranking is applicable: • 'Super preference' of wage claims: payment of remuneration for the last 60 days of work prior to the judgment opening the proceedings; • Court costs duly arising after the judgment opening the proceedings to meet the requirements of conducting the proceedings: costs relating to preservation, realisation of assets and distribution of proceeds among the creditors (inventory and advertising costs, remuneration of court-appointed representatives, etc.); • Claims guaranteed by the conciliation preference: benefits creditors who provide a fresh injection of cash or supply new goods or services with a view to ensuring the continuation and survival of the business;

	• Preference of claims arising after the judgment opening the proceedings: claims arising to meet the requirements of conducting the proceedings or of provisional maintenance of the business, or claims arising in exchange for goods or services supplied to the debtor during the maintenance of the business or to perform a current contract maintained by the liquidator, or claims arising for the everyday needs of the debtor who is a natural person; • Claims guaranteed by the general preference of employees: payment of the remuneration for six months of work prior to the judgment opening the proceedings; • Claims guaranteed by a special preference or by a mortgage; • Unsecured claims.
Transaction avoidance	In reorganisation or liquidation, any transaction entered into during the suspect period (*période suspecte*) can be subject to clawback provisions. The suspect period runs from the date when the company is deemed insolvent, and can be backdated by the court by up to 18 months before the insolvency judgment. The act is void in relation to all and cancelled retroactively. There are twelve cases of compulsory nullity concerning irregular acts: • all acts transferring ownership of movable property or real estate free of charge; • any commutative contract in which the debtor's obligations far exceed those of the other party; • any payment, by whatever method, for debts which are not due on the date of payment; • any payment of debts due, other than in cash, bills of exchange, bank transfers, transfer deeds or any other form of payment commonly accepted in business dealings; • any deposit or any consignment of sums made following the pledge of property, in the absence of a final court judgment; • any contractual mortgage, any legal mortgage, as well as a legal mortgage of spouses, and any right of lien or pledge created on the debtor's assets for debts previously contracted; • any preservation measure, unless the registration or writ of attachment predates the cessation of payment; • any authorisation and exercising of options by the employees of the business; • any transfer of goods or rights to a fiduciary estate, unless this transfer occurred as a guarantee for a debt contracted simultaneously; • any amendment to a trust agreement affecting rights or assets already transferred to a fiduciary estate to guarantee debts contracted prior to this amendment; • where the debtor is an individual entrepreneur with limited liability, any assignment or change to the assignment of an asset, subject to the payment of income not assigned to the business activity, resulting in depletion of the assets covered by the proceedings in favour of another asset of this entrepreneur; • the notarial declaration of exemption from attachment made by the debtor. Any payment made, or any transaction entered into during the suspect period is also subject to optional voidance, if proper evidence is brought before the court that, at the time of the payment or transaction, the contracting party knew the company's insolvency. When dealing with intra-group transactions, this knowledge is presumed for companies belonging to the same corporate group.
Rules on directors' duties	Liability can arise where, as a result of management errors, a company's assets do not cover its debts. An action for mismanagement (other than mere negligence), which only applies in liquidation proceedings, can lead to an insolvent company's management being liable for all or part of its debts. This liability can extend to formally appointed directors or managers with representation powers, and

		to any individual or entity that is not officially a director or manager but, that repeatedly influenced the company's management or strategic decisions (that is, shadow (*de facto*) directors/managers). In addition, directors (or *de facto* directors/managers) found liable for certain specific breaches can be (independent of any liability action or criminal prosecution based on the same facts): • Forced to assign their equity interest in the company. • Prohibited from managing any business for up to 15 years and holding any public office for up to five years. Breaches include: • Using the company's assets or credit for their own benefit, or the benefit of another corporate entity in which they have a direct or indirect interest; • Using the company to conduct and conceal business transactions for their own benefit; • Carrying out business activities at a loss to further their own interests, knowing that this would lead to the company's insolvency; • Fraudulently embezzling or concealing all or part of the company's assets; • Fraudulently increasing the company's debts.
Insolvency Practitioners	**Judicial reorganisation**	Where safeguard or judicial reorganisation proceedings are opened, the debtor is not disinvested and continues to manage his business. Under safeguard proceedings, the court may appoint an administrator to supervise or assist the debtor in his business management, according to the mandate defined by the court in the judgment. In certain cases (businesses with at least 20 employees and turnover excluding taxes of at least EUR 3 million) that appointment is compulsory. Under judicial reorganisation proceedings, the court may also appoint an administrator (*administrateur judiciaire*) who will assist the debtor in his management or manage the business himself, in whole or in part, in place of the debtor. That appointment is compulsory in the same cases as in safeguard proceedings.
	Judicial liquidation	In the case of judicial liquidation proceedings, the debtor is divested of the administration and disposal of his assets. The liquidator (*liquidateur*) exercises his rights and performs actions in relation to his business assets. The liquidator therefore undertakes the administration of his assets.
	General conditions	Insolvency practitioners are court-appointed representatives placed under the supervision of the public prosecutor's office and are members of regulated professions. These specialised professionals must be entered on national lists and meet strict conditions as to suitability and good character. Persons not entered on these lists, but with particular experience or qualifications in the light of the case, may also be designated. Insolvency practitioners are appointed by the court when proceedings are opened. Insolvency practitioners could incur civil and criminal liability under ordinary law. The practitioners' fees are determined by scales fixed by decree; their remuneration under these scales is charged by the court to the debtor.
	Court-appointed administrator	In principle, the court opening safeguard or judicial reorganisation proceedings appoints an administrator, who may be proposed by the debtor under the safeguard proceedings or by the public prosecutor's office.

		It is not compulsory to appoint an administrator if the debtor has a workforce of fewer than 20 employees and if his turnover excluding taxes is less than EUR 3 million. In the case of accelerated safeguard and accelerated financial safeguard proceedings, the appointment of an administrator is always compulsory. Under safeguard proceedings, the debtor is not disinvested and continues to dispose of and manage his assets, unless the court decides otherwise. The court-appointed administrator, if one is appointed, supervises or assists the debtor in his business management, according to the mandate defined by the court. Under judicial reorganisation proceedings, the court-appointed administrator assists the debtor in his management or manages the business himself, in whole or in part, in place of the debtor. The court-appointed administrator must take, or have the debtor take, the necessary measures to preserve the rights of the business against its debtors and the necessary measures to maintain its production capacity. The court-appointed administrator is vested with specific powers, such as operating under his signature the bank accounts of a debtor who has been prohibited from issuing cheques, requiring the continuation of current contracts and implementing the necessary redundancies.
	Court-appointed receiver	It is compulsory for the court to appoint a receiver (*mandataire judiciaire*) in any collective proceedings. His task is to represent the creditors and their collective interests. He draws up the list of declared claims, including wage claims, with his proposals for admission, rejection or referral to the competent court, and forwards the list to the bankruptcy judge.
	Liquidator	The court appoints a liquidator in the judicial liquidation order. The liquidator must verify the claims and realise the debtor's assets in order to pay off creditors. He implements redundancies and may opt for the continuation of current contracts. He represents the disinvested debtor and thus exercises most of his rights and performs most of the actions relating to these assets during judicial liquidation proceedings. On the other hand, he may not exercise the debtor's non-pecuniary rights.
Role of the courts		The courts capable to hear cases on insolvency are regional courts and specialised commercial courts dedicated to significant insolvency cases (*Tribunaux de commerce spécialisés*). Insolvency courts open insolvency procedures, approve the safeguard plan, appoint the receivers, monitor the proceedings etc.
GERMANY		
Insolvency		Insolvency proceedings are opened only on application, and not automatically by any public body. The application can be submitted by the debtor or by a creditor. The general reason for opening insolvency proceedings is inability to pay. There is inability to pay if a debtor is not in a position to meet payment obligations that have fallen due; insolvency is presumed as a rule if the debtor has stopped payments (Section 17(2) of the German Insolvency Code - GIC). If the debtor is a legal person or a company in which none of the partners is a natural person with unlimited liability, proceedings may also be opened on grounds of over-indebtedness. There is over-indebtedness if the debtor's

		assets no longer cover the existing liabilities, unless it is highly likely in the circumstances that the enterprise will continue in being for the next 12 months (Section 19(2) GIC). An application can also be brought by a debtor if he faces imminent inability to pay (Section 18(1) GIC). The debtor is deemed to face imminent inability to pay if he is likely to be unable to meet his existing obligations to pay on the date on which they fall due (Section 18(2) GIC). To assess whether a debtor faces imminent inability to pay, a forecasting horizon of 24 months is usually taken as the basis. For proceedings to be opened, it is also necessary to ensure the financing of the insolvency proceedings. The request to open insolvency proceedings will therefore be refused if the debtor's assets will probably be insufficient to cover the costs of the proceedings (Section 26(1), first sentence, GIC). The Insolvency Code does not provide for separate types of proceedings for reorganisation and winding up. In addition to the '*standard procedure'*, the Code opens up the possibility of an insolvency plan as a path to winding up or as a path to reorganisation.
Pre-pack sales		Not existent *per se*. So-called prepacked plans in a German context are insolvency plans that are planned and created before the debtor files a request for insolvency. Usually, they are submitted together with the petition to open insolvency proceedings.
Creditors' committees	**General**	The Insolvency Code grants considerable influence over the insolvency proceedings to the creditors. The creditors exercise their rights through the creditors' meeting (Sections 74 et seq. GIC) or a creditors' committee (*Gläubigerausschuss*) that may optionally be set up by the creditors' meeting (Sections 68 et seq. GIC). Whereas the creditors' meeting is the central body through which the creditors take their decisions, the creditors' committee is a body through which they exercise supervision. The creditors' meeting is convened by the insolvency court (Section 74(1), first sentence, GIC), which also chairs it (Section 76(1) GIC). All preferred creditors, all ordinary creditors, the insolvency administrator, the members of the creditors' committee and the debtor are entitled to attend the creditors' meeting (Section 74(1), second sentence, GIC). If an enterprise exceeds certain size criteria, the insolvency court has to appoint a provisional creditors' committee even before the opening of the insolvency proceedings (Section 22a GIC). This committee is involved in the appointment of the insolvency administrator and plays a role in any decision on the ordering of debtor-in-possession management (Sections 56a and 270b(3) GIC).
	Voting rights creditors' meeting	Decisions of the creditors' meeting are in principle adopted by simple majority, with the majority being decided not by the number of votes, but by the sum of the claims held by the creditors voting (Section 76(2) GIC).
Lodging claims	**Deadline national creditors**	Claims must be filed in writing with the insolvency administrator within the time limit set by the insolvency court in the opening decision, indicating the cause and the amount of the claim and accompanied by copies of the documents evidencing the claim (Section 174(1), first and second sentences, and (2) GIC). However, in the event of late filing, claims will still be considered (Section 177 GIC). All insolvency claims are to be filed, regardless of whether the underlying legal relationship is governed by the ordinary civil law or by public law (such as, for example, tax liabilities).
	Deadline foreign creditors	The following particularities apply to foreign creditors: Article 55 of the EU Insolvency Regulation enables foreign creditors to lodge claims using a standard claims form. In principle, claims must be lodged within the period stipulated by the law of the state of the opening of proceedings. In the case of a foreign creditor, that period is not less than 30 days following the publication of the opening of insolvency proceedings in the insolvency register of the state of the opening of proceedings.
Existence of special rules for SMEs		If the debtor is a small enterprise and does not have the financial means to hire a practitioner in the field of restructuring, there is the possibility of a '*light*' version of restructuring proceedings (that is, a restructuring moderator (*Sanierungsmoderator*), who will

	negotiate the restructuring settlement agreement with the relevant creditors). This will require the confirmation by the restructuring court, but unlike the restructuring plan itself, it cannot be forced upon dissenting creditors.

Classes of creditors & priority claims	In Germany, creditors are divided into:
	• secured creditors;
	• unsecured creditors; and
	• subordinated creditors.
	
	In regular insolvency proceedings (*Regelinsolvenz)* as well as in procedures with an insolvency plan (*Insolvenzplan)*, creditors and contributories rank as follows on a debtor's insolvency:
	
	• Owners. Any assets, which belong to third parties, must be surrendered to these owners;
	• Secured creditors (immovable property). A land charge or mortgage holder has a claim for foreclosure;
	• Secured creditors (movable assets, and claims). Secured debts are paid using the sale proceeds of the relevant assets. An insolvency administrator is generally entitled to sell such encumbered assets to a third party free from encumbrances, or to collect such encumbered claims. The insolvency administrator disburses the proceeds to the secured creditor up to a maximum amount of the secured claim, and he/she will withhold a standard fee of 9% from the respective proceeds for the insolvency estate. Any surplus in excess of the secured claim will remain with the insolvency estate and will become available to other creditors;
	• Expenses/costs of insolvency proceedings. This includes court fees for the insolvency proceedings, remuneration earned and expenses incurred by the preliminary insolvency administrator, the insolvency administrator and the members of the creditors' committee. The expenses/costs of insolvency proceedings rank in higher priority to all other debts (including employees);
	• Insolvency estate creditors. These are claims entitled to full satisfaction and include, for example, claims resulting from new contracts entered into by the insolvency administrator with third parties, such as suppliers;
	• Insolvency creditors. All unsecured creditors (including employees) who registered their claims in writing with the insolvency administrator and whose claims have seen no objection by the insolvency administrator or an insolvency creditor. Insolvency creditors will receive payment on a pro rata basis;
	• Subordinated creditors. Subordinated claims are (among others):
	    ✓ claims for payment of interest accrued after the opening of insolvency proceedings;
	    ✓ costs incurred by individual insolvency creditors due to their participation in the insolvency proceedings;
	    ✓ claims for repayment of shareholder loans or similar claims.
	• Claims subordinated by agreement. Such claims rank behind statutory subordinated claims;
	• Shareholders. Any remaining surplus will be distributed to the debtor, or in the case of companies, to the shareholders.

Transaction avoidance	To prevent actions detrimental to the creditors, any acquisition of assets belonging to the insolvency estate after the opening of the proceedings is in principle void, whereas the acquisition before the opening of the proceedings of assets that would have belonged to the insolvency estate after the opening of the proceedings is in principle valid, but can be contested under certain circumstances. Since the opening of the insolvency proceedings, the right of the debtor to dispose of his property is vested in the insolvency administrator. Any disposal by the debtor of an asset belonging to the insolvency estate after the insolvency proceedings have been opened is in principle absolutely invalid (the main exception being where there is an acquisition in good faith of land, although this can be contested) (Section 81(1), first sentence, GIC). Nor is there any acquisition of rights to an asset belonging to the insolvency estate if the debtor has disposed of an asset belonging to the insolvency estate before the insolvency proceedings are opened but the result occurs only after the proceedings are opened (Section 91(1) GIC) (the main exception being an acquisition of land, Section 91(2) GIC). Rights of security acquired as a result of enforcement proceedings during the last month preceding the application to

	open the insolvency proceedings, or after such application, likewise become legally ineffective once the insolvency proceedings are opened (Section 88(1) GIC). An acquisition from the insolvency estate before the proceedings are opened, unlike an acquisition after the proceedings are opened, is in principle valid, but can be contested under certain conditions (Sections 129 et seq. GIC). This right to contest an insolvent debtor's transactions is of decisive importance for the functioning of insolvency law, since it allows the insolvency administrator access to outflows from the debtor's assets that took place before the insolvency proceedings are opened. It can help greatly to increase the insolvency estate, and thus to ensure that insolvency law makes good on its claim to provide equal satisfaction for the creditors in an orderly fashion and to prevent preferential treatment of individual creditors. If the insolvency administrator successfully exercises a right to contest, the party who benefited as a result of the contested transaction must return everything that has been withdrawn from the insolvency debtor's assets by the transaction. If he cannot do so in kind, he has to pay compensation. The insolvency administrator can bring an action to enforce the right to restitution, and can rely on the right to restitution against any opposing claims brought by a creditor. If the recipient of a benefit under a contestable transaction restores the property received, any counterclaim he may have revives (Section 144 GIC).
Rules on directors' duties	If a company is insolvent, its managing director is generally not liable for the company's debts, with the following exceptions: • Suretyship, guarantee, or other contractual obligation; • Liability for payments made after illiquidity or over-indebtedness. A managing director will be liable towards the insolvency estate for any payments made by the company to third parties after the company has become illiquid or over-indebted (section 15b, GIC). The insolvency administrator (or in the case of self-administration, the custodian) can bring a claim against the managing director to recover the money paid. The background for this liability is that on illiquidity or over-indebtedness, the managing director must file an insolvency petition without undue delay (at the latest, three weeks after the commencement of illiquidity or six weeks after the commencement of over-indebtedness). The liability for payments made after illiquidity or over-indebtedness is subject to very limited, narrow exceptions; • Liability for payments to shareholders resulting in illiquidity or over-indebtedness of the company; • Delayed filing of insolvency petition. If a managing director fails to file an insolvency petition without undue delay, they are liable for both payments made after illiquidity or over-indebtedness and any decreases in insolvency quotas; • Preservation of capital. A managing director is liable towards the insolvency estate for unlawful repayments of capital. Exceptions apply if the payment is made under a profit transfer agreement covered by a collectible claim for repayment against the shareholder or made in respect of repayment of a shareholder loan; • Duties of care. A managing director is liable towards the insolvency estate if they fail to act with due care in managing the company's affairs. For example, a managing director must: ✓ comply with applicable laws, by-laws and articles of association (*Satzung*); ✓ ensure proper organisation of the company, including compliance of the company with applicable laws; ✓ carefully prepare all business decisions in advance, being aware of any risks, and of financial impact, and of alternatives, and compile the necessary documentation in advance (business judgement rule, as understood under German law). In practice, however, a defence based on the business judgement rule will often not be successful because one or more of the prerequisites can often not be proven because they were not fulfilled or documented in advance; ✓ supervise any developments which may jeopardise the company's survival. • Embezzlement of company's assets; • Tort. A person who, in a manner contrary to public policy, intentionally inflicts damage on another person or company is liable to the other person or company to make compensation for the damage;

	• Tax debts. A managing director is liable to the tax authorities for any failure of the company to settle tax obligations when due, if they acted wilfully or through gross negligence; • Employees' share of social security premiums. A managing director is liable to the social insurance authorities for any failure of the company to pay employees' share of social security premiums; • Deception regarding illiquidity. A managing director is liable towards a contract partner if the contract partner (for example, a supplier) is deceived about the company's illiquidity.
Insolvency Practitioners	The insolvency administrator is the key player in the insolvency proceedings. Only natural persons, and not legal persons, can be appointed as insolvency administrator (Section 56(1), first sentence, GIC). In particular lawyers, accountants or tax advisers come into consideration for this appointment. With the opening of the insolvency proceedings, the right to manage and dispose of the debtor's property is vested in the insolvency administrator (Section 80(1) GIC). The insolvency administrator is required to clear the assets he finds on the opening of the insolvency proceedings of any items that are not the property of the debtor. He also has to transfer to the debtor's assets items which belong to the debtor's assets under liability law, but which were not yet entered among the debtor's assets at the time insolvency proceedings were opened. The debtor's assets determined in this way constitute the insolvency estate (*Insolvenzmasse*, Section 35 GIC) which will be realised by the insolvency administrator and from which the creditors will be satisfied. Further duties of the insolvency administrator include: • payment of wages to the employees of the insolvency debtor, • deciding whether to continue or end pending legal disputes (Sections 85 et seq. GIC) and how to deal with contracts which have not been fully performed (Sections 103 et seq. GIC), • drawing up a statement of assets and liabilities (Section 153(1), first sentence, GIC), • contesting transactions entered into prior to the opening of insolvency proceedings that are likely to disadvantage the ordinary creditors (Sections 129 et seq. GIC). The insolvency administrator is subject to the supervision of the insolvency court (Section 58(1) GIC). If a creditors' committee is set up, it supports and monitors the insolvency administrator in the performance of his duties (Section 69, first sentence, GIC). After the opening of the insolvency proceedings, when the right to dispose of the debtor's property has been vested in the insolvency administrator, the administrator can in principle dispose freely of all the assets belonging to the insolvency estate. There are limits on transactions of particular importance, such as the sale of the enterprise or the entire stock. Transactions of particular importance such as these require the approval of the creditors' meeting or the creditors' committee. The fact that the approval requirement has been infringed, however, has no effect on outside parties, but results only in the liability of the administrator. The administrator also has to comply with a decision of the creditors' meeting to wind up the enterprise or to continue in business (Sections 157 and 159 GIC). If the insolvency administrator wrongfully violates the obligations incumbent on him under the Insolvency Code, he is liable for damages to all parties to the proceedings (Section 60(1) GIC). Section 60(1) of the Code provides: '*The insolvency administrator shall be liable to compensate the damage suffered by any party to the proceedings if he wrongfully violates the duties incumbent on him under this Code. He shall conduct himself with the care expected of a proper and diligent insolvency administrator*.' The insolvency administrator is entitled to remuneration in consideration of the exercise of his office and to reimbursement of appropriate expenses (Section 63(1), first sentence, GIC). The remuneration is regulated in the Insolvency Law Remuneration Regulation (*Insolvenzrechtsvergütungsverordnung* – 'InsVV') and is determined according to the value of the insolvency estate at the time the insolvency proceedings come to an end. The Regulation provides for graduated standard rates, which may, however, be increased according to the scale and difficulty of the duties of the insolvency administrator.

Role of the courts		The insolvency court essentially has powers of supervision and direction (see Sections 58 and 76 GIC) The court takes decisions on the opening, on interim measures of protection, and on the appointment of an insolvency administrator. The court is also responsible for supervising the insolvency administrator. It will monitor the lawfulness of his acts, but it cannot give instructions.
GREECE		
Insolvency		Greece has a single, unified legal framework for efficient preventive restructuring, pre-insolvency and insolvency resolution proceedings. The newly enacted Greek Law titled '*Debt Settlement and Facilitation of a Second Chance'* (Law No. 4738/2020) (the Greek Insolvency Kaw - GIL) comes into effect on 1 January 2021. An early warning electronic mechanism which classifies debtors in three (3) insolvency risk levels, low-medium-high and is supervised by the Special Secretariat for Private Debt Administration, is introduced for natural and legal persons. This tool will be able to identify circumstances that could make the debtor insolvent. The procedures under GIL are: <u>Out-of-Court debt settlement process (Articles 5–30) GIC</u> Under the new Out-of-Court Debt Settlement mechanism (which replaces the procedure of existing Greek Law No. 4469/2017), individuals or legal entities, eligible to be declared insolvent, may apply for extrajudicial settlement of their monetary liabilities to the Greek State or financial and social security institutions provided they do not fall under certain exemptions (*e.g.* 90% of a debtor's liabilities being owed to a single institution). The process may also be initiated by creditors with an invitation to debtors to apply within 45 days. Out-of-court settlement applications will be filed digitally to the Special Secretariat for the Administration of Private Debt through an electronic platform. <u>Pre-Insolvency Business Recovery Process (Articles 31–64) GIC</u> The application to the court for ratification of a rehabilitation agreement concluded between the debtor and more than 50 per cent of the secured claims and more than 50 per cent of the other claims (unsecured creditors and creditors with general privileges) is submitted by a debtor carrying on a business activity and having the centre of its main interests in Greece, if there is evidence of an actual or foreseeable financial inability on the part of the debtor to pay its debts as they fall due in a general manner, or evidence that there is a likelihood that the debtor will become insolvent unless rehabilitated. A restructuring agreement like this must be ratified by the court through a simplified short procedure. <u>Insolvency resolution process (Individuals & Legal Entities) (Articles 75–196)</u> Under the Insolvency Code, bankruptcy proceedings commence by a declaration of the court on the application of any creditor, the debtor or the attorney general, if the debtor has ceased payments in the sense that it is generally and permanently unable to pay its debts as they fall due. In respect of simplified bankruptcy proceedings, cessation of payments is deemed to have occurred if the debtor does not pay the due amounts towards the state, the social security funds or credit or financial institutions for an amount of at least 60 per cent of the total amount due and for a period of at least six months, and if the non-performing debt or debts exceed in aggregate the amount of €30,000.
Pre-pack sales		Pre-packs business recovery process is available contingent to court ratification.
	General	Not existent.

Creditors' committees	**Voting rights**	For creditors' meetings, in order to conclude an agreement on Pre-insolvency business recovery process, 50% consent of each category of creditors is required (secured and other claims), with the possibility of bypassing these majorities under certain conditions. Creditors' consent can also be provided through electronic voting.
Lodging claims	**Deadline national creditors**	During the bankruptcy procedure, creditors can give notice of their claims to the court and the bankruptcy officer. The latter is assisted by the meeting of creditors, and also monitors the proceedings. Decisions of the meeting of creditors are required for various matters (including in respect of the continuation of the operation of the business, if considered necessary to preserve the value of the assets).
	Deadline foreign creditors	During bankruptcy procedure or 30 days, whichever is longest in accordance with Art. 55 of the EU Insolvency Regulation.
Existence of special rules for SMEs		The new Bankruptcy Code provides for important amendments to the liquidation of small companies. The law identifies small and medium-sized entities as those that meet at least two of the following criteria: • assets or property up to EUR 350 000 (from EUR150 000 that was until now), • have a turnover amounting up to EUR 700 000 (from EUR 200 000 until now), and • employ up to 10 people on average (from 5 persons until now). • In case of individuals the asset criterion applies to the property of each individual ('small-scale bankruptcies'). The application for the declaration of small-scale bankruptcies is submitted electronically to the Electronic Solvency Register. Thirty days after the publication of the application in the Registry and unless an intervention against the application is submitted, the application is accepted by the Bankruptcy Court. The rapporteur and liquidator are appointed as well. The debtor loses the right to enjoy the benefits of a hearing, where he can present his arguments in a timely manner. Announcement of the creditors' claims must take place within three months of publication of the court's decision. Based on estimates by Institute of Small Companies-GSEBEE, 81% of small and medium-sized enterprises are potentially included in the new fast track bankruptcy regime, based on turnover (data from FHW GSEBEE climate survey July 2020).
Classes of creditors & priority claims		Articles 975–978 of the Code of Civil Procedure include specific provisions on the priority of claims of creditors and distinguish between: • claims with a general privilege, which applies by operation of law and concerns, among others, claims on account of valued added tax and other taxes, claims of public law entities, claims of employees and social security funds; • claims with a special privilege, which include those of secured creditors; and • unsecured claims. The distinction between claims with a general privilege, claims with a special privilege and unsecured claims is critical in the context of distribution of the proceeds of liquidation of the assets over which security has been created. Claims with a general or special privilege are satisfied in priority over unsecured claims. Under Article 977 of the Greek Code of Civil Procedure, if there are only claims with a general privilege and claims with a special privilege, the former may only be satisfied up to one-third of the proceeds of liquidation of the bankruptcy estate. If there are claims of all three categories, those with a general privilege are satisfied up to 25 per cent, those with a special privilege are satisfied up to 65 per cent and unsecured claims are satisfied up to 10 per cent of the proceeds of liquidation of the bankruptcy estate.

	If there are no claims with a special privilege, those with a general privilege are satisfied up to 70 per cent and unsecured claims are satisfied up to 30 per cent of the proceeds of liquidation of the bankruptcy estate. If there are only claims with a special privilege and unsecured claims, those with a special privilege are satisfied up to 90 per cent and unsecured claims are satisfied up to 10 per cent of the proceeds of liquidation of the bankruptcy estate.
Transaction avoidance	Vulnerability of transactions is determined by reference to the date of cessation of payments, which is set by the bankruptcy court in its judgment declaring bankruptcy in respect of an insolvent debtor in accordance with the Insolvency Code. 'Cessation of payments' means the evidenced general and permanent inability of a debtor to pay its debts as they fall due. The date of cessation of payments so set by the court cannot fall earlier than two years prior to the date of the issue of the judgment declaring bankruptcy. Under Article 117 of the Insolvency Code, certain acts carried out by the debtor during the suspect period (*i.e.*, the period commencing on the date of cessation of payments and ending on the date of the declaration of bankruptcy by the court) are subject to compulsory rescission by the bankruptcy officer. These acts include: • any acts of the insolvent debtor carried out without consideration being received in return and that have the effect of reducing the value of the debtor's estate and any undervalue transactions entered into by the debtor (other than disposals made out of a moral or legal duty or as necessary to sustain the debtor's children, provided that in each case such disposals were in proportion to and did not deteriorate the debtor's financial condition); • any payment of debts that are not yet due and payable; • any repayment of due and payable debts not made by payment in cash or in the pre-agreed manner (other than voluntary transfers of properties to credit or financial institutions in or towards repayment of due and payable debts); and • any security interest created over the debtor's assets to secure a pre-existing debt whereby the debtor had not pre-agreed to grant such a security interest, or to secure a new debt replacing a pre-existing debt (but subject to the protection accorded to security interests in favour of banks pursuant to Legislative Decree 17.7./13.8.1923). In addition, under Article 118 of the Insolvency Code, certain acts carried out by the debtor during the suspect period, which are not subject to compulsory rescission, as above, may be subject to rescission by the bankruptcy officer. Acts subject to challenge in this manner include: • any payment of debts that are due and payable, and • any transaction entered into by the debtor for consideration. This applies in each case if the relevant party or creditor (as the case may be) was aware of the cessation of payments and that such payment or transaction is detrimental to the other creditors. For these purposes, deemed knowledge of that party or creditor applies in respect of a spouse, close relative, founder, administrator, director, or manager of the debtor or, where that party or creditor is an affiliate of the debtor within the meaning of Article 32 of Law 4308/2014, if the terms of the transaction manifestly deviate from normal market terms. Exceptionally, certain transactions may be vulnerable even if concluded earlier than the set date of cessation of payments. Under Article 119 of the Insolvency Code, acts of the debtor concluded within the five years immediately prior to the declaration of bankruptcy are subject to rescission, if the debtor intended the act to operate to the detriment of its creditors in general or to benefit certain creditors to the detriment of other creditors, and the relevant party was, at the time of the act, aware of the debtor's intention.
Rules on directors' duties	Specific duties are provided for under the Insolvency Code for the members of the board of directors. Failure to file (or delay in filing) for bankruptcy upon cessation of payments exposes the directors to personal liability.

		The same applies if bankruptcy results from gross negligence or wilful misconduct of the directors, while the directors are further exposed to criminal liability in the event of loss-making or extraordinarily risky transactions, inappropriate borrowings, misleading or incomplete company books and records, failure to prepare and approve financial statements or inventories as required by law, undue disposals or deterioration of assets, or preferential payments to the detriment of other creditors. Furthermore, the directors have personal and criminal liability in the event of tax indebtedness, in accordance with tax legislation.
Insolvency Practitioners	**General**	The insolvency practitioners perform specific tasks related to debt adjustment and second chance under Law 4738/2020. They must be registered in the Registry of Insolvency Practitioners. The granting, renewal and revocation of the license to Insolvency Practitioners is given by the Insolvency Administration Commission which was established on 21.4.2021 and operates within the Ministry of Finance under the supervision of the Special Secretariat for Private Debt Management.
	Corporate debt adjustment through the out-of-court mechanism	In cases of corporate debt adjustment through the out-of-court mechanism: They work for the benefit of companies in order to achieve the settlement of their debts to the State, relieving the public officials of the creditors of the relevant responsibility. To this end, they provide an opinion that: • that the assessment of the restructuring agreement provides for a recovery at least equal to the recovery in the event of the debtor's bankruptcy (and therefore that the State will not be worse off than it would be in the event of the debtor's bankruptcy); • that the implementation of the restructuring agreement allows the viable operation of the company or makes it solvent, that the conditions, rules and restrictions of the debt arrangement with the State are met (e.g. that the conditions for debt write-off are fulfilled).
	Corporate debt restructuring	Insolvency Practitioners are appointed by the court as special representatives with the power to exercise some or all of the powers of the administration of the company in debt restructuring proceedings. They may also be selected by banks and loan managers to give their reasoned opinion in order to obtain the consent of the State and social security institutions to multilateral restructuring agreements for amounts owed to them exceeding EUR 1,5 million, etc.
	Second chance cases	They are appointed by the court as receivers, with the power to sell all or part of the debtor's assets and subsequently distribute the resulting amounts to creditors.
Role of the courts		With the exception of the out-of-court settlements, all insolvency proceedings are conducted in accordance with judgments and orders issued by the competent court or under the supervision of the competent court, or both. Insolvency courts are capable in declaring bankruptcy, appointing IPs, ratifying rehabilitation agreements etc.
HUNGARY		
Insolvency		In Hungary, the following insolvency proceedings are available as main proceedings: • bankruptcy proceedings; • liquidation proceeding; and • reorganization proceeding. Bankruptcy proceeding is regulated by Act XLIX of 1991 on bankruptcy and liquidation proceedings (the Bankruptcy Act).

<table>
<tr><td colspan="2"></td><td>Bankruptcy is a voluntary procedure which can be initiated by the Hungarian debtor (company) by applying to the court for a moratorium over its payment obligations in order to reach a composition agreement (bankruptcy agreement) with its creditors and to continue as a going concern. If a composition agreement is reached in the bankruptcy proceedings, the liabilities of the debtor may, in theory, be discharged as provided for in the bankruptcy agreement. However, in practice, this is very rarely the case. The debtor is not required to prove that it is insolvent or over-indebted to apply for bankruptcy proceeding.

Any creditor, the debtor itself, and a trustee in voluntary winding-up proceedings, may apply to the court for an order for the liquidation of an insolvent debtor. There is no obligation on the debtor to initiate liquidation proceedings, even where it is insolvent or over-indebted. Only a trustee in voluntary winding-up proceedings is obliged to file for the liquidation of the debtor if the assets of the debtor are insufficient to cover the claims of its known creditors.

The court will declare that a debtor is insolvent and order the liquidation proceeding, when:

• the debtor has not repaid or disputed (in writing) an acknowledged or undisputed debt, arising out of contract, within 20 days of the debt’s maturity and upon a subsequent written payment demand from the creditor; or
• the debtor failed to repay its debt within its maturity as stated by the court's definitive judgement;
• judicial enforcement proceedings against the debtor were unsuccessful;
• the debtor has breached the obligations it has undertaken under a composition entered into with its creditors in previous bankruptcy or liquidation proceedings;
• the court terminated the previous bankruptcy proceedings;
• in the proceedings initiated by the debtor or the liquidator, the debts of the debtor exceed his assets, or the debtor could not or will not be able to satisfy his debts (debts) at the due date, and in the proceedings initiated by the liquidator, the members (owners) of the debtor business organization do not declare their commitment to provide the resources necessary for the payment of debts.

Reorganization proceeding is regulated by Government Decree 345/2021. (VI. 18.).The reorganization procedure is a civil non-litigation proceeding. It is a temporary option for the companies, since application for reorganization proceedings may be filed with the court until December 31, 2022.

In terms of its purpose, the reorganization procedure is similar to bankruptcy proceedings, given that the main purpose of both institutions is to reorganize a debtor company having difficulty with payment of its debts, i.e., to restore its solvency. Regarding its material scope, reorganization may only be initiated by business organizations registered in Hungary. A precondition for initiating reorganization proceedings is that the debtor company is in a situation threatening with insolvency. Reorganization proceedings may not be initiated if the debtor company is under, for example, bankruptcy or liquidation proceedings.</td></tr>
<tr><td colspan="2">Pre-pack sales</td><td>Not existent.</td></tr>
<tr><td rowspan="2">Creditors’ committees</td><td>General</td><td>Creditors may form creditors’ committees or elect a representative of the creditors with whom the liquidator must consult and whom the liquidator is obliged to inform and whose implicit or explicit consent must be obtained for certain measures.

If the creditors have formed a creditors’ committee the liquidator shall be required to obtain the consent of the committee for continuing business operations of the debtor. The same rule applies if the creditors have selected a creditors’ representative.</td></tr>
<tr><td>Voting rights</td><td>The liquidator may lease or transfer the debtor's assets only with the approval of the creditors 'committee or the creditors' representative or two-thirds of the creditors to a person or entity who, at the time of order of liquidation or within one year, was the executive officer of the debtor, or the debtor's sole or majority owner.</td></tr>
</table>

Lodging claims	**Deadline national creditors bankruptcy**	The order also includes an invitation to the creditors to notify the debtor and the trustee of their claims within 30 days of the publication of the order for bankruptcy proceedings in the Company Gazette, and to pay the fee for the registration of the claim at the same time to the trustee's published current bank account.
	Deadline national creditors liquidation	Creditors will be able to learn of the commencement of liquidation by means of the publication of the court order in the Companies Gazette (which constitutes constructive notice). The publication of the Company Gazette contains a call to creditors to notify their known claims to the liquidator within 40 days of the publication of the liquidation order.
	Deadline foreign creditors	Information not found.
Existence of special rules for SMEs		Insolvency regulations in Hungary are not different for large or small or medium-sized enterprises. The distinction is not justified either, as each enterprise operates according to the same principles and their organization is subject to similar rules.
Classes of creditors & priority claims		Creditors are divided into: • secured creditors; • unsecured creditors. The order of payment of creditors is as follows: • the costs of liquidation; • the unsatisfied part of the pledged receivables (secured claim) incurred before the commencement date of the liquidation up to the amount of the sales revenue of the pledged property excluding VAT, so that the amount deducted at the time of payment to the pledgee and the amount set aside for debts shall be used to pay the pledged receivables; • alimony, life annuity, compensation annuity, mining supplement, and cash benefits paid to a member of an agricultural cooperative in lieu of backyard land or crops, which are due to the holder for the rest of his life; • other claims of private persons arising from a non-economic activity, other than claims based on a bond (including, in particular, claims arising from defective performance, damages, including the amount quantified by the liquidator in the ordinary course of business-related warranty or guarantee obligations), the claims of small and micro enterprises, primary agricultural producers and the claims of the Common Fund of Cooperative Credit Institutions based on the fact that the Common Fund of Cooperative Credit Institution has become the legal successor of the depositors with the insured deposit or the holder of their claims; • overdue social security contributions and private pension fund membership fees, taxes and public debts collectable as taxes, as well as grants from other international sources based on repayable public finances, the European Union or an international agreement, as well as utilities and condominium costs and claims on the Cooperative Credit Institutions' Common Fund for Equity, other than those referred to in point (d); • claims of other unsecured creditors; • default interest and default penalties irrespectively of the date and legal ground of their arising, as well as debts of a surcharge and fine; and • claims owed to directors, executive position employees of the debtor or by their spouses or close relatives, or claims of companies under the influence of the debtor, claims originating from agreements without consideration and claims owed to a member (shareholder) having a majority influence in the debtor (excluding mandatory minimum wage, wage and salary

		claims not exceeding twice the guaranteed wage and not exceeding six months' average wage in the case of an employee paid exclusively for performance pay).
Transaction avoidance		The administrator or creditors may challenge such transactions by lodging a petition and may request the transaction to be declared invalid. Any assets thus returned to the debtor increase the assets of the insolvent estate. Under Hungarian law, acts can be challenged within a term of 90 days before an imminent insolvency. For transactions with the intent of defrauding creditors the avoidance period is of 5 years.
Rules on directors' duties		The liquidator or the creditors may lodge lawsuits against the debtor's former directors for their activities which were detrimental to the interests of the creditors on the grounds that the former directors did not carry out their managerial functions, taking into account the creditors' interests when a situation with the threat of insolvency arose, leading to a decrease in the economic operator's assets, or frustrated the full satisfaction of the creditors' claims or neglected to settle environmental charges. If this is proven, the former director of the debtor must compensate the creditors for the damage thus caused.
Insolvency Practitioners	• **Bankruptcy trustee**	The court appoints a bankruptcy trustee, who shall monitor the debtor's business activities with a view to protect the creditors' interests and to prepare for the composition with creditors. Accordingly, the bankruptcy trustee shall: • review the debtor's financial standing, which may entail inspection of the debtor's books, assets, and liabilities, contracts, and current accounts, requesting information from the directors of the economic operator, from the supreme body, supervisory board members and the auditor, and - in the case of a recognized group of companies governed by the Companies Act from the dominant member -, shall inform the creditors regarding his findings; • carry out - assisted by the debtor - the tasks relating to the registration and categorization of claims ; • approve and endorse -any financial commitment of the debtor after the time of the opening of bankruptcy proceedings; • advise the debtor to enforce its claims and shall oversee the way it is executed, and in the event of the debtor's failure to comply shall notify the supreme body, the supervisory board and the auditor thereof; • contest, at its discretion, any contract or legal statement the debtor has made in the absence of his approval or endorsement, and shall initiate or open proceedings for the recovery of any payments effected unlawfully or arising out of or in connection with any unlawful claim, as well as proceedings for the restoration of the situation that existed previously; • categorize the registered claims and inform the creditors about the registration and categorization of their claims; • exercise joint power of representation and joint right of disposition over the current accounts in the case the court orders it, or if the majority of the creditors may make the extension of the deferral period conditional on the debtor granting the trustee a joint right of representation or a joint right of disposal over the current accounts; • perform the tasks of initiating the extension of payment deferral. The bankruptcy trustee shall have powers to approve any new commitment made by the debtor. However, the bankruptcy trustee may grant approval for a commitment, or for a payment, if they serve the debtor's interest in terms of operations, and for the preparation of composition arrangements, and may provide guarantees for such commitments only if agreed by the creditors representing the majority of the claims held by creditors with voting rights. The executive officers of a debtor, including its supreme body, shall exercise their respective rights only if it does not violate the powers vested in the bankruptcy trustee. The court shall impose a financial penalty on the executive officer of the debtor between 100,000 and 500,000 Hungarian forints for any breach of his statutory obligation to cooperate with the bankruptcy trustee.

	Liquidator	A liquidator may only be an organization of which a member (shareholder) is known and in which a member (shareholder) does not have a direct or indirect shareholding, who is resident in a state specified in the regulation on the publication of the list of non-cooperating states or in which the law does not require the tax liability corresponding to corporation tax - not including a State party to the Agreement on the European Economic Area, or the prescribed tax rate is not more than 10 percent. The liquidator shall appoint a liquidator officer to carry out the liquidation of the debtor who has no criminal record, is not subject to a prohibition on engaging in the activity of liquidator, is not subject to a conflict of interest or meets the conditions set out in the Bankruptcy Act. This also applies to the person carrying out the tasks of bankruptcy trustee. The rights of the owner(s) of the debtor, as defined in other regulations, shall cease as of the time of the opening of liquidation proceedings. As of the time of the opening of liquidation only the liquidator shall be authorized to make any legal statements in connection with the assets of the debtor. In order to perform his duties, the liquidator may enter the debtor's premises and inspect any of its assets. The debtor is obliged to open its closed areas immediately upon the liquidator's call and provide information on the existence and location of its property (furniture and other movables). The executive officer of the debtor may be subject to a fine of up to 50 % of his income received from the debtor in question in the year preceding the time of the opening of liquidation proceedings, or up to 2.000.000 Hungarian forints, if his income cannot be determined, for failure to cooperate with the liquidator. The liquidator shall analyse the financial standing of the economic operator and the claims against it. If the creditors have formed a creditors’ committee the liquidator shall be required to obtain the consent of the committee for continuing business operations of the debtor. The same rule applies if the creditors have selected a creditors’ representative. The liquidator may lease or transfer the debtor's assets only with the approval of the creditors 'committee or the creditors' representative or two-thirds of the creditors to a person or entity who, at the time of order of liquidation or within one year, was the executive officer of the debtor, or the debtor's sole or majority owner. The liquidator shall have powers to terminate, with immediate effect, the contracts concluded by the debtor, or to rescind from the contract if neither of the parties rendered any services. Any claim that is due to the other party owing to the above may be enforced by notifying the liquidator within forty days from the date when the rescission or termination was communicated. From the commencement date of the liquidation - within the framework of the law, the collective agreement and the internal regulations and employment contracts - the liquidator exercises the employer's rights and fulfils the obligations. The liquidator collects the debtor's claims when they fall due, enforces its claims and sells its assets. The liquidator is obliged to take care of the protection of the debtor's property during the liquidation proceeding. The liquidator is obliged to ensure the preservation of the debtor's records and documents. The liquidator shall act with the due diligence expected of the person holding such office. He is liable for damages caused by a breach of his obligations under the rules of civil liability. The liquidator is liable for the debtor's assets existing at the commencement of the liquidation or acquired during the liquidation. One of the liquidators' due diligence is that if an unlawful asset withdrawal from the debtor has taken place in the period before the insolvency of the debtor has been declared, and the liquidator considers that action against such unlawful withdrawal may increase the liquidity of the debtor, it must initiate proceedings to reclaim such asset, and inform the creditors' committee.

	• **Reorganization expert**	The assistance of a reorganization expert is mandatory in the reorganization proceeding. Only the National Reorganization Non-Profit Limited Liability Company may act as a reorganization expert. The reorganization expert shall immediately review the financial situation of the debtor after the commencement of the reorganization proceeding and shall be informed of all circumstances affecting the planned reorganization. The reorganization expert is involved in negotiating the reorganization plan with creditors. During the reorganization, the senior executive of the company is obliged to co-operate with the reorganization expert, facilitate the performance of his duties and provide him with all the information and documents necessary for the performance of his duties. During the reorganization, the executive officer of the company is obliged to report to the reorganization expert on the fulfilment or challenging of debts due during the moratorium period, the necessary measures that have been taken to enforce the company's claims, as well as and if the company is in arrears of more than 20 days with its payment obligations not covered by the moratorium. The reorganization expert may get acquainted with the data and documents of the company containing business secrets and other private secrets for the purpose necessary for the performance of his duties, the exercise of his rights and the fulfilment of his obligations. The reorganization expert is entitled to make a statement to the creditor providing new or temporary financing about the investment risk of the company's situation and the reorganization plan. As part of the reorganization plan, creditors may stipulate that the reorganization expert will monitor the implementation of the reorganization plan and report to the creditors, and the company must tolerate the control and cooperate with the reorganization expert. If the reorganization plan requires the reorganization expert to monitor the implementation of the plan, the reorganization expert has an obligation to report to the decision-making body of the company and to the creditors involved in the reorganization plan. It shall immediately notify the decision-making body, the supervisory board and the auditor of the undertaking, as well as the interim or new financiers, if the undertaking is in arrears with its payment obligations for more than 30 days or if it fails to take action to enforce its claims.

Role of the courts	Insolvency proceedings (both bankruptcy and liquidation proceedings) are conducted by specialised judges within each general county court and the Metropolitan Court. The Metropolitan Court has exclusive jurisdiction to conduct the reorganization proceedings. Bankruptcy and liquidation proceedings are non contentious civil proceedings before a court. In matters not regulated by the Bankruptcy Act, the rules of the Code of Civil Procedure apply, with derogations arising from the specificities of non-contentious proceedings. Bankruptcy proceedings are ordered by the court while liquidation proceedings are ordered by the court as a result of the debtor being declared insolvent or in other cases specified by law or on the basis of a request from another court, public authority or the administrator. At the opening of the proceeding the court appoints the administrator or liquidator from the list of liquidators. When liquidation proceedings are brought, the court appoints – at the request of the creditors – a liquidator with the competence of a temporary administrator to supervise the activities of the debtor until the liquidation is ordered. Objections submitted against any unlawful measures or omissions by the administrator or liquidator are adjudged by the court and in case of an unlawful measure or omission the court requires the administrator or liquidator to conduct their activities in accordance with the law and in case this is breached, the administrator or liquidator is removed from the proceeding and a new administrator or liquidator is appointed. If the majority prescribed by the Bankruptcy Act accepts the voluntary arrangement and the arrangement is in compliance with statutory requirements, the court approves the arrangement and the debtor is bound by it. If a voluntary arrangement is not agreed upon, the court orders the debtor to be wound up *ex officio*. An agreement between the debtor and the creditors may also be reached in liquidation proceedings. The court sets the date for composition negotiations in the course of the liquidation proceeding and if the vote on the voluntary arrangement is favourable and the arrangement is in compliance with legislation, the court approves it. In liquidation, the conditions for the approval of a voluntary arrangement are that through the arrangement the debtor will cease to be insolvent and priority claims will be settled or cover for such claims is available. The court decides on registering the bankruptcy or liquidation proceedings as closed or on the termination of the proceedings. If the liquidation proceedings are closed without a legal successor to the debtor, upon notification from the court the commercial court strikes the debtor dissolved by liquidation off the commercial register, or the civil society organisation from the register of civil society organisations.
IRELAND	
Insolvency	The primary condition for opening personal insolvency proceedings is that the debtor is insolvent, *i.e.* they are unable to meet their debts as they come due. The nature and extent of the debts and the debtor's income then determines which of the three arrangement types is appropriate. Insolvency proceedings are governed by the Personal Insolvency Act (PIA) and comprise the following three arrangements: • Debt Relief Notice (DRN): for debts of up to €35,000 for people with virtually no assets and very low income; • Debt Settlement Arrangement (DSA): for the agreed settlement of unlimited unsecured debts over a period of up to five years (extendable to six years in certain circumstances); • Personal Insolvency Arrangement (PIA): for the agreed settlement or restructuring of secured debt of up to €3 million (which can be increased by creditor agreement) and unlimited unsecured debt over a period of up to six years (extendable to seven years in certain circumstances). A DSA and a PIA both share a three-stage process:

		• Stage 1: A Protective Certificate (PC) is issued by the relevant court, which on issue precludes certain named or 'specified' creditors from taking or bringing action against the debtor, including bankruptcy petitions, to recover their debt. When granted by the relevant court, a PC will apply for 70 days, but can be extended for a further 40 days on certain grounds; • Stage 2: This involves the negotiation by a Personal Insolvency Practitioner (PIP) on behalf of the debtors with the specified creditors and the approval of the proposal by way of a vote at a statutory creditors' meeting. Recent legislation has provided for the opportunity for the debtor to seek a court review of their proposal where the creditors have rejected the PIA proposal at the creditors' meeting; • Stage 3: Implementation of Arrangements, including periodic distributions to creditors by the PIP and annual reviews by the PIP where appropriate. A debtor may enter into a DRN, DSA or PIA only once. Bankruptcy is an option for debtors who, due to their circumstances, do not meet the eligibility criteria for the abovementioned three debt solutions, or have previously entered into one of the debt solutions but the arrangement with the creditors proved to be unsustainable. As soon as a debtor is made bankrupt their unsecured debts are written off in full, however, all of their assets become the property of the Official Assignee in Bankruptcy, who is the High Court appointed administrator of the bankruptcy estate. Bankruptcy proceedings may be brought in the following two circumstances: • By a Petitioning Creditor, who brings an application to the High Court in order to bankrupt an individual who owes them debts, proving that they are a creditor of the individual and that the individual has not made satisfactory attempts to settle their debts; • By the individual themselves, termed a Self-Adjudicating bankruptcy.
Pre-pack sales		The usage of pre-pack insolvency sales is less developed in Ireland than in other jurisdictions, but there has been an increasing number of asset sales structured through pre-pack receiverships. In Ireland there are no corresponding rules or guidelines in general usage, although some insolvency professionals follow the Statements of Insolvency Practice guidelines. In the absence of detailed rules, the critical standard for the appointed insolvency office holder is to ensure that he obtains the best price possible for the assets at the time of sale. Provided the insolvency office holder complies with this test and adheres to the highest professional standards, there is no barrier to effecting a pre-pack sale in a manner which stands up to scrutiny and which will allay the concerns of creditors.
Creditors' committees	**General**	Not existent. However, in certain liquidations there is a requirement for the creditors to form a committee of inspection which consists of representatives of the creditor group. The committee of inspection has a supervisory role (once reserved to the High Court) in the conduct of the liquidation and has the power to authorise certain acts of the liquidator and the liquidator's remuneration, costs and expenses.
	Voting rights	Information not available.
Lodging claims	**Deadline national creditors insolvency**	In respect of a DSA or PIA claims are not formally lodged by a creditor against a debtor. The first stage in the process is the completion of a debtor's Prescribed Financial Statement (PFS). The PFS lists all creditors and the amounts due to each creditor, and is the factual basis on which a Protective Certificate (PC) is issued. Following the issue of a PC in DSA and PIA insolvency proceedings, the specified creditors are given notice of the issue of the PC and a copy of the debtor's PFS. The creditor may be asked to provide proof of debt

		and is asked what their preference is as to how they would like their debt treated. A creditor's debt shall be proved in the same manner as a debt of a bankrupt is proved under the Bankruptcy Act. After the creditor has proven their debt, they will be entitled to vote at the statutory creditors' meeting convened to approve the debtor's proposal. If the creditor does not submit a proof of debt, or otherwise inadequately proves their debt, they cannot take part in the creditors' meeting or participate in any dividend payment provided for in the arrangement.
	Deadline national creditors bankruptcy	Notification of individuals who have been adjudicated bankrupt are sent to a list of financial institutions and Government Departments by the Bankruptcy Division of the Insolvency Service of Ireland (ISI) the day after the individuals are adjudicated bankrupt. Notice of these adjudications are also posted on the ISI website and on an official Irish State publication. All secured creditors in a bankruptcy estate are given thirty days' notice (in writing or by email) from the date of adjudication to lodge proof of their claims in the bankruptcy estate. Such proof of debt can take the form of mortgage deeds, invoices, statements and bills, or in some circumstances an affidavit from the creditor may be required. Before a dividend is paid to creditors in a bankruptcy estate, the ISI will advertise the upcoming payments and the cases they relate to. The creditors (both secured and unsecured) are again given thirty days to lodge their claims with the ISI, and the same burden of proof is required. In all cases, creditors are required by the Bankruptcy Division of the ISI to fill out standardised Proof of Debt Forms, which are available on the ISI website.
	Deadline foreign creditors	There is no distinction in Irish law between procedures available to domestic or foreign creditors of an Irish company. As a result, the deadline to lodge claims will be of 30 days.
Existence of special rules for SMEs		Not existent.
Classes of creditors & priority claims		Creditors are divided into: • preferential creditors; • secured creditors; • unsecured creditors. <u>Preferential Debt</u> In Personal Insolvency Arrangements (PIA) and Debt Settlement Arrangements (DSA), preferential debts are paid per the terms of the agreement, and in bankruptcy preferential debts rank directly after bankruptcy fees and any costs or expenses incurred by the Official Assignee (OA) when dealing with the bankruptcy estate. Debts that are considered to be preferential are: • Certain amounts due to the Revenue Commissioners, such as Income Tax, Capital Gains Tax, VAT, PAYE/PRSI etc.; • Certain Local Authority Rates incurred in the 12 months prior to the debtor's date of adjudication or entering into the arrangement (commencement date). This includes local council rates and charges; • Wages or salaries owed to any employees of the debtor for the 4 months previous to the commencement date; • Any pension-related, holiday-related or sick absence pay due to these employees.

		Secured Debt In a PIA, the secured creditor is bound by the terms of the agreement. In a normal PIA the secured lender is paid out of the debtor's income at whatever figure is agreed to in the arrangement. The debtor's remaining monthly income, if any, after the debtor's RLEs and PIP's fees are deducted is paid to their unsecured creditors by way of dividend. Bankruptcy does not affect the rights of a secured creditor. Such a creditor may take one of the following three options with regard their secured debt: • Rely on their security – this means they effectively stay outside the bankruptcy; • Realise or value their security and claim for the shortfall (if any) – the creditor will calculate the fair market value of the secured asset and subtract this from the total owing. The resultant shortfall (if any) is admitted into the bankruptcy estate as an unsecured claim. During this process, the secured creditor may sell the asset in question; • Abandon their security – the secured creditor has an option to abandon their security entirely and have their claim admitted into the bankruptcy estate as an unsecured claim. Unsecured Debt In both a PIA and a DSA, the debts of unsecured creditors are settled under the agreed terms of the arrangement. In a DRN if a person's circumstances improve during the supervision period, s/he must tell the ISI and depending on the level of change, may be asked to make some contribution to what he/she owes. The claims of unsecured creditors of a bankruptcy estate are ranked equally. Their debts are settled with the disbursement of any funds that remain after bankruptcy fees, OA expenses and preferential debts have been settled.
Transaction avoidance	**Insolvency Proceedings**	The creditors do not have any right to seek reversal of any transactions or asset transfers prior to the commencement of the insolvency proceedings. However, if the debtor can be considered to have made excessive contributions to a pension fund, the creditor may seek financial relief from the courts. This may result in the court ordering that the fund provider issues a full refund of the amount for distribution among the creditors party to the arrangement.
	Bankruptcy	Previous asset transfers and payments that bankrupts made to creditors or other individuals can be overturned under bankruptcy legislation. This includes situations where: • The bankrupt has paid an amount or transferred an asset to any creditor in preference to any other creditors to whom they owe a debt. The OA can seek to have such payments, made in the three years prior to the date of adjudication, reversed. If the OA is successful, the amount in question would be paid back into the bankruptcy estate for the benefit of all creditors; • The bankrupt has transferred or gifted an asset to a third party for an amount less than the fair market value. Upon successful application before the High Court by the OA, such transfers within three years prior to the date of adjudication can be voided and the shortfall would be paid into the bankruptcy estate for the benefit of all creditors; • The bankrupt has transferred an asset or made a payment which can be considered to be an 'avoidance transaction', i.e. the bankrupt was intending to avoid having the asset or sum of money considered as part of their bankruptcy estate. Two time periods apply in these cases: ✓ Any such transactions made three years prior to the bankruptcy can be reversed by the OA on successful application to the High Court, and; ✓ Any such transactions made five years prior to the bankruptcy, provided that the bankrupt fails to prove they were solvent at the time of the transaction.

<table>
<tr><td colspan="2">Rules on directors' duties</td><td>Directors or officers can be liable for the debts of an insolvent company in the following circumstances:
Reckless trading. Personal liability can arise if, in the course of winding up a company, it appears that any person was, while an officer of the company, knowingly a party to the carrying on of any business of the company in a reckless manner. Liability can also apply to directors who ought to have known that these actions were reckless;
Misfeasance. Where it appears that a director or other party has misapplied the assets of the company or been guilty of 'misfeasance' or breach of duty or breach of trust, the court can compel him to restore such assets or to provide the company with compensation in respect of such misapplication of its assets. This provision is not confined to directors and officers of a company but applies to any person who has taken part in the formation or promotion of the company. It is also not limited to insolvent procedures;
Fraudulent trading. Where a person is knowingly a party to the carrying on of a business with intent to defraud creditors of the company or any other person, or for any other fraudulent purpose, that person will be guilty of an offence;
Failure to keep proper books and records. A director or officer of an insolvent company can be held personally liable for debts of the company where they have failed to keep proper books and records and where that failure has contributed to the company's inability to pay its debts as they fell due, caused uncertainty as to the assets and liabilities of the company, or has impeded the orderly winding-up of the company.</td></tr>
<tr><td rowspan="2">Insolvency Practitioners</td><td>General</td><td>The PI Act creates a new profession regulated by the ISI, which falls into two categories:
Approved Intermediaries (AIs): a person or corporate body authorised by the ISI to support debtors who wish to make an application for a DRN;
Personal Insolvency Practitioners (PIPs): a person authorised by the ISI to act as liaison between the debtor and their creditor(s) for the purposes of securing a DSA or PIA. A PIP is legally obliged to act in compliance with the PI Act and associated regulations.</td></tr>
<tr><td>Insolvency Proceedings</td><td>A PIP, when engaged by a debtor, will act as a negotiator between the debtor and their creditors. PIPs are bound by legislation to act in the best interests of both the debtor and the creditor(s), therefore they are obliged to formulate the best possible arrangement for all parties concerned in an insolvency arrangement.
The role and functions of a PIP include:
Engaging with a debtor who is contemplating making a proposal for an insolvency arrangement;
Accepting the appointment to act as insolvency practitioner;
Reviewing the Prescribed Financial Statement (PFS) prepared by the debtor and providing advices to the debtor on options and their eligibility to make a proposal for a debt settlement or personal insolvency arrangement;
Satisfying themselves that the financial information provided to them by the debtor is accurate and complete;
Providing an opinion, based on the criteria set out in legislation, as to which type of insolvency arrangement (DSA or PIA) best suits the debtor's situation;
Providing information relating to the procedure chosen, the general effect of, and the likely costs of becoming a party to an insolvency arrangement;
Applying on behalf of the debtor for a Protective Certificate (PC);
Notifying all creditors of the PC, PIP appointment, enclosing a copy of the debtor's PFS;
Preparing a proposal to creditors and convening a statutory meeting of creditors to consider and vote upon the proposal;
Where a proposal is approved, notifying the ISI and all creditors of the outcome;</td></tr>
</table>

		• Once approved by court or on a court review, operating the terms of the arrangement including the collection of funds from the debtor and payment to creditors over the duration of the arrangement; • Monitoring the arrangement throughout its lifetime; • Carrying out a review of the arrangement on at least an annual basis; • In insolvency proceedings, the debtor's role is to participate honestly in the process, agree to the arrangement negotiated by their PIP and meet the required terms of the arrangement.
	Bankruptcy	On adjudication in bankruptcy, all assets divest from the bankrupt and vest in the Official Assignee (OA) in Bankruptcy. The OA is an independent statutory officer whose role is to administer bankruptcy estates and manage the Bankruptcy Division of the ISI. In Ireland, a private individual can be appointed as trustee in bankruptcy to replace the High Court Official Assignee in Bankruptcy (OA). In practice, such appointments are extremely rare. The Bankruptcy Act does not specify any qualifications for such appointments. The debtor's powers in bankruptcy are limited to being able to apply to the High Court to challenge certain decisions of the OA. The debtor has an obligation to comply with requests made by the OAs office with regard to the administration of the bankruptcy estate.
Role of the courts		Courts have a supporting and monitoring role. There is no court involvement in Proceedings are issued in one of three jurisdictions, the District Court, Circuit Court or High Court depending on the amount of the debt. The procedure to obtain judgment depends on the relevant court and whether the proceedings are on a contested or uncontested basis. After judgment is obtained, there are a number of options open to the creditor to enforce the judgment
		ITALY
Insolvency		The objective prerequisite for the declaration of bankruptcy is the state of insolvency provided for in Art. 5 of the Italian Bankruptcy Law (IBL), which establishes that a person is in a state of insolvency if he is unable to regularly meet his obligations. Insolvency can be manifested by defaults or other external facts (*e.g.* the escape of the entrepreneur or the closure of the premises in which he exercised the activity), which demonstrate that the debtor is no longer able to meet his obligations. An entrepreneur who can only partially pay his debts is considered insolvent, as is an entrepreneur who can fulfil his obligations, but only after they have expired, or in an irregular manner (*e.g.* an entrepreneur who is forced to sell real estate to satisfy the company's creditors). The declaration of bankruptcy is the act from which begins the judicial procedure aimed at the coactive realization of the rights of creditors. The following are entitled to request the bankruptcy of an entrepreneur: • one or more creditors, unsecured or preferential, even if not provided with an enforceable title and even if they have a credit not yet expired. Full proof of the state of insolvency is not required, since bankruptcy is an inquisitorial procedure; consequently, the lack of proof does not justify the rejection of the petition, since the court is always required to carry out further investigations; • the debtor, who is obliged to file for bankruptcy only in the event that failure to do so could lead to a worsening of the insolvency; • the public prosecutor, since the declaration of bankruptcy aims to protect interests of a general nature. Pursuant to Article 7 IBL, the public prosecutor must file for bankruptcy if the insolvency results in the course of criminal proceedings, i.e., the flight, unavailability or absconding of the entrepreneur, the closure of the business premises, or when the insolvency results from the judge during a civil trial to which the entrepreneur is a party.

Pre-pack sales		Pre-packed plans provide for the sale or lease of the debtor's assets to a third-party investor, based on agreements reached by the debtor and the third-party investor prior to filing. Should the assets be sold to a third party different from the original investor as a consequence of the competitive procedure above mentioned, the latter has the right to be reimbursed for the costs incurred in connection with the agreement reached with the debtor up to an amount equal to three per cent of the price of the assets agreed therein.
Creditors' committees	**General**	The creditors' committee is composed of three or five creditors and appointed by the delegated judge, after hearing the curator and the creditors. The appointment is made within 30 days of the bankruptcy sentence, and within 10 days of the appointment the committee appoints the chairman. The creditors' committee performs: • Management functions: ✓ authorizes all acts of extraordinary administration to be carried out by the curator; ✓ authorizes the new curator to propose the action of responsibility against the revoked curator; ✓ authorizes the receiver to take over pending contracts in place of the bankrupt; ✓ approves the liquidation program presented by the liquidator. • Advisory functions: ✓ in all cases provided for by law (necessary advisory activity); ✓ when the court deems it appropriate (possible advisory activity). • Control functions: ✓ must endorse the register kept by the liquidator ; ✓ may make comments on the summary report on the activities carried out and drawn up every 6 months by the receiver; ✓ has the right to view any deed or document contained in the bankruptcy file; ✓ is informed by the receiver on the outcome of the sales carried out.
	Voting rights	Information not available
Lodging claims	**Deadline national creditors**	All creditors who have a claim against the bankrupt must assert it independently by means of applications for admission to the liabilities, which may concern either a pecuniary claim or a real or personal right to movable and immovable property. Pursuant to art. 93 IBL, applications for admission to the liabilities must be presented by means of an appeal to be lodged at least 30 days before the hearing fixed for the examination of the liabilities. The appeal must be accompanied by the reasons for pre-emption and supporting documents for the claim. Applications for lodgement of claims are examined by the receiver, who prepares separate lists of creditors and third parties, and finally files the draft statement of liabilities with the clerk's office at least 15 days before the hearing for examination of the statement of liabilities. At the hearing the delegated judge decides by decree on each individual application, accepting or rejecting them. He accepts with reservation the credits subject to conditions; lacking the justification for a fact not attributable to the creditor; established by a judgment pronounced before the declaration of bankruptcy but which has not yet become final. Those who have not submitted an application for lodgement of claims may submit a late application, up to 12 months after the deposit of the decree of enforceability of the statement of liabilities. Once the time limit has elapsed, until all the allocations of assets have been exhausted, late applications are admissible only if the creditor proves that the delay was due to causes not attributable to him.

	Deadline foreign creditors	Foreign creditors submitting their claims within Italian insolvency/restructuring proceedings are subject to the same rules that apply to domestic creditors *i.e.* 30 days before the hearing fixed for the examination of the liabilities or 30 days, whichever is longer according to the EU Insolvency Regulation.
Existence of special rules for SMEs		There is a derogatory regime - an '*early warning*' procedure, aimed at detecting deterioration in a business at an early stage and thereby signalling to the debtor the need to act as a matter of urgency in order to: • avoid insolvency; and • continue its business activities. In general terms, the early warning procedure is an out-of-court procedure characterised by privacy and confidentiality. However, SMEs can apply to the court to obtain certain protective measures such as a stay from enforcement actions by the SMEs' creditors for a period of up to six months. The agreement entered into at the end of the early warning procedure has the same effect as a recovery plan underlying a voluntary composition agreement, thus exempting restructuring related transactions from insolvency avoidance actions.
Classes of creditors & priority claims		Creditors are divided into: • secured creditors and • unsecured creditors. There are three categories of claims: • senior-ranked claims; • secured claims, i.e. claims with priority; • unsecured, i.e. unsecured claims. Article 111 of the IBL lays down preference criteria for the method of liquidation of these claims. According to that article, the sums obtained from the liquidation must be disbursed in the following order: • to mortgage and pledge claims, in order to the liquidation of the secured assets; • senior-ranked claims; • other creditors who have a right of pre-emption; • unsecured creditors. Senior-ranked claims must be satisfied in their entirety, provided that the assets are sufficient, but even for these there may be causes of pre-emption, which must be taken into account in their liquidation. Such claims are those so defined by law (*e.g.* in the case of the provisional exercise of the business by the bankrupt). If the assets are insufficient, senior-ranked claims must be distributed according to the criteria of graduation and proportionality, in accordance with the order assigned by the law (Article 111-bis, IBL). Article 111- bis makes an exception to this principle, stating that '*the proceeds from the liquidation of assets subject to pledge and mortgage for the part intended for secured creditors' cannot be allocated to satisfy senior-ranked claims*.'

	As regards preferential creditors, which may be either creditors with a general or special lien (Article 2745 et seq. of the Civil Code) or creditors secured by a pledge or mortgage, the reference article is 111-quater of the Bankruptcy Law and Articles 54 and 55 of the Bankruptcy Law. In particular, claims secured by a general lien have a right of pre-emption for the capital, expenses and interest, within the limits set out in Articles 54 and 55, on the price obtained from the liquidation of the movable assets, on which they compete in a single ranking with claims secured by a special lien on movable assets, according to the degree provided for by law. Claims secured by mortgage and lien and those secured by special privilege shall have a right of pre-emption for the principal, expenses and interest, within the limits set out in Articles 54 and 55, on the price obtained from the assets pledged as collateral. If the security has not yet been realized, or for the part for which they remain unsatisfied by the security, they shall participate in the distribution of the assets in the same manner and in competition with the unsecured, that is to say in proportion to the amount of the claim for which they have been admitted.
Transaction avoidance	Legal acts carried out by the insolvent before the opening of the insolvency proceedings can be revoked if they were carried out within a certain period (one year or six months) before the opening of the proceedings. The legal references relating to the effects of legal acts carried out by the bankrupt prior to the declaration of bankruptcy which are detrimental to the mass of creditors are contained in Article 64 et seq. of the bankruptcy law. Article 64 of the bankruptcy law establishes the ineffectiveness against creditors of free acts carried out by the bankrupt in the two years preceding the declaration of bankruptcy, with the exception of gifts for use and acts carried out in fulfilment of a moral duty or in the public interest, but on condition that these gifts are proportionate to the donor's assets. Article 65 of the bankruptcy law sanctions with ineffectiveness payments made by the bankrupt in the two years preceding the declaration of bankruptcy and concerning debts due on the day of the declaration of bankruptcy or later. Article 66 of the bankruptcy law extends to the trustee in bankruptcy the right to bring an ordinary revocatory action pursuant to article 2901 of the Civil Code, in order to obtain a declaration of the ineffectiveness of the acts carried out by the debtor to the detriment of the masses, where the objective and subjective conditions exist. Art. 67 of the bankruptcy law is the pivotal rule of the bankruptcy revocation regulations contained in Section III of the bankruptcy law since it represents the main instrument for protecting the '*par condicio creditorum'* and compliance with the prohibition of altering the legitimate order of privileges. The objective premise of the bankruptcy revocation action is the '*eventus damni*', *i.e.* the very fact of the damage to the '*par condicio creditorum'*, which can be linked, by legal and absolute presumption, to the removal of the asset from the estate following the act of disposal. The bankruptcy law distinguishes, with regard to the subjective presupposition of the revocation action, 'normal' acts from 'abnormal' acts, *i.e.* acts that can be carried out in the normal course of business activity from acts that, although they can be carried out in the course of business activity, have peculiarities that lead them to real anomalies in the entrepreneur's management. If the trustee intends to apply for the revocation of '*normal'* acts carried out by the debtor in the suspected period, he must prove the existence of the subjective condition of the defendant's knowledge, at the time the act was concluded, of the debtor's state of insolvency (*scientia decoctionis).* If, on the other hand, the trustee acts to revoke an '*abnormal*' act, then he does not have to provide any evidence of the *scientia decoctionis*, since the law presumes that the defendant who took advantage of the abnormal act was aware of the state of insolvency of the debtor who later became bankrupt.

<table>
<tr><td colspan="2"></td><td>For the purposes of the bankruptcy revocation, the liquidator must take into consideration only that part of the debtor's activity (payments, contracts, deeds, and the provision of guarantees) carried out in a period that the law considers to be 'suspicious' and that corresponds to a period of time preceding the date of the judgment declaring bankruptcy (or the date of a different order, in the event of the completion of bankruptcy proceedings).

As a result of Decree-Law no. 35/2005, converted into Law no. 80/2005, the backward time limits for the exercise of the revocation action were halved to two years for gratuitous acts, one year for abnormal acts and six months for normal acts.

As regards the starting date, the suspected period is calculated backwards from the date of publication of the declaration of bankruptcy in the company register, and not from the date of filing the judgment in the registry.

Pursuant to Article 44 of the Bankruptcy Act, on the other hand, all legal acts carried out by the bankrupt and payments made by him after the declaration of bankruptcy are ineffective against creditors.

• Payments received by the bankrupt after the declaration of bankruptcy will also be ineffective;
• Finally, acts of extraordinary administration carried out by the bankrupt during agreements with creditors and without the authorisation of the court are null and void.</td></tr>
<tr><td colspan="2">Rules on directors' duties</td><td>There is no way that directors can be held liable for a company's debts. They are liable for personal debts arising from liability actions that can be brought against them by:

• The company, when directors are in breach of their fiduciary duties;
• The company's creditors, when directors are in breach of their duty to preserve the integrity of the company's assets to the extent that they are no longer sufficient to satisfy the creditors;
• A single shareholder and/or third party, whose personal assets were damaged by the directors' misconduct.

Liability actions against directors are brought by the bankruptcy trustee, when the company is declared bankrupt.</td></tr>
<tr><td rowspan="2">Insolvency Practitioners</td><td>Curator</td><td>The insolvency practitioner (curator) has the power/duty to manage the assets, sell them, and distribute the proceeds to the creditors.

The curator is appointed by the judgment declaring the bankruptcy, or in case of replacement and revocation by court decree. The law requires certain positive requisites in order to be appointed. In fact, the following may be called upon to carry out these functions pursuant to Article 28 IBL:

• lawyers, accountants and bookkeepers;
• associated professional studios or companies between professionals;
• those who have carried out functions of administration, management and control in joint stock companies.</td></tr>
<tr><td>Liquidator</td><td>The liquidator is called upon to carry out the following tasks:

• to affix the seals on the bankrupt's assets and draw up the inventory;
• draw up the first information report on the causes of the economic breakdown;
• draw up, every 6 months, a report summarizing the activities carried out ;
• draw up the balance sheet for the bankrupt's last financial year;
• examine applications for admission to the liabilities;
• attend the hearing for the discussion of the statement of liabilities;
• examine applications for admission to the liabilities which are submitted late;</td></tr>
</table>

		• to present a request to the court which orders the non-prosecution of the statement of liabilities due to insufficient realization of assets; • prepare a liquidation plan; • submit a statement of available funds every 4 months; • present a management report; • promote the closure of the bankruptcy; • propose to the delegated judge, in order to obtain authorization, the leasing of the bankrupt's company or company branches to third parties.
Role of the courts		The insolvency court operates in collegial composition, and has widespread jurisdiction over the entire procedure, as follows: • it provides for the appointment and revocation of the bodies of the procedure, except when this competence belongs to the delegated judge; • has the task of supervising the procedure, which is expressed in asking for clarifications and information whenever it is deemed necessary from the liquidator and the committee of creditors. The delegated judge has the task of supervising and controlling the regularity of the procedure, being able to ask the receiver for further reports on his work, in particular s/he: • issues urgent measures to protect the preservation of the bankrupt's assets, the so-called acquisition decrees; • convenes the curator and the committee of creditors whenever it deems it necessary, either to obtain clarifications or to request fulfilment of obligations; • authorizes the curator to appear in court; • proceeds to ascertain the liabilities and rights of third parties;
LATVIA		
Insolvency		The insolvency proceedings of a natural person may be applied to a natural person who has been the Republic of Latvia for the last six months and who has financial difficulties (signs of insolvency): • There is no possibility of settling debts of a total of more than EUR 5000 for which the deadline has entered into; • on the basis of verifiable circumstances, it will not be possible for that person to settle debts above EUR 10 000 for which the deadline is set to expire within one year.
Pre-pack sales		No information available
Creditors' committees	**General**	There is no creditors' committee. Other key players in insolvency proceedings in Latvia are the insolvency court (and the insolvency judge), the insolvency administrator, creditors acting at a creditors' meeting, the debtor's representative, the insolvency administration and the Latvian Association of Certified Administrators.
Lodging claims	**Deadline national creditors**	All creditors of the company should be notified about the start of the liquidation process. The deadline for submitting creditor claims is determined by the meeting of participants and by law such a deadline cannot be less than one month from the date of publication of notification. Usually a period of 1 month is set. A notice of termination of activity and the beginning of liquidation of a company

		shall be published in the official publication of the Republic of Latvia. In addition, the liquidator must send a notice about liquidation to all known creditors of the company and invite them to submit their claims to the liquidator within the specified time. Within the time-frame specified in notification, creditors shall submit their claims to the liquidator. In the event that a known creditor has not submitted his claim, or has not accepted the performance, or the deadline for the fulfilment of his obligation has not yet reached, the liquidator is obliged to transfer the amount due to this creditor to a deposit (deposit) account of a notary public.
	Deadline foreign creditors	No rules concerning different deadlines for foreign creditors were found. As a general clause, the deadline for foreign creditors cannot be less than thirty days from the beginning of the insolvency proceeding
Existence of special rules for SMEs		There are no special rules for SMEs in Latvia.
Classes of creditors		Information not available.
Transaction avoidance		Prerequisites for avoiding a transaction are losses incurred by the debtor (such as in the case of undervalue transactions) and knowledge of losses by the counterparty. Knowledge is presumed in the case of transactions concluded with related persons. In addition, the law vests with the insolvency administrator the right to reclaim payments made by the debtor prematurely within six months prior to insolvency, if, at the same time, other payment obligations were not honoured in time.
Rules on directors' duties		Directors must take care about safeguarding the assets for the creditors as well as timely apply for insolvency of the company. Additionally, both directors and any other responsible representative must be able to transfer the books and assets of the company to the insolvency administrator, should insolvency proceedings of the company be started. The directors who are management board members are jointly liable for losses caused to the company in case they fail to transfer the books to the insolvency administrator, or, if the condition of the books does not allow to obtain a clear understanding of the company's transactions and assets in the three years prior to the commencement of insolvency proceedings. The Insolvency Law contains a presumption that the losses are in the amount of the accepted principal claims of the creditors.
Insolvency Practitioners		An administrator shall be appointed by a court on the basis of a nomination by the Insolvency Administration immediately after the initiation of an insolvency matter. The Insolvency Administration chooses and recommends one administrator candidate by the principle of accident. An administrator has many duties according to the Latvian Law. He or she shall: • Ensure that the insolvency proceeding proceeds lawfully and effectively; • Assume the property, documentation and seal of the debtor until termination of the insolvency proceedings or the entering into of a settlement; • Administer the property of the debtor during the insolvency proceedings and ensure its maintenance until the termination of the insolvency proceedings and the payment of money intended to cover the costs of administration and debts, or the entering into of a settlement; • Ascertain the causes of actual insolvency and provide his or her opinion regarding them to the creditors' meeting and the court; • File to the Insolvency Administration information and documents about insolvency proceedings in accordance with the Insolvency Administration's requirements, etc.

Role of the courts		Information not available.
	LITHUANIA	
Insolvency		Bankruptcy proceedings may be brought against a legal person where the court has determined the existence of at least one of the following circumstances: • the company is insolvent; • the company is late in making payments relating to employment relationships to its employees; • the company is or will be unable to meet its obligations. In addition, company insolvency is understood to be a state where a company is unable to meet its obligations (does not pay debts, does not perform work paid for in advance, etc.) and the overdue obligations of the company (debts, overdue work, etc.) exceed one half of the book value of its assets.
Pre-pack sales		There are no pre-pack sales identified in the Lithuanian law.
Creditors' committees	**General**	Creditors convene at a general assembly to decide on the establishment (and members) of the creditors' committee, to investigate any creditors' complaints regarding the conduct of the insolvency administrator, to request any reports from the insolvency administrator and to determine the level of the insolvency administrator's fees. The creditors' committee supervises the activities of the insolvency administrator and protects the interest of the creditors. Its rights and duties, as a general rule, are established by creditors as a whole at their general meeting.
	Voting rights	Information not available.
Lodging claims	**Deadline national creditors**	In the event of bankruptcy of companies and natural persons, and in the event of company restructuring, the court commencing bankruptcy or restructuring sets a time limit during which creditors are allowed to file their claims with the assigned bankruptcy or restructuring administrator and to submit relevant evidence to substantiate those claims. A maximum period of 45 days is set in the case of corporate bankruptcy or restructuring and a period of at least 15 days but no longer than 30 days is set in the case of bankruptcy of a natural person. The assigned administrator verifies the claims filed and, in the absence of any dispute as to their existence or amount, presents them to the court for approval. A challenge to the claims or a part thereof from the administrator is resolved by the court. The court ruling approving a creditor's claim is subject to appeal. If claims are submitted after the deadline for submission thereof set by the court, the deadline may be extended if the reasons for missing it are recognised to be valid.
	Deadline foreign creditors	No specific rules concerning deadlines for foreign creditors has been found. Hence, according to Article 55 of the EU Regulation 848/2015, the deadline cannot be less than thirty days from the beginning of the insolvency proceeding.
Existence of special rules for SMEs		There are no specific rules concerning the insolvency of SMEs.

Classes of creditors & priority claims	**Classes of creditors in bankruptcies proceedings**	Bankruptcies, creditors' claims are satisfied in two stages. At the first stage, creditors' claims are paid without the interest and default penalties; interest and penalties are paid at the second stage. At each stage, the creditor's claims of each lower rank are satisfied after the creditor's claims of the superior rank in the respective stage have been completely satisfied. If the assets are insufficient to fully satisfy the claims of one rank in one stage, the said claims are to be satisfied in proportion to the amount due to each creditor. • First-rank claims are employee claims arising out of the employment relationship; claims for damage compensation due to mutilation or other bodily injury, contraction of an occupational disease or death as a result of an accident at work; and claims of agricultural businesses requesting payment for agricultural products sold; • Second-rank claims are claims in respect of taxes and other contributions to State and social insurance budgets and compulsory health insurance contributions; in respect of money borrowed on behalf of the State and loans secured by a guarantee provided by the State or a guarantee institution vouched for by the State; and in respect of support granted from European Union funds and State budget funds. All other claims from creditors are third-rank claims.
	Classes of creditors in case of restructuring proceedings	For what concern cases of restructuring, creditors' claims are satisfied in two stages. At the first stage, creditors' claims are paid without the interest and default penalties; interest and penalties are paid at the second stage. First-rank claims are employee claims arising out of the employment relationship; claims for damage compensation due to mutilation or other bodily injury, contraction of an occupational disease or death as a result of an accident at work; claims from natural and legal persons requesting payment for agricultural produce delivered for processing; and creditors' claims secured by pledge and/or mortgage not exceeding the value of the assets that have been pledged and are not for sale during the restructuring. Second-rank claims are the remaining claims from creditors, except third-rank claims and secured claims, where the pledged assets are not offered for sale during the restructuring. Third-rank claims are non-employment claims from the members of the enterprise undergoing restructuring who became creditors of the enterprise before the institution of the restructuring proceedings and who, either alone or with other members, are in control of the enterprise undergoing restructuring. At every stage, the creditors' claims of each lower rank are satisfied after the creditors' claims of the superior rank in the respective stage have been completely satisfied. If the assets are insufficient to fully satisfy the claims of one rank in one stage, the said claims are to be satisfied in proportion to the amount due to each creditor.
Transaction avoidance		Any transaction by the debtor that infringes upon creditors' rights may be challenged by the assigned insolvency administrator or an individual creditor, on the basis of *actio Pauliana* within a one-year period of limitation, which starts to run on the day when the transaction became known or should have become known. For a transaction to be successfully contested on the basis of *actio Pauliana*, existence of all of the following conditions is necessary: • the creditor must have an indubitable and valid right of claim, i.e. the debtor must have either failed to fulfil his/her obligation entirely or must have fulfilled in improperly; • the transaction at issue must infringe the creditor's rights. Creditors' rights are infringed where the transaction renders the debtor insolvent or where a solvent debtor prioritises another creditor, or the transaction, while not rendering the debtor insolvent, changes (reduces) the debtor's ability to discharge the obligation to the creditor, for instance, reduces the value of the debtor's assets (such a situation may occur, for instance, when the price received for property sold is significantly below the market price); • the debtor was not obliged to enter into the disputed transaction;

		• the debtor did not act in good faith, because he/she knew that the transaction would breach the rights of the creditors; • the third party that concluded the bilateral transaction with the debtor in exchange for a compensation did not act in good faith. Additionally, at the time bankruptcy or restructuring, disposal of the debtor's property is restricted by law and the debtor's transactions concluded in violation of those restrictions are invalid as of the moment they were concluded.
Rules on directors' duties		In Lithuanian case law and doctrine, the general obligation to initiate insolvency proceedings in a timely manner is regarded as an imperative duty of the director, and failure to comply with this duty is unlawful inaction that may cause damage and therefore incur a director's civil liability. This is a clear element of the liability for delaying insolvency proceedings doctrine.
Insolvency Practitioners	**Bankruptcy proceedings**	Under corporate bankruptcy proceedings, the appointed bankruptcy administrator takes over the company's management, disposes of its estate, organises the sale of the estate and settles with creditors using the proceeds, and takes any steps necessary to wind up the company. The key functions of the corporate bankruptcy administrator are as follows: • to represent the company and to defend its interests and those of all its creditors; • to take over the management of the company in bankruptcy and the bankruptcy estate; • to terminate company contracts that will no longer be implemented (including contracts with members of the management bodies and staff); • to apply for money from the Guarantee Fund in order settle up with creditors/employees; • where necessary, to enter into temporary work or service contracts required for the purposes of the bankruptcy procedure; • to verify the creditors' claims filed and to submit the list of these for approval by the court; • to oversee the business operations of the company in bankruptcy; • to check the company's transactions entered into over the three-year period prior to the institution of the bankruptcy proceedings; • to dispute the company's transactions in court if they are contrary to the company's operating objectives and may have contributed to the company's inability to pay its creditors; • where justified, to apply to the court to have the bankruptcy declared intentional; • to convene creditor meetings; • to draft activity reports and to submit them to the meeting of creditors; • to compile and deliver the company's annual and intermediate financial statements; • to implement the decisions of the court and the creditors' meeting; • to provide information on the bankruptcy procedure; • to organise the sale of the bankrupt company's assets; • to use the funds obtained in the course of the bankruptcy procedure to settle up with the creditors; • to perform any actions necessary to wind up and unregister the company.
	Restructuring proceedings	In the case of a company restructuring, the assigned restructuring administrator acts as a professional consultant and independent person in control of the restructuring procedures. The key functions of the restructuring administrator are as follows: • to contribute to the drafting and consideration of the company's restructuring plan and to take measures to ensure that the restructuring plan is drafted, submitted for approval and implemented within the deadlines set by the court;

		• to prepare a written conclusion on the feasibility of the draft restructuring plan; • to oversee the activities of the management bodies of the company being restructured in as far as they relate to the implementation of the restructuring plan, to notify the members of the company's management bodies of iv) the shortcomings found in their activities and set a deadline for rectifying these, and to apply to the court for removal of the management bodies of the company; • to convene meetings of the company's members, owners of the representatives of the body exercising the rights and obligations of the owner of a State or municipal enterprise and to participate in those meetings without voting rights; • to supply information concerning the restructuring proceedings and to inform the court about the progress of the restructuring plan. The restructuring administrator, together with the management bodies of the company being restructured, are responsible for the implementation of the court-approved restructuring plan. In the case of bankruptcy of a natural person, the assigned bankruptcy administrator disposes of the assets of the natural person organises their sale, and uses the proceeds to settle with the creditors. The key functions of the natural person bankruptcy administrator are as follows: • to dispose of the assets of the natural person and the funds in the deposit account; • to keep the accounts of all the funds received by the natural person and of the use thereof; • to organise the sale of the natural person's assets and settle up with the creditors; • to convene creditor meetings and take part in them without voting rights; • to provide information on the bankruptcy procedure for the natural person and to deliver the restoration plan implementation report; • to initiate amendments to the solvency restoration plan; • to represent the natural person in proceedings for recovery of assets on behalf of the natural person in bankruptcy and take action to recover debts from the debtors; • to defend the rights and legitimate interests of the natural person and all creditors; • to evaluate the expediency of a natural person's self-employment and/or farming activities.
Role of the courts		Information not available
	LUXEMBOURG	
Insolvency		According to the law of Luxembourg, the conditions needed to open an insolvency proceeding are: • Status of trader ; • cessation of payments: it means that unquestionable debts due for payment (e.g. wages, social security, etc.) are unpaid, with term or contingent debts and natural obligations not being sufficient; • loss of creditworthiness (the trader can no longer obtain credit from banks, suppliers or creditors). The Grand Duchy of Luxembourg has eight types of insolvency proceedings. Three apply only to traders (natural and legal persons): • Bankruptcy proceeding ;

		• Composition with creditors to prevent bankruptcy ; • Administration proceedings. In addition to these proceedings, Luxembourg law (Article 593 et seq. of the Commercial Code) provides for a procedure whereby traders can obtain the suspension of payments under certain conditions. A fourth procedure is open only to natural persons who are not traders: this is the over-indebtedness procedure.
Pre-pack sales		No information found.
Creditors' committees	**General**	On the basis of the debtor's proposed composition, the *juge délégué* issues a notice to attend to the creditors by means of a publication in the daily newspapers and by registered letter at least 8 days before the meeting is held. The *juge délégué* ensures that the composition procedure is carried out correctly and chairs the meeting of creditors. On the day of the meeting, the *juge délégué* reports on the state of the debtor's affairs. The debtor then presents the proposed scheme of composition directly to the creditors. The creditors are then invited to declare the amount of their claims in writing and to declare whether or not they agree to the composition. The composition may only be established with the approval of the majority of the creditors, representing 3/4 of the total claims accepted definitively or provisionally. A creditor may be represented by an authorised representative. Creditors who are unable to present themselves beforehand may submit any claims to the court clerk, along with the supporting documentation, during the week following the meeting of creditors and prior to the final deliberation meeting. They will then be required to accept or refuse the composition. Following the meeting of creditors, the court convenes another meeting in order to definitively approve the composition.
	Voting rights	A successful application requires the consent of a majority of creditors representing 75% of the outstanding debt. Creditors with claims which are secured by priority rights, mortgages or pledges can only vote if they waive those rights. The court will not ratify the application if the legal provisions are not met or for reasons of public interest or the interests of creditors. If the court deems that the conditions are not met, it declares the company bankrupt.
Lodging claims	**Deadline national creditors**	Bankruptcy Publication of the bankruptcy notice in one or more newspapers distributed in Luxembourg informs creditors that their debtor has gone bankrupt. They must then file their claims, together with their securities, with the registry of the district court responsible for commercial cases, within the time-limit set in the bankruptcy order. The court clerk records the claims and provides a receipt. Claim declarations must be signed and must include the surname, forename, profession and address of creditors, as well as the amount of the claim, reasons for the claim, and any guarantees or securities associated with the claim. The various claims filed are then verified in the presence of the trustee, bankrupt debtor and official receiver. If the trustee has been able to identify assets that can be distributed between the creditors, he/she summons the latter to a presentation of accounts meeting during which the creditors can give an opinion on the distribution plan. If there are insufficient assets, closure of the bankruptcy is ordered. If the trustee does not fulfil his/her duties to the satisfaction of the creditors, the latter can send their complaints to the official receiver who, as necessary, may replace the trustee. In administration proceedings, the administrators must provide the creditors with details of the reorganisation or asset realisation plan. In this case, the creditors may be invited to make comments. Within 15 days of the creditors being informed, they must tell the registry whether they accept or oppose the plan, which cannot be implemented unless over half of the creditors whose claims represent over half of the liabilities accept this plan.

		Over-Indebtedness In the first instance, during the agreed settlement stage, creditors must file their claims with the Over-Indebtedness Information and Advice Service. Creditors can then take an active part in the adoption of an agreed settlement plan by said Service.
	Deadline foreign creditors	No relevant provision concerning the deadline for foreign creditors were found, but the deadline must be of at least thirty days from the opening of the proceeding in accordance with the Insolvency Regulation. Foreign creditors may lodge their claims in insolvency proceedings brought in another Member State through any means of filing that is provided for by the laws of the State where the proceedings are brought.
Existence of special rules for SMEs		Not found.
Classes of creditors and priority claims		Some creditors with a security or preferential claim are paid first. Preferential creditors are ranked in a legal order that is public policy (property landlords, mortgagees, creditors with securities over the business capital and, in particular, the public treasury in the broadest sense). In general, the trustee refers to Articles 2096 to 2098, 2101 and 2102 of the Civil Code (*Code civil*). The net assets available to unsecured creditors must be distributed on a pro rata basis in accordance with Article 561(1) of the Commercial Code. Once the trustee knows the amount of the fees set by the court, has ranked the preferential creditors and knows the amount left to be distributed between the unsecured creditors, he/she draws up an asset distribution plan that is submitted in the first instance to the official receiver. In accordance with Article 533 of the Commercial Code, the trustee invites all creditors to the presentation of accounts meeting by registered letter, to which he/she attaches a copy of the asset distribution plan.
Transaction avoidance		To protect the interests of creditors, the period between the cessation of payments and the order is regarded as the '*suspect period'*. Certain acts carried out during this period, where they may be detrimental to the rights of creditors, will be null and void. These involve in particular: • any acts in relation to movable or immovable property that the bankrupt has sold at no cost or in return for payment where the sale price is clearly much lower than the value of the property in question; • all payments made in cash or by transfer, sale, offsetting or otherwise for debts that have not yet fallen due; • all payments made other than in cash or using commercial instruments for debts falling due; • any mortgage or any other property rights granted by the debtor for debts contracted before the cessation of payments. Any acts carried out or payments made in fraud of creditors, *i.e.* where done by the debtor in full knowledge of the detriment that this will cause to the creditor (*i.e.* by reducing the insolvency estate, not respecting the ranking of claims, etc.) are deemed null and void, whatever the date on which they occurred.
Rules on directors' duties	**Directors' duties in case of bankruptcy**	The managing director is declared negligent bankrupter if: • their personal expenditure are deemed excessive, or; • they have spent large sums of money in gambling, or in fictitious stock exchange transactions or with the intention of delaying their bankruptcy, they: ✓ made purchases to resell at a loss; or ✓ engaged in ruinous borrowing to raise money; or

		✓ cannot justify the use of assets and funds; or ✓ if, after the cessation of payments, they have paid or favoured a creditor to the detriment of the pool of creditors. A managing director manager may also be declared negligent bankrupter if s/he: • have contracted for the account of others, without receiving any value in exchange; • are declared bankrupt, without having fulfilled the obligations of a previous scheme of composition; • have not made an admission of cessation of payments within the time limit; • have been absent without authorisation from the examining magistrate; • have not kept their accounts in accordance with the law.
	Duties of Managers of Public Limited Companies	The managers of public limited companies (SA) may still be sentenced as a negligent bankrupter if they: • do not provide the information requested by the examining magistrate or the trustee; or • provide inaccurate information.
	Bankrupt of the managing director	The managing director is declared fraudulent bankrupter if s/he: • remove company accounts or other accounting documents, or fraudulently alter their content; or • misappropriate or conceal part of their assets; or • fraudulently acknowledge that they owe amounts that are not owed.
Insolvency Practitioners		Trustees in a bankruptcy represent both the bankrupt person and the body of their creditors. In this dual capacity, they not only are responsible for administering the bankrupt's assets, but are also authorised to monitor, as claimants or defendants, all actions that seek to preserve the assets that must be used as security for the creditors, and also to recover or increase those assets in the common interests of the latter. The trustee may bring any actions in respect of the common security for the creditors, consisting of the bankrupt's assets seek to recover, protect or liquidate those assets.
Role of the courts		The court arranges for the debtor's financial and social situation to be assessed in order to verify the claims and value the assets and liabilities. The court decides on any disputed claims and orders liquidation of the debtor's personal assets. Having decided to open the personal recovery proceedings and having determined that there are assets to be liquidated, the court then proceeds with the liquidation of the debtor's assets.
MALTA		
Insolvency		Insolvency Proceedings (Companies) conditions: according to article 214(2)(a)(ii) of Chapter 386 of the Companies Act (MCA), the company shall be deemed to be unable to pay its debts: • if a debt due by the company has remained unsatisfied in whole or in part after twenty-four weeks from the enforcement of an executive title against the company by any of the executive acts specified in article 273 of the Code of Organization and Civil Procedure; or • if it is proved to the satisfaction of the court that the company is unable to pay its debts, account being taken also of contingent and prospective liabilities of the company.

Pre-pack sales		Pre-packs are not formally codified under Maltese law, and practice has thus far not necessitated their judicial recognition. However, the local legislative architecture may indeed be stretched to accommodate pre-packs; if pre-packs were to enter into vogue locally as a result of developments in the Maltese restructuring market, they could be sanctioned under the CRP or the compromise or arrangement restructuring route. Since pre-packs thrive on speed of execution and minimal court involvement, the CRP would seem to be the more appropriate route for their execution. Where all required consents to the pre-pack are solicited before entry into the CRP, the issuance of the company recovery order (approving the pre-packaged sale) may take place shortly after, and, in any event, within a maximum of 20 days of the CRP application being filed. There would be no plausible grounds for a putting a pre-packaged restructuring plan to creditor or member meetings and subsequently applying to the courts to sanction its outcome under the compromise or arrangement option, unless such option is necessary to overcome hold-out within an impaired debt tranche.
Creditors' committees	**General**	No creditors' committee exists *per se*. A creditors' meeting does exists and has the following responsibilities. In a court winding up, creditors can make submissions to the court on the hearing of a winding-up application. In a creditors' voluntary winding up, following the resolution for winding up, the directors must call a meeting of the creditors and submit to them a full statement detailing the position of the company's affairs, together with a list of the company's creditors and the estimated amount of their claims. The creditors may also nominate the liquidator. If the creditors and the company nominate different persons, the person nominated by the creditors will be liquidator. The creditors may also form a liquidation committee. If the winding up continues for more than 12 months, the liquidator must summon a general meeting of the company and a meeting of the creditors at the end of the first 12-month period and each succeeding 12-month period, during which he or she must submit an account of his or her acts and dealings and the conduct of the winding up during the preceding 12 months, including a summary of receipts and expenditure.
	Voting rights	Information not found
Lodging claims	**Deadline national creditors**	Article 255 of Chapter 386 MCA gives authority to the court to fix a time or times within creditors are to prove their debts or claims or are to be excluded from the benefit of any distribution made before debts are proved.
	Deadline foreign creditors	No specific provision concerning the deadline for foreign creditors were found in Maltese Law. The deadline cannot be less than thirty days.
Existence of special rules for SMEs		The liquidation proceedings in Malta are all designed for Small and Medium Enterprises (SMEs) because in Malta, over 95% of the companies are considered as SMEs.
Classes of creditors and priority claims		Under Maltese legislation there is no definite list of ranking of creditors, since ranking is not found in a specific legislation but is found in various legislation. The legislation which deals with ranking of claims can: be found in: • Article 302 of Chapter 386 MCA states that in the winding up of a company the assets of which are insufficient to meet the liabilities, the rights of secured and unsecured creditors and the priority and ranking of their debts shall be regulated by the law for the time being in force; • Article 535 of Chapter 13 MCA also states that creditors having pledges, privileges or hypothecs shall be ranked according to the law for the time being in force.

		In both cases the law states that ranking of debt shall be regulated by the law for the time being in force. Various specific laws which grant priorities to certain claims, as is the case with the Value Added Tax Act, the Employment and Industrial Relations Act, and the Social Security Act.
Transaction avoidance		Prejudicial transactions to creditors should address transactions undertaken by the debtor with the intention to prejudice the creditors. Currently, the suspect period in Malta is six months
Rules on directors' duties		If a director mismanages the company in a way that endangers the good governance of the company or fails to adequately supervise and act as the *bonus paterfamilias* while managing the company's affairs, he would be personally liable for the damages ensued by the company. • Directors can be liable for the following acts under the MCA: • Duty to file for insolvency; • Fraudulent preference; • Duty to keep proper accounting records; • Fraudulent or wrongful trading. Article 329A of the MCA provides that where the Directors become aware that the company is unable to pay its debts or is imminently likely to become unable to pay its debts, they shall convene a General Meeting of the company to review the company's position and to determine the next steps that should be taken. Under MCA, any act which dispossesses the property or rights of the company made in the period of 6 months prior to the dissolution of the Company, shall be deemed as fraudulent preference against its creditors if it is made gratuitously or at an undervalue or if preference to any creditor is given. Directors may incur liability when proper accounting records are not kept by the insolvent company under Art. 314 of the MCA. Fraudulent trading is defined as carrying out acts with the intention to defraud: • creditors of the company; or • creditors of any other person; or • for any fraudulent purpose. Under Maltese law, directors can be subjected to the following sanctions: • Disqualification – under Art. 320 MCA, if the director is found guilty in terms of Section 312 (delinquent directors), 315 (fraudulent trading) and 316 (wrongful trading) and consequently ordered by the court to make a contribution to the assets of the company or declared personally liable for the debts of the company, is subject to a disqualification order; • Liability in tort – direct liability if the director is involved in fraud or other crimes; • Criminal liability; • Administrative fines – for failure to inform the Registrar regarding a resolution for the dissolution and voluntary winding up of a company.
Insolvency Practitioners	**Winding up proceedings**	The insolvency practitioner in a winding up by the court shall, have the power:

		• to sell the movable and immovable property, including any right, of the company by public auction or private agreement with power to transfer the whole or any part thereof; • to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents; • to raise on the security of the assets of the company any money requisite; • to appoint a mandatory to act for him in his capacity as insolvency practitioner for particular purposes.
	Reorganisation proceedings	In Reorganization Proceedings, during the period that a recovery (reorganization) order is in force, the company shall continue to carry on its normal activities under the management of the special controller. The special controller needs to be an individual who the Court has ascertained to its satisfaction that he/she enjoys proven competence and experience in the management of business enterprises, is qualified and willing to accept the appointment, and has no conflict of interest in relation to his appointment. The special controller has the authority to: • take into his custody or under his control all the property of the company and he shall thenceforth be responsible to manage and supervise its activities, business and property; • after informing the Court, to remove any director of the company and to appoint any individual to serve as a manager; • engage persons for the provision of professional or administrative services, and commit the company to the payment of their respective fees or charges; and • to call any meeting of the members or creditors of the company.
	Bankruptcy proceedings	In case of Bankruptcy, the special controller has the power to: • take possession of all the bankrupts' property and rights of any kind belonging to the bankrupt; • take all the necessary steps to preserve the rights of the bankrupt against his debtors; • register in the Public Registry any hypothec affecting the property of the debtors of the bankrupt. Within one month from the delivery of the judgment of bankruptcy, s/he shall make up an inventory of the bankrupt's property.
Role of the courts		The court has a monitoring and support role. It rules upon the opening of proceedings, it appoints the administrators, decides on the reorganisation or the bankruptcy of the case. The court has various prerogatives during proceedings, which it can adopt via orders – *e.g.* a wide discretion in determining who shall pay for the remuneration of the insolvency practitioner; decide upon disposal of property; issue a temporary decree in order to provide respite for the recovery of the affairs of the bankrupt/partnership etc.
THE NETHERLANDS		
Insolvency		A debtor who is in a situation where he has stopped to pay his due and demandable debts shall be declared bankrupt by court order, rendered either upon his own request or upon the request of one or more of his creditors. Moreover, the bankruptcy order may also be rendered for reasons of public interest or upon the request of the Public Prosecution Service. A debtor who applies for his own bankruptcy has to make plausible to the court that he is no longer able to pay off his debts. When a creditor applies for the bankruptcy of the debtor he must, briefly, prove the same. In practice this means, although not formally required, that such creditor must not only submit his own claim(s), but he has to make plausible as well that the debtor is in default of performing at least one other claim of another creditor (*'supporting claim'*). Only then the court is able to asses that the debtor has stopped to pay his due and demandable debts. So it is not possible for a creditor to lodge a petition for bankruptcy when the debtor only fails to comply with this creditor's claim(s). In such event the creditor can only

		try to acquire an enforceable judgment against the debtor (to be obtained after normal proceedings) which makes him entitled to foreclose the debtor's property, from which he, subsequently, may recover his claim(s).
Pre-pack sales		In Netherlands there is the option of a pre-packaged bankruptcy filing. Before filing for bankruptcy or suspension of payment, the company's management, shareholder or (third party) investor and/or purchaser prepare a plan to acquire or sell certain parts of the business out of the (bankrupt) estate and continue business in another company standing at the ready. Following the preparation of such plan, the court may be asked to appoint a '*silent administrator*' prior to the request for bankruptcy (or suspension of payment) to ensure that the pre-pack plan is acceptable to the administrator and the bankruptcy judge. This process will prevent delay and limit actions on the basis of fraudulent preference (possibly voiding the sale of the business) and allows (part of) the business to be sold as a going concern. There is currently no statutory basis for the appointment of the '*silent administrator*,' and the process is sometimes heavily criticised for its lack of transparency. However, all but two courts allow it, albeit certain requirements have to be met before an application for appointing a '*silent administrator*' will be considered by the courts. In general, the upside of a restart through bankruptcy is that the purchasing company will be able to continue the business with a clean slate, being freed of the burden of costly employees (as cherry picking is possible and transfer-of-undertaking regulations for a large part do not apply), certain other disadvantageous contracts and old debts. The downsides may be that other interested parties will address the trustee to try and win the healthy components of the business; and negative publicity, which is intrinsically connected to insolvency. If the bankruptcy was not preceded by a silent administration and the trustee feels that the sale is not in the best interests of the combined creditors or that public interests bar such a sale, he is at liberty to set aside the pre-pack, although the bankruptcy judge may be addressed if the trustee chooses a clearly unreasonable path. These downsides can – to a certain extent – be remediated by requesting the appointment of a silent administrator prior to filing bankruptcy (or suspension of payment). The silent administrator would review whether a deal with a party other than the envisaged purchaser would be more beneficial to the combined creditors
Creditors' committees	**General**	If desired by the creditors, the court may nominate a committee of creditors to advise the trustee. However, the trustee is not bound by the committee's recommendations. In practice, the nomination of a creditors' committee is uncommon.
	Voting rights	No information found.
Lodging claims	**Deadline national creditors**	According to article 108 of the Bankruptcy act, within fourteen days after the bankruptcy order has become final and binding, the magistrate ('*rechter-commissaris*') shall set: • the latest possible date for the submission of claims; • the date, hour and place for the verification meeting; There must be at least fourteen days between the dates referred to above.
	Deadline foreign creditors	The status of foreign creditors in filing claims is virtually identical to that of domestic creditors. They enjoy the same rights as a creditor whose domicile or registered office is in the Netherlands.
Existence of special rules for SMEs		Not existent.

Classes of creditors and priority claims	A leading principle of Dutch bankruptcy law is the *paritas creditorum* (*pari passum*), which means that all creditors have an equal right to the debtor's assets and that the proceeds of the bankrupt estate are distributed among them *pro rata parte*. However, there are creditors to whom the principle of *paritas creditorum* (*pari passum*) does not apply: • Creditors that hold a security interest; and • Creditors that have a preference by virtue of law. Therefore, the *paritas creditorum (pari passum)* applies to those who have an unsecured claim and do not have a right of preference, *i.e.* the ordinary creditors share *pro rata parte* in the amount available to them. A further exception can be made for subordinated claims.
Transaction avoidance	During bankruptcy proceedings, a liquidator may invoke the *actio Pauliana* to invalidate antecedent transactions that are detrimental to the insolvent estate. Clawback generally requires prejudice, which will materialise if creditors receive a lower distribution on their claims as a result of a transaction. Prejudice would typically be the result of a reduction in the total value of the debtor's estate as a result of a transaction (transactions at an undervalue) or as a result of a disturbance of the statutory waterfall of priorities when a company is already insolvent (preferences). The liquidator should look at the entire transaction (including beneficial aspects of the transaction) and, therefore, has no right to cherry-pick by only looking at one particular provision of a document as a clause that has a negative impact on the recourse position of the joint creditors. If the disputed act was part of a set of transactions, the positive or negative effects of the combined set should also be considered. Where prejudice has been established, the right to challenge the prejudicial action depends on further circumstances. The avoidance of an act entered into without a pre-existing obligation to perform the relevant act requires that the debtor (and in the case of a transaction against consideration, also the counterparty) knew or should reasonably have known that such prejudice would materialise. Knowledge of a mere chance that prejudice may occur is insufficient to invoke the *actio Pauliana*. Knowledge must relate to a reasonable degree of likeliness that insolvency proceedings will be opened, and that the insolvent estate contains a deficit. In certain cases, the onus of proof regarding knowledge of prejudice is reversed by law (*e.g.*, in the event of certain transactions executed between related parties within a period of one year prior to the bankruptcy date). A compulsory or involuntary legal act, on the other hand, can only be avoided either in the event that the transaction occurred at a time when the counterparty knew or ought to have known that a petition was submitted for the commencement of insolvency proceedings against the debtor, or in the event of a concerted action by the debtor and the creditor aimed at facilitating preferential treatment of the latter (collusion). Finally, set-off effected in the period immediately prior to the commencement of insolvency proceedings could be clawed back if the creditor effecting the set-off acted in bad faith when acquiring its claim or debt on which it relied when setting off. Bad faith is, notably, given when the creditor knew or should have known that the insolvency could reasonably be expected. A similar rule applies to the right of an account bank to exercise its pledge over monies standing to the credit of bank accounts of its clients (such a pledge is generally stipulated in the general terms and conditions used by the relevant account bank). The pledge cannot be exercised by account banks in relation to monies paid into the account at a time when the account bank is considered to be in bad faith (as defined above).
Rules on directors' duties	Only a few managerial duties are described in the Dutch law. An example is the standard of care that the director should observe towards the company.

	A director may be held liable by the company itself – or, in case of bankruptcy, by the trustee – for the damages suffered by that company when he acts contrary to his obligations and the damages are a result of that mismanagement. The director is obliged to perform to the best of his abilities in the interest of the company and as could be reasonably expected from a competent and qualified director under the same circumstances. For liability to be accepted there must be a serious personal reproach/fault on the side of the director. All relevant facts and circumstances must be taken in account. Not every imperfection or mistake leads to liability: the director is granted a certain degree of latitude. In principle, collective responsibility entails that all directors are severally and jointly liable for failure, although individual directors do have the opportunity to exculpate themselves when held liable. For exculpation the director must show that he is not to blame for the mismanagement and that he has not been negligent in taking measures to avert the negative consequences of the mismanagement. The board of directors may also be discharged by the general meeting of shareholders, lifting the directors from (internal) liability with regard to the management in the period relevant to the discharge. The discharge only relates to the facts that are officially known to the general meeting. An example of improper performance is entering into irresponsible financial transactions involving great financial risks. Another example of internal liability may apply when a director forces a company to lend a large amount to a third party without stipulating security and/or interest and the third party subsequently goes bankrupt.
Insolvency Practitioners	The court will appoint an administrator. The debtor must inform the administrator about everything that might be relevant for its situation. Often the administrator will end debtor's business and sell its company's assets.
Role of the courts	No information found.
POLAND	
Insolvency	The Bankruptcy Law identifies two independent grounds for the existence of a state of the debtor's insolvency, known as the liquidity test and the balance-sheet test. The essence of the liquidity test, which is the most common grounds for insolvency, is the debtor's loss of the ability to perform its monetary obligations as they come due. The Bankruptcy Law provides for a presumption that the liquidity test is met if the debtor's delay in performing monetary obligations exceeds three months. The balance-sheet test provides, in turn, that a debtor that is a legal person, a commercial partnership, or other organisational unit (with certain exceptions) is also insolvent when the value of the debtor's monetary obligations exceeds the value of the debtor's assets over a period exceeding 24 months.
Pre-pack sales	A debtor that has become insolvent can also find a buyer for its assets on its own. The debtor can then file a bankruptcy petition along with an application for approval of the terms of sale of the enterprise—known as a 'pre-pack.' It is also possible to file a pre-pack application after filing of the bankruptcy petition. A pre-pack application may also be filed by an *in personam* creditor of the debtor. A pre-pack consists of a sale of the assets of an insolvent debtor, approved by the court, but negotiated and prepared prior to the declaration of the debtor's bankruptcy. This procedure allows an investor to quickly acquire the assets of an insolvent company, relatively soon after the declaration of bankruptcy, unlike the time-consuming acquisition of assets under the standard conditions of bankruptcy procedure. In the pre-pack procedure, it is possible to acquire the debtor's enterprise, an organised part of the enterprise, or a set of assets constituting a significant portion of the enterprise. A sale made in the form of a pre-pack has the effects of a sale in execution (acquisition free of encumbrances on the assets or debts of the debtor).

Creditors' committees	**General**	The participation of the creditors in the bankruptcy proceedings is governed by Articles 189-213 of the Bankruptcy Act. Creditors whose claims have been admitted are entitled to take part in the creditors' meeting and vote. The bankruptcy judge, acting *ex officio* or on request, establishes the creditors' committee and appoints and dismisses its members. The committee assists the receiver, controls his actions, examines the state of the funds forming the bankruptcy estate, grants permission for actions that may be performed only with the permission from the creditors' committee and expresses its opinion on other matters if requested by the bankruptcy judge or receiver. The creditors' committee may request the bankrupt party or the receiver to provide clarification and it may examine books and documents concerning the bankruptcy in so far as that does not infringe business confidentiality.
	Voting rights	No information found.
Lodging claims	**Deadline national creditors**	In bankruptcy proceedings the creditors are responsible for lodging claims. Claims must be lodged no more than 30 days after the decision on the declaration of bankruptcy is published in the Court and Commercial Gazette. Claims under an employment relationship do not have to be lodged. Claims of this type are included in the list of claims *ex officio*. The creditor lodges his claim in writing, in two copies. The lodgement should include the creditor's name and address, personal identification, or National Court Register number and in their absence details making it possible to identify the creditor clearly, define the claim together with the incidental dues and the value of the non-monetary claim, evidence confirming the existence of that claim (if the claim has been included in the list of claims drawn up in restructuring proceedings it is enough to invoke that fact), the category in which it may be included, securities linked to it and the status of the case if the claim is the subject of ongoing court, administrative, administrative court or arbitrary court proceedings. If a claim is lodged in respect of which the bankrupt party is not a personal debtor, the subject of the security has to be indicated that is to be used to meet the claim. If the creditor is a partner or shareholder in a bankrupt company, he indicates the number and type of shares he holds. The bankruptcy judge modifies the list of claims after the decision concerning the objection becomes final and he may modify the list of claims *ex officio*. The list of claims in restructuring proceedings is governed in Articles 84 –102 of the Restructuring Act. The list of claims is drawn up by the supervisor or insolvency practitioner based on the debtor's accounting books, his other documents, entries in land and mortgage register and other registers. In remedial proceedings opened on the basis of a simplified request the list of claims is drawn up in so far as possible on the basis of the list of claims drawn up in the preceding restructuring proceedings. If a composition proposal involves dividing the creditors into groups, the list of claims is drawn up taking account of the proposed division.
	Deadline foreign creditors	No information concerning the foreign creditors were found. As a general clause, the term for the lodgement of claim for foreign creditors must be more than thirty days in accordance with the Insolvency Regulation.
Existence of special rules for SMEs		The current Polish Restructuring Law and the Bankruptcy law do not provide for a special treatment of micro and SMEs.
Classes of creditors and priority claims		The claims to be paid out of the bankruptcy estate fall into the following categories: • the first category - claims under an employment relationship for the period before the declaration of bankruptcy (applies mutatis mutandis to the claims of the Fund for Guaranteed Employee Benefits for the repayment, out of the bankruptcy estate, of benefits paid out to the bankrupt party's employees) ; • the second category - other claims, if not met in other categories, in particular taxes and public levies as well as other claims in respect of social insurance contributions;

	• the third category - interest on claims included in the categories above, in the order in which the principal amounts are paid as well as court and administrative fines and claims regarding donations and legacies; • the fourth category - partners' or shareholders' claims regarding a loan or another legal act with similar effects, especially the supply of goods on deferred terms to the bankrupt party that was a capital company in the five years preceding the declaration of bankruptcy, with interest. The sum falling to the creditor is counted first of all towards the main claim, then to interest and other collateral claims, with the costs of proceedings being covered at the end. Claims secured with a mortgage, pledge, registered pledge, fiscal pledge and maritime mortgage as well as rights expiring according to the provisions of the Act and the effects of disclosing personal rights and claims encumbering real property, a right to perpetual usufruct, a cooperative member's ownership right to residential premises or a sea-going vessel entered in the shipping register, are met out of the sum obtained through the liquidation of the encumbered party minus the costs of liquidating that party and other costs of bankruptcy proceedings in an amount no higher than a tenth of the sum obtained through the liquidation; however, the deducted part of the costs of bankruptcy proceedings cannot be higher than the part corresponding to the proportion of the value of the encumbered object to the value of the total bankruptcy estate. Those claims and rights are met in the order of their priority. If the sum obtained through the liquidation of the encumbered party is used to meet both claims secured by a mortgage and expiring rights as well as personal rights and claims, the priority depends on the moment as which the entry of a mortgage, right or claim in the land and mortgage register begins to have effect.
Transaction avoidance	In bankruptcy proceedings the legal actions performed by the bankrupt party in respect of the bankruptcy estate are void. Under pain of nullity, the consent of the creditors' committee is required for the following actions (Article 206 of the Bankruptcy Act): • the continued management of the enterprise by the receiver if it is to last more than three months after the declaration of bankruptcy; • waiving the sale of the enterprise as a whole; • the direct sale of the assets included in the bankruptcy estate; • contracting loans or credits and encumbering the bankrupt party's assets with limited proprietary rights; • the admission, waiver of entering into a composition regarding disputed claims and bringing a dispute before a court of arbitration. In restructuring proceedings, in accordance with Article 129 of the Restructuring Act, under pain of nullity the following actions by the debtor or the insolvency practitioner require the consent of the creditors' committee: • encumbering elements of the composition or remedial estate with a mortgage, pledge, registered pledge or maritime mortgage in order to secure a claim not subject to composition; • the transfer of the ownership of an object or a right in order to secure a claim not subject to composition; • encumbering elements of the composition or remedial estate with other rights; • contracting credits or loans; • concluding an agreement on the leasing of the debtor's enterprise or of its organised part or another similar agreement; • the sale, by the debtor, of real property or other assets worth over PLN 500 000. The insolvency practitioner may institute proceedings to declare actions invalid and other proceedings in which a claim is based on the invalidity of an action.

	An action cannot be declared invalid after one year has elapsed since the opening of remedial proceedings, unless that power expired earlier pursuant to the Civil Code. That time limit does not apply if the request to declare an action ineffective was made by way of an objection. Legal actions performed by the bankrupt party to the creditors' detriment in matters not covered by the provisions discussed above may be challenged accordingly pursuant to the provisions of the Civil Code on the protection of the creditor against the debtor's insolvency (Articles 306 – 308 of the Restructuring Act).
Rules on directors' duties	Directors are responsible for any damage caused as a result of their failure to file a petition within the applicable time limit, unless they are not at fault. It is presumed that this damage covers the amount of unsatisfied creditor receivables toward the company. Members of the management board may also be subject to specific liability consisting of a prohibition on holding managerial positions or conducting business activity for a period of 1 to 10 years in the case of, inter alia, a wilful failure to file for bankruptcy in the event of the company's insolvency.
Insolvency Practitioners	In bankruptcy proceedings, after the declaration of bankruptcy the receiver draws up an inventory, estimates the bankruptcy estate and drafts a liquidation plan. The liquidation plan defines the proposed manner of selling the bankrupt party's assets, in particular the enterprise, the time of the sale, an estimate of expenditure and the economic rationale for the continuation of the business activity (Article 306 of the Bankruptcy Act). After drawing up the inventory and financial report or after submitting a general written report the receiver liquidates the bankruptcy estate (Article 308 of the Bankruptcy Act). After the liquidation the receiver may continue to manage the bankrupt party's enterprise if a composition with the creditors is possible or if it is possible to sell the whole of the bankrupt party's enterprise or organised parts thereof (Article 312 of the Bankruptcy Act).
Role of the courts	Both the Bankruptcy Law and Restructuring provide for an appointment of a specialized judge-commissioner. After declaration of bankruptcy, actions in bankruptcy proceedings are taken by the judge-commissioner, except actions that fall under the competence of the bankruptcy court. Within the framework of his actions, the judge-commissioner has the rights and obligations of the court and the presiding judge. The Judge-commissioner sets the course of the bankruptcy proceedings, oversees the performance of the official receiver, indicates which activities the official receiver cannot get engaged in without his / her approval or the approval of the creditors' council, and also points out shortcomings in performance of their duties.
PORTUGAL	
Insolvency	Insolvency is a factual situation of insufficiency of assets of any legal subject (insufficiency which translates into the impossibility to comply with its due obligations) described by the Insolvency and Recovery Code (*Código da Insolvência e da Recuperação de Empresas* - CIRE), from which may derive the adoption of a recovery measure (in the case where the insolvent party is a company). In other words, insolvency is characterised as the impossibility to comply with the generality of the due obligations of an individual or legal entity, and this situation may be current (incapacity to comply with the due obligations) or imminent (situation of potential incapacity to generate cash flow to cover the liabilities).
Pre-pack sales	There are no pre-pack procedures.

<table>
<tr><td rowspan="2">Creditors’ committees</td><td>General</td><td>Once the insolvency proceedings are held open, the court shall appoint the members of a creditors’ committee, comprising between three and five creditors representing different ranking claims, presided over by the debtor’s major creditor. This committee shall cooperate with the insolvency administrator and is responsible for supervising the performance of the duties of the latter.</td></tr>
<tr><td>Voting rights</td><td>Information not available.</td></tr>
<tr><td rowspan="2">Lodging claims</td><td>Deadline national creditors</td><td>The claim for claims must be filed within the time limit set in the insolvency judgment, which, however, may not exceed 30 days from the judgment.

After the expiry of this time limit, creditors who still wish to obtain payment will have to initiate an action for further verification of claims or further (subsequent) lodgement of claims.</td></tr>
<tr><td>Deadline foreign creditors</td><td>The date or the last day of the time to lodge a claim must not be less than 30 days following the publication of the opening of insolvency proceedings in the insolvency register of the Member State of the opening of proceedings, or if the information with regard to the debtor is not included in the national register, following the date of receipt of this notice by the creditor.</td></tr>
<tr><td colspan="2">Existence of special rules for SMEs</td><td>SMEs are the focus of the Special Recovery Proceedings (Processo Especial de Revitalização – PER), which is found in CIRE. It was through this logic of ‘preventive restructuring’ that the PER was created to try to ‘save’ SMEs.

In relation to SMEs, about insolvency proceedings, in addition to CIRE, the Extrajudicial Business Recovery Regime (RERE), and the Business Recovery Ombudsman (MRE) should be considered. The RERE is an instrument through which a debtor (except for natural persons who are not business owners) in a difficult economic situation or of eminent insolvency may enter into negotiations with all or some of its creditors with a view to reaching an agreement - voluntary, free-content and, as a rule, confidential - tending to its recovery. During a transitional period of 18 months from the date of its entry into force, debtors who are in a situation of insolvency, assessed under the terms of the CIRE, may resort to the RERE.</td></tr>
<tr><td colspan="2">Classes of creditors and priority claims</td><td>The graduation of claims and corresponding hierarchy or priority of payment shall take place in the following order:

• secured claims;
• privileged claims
• common claims; and
• subordinated claims.

<u>The secured claims:</u>

Secured claims are the ones that benefit from real guarantees, including special credit privileges, up to the value of the assets subject to the guarantee, are paid. Secured credits are credits benefiting from: mortgage, pledge, special credit privileges, right of retention, among others.

Secured credits are only paid with the proceeds of the sale of the assets encumbered by the guarantee, after:

• deduction of the costs of the respective settlement (payment of any commissions to auctioneers, costs of notarial acts such as the execution of the public deed or the authentication instrument, etc.) and;
• deducting 10% of the sale proceeds to pay the insolvent estate's debts.

<u>Privileged claims:</u></td></tr>
</table>

	In second place and, if the balance remains, the privileged credits are paid, which are the credits that benefit from general, movable or immovable privileges of credit. General preferential claims are those that apply to the generality of the debtor's assets. Only claims that benefit from general preferential claims are classified as preferential claims and not those that benefit from special preferential claims, which are those that are over specific assets of the debtor. In effect, special preferential claims are considered as real guarantees and are therefore classified as secured claims. <u>Common claims:</u> In the third place and if the balance subsists, the common claims are paid, which are the claims that do not benefit from real guarantees (secured claims), nor from general privileges of credit (privileged claims), nor do they qualify as subordinated claims. Thus, common claims are, for example: • credits that benefit only from personal guarantees, such as surety and personal guarantee; • credits that, despite benefiting from a real security, have not been able to be paid with the value of the sale of the secured asset, as mentioned above under the heading '1st place, secured credits'; • credits whose real security had been extinguished upon the declaration of insolvency (this is the case of some general and special privileges of the State, among others); • claims whose security in rem is completely removed in the context of insolvency proceedings. This is the case of claims secured by a real guarantee of a procedural nature, such as seizure, attachment and judicial mortgage. <u>Subordinated claims:</u> In 4th and last place, if a balance still remains (which is very unlikely), subordinated claims are paid. Subordinated claims are, for example: • claims held by persons especially related to the debtor, whether a natural or legal person; or the, • claims for shareholder loans held by the partners of private limited companies or single partner limited companies, among others.
Transaction avoidance	Acts detrimental to the insolvent estate performed within two years prior to the date of commencement of the insolvency proceedings may be resolved (Article 120, no. 1 of CIRE). This includes all those acts that diminish, frustrate, hinder, endanger, or delay the satisfaction of creditors (Article 120.2 of CIRE). The resolution presupposes bad faith of the third party. Bad faith is understood to be the knowledge that the debtor was in a situation of insolvency; of the prejudicial nature of the act and that, on that date, the debtor was in an imminent situation of insolvency; or of the beginning of the insolvency process (Article 120, nr. 5). In any case, the bad faith of the third party is presumed when the acts performed or omitted have occurred in the two years prior to the commencement of the insolvency proceedings and in which persons especially related to the insolvent, such as parents or children, participated or benefited from (Article 120, nr. 4). In some cases, the requirement of bad faith may be waived (Article 121 of the CIRE). There are, therefore, some acts which are resolvable irrespective of any requirement. For example, the following are therefore resolvable: acts performed by the debtor free of charge in the two years prior to the commencement of insolvency proceedings (including the repudiation of an inheritance or legacy); bail, sureties, sureties, endorsements and credit mandates granted by the debtor during that period, which do not concern transactions or businesses of real interest to the debtor; onerous acts performed by the insolvent in the year prior to the commencement of the insolvency proceedings, in which he manifestly assumed more obligations than the counterparty.

Rules on directors' duties		Directors are also legally required to apply for a declaration of insolvency on behalf of the company within 30 days of the date on which directors become aware of, or ought to have become aware of, the insolvency situation
Insolvency Practitioners	**General**	According to Article 2 of the Statute of the Judicial Administrator (Law No. 22/2013, February 26) '*the judicial administrator is the person in charge of the supervision and guidance of the acts integrating the special revitalization process, as well as the management or liquidation of the insolvent estate under the insolvency proceeding, being competent to perform all the acts committed by this statute and by the law.*' As follows from Art.2, no. 2 of CIRE, the judicial administrator may have three different designations, depending on the functions he performs in the proceedings:
	Insolvency administrator	In view of the lack of confidence in the debtor's administrative capacity, which the debtor's insolvency naturally implies, it is necessary to appoint an insolvency administrator, *i.e.*, an autonomous administrator of the debtor, who has, among other duties (Article 55 of CIRE), the powers to administer the insolvent estate. Thus, with the judgment of declaration of insolvency, the CIRE requires the appointment of an '*Insolvency Administrator*' or reappointment of the '*Provisional Judicial Administrator*', whose role, in collaboration and under the supervision of the judge and the creditors' committee (if any, since it is an optional body in the process), is to administer the insolvent estate, proceeding with the recovery of the company or its liquidation.
	Provisional Judicial administrator	In the special revitalization process (PER) and in the special process for payment agreement (PEAP), having as competencies, according to Article 33 of CIRE, the maintenance and preservation of the debtor's assets, providing for the continuity of the company's operation, unless he considers that the suspension of activity is more advantageous to the interests of creditors and such measure is authorized by the judge. The provisional judicial administrator is thus only in charge of assisting the debtor in the administration of his assets.
	Fiduciary	During the assignment period (5 years) regarding the discharge of the remaining liabilities, after the granting and opening of the process for the discharge of the remaining liabilities (Art.235 et seq. of CIRE), the Trustee is appointed as Fiduciary acting only as a supervisor of the process, verifying that the insolvent who requested the discharge of his liabilities complies with the plan determined by the Court and not having any executive power, as results from Art.241 of CIRE, under the heading '*Functions*'.
Role of the courts		The insolvency court supervises the proceedings. The court appoints the administrator and decides upon opening insolvency proceedings. Under article 36 of CIRE the court can: • appoint the insolvency practitioner; • requires the seizure, for immediate handover to the insolvency practitioner, of the debtor's accounting documents and all assets, even when seized, pledged or in any way attached or held and without prejudice to the provisions of Article 150(1); • when in possession of information justifying the opening of a procedure to examine the culpability of the insolvency, declares the opening of such a procedure, of a full or limited nature, without prejudice to the provisions of Article 187; • set a time limit of up to 30 days to lodge claims; • advise creditors that they are required to inform the insolvency practitioner promptly of any real guarantees they benefit from; • set a date and time in the following 45 to 60 days to hold the creditors' meeting as set out in Article 156, referred to as a report appraisal meeting, or declares, on due grounds, to forego the said meeting.

Insolvency		Insolvency procedure is initiated by submitting an insolvency petition in the insolvency court (the Tribunal where the debtor has its headquarter). The petition may be filed either by the debtor through its representatives, or by any interested creditor meeting the legal conditions. Therefore, any company is entitled to petition for insolvency in Tribunal as soon as it determines that it is/soon will be unable to perform payment of its current/or future debt exceeding the threshold of RON 50,000 (approx. EUR 10,000). At the same time, any creditor of a company may file an insolvency petition in court if its receivables against that company exceed the aforementioned threshold and are overdue for more than 60 days. The debtor may defend against the creditor's petition indicating that even if the above conditions are met, it has sufficient liquidity. In certain cases, the court may decide to oblige the petitioning creditor to pay a bond of up to 10% of the value of his claim (but not exceeding the sum of RON 40,000 equivalent EUR 8,000) in order to cover any damages incurred by the debtor in case the creditor's petition is without sufficient grounds.
Pre-pack sales		Pre-pack administrations are not regulated under Romanian law. The sale of assets in distressed M&A transactions is stricter once the target has entered insolvency. Insolvency proceedings are highly regulated under Romanian law, and involve various approvals and confirmations that must be obtained from the creditors' assembly and the court of law prior to implementing it: - in case of judicial reorganisation, the asset sale must be encapsulated under the reorganisation plan approved by the creditors' committee and confirmed by the court of law. For any amendment to the plan, the approval of the creditors' committee and the confirmation of the syndic judge must be obtained; and - in case of bankruptcy, the assets will be evaluated by an authorised valuator and the creditors committee must approve the valuation reports as well as the type of sale (direct negotiation, auction or a combination of the two) and the sale regulation.
Creditors' committees	**General**	After the first meeting has been convened the delegated judge and then the creditors may appoint a creditors committee, which is made up, depending on the number of creditors, of three or five creditors from among those with the right to vote, with preference claims, budgetary claims and unsecured claims in order of value. The creditors' committee (*comitetul creditorilor*) has the following terms of reference: • to review the debtor's situation and to issue recommendations to the creditors' meeting with regard to the continuation of the debtor's business and proposed reorganisation plans; • to negotiate terms of appointment with the administrator or liquidator whom the creditors wish to see appointed by the court; • to take notice of the reports prepared by the court-appointed administrator or liquidator, to review them and, where applicable, to file objections thereto; • to prepare reports to be presented at the creditors' meeting in regard to the measures taken by the court-appointed administrator or liquidator and their effects, and to propose other measures, giving reasons; • to request the removal of the debtor's right to manage its affairs; • to file legal actions for the annulment of certain fraudulent acts or transactions performed by the debtor to the detriment of creditors when such legal actions have not been brought by the court-appointed administrator or liquidator.
	Voting rights	Information not found.
Lodging claims	**Deadline national creditors**	All creditors whose claims are dated prior to the opening of proceedings have to lodge an application for the admission of their claims within a deadline set in the order opening the proceedings. The application must include: the creditor's name and home address or registered office, the amount due, the grounds of the claim, and details of any potential grounds for preferential ranking. The

		documents supporting the claim and any grounds for preferential ranking are to be attached to the application no later than the deadline set for the submission of the application itself. Claims qualifying for preferential treatment are included on the final list up to the market value of the guarantee, which is established through a valuation ordered by the court-appointed administrator or liquidator and performed by a valuer (evaluator). All claims will be subjected to the verification procedure, except for claims ascertained in enforceable judgments and enforceable arbitration awards; nor does the procedure cover public budget claims arising from an enforceable title which has not been challenged within the deadlines set under the specific laws. The court-appointed administrator or liquidator prepares a preliminary list of claims, which can be challenged before the delegated judge by any interested party, debtor or creditor. Except where the opening of proceedings has been notified in breach of the rules on summonses and notice of procedural acts, the holder of a claim arising prior to the opening of the proceedings who fails to submit an application for admission of the claim by the set time-limit (the time-limit is indicated in the notice and is not more than 45 days from the opening of the proceedings) will lose the right to be included on the list of creditors and will not acquire the position of creditor entitled to take part in the proceedings in respect of that claim.
	Deadline foreign creditors	No specific deadlines were found concerning deadlines for foreign creditors. The deadline must be longer than thirty days according to Article 55 of the Insolvency Regulation.
Existence of special rules for SMEs		Currently, there are no special tools or procedures used to help SMEs.
Classes of creditors and priority claims		The funds obtained from the sale of assets and rights from the debtor's estate which are secured in favour of the creditor on a preferential basis will be distributed in the following order: • fees, stamp duties and any other expenditure arising out of the sale of the assets concerned, including expenses required for the conservation and administration of those assets, expenses incurred by the creditor under the forced recovery procedure, claims of utilities suppliers which arise after the opening of the procedure, and remuneration due to persons employed in the common interest of all creditors on the date of distribution, which will be borne on a pro rata basis in proportion to the value of all the debtor's assets; • claims of creditors enjoying preference that arise during the insolvency proceedings; these claims include capital, interest and other ancillaries, where applicable; • claims of creditors enjoying preference, including the entire capital, interest, and increases and penalties of any kind. If the sums realised from the sale of these assets is insufficient for the full payment of the claims concerned, the creditors have an unsecured or public budget claim, as the case may be, for the difference, which will be ranked with the other claims in the appropriate category. If, after the payment of the sums referred to previously, a surplus remains, it will be deposited by the court-appointed liquidator in the account of the debtor's estate.
Transaction avoidance		The following acts or transactions performed by the debtor can be annulled in order to return the transferred assets or the value of other benefits provided: • acts of transfer without consideration performed in the two years prior to the opening of the proceedings; sponsorships for humanitarian purposes are exempted; • unequal transactions, where what is given by the debtor is clearly greater than what is received, performed in the six months prior to the opening of the proceedings; • acts performed in the two years prior to the opening of the proceedings with the intention on all sides of preventing assets from being pursued by creditors, or of harming their rights in any other way;

	• acts of transfer of ownership to a creditor for or towards the satisfaction of a prior debt, performed in the six months prior to the opening of the proceedings, if the amount which the creditor could obtain in the event of a winding-up of the debtor is below the value of the act of transfer of ownership; • the establishment of a right of preference in regard to an unsecured claim in the six months prior to the opening of the proceedings; • advance payment of debts which are made in the six months prior to the opening of the proceedings, if the due date was to have been a date after the opening of the proceedings; • acts of transfer or assumption of obligations performed by the debtor in the two years prior to the opening of proceedings with the intention of concealing or delaying the state of insolvency or committing fraud against a creditor. The action for annulment can be brought against a constitutive act under property law or an act of transfer of ownership under property law if it is concluded by a debtor in the normal course of its day-to-day business. An application for the annulment of a constitutive act or of an act of transfer of ownership will be entered automatically in the appropriate public registers. After the insolvency proceedings have been opened, all acts, transactions and payments performed by the debtor after the opening of proceedings are automatically null and void, with the exception the ones required for the conduct of current business, ones authorised by the delegated judge, transactions endorsed by the court-appointed administrator
Rules on directors' duties	There is liability for wrongdoing committed before the proceedings are opened. Corporate officers and directors are personally liable if they have committed one of the following acts, if it resulted in the insolvency: • they used the goods or credits of the legal person for their own benefit or for that of another person; • they carried out the activities of production, trade or provision of services in personal interest, under the cover of the legal person; • they ordered, in personal interest, the continuation of an activity that obviously led the legal person to the cessation of payments; • they kept fictitious accounts, made some accounting documents disappear or did not keep the accounts as required in accordance with the law. In the case of non-delivery of the accounting documents to the judicial administrator or the judicial liquidator, both the fault and the causal link between the deed and the damage are presumed, the presumption being relative; • they have misappropriated or concealed a part of the legal person's assets or have fictitiously increased its liabilities; • they used ruinous means to procure funds for the legal person to delay the cessation of payments; • in the month preceding the cessation of payments, they have paid or are willing to pay in a manner that favours one creditor to the detriment of the other creditors; or • any other deed committed intentionally that contributed to the debtor's state of insolvency, as ascertained according to the provisions the law.
Insolvency Practitioners	The authorities and responsibilities of the Romanian insolvency practitioners arise, in the first place, from the provisions of the Government Emergency Ordinance no. 86/2006 on the organization of their activity. Under the applicable rules, insolvency practitioners have a number of powers and responsibilities both in insolvency prevention and in bankruptcy proceedings; moreover the Insolvency Office Holders (IOHs) also play an important role in the ordinary procedures for the dissolution and the liquidation of companies according to the Companies Law no. 31/1990. The Government Emergency Ordinance no. 86/2006 specifies the functions of IOHs, as follows:

		• the Judicial Administrator is the insolvency practitioner appointed to fulfil duties provided both by law or assigned by the court during the observation period and the reorganization procedure; • the Judicial Liquidator is the insolvency practitioner appointed to control the debtor's activity within the bankruptcy procedure and to perform other duties provided by the law or assigned by the court; • the Composition Administrator is the insolvency practitioner appointed to perform the tasks provided by the law or assigned by the court, within the preventive composition procedure; • The 'ad hoc agent' (in Romanian language 'Mandatarul ad hoc') is the insolvency practitioner appointed to perform the tasks set out by the law or the ones assigned by the court, within the out-of-court settlement with creditors procedure.
Role of the courts		The Court has a supervisory and monitoring role. The insolvency procedures are strongly regulates, and the courts generally benefit from a large discretion. Among others, the court has the power to appoint the administrator and liquidator with in insolvency proceedings.
SLOVAKIA		
Insolvency		Insolvency means that the debtor has excessive debt or is cash-flow insolvent. A debtor has excessive debt if the debtor is obliged to keep accounts in accordance with the applicable legislation (Act No 431/2002 on accountancy), has more than one creditor, and the value of the debtor's liabilities is greater than the value of the debtor's assets. A legal person is cash-flow insolvent if it is more than 30 days overdue with the payment of two or more financial liabilities to more than one creditor. A natural person is cash-flow insolvent if he or she is unable to pay at least one financial liability 180 days after payment was due.
Pre-pack sales		There are no rules concerning pre-pack sales in Slovakia
Creditors' committees	**Duties and powers**	Committee's duties: • instructs and makes recommendations to the insolvency practitioner concerning managing the assets, running the debtor's enterprise or a part thereof, and realising the assets. This also includes hiring out the assets or a substantial part thereof (with restrictions when the enterprise is in operation). • concludes an agreement on the temporary provision of funds in connection with running the debtor's enterprise; • continues the running of the enterprise if the debtor is a particular type of financial institution; • establishing a lien on the debtor's assets; • concludes an agreement in connection with running the debtor's enterprise, in which the insolvency practitioner undertakes to continue performance beyond a particular time period or a particular percentage of turnover;
	Voting rights	No information found
Lodging claims	**Deadline national creditors**	A claim is lodged in bankruptcy proceedings by means of an application. A copy of the application is lodged with the insolvency practitioner and must be sent to the practitioner within the standard deadline for lodging claims of 45 days after bankruptcy was declared; the creditor also sends a copy of the application to the court. If a creditor sends the application to the insolvency practitioner later it is taken into account, but the creditor cannot exercise any voting rights or other rights attaching to the lodged claim. This does not prejudice the creditor's right to proportional satisfaction; however, the creditor may only be paid from the proceeds assigned to the distribution schedule of proceeds from the general estate, where the plan to draw up the distribution schedule was announced in the Commercial Bulletin after the insolvency practitioner received the application. The insolvency practitioner publishes in the Commercial Bulletin the registering of this claim in the list of claims, with the creditor's name and the amount of money.

		For a secured claim, the security interest must be invoked in a due and timely manner in an application sent to the insolvency practitioner within the standard deadline for lodging claims of 45 days after bankruptcy was declared; otherwise it will lapse. An application can also be used for a future claim or a claim that depends on a certain condition being met ('*contingent claim'*); however, the creditor may only exercise the rights related to a contingent claim once the creditor has proved to the insolvency practitioner that the contingent claim has arisen. Sending an application to the insolvency practitioner has the same legal effects for the limitation period and the lapse of the right as the exercising of the right in court. In bankruptcy proceedings, a creditor who has a claim due from a person other than the debtor also lodges this claim if it is secured by a security interest in the debtor's assets. If such creditor does not lodge this secured claim within the standard deadline, the bankruptcy proceedings disregard the creditor's security interest; however, the creditor has the right against the relevant estate to the surrender of what has thereby enriched the relevant estate, and may exercise this right against the relevant estate as a claim against the estate, but this claim is only satisfied after all other claims against this estate have been satisfied.
	Deadline foreign creditors	No specific rules concerning foreign creditors were found. As a general clause the deadline must be longer than thirty days according to article 55 of Regulation 848/2015.
Existence of special rules for SMEs		No provisions found.
Classes of creditors and priority claims		In bankruptcy proceedings, the distribution of the proceeds varies according to the type of creditor: • secured creditors, • unsecured creditors, • creditors with subordinated claims, • contractual penalties and claims from creditors related to the debtor. A creditor may lodge all claims against the debtor, including claims that are not yet due for payment. A secured claim (with a security interest in the debtor's assets) can also be lodged. A secured claim a creditor has against a person other than the debtor can be lodged if the security interest concerns the debtor's assets (there are certain restrictions on satisfaction in such cases); if such a claim is not lodged, it is treated as a weaker claim against the estate. Future claims and contingent claims can also be lodged. Claims that are not lodged by means of an application are called claims against the estate. They are divided into claims against the general estate and claims against a separate estate (secured with a security interest). The insolvency practitioner satisfies claims against the general estate on an ongoing basis; if claims of the same ranking against the general estate cannot be fully satisfied, they are satisfied proportionally. Claims against a separate estate relate to the separate estate. The insolvency practitioner satisfies claims against the separate estate on an ongoing basis; if claims of the same ranking against the separate estate cannot be fully satisfied, they are satisfied proportionally.
Transaction avoidance		The Bankruptcy Act legislates for acts detrimental to the creditor by making them ineffective under certain conditions. Ineffectiveness only has consequences if the debtor's acts are contested. The insolvency practitioner and the creditors have the right to contest them, but a creditor only has this right if the insolvency practitioner does not act on the creditor's request to contest a legal act within a reasonable time. The right to contest a legal act lapse if it is not exercised in respect of the debtor or in court within a year of bankruptcy being declared; the right to contest a legal act is only considered to have been exercised in respect of the debtor if the debtor acknowledges the right

		in writing. Under the legislation, legal acts from which entitlements are enforceable, or have already been satisfied, can also be contested.
Rules on directors' duties		In general, directors are liable for damage caused to the company as a result of a breach of their duties, whether in cases of financial distress or not. For the liability to arise there has to be: • a breach of a duty under the law or incorporation documents of the company; • damage incurred by the company; and • a causal link between the breach and the damage incurred by the company. A breach of duty can be based on a director's action or omission. The breach does not require a culpable act (*i.e.* negligence or intent of a director). The law provides for a rebuttable legal presumption that a director has breached their duties. This means that unlike in standard damage claims, where the claimant would bear the burden of proof regarding the breach, in the event of a breach of duties the burden of proof rests on the director, who must substantiate that the duties were not breached. There are several legal provisions that create directors' liability in the case of financial distress. For instance, if a director found out or, considering all circumstances, could find out that the company is in crisis (*i.e.* if the company is insolvent or at risk of insolvency), the director is obliged to procure all reasonably necessary steps to overcome the crisis. Further, directors may not distribute dividends or other distributions to shareholders if, considering all circumstances, it causes insolvency of the company and the company's equity to be lower than its share capital plus reserve funds. Furthermore, there are a number of other cases of specific personal liability of directors which are discussed in the following parts of this survey
Insolvency Practitioners	**General duties**	Insolvency practitioner primarily manages the assets subject to bankruptcy proceedings, realises them and uses the proceeds to pay the debtor's creditors. When the bankruptcy order is made, the debtor's right to dispose of assets subject to bankruptcy proceedings and the right to act on the debtor's behalf in matters concerning these assets pass to the insolvency practitioner, who now acts in the name and for the account of the debtor. Insolvency practitioners' duties are to: • produce a list of assets in the bankruptcy estate and disposes of them (i.e. the assets subject to the bankruptcy proceedings); • terminate certain contracts; • realise the assets from the estate, pays the costs of the bankruptcy proceedings, proposes the distribution schedule for the proceeds, and subsequently implements it; • if the bankruptcy proceedings use a payment schedule, to draft the payment schedule and submits it to the court for approval.
	Role in case of reorganisation	In case of reorganisation, the insolvency practitioner's main role is to draft the reorganisation plan in collaboration with the debtor and the creditors. S/his duties are to: • examine the claims lodged and establishes or denies them; • supervise the debtor.
Role of the courts		In insolvency proceedings, the court has the power to declare bankruptcy and to supervise the restructuring process.
	SLOVENIA	

<table>
<tr><td colspan="2">Insolvency</td><td>Insolvency is defined as a situation where:
the debtor has been insolvent for a lengthy period of time because it was unable to pay all of its obligations due in that period; or
the debtor has become long-term insolvent because the value of its property is less than the sum of its obligations (over-indebtedness), or because the loss of the debtor capital company together with the loss brought forward in the current year exceeds half of the share capital, and the losses cannot be covered by profit brought forward or from reserves.</td></tr>
<tr><td colspan="2">Pre-pack sales</td><td>Pre-package sales are not foreseen by Slovenian law.</td></tr>
<tr><td rowspan="2">Creditors’ committees</td><td>General</td><td>The creditors' committee shall be formed:
in compulsory settlement proceedings, and;
in bankruptcy proceedings, if the formation of a creditors' committee is requested by the creditors.
The number of members of the creditors' committee shall be determined by the court. The number of members of the creditors' committee must be odd and may not be less than three, unless the number of creditors is less than three, and not more than 11. In determining the number of members of the creditors' committee, the court must take into account the total number of creditors.
The number of members of the creditors' committee shall be determined by the court:
if it is competent to decide on the appointment of the members of the creditors 'committee: by a decision appointing the creditors' committee,
if the members of the creditors' committee are elected by the creditors: by a decision on the election of the creditors' committee.
In compulsory settlement proceedings, the court appoints the members of the creditors' committee by a decision on the institution of these proceedings. The court must appoint creditors as members who are the holders of ordinary claims against the debtor in highest total amount.</td></tr>
<tr><td>Voting rights</td><td>No information found</td></tr>
<tr><td rowspan="2">Lodging claims</td><td>Deadline national creditors</td><td>In general, in compulsory settlement proceedings, the creditor shall lodge a claim against an insolvent debtor within one month following the publication of the notice of initiation of such proceeding. In bankruptcy proceeding the deadline is three months.</td></tr>
<tr><td>Deadline foreign creditors</td><td>The deadline must be longer than thirty days from the beginning of the proceeding.</td></tr>
<tr><td colspan="2">Existence of special rules for SMEs</td><td>Special rules for compulsory settlement proceedings over small, medium or large-sized company, imposed in section 4.8 of the Financial Operations, Insolvency Proceedings and Compulsory Winding-up Act (ZFPPIPP) regulate the following matters:
the process of appointing insolvency practitioners in compulsory settlement proceedings,
the creditor’s proposal to initiate compulsory settlement proceedings,
financial restructuring measures,
lodging and testing of claims and value of collateral,
re-compulsory settlement proceedings after final confirmation of compulsory settlement proceedings,</td></tr>
</table>

		• creditors' agent.
Classes of creditors and priority claims		The level of priority of creditors in insolvency proceedings is determined in ZFPPIPP (in descending order) is: • creditors with secured claims (creditors with a right to separate satisfaction) and exclusionary creditors (creditor with an exclusion right), • creditors with unsecured priority claims (salaries, compensations, taxes etc.), • creditors with unsecured ordinary claims and, • creditors with unsecured subordinated claims.
Transaction avoidance		Creditors and the bankruptcy administrator have the right to contest a legal act of the debtor. Any legal acts can be contested (including omissions) that result in unequal or reduced payment of bankruptcy creditors or in placing a particular creditor in a more favourable position. Legal acts that may be contested in bankruptcy proceedings are those that were committed in the period from the last year before the submission of a petition to launch bankruptcy proceedings until the opening of bankruptcy proceedings. An unpaid legal act (or legal acts of disproportionately low counter value) can be contested when committed in the period starting 36 months before the submission of the request to launch bankruptcy proceedings and ending upon the opening of bankruptcy proceedings. A lawsuit for voidability must be lodged within 12 months after a decision on opening bankruptcy proceedings becomes final. It is not possible to contest legal acts performed by the debtor in bankruptcy during compulsory settlement proceedings, in accordance with legal rules applicable for conducting the debtor's business in the proceedings; legal acts performed by the debtor in bankruptcy to pay creditor claims in the proportions, within the deadlines and at the interest rates set out in a confirmed compulsory settlement; and payments for bills of exchange or cheques if the other party had to receive a payment in order for the debtor in bankruptcy not to lose the right of recovery against another person obligated under the bill of exchange or cheque. Legal acts performed by the debtor to pay creditor claims or to perform other obligations in accordance with a confirmed agreement on financial restructuring cannot be contested either.
Rules on directors' duties		When a company becomes insolvent management must, within one month, draft a report on its financial position and its opinion of its chances of restructuring and, based on this report and the likelihood of successful restructuring, either financially restructure the company or petition for bankruptcy (after which, the supervisory board must opine on such report within five working days). If the management or the supervisory board of the company fails to fulfil their respective duties, their individual members will be jointly and severally liable to the creditors for any damages incurred by the creditors due to the members' failure to achieve complete payment in bankruptcy proceedings. The ZFPPIPP provides specific rules on damage liability, amount of damages, exemptions and limitations of the liability, enforcement of claims and more.
Insolvency Practitioners	**Receiver**	In accordance with the provisions of ZFPPIPP the receiver shall be a body in insolvency proceedings, executing its competencies and tasks in such proceedings, stipulated by an Act, with the aim of protecting and realising the interests of creditors. In insolvency proceedings, the receiver shall conduct the operations of the insolvent debtor according to the needs of the procedure, and represent him: • in procedural and other legal actions in relation to testing claims, to rights to separate satisfaction and exclusion rights; • in procedural and other acts in relation to rebutting the legal actions of the insolvent debtor; • in legal transactions and other acts necessary for the realisation of the bankruptcy estate;

		• in realisation of the right to dispose of the claim and other rights acquired by an insolvent debtor as legal consequences of the initiation of bankruptcy proceedings, and; • in other legal transactions which the insolvent debtor may carry out pursuant to ZFPPIPP. The receiver shall perform his tasks and competencies in accordance with ZFPPIPP and regulations issued on the basis thereof, other acts which apply for an insolvent debtor, and regulations issued on the basis thereof and the rules of the profession of persons who execute operations for other persons as mandataries. In performing his tasks and competencies, the receiver shall act conscientiously and fairly, with a corresponding professional care, and so as to protect and realise the interests of creditors, which shall be the guide in executing such tasks and competencies. The receiver shall treat creditors who are in an equal position vis-a-vis the insolvent debtor, equally and shall not enable or allow that individual creditors in the procedure achieve priority payment or other benefits to the detriment of other creditors who are in an equal position vis-a-vis the insolvent debtor, or that other persons obtain the insolvent debtor's assets which belong to the bankruptcy estate without providing for an equivalent counter performance, or other benefits to the detriment of the bankruptcy estate which are not in accordance with acts, regulations and rules of the profession mentioned above. The receiver shall prepare a regular report on the conduct of the procedure every three months. The receiver shall submit a regular report to the court in compulsory settlement proceedings within eight days, and in bankruptcy proceedings within one month following the end of the period to which the report refers. Upon a request by the court or creditors' committee, the receiver shall submit a written report on a certain matter significant for the conduct of the procedure, or protection, or realisation of interests of creditors in such procedure (extraordinary report), within eight days following the receipt of the request, unless a longer time limit for submission is determined in the request. A presiding judge shall instruct the receiver on the work which are obligatory for him.
	Liability of the receiver	The receiver shall be liable to creditors for any damages incurred as a result of a violation of his obligations. The receiver shall be liable to creditors for the damages referred to in the previous sentence, caused in an individual insolvency proceeding, up to five times the amount of entitled remuneration from such procedure, but not less than EUR 5,000.
Role of the courts		The district court has competence to deal with insolvency proceedings. A single judge presides in insolvency proceedings. The Ljubljana Higher Court is territorially competent to decide appeals in all insolvency proceedings.
SPAIN		
Insolvency		The law lays down certain subjective and objective prerequisites to be met in order to open insolvency proceedings: • Subjective prerequisite: any debtor can be declared insolvent, whether a natural or legal person, an entrepreneur or a consumer, although the law contains some specifications in relation to the type of debtor in question, especially in the case of commercial companies or consumers. Authorities that make up the territorial organisation of the state, public sector bodies and other public law bodies cannot be declared insolvent. • Objective prerequisite: the debtor's insolvency, defined as the inability to pay its liabilities on a regular basis.
Pre-pack sales		For the time being, there is no specific legal regulation of this figure in the Spanish legislation. But from the actions already carried out, the following structure can be observed: First, there is a preliminary phase. During this phase, the entrepreneur must inform the Court of the opening of negotiations with its creditors. Then, it must communicate that operations are being carried out regarding the sale of production units. An independent

		expert appointed by the company will be in charge of carrying out the sale of the production units. This independent expert will also be in charge of ensuring compliance with the law and providing transparency to the process. Once the insolvency proceedings are declared, this independent expert will become the insolvency administrator. The second phase is the judicial phase of authorization and implementation of the pre-pack operations. This will be done through Article 530 of the Consolidated Text of the Insolvency Law. This determines that the debtor must present a liquidation plan with a proposal for the acquisition of the productive unit. Subsequently, the judge will agree the opening of the liquidation phase.
Creditors' committees	**General**	In general, creditors are represented in the creditors' committee, which will be considered validly constituted when the following quorum is reached: • claims for an amount of at least half of the ordinary aggregate liabilities; or • creditors who represent at least half of the class of claims that could be affected by the contents of the proposed Company Voluntary agreement (CVA).
	Voting rights	Information not available
Lodging claims	**Deadline national creditors**	When insolvency proceedings are opened, creditors are granted a period of one month from publication of the order in the Official State Gazette to make their claims, and the administrator must inform each of the creditors identified in the debtor's documentation of the responsibility to communicate their claims. The period is no different for creditors domiciled abroad. This communication must be written and addressed to the administrator, and it must identify the claim with the necessary information: • on amount, • the dates on which the claim arose and became due, • characteristics and expected classification, • if a special preferential right is alleged, • the assets or rights subject to payment and their registry details must be indicated. The administrator must decide on the inclusion or exclusion of each claim and its amount in a list of creditors which will accompany their report. Creditors that are dissatisfied with the classification or amount of the claim or those that were not included can challenge the report within a period of 10 days by filing for an incidental insolvency proceeding, on which the judge will issue a judgment.
	Deadline foreign creditors	No specific information were found in Spanish law, as a general clause, according to Article 55 of Regulation 848/2015, the deadline must be more than thirty days from the beginning of the proceeding.
Existence of special rules for SMEs		There are no specific rules for SMEs.
Classes of creditors and priority claims		Once insolvency proceedings are opened, the claims of all of the creditors, whether unsecured or preferential are included among the debtor's liabilities. The purpose here, based on the principles of *parcondicio creditorum* (*pari passu*) and compliance with the '*dividend law'*, is to give all claims equal treatment in the context of the debtor's verified insolvency and when it comes to settling all of its debts. There is a difference in creditors and their respective claims: Claims with special preference (Article 270) include:

	• Claims secured with a real estate mortgage, a chattel mortgage, or with a registered lien on the mortgaged or pledged assets or rights; • Claims secured by the pledging of income from encumbered property; • Loan claims on fixed assets, including the claims of workers on the objects manufactured by them while they are the property or in the possession of the debtor; • Claims on financial lease payments or purchase at fixed prices of movable or immovable assets, to the benefit of the lessors or sellers and, if applicable, the financial backers, on assets leased or sold with reservation of title, with a prohibition on disposal or with a condition subsequent in the case of non-payment; • Claims guaranteed with securities represented in account entries, on the encumbered securities; • Claims secured by a pledge established in public documents, on pledged assets or rights that are in the possession of the creditor or of a third party. Claims with general preference (Article 280) include: • Wage claims; • The amounts corresponding to tax and social security withholdings owed by the debtor in compliance with a legal obligation; • Claims of natural persons arising from freelance work and those that correspond to authors for the assignment of the exploitation rights of works subject to intellectual property protection, accrued during the six months prior to the insolvency order; • Tax claims and other public law claims. This preferential right may be applied to up to 50 % of the overall claims of the tax authority and the overall claims of the social security system, respectively; • Claims for non-contractual civil liability; • Claims arising from new cash income granted in the context of a refinancing agreement that meets the conditions laid down in Article 71(6) and of the amount not recognised as a claim against the insolvency estate; • Up to 50 % of the amount of the claims held by the creditor that applied for the insolvency proceedings and which are not considered subordinate. Subordinate claims (Article 281) include: • Claims that have been communicated late, except where these relate to claims under forced recognition or due to court decisions; • Claims that, on the basis of contractual agreement, are subordinated; • Claims for surcharges and interest; • Claims for fines and penalties; • Claims held by any persons with a special relationship with the debtor under the terms established in this Law; • Claims arising from revocatory actions due to a person having been declared to have acted in bad faith in the contested act; • Claims arising from contracts with reciprocal obligations or, in the case of reinstatement, in the situations laid down in the provision.
Transaction avoidance	The regulation of revocatory actions in insolvency proceedings is contained in Articles 226 et seq. of the Recast Text of the Insolvency Law. These provisions have undergone successive amendments, mainly in relation to the nature of the '*protective mechanisms'* of the refinancing agreements.

	Article 226 contains the legal system for claw-back actions, based on a general clause declaring all acts carried out by the debtor that are '*detrimental to the assets covered by the proceedings'* as '*revocable'*, whether or not there was '*intention to mislead'*. In order to safeguard the effects of revocation, a specific period of time is established: the two years prior to the date of the insolvency order. The law opts for the establishment of a specific revocation period: two years dating back from the date of the insolvency order. Actions carried out during the '*suspect period'* by the debtor are revocable if they are detrimental to the assets covered by the proceedings. Pecuniary detriment must be satisfactorily proven by the party making the complaint. However, given the difficulties normally entailed in proving detrimental acts, the Insolvency Law facilitates bringing actions through the establishment of a set of presumptions. As happens in other parts of the law, the presumptions may be irrebuttable or rebuttable. The pecuniary detriment is presumed irrebuttable in two cases: • when dealing with the free disposal of assets, except donations for use, and • when dealing with payments and other acts settling obligations that fall due after the insolvency order, unless they are secured by collateral, in which case the presumption admits evidence to the contrary; The pecuniary detriment is presumed rebuttable in three cases: • when dealing with the disposal of assets against payment to persons with a special relationship with the insolvency debtor, • when dealing with the creation of charges on property in favour of pre-existing obligations or in favour of new obligations incurred to replace the former, and • payments or other acts settling obligations secured by collateral and that fall due after the insolvency order. Legal standing to bring revocatory actions in insolvency proceedings falls to the administrator. However, for the purpose of protecting creditors against the inactivity of administrators, the law provides for a subsidiary or second grade legal standing for creditors that have urged the administrator in writing to bring a revocatory action, if within a period of two months since the date of the request the action is not brought by the administrator. The law contains rules aimed at ensuring that administrators effectively carry out the role of ensuring that the assets covered by the proceedings are not disposed of. For actions against refinancing agreements, legal standing is exclusive to the administrator, excluding any subsidiary standing. In order to protect the refinancing agreements, there are special rules resulting from recent legislative amendments, which define protective mechanisms that make these agreements (approved under certain conditions) resistant to revocatory actions.
Rules on directors' duties	The failure to take reasonable steps to minimise losses to creditors may violate the duties and responsibilities of directors. Article 164(1) of the Insolvency Act provides that the insolvency will be found to be negligent when the insolvency has been originated or aggravated with bad faith or gross negligence on the part of the company's directors or liquidators (or any person holding such a position in the two-year period before the filing of the insolvency petition). If the insolvency is found to be negligent, the directors can be held liable for '*bankruptcy liability'*, that is the liability to cover the deficit between the assets and the liabilities. In addition, if directors violate their duties by misappropriating corporate assets, the insolvency will be declared negligent, and the directors would be subject to bankruptcy liability. Article 164(2.4) of the Insolvency Act provides that the insolvency will be found to be negligent when the debtor has taken all or part of his assets to the detriment of his creditors, or had carried out any act that delays, makes difficult or impedes the efficiency of a seizure of assets in any kind of enforcement action.

	In addition, Article 164(2.5) of the Insolvency Act provides that the insolvency will be found to be negligent when the assets or rights of the debtor have been fraudulently removed from the pool of assets during the two-year period before the opening of the proceedings. Under Article 164(2-6) of the Insolvency Act provides that the insolvency will also be found to be negligent when the debtor (a director or officer of the debtor) has carried out any action aimed at imitating a fictitious financial condition before the opening of the insolvency proceedings. According to Article 165(1) of the Insolvency Act provides that it will be presumed that the debtor (a director of officer of the debtor) or its legal representatives, administrators or liquidators have acted in bad faith or with gross negligence when they breach the duty to request the opening of the insolvency proceedings (unless proved otherwise). Article 5 of the Insolvency Act provides that the debtor (a director of officer of the debtor) must request the opening of the insolvency proceedings within two months following the date on which it has known, or should have known, about the insolvency. Moreover, there is no liability for directors who make a preferential payment to one creditor as opposed to another creditor when there are insufficient monies available to pay both. If the directors allow the company to continue to trade when there is little prospect of being able to pay when due, they may breach their obligation to file the application for the opening of insolvency proceedings under Article 5 of the Insolvency Act (see above). Article 164(2.1) of the Insolvency Act provides that the insolvency will be found to be negligent when the debtor (a director of officer of the debtor) is legally bound to keep accounts and has substantially breached the obligation, has kept double accountancy, or has committed irregularities in the accounts that are relevant for the understanding of the company's financial situation. However, Article 165(1.3) provides that it will be presumed that the debtor (a director of officer of the debtor) or its legal representatives, administrators or liquidators have acted in bad faith or with gross negligence, when the debtor (a director of officer of the debtor) who is legally bound to keep accounts: • Has not drawn up the annual accounts; • Has not audited the annual accounts when required; • Has not filed the accounts with the Commercial Registry in any of the three years before the opening of the proceedings.
Insolvency Practitioners	The functions of the insolvency administrator are limited by the type of insolvency proceeding in which he acts, so that in the case of a compulsory insolvency proceeding the administrator will replace the debtor in the exercise of his powers of administration and disposal of the estate, while in the case of a voluntary insolvency proceeding his actions will be limited to simple intervention in the functions of the company's management board, whose actions will be subject to his consent. The administrator is a necessary person that assists the judge and is entrusted with managing the insolvency proceedings. Once insolvency proceedings have been opened, the judge orders the initiation of phase two of the proceedings, which includes everything relating to the appointment, provisions governing, powers and responsibilities of the administrator. The administrator is chosen from among the natural and legal persons voluntarily registered in the Public Insolvency Register in accordance with the conditions established by law. Insolvency practitioner has a series of duties, such as: • duties of a procedural nature; • duties relating to the debtor or its governing bodies; • duties regarding labour matters; • duties relating to creditors' rights;

		• report and evaluation duties; • duties relating to the realisation or liquidation of assets; • secretarial duties. Their most important duty is to submit the report provided for in Article 292, to which they must add an asset inventory proposal and the list of creditors.
Role of the courts		The insolvency courts have a monitoring role and supervise the conduct of insolvency procedures. The judge is also competent to make decisions relating to collective suspension of employment contracts when the employer is declared insolvent and to hear liability actions against the directors or liquidators of the insolvent company.
SWEDEN		
Insolvency		Insolvency is defined as a situation where the debtor is not able to duly pay his debts, and this inability is not of a temporary nature.
Pre-pack sales		Pre-packaged sales are possible in practice and is not uncommon. However, a pre-pack and its commercial terms will always be reviewed by the official receiver in subsequent bankruptcy proceedings, thus with a risk of being set aside. Also, with little transparency and no creditor consultation pre-packs have been debated, and still are, especially where the business/assets are sold to someone connected to the debtor. When doing a prepack sale, it is recommended to obtain a third-party valuation of the property sold, to avoid a sale at undervalue which can be criticized and potentially challenged.
Creditors' committees	**General**	In case of Business Reorganisation, the committee consists of no more than three members. In some cases, employees will also have the right to appoint a representative as an additional member of the committee. The court may appoint further members if there are particular grounds for doing so. The business reorganisation officer must consult the creditors' committee with regard to matters of importance if there is nothing to prevent this. In Bankruptcy the creditors have no formal role in the bankruptcy procedure. The administrator must consult creditors that are particularly affected if there is nothing to prevent this. The creditor are also entitled to receive information from the administrator, and to attend the taking of the oath, for example. A creditor may request that a supervisor be appointed to monitor the administration of the bankruptcy estate on the creditor's behalf.
	Voting rights	No information found.
Lodging claims	**Deadline national creditors for Bankruptcy**	In general, only those claims that arose before the bankruptcy decision was announced may be asserted during bankruptcy. A claim may be asserted during bankruptcy even if it is conditional or has not fallen due for payment. The creditors must submit their claims in writing within the set period. If a creditor holds a right of pledge or retention right over property, they do not need to submit proof of the debt as part of this procedure in order to obtain payment from the property. If debts have been proved, and a creditor wishes to submit a claim or exercise a right of pledge after the time-limit for the submission of proof, they may submit proof ex post.
	Deadline national creditors for Business Reorganisation	There is no general obligation for creditors to submit claims in the event of business reorganisation, but the creditor may need to submit his or her claims as part of any composition negotiations that take place. The business reorganisation officer must produce a business reorganisation plan. The plan usually shows how the financial situation of the debtor company can be resolved and how its operating results are to be improved. The content of the plan may, however, be adapted to the circumstances in individual cases.

	Deadline national creditors for Debt Restructuring	If a decision is taken to initiate the debt restructuring process, a notice to that effect must be published immediately in the official gazette, and it must also be sent to the known creditors within one week of publication. These notices must invite the creditors inter alia to submit their claims against the debtor, usually in writing within one month of the date of publication, giving details of their claims and any other information relevant to the assessment of the case, and details of the account into which any payments are to be made during the debt restructuring process.
	Deadline foreign creditors	No specific Swedish provision define the deadlines for the lodgement of claim for foreign creditors. Therefore, according to Regulation 848/2015, the deadline must be longer than 30 days from the beginning of the insolvency
Existence of special rules for SMEs		No specific rules for SMEs.
Classes of creditors and priority claims	**Business Reorganisation**	Claims based on agreements entered by the debtor with the consent of the business reorganisation officer during the business reorganisation enjoy a general preference.
	Bankruptcy	The Preference Act regulates the entitlements of the creditors to receive payment in the event of bankruptcy. Creditor with preference is either special or general. A special preference relates to certain property (examples being a right of pledge, a right of retention, or a mortgage on immovable property). A general preference relates to all property included in the debtor's bankruptcy estate. A special preference takes precedence over a general preference. Any claims that do not enjoy a preference have the same rights among themselves. It may also have been provided in an agreement that a creditor is entitled to payment only after all other creditors have been satisfied A preference continues in being even if the claim is transferred or attached or otherwise passes to another party. If a claim enjoys a special preference with respect to certain property, but the property in question is insufficient to satisfy the claim, the remainder is treated as a claim without preference.
	Debt restructuring	In case of Debt Restructuring all claims covered by a debt restructuring have equal rights. A claim may, however, be given less favourable rights with the consent of the creditor in question or may be paid out before other claims if the sum available at distribution is small and it is reasonable to do so having regard to the scale of the debts and other circumstances.
Transaction avoidance		An act can be reversed if it improperly favoured a certain creditor over others, or if the creditors have been deprived of the debtor's property, or if the debtor's debts have increased, and if the debtor was insolvent or became insolvent as a result of the proceeding alone or as a result of the proceeding in combination with other factors, and the other party knew or should have known that the debtor was insolvent and what the circumstances were that rendered the legal act improper. Payment of a debt later than three months before the reference date using a method other than the customary means of payment, or in advance, or of an amount that appreciably worsened the debtor's financial status, can be reversed unless it can be regarded as ordinary in the circumstances. If the payment was made to one of the debtor's family members prior to that date but later than two years before the reference date, it can be reversed unless it is shown that the debtor was not insolvent and did not become insolvent as a result of the act in question.

Rules on directors' duties		Where there is reason to believe that the shareholders' equity is less than one-half of the registered share capital or if it has been shown during execution of a distraint order that the company lacks attachable assets, the board of directors is obliged to prepare immediately a balance sheet of the company for liquidation purposes Directors must issue a notice of a general meeting if the balance sheet shows that shareholders' equity is less than one-half of the registered share capital. If a second balance sheet, prepared within a set time limit, shows that the shareholders' equity still does not exceed one-half of the registered share capital, the board of directors has a duty to petition the court for a liquidation order. Should the board of directors fail to prepare the balance sheet (to convene the initial general meeting) or to petition the court for a liquidation order within set time limits, the directors can be jointly and severally liable for the obligations incurred by the company during the period of such failure to act, unless a director can prove that he or she was not negligent.
Insolvency Practitioners	**Bankruptcy**	Once a bankruptcy decision is announced, the debtor loses control of any property pertaining to the bankruptcy estate. The debtor may not enter into any obligations that might be invoked during the bankruptcy. There are some exemptions. During the bankruptcy process the bankruptcy estate is represented by the administrator. The administrator is appointed by the district court, and must have the special knowledge and experience required for the task, and be suitable for the task in other respects. A person employed by a court may not be appointed as an administrator. A person may not be appointed as an administrator if they have a conflict of interest.
	Business reorganisation	A business reorganisation officer must have the special knowledge and experience required for the task, must have the confidence of the creditors, and must be suitable for the task in other respects. The business reorganisation officer investigates the debtor's financial standing and, in consultation with the debtor, draws up a plan setting out how the aims of the reorganisation are to be achieved. The plan must be supplied to the court and to the creditors. The business reorganisation officer may engage expert assistance. The debtor is required to provide the business reorganisation officer with all information concerning his or her financial circumstances that is relevant to the restructuring of the business. The debtor must follow the business reorganisation officer's instructions concerning the manner in which the business is to be run. There are some legal acts that the debtor cannot perform without the business reorganisation officer's consent. These include paying debts that arose prior to the decision, undertaking new obligations, and transferring or pledging property of substantial importance for the debtor's business. If the debtor fails to fulfil these obligations, however, the legal act in question remains valid.
Role of the courts		District courts decide upon a bankruptcy application. During the bankruptcy proceedings the court decides several issues: it determines how to distribute the estate, for example, or whether debts must be proved. In business reorganisation procedures, the business reorganisation officer will be is appointed by the court. Debt restructuring applications are handled by the Enforcement Authority, but appeals are decided by the courts.

Annex B | Methodologies

Methodologies and tools by tasks

The objective of the impact assessment study is to evaluate the impacts of a combination of policy options on the building blocks of the insolvency framework, in other words to assess whether the different policy options identified achieve the different policy objectives shared and approved by the EC. In particular, the building blocks have been provided by the EC, while the policy options, i.e. options entailing measures of varying nature and intensity for all the relevant building blocks, have been defined and further refined together with the EC.

In other terms, the European Commission is working, together with external experts, on the convergence of insolvency laws in EU Member States and has identified 14 core building blocks where this convergence will be manifested. The five policy options, including the "no intervention" or the "business as usual" option. The combination of the policy options with the fourteen building blocks of insolvency convergence will produce the impact drivers on timing, costs and effectiveness of cross-border insolvency and therefore on the circulation of cross-border capital investment.

The stakeholders involved in the impact assessment study include:

- Bank or other financial institutions
- Legal experts and practitioners, insolvency lawyers
- Judges in commercial courts
- Accountants
- Member of public administrations handling insolvency
- Insolvency practitioners as identified by the Regulation
- Labour Unions
- SME association representatives
- Large Enterprise association representatives.

They were asked to provide inputs and estimates on timing, costs and effectiveness of building blocks of convergent cross-border insolvency. These inputs will feed into the system dynamics model and into the multicriteria analysis and combined with dimensions such as:

a) Business demographics

b) Level of insolvency

c) Asset preservation

d) Efficiency of cross-border insolvency in terms of cost and timing

e) Preservation of employment

f) Protection of voluntary creditors

g) Protection of involuntary creditors (employees, tax and social security authorities).

The outcomes of the field research activities (interviews, questions and surveys, as described in paragraph 3.3 below) is designed to gather evidence from stakeholders, who will be asked to provide their judgments, priorities and preferences on the options presented, but also on the perceived mutual interaction of some variables describing the benefits and costs for the society. Thus, the policy options and the related impacts

are modelled as dynamic problems characterized by interdependence, mutual interaction, information feedback, and circular causality.

Stakeholder input will feed into the system of differential equations which are at the basis of the multi-criteria analysis to determine the impacts. An initial set of the approach is presented in this interim report in section 7.5.

The full set of the principles of the computational system, the external variables used, the quantitative input coming from the survey and the qualitative input coming from the interviews.

The methodology entails four steps:

1. Problem articulation: this step is crucial for any modelling purpose. it concerns the identification of the objectives and the definition of the scope of the model to be designed;
2. Dynamic hypotheses and causal loop diagram formulation: this component relates to the conceptualisation of the system under consideration into a causal loop diagram, in order to highlight its feedback structure. It aims to initiate the process of knowledge elicitation and to establish a consensus among relevant stakeholders; this abductive approach is aimed to obtain models that are not trivial and simply retrievable from evidence, even strongly supported from the literature[142];
3. Simulation model formulation: this step includes the design of a level-rate model, the development of decision rules, the quantification and calibration of the model;
4. Formulation of strategies and evaluation: this component relates to the development of scenarios and the analysis of simulated results over time.

The complexity of the impact assessment study task is related to the multiplicity of dimensions, which are inherent to the situation of cross-border insolvency between the 27 EU Member States:

a) All 27 Member States have more or less divergent insolvency laws and associated judicial capacities. The potential combinations of relationships are 27 power 27-1, and each of these many-to-many relationships requires the analysis of different variables, such as timing of cross-border insolvency; cost of cross-border insolvency for information access and claims; impact of the effectiveness of the insolvency judicial capacities on the results and outcomes of procedures;
b) The impacts generated are related to the interplay of the possible policy options with the building blocks of cross-border insolvency: we are considering five options, including the "no action" option, and fourteen cross-border insolvency building blocks, producing 5 power 14 possible combinations of options and building blocks.

Exploring such a significant amount of relationships to determine the impacts on capital circulation, the preservation of assets, the recovery of debt, the protection of employees and of tax and social security authorities requires a selective approach and a multi-layered, multidimensional impact assessment study model. A linear and single-level model is just not enough to reflect this complexity and our model, which we have proposed in our offer and described and discussed in the several meetings with the European Commission services, is the approach to allow a sound and effective assessment of the impacts of convergent insolvency laws such a complex EU-level scenario.

Step 1: Problem articulation

This first step deals with the elaboration of the dynamics coming from the interaction of the insolvency phenomenon main stakeholders , taking into account their interests related to the issue, and the relevance of the topic/issue. Further, in this phase we will define how the options influence such dynamics. In particular, although a general model can be devised from the literature (as described in the paragraph 7.3), the main interdependencies will be gathered from the questionnaire outcomes (see the paragraph 3.3).

Step 2: Dynamic hypotheses and causal loop diagram formulation

[142] Vennix, J. A. M., 1999, "Group model-building: tackling messy problems", System Dynamics Review, 15, 379-401.

More specifically, the model-building, and quantification is being developed by adopting a Group Model Building approach[143][144] to further elicit the judgements and preferences of both the interviewees and the people who answer to the questionnaire (i.e., the way they understand the main issues regarding the legal framework on insolvency and how the inherent factors may be interlinked). The purpose of the investigation is to define the key dynamics of insolvency procedures within the several economic contexts of the EU to facilitate the development of non-trivial models, i.e. models able to investigate indirect and systemic effects. Such models will provide insights into the structure of causality and underlying dynamics of scenarios defined by the different options, and ultimately provide useful insights on impact dynamics and direct/indirect effects of the policy options.

At this stage, the emphasis is on identifying useful scenarios to derive the main impacts of the options, in terms of efficiency, effectiveness, relevance, coherence and the EU added value. It is crucial to be aware that the models need to be sufficiently detailed to describe the potential impacts but also generic enough to internalise the degree of uncertainty on a case-by-case basis, depending on the case under consideration, the time and data constraints and the views of the stakeholders involved.

It shall be noted that the impact assessment study dimensions are all included in the empirical research instruments:

Impact Assessment Study Dimension	**Research and impact assessment instrument**
Efficiency	The questionnaire, the external datasets and the impact assessment study model
Effectiveness	The questionnaire, the external datasets and the impact assessment study model
Relevance	The structured interviews
Coherence	The review of law texts, the comparison with the proposed legal measures and the overall regulatory framework concerning cross-border insolvency
EU added value	The questionnaire, the external datasets and the impact assessment study model

Step 3: Simulation model formulation

Starting from the elicited models, and from the resulting shared understanding between the study team and the stakeholders, simulation models will be constructed.

The model design will incorporate the following sets of inputs

- The expected preservation of asset values
- Cross-border flows

The quantification of the model inputs allows us to perform several runs and to infer the outcomes of the main variables (i.e. the factors that affect the values the dimensions of impact). Specifically:

- some of the inputs to the model that will be considered uncertain and their distributions will be derived from the literature, by running a statistical test on a set of available data, or by collecting several judgements through the questionnaire;
- some of the inputs will be considered not uncertain and defined by time series (e.g. several observations of the same variable over time).

[143] Vennix, J. A. M., 1999, "Group model-building: tackling messy problems", System Dynamics Review, 15, 379-401.
[144] Vennix, J. A. M., Andersen, D. F., Richardson, G. P., Rohrbaugh, J., 1992, "Model-Building for Group Decision Support - Issues and Alternatives in Knowledge Elicitation", European Journal of Operational Research, 59, 28-41.

Notwithstanding the above, we expect that some of parameters of the model cannot be measured (at least with reasonable efforts) directly in the real world, in contrast with other ones. Thus, before using the model, we need to find out the values of the immeasurable parameters. Our proposal is to calibrate the model: we will use historical data form specific contexts (many updated sources are reported in the paragraph 4) of a similar case and adjust the parameter values so that the model output reproduces the historical data as closely as possible. To calibrate the model, we will iteratively run it, compare its output with the historical curve, change the parameter values, perform another run, etc.

Step 4: Formulation of strategies and evaluation

Several combinations of policy options, guided by the preferences emerging from the statistics analysis performed to the data collected through the field research activities, will be tested and related impacts discussed.

The System Dynamics Model and Macroeconomic analysis for the impact assessment

Introduction and methodology

The complexity of the impact assessment task is related to the multiplicity of dimensions, which are inherent to the situation of cross-border insolvency between the 27 EU Member States:

c) All 27 Member States have more or less divergent insolvency laws and associated judicial capacities. The potential combinations of relationships requires the analysis of different variables, such as timing of cross-border insolvency, cost of cross-border insolvency for information access and claims; impact of the effectiveness of the insolvency judicial capacities on the results and outcomes of procedures.

d) The impacts generated by an harmonization are related to the interplay of the possible policy options with the building blocks of cross-border insolvency.

Exploring such a significant amount of relationships to determine the impacts on intra-eu capital circulation, the preservation of assets and the recovery of debt, which imply the protection of employees and of tax and social security authorities, requires a multidimensional dynamic model.

The methodology adopted to build such a model entails 3 steps:

1. Problem articulation, dynamic hypotheses and stock and flow diagram: first, the objectives and the definition of the scope of the model to be designed have been identified; then, the system, representing the impact of the insolvency framework on some relevant macro-economic variables (such as the cross-border intra-EU capital circulation) has been conceptualised using the stock & flow notation[145], in order to highlight its feedback structure. This step is strongly based on a process of knowledge elicitation from relevant stakeholders, based on the results of the survey and the outcomes of the interviews;
2. Calibration and simulation: this step includes the design of a level-rate model, the development of decision rules, the quantification and calibration of the model;
3. Results of the modelling: this component relates to the development of scenarios and the analysis of simulated results over time.

The logic of modelling with the Stock and Flow (S&F) approach

The analysis is performed by elaborating a dynamic model by means of a System Dynamics approach and in particular it took the form of a stock and flow (S&F) model.

All systems are part of bigger systems, that in turn are part of even bigger systems and so on, and in turn, are made up of sub-systems, that in turn are made up of their sub-sub-systems. A system is more than the sum of its components: this means that for understanding it, knowing the components is not sufficient, but a complete mapping of interconnections is needed. To do that, it’s useful to notice that many of the interconnections in systems operate through flows of information[146].

[145] Forrester, J. W. (2009). Some basic concepts in system dynamics. Sloan School of Management, 1-17.
[146] Sterman, J. (2002). System Dynamics: systems thinking and modeling for a complex world.

System Dynamics consists in an iterative process to define a dynamic hypothesis, develop a formal model, test and validate it, and formulate and evaluate different intervention policies[147]. The method was developed in the 1960s by Jay W. Forrester[148] to study complex business problems and was later expanded to study problems associated with the dynamics of growth and decline in urban centers, in the world as a whole[149], as well as modern problems such as climate change. The features of system dynamics modelling include the possibility to account for non-linearities, information feedbacks, time delays, and dynamic complexity[150].

The System Dynamics approach employs various tools for extrapolating information about complex systems and discovering hide and counter-intuitive behaviours. Stocks and flows (also named "S&F") are the basic building blocks of system dynamics models. Jay Forrester originally referred to them as "levels" (for stocks) and "rates" (for flows). A stock variable is measured at one specific time and represents a quantity existing at that point in time (say, December 31, 2004), which may have accumulated in the past. A flow variable is measured over an interval of time. Therefore, a flow would be measured per unit of time (say a year).

Basically, Stock and flow diagrams are built by combining six main kinds of elements: stocks, flows, converters, connectors, sources and sinks.

- **Stocks**. A stock represents a part of a system whose value at any given instant in time depends on the system's past behavior. The value of the stocks at a particular instant in time cannot simply be determined by measuring the value of the other parts of the system at that instant in time – the only way to calculate it is by measuring how it changes at every instant and adding up all these changes. On diagrams, stocks are represented by rectangles.
- **Flows**. Flows represent the rate at which the stock is changing at any given instant, they either flow into a stock (causing it to increase) or flow out of a stock (causing it to decrease). On diagrams, flows are represented by small valves attached to flow pipes that lead into or out of stocks.
- **Converters**. Converters either represent parts at the boundary of the system (i.e. parts whose value is not determined by the behavior of the system itself) or they represent parts of a system whose value can be derived from other parts of the system at any time through some computational procedure. On diagrams, converters are represented by small circles.
- **Connectors**. The connectors of a system show how the parts of a system influence each other. Stocks can only be influenced by flows (i.e. there can be no connector that connects into a stock), flows can be influenced by stocks, other flows, and by converters. Converters either are not influenced at all (i.e. they are at the systems' boundary) or are influenced by stocks, flows and other converters.
- **Source/Sink**. Sources and sinks are stocks that lie outside of the model's boundary – they are used to show that a stock is flowing from a source or into a sink that lies outside of the model's boundary. On diagrams, sources and sinks are represented by small clouds.

The notation used in stock and flow diagrams was originated by Jay Forrester in his book "Industrial Dynamics"[151]. It was based on a hydraulic metaphor: the flow of water into and out of reservoirs. Hence the names of these elements and their visualization. The key feature of a stock and flow diagram is that each construct can be precisely specified using a mathematical formalism – viewed from a mathematical perspective, such fully specified stock and flow models are just a way of visualizing a corresponding set of integral equations. In most cases these integral equations cannot be solved analytically, but it is possible to solve these equations numerically using computer simulation techniques.

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[147] Sterman, J. (2000). Business dynamics. McGraw-Hill, Inc.
[148] Jay Wright Forrester. (1961). Industrial dynamics. Productivity Press.
[149] Meadows, D. H., Meadows, D. H., Randers, J., & Behrens III, W. W. (1972). The limits to growth: a report to the club of Rome (1972). Google Scholar, 91.
[150] O'Connor, J., & McDermott, I. (1997). The art of systems thinking (Vol. 288). San Francisco: Thorsons.
[151] Forrester, J. W. (1997). Industrial dynamics. Journal of the Operational Research Society, 48(10), 1037-1041.

Problem articulation, dynamic hypotheses, and Stock&Flow formulation

The Insolvency dynamics

Insolvency law deals with the situation in which a debtor cannot pay its debts in full. In order to understand why companies might take on more debt than they can eventually pay, one needs to understand the basics of corporate finance and the dynamics of leveraged finance[152]. In particular, a company is balance sheet insolvent if its assets are worth less than the outstanding debts, meaning there are not sufficient assets to pay all creditors in full.

The formal insolvency proceedings entail a judicial process, in which a judge assesses whether the company/individual is insolvent and considers which legal proceedings best fit the situation. Moreover, to avoid a disorderly run of creditors on the company, a contractual-based treatment of creditors ensures trust and predictability of the procedures through equal and fair treatment for the same categories of creditors. The insolvency process timeline can be depicted as follows[153].

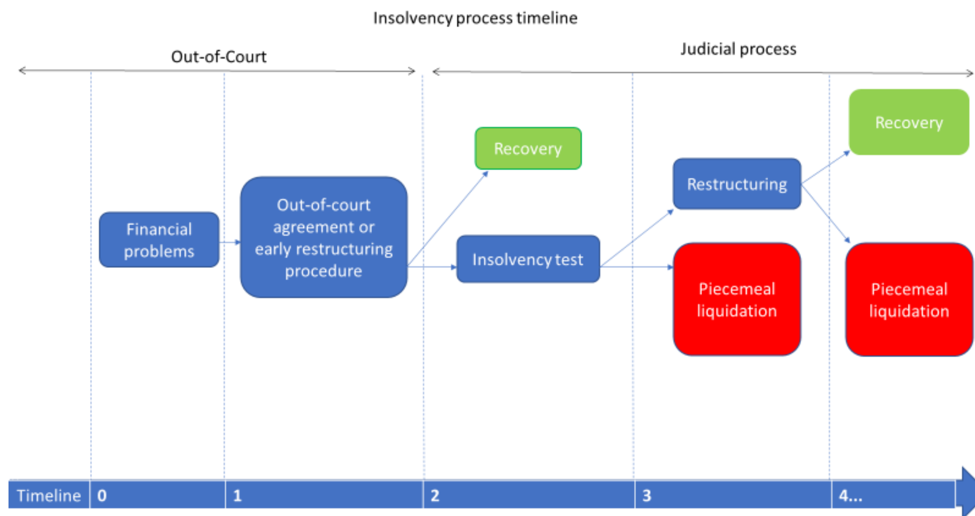

Figure 2 - The insolvency process timeline

The insolvency process timeline figure shows the overall processes that are available depending on the individual situation of a company in debt. There is a possibility of figuring debt outside of court system by creating a contract of agreement to solve the debt if both parties, the creditor, and the debtor agree. Insolvency test is done most of the times either in cash flow-based manner or focusing on balance sheet. Piecemeal liquidation is a process, where creditors liquefy the remaining assets of the company for the purpose of paying back the loans taken before[154].

This process timeline can be reflected in the general dynamic model as follows.

[152] de Weijs, R. J. (2018). Secured credit and partial priority: Corporate finance as a creation or an externalization practice?. *European Property Law Journal*, *7*(1), 63-101.

[153] Valiante, D. (2016). Harmonising Insolvency Laws in the Euro Area: Rationale, stocktaking and challenges. CEPS Special Report No. 153, December 2016.

[154] Valiante, D. (2016). Harmonising Insolvency Laws in the Euro Area: Rationale, stocktaking and challenges. CEPS Special Report No. 153, December 2016.

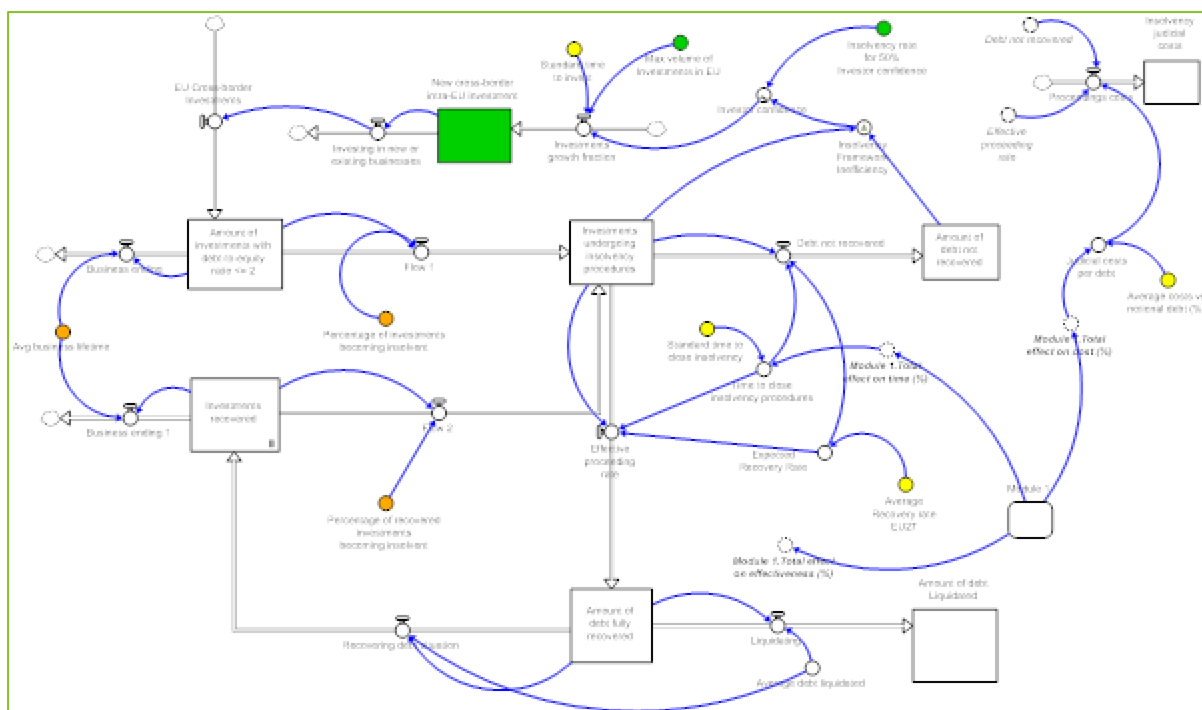

Figure 3 - The dynamic model showing the process of insolvency with finalization in liquidation or recovery

We can start from the left in which we find the amount of investment with debt-to-equity ratio <= 2. These businesses are virtuous ones as they count almost only on their own capital. But after some time, they could start to collect debts due to financial issues.

Investments undergoing insolvency procedures can go through two paths: amount of debt not recovered or amount of debt fully recovered (it means full recovery or effective liquidation). The outflows of the investments undergoing insolvency procedures are mainly influenced by two factors: **time** and **expected recovery rate**. As the time to close insolvency procedures goes down, both the flows will rise; at the same time, the higher the percentage of effective resolution, the higher the business recovering or effectively liquidating.

Starting from this formulation, there are several dynamics that could be represented[155], affecting the whole process, but here are not reported to avoid a super-complexity of the model. For example, creditors' and debtors' incentives are shaped by the interaction of insolvency frameworks with other institutional settings. On the creditors' side the incentives to resolve debt depend not only on the framework for insolvency but also on a series of policy and regulatory conditions including taxation (the impact of different outcomes of insolvency on their tax obligations), prudential rules (how write-downs affect provision and capital requirements), accounting rules (the impact of different resolution options on earnings). Regarding debtors, requirements for information disclosure coupled with appropriate monitoring and enforcement are crucial to identifying debtor's true repaying capacity and discouraging moral hazard. The incentives for debtors to initiate and engage in a resolution dialogue when debts are not serviceable are shaped not only by bankruptcy law but also by framework conditions including social safety nets, the efficiency of markets and all factors that relate to the ease of doing business and starting a new activity for entrepreneurs. Some further dynamics could be:

- "Run on debtor assets" dynamic. Once a debtor becomes distressed, creditors have individually an incentive to call back their credit before others do, to maximise the chances of repayment. Similarly, to bank runs, the run on debtors' assets by creditors could itself provoke insolvency even in cases of viable activities.

[155] Bricongne, J. C., Demertzis, M., Pontuch, P., & Turrini, A. (2016). Macroeconomic relevance of insolvency frameworks in a high-debt context: an EU perspective. European Economy-Discussion Papers 2015-, (032).

- "Heterogeneous preferences on debt resolution modalities" dynamic. Creditors have different priority status (secured, senior, junior), and the economic origin of their claims differs (financial, trade credit, labour liabilities, public authorities) and may therefore affect their preferences for a certain type of debt resolution. In particular, it may happen that purely out-of-court preventive restructuring deals that require unanimity are blocked by a dissenting minority (hold out problem).
- "Strategic delay" dynamic. The macroeconomic environment affects the capacity to pay back distressed debts. Creditors have individually an incentive to refrain from writing off bad debts and disclosing losses. Instead, they have an incentive to wait for the macroeconomic environment to improve, which may help previously distressed loans starting to perform again. This type of dynamic tends to delay the moment in which bad debt is resolved, keeping resources employed in non-viable uses.
- "Collateral meltdown" dynamic. The simultaneous liquidation of collateral by creditors could have an impact on the market value of collateral (including that of performing debt), thereby reducing the extent to which bad debts are recovered. Financial institutions may not internalise sufficiently this phenomenon and thus reduce the capacity to recover distressed debt on aggregate.
- "Congestion" dynamic. The simultaneous resort to insolvency procedures could lead to court congestion, thereby lengthening the time necessary to complete bankruptcy cases.

At the end, the model incorporate the vision define in the document "Macroeconomic Relevance of Insolvency Frameworks in a High-debt Context: An EU Perspective"[156], in the sense that in the case of corporate insolvency, generally legislation and practice aim at maximising the value that debtors can generate, with liquidation seen as a last resort alternative. In such perspective, insolvency is only a late step in the time-line of distressed debt. The time-line of distressed debt starts when a debtor first sees signs of difficulty in servicing. This time-line goes all the way through actual default and insolvency, and ends at the point when debtors are released of all obligations. Different tools are relevant to ensure that debt continues to be serviced or is quickly resolved, at each stage of the timeline. As a result, the outstanding stock of debt in an economy is a mix of solvent debt, as well as debt at different stages of distress.

Cross-border flows and the insolvency regimes

There are several studies and position papers addressing the main issues of the relationship between cross-border capital market and insolvency regimes. As reported by the AFME "Capital Markets Union: Key Performance Indicators"[157] in October 2021: the reform of the Europe's several insolvency laws is a long-standing single market project; currently, sub-optimal and inconsistent insolvency regimes are holding back European financial markets and growth in the real economy, causing uncertainty among investors, discourage in cross-border investment, and delays in the restructuring of companies facing financial difficulty, finally making it harder to address the potential increase in levels of non-performing loans, which can represent a challenge for the path to economic recovery.

These sentences reveal few relevant macro-economic dynamics that could improve the understanding of the relationship that the dynamic model could address, as for example:

- While debt is a necessary tool to promote growth, excessive debt weighs on economic prospects. At moderate levels, debt helps channel savings to profitable investment opportunities and helps smoothing consumption over time. However, once debt rises beyond prudent levels, it may increase vulnerability to shocks. **Although there is no clear consensus about where the tipping point lies, there is widespread recognition that high debt sows the seeds of reduced investment rates afterwards**[158].
- From the debtors' perspective, unsustainably high indebtedness creates a debt overhang problem, which weighs on investment and consumption decisions. Debt overhang is defined as a situation

[156] Bricongne, J. C., Demertzis, M., Pontuch, P., & Turrini, A. (2016). Macroeconomic relevance of insolvency frameworks in a high-debt context: an EU perspective. European Economy-Discussion Papers 2015-, (032).
[157] AFME (2021). Capital Markets Union: Key Performance Indicators. October 2021
[158] Bricongne, J. C., Demertzis, M., Pontuch, P., & Turrini, A. (2016). Macroeconomic relevance of insolvency frameworks in a high-debt context: an EU perspective. European Economy-Discussion Papers 2015-, (032).

where a firm's high levels of debt act as a disincentive to new investment. **Large outstanding debt implies high repayment costs and high perceived default risk, which discourage engaging in new investments**. Moreover, incentives not only to invest but also to supply labour are reduced if a large part of income is used to repay debt. **Empirical evidence shows that the impact of the debt overhang on aggregate investment can be quite sizeable**[159].
- From the creditors' perspective, **the presence of non-performing debt in their balance sheets weighs on their ability to provide funding to the economy**.
- Ex-ante, i.e., when debt is created, insolvency frameworks affect borrowers' incentives to take on debt and lenders' incentives to provide credit. By providing adequate protection of lenders in case of default, a good framework helps maintain incentives to supply credit. In parallel it mitigates opportunistic behaviour on the part of borrowers (moral hazard), without discouraging responsible borrowing.
- Ex-post, after debt becomes distressed, insolvency frameworks can affect borrowers' incentives to create value to repay outstanding debts. Insolvency frameworks also matter for insolvent debtors to have a fresh start and engage in new projects and activities after having become bankrupt.
- Efficient insolvency procedures are associated with an increase in credit supply[160] , notably to SMEs, diversification of portfolio[161], and lower risk-taking[162].

According to the conclusions of the EBA "Report on the benchmarking of national loan enforcement frameworks across EU Member States" in 2020[163], there is a clear evidence of the negative impacts of the continued disparity in insolvency outcomes across the EU, as measured by the average recovery rates or time to recoveries of each countries of the EU.

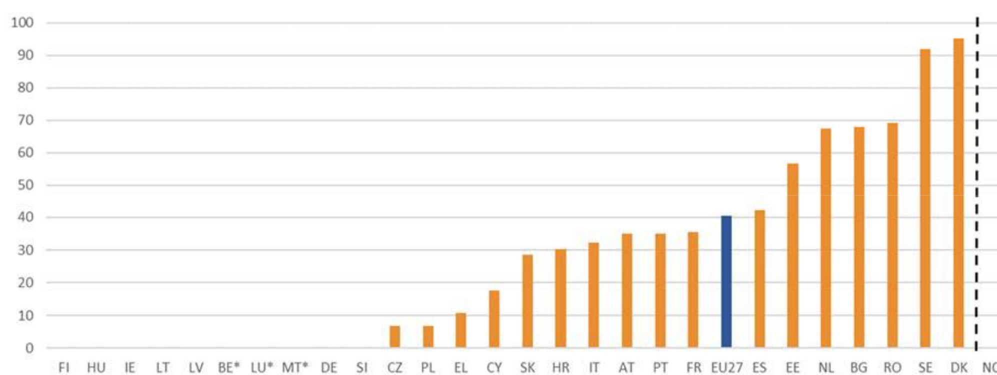

Figure 4 - EU benchmark, gross recovery rate (%), simple average for each EU Member State – corporate

[159] Kalemli-Ozcan, S., Laeven, L., & Moreno, D. (2015). Debt overhang in Europe: Evidence from firm-bank-sovereign linkages. University of Maryland.
[160] Haselmann, R. F. H., Pistor, K., and Vig, V. (2009). How law affects lending. The Review of Financial Studies, 23(2):549-580.
[161] Haselmann, R. and Wachtel, P. (2010). Institutions and bank behavior: Legal environment, legal perception, and the composition of bank lending. Journal of Money, Credit and Banking, 42:965-984.
[162] Fang, Y., Hasan, I., and Marton, K. (2014). Institutional development and bank stability: Evidence from transition countries. Journal of Banking & Finance, 39:160-176.
[163] EBA (2020). Report on the benchmarking of national loan enforcement frameworks across EU Member States. EBA/Rep/2020/29

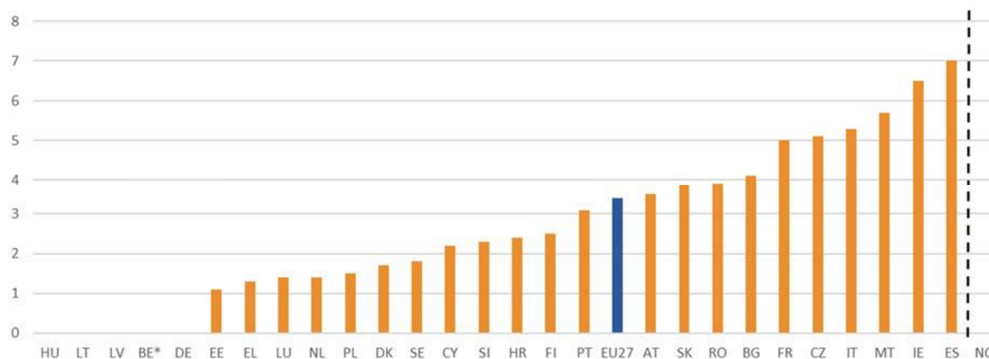

Figure 5 - EU Benchmark, time to recovery (years), simple average for each EU Member State – corporate

Furtherly a study on "Insolvency regimes and cross-border investment decisions" in 2020[164] provided insights on the effects of insolvency reforms on foreign players, and from an investment point of view, on debt and equity. Relying on the OECD data on insolvency regimes and ECB SHSS data on cross-border investments, the authors identified a causal effect within each sector and each instrument through a difference-in-difference approach. The results suggest that foreign investors are more likely to invest in a country if its insolvency regime is efficient. Investors are particularly sensitive to improvement in prevention, streamlining, and restructuring tools. However, the marginal effect is not homogeneous across sectors. Institutional investors seem to be the most reactive in their equity investments after such reforms, while banks react in debt holdings. Further, the authors found evidence that, for equities, all sectors are highly sensitive to measures related to prevention and streamlining, while debt-holders mostly take into account restructuring tools. Overall, insolvency reforms do exert a positive effect on cross-border investments, thereby deepening the capital markets integration.

In particular, the intra-EU investment in our model is characterized by the **"investor confidence" which is directly influenced by the insolvency framework (in)efficiency, in non-linear way**. The confidence is a value that goes from 0 to 1 and, decreasing when the insolvency framework efficiency decreases and which is calibrated to provide the actual amount of cross-border investments when considering the actual data, as benchmarked by the EBA[165].

The effect of an efficient insolvency framework

Starting from 2001, the World Bank has been working with partner organizations to develop principles for insolvency and creditor/debtor rights systems (the current revision is the one issued in 2021) [166]. The Principles for Effective Insolvency and Creditor/Debtor Regimes are a distillation of international best practice on design aspects of these systems, emphasizing contextual, integrated solutions and the policy choices involved in developing those solutions. According to these principles and integrating some positions from the literature, we consider as "efficient" an insolvency framework that prevents fire-sale liquidations[167], ensures continuation of businesses where the going concern has greatest value, and guarantees creditors' rights[168] while ensuring that the owners have the right incentives to preserve the value of the distressed company[169]. Thus, efficiency principles for corporate insolvency can be summarized as follows[170].

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[164] Kliatskova, T., & Savatier, L. B. (2020). Insolvency regimes and cross-border investment decisions.
[165] EBA (2020). Report on the benchmarking of national loan enforcement frameworks across EU Member States. EBA/Rep/2020/29
[166] World Bank. (2021). Principles for Effective Insolvency and Creditor/Debtor Regimes, 2021 Edition. World Bank.
[167] Acharya, V. V., Sundaram, R. K., & John, K. (2011). Cross-country variations in capital structures: The role of bankruptcy codes. Journal of Financial Intermediation, 20(1), 25-54.
[168] La Porta, R., Lopez-de-Silanes, F., Shleifer, A., & Vishny, R. W. (1997). Legal determinants of external finance. The journal of finance, 52(3), 1131-1150.
[169] Von Thadden, E. L., Berglöf, E., & Roland, G. (2010). The design of corporate debt structure and bankruptcy. The Review of Financial Studies, 23(7), 2648-2679.
[170] Bricongne, J. C., Demertzis, M., Pontuch, P., & Turrini, A. (2016). Macroeconomic relevance of insolvency frameworks in a high-debt context: an EU perspective. European Economy-Discussion Papers 2015-, (032).

1. Early resolution of debt distress should be encouraged as it maximises the value recovered for creditors, and minimises the cost to the economy. The loss of value in corporate insolvency is in general higher the longer the time of distress. Indeed, firms in distress can allocate fewer resources to normal operations, thereby contracting their income-generation capacity and losing value over time. A number of features of insolvency frameworks contribute to an early triggering of the resolution process and to its fast completion.
2. Insolvency frameworks should ensure that firms with viable activities are reorganised, while nonviable firms are promptly liquidated (separating viable from non-viable debt is a challenging task that requires mechanisms to make available necessary information on debtors' conditions and adequate judicial capacities in terms of court capacity and skills of extra-judicial practitioners)

According to an AFME study[171], efficient insolvency regimes reduce the transactions costs of enforcing debt contracts, and more broadly promote the efficiency of capital markets by promoting the winding up of unviable firms while providing scope for the orderly restructuring of distressed, but ultimately viable, businesses. Measuring best practice in insolvency regimes can be done in many ways. One is to focus on quantitative performance measures, such as the cost of proceedings, time for creditors to recover credit, and rates of default and recovery. A complementary approach is to identify the desirable properties of an insolvency regime, and to "score" the actual regime of a jurisdiction based on whether, and how far, they exhibit these desirable properties. These "desirable properties" relate essentially to the decision rights of the various parties over business operations and the conduct of the proceedings; in this study these decisions area addressed by the combination of policy options with the framework building blocks.
The EBA provides information on recovery rates and time-to-recover indicators based on data on insolvency outcomes (see [172]). These information point to significant variation across countries in terms of the efficiency of insolvency frameworks and thus room for improvement in many countries.
To address such issues, our model considers the effects of the harmonization of relevant building blocks on the costs of proceedings, the time to close the efficiency procedure and the effectiveness.
Besides the dynamics of flows, the model addresses the economic impacts of procedures in terms of 3 factors: time, effectiveness and costs. These, are strictly connected to policy decision about harmonization of building blocks; therefore, the factors will vary based on the which policy will be activated.
In addition to this linear change of state of businesses, the model takes into account also some circular feedbacks, so that some effects coming from the dynamics of businesses' changing status is going to feed back some other variables, like the number of businesses and the rate with which they change over time.

Calibration and simulation

The model is constituted by 78 variables and runs over a 15 years horizon.
In order to investigate the impact of the harmonization of the insolvency framework an accurate calibration of few parts of the model have been performed. In fact, the model is able to consider the cumulative impact of the harmonization of each building block considering the adoption of the policy option selected through the questionnaire. In particular, the effects are calculated by elaborating per each building block the weighted average of the score assigned in terms of decreased/increased effect. In the following table such impact is reported.

Table 11 - Impact of Calibration on the Policy Options

Building block	Policy option	Option description	Impact on costs	Impacts on time	Impact on effectiveness

[171] AFME (2016) Potential economic gains from reforming insolvency law in Europe
[172] EBA (2020). Report on the benchmarking of national loan enforcement frameworks across EU Member States. EBA/Rep/2020/29

Pre-pack sales	4	Pre-pack sales should be introduced by a EU Directive or Regulation, precisely regulating the features of the instrument, the role of the Advisor and its appointment as an IP, the assignment or termination of civil and commercial executory contracts, the criteria to choose the best bid, and the measures to maximize the value of the business subject to pre – pack, displacing existing national provisions	-14,17%	-21,70%	16,00%
Transaction avoidance	4	Transaction avoidance should be ruled by means of a Directive or a Regulation providing a exhaustive specific set of rules on transaction avoidance displacing conflicting national law	-10,85%	-10,38%	20,08%
Specificities of micro and small enterprises (MSEs)	2	Specificities of MSEs should be ruled by means of Directive providing specific regime and/or exemptions from general insolvency requirements in case of MSEs in the form of targeted modifications of the general insolvency system including the following: definition of the scope of special provisions; access to orderly proceedings regardless available assets to cover the cost of the proceedings; postponement of the payment of procedural costs; the possible public funding of procedural costs; lowering the complexity and duration of the MSEs cases; providing for a scrutiny of the honesty of the debtor in the course of the proceedings instead of imposing heavy tests on the first day of the proceedings or setting forth extensive filing requirements; reflecting the rational creditor passivity in the rules on the decision about the restructuring plan, a sale of the business, or a piecemeal liquidation by a deemed approval rule; considering having proceedings outside the courts systems and involving courts only for appeals or objections; limiting the administrative burden by using mandatory templates and IT tool, providing for a very short periods of a stay of a plan proposal	-12,95%	-13,94%	11,11%
Role and powers of insolvency practitioners in asset tracing and recovery,	4	Roles and powers of insolvency practitioners, with regard to asset tracing and asset recovery should be ruled by means of a Directive or a Regulation providing an exhaustive list of powers and	-13,51%	-16,49%	27,57%

including asset to registers		tools for insolvency practitioners asset tracing and recovery in cross border insolvency cases			
Creditors' committee	1	Creditors' committees should be ruled by means of a EU Recommendation with some principles on formation of creditors' committees	0,00%	-1,75%	7,26%
Pre – commencement entitlements and identification of potential grounds to a post commencement privilege	4	Post – commencement privilege should be ruled by means of a Directive stating priority preferences for privileged creditors to general unsecured creditors and listing in NON – exhaustive manner the positive priority preferences and the negative priority preferences	-3,74%	-4,30%	12,50%
Preferences to certain types of unsecured creditors	0	Pari passu and any modifications to be ruled according to Member States laws, without any further EU intervention	0,00%	0,00%	0,00%
Role of the courts and regulating insolvency practitioners' professional conditions	2	Roles of courts and professional conditions of insolvency practitioners should be ruled by means of a EU Directive with more concrete rules on specialisation of insolvency courts and training of judges and on requirements for insolvency practitioners' when it comes to conditions for eligibility, appointment, suitable, training, or necessary expertise	-11,47%	-16,24%	21,67%
Directors' duties and liability in the vicinity of the insolvency	2	Directors' duties and liabilities should be ruled by means of a EU Directive on the directors' duties and liability in the vicinity of insolvency (including details on the decisions to be taken once the shareholders meeting has been convened, conditions under which insolvency should be filed and liability against wrongful trading	-9,87%	-9,61%	21,58%

Each impact is applied in the range of the feasibility of the element, using data derived from the EBA "Report on the benchmarking of national loan enforcement frameworks across EU Member States" in 2020[173], as follows:

- In the report the insolvency cost is reported by using the "**judicial cost to recovery**" variable, defined using the judicial costs as a share of the notional amounts at time of default (i.e. Judicial cost to recovery = Judicial costs / Notional amount outstanding at time of default). The report states that **the EU27 simple average is 3.5%, while the best case is 0,1%. Therefore, starting from the 3,5% of judicial cost to recovery (baseline), we assume that a 100% reduction of costs leads to the 0,1% of judicial cost to recovery**.

[173] EBA (2020). Report on the benchmarking of national loan enforcement frameworks across EU Member States. EBA/Rep/2020/29

- In the report the **time to close the insolvency procedure is accounted by the variable "time to recovery"**, defined as the length (in days) of the recovery period (as part of the recovery rate process, from the start of the formal enforcement status to the date of ultimate recovery from the formal enforcement procedures). The specific from which the number of days was counted was the date of the decision to enter into a formal legal procedure. It contains the days until full recovery. **The report states that the EU27 simple average is 3.3 years, while the best case is 0.3. Therefore, starting from the 3,3 years of time to recovery (baseline), we assume that a 100% reduction of time leads to the 0,3 years of time to recovery**.
- In the report the **effectiveness is accounted by using the variable "gross recovery rate"**, defined using the gross recovery amount as a share of the notional amounts at time of default (Gross recovery rate = Gross recovery amount / Notional amount outstanding at time of default). **The report states that the EU27 simple average is 33,8%, while the best case is 74,9%. Therefore, starting from the 33,8% of gross recovery rate (baseline), we assume that a 100% increase in effectiveness leads to the 74,9% of gross recovery rate**. However, the recovery rate strongly impacts the model dynamics, because imply both more debt that is recovered and used to leverage the equity of companies and a greater investor confidence (multiplier effect); thus, the model accounts a moderated effect of the harmonization on the gross recovery rate.

Further variables have been calibrated by elaborating data from the World Bank[174] and a study of the European Commission[175], as follows:

- "Average_costs_vs_notional_debt_(%)": 3,5%
- Average_Recovery_rate_EU27: 33,8%
- Avg_business_lifetime: 50 Years
- Insolvency_rate_for_50%_Investor_confidence: 55%
- Max_volume_of_Investments_in_EU: 300*10^9 €
- Standard_time_to_close_insolvency: 3,3 Years
- Standard_time_to_invest: 1 Years

Desk research and literature review

Taking advantage of a wealth of existing research covering the entire EU, the study team collected and analysed a large number of sources. The main aim was to include any relevant publication and report on the topics both at European and at Member State level. The focus was on literature evidence provided in the English language and the list of sources collected is available in Annex 2. Each of the sources was selected based on quality and relevance criteria. Information extraction followed a systematic approach based on an in-depth review of the selected documents with the aim of providing an analytical literature review that covers all the topics described in the ToR.

The approach to literature search included the analysis of the following sources:

1) Laws on insolvency
2) Insolvency procedures
3) Case law
4) Policy documents on cross-border insolvency
5) Cases of cross-border out of court settlements.

The desk research and literature review was carried out by legal experts following a common guideline developed considering the overall impact assessment study framework for insolvency and investment capital

[174] World Bank (2020). Doing Business Indicators on Insolvency.
[175] European Commission (2020). Analysis of Developments in EU Capital Flows in the Global Context.

circulation.

Field research methods

Survey

To design the Survey and integrate its finding into the Study, the study team has adopted the following five steps:

1. Development of the contact list. Stakeholders identified in the list cover the entire EU and the following categories: insolvency judges, insolvency practitioners, experts in insolvency laws, banks and financial institutions, labour unions, enterprises associations (both large and small – mediums).
2. Development of the survey questionnaire, in collaboration with DG Just. The survey has been drafted on the basis of the building blocks with scaled questions instead of binary questions (yes/no) and categorical questions, which tend to limit the flexibility of the analysis. To allow the respondents to correctly understand the question in so providing a real added value to the questionnaires, each question was preceded by a brief introduction which illustrates the topic, the issues and the possible grounds for harmonization at EU level.
3. Uploading and launching of the survey questionnaire. The survey has been uploaded and launched electronically through a web – based tool, along with a data protection notice to ensure that respondents are aware that all data are managed in accordance with the GDPR.
4. Follow up. The study team has monitored the responses to the invitation and actual contributions and sent two reminders to keep the stakeholders sufficiently interested. The endorsement letter and the cover email allow any stakeholder to directly contact the study team for any questions and doubts that may arise.
5. Analysis. To provide in – depth insights into the abovementioned research questions, the analysis of the survey will move well beyond simple descriptive statistics (e.g. averages and percentages) and will offer two advanced result components:
    - inferential analytics to uncover relationships between key variables.
    - segmentation techniques (cluster-centroid based algorithms – k-means or latent class) to identify hidden groups of respondents based on similar preferences, priorities, for instance according to their attitude based on the current insolvency framework or based on certain company's features (size, location, etc.) – in other words, homogenous groups of respondents that consider certain aspects differently than other groups).

The information collected through the survey provide quantitative information on the expected impacts of the policy options among European stakeholders and enable the study team to propose evidence-based policy recommendations for actions that could support harmonisation of laws at EU level.

Exploratory interviews and focused interviews

To complement the desk research and the survey, the study team carried out, firs exploratory interviews to and then a series of in-depth interviews. Such interviews allowed the study team to gather qualitative information and to understand the mechanisms according to which the Policy Options provide social and economic impact through cases and best practices.

This activity consisted in the following two distinct steps: the elaboration of a semi-structured interview questionnaire and its implementation.

The semi-structured interviews were based on a guideline elaborated on concrete sub-questions related to the impact assessment study questions, as presented in the survey questionnaires and it was further refined upon the results of the exploratory interview,.

The guideline for the interviews has been adapted to the target groups and to the building blocks, since their

perspective may probably differ in some respects and the main focus of the Study is on the possible harmonization of the building blocks and, inter alia, their potential effects on the CMU. This helps interviewers to focus on the topics of interest without constraining the interviewees to a format, being able to tailor the questions to the context and the person, who will neither see his/her freedom of answer limited. In fact, the two-way communication has been encouraged to increase the dynamism and sense of participation.

The objective was to gather qualitative information that confirms and complements the results of the other tasks developed, clarify certain aspects of the project when needed and raise new issues or emphasise existing ones whose similarities can be later analysed. For this reason, the questions have been formulated in an accessible language and showed a high degree of effectiveness to exploit the information provided by the subjects in any of the given topics. Furthermore, the questions are clear and simple, open enough to allow the interviewee express or discuss any idea but setting some limits on the topics to avoid deviations and to maintain the coherence with the rest of the methodologies without overlapping.

The System Dynamics Model and Macroeconomic analysis for the impact assessment study

Introduction and methodology

The dynamical model, elaborated by adopting a System Dynamics approach, builds a holistic picture of the impact of the harmonization of the insolvency framework on the circulation of intra-EU capitals, combining the several stakeholders' perspectives acquired through the survey and the interviews with external variables and macro-economic principles identified in the relevant literature.

The methodology adopted to build such a model entails 3 steps:

1. Problem articulation, dynamic hypotheses and stock and flow diagram: first, the objectives and the definition of the scope of the model to be designed have been identified; then, the system, representing the impact of the insolvency framework on some relevant macro-economic variables (such as the overall intra-Eu capital circulation) has been conceptualised using the stock & flow notation[176], in order to highlight its feedback structure. This step is strongly based on a process of knowledge elicitation from relevant stakeholders, based on the results of the survey and the outcomes of the interviews; this approach is aimed to obtain models that are not trivial and simply retrievable from the evidences, even strongly supported from the literature [177];
2. Calibration and simulation: this step includes the design of a level-rate model, the development of decision rules, the quantification and calibration of the model;
3. Results of the modelling: this component relates to the development of scenarios and the analysis of simulated results over time.

The complexity of the impact assessment study task is related to the multiplicity of dimensions, which are inherent to the situation of cross-border insolvency between the 27 EU Member States:

a) All 27 Member States have more or less divergent insolvency laws and associated judicial capacities. The potential combinations of relationships are 27 power 27-1, and each of these many-to-many relationships requires the analysis of different variables, such as timing of cross-border insolvency; cost of cross-border insolvency for information access and claims; impact of the effectiveness of the insolvency judicial capacities on the results and outcomes of procedures;

[176] Forrester, J. W. (2009). Some basic concepts in system dynamics. Sloan School of Management, 1-17.
[177] Vennix, J. A. M. (1999). Group model-building: tackling messy problems. System Dynamics Review, 15, 379-401.

b) The impacts generated are related to the interplay of the possible policy options with the building blocks of cross-border insolvency: we are considering five options, including the "no action" option, and fourteen cross-border insolvency building blocks, producing 5 power 14 possible combinations of options and building blocks.

Exploring such a significant amount of relationships to determine the impacts on capital circulation, the preservation of assets and the recovery of debt, which imply the protection of employees and of tax and social security authorities, requires a selective approach and a multidimensional dynamic model. A linear and single-level model is just not enough to reflect this complexity.

Step 1: Problem articulation, dynamic hypotheses and stock and flow diagram

This first step deals with the elaboration of the dynamics coming from the interaction of the insolvency phenomenon main stakeholders, taking into account their interests related to the issue, and the relevance of the topic/issue. Further, in this phase we defined how the options influence such dynamics. In particular, the main interdependencies have been gathered by combining a literature review with the insights emerging from the questionnaire outcomes. The model-building, and quantification has been developed by adopting a Group Model Building approach[178][179] to further elicit the judgements and preferences of both the interviewees and the people who answer to the questionnaire (i.e., the way they understand the main issues regarding the legal framework on insolvency and how the inherent factors may be interlinked). In fact, the purpose of the investigation was to define the key dynamics of cross-border insolvency procedures within the several economic contexts of the EU to facilitate the development of non-trivial models, i.e. models able to investigate indirect and systemic effects. At the end, the model provides insights into the structure of causality and underlying dynamics of scenarios defined by the different options, and ultimately provides useful insights on impact dynamics and direct/indirect effects of the policy options.

At this stage, the emphasis has been on identifying useful scenarios to derive the main impacts of the options, in terms of efficiency, effectiveness, relevance, coherence and the EU added value. It is crucial to underline that the general model is sufficiently detailed to describe the potential impacts but also generic enough to internalise the degree of uncertainty on a case-by-case basis, depending on the case under consideration, the time and data constraints and the views of the stakeholders involved.

Step 3: Calibration and simulation

Starting from the elicited models, and from the resulting shared understanding between the stakeholders, a simulation model has been constructed.

The quantification of the model inputs allows us to perform several runs and to infer the outcomes of the main variables (i.e. the factors that affect the values the dimensions of impact). Specifically:

- some of the inputs to the model that have been considered uncertain are derived from the literature or by collecting several judgements through the questionnaire;
- some of the inputs that have been considered not uncertain are defined by time series.

Step 4: Results of the modelling

[178] Vennix, J. A. M. (1999). Group model-building: tackling messy problems. System Dynamics Review, 15, 379-401.
[179] Vennix, J. A. M., Andersen, D. F., Richardson, G. P., Rohrbaugh, J. (1992). Model-Building for Group Decision Support - Issues and Alternatives in Knowledge Elicitation. European Journal of Operational Research, 59, 28-41.

Several combinations of policy options, guided by the preferences emerging from the statistics analysis performed to the data collected through the field research activities, have been tested and related impacts discussed.

The logic of modelling with the Stock and Flow (S&F) approach

The analysis is performed by elaborating a dynamic model by means of a System Dynamics approach and in particular it took the form of a stock and flow (S&F) model.

All systems are part of bigger systems, that in turn are part of even bigger systems and so on, and in turn, are made up of sub-systems, that in turn are made up of their sub-sub-systems. A system is more than the sum of its components: this means that for understanding it, knowing the components is not sufficient, but a complete mapping of interconnections is needed. To do that, it's useful to notice that many of the interconnections in systems operate through flows of information[180].

System Dynamics consists in an iterative process to define a dynamic hypothesis, develop a formal model, test and validate it, and formulate and evaluate different intervention policies[181]. The method was developed in the 60s by Jay W. Forrester[182] to study complex business problems and was later expanded to study problems associated with the dynamics of growth and decline in urban centers, in the world as a whole[183], as well as modern problems such as climate change. The features of system dynamics modelling include the possibility to account for non-linearities, information feedbacks, time delays, and dynamic complexity[184].

The System Dynamics approach employs various tools for extrapolating information about complex systems and discovering hide and counter-intuitive behaviours. Stocks and flows (also named "S&F") are the basic building blocks of system dynamics models. Jay Forrester originally referred to them as "levels" (for stocks) and "rates" (for flows). A stock variable is measured at one specific time and represents a quantity existing at that point in time (say, December 31, 2004), which may have accumulated in the past. A flow variable is measured over an interval of time. Therefore, a flow would be measured per unit of time (say a year).

Basically, Stock and flow diagrams are built by combining six main kinds of elements: stocks, flows, converters, connectors, sources and sinks.

- **Stocks**. A stock represents a part of a system whose value at any given instant in time depends on the system's past behavior. The value of the stocks at a particular instant in time cannot simply be determined by measuring the value of the other parts of the system at that instant in time – the only way to calculate it is by measuring how it changes at every instant and adding up all these changes. On diagrams, stocks are represented by rectangles.

- **Flows**. Flows represent the rate at which the stock is changing at any given instant, they either flow into a stock (causing it to increase) or flow out of a stock (causing it to decrease). On diagrams, flows are represented by small valves attached to flow pipes that lead into or out of stocks.

- **Converters**. Converters either represent parts at the boundary of the system (i.e. parts whose value is not determined by the behavior of the system itself) or they represent parts of a system whose value can be derived from other parts of the system at any time through some computational procedure. On diagrams, converters are represented by small circles.

[180] Sterman, J. (2002). System Dynamics: systems thinking and modeling for a complex world.
[181] Sterman, J. (2000). Business dynamics. McGraw-Hill, Inc.
[182] Jay Wright Forrester. (1961). Industrial dynamics. Productivity Press.
[183] Meadows, D. H., Meadows, D. H., Randers, J., & Behrens III, W. W. (1972). The limits to growth: a report to the club of Rome (1972). Google Scholar, 91.
[184] O'Connor, J., & McDermott, I. (1997). The art of systems thinking (Vol. 288). San Francisco: Thorsons.

- **Connectors**. The connectors of a system show how the parts of a system influence each other. Stocks can only be influenced by flows (i.e. there can be no connector that connects into a stock), flows can be influenced by stocks, other flows, and by converters. Converters either are not influenced at all (i.e. they are at the systems' boundary) or are influenced by stocks, flows and other converters.

- **Source/Sink**. Sources and sinks are stocks that lie outside of the model's boundary – they are used to show that a stock is flowing from a source or into a sink that lies outside of the model's boundary. On diagrams, sources and sinks are represented by small clouds.

The notation used in stock and flow diagrams was originated by Jay Forrester in his book "Industrial Dynamics"[185]. It was based on a hydraulic metaphor: the flow of water into and out of reservoirs. Hence the names of these elements and their visualization. The key feature of a stock and flow diagram is that each construct can be precisely specified using a mathematical formalism – viewed from a mathematical perspective, such fully specified stock and flow models are just a way of visualizing a corresponding set of integral equations. In most cases these integral equations cannot be solved analytically, but it is possible to solve these equations numerically using computer simulation techniques.

Problem articulation, dynamic hypotheses and Stock & Flow formulation

The process of a business becoming insolvent

Insolvency law deals with the situation in which a debtor cannot pay its debts in full. In order to understand why companies might take on more debt than they can eventually pay, one needs to understand the basics of corporate finance and the dynamics of leveraged finance[186]. Although one intuitively likes to stay well away from a situation of insolvency and one might not want to incur too much debt, there is a global tendency for companies to do just that: take on as much debt as possible. One of the reasons for doing so, is that the shareholders can increase their returns (Return on Equity or ROE) by having the company taking on debt. This is referred to as "leveraged finance". In case of leveraged finance, the company is being financed with little shareholder money and significant money from creditors. The more debt the company takes on, the higher the leverage of that company.

The increasing ROE in case of leveraged finance is the great attraction of financing with debt instead of equity. Leveraged finance is, however, also dangerous, most notably for creditors. Firstly, the entire leveraged structure depends on low interest rates charged by the professional creditors, mostly banks. If interest rates increase, the company quickly succumbs under increased interest payments. Secondly, the leveraged company is left with extremely little equity. Equity also performs the function of a so-called equity cushion. Any losses incurred by the company, are first absorbed by equity. Equity is therefore an important measure of financial resilience. Extreme leverage should therefore be seen as undermining the immune system of the company. In case of overleveraged structures, even a minor setback can render the company insolvent.

A company is balance sheet insolvent if its assets are worth less than the outstanding debts, meaning there are not sufficient assets to pay all creditors in full. Outside of insolvency, in case a debtor defaults, a creditor can go to court and foreclose on the debtor's assets. In case of insolvency there are not sufficient assets to pay all creditors in full. The individual approach of debt collection then becomes counterproductive. An individual creditor will try to seize individual assets, thereby possibly dismantling a viable business. As a result of individual foreclosure, the total value available for the creditors is diminished.

[185] Forrester, J. W. (1997). Industrial dynamics. Journal of the Operational Research Society, 48(10), 1037-1041.
[186] de Weijs, R. J. (2018). Secured credit and partial priority: CorPolicy optionsrate finance as a creation or an externalization practice?. *European Property Law Journal*, *7*(1), 63-101.

Thus, to derive a general model to describe a population of business incorporating a cross-border investment (in terms of equity/debt) that are at risk of becoming insolvent we adopted the debt-to-equity ratio combined with the dynamic representing cash-flow-to-debt. The debt-equity ratio is a measure of the relative contribution of the creditors and shareholders or owners in the capital employed in business. This financial tool gives an idea of how much borrowed capital (debt) can be fulfilled in the event of liquidation using shareholder contributions. A low debt-equity ratio is favorable from investment viewpoint as it is less risky in times of increasing interest rates. It therefore attracts additional capital for further investment and expansion of the business.

In general, if the debt-to-equity ratio is too high, it's a signal that the company may be in financial distress and unable to pay your debtors. But if it's too low, it's a sign that the company is over-relying on equity to finance its business, which can be costly and inefficient. A very low debt-to-equity ratio puts a company at risk for a leveraged buyout. However, a good debt-to-equity ratio varies from different industrial sectors. Technology-based businesses and those investing a lot in R&D tend to have a ratio of 2 or below. Large manufacturing and stable publicly traded companies have ratios between 2 and 5. In banking and many financial-based businesses, it's not uncommon to see a ratio of 10 or even 20, but that's unique to those industries. As a result, there is no standard generic benchmark from which to judge all companies. Therefore, it is important to combine the ratio with a dynamic comparing the relationship of operating cash flow to total debt outstanding. Such a dynamic shows a company's implied capacity to retire debt principal, or, in other words, to make payments above and beyond contractual minimums.

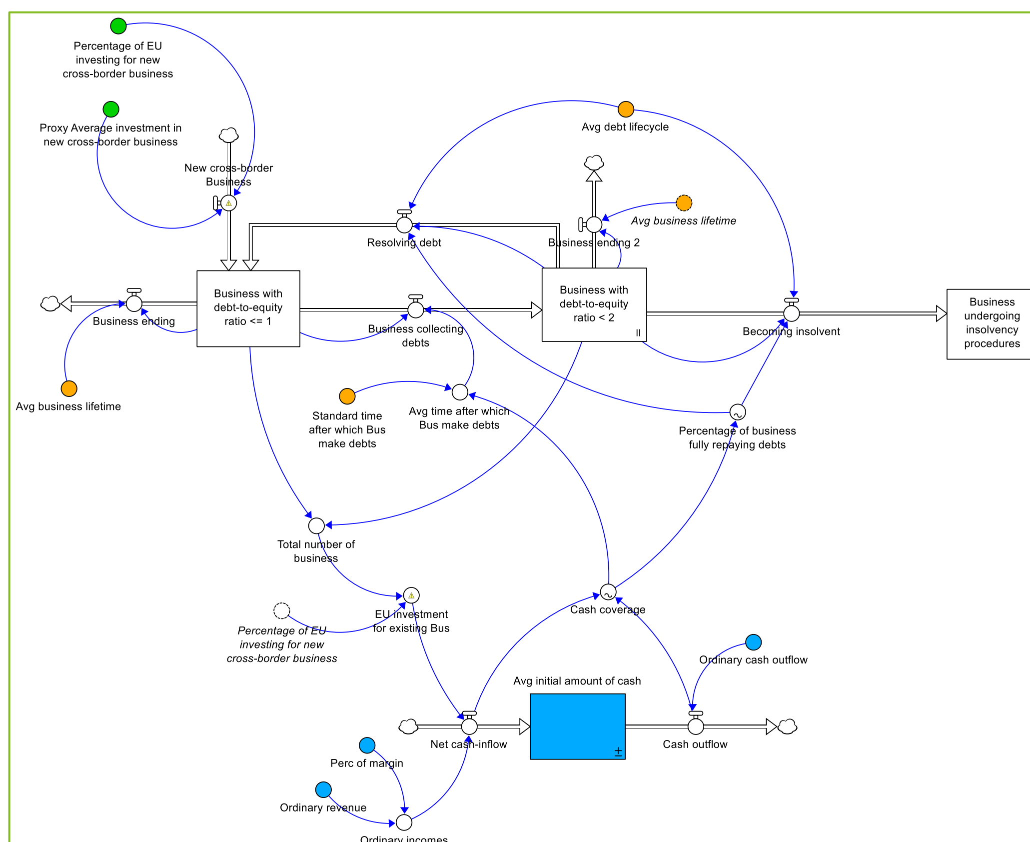


Figure 6 - The dynamic model showing the process from debt to insolvency

The derived model describes the status change of businesses and how this passage of state influence the economic context, with specific attention to insolvency dynamics.

We can start from the left in which we find the businesses with debt-to-equity ratio <= 1. These businesses are virtuous ones as they count almost only on their own capital. But after some time, they could start to collect debts due to financial issues. In order to represent the financial situation and so define the flow that carries businesses from debt-to-equity ratio <= 1 to debt-to-equity ratio < 2, cash flow analysis was considered. In representation of every business there is an average amount of cash that is defined by an inflow (ordinary incomes and investments for existing businesses from intra-EU investments) and an outflow (ordinary cash outflow due to operating, investing and financing activities). The cash inflow-outflow ratio gives the cash coverage, i.e. the ability to maintain the sustainability of business with own resources. Therefore, the cash coverage directly influences the average time after which businesses make debts, in non-linearly way. If the cash coverage rises, also the average time of making debts will rise, this is going to weak the flow, so less businesses will pass to debt-to-equity ratio < 2 over time.

Once the businesses are in debt-to-equity ratio < 2 stock, they have two paths: on one side, once the average debt lifecycle passes, they totally repay the debt, going back in debt-to-equity ratio <= 1, over time; on the other side, once the average debt lifecycle passes, they could not be able to repay the debt and becoming insolvent. The percentage of the businesses that are able (and not able) to repay debts comes from the cash coverage value again, in non-linearly way. If cash coverage rises, the percentage of businesses that can repay debts also rises.

The insolvency dynamics

Formal insolvency proceedings entail a judicial process, in which a judge assesses whether the company/individual is insolvent and considers which legal proceedings best fit the situation. Moreover, to avoid a disorderly run of creditors on the company, a *pari passu* treatment of creditors ensures trust and predictability of the procedures through equal and fair treatment for the same categories of creditors. The insolvency process timeline can be depicted as follows[187].

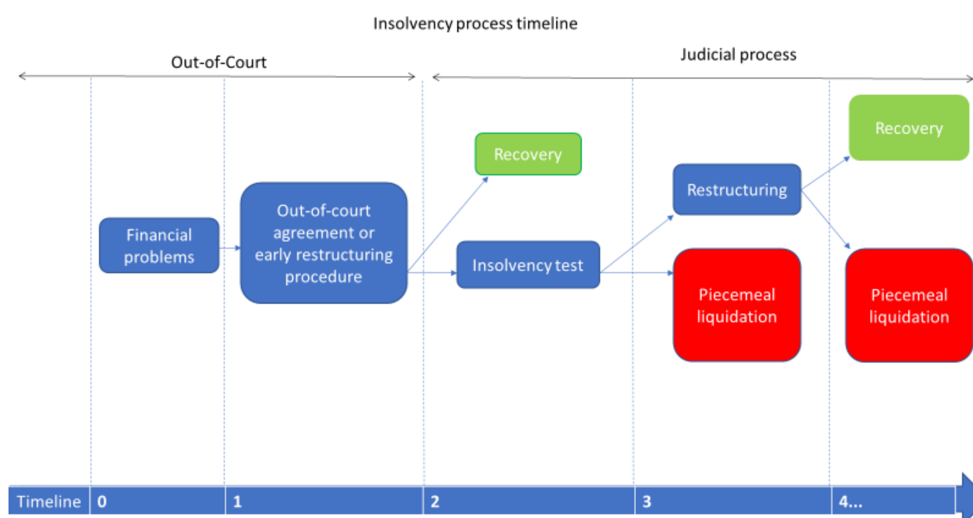


Figure 7 - The insolvency process timeline

The insolvency process timeline figure shows the overall processes that are available depending on the individual situation of a company in debt. There is a possibility of figuring debt outside of court system by creating a contract of agreement to solve the debt if both parties, the creditor, and the debtor agree. Insolvency test is done most of the times either in cash flow-based manner or focusing on balance sheet.

[187] Valiante, D. (2016). Harmonising Insolvency Laws in the Euro Area: Rationale, stocktaking and challenges. CEPS Special Report No. 153, December 2016.

Piecemeal liquidation is a process, where creditors liquify the remaining assets of the company for the purpose of paying back the loans taken before. The differences in choosing the way of testing insolvency are governmental and cultural to a point, but the processes are on a same timeline regardless of the differences[188].

This process timeline can be reflected in the general dynamic model as follows.

Figure 8 - The dynamic model showing the process of insolvency with finalization in liquidation or recovery

Businesses undergoing insolvency procedures can go through two paths: partially liquidation (it means that the procedure is not effective) or recovery (it means full recovery or effective liquidation). The partial liquidation and effective proceeding rate are mainly influenced by two factors, time and percentage of effective resolution (effectiveness). As the time to close insolvency procedures goes down, both the flow of businesses to partial liquidation or business recovering/liquidating stocks will rise; at the same time, the higher the percentage of effective resolution, the higher the business recovering or effectively liquidating.

Starting from this formulation, there are several dynamics that could be represented[189], affecting the whole process, but here are not reported to avoid a super-complexity of the model. For example, creditors' and debtors' incentives are shaped by the interaction of insolvency frameworks with other institutional settings. On the creditors' side the incentives to resolve debt depend not only on the framework for insolvency but also on a series of policy and regulatory conditions including taxation (the impact of different outcomes of insolvency on their tax obligations), prudential rules (how write-downs affect provision and capital

[188] Valiante, D. (2016). Harmonising Insolvency Laws in the Euro Area: Rationale, stocktaking and challenges. CEPS Special Report No. 153, December 2016.
[189] Bricongne, J. C., Demertzis, M., Pontuch, P., & Turrini, A. (2016). Macroeconomic relevance of insolvency frameworks in a high-debt context: an EU perspective. European Economy-Discussion Papers 2015-, (032).

requirements), accounting rules (the impact of different resolution options on earnings). Regarding debtors, requirements for information disclosure coupled with appropriate monitoring and enforcement are crucial to identifying debtor's true repaying capacity and discouraging moral hazard. The incentives for debtors to initiate and engage in a resolution dialogue when debts are not serviceable are shaped not only by bankruptcy law but also by framework conditions including social safety nets, the efficiency of markets and all factors that relate to the ease of doing business and starting a new activity for entrepreneurs. Some further dynamics could be:

- "**Run on debtor assets**" dynamic. Once a debtor becomes distressed, creditors have individually an incentive to call back their credit before others do, to maximise the chances of repayment. Similarly, to bank runs, the run on debtors' assets by creditors could itself provoke insolvency even in cases of viable activities.

- "**Heterogeneous preferences on debt resolution modalities**" dynamic. Creditors have different priority status (secured, senior, junior), and the economic origin of their claims differs (financial, trade credit, labour liabilities, public authorities) and may therefore affect their preferences for a certain type of debt resolution. In particular, it may happen that purely out-of-court preventive restructuring deals that require unanimity are blocked by a dissenting minority (hold out problem).

- "**Strategic delay**" dynamic. The macroeconomic environment affects the capacity to pay back distressed debts. Creditors have individually an incentive to refrain from writing off bad debts and disclosing losses. Instead, they have an incentive to wait for the macroeconomic environment to improve, which may help previously distressed loans starting to perform again. This type of dynamic tends to delay the moment in which bad debt is resolved, keeping resources employed in non-viable uses.

- "**Collateral meltdown**" dynamic. The simultaneous liquidation of collateral by creditors could have an impact on the market value of collateral (including that of performing debt), thereby reducing the extent to which bad debts are recovered. Financial institutions may not internalise sufficiently this phenomenon and thus reduce the capacity to recover distressed debt on aggregate.

- **"Congestion" dynamic**. The simultaneous resort to insolvency procedures could lead to court congestion, thereby lengthening the time necessary to complete bankruptcy cases.

At the end, the model incorporates the vision define in the document "Macroeconomic Relevance of Insolvency Frameworks in a High-debt Context: An EU Perspective"[190], in the sense that in the case of corporate insolvency, generally legislation and practice aim at maximising the value that debtors can generate, with liquidation seen as a last resort alternative. In the perspective, insolvency is only a late step in the timeline of distressed debt. The timeline of distressed debt starts when a debtor first sees signs of difficulty in servicing. This timeline goes all the way through actual default and insolvency, and ends at the point when debtors are released of all obligations. Different tools are relevant to ensure that debt continues to be serviced or is quickly resolved, at each stage of the timeline. As a result, the outstanding stock of debt in an economy is a mix of solvent debt, as well as debt at different stages of distress.

Cross-border flows and the insolvency regimes

There are several studies and position papers addressing the main issues of the relationship between cross-border capital market and insolvency regimes. As reported by the AFME "Capital Markets Union: Key Performance Indicators"[191] in October 2021: the reform of the Europe's several insolvency laws is a long-standing single market project; currently, sub-optimal and inconsistent insolvency regimes are holding back European financial markets and growth in the real economy, causing uncertainty among investors,

[190] Bricongne, J. C., Demertzis, M., Pontuch, P., & Turrini, A. (2016). Macroeconomic relevance of insolvency frameworks in a high-debt context: an EU perspective. European Economy-Discussion Papers 2015-, (032).
[191] AFME (2021). Capital Markets Union: Key Performance Indicators. October 2021

discourage in cross-border investment, and delays in the restructuring of companies facing financial difficulty, finally making it harder to address the potential increase in levels of non-performing loans, which can represent a challenge for the path to economic recovery.

These sentences reveal few relevant macro-economic dynamics that could improve the understanding of the relationship that the dynamic model could address, as for example:

- While **debt is a necessary tool to promote growth**, excessive debt weighs on economic prospects. At moderate levels, debt helps channel savings to profitable investment opportunities and helps smoothing consumption over time. However, once debt rises beyond prudent levels, it may increase vulnerability to shocks. Although there is no clear consensus about where the tipping point lies, there is widespread recognition that high debt sows the seeds of reduced investment rates afterwards. Moreover, high credit growth tends to precede the occurrence of financial crises, thereby amplifying subsequent recessions[192].

- **From the debtors' perspective**, unsustainably high indebtedness creates a debt overhang problem, which weighs on investment and consumption decisions. Debt overhang is defined as a situation where a firm's high levels of debt act as a disincentive to new investment. Large outstanding debt implies high repayment costs and high perceived default risk, which discourage engaging in new investments. Moreover, incentives not only to invest but also to supply labour are reduced if a large part of income is used to repay debt. Empirical evidence shows that the impact of the debt overhang on aggregate investment can be quite sizeable[193].

- **From the creditors' perspective**, the presence of non-performing debt in their balance sheets weighs on their ability to provide funding to the economy. There are several channels through which nonperforming loans can affect creditors[194]. First, the occurrence of non-performing loans (NPLs) creates higher provisioning needs. This weighs on banks' profits (with the impact depending also on the particular tax treatment of provisions), thereby reducing banks’ ability to generate equity. Second, the willingness of banks to finance risky projects could be reduced by the perception of increased asset riskiness linked to NPLs[195]. Third, higher capital requirements linked to increased riskiness of assets tie up banks' resources and crowd out new credit.

- **High stocks of NPLs are often associated with a relatively large fraction of credit being locked up with non-viable firms**. Banks may have an incentive to refinance non-viable ""zombie"" firms in order to delay having to incur losses on these loans. As this happens, at the expense of the supply of credit to new, viable projects, the protracted refinancing of unviable debt implies that capital becomes increasingly misallocated, with relevant implications in terms of overall investment and growth prospects[196].

- **Ex-ante**, i.e., when debt is created, insolvency frameworks affect borrowers’ incentives to take on debt and lenders’ incentives to provide credit. By providing adequate protection of lenders in case of default, a good framework helps maintain incentives to supply credit. In parallel it mitigates opportunistic behaviour on the part of borrowers (moral hazard), without discouraging responsible borrowing.

[192] Bricongne, J. C., Demertzis, M., Pontuch, P., & Turrini, A. (2016). Macroeconomic relevance of insolvency frameworks in a high-debt context: an EU perspective. European Economy-Discussion Papers 2015-, (032).
[193] Kalemli-Ozcan, S., Laeven, L., & Moreno, D. (2015). Debt overhang in Europe: Evidence from firm-bank-sovereign linkages. University of Maryland.
[194] Aiyar, S., Bergthaler, W., Garrido, J. M., Ilyina, A., Jobst, A., Kang, K., ... & Moretti, M. (2017). A strategy for resolving Europe’s problem loans. Eur Econ, 1, 87-95.
[195] Diwan, I., & Rodrik, D. (1992). Debt reduction, adjustment lending, and burden sharing.
[196] Bricongne, J. C., Demertzis, M., Pontuch, P., & Turrini, A. (2016). Macroeconomic relevance of insolvency frameworks in a high-debt context: an EU perspective. European Economy-Discussion Papers 2015-, (032).

- **Ex-post**, after debt becomes distressed, insolvency frameworks can affect borrowers' incentives to create value to repay outstanding debts. Insolvency frameworks also matter for insolvent debtors to have a fresh start and engage in new projects and activities after having become bankrupt.

- **Cross-country correlations suggest that countries with more effective insolvency frameworks are characterised by a lower stock of NPLs and have implications for business dynamics**[197]. Results show that good insolvency regimes are weakly associated with lower stock of NPLs (as % of total loans) but have a stronger negative correlation with the rate of increase in NPLs. Effective frameworks are more frequently found in countries where the subsequent build-up of NPLs is slower. The relation suggests that effective insolvency frameworks may contribute to keep NPLs low, although one should be prudent in interpreting such relation as a manifestation of causality: such regularity may be driven by other factors affecting insolvency and NPLs at the same time. The analysis also shows that good insolvency regimes are also associated with a lower frequency of insolvencies. A possible interpretation is that in countries with effective insolvency frameworks, despite their lower cost, insolvencies are less frequent because those countries are also the same exhibiting a lower stock of NPLs. High-quality insolvency regimes also tend to go together with higher entry rate of firms. This evidence confirms existing findings that better insolvency regimes have an impact also on the degree of business dynamism[198].

- Efficient insolvency procedures are associated with an increase in credit supply[199] , notably to SMEs, diversification of portfolio[200], and lower risk-taking[201].

- According to an AFME study[202], improvements in insolvency frameworks across the EU could increase EU GDP by between 0.3% and 0.55% over the long-term. As stated in the conclusions of the EBA "Report on the benchmarking of national loan enforcement frameworks across EU Member States" in 2020[151], the 2019 EU Directive on Restructuring and Second Chance was a step in the right direction but some further improvements are broadly required. Successful implementation of minimum standards will require consistent adoption at member state level with a closer harmonisation of insolvency standards across the EU to embed key elements of effective insolvency laws and practices into national systems. In effect, the EBA Report [203] evidenced the continued disparity in insolvency outcomes across the EU as measured by average recovery rates or time to recovery.

[197] World Bank (2015.) Principles for Effective Insolvency and Creditor/Debtor Rights Systems (revised 2015), the World Bank Group.
[198] Lee, S. H., Peng, M. W., & Barney, J. B. (2007). Bankruptcy law and entrepreneurship development: A real options perspective. Academy of Management Review, 32(1), 257-272.
[199] Haselmann, R. F. H., Pistor, K., and Vig, V. (2009). How law affects lending. The Review of Financial Studies, 23(2):549-580.
[200] Haselmann, R. and Wachtel, P. (2010). Institutions and bank behavior: Legal environment, legal perception, and the composition of bank lending. Journal of Money, Credit and Banking, 42:965-984.
[201] Fang, Y., Hasan, I., and Marton, K. (2014). Institutional development and bank stability: Evidence from transition countries. Journal of Banking & Finance, 39:160-176.
[202] AFME (2016) Potential economic gains from reforming insolvency law in Europe
[203] EBA (2020). Ibidem.

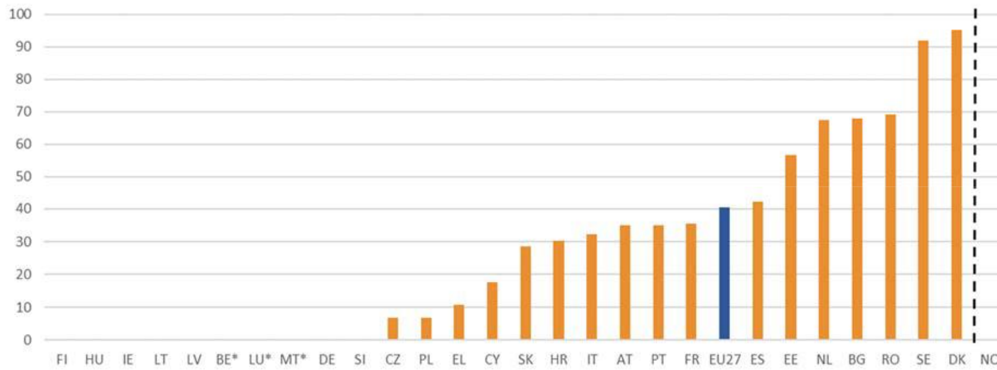


Figure 9 - EU benchmark, gross recovery rate (%), simple average for each EU Member State – corporate

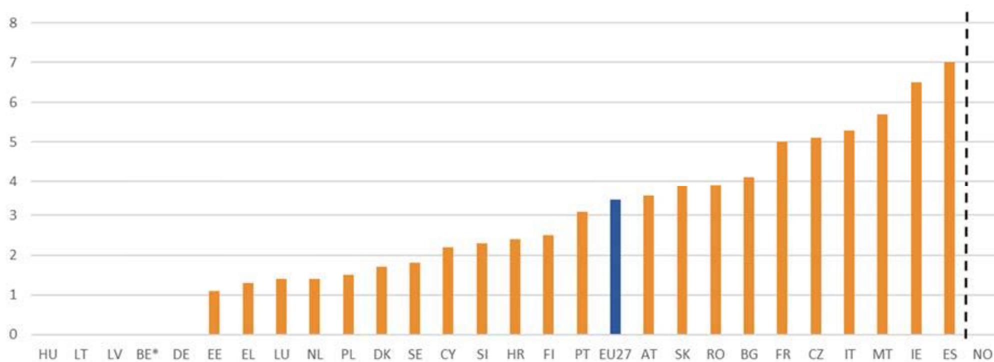


Figure 10 - EU Benchmark, time to recovery (years), simple average for each EU Member State – corporate

Furtherly a study on “Insolvency regimes and cross-border investment decisions” in 2020[204] provided insights on the effects of insolvency reforms on foreign players, and from an investment point of view, on debt and equity. Relying on the OECD data on insolvency regimes and ECB SHSS data on cross-border investments, the authors identified a causal effect within each sector and each instrument through a difference-in-difference approach. The results suggest that foreign investors are more likely to invest in a country if its insolvency regime is efficient. Investors are particularly sensitive to improvement in prevention, streamlining, and restructuring tools. However, the marginal effect is not homogeneous across sectors. Institutional investors seem to be the most reactive in their equity investments after such reforms, while banks react in debt holdings. Further, the authors found evidence that, for equities, all sectors are highly sensitive to measures related to prevention and streamlining, while debt-holders mostly take into account restructuring tools. Overall, insolvency reforms do exert a positive effect on cross-border investments, thereby deepening the capital markets integration.

The **general dynamic model** can address the described dynamics as follows.

[204] Kliatskova, T., & Savatier, L. B. (2020). Insolvency regimes and cross-border investment decisions.

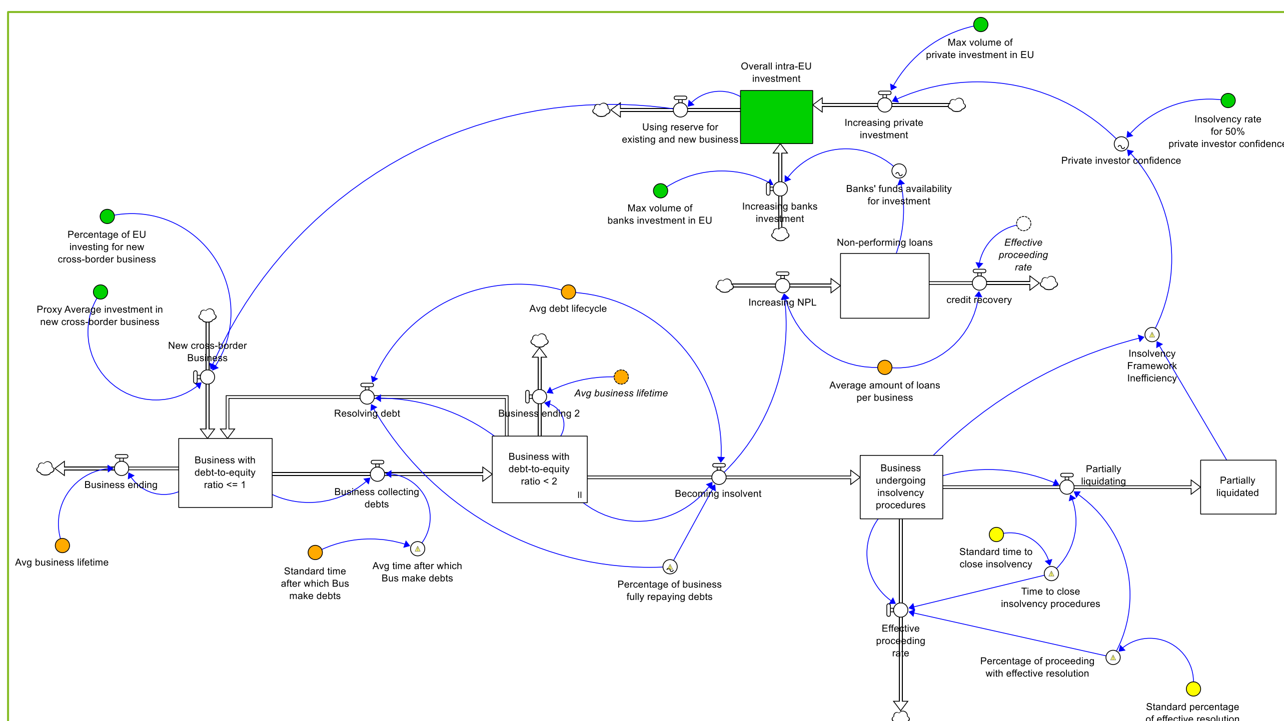


Figure 11 - The dynamic model incorporating some macro-economic dynamics

Private investments from intra-EU investor in this model are characterized by the private investor confidence which is directly influenced by the insolvency rate (i.e. Business undergoing insolvency procedures over totality of businesses), in non-linear way. The confidence is a value that goes from 0 to 1 and, giving the max potential volume of private investments in EU, gives back the percentage of that amount currently circulating.

On the other side, there are also the role of investments from banks. The amount of investments from banks comes from the max potential volume of banks investments in EU and the average banks' funds availability for investments. As for private investors' confidence this is a variable that ranges from 0 to 1 and it is mainly defined in this model by the amount of non-performing loans collected by banks, on average. This stock of non-performing loans is affected by an inflow due to "becoming insolvent" businesses and an outflow due to credits recovery after insolvency procedures.

The two flows, from private and banks investment, are inflow for overall intra-EU investment that will be used in two ways. On the one hand, a certain percentage of this amount of investment will be used to create new businesses; on the other hand, the complementary percentage will be used to feed existing businesses, improving their cash flow balance (with consequences on cash coverage, debts collection and insolvency transition).

The effect of an efficient insolvency framework

Starting from 2001, the World Bank has been working with partner organizations to develop principles for insolvency and creditor/debtor rights systems (the current revision is the one issued in 2021) [205]. The Principles for Effective Insolvency and Creditor/Debtor Regimes are a distillation of international best practice on design aspects of these systems, emphasizing contextual, integrated solutions and the policy choices involved in developing those solutions. According to these principles and integrating some positions from

[205] World Bank. (2021). Principles for Effective Insolvency and Creditor/Debtor Regimes, 2021 Edition. World Bank.

the literature, we consider as "efficient" an insolvency framework that prevents fire-sale liquidations[206], ensures continuation of businesses where the going concern has greatest value, and guarantees creditors' rights[207] while ensuring that the owners have the right incentives to preserve the value of the distressed company[208]. Thus, efficiency principles for corporate insolvency can be summarized as follows[209].

3. Early resolution of debt distress should be encouraged as it maximises the value recovered for creditors, and minimises the cost to the economy. The loss of value in corporate insolvency is in general higher the longer the time of distress. Indeed, firms in distress can allocate fewer resources to normal operations, thereby contracting their income-generation capacity and losing value over time. A number of features of insolvency frameworks contribute to an early triggering of the resolution process and to its fast completion.
4. Insolvency frameworks should ensure that firms with viable activities are reorganised, while nonviable firms are promptly liquidated (separating viable from non-viable debt is a challenging task that requires mechanisms to make available necessary information on debtors' conditions and adequate judicial capacities in terms of court capacity and skills of extra-judicial practitioners)
5. The framework should be supportive of the continuation of viable firms both during the restructuring process and afterwards

According to an AFME study[210], efficient insolvency regimes reduce the transactions costs of enforcing debt contracts, and more broadly promote the efficiency of capital markets by promoting the winding up of unviable firms while providing scope for the orderly restructuring of distressed, but ultimately viable, businesses. Measuring best practice in insolvency regimes can be done in many ways. One is to focus on quantitative performance measures, such as the cost of proceedings, time for creditors to recover credit, and rates of default and recovery. A complementary approach is to identify the desirable properties of an insolvency regime, and to "score" the actual regime of a jurisdiction based on whether, and how far, they exhibit these desirable properties. These "desirable properties" relate essentially to the decision rights of the various parties over business operations and the conduct of the proceedings; in this study these decisions area addressed by the combination of policy options with the framework building blocks.

The EBA provides information on recovery rates and time-to-recover indicators based on data on insolvency outcomes. These information point to significant variation across countries in terms of the efficiency of insolvency frameworks and thus room for improvement in many countries.

To address such issues and dynamics the general dynamic model can be furtherly improved by considering the effects of the harmonization of relevant building blocks on the costs of proceedings, the time to close the efficiency procedure and the effectiveness.

[206] Acharya, V. V., Sundaram, R. K., & John, K. (2011). Cross-country variations in capital structures: The role of bankruptcy codes. Journal of Financial Intermediation, 20(1), 25-54.
[207] La Porta, R., Lopez-de-Silanes, F., Shleifer, A., & Vishny, R. W. (1997). Legal determinants of external finance. The journal of finance, 52(3), 1131-1150.
[208] Von Thadden, E. L., Berglöf, E., & Roland, G. (2010). The design of corporate debt structure and bankruptcy. The Review of Financial Studies, 23(7), 2648-2679.
[209] Bricongne, J. C., Demertzis, M., Pontuch, P., & Turrini, A. (2016). Macroeconomic relevance of insolvency frameworks in a high-debt context: an EU perspective. European Economy-Discussion Papers 2015-, (032).
[210] AFME (2016) Potential economic gains from reforming insolvency law in Europe.

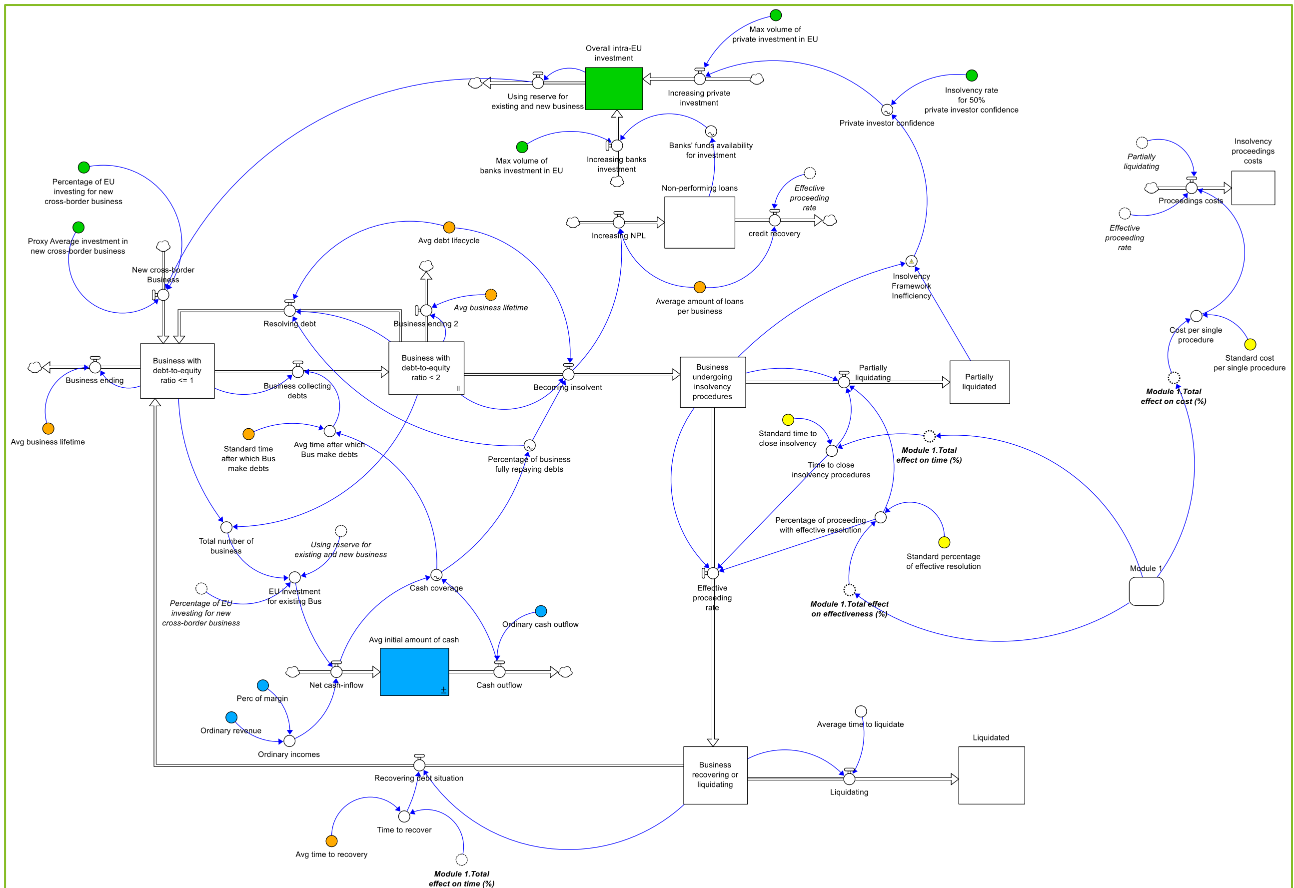


Figure 12 - The complete general dynamic model

Besides the dynamics of flows, the model addresses the economic impacts of procedures in terms of 3 factors: time, effectiveness and costs. These are strictly connected to policy decision about harmonization of building blocks; therefore, the factors will vary based on the which policy will be activated.

In addition to this linear change of state of businesses, the model takes into account also some circular feedbacks, so that some effects coming from the dynamics of businesses' changing status is going to feed back some other variables, like the number of businesses and the rate with which they change over time.

Calibration and simulation

The model is constituted by 101 variables and runs over a 10 years horizon.

In order to investigate the impact of the harmonization of the insolvency framework an accurate calibration of few parts of the model have been performed. In fact, the model is able to consider the cumulative impact of the harmonization of each building block considering the adoption of the policy option selected through the questionnaire. In particular, the effects are calculated by elaborating per each building block the weighted average of the score assigned in terms of decreased/increased effect. In the following table such impact is reported.

Table 12 - Impact of the calibration on the Policy Options

Building block	Policy option	Option description	Impact on costs	Impacts on time	Impact on

					effective ness
Pre-pack sales	4	Pre-pack sales should be introduced by a EU Directive or Regulation, precisely regulating the features of the instrument, the role of the Advisor and its appointment as an IP, the assignment or termination of civil and commercial executory contracts, the criteria to choose the best bid, and the measures to maximize the value of the business subject to pre – pack, displacing existing national provisions	-14,17%	-21,70%	16,00%
Transaction avoidance	4	Transaction avoidance should be ruled by means of a Directive or a Regulation providing an exhaustive specific set of rules on transaction avoidance displacing conflicting national law	-10,85%	-10,38%	20,08%
Specificities of micro and small enterprises (MSEs)	2	Specificities of MSEs should be ruled by means of Directive providing specific regime and/or exemptions from general insolvency requirements in case of MSEs in the form of targeted modifications of the general insolvency system including the following: definition of the scope of special provisions; access to orderly proceedings regardless available assets to cover the cost of the proceedings; postponement of the payment of procedural costs; the possible public funding of procedural costs; lowering the complexity and duration of the MSEs cases; providing for a scrutiny of the honesty of the debtor in the course of the proceedings instead of imposing heavy tests on the first day of the proceedings or setting forth extensive filing requirements; reflecting the rational creditor passivity in the rules on the decision about the restructuring plan, a sale of the business, or a piecemeal liquidation by a deemed approval rule; considering having proceedings outside the courts systems and involving courts only for appeals or objections; limiting the administrative burden by using mandatory templates and IT tool, providing for a very short periods of a stay of a plan proposal	-12,95%	-13,94%	11,11%

Role and powers of insolvency practitioners in asset tracing and recovery, including asset to registers	4	Roles and powers of insolvency practitioners, with regard to asset tracing and asset recovery should be ruled by means of a Directive or a Regulation providing an exhaustive list of powers and tools for insolvency practitioners asset tracing and recovery in cross border insolvency cases	-13,51%	-16,49%	27,57%
Creditors' committee	1	Creditors' committees should be ruled by means of a EU Recommendation with some principles on formation of creditors' committees	0,00%	-1,75%	7,26%
Pre – commencement entitlements and identification of potential grounds to a post commencement privilege	4	Post – commencement privilege should be ruled by means of a Directive stating priority preferences for privileged creditors to general unsecured creditors and listing in NON – exhaustive manner the positive priority preferences and the negative priority preferences	-3,74%	-4,30%	12,50%
Preferences to certain types of unsecured creditors	0	*Pari passu* and any modifications to be ruled according to Member States laws, without any further EU intervention	0,00%	0,00%	0,00%
Role of the courts and regulating insolvency practitioners' professional conditions	2	Roles of courts and professional conditions of insolvency practitioners should be ruled by means of a EU Directive with more concrete rules on specialisation of insolvency courts and training of judges and on requirements for insolvency practitioners' when it comes to conditions for eligibility, appointment, suitable, training, or necessary expertise	-11,47%	-16,24%	21,67%
Directors' duties and liability in the vicinity of the insolvency	2	Directors' duties and liabilities should be ruled by means of a EU Directive on the directors' duties and liability in the vicinity of insolvency (including details on the decisions to be taken once the shareholders meeting has been convened, conditions under which insolvency should be filed and liability against wrongful trading	-9,87%	-9,61%	21,58%

Each impact is applied in the range of the feasibility of the element, using data derived from the EBA "Report on the benchmarking of national loan enforcement frameworks across EU Member States" in 2020[211], as follows:

- In the report the insolvency cost is reported by using the "judicial cost to recovery" variable, defined using the judicial costs as a share of the notional amounts at time of default (i.e. Judicial cost to recovery = Judicial costs / Notional amount outstanding at time of default). The report states that the EU27 simple average is 3.5%, while the best case is 0,1%. Therefore, starting from the 3,5% of judicial cost to recovery (baseline), we assume that a 100% reduction of costs leads to the 0,1% of judicial cost to recovery.

- In the report the time to close the insolvency procedure is accounted by the variable "time to recovery", defined as the length (in days) of the recovery period (as part of the recovery rate process, from the start of the formal enforcement status to the date of ultimate recovery from the formal enforcement procedures). The specific from which the number of days was counted was the date of the decision to enter into a formal legal procedure. It contains the days until full recovery. The report states that the EU27 simple average is 3.3 years, while the best case is 0.3. Therefore, starting from the 3,3 years of time to recovery (baseline), we assume that a 100% reduction of time leads to the 0,3 years of time to recovery.

- In the report the effectiveness is accounted by using the variable "gross recovery rate", defined using the gross recovery amount as a share of the notional amounts at time of default (Gross recovery rate = Gross recovery amount / Notional amount outstanding at time of default). The report states that the EU27 simple average is 33,8%, while the best case is 74,9%. Therefore, starting from the 33,8% of gross recovery rate (baseline), we assume that a 100% increase in effectiveness leads to the 74,9% of gross recovery rate.

[211] EBA (2020). Report on the benchmarking of national loan enforcement frameworks across EU Member States. EBA/Rep/2020/29

Annex C | Report on interviews

7.1 Set-up of the specialised interviews

A large number of interviews was carried out with experts of different backgrounds and the interview guideline was tailored to the different backgrounds of the experts, which belonged to the following groups:

- Academics and professors and researchers
- Lawyers and legal advisers and bar members
- Banks and financial institutions operating cross-border
- Judges in commercial courts and of insolvency courts
- Members of trade unions
- Members of Banking Federations
- Insolvency Practitioners
- Members of institutions and EU and national level focusing on insolvency
- Members of institutions and EU and national level focusing on investment and cross-border investment
- Banking federations
- Members of EU expert groups
- State agencies focusing on investment
- State agencies focusing on insolvency

These experts were interviewed under the principle of anonymity and non-disclosure, derived from the practice of impact assessment research and the need to facilitate open and unconstrained expression on opinions.

7.2 The interview topics

A number of key topics related to the issue of insolvency in relation to EU cross-border capital circulation was discussed with the experts with different backgrounds and perspectives. Here the analysis is presented.

7.2.1 Main issues of cross-border insolvency convergence and capital circulation

Insolvency convergence issues

The first topic concerns the overall problem of insolvency convergence in relation to cross-border capital circulation. In this case the majority of the legal and financial experts interviewed confirms that the convergence of insolvency rules will undoubtably help capital circulation as investors would have a better understanding and appreciation of the risks attached to their actions. The convergence process will impact on all elements of cross-border investment, such as financial risk assessment, level of interest applied, assumption of capital investment risk, including the assumption of risk in **the relationships with trading partners in cross-border value chains**. This may not have direct impact on interest rates, but the risk assessment may affect the contracts in their value and conditions.

The target and scope of convergence

Some interviewees indicate that a full harmonisation of insolvency laws is not necessary, but also specify that the full harmonisation of insolvency law requires the harmonisation of company law and tax law. A convergence process should address not only specific parts of insolvency law but also the rules for secure credits, which is – politically speaking – really difficult in the current EU setting.

The desirable and feasible convergence would focus on the identification of the issues to be harmonised, such as the way the liquidators work or the way they are controlled. The feasibility of convergence policies should be properly tested: for example, the restructuring directive will not be easily implemented because of its characteristics due to a political compromise. It leads to the effect of "race to the court", so any adviser, liquidator or insolvency practitioner tries to get a proper restructuring regime in his own local jurisdiction.

Most legal experts feel the need to harmonise the legal definition of insolvency. It is pointed out that determining a convergent determination of the start of the insolvency would benefit cross border insolvency. Several interviewees have pointed out that credit priority and ranking make secured creditors concerned, convergence across the EU would be welcome in principle, but investors – recognisably banks – are afraid that their current practices and processes may be disrupted by different rankings.

When asked to reason on the relationship between a convergent insolvency regulatory framework in the EU, some interviewees point out that a generally convergent insolvency set of rules across the EU would not be indispensable for the creation and functioning of the market. Other experts however recognised that there are regulatory items, which could facilitate cross-border capital circulation, even though investors do not expect substantial breakthroughs from convergence. One of the interviewees pointed out that when professional/sophisticated investors assess cross-border investment opportunities, the structure of the relevant legal framework has only a limited weight in the overall process.

Micro and Small and Medium Enterprises

Micro and Small Enterprises take the most impact from the efficiency/inefficiency of insolvency procedures in cross-border investment and capital transfer. Large companies have no major impact, their operational and financial critical mass allows them to operate safely and with a satisfactory control of risk. Some legal experts do not deem a special insolvency regime for MSMEs as necessary, the shocks they may be the target of different policies other than insolvency, namely industrial and labour policies. However, most of the experts are in support of harmonization for MSMEs.

Insolvency convergence issues for banks and financial operators

In the specific case of banks, when they assess a potential creditor in a different Member State, they have to make a business case with a local lawyer to determine precisely what type of **security** they can expect to obtain and to have certainty about the functioning of the overall insolvency process. The lenders risk is mainly on the assessment of securities. Also, in the case of banks, interviewees have confirmed that the legal framework of insolvency plays only a minor role in investment decisions. As will be explained in the later paragraphs of this section, banks are interested in making sure that their credit contractual arrangements are clear and their priorities on the assets can be secured.

Large banks operating cross-border normally have a structured process executed by local branches and the root decision is basically whether a certain credit market is profitable with acceptable risk or not. Banks make a yes/no decision, for which insolvency plays a specific but not prevailing role. The strategic top management decision to provide financial services in a certain Member State this decision is pursued according to the business case, notwithstanding the peculiarities of legislation (insolvency and beyond) and a Bank's board rarely decided not to take up a business opportunity in a certain MS because of its insolvency legislation. For banks it is important that their own credit assessment and risk rating processes can be fully and effectively run.

Cross-border restructuring frameworks are desirable to keep viable businesses alive, the lack thereof may lead to the liquidation of viable businesses, even if they shouldn't be. Micro small and medium enterprises have specific needs when facing is exogenous shocks.

The role of judicial capacities

Furthermore, legal experts have pointed out that convergence and harmonisation is not only about rules, but also about judicial capacities. As a matter of fact, it was pointed out that the functioning of insolvency is not just a matter of rules and laws, but also, and for a significant part, a matter of law enforcement judicial capacity, i.e., the organisation of in-court and out of-court processes and of the organisations and individuals (e.g.: the insolvency practitioners). A perfectly conceived insolvency framework in and inefficient setting will not yield advantages in the overall effectiveness of the insolvency system.

7.2.2 Protection of involved parties (creditors and viable debtors)

Legal experts and insolvency practitioners indicate that in cross-border investment decisions the convergence of law will provide an increased protection of involved parties, creditors and debtors. This applies mostly to micro and small and medium enterprises, while corporate groups are normally handled out of court by means of out of court pre insolvency proceedings settled according to the centre of main interest (COMI). But large corporates require the arrangement of centralised group proceedings, which are very costly.

There is a vast set of creditors, who shall be protected in an insolvency proceeding, among them secured and unsecured creditors, voluntary and unvoluntary creditors, adjusting and non-adjusting creditors. Viable businesses are also a value that shall be preserved.

Employees

The interviews touched upon the different types of protected parties: Employees are in general well protected in the EU and this protection seems to increase with time. Outside of insolvency regulations, governments pays the dues to employees and then become creditors of insolvent company.

Secured creditors

Secured creditors are in general very well protected, some possibly overprotected, say some legal experts, possibly creating and imbalance in respect to other creditors. In this line, interviewees confirm that the minimum regulation on transaction avoidance would rule the risk of losing the security. It's about creating a security right, not a possessory right.

Early restructuring

On the side of the businesses, viable companies should be put in a position to do early restructuring and be able to make an arrangement with creditors. Nevertheless, creditors should be able to collect their debts as quickly as possible, either restoring the profitability of the business or liquidating the assets. For this reason, there need to be a proportion between asset level and restructuring process. MSMEs needs to be protected because of their limited financial and operational critical mass. In special cases viable companies should be supported by the public, possibly also through banks, which have put their loans on hold.

Ranking of claims

When it comes to ranking of cross-border claims, the convergence of retention of title clauses that foster cross border investment should be a quick win in the view of cross-border investors. Bank representatives are comfortable with the current classification of claims and would advise against the introduction of a subjective element, obviously seeking to keep control over transactions. They would be not favourable to the introduction of a subjective element in claims ranking.

Banks advocate a convergence of rules concerning non-disruptive loans securitisation, investment control, credit recovery, and prevention of the circumvention of legislation shortcomings, as well as the access to registers to have a full picture of assets and their movement. Experts confirm that banks do not only respond to their stakeholders but need to monitor the status of their credits, which affects their bank credit rating and their balance sheets and financial standing.

7.2.3 **Volumes of cross-border insolvency**

In general, experts expect an increase of cross-border insolvency with the increasing integration of economic transactions in the Union. They were in general unable to indicate precise numbers. In case of one specific EU Member State the interviewee advised that statistics on cross-border insolvency would be available, but not readily accessible.

7.2.4 **Costs of cross-border insolvency procedures**

Experts agree that it is excessively difficult to represent procedural costs for insolvency and for cross-border insolvency. High costs are normally associated with the assessment of the target regulatory system against the organisations' procedures for cross-border investment appraisal. The costs of lawyers vary. It is very hard to harmonise the cost of proceedings. This cost of proceedings influences the decision of investing.

It is also recognised that insolvency administration claims a significant share of the asset recovery value.

7.2.5 **Factors and issues affecting investor behaviour**

The financial risk assessment

Experts from the financial and banking sectors have confirmed that cross-border investors mainly do a financial risk assessment. Some of them indicate that there is no real correlation of risk assessment and interest rates. Nevertheless, the aspect that would be most affected by an increased convergence would be the harmonisation of financial risk assessment. Indeed, this would lead to a better cross-border lending environment as the lenders would know what the worst-case scenarios would be and subsequently be more comfortable in lending money. On the contrary would not be affected as they are based on numerous variables that are complex and would not be touched by harmonisation because bankers focus more on the debtor's ability to pay more than at the bankruptcy dividend.

For many investors an increased convergence would benefit their financial risk assessment. It would be easier and cost-effective to have similar systems across the EU. Some of the experts have stated that it is not harmonisation or convergence that will boost cross border investment. For the sophisticated investor the cross-border insolvency scenario is clear and predictable. The sophisticated investor knows how to handle such cases and does not consider the lack of harmonisation of insolvency a hampering factor.

Investment decisions

In respect to the ranking of claims, Banks make no calculation when they make investment decisions on which categories shall not be given preference. As mentioned earlier on, banks award their credit on the basis of the individual solvability and sustainability assessment. They want to be sure of the securities and the collateral and want to keep control over transaction avoidance, which should be converging as much as possible, including asset tracing.

For banks the assessment of the regulatory framework and the adaptation of procedures is performed not on a case-by-case basis, but rather for a country-strategic evaluation.

On the other hand, unsophisticated investors are mainly driven by expected returns and don't have procedures in place which allow them to differentiate their investment procedures. The decision to grant the credit is normally not related to the insolvency legal framework: it is a strategic decision; credit award

procedures take the insolvency factors as one of the elements to be considered. Banks tend work within their own frameworks so that they can secure financial collaterals, with no unpredicted obstacles put in place or unpredictable proceedings in case of crisis, which may disrupt specific credit arrangements. Also, the ranking of claims and the framework of creditor privileges should be certain: they do not wish that rules make creditors with a higher credit ranking step into their contract and process putting their debt recovery in danger. It is important for banks that real assets can be controlled. Banks and private investors/funding trusts use legal mechanism that are designed to circumvent the issues raised by insolvency proceedings – such as secured loans. In case of default, the creditors will be able to use the security arrangements in order to obtain the control of investment or be repaid in a full and timely manner. Insolvency plays a role in the decision making, but assessment mechanisms, procedures and contracts are designed to go around problems raised by insolvency.

In any case the more harmonised the legal framework the more certain and the easier the procedures to complete insolvency procedures.

Asset tracing, early recognition of business distress

Asset tracing is still very fragmented and not very harmonised across the EU, with every MS following their own rules. A stronger convergence would be welcome.

Likewise, banks would welcome rules, which enable the early recognition of distress through early crisis warning. They prefer rules which grant easy access to asset and distress information to better asses the steps and measures involved and therefore have a better idea of preservation of asset value.

Rules should allow interim or new financing ongoing concern as long as it is secured by free on unburdened assets.

7.2.6 Solutions to facilitate the cross-border insolvency claims

Interviewees have provided inputs on supporting instruments, tools and platforms, which would aid cross-border insolvency from an operational point of view. Experts indicate that the handling of cross border insolvency and claims would benefit from Language support, translating terms, procedures, claim forms. Such instruments and tools would in many cases make unnecessary the hiring of a local lawyer, thus leading to lower costs for the claimant. In other terms, the individual creditor should be helped to access claim procedures.

A harmonised cross-border insolvency framework would also include a general standardisation and harmonisation and the use of tools such as emails would facilitate the cross-border handling of claims, possibly setting up registers and portals for claims and for asset tracing. Existing Registers of assets publicity of insolvency procedures should be based on Interconnected European platforms, providing the relevant necessary judicial capacity and a reliable access to information regarding the financial situation of companies in financial difficulty and on near insolvency proceedings. Also a register of ownership should be implemented which should include the main assets that a company has. The creditors would then be able to assess whether they can gain a security over certain assets to provide additional financing.

It would be very effective to be able to lodge claims online with no physical signature needed, which would be cheaper and more streamlined. It would be advisable that each Member State would set-up building a one-stop portal for all for the insolvency proceedings and the EU would be responsible just for the interconnection.

7.3 Summary of the outcomes of the interviews, split according to the relevant building block.

Pre-pack sales

A majority of respondents212 are in favour of implementing this mechanism at European level through either a Regulation or a Directive. Five respondents suggest that no action should be taken in this respect while three respondents are favouring the adoption of a recommendation. Among the arguments in favour of the use of the instrument are the avoidance of costs and time lost during insolvency proceedings. Safeguards should be put in place to ensure that the rights of other creditors are respected considering that arguments against the use of pre-pack sales refer to the need to safeguard other creditors as well as employees. Stakeholders from Member States which have pre – pack witnesses the instruments functions properly.

Creditors' committees

Most of the respondents213 are in favour of harmonizing the rules concerning the creditors' committees via a Directive, while three respondents would prefer a recommendation. Aspects such as the powers and the composition of the committees and the electronic voting were among the ones considered by the experts in favour of harmonization.

Definition of insolvency

A majority214 of respondents are in favour of harmonizing the definition of insolvency through the introduction of a Regulation. Eleven respondents favour a strong harmonization via a Directive, while five interviewees consider that a soft harmonization via a Directive would be preferable. Some of the main arguments in favour of harmonization are the facilitation of proceedings for creditors and the overall simplification of procedures. Main issue concerns the kind of definition that shall be adopted especially in jurisdiction when such a definition is well functioning and properly tailored on the specificities of the economic system (e.g. FR, DE).

Extending the minimum thirty days deadline for lodgment of claims for foreign creditors

Seventeen respondents favour the extension of the thirty days deadline via a strongly harmonized Directive, while nine respondents consider that a softer approach via a Directive is the right way of harmonization. Four respondents are against any extension. The main reason consists in the insufficient time available for creditors to lodge their claims. However, experts caution that an extension would also lead to lengthier procedures and highlighted that regardless the timeframe the point is the lack of information available and difficulties in retrieving them.

Special regime for SMEs

Twenty-four respondents would be in favour of using a 'hard' Directive for creating special rules for SMEs while thirteen experts were in favour of using a 'soft' Directive. Four respondents suggested that no action should be taken. Respondents argued that the rules should aim at creating faster and cheaper proceedings for SMEs in order to increase its effectiveness. All the interviewees agreed that definition of SMEs should be untouched as economic framework diverges significantly across Member States and any definition may create discrimination and affect the potentiality of a special regime.

Priority of privileged creditors to general unsecured creditors

Fifteen respondents were in favour of some form of priority preference for privileged creditors at European level via a strongly harmonized Directive. Twelve respondents preferred a 'soft' Directive, while five

[212] 20 respondents.
[213] 15 respondents.
[214] Seventeen respondents.

respondents are in favour of using a Recommendation. Six interviewees opposed the intervention in this area. Generally speaking, respondents were in favour of introducing a priority for the costs of the proceedings, while opinions diverges in respect to the use of priority for employees – which may be protected in other ways - and for public authorities.

Priority between general unsecured creditors

Eleven respondents favour a form of priority via a 'soft' Directive (e.g. between voluntary and non-voluntary creditors). Ten respondents are in favour of introducing a form of priority between general unsecured creditors via a 'hard' Directive. Seven respondents consider that no action should be taken in this area. Some of the reasons against harmonizing the rules in this area were additional hinders to proceedings efficiency, an increase in difficulty of proceedings as well as a lack of data and studies at the European level to assess the impact such a change would make.

Differentiation between adjusting and non-adjusting creditors

A majority of eleven respondents oppose such an idea. Eight would be in favour of it via a 'soft' Directive approach, while seven prefer a stronger harmonization via a Directive. The reasons against the intervention are related to the fact that this would be a theoretical approach and would lead to a further increase in complexity of procedures215 and further increase of the length of procedures.216

Extension of protection for interim and new financing

Twenty respondents favour the extension of protection through a Directive, including in reorganisation proceedings, while three are in favour of the use of a Recommendation. Two respondents consider that no action should be taken. The argument given by the experts is that a creditor would not lend money should s/he not benefit from a strong guarantee.217

Transaction avoidance

Seventeen respondents are in favour of harmonization via a 'hard' Directive, while sixteen respondents support the use of a Regulation. Four respondents consider that the use of a 'soft' Directive would be more suitable, and three experts consider that no action should be taken. Among the arguments in favour of a harmonized approach are the existence of divergent legislations with negative effects on cross border insolvencies, the resulting decrease in costs and the facilitation of proceedings in favour of creditors.

Powers and tools of insolvency practitioners

Twenty-two respondents are in favour of the adoption of powers and rules for insolvency practitioners through a Regulation. Twelve respondents favour a strong harmonization via a Directive. The respondents support the implementation of tools for better asset tracing, the reduction of language barriers, better management of documents related to cross border proceedings and the use of an electronic register etc. Such tools should increase the effectiveness of procedures.

Rules on specialisation of insolvency courts and the training of judges

Fifteen respondents are in favour of the training of judges and specialized courts via a Directive. Eleven experts consider that a Recommendation would be a more suitable instrument, while four respondents appreciate that no action should be adopted in this regard. Most of the experts favouring the intervention consider that the further training of judges is necessary, especially in the economics domain.218

[215] Blazej Blasikiewicz and colleagues; Toma Vanda and Kain Beata.
[216] Karin Sonntak.
[217] *E.g.* Gubova Lea; Luigi Lai; Luis Martin.
[218] *E.g*. Annina Persson; Miodrag Dordevic; Johan Jol; Luigi Lai.

Harmonization of professional rules for insolvency practitioners

Seven respondents are in favour of such an approach via a 'soft' Directive, six respondents favour the use of a Recommendation and five respondents consider that a 'hard' Directive should be implemented. Five respondents oppose the adoption of any action. Attention should be paid to the small Member States where introducing additional barriers may be detrimental for the whole market.

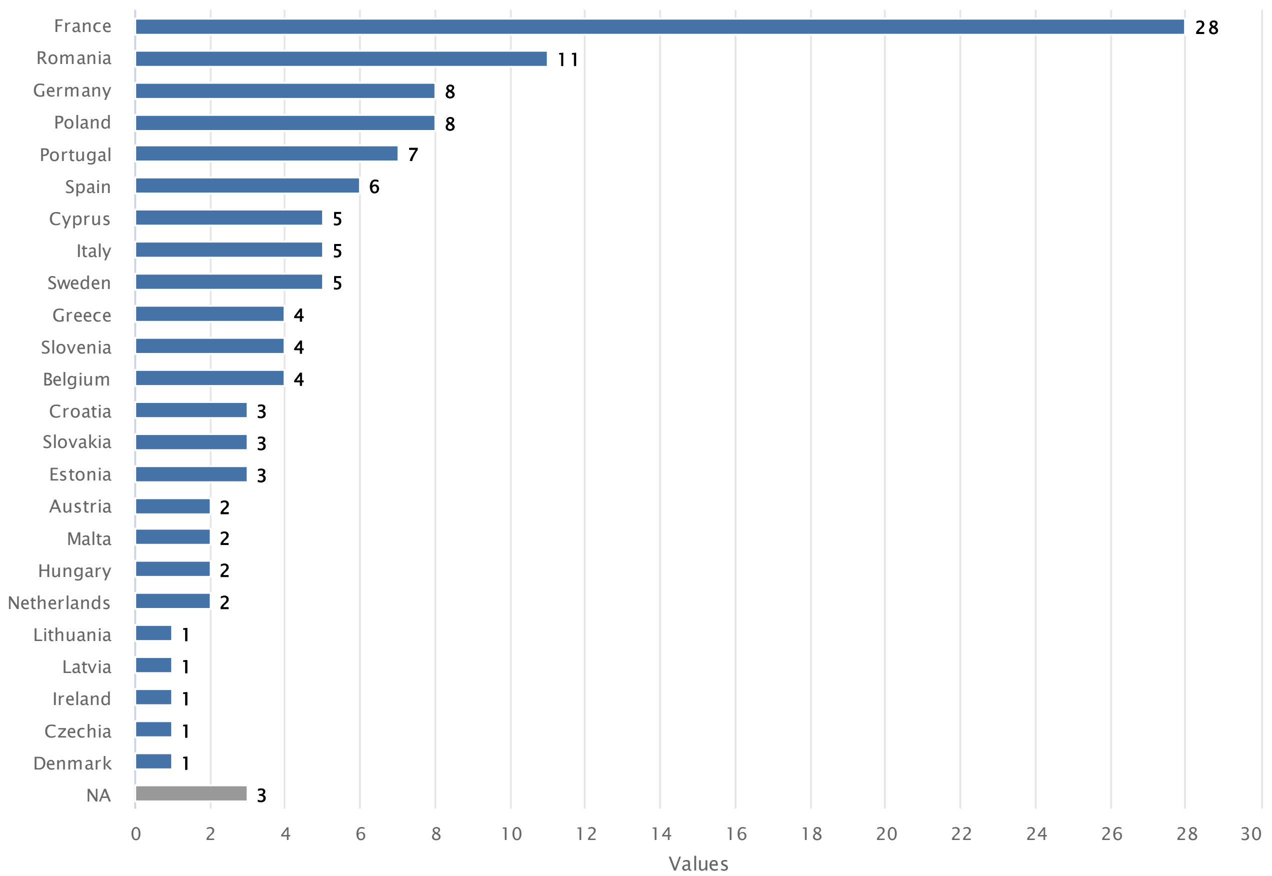
Directors' duties and liabilities

Twenty-two respondents are in favour of harmonization of the rules via a 'hard' Directive and eleven support the introduction of a 'soft' Directive in this area. Most of the respondents argue that this would benefit the proceedings and many Member States have already strengthened the directors' duties.

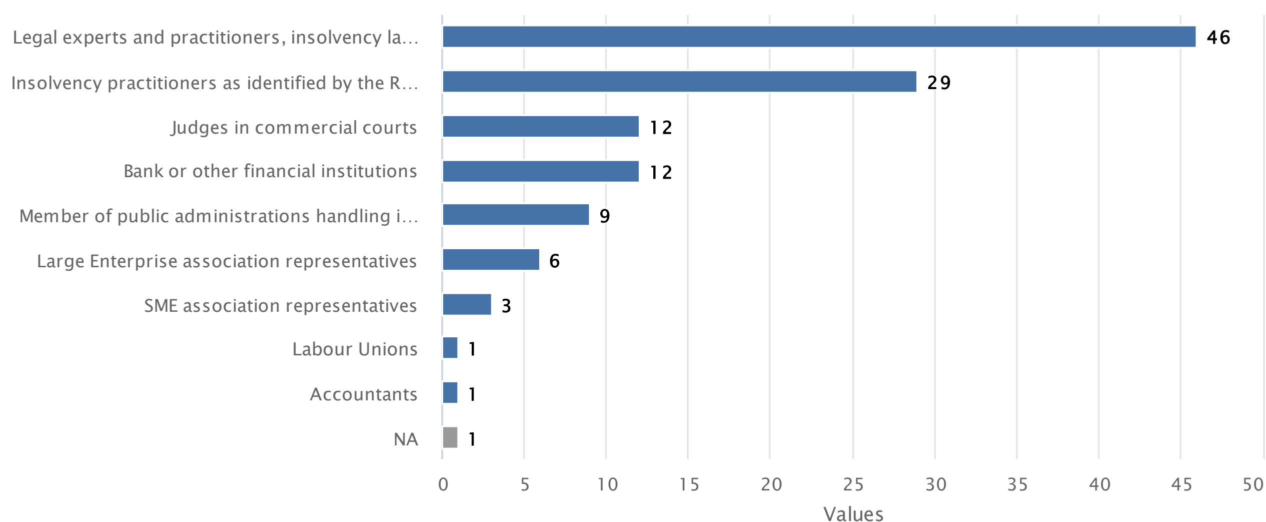
Annex D | Report on stakeholder survey

ID: **countrym**		
Question: In which jurisdiction do you operate mainly:		
Answer	**Freq**	**Freq %**
France	28	23.3 %
Romania	11	9.2 %
Germany	8	6.7 %
Poland	8	6.7 %
Portugal	7	5.8 %
Spain	6	5.0 %
Cyprus	5	4.2 %
Italy	5	4.2 %
Sweden	5	4.2 %
Greece	4	3.3 %
Slovenia	4	3.3 %
Belgium	4	3.3 %
NA	3	2.5 %
Croatia	3	2.5 %
Slovakia	3	2.5 %
Estonia	3	2.5 %

Austria	2	1.7 %
Malta	2	1.7 %
Hungary	2	1.7 %
Netherlands	2	1.7 %
Lithuania	1	0.8 %
Latvia	1	0.8 %
Ireland	1	0.8 %
Czechia	1	0.8 %
Denmark	1	0.8 %
Tot	120	100.0%

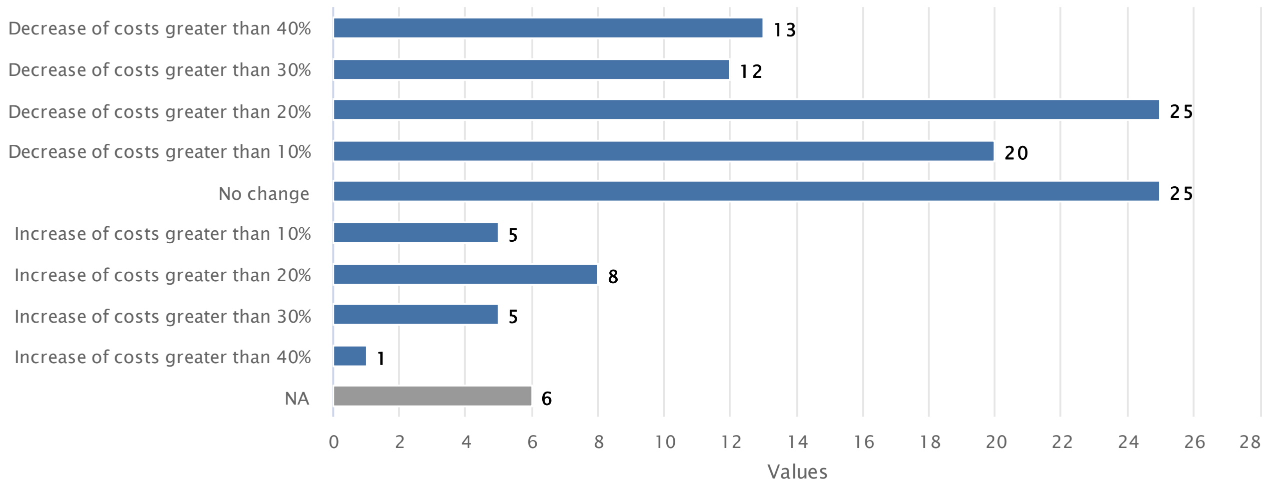


ID: **orgtype**		
Question: To which main category of insolvency actors do you belong (please indicate the main one):		
Answer	**Freq**	**Freq %**
Legal experts and practitioners, insolvency lawyers	46	38.3 %
Insolvency practitioners as identified by the Regulation	29	24.2 %
Judges in commercial courts	12	10.0 %
Bank or other financial institutions	12	10.0 %
Member of public administrations handling insolvency	9	7.5 %
Large Enterprise association representatives	6	5.0 %
SME association representatives	3	2.5 %
Labour Unions	1	0.8 %
Accountants	1	0.8 %
NA	1	0.8 %
Tot	120	100.0 %



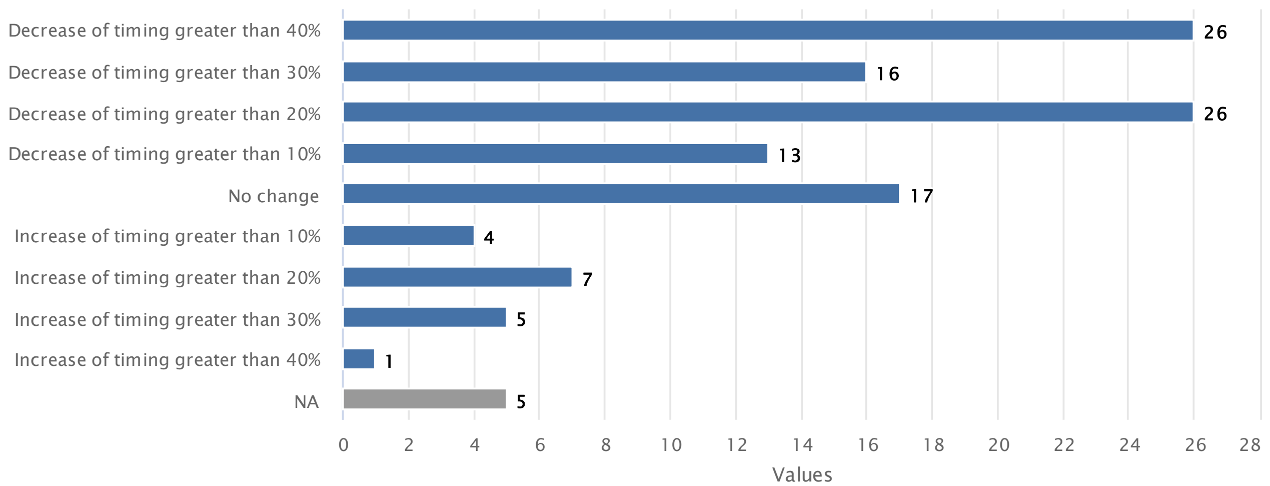
ID: **q1-1**		
Question: Please consider the overall costs of a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of EU rules on pre-pack sales.		
Answer	**Freq**	**Freq %**
NA	6	5 %
Decrease of costs greater than 40%	13	10.8 %
Decrease of costs greater than 30%	12	10 %
Decrease of costs greater than 20%	25	20.8 %
Decrease of costs greater than 10%	20	16.7 %
No change	25	20.8 %
Increase of costs greater than 10%	5	4.2 %
Increase of costs greater than 20%	8	6.7 %

Increase of costs greater than 30%	5	4.2 %
Increase of costs greater than 40%	1	0.8 %
Tot	120	100.0 %



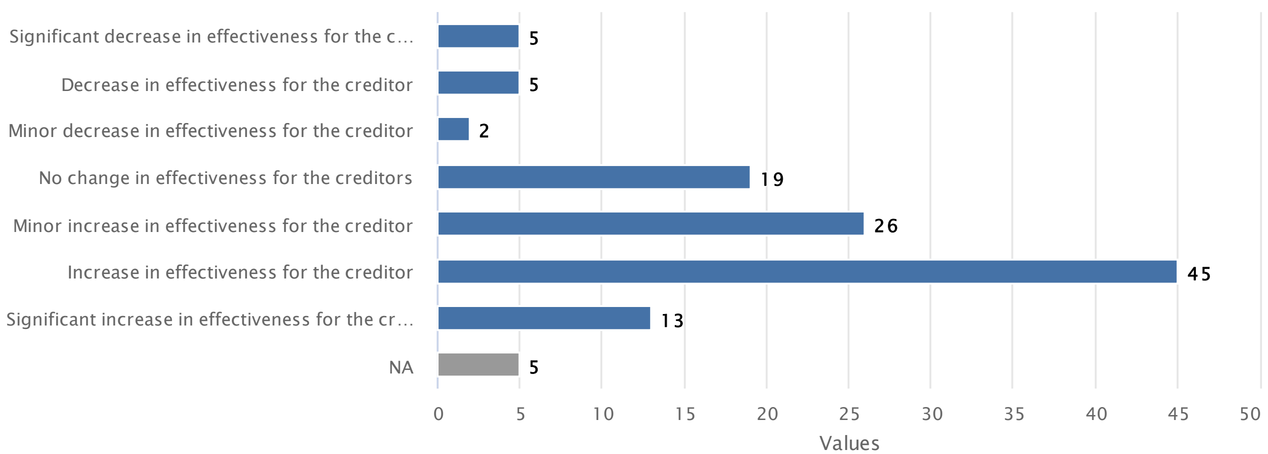
ID: **q1-2**		
Question: Please consider the overall timing to complete a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of EU rules on pre-pack sales.		
Answer	**Freq**	**Freq %**
NA	5	4.2 %
Decrease of timing greater than 40%	26	21.7 %
Decrease of timing greater than 30%	16	13.3 %
Decrease of timing greater than 20%	26	21.7 %
Decrease of timing greater than 10%	13	10.8 %
No change	17	14.2 %

Increase of timing greater than 10%	4	3.3 %
Increase of timing greater than 20%	7	5.8 %
Increase of timing greater than 30%	5	4.2 %
Increase of timing greater than 40%	1	0.8 %
Tot	120	100.0 %



ID: **q1-3**		
Question: Considering the overall effectiveness of the cross-border insolvency procedure, as concerns the liquidation of debts and the satisfaction of the claims of creditors, please provide us your estimate of the change in the overall effectiveness determined by the introduction of EU rules on pre-pack sales..		
Answer	**Freq**	**Freq %**
NA	5	4.2 %
Significant decrease in effectiveness for the creditor	5	4.2 %
Decrease in effectiveness for the creditor	5	4.2 %

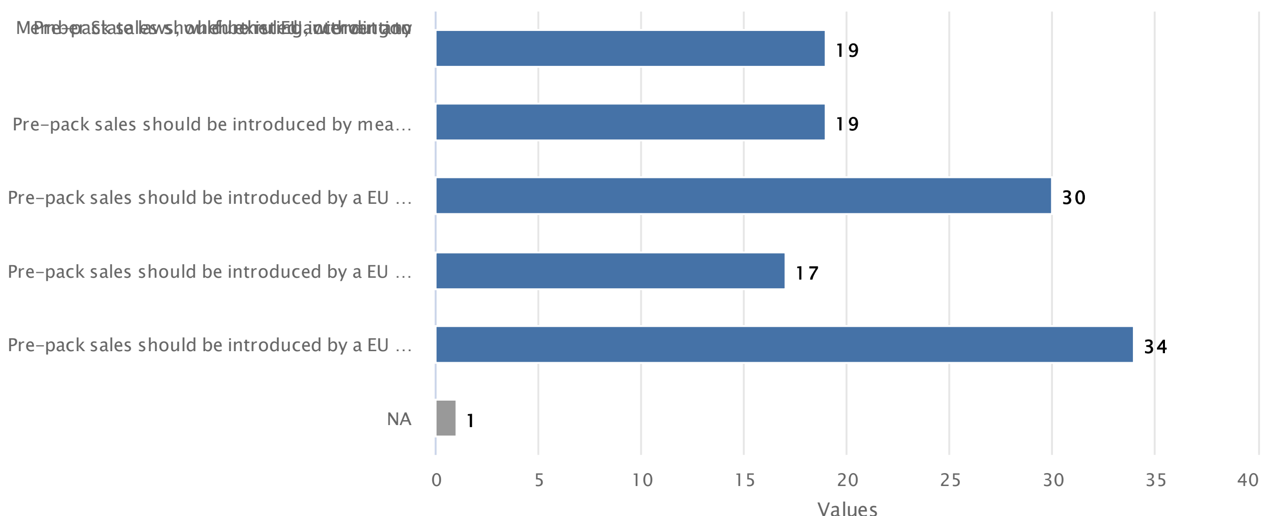
Minor decrease in effectiveness for the creditor	2	1.7 %
No change in effectiveness for the creditors	19	15.8 %
Minor increase in effectiveness for the creditor	26	21.7 %
Increase in effectiveness for the creditor	45	37.5 %
Significant increase in effectiveness for the creditor	13	10.8 %
Tot	120	100.0 %



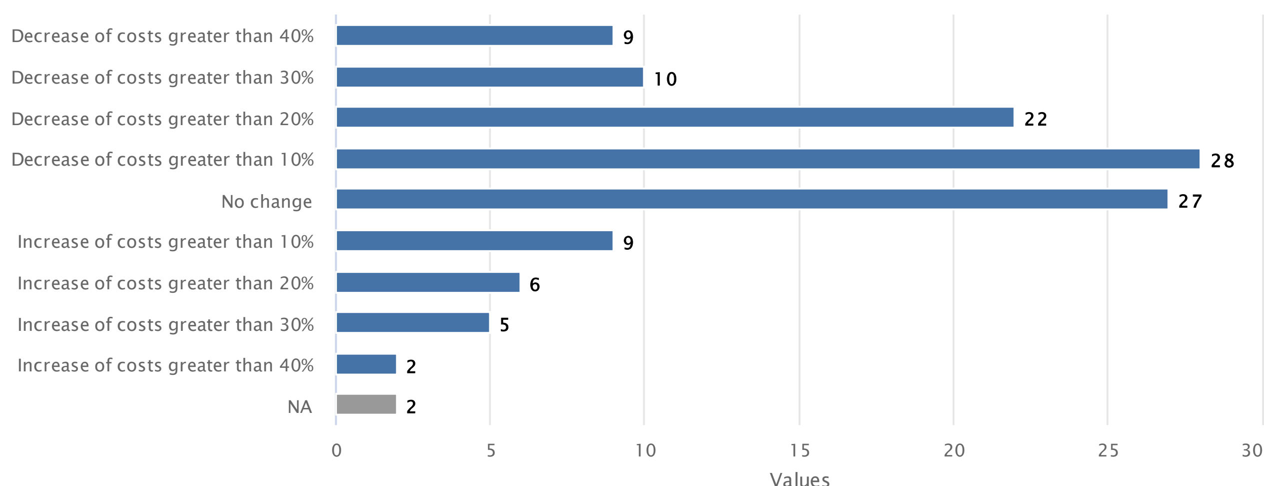
ID: **q1-4**		
Question: Considering the available policy options to introduce EU regulation of pre-pack sales, please rank the policy instrument according to their effectiveness		
Answer	**Freq**	**Freq %**
NA	1	0.8 %
Pre-pack sales should be ruled according to Member State laws, when existing, without any further EU intervention	19	15.8 %

Pre-pack sales should be introduced by means of a EU Recommendation including the features to introduce the instrument in each Member State but no further regulatory instrument shall be adopted	19	15.8 %
Pre-pack sales should be introduced by a EU Directive as an insolvent liquidation proceedings, merely establishing the main features of the instrument and defining the minimum transparency and standards in relation to the transparency of the negotiation process	30	25 %
Pre-pack sales should be introduced by a EU Directive, precisely regulating the features of the instrument, the role of the Advisor and its appointment as an IP, the assignment or termination of civil and commercial executory contracts	17	14.2 %
Pre-pack sales should be introduced by a EU Directive or Regulation, precisely regulating the features of the instrument, the role of the Advisor and its appointment as an IP, the assignment or termination of civil and commercial executory contracts, the criteria to choose the best bid, and the measures to maximize the value of the business subject to pre – pack, displacing existing national provisions	34	28.3 %
Tot	120	100.0 %

Considering the available policy options to introduce EU regulation of pre-pack sales, please rank the policy instrument according to their effectiveness

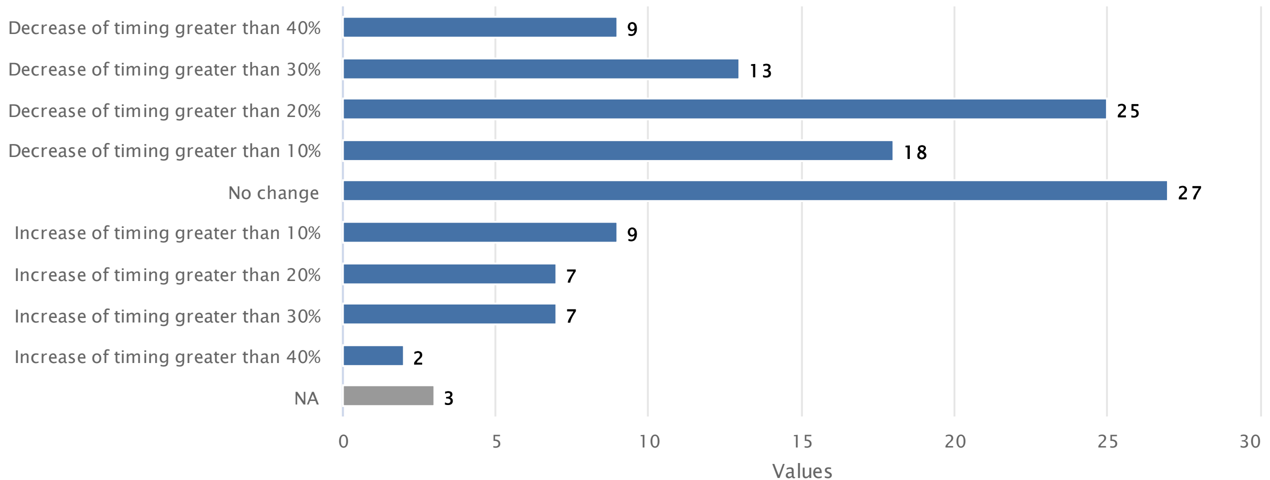


ID: **q2-1**		
Question: Please consider the overall costs of a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of the EU rules of such rules.		
Answer	**Freq**	**Freq %**
NA	2	1.7 %
Decrease of costs greater than 40%	9	7.5 %
Decrease of costs greater than 30%	10	8.3 %
Decrease of costs greater than 20%	22	18.3 %
Decrease of costs greater than 10%	28	23.3 %
No change	27	22.5 %
Increase of costs greater than 10%	9	7.5 %
Increase of costs greater than 20%	6	5 %
Increase of costs greater than 30%	5	4.2 %
Increase of costs greater than 40%	2	1.7 %
Tot	120	100.0 %



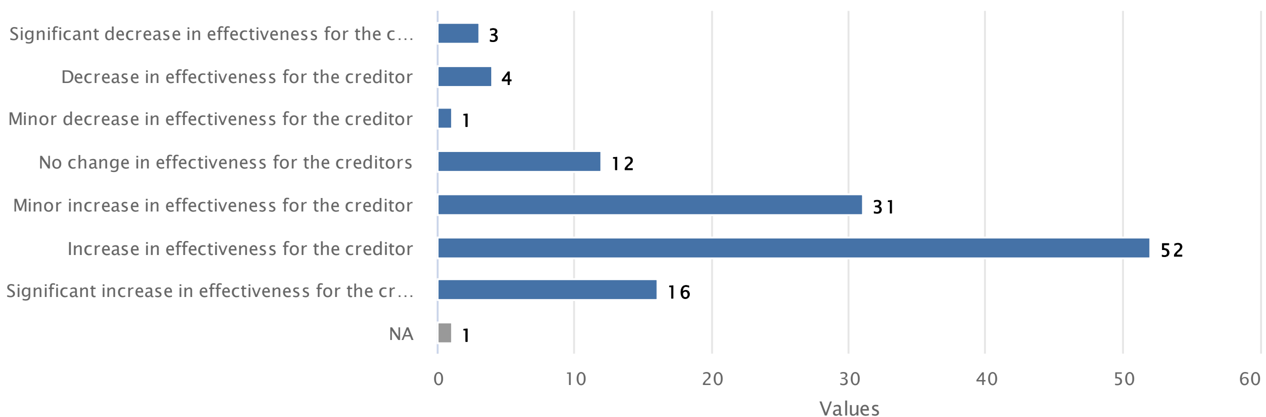
ID: **q2-2**		
Question: Please consider the overall timing to complete a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of such rules.		
Answer	**Freq**	**Freq %**
NA	3	2.5 %
Decrease of timing greater than 40%	9	7.5 %
Decrease of timing greater than 30%	13	10.8 %
Decrease of timing greater than 20%	25	20.8 %
Decrease of timing greater than 10%	18	15 %
No change	27	22.5 %
Increase of timing greater than 10%	9	7.5 %
Increase of timing greater than 20%	7	5.8 %
Increase of timing greater than 30%	7	5.8 %
Increase of timing greater than 40%	2	1.7 %

Tot	120	100.0 %



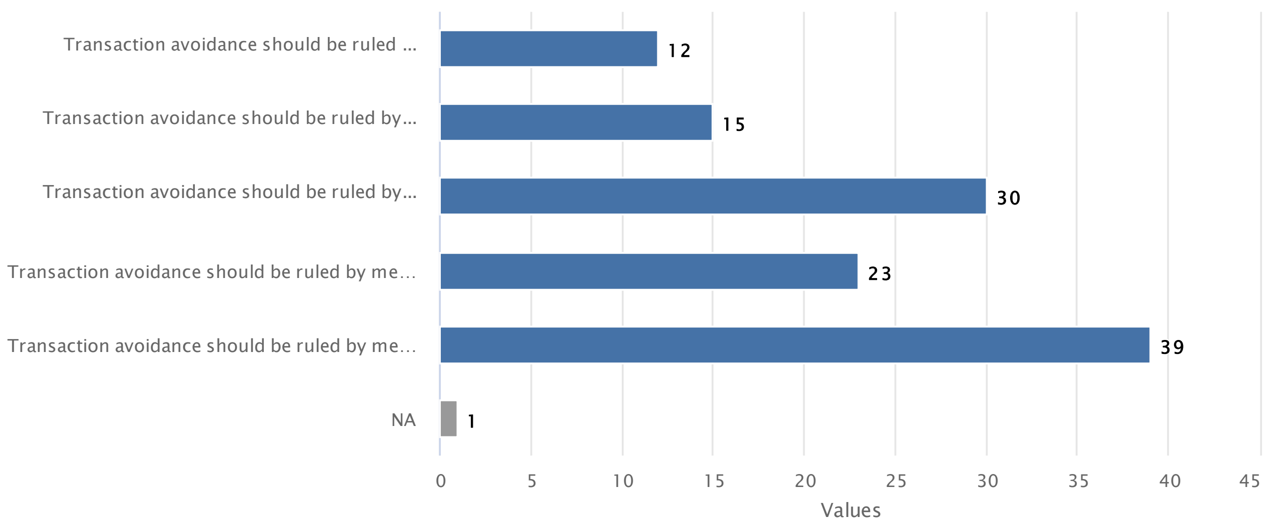
ID: **q2-3**		
Question: Considering the overall effectiveness of the cross-border insolvency procedure, as concerns the liquidation of debts and the satisfaction of the claims of creditors and the preservation of business assets and the conservation of the continuity of viable businesses, please provide us your estimate of the change in the overall effectiveness determined by the introduction of such rules.		
Answer	**Freq**	**Freq %**
NA	1	0.8 %
Significant decrease in effectiveness for the creditor	3	2.5 %
Decrease in effectiveness for the creditor	4	3.3 %
Minor decrease in effectiveness for the creditor	1	0.8 %
No change in effectiveness for the creditors	12	10 %
Minor increase in effectiveness for the creditor	31	25.8 %
Increase in effectiveness for the creditor	52	43.3 %

Significant increase in effectiveness for the creditor	16	13.3 %
Tot	120	100.0 %



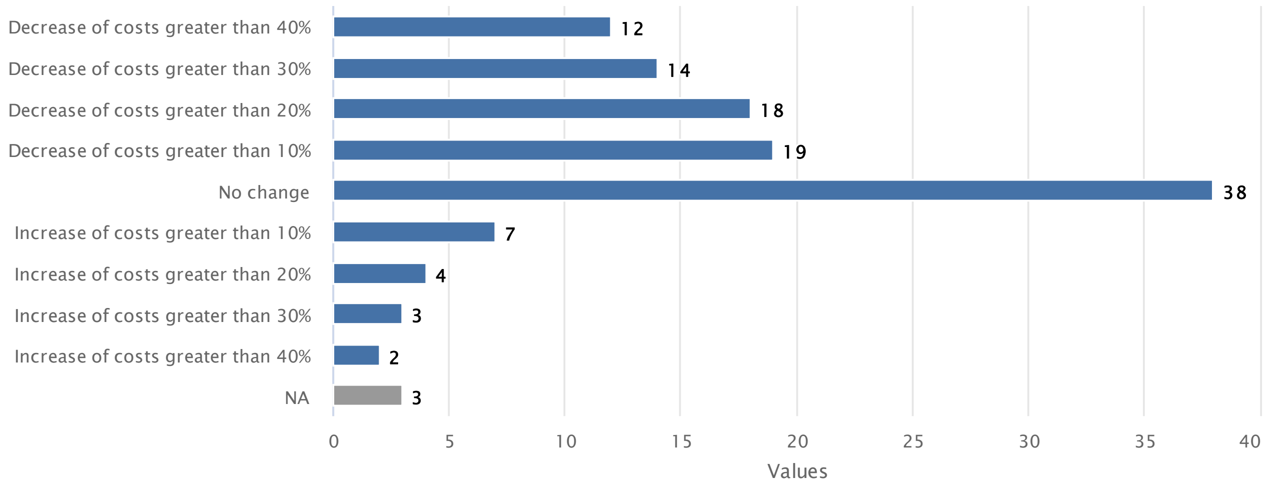
ID: **q2-4**		
Question: Considering the available policy options to introduce EU rules on transaction avoidance, please rank the policy instrument according to their effectiveness		
Answer	**Freq**	**Freq %**
NA	1	0.8 %
Transaction avoidance should be ruled according to Member State laws, without any further EU intervention	12	10 %
Transaction avoidance should be ruled by means of a EU Recommendation but no further regulatory instrument	15	12.5 %
Transaction avoidance should be ruled by means of a Directive providing general rules on transaction avoidance	30	25 %

Transaction avoidance should be ruled by means of a Directive providing a non-exhaustive set of specific rules on transaction avoidance displacing conflicting national law	23	19.2 %
Transaction avoidance should be ruled by means of a Directive or a Regulation providing a exhaustive specific set of rules on transaction avoidance displacing conflicting national law	39	32.5 %
Tot	120	100.0 %



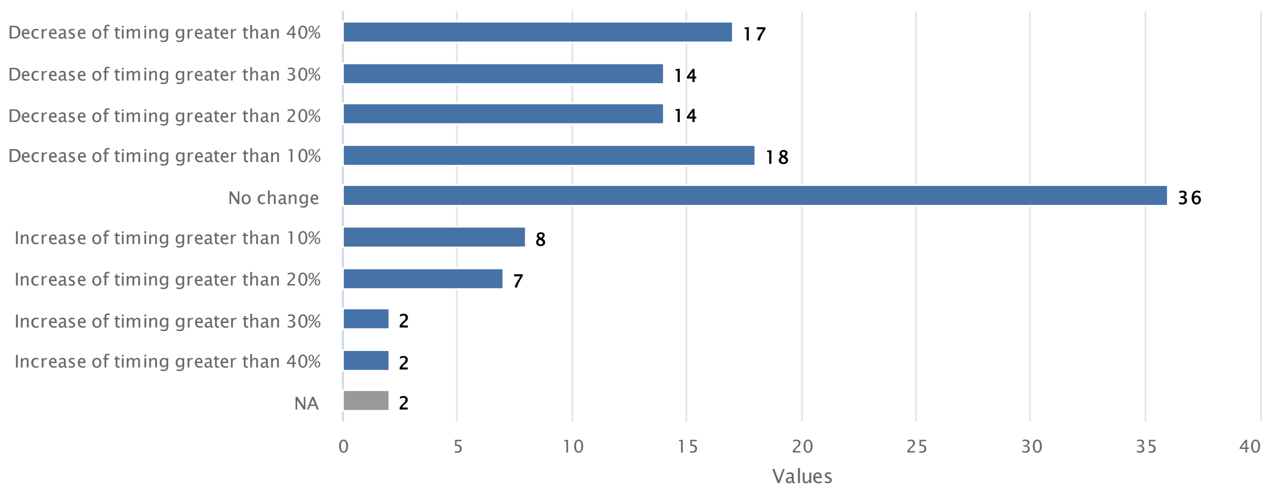
ID: **q3-1**		
Question: Please consider the overall costs of a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of a special regime of MSEs.		
Answer	**Freq**	**Freq %**
NA	3	2.5 %

Decrease of costs greater than 40%	12	10 %
Decrease of costs greater than 30%	14	11.7 %
Decrease of costs greater than 20%	18	15 %
Decrease of costs greater than 10%	19	15.8 %
No change	38	31.7 %
Increase of costs greater than 10%	7	5.8 %
Increase of costs greater than 20%	4	3.3 %
Increase of costs greater than 30%	3	2.5 %
Increase of costs greater than 40%	2	1.7 %
Tot	120	100.0 %



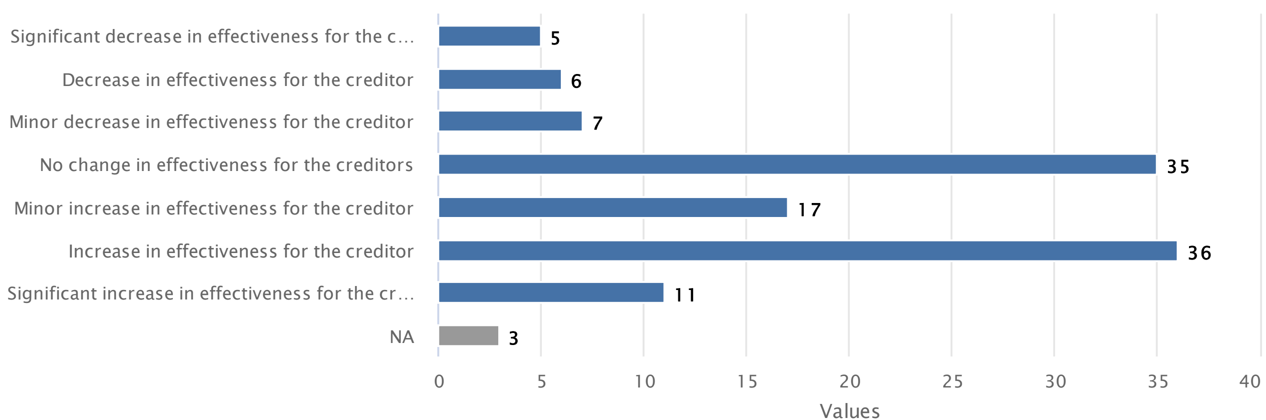
ID: **q3-2**
Question: Please consider the overall timing to complete a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of a special regime for MSEs.

Answer	Freq	Freq %
NA	2	1.7 %
Decrease of timing greater than 40%	17	14.2 %
Decrease of timing greater than 30%	14	11.7 %
Decrease of timing greater than 20%	14	11.7 %
Decrease of timing greater than 10%	18	15 %
No change	36	30 %
Increase of timing greater than 10%	8	6.7 %
Increase of timing greater than 20%	7	5.8 %
Increase of timing greater than 30%	2	1.7 %
Increase of timing greater than 40%	2	1.7 %
Tot	120	100.0 %



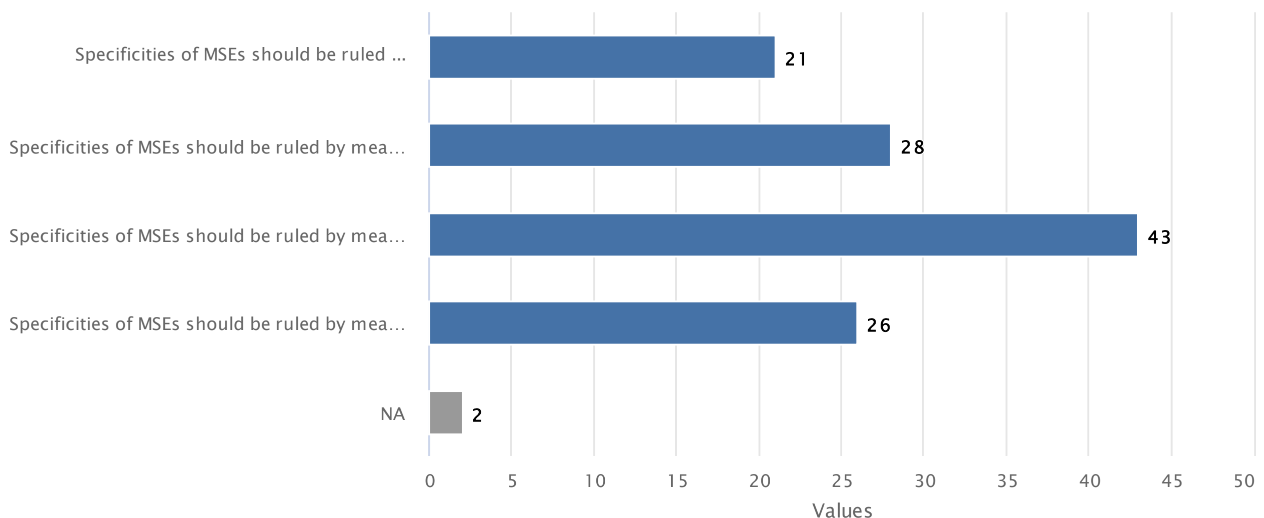
ID: **q3-3**
Question: Considering the overall effectiveness of the cross-border insolvency procedure, as concerns the liquidation of debts and the

satisfaction of the claims of creditors and on the preservation of business assets and the conservation of the continuity of viable businesses, please provide us your estimate of the change in the overall effectiveness determined by the introduction of a special regime for MSEs.		
Answer	**Freq**	**Freq %**
NA	3	2.5 %
Significant decrease in effectiveness for the creditor	5	4.2 %
Decrease in effectiveness for the creditor	6	5 %
Minor decrease in effectiveness for the creditor	7	5.8 %
No change in effectiveness for the creditors	35	29.2 %
Minor increase in effectiveness for the creditor	17	14.2 %
Increase in effectiveness for the creditor	36	30 %
Significant increase in effectiveness for the creditor	11	9.2 %
Tot	120	100.0 %

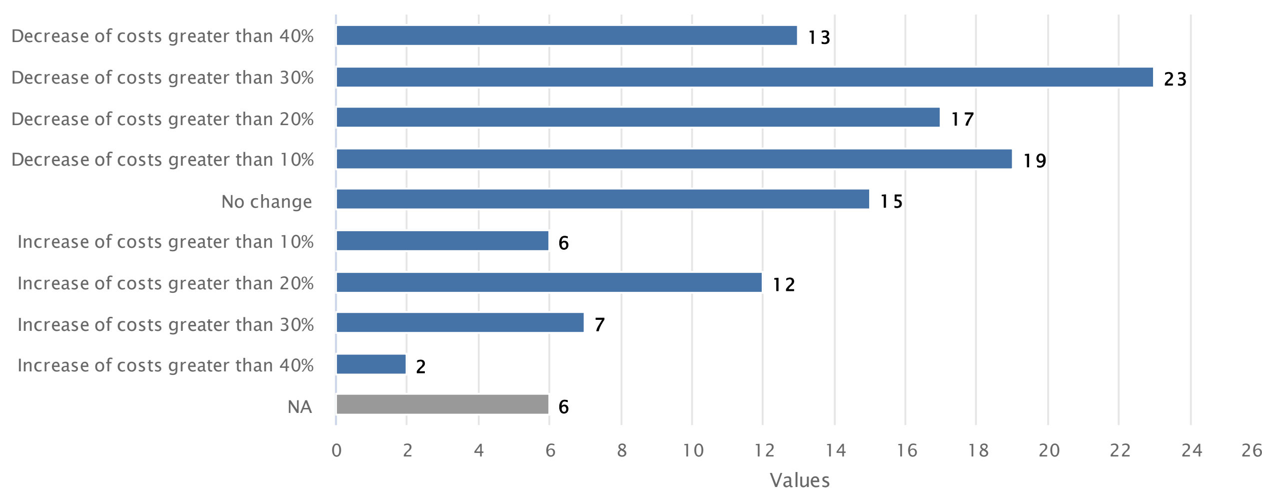


ID: **q3-4**		
Question: Considering the available policy options, please rank the policy instrument according to their effectiveness		
Answer	**Freq**	**Freq %**
NA	2	1.7 %
Specificities of MSEs should be ruled according to Member State laws, without any further EU intervention	21	17.5 %
Specificities of MSEs should be ruled by means of a EU Recommendation, with no further regulatory instrument, on specific treatment for MSEs including: definition of the scope of special provisions; access to orderly proceedings regardless available assets to cover the cost of the proceedings; postponement of the payment of procedural costs; the possible public funding of procedural costs; lowering the complexity and duration of the MSEs cases; providing for a scrutiny of the honesty of the debtor in the course of the proceedings instead of imposing heavy tests on the first day of the proceedings or setting forth extensive filing requirements; reflecting the rational creditor passivity in the rules on the decision about the insolvency, a sale of the business, or a piecemeal liquidation by a deemed approval rule; considering having proceedings outside the courts systems and involving courts only for appeals or objections; limiting the administrative burden by using mandatory templates and IT tool, providing for a very short periods of a stay of a plan proposal;	28	23.3 %
Specificities of MSEs should be ruled by means of Directive providing specific regime and/or exemptions from general insolvency requirements in case of MSEs in the form of targeted modifications of the general insolvency system including the following: definition of the scope of special provisions; access to orderly proceedings regardless available assets to cover the cost of the proceedings; postponement of the payment of procedural costs; the possible public funding of procedural costs; lowering the complexity and duration of the MSEs cases; providing for a scrutiny of the honesty of the debtor in the course of the	43	35.8 %

proceedings instead of imposing heavy tests on the first day of the proceedings or setting forth extensive filing requirements; reflecting the rational creditor passivity in the rules on the decision about the insolvency, a sale of the business, or a piecemeal liquidation by a deemed approval rule; considering having proceedings outside the courts systems and involving courts only for appeals or objections; limiting the administrative burden by using mandatory templates and IT tool, providing for a very short periods of a stay of a plan proposal		
Specificities of MSEs should be ruled by means of Directive providing for a specific separate system for MSEs and outside the ordinary insolvency system, which is flexible and cost-effective and composed of a core procedure with two possible outcomes: entry into liquidation, with short period and reduced formalities, or insolvency where the debtor remains in control of its assets and the day - to - day operation of its business under the supervision and assistance of the competent authority.	26	21.7 %
Tot	120	100.0 %

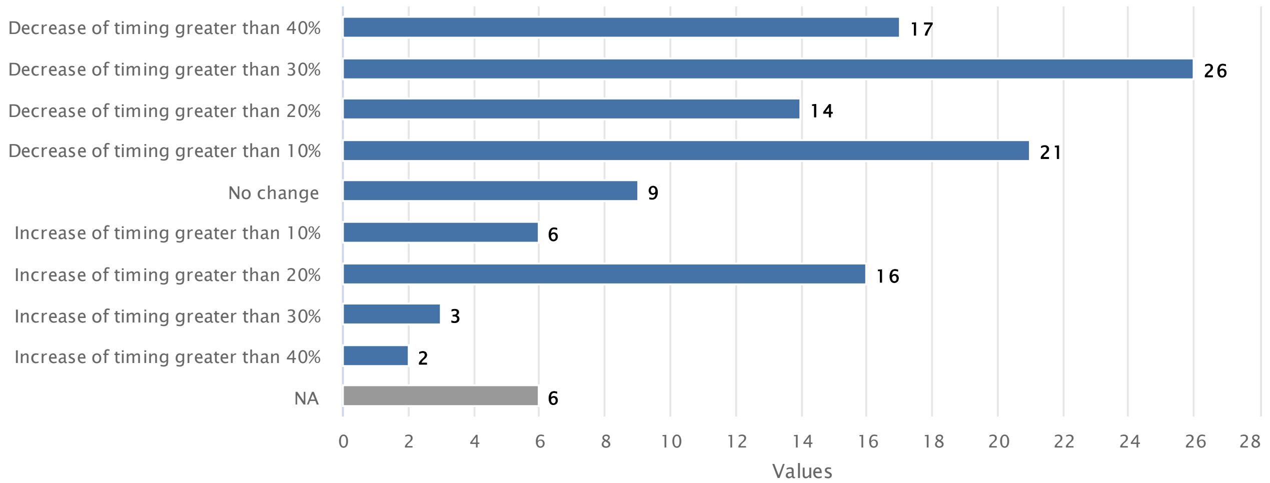


ID: **q4-1**		
Question: Please consider the overall costs of a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of the above EU rules.		
Answer	**Freq**	**Freq %**
NA	6	5 %
Decrease of costs greater than 40%	13	10.8 %
Decrease of costs greater than 30%	23	19.2 %
Decrease of costs greater than 20%	17	14.2 %
Decrease of costs greater than 10%	19	15.8 %
No change	15	12.5 %
Increase of costs greater than 10%	6	5 %
Increase of costs greater than 20%	12	10 %
Increase of costs greater than 30%	7	5.8 %
Increase of costs greater than 40%	2	1.7 %
Tot	120	100.0 %



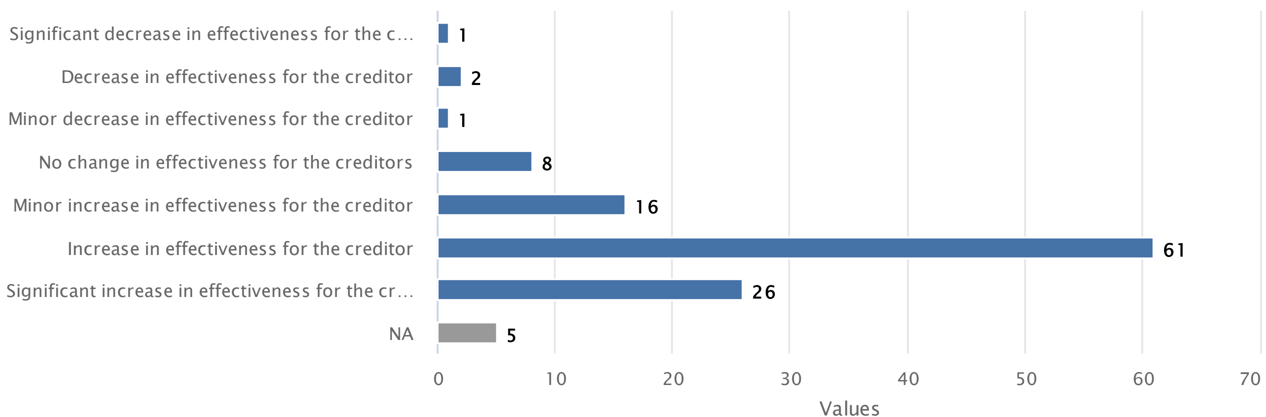
ID: **q4-2**		
Question: Please consider the overall timing to complete a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of the above EU rules.		
Answer	**Freq**	**Freq %**
NA	6	5 %
Decrease of timing greater than 40%	17	14.2 %
Decrease of timing greater than 30%	26	21.7 %
Decrease of timing greater than 20%	14	11.7 %
Decrease of timing greater than 10%	21	17.5 %
No change	9	7.5 %
Increase of timing greater than 10%	6	5 %
Increase of timing greater than 20%	16	13.3 %
Increase of timing greater than 30%	3	2.5 %
Increase of timing greater than 40%	2	1.7 %

Tot	120	100 %



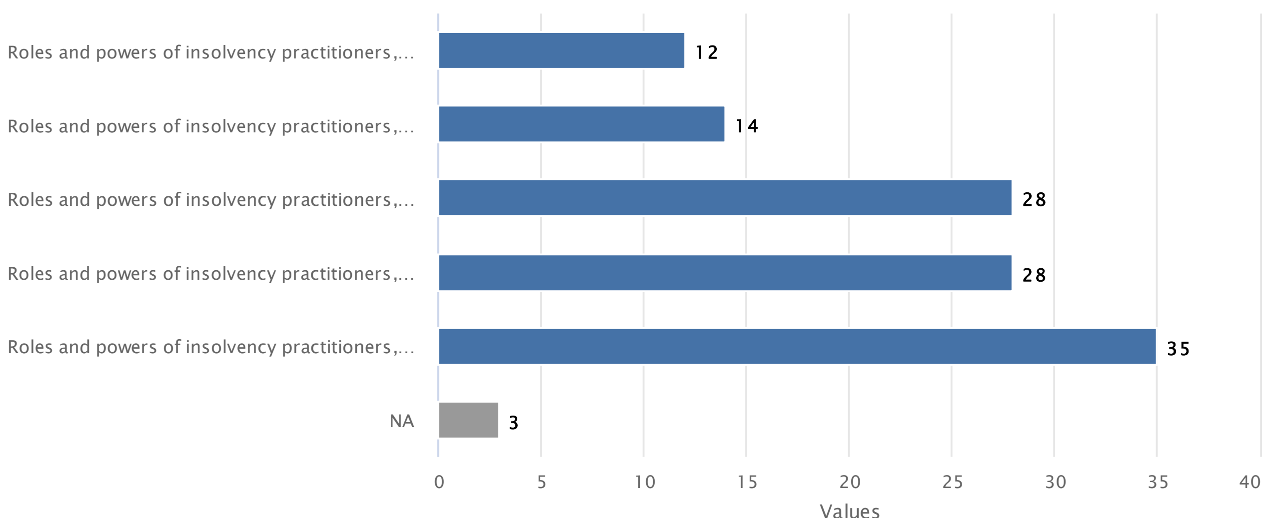
ID: **q4-3**		
Question: Considering the overall effectiveness of the cross-border insolvency procedure, as concerns the liquidation of debts and the satisfaction of the claims of creditors, the preservation of business assets and the conservation of the continuity of viable businesses, please provide us your estimate of the change in the overall effectiveness determined by the introduction of such rules.		
Answer	**Freq**	**Freq %**
NA	5	4.2 %
Significant decrease in effectiveness for the creditor	1	0.8 %
Decrease in effectiveness for the creditor	2	1.7 %
Minor decrease in effectiveness for the creditor	1	0.8 %
No change in effectiveness for the creditors	8	6.7 %
Minor increase in effectiveness for the creditor	16	13.3 %
Increase in effectiveness for the creditor	61	50.8 %

Significant increase in effectiveness for the creditor	26	21.7 %
Tot	120	100.0 %

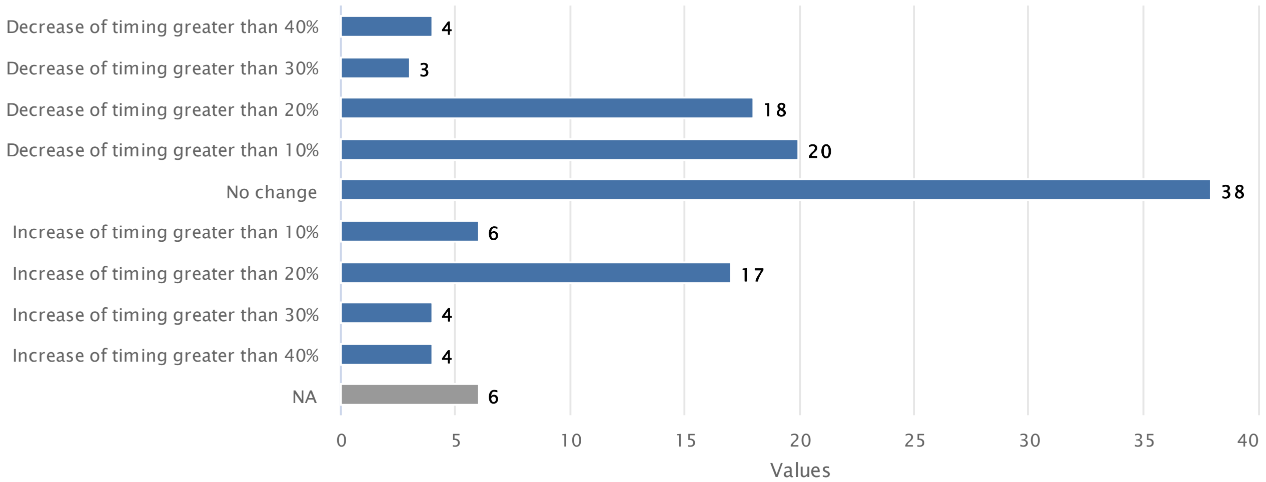


ID: **q4-4**		
Question: Considering the available policy options to introduce such rules, please rank the policy instrument according to their effectiveness		
Answer	**Freq**	**Freq %**
NA	3	2.5 %
Roles and powers of insolvency practitioners, with regard to asset tracing and asset recovery should be ruled according to Member State laws, without any further EU intervention	12	10 %
Roles and powers of insolvency practitioners, with regard to asset tracing and asset recovery should be ruled by means of a EU Recommendation on these powers, including how insolvency practitioners can have access to information on assets but no further regulatory instrument	14	11.7 %

Roles and powers of insolvency practitioners, with regard to asset tracing and asset recovery should be ruled by means of a Directive providing a non-exhaustive set of specific rules on asset tracing and recovery, including granting access to national registers across borders	28	23.3 %
Roles and powers of insolvency practitioners, with regard to asset tracing and asset recovery should be ruled by means of a Directive or a Regulation reconsidering the current logic of powers granted to the insolvency practitioners in cross – border cases and in particular: disregarding the limitation of the law in the State of the opening of the proceedings; including granting access to insolvency practitioners to national registers across borders and on granting full access to BORIS for the purposes of insolvency cases	28	23.3 %
Roles and powers of insolvency practitioners, with regard to asset tracing and asset recovery should be ruled by means of a Directive or a Regulation providing an exhaustive list of powers and tools for insolvency practitioners asset tracing and recovery in cross border insolvency cases	35	29.2 %
Tot	120	100.0 %

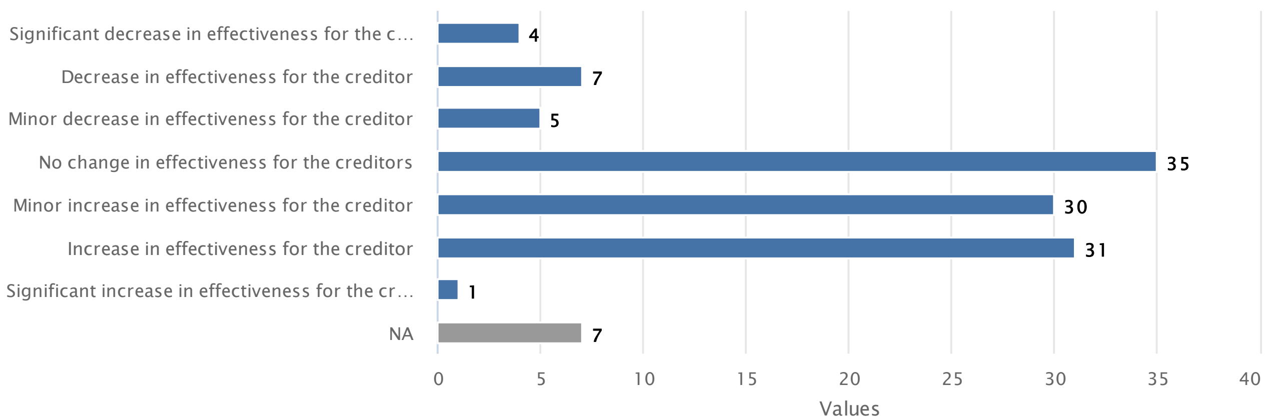


ID: **q5-1**		
Question: Please consider the overall timing to complete a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of a special regime for MSEs.		
Answer	**Freq**	**Freq %**
NA	6	5 %
Decrease of timing greater than 40%	4	3.3 %
Decrease of timing greater than 30%	3	2.5 %
Decrease of timing greater than 20%	18	15 %
Decrease of timing greater than 10%	20	16.7 %
No change	38	31.7 %
Increase of timing greater than 10%	6	5 %
Increase of timing greater than 20%	17	14.2 %
Increase of timing greater than 30%	4	3.3 %
Increase of timing greater than 40%	4	3.3 %
Tot	120	100.0 %



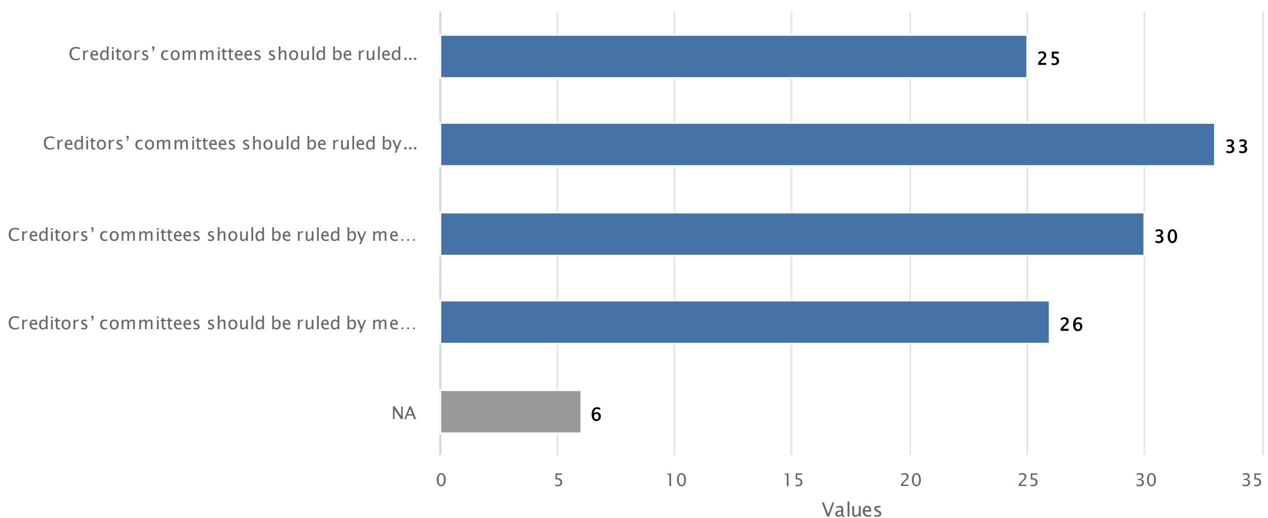
ID: **q5-2**		
Question: Considering the overall effectiveness of the cross-border insolvency procedure, as concerns the liquidation of debts and the satisfaction of the claims of creditors, please provide us your estimate of the change in the overall effectiveness determined by the introduction of such an optional regime for creditors' committee.		
Answer	**Freq**	**Freq %**
NA	7	5.8 %
Significant decrease in effectiveness for the creditor	4	3.3 %
Decrease in effectiveness for the creditor	7	5.8 %
Minor decrease in effectiveness for the creditor	5	4.2 %
No change in effectiveness for the creditors	35	29.2 %
Minor increase in effectiveness for the creditor	30	25 %
Increase in effectiveness for the creditor	31	25.8 %

Significant increase in effectiveness for the creditor	1	0.8 %
Tot	120	100.0 %



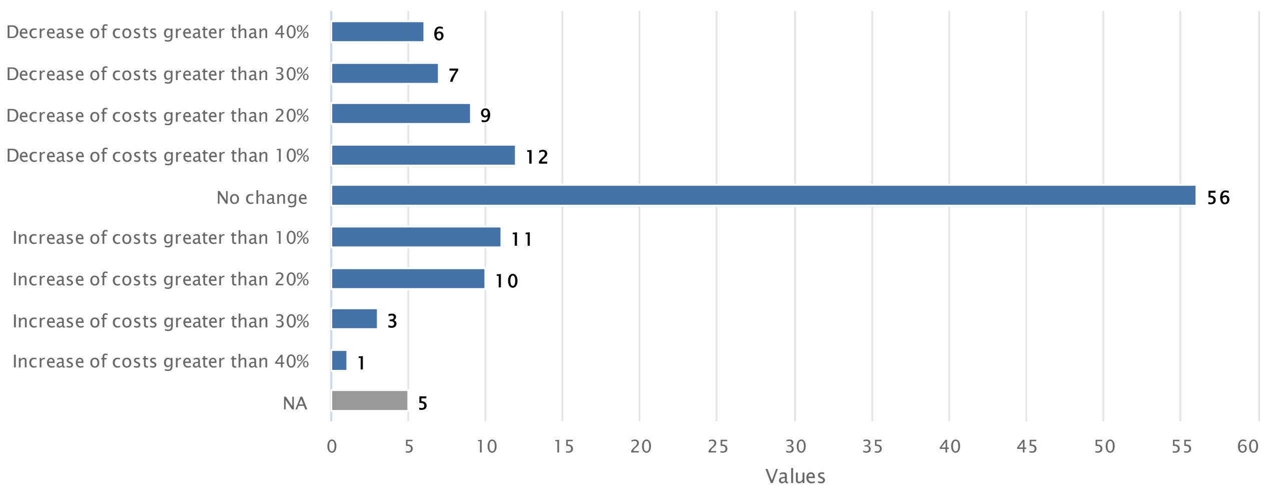
ID: **q5-3**		
Question: Considering the available policy options, please rank the policy instrument according to their effectiveness		
Answer	**Freq**	**Freq %**
NA	6	5 %
Creditors' committees should be ruled according to Member State laws, without any further EU intervention	25	20.8 %
Creditors' committees should be ruled by means of a EU Recommendation with some principles on formation of creditors' committees	33	27.5 %
Creditors' committees should be ruled by means of a EU Recommendation with some principles on formation of creditors' committees and by means of a EU Directive providing rules on working method	30	25 %

(rules on electronic voting) and rules on determination of majority		
Creditors’ committees should be ruled by means of a Directive providing specific rules on formation, composition, powers and governing certain aspects of majority voting in those committees	26	21.7 %
Tot	120	100.0 %



ID: **q6-1**		
Question: Please consider the overall costs of a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of such rules.		
Answer	**Freq**	**Freq %**
NA	5	4.2 %
Decrease of costs greater than 40%	6	5 %

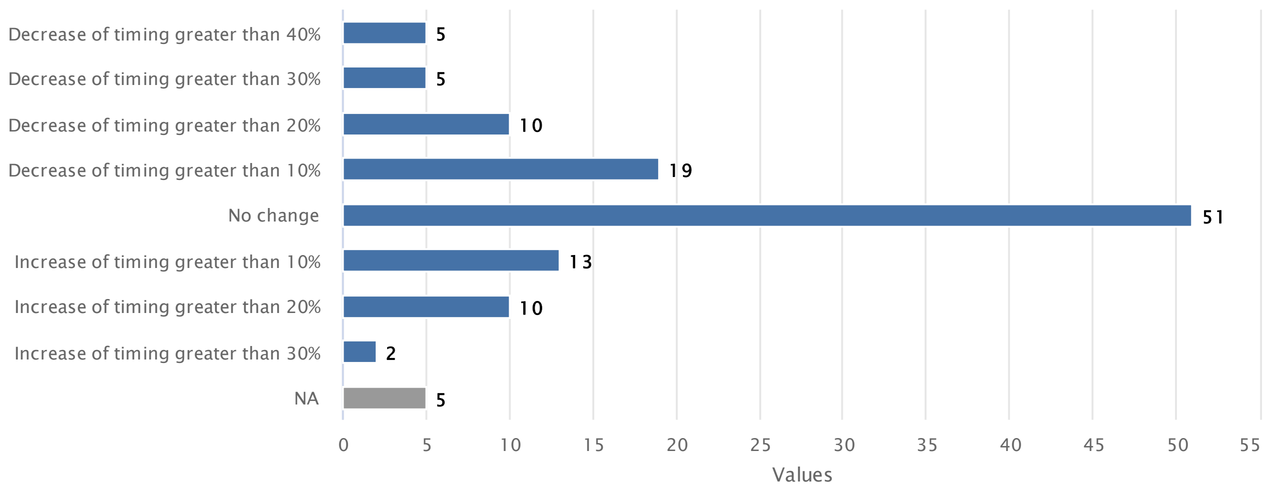
Decrease of costs greater than 30%	7	5.8 %
Decrease of costs greater than 20%	9	7.5 %
Decrease of costs greater than 10%	12	10 %
No change	56	46.7 %
Increase of costs greater than 10%	11	9.2 %
Increase of costs greater than 20%	10	8.3 %
Increase of costs greater than 30%	3	2.5 %
Increase of costs greater than 40%	1	0.8 %
Tot	120	100.0 %



ID: **q6-2**		
Question: Please consider the overall timing to complete a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of such rules.		
Answer	**Freq**	**Freq %**
NA	5	4.2 %

Decrease of timing greater than 40%	5	4.2 %
Decrease of timing greater than 30%	5	4.2 %
Decrease of timing greater than 20%	10	8.3 %
Decrease of timing greater than 10%	19	15.8 %
No change	51	42.5 %
Increase of timing greater than 10%	13	10.8 %
Increase of timing greater than 20%	10	8.3 %
Increase of timing greater than 30%	2	1.7 %
Tot	120	100.0 %

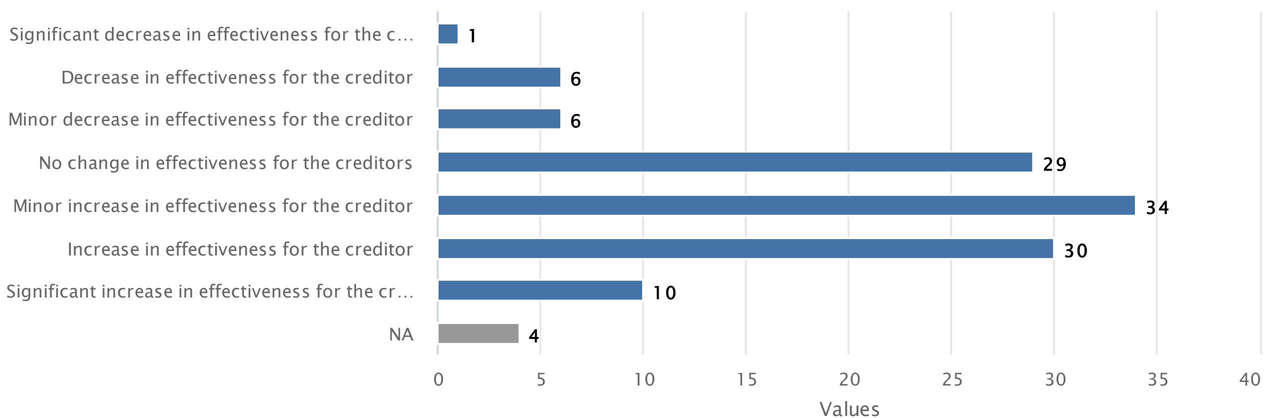
Please consider the overall timing to complete a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of such rules.



ID: **q6-3**
Question: Considering the overall effectiveness of the cross-border insolvency procedure, as concerns the liquidation of debts and the satisfaction of the claims of creditors and the preservation of business assets and the conservation of the continuity of viable businesses, please provide us your estimate of the change in the overall effectiveness determined by the introduction of such rules.

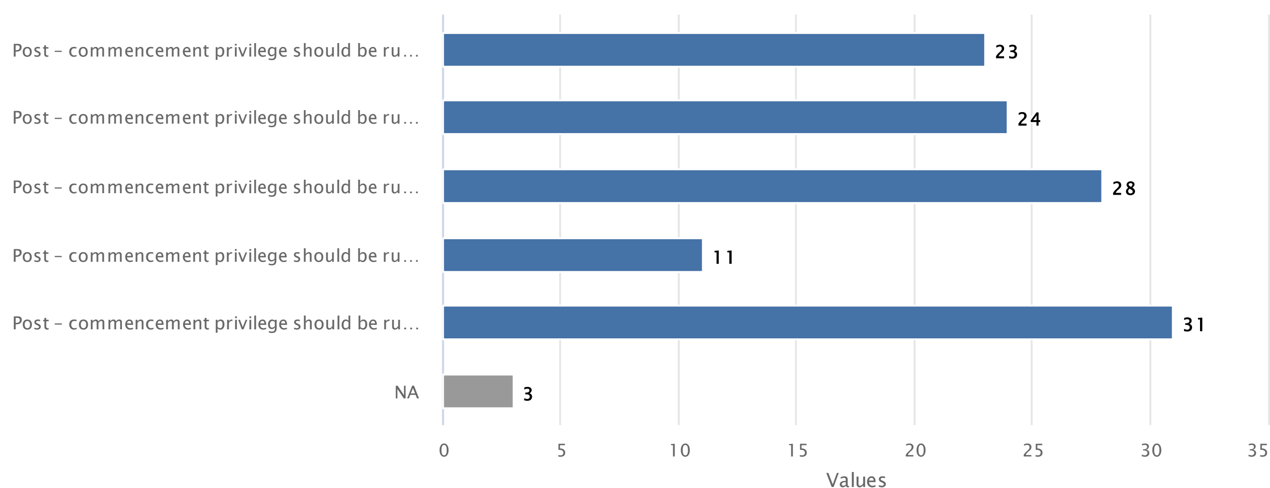
Answer	Freq	Freq %
NA	4	3.3 %
Significant decrease in effectiveness for the creditor	1	0.8 %
Decrease in effectiveness for the creditor	6	5 %
Minor decrease in effectiveness for the creditor	6	5 %
No change in effectiveness for the creditors	29	24.2 %
Minor increase in effectiveness for the creditor	34	28.3 %
Increase in effectiveness for the creditor	30	25 %
Significant increase in effectiveness for the creditor	10	8.3 %
Tot	120	100.0 %

Considering the overall effectiveness of the cross-border insolvency procedure, as concerns the liquidation of debts and the satisfaction of the claims of creditors and the preservation of business assets and the conservation of the continuity of viable businesses, please provide us your estimate of the change in the overall effectiveness determined by the introduction of such rules.



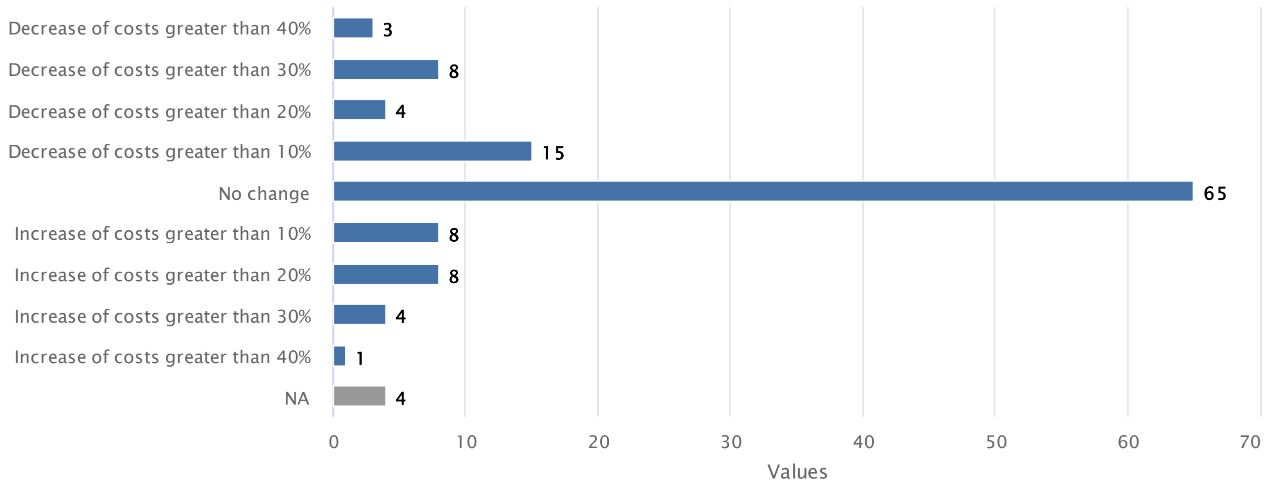
ID: **q6-4**
Question: Considering the available policy options to introduce EU rules on post – commencement privilege, please rank the policy instrument according to their effectiveness

Answer	Freq	Freq %
NA	3	2.5 %
Post – commencement privilege should be ruled according to Member State laws, without any further EU intervention	23	19.2 %
Post – commencement privilege should be ruled by means of a EU Recommendation stating priority preferences for privileged creditors to general unsecured creditors and listing in NON – exhaustive manner the positive priority preferences for privileged creditors (cost of proceedings, administrative expensive, interim or new financing) and negative priority preferences	24	20 %
Post – commencement privilege should be ruled by means of a Directive stating priority preferences for privileged creditors to general unsecured creditors and listing in NON – exhaustive manner the positive priority preferences for privileged creditors (cost of proceedings, administrative expensive) and extending current protection granted by the EU framework to interim or new financing	28	23.3 %
Post – commencement privilege should be ruled by means of a Directive stating priority preferences for privileged creditors to general unsecured creditors and listing in NON – exhaustive manner the negative priority preferences	11	9.2 %
Post – commencement privilege should be ruled by means of a Directive stating priority preferences for privileged creditors to general unsecured creditors and listing in NON – exhaustive manner the positive priority preferences and the negative priority preferences	31	25.8 %
Tot	120	100.0 %



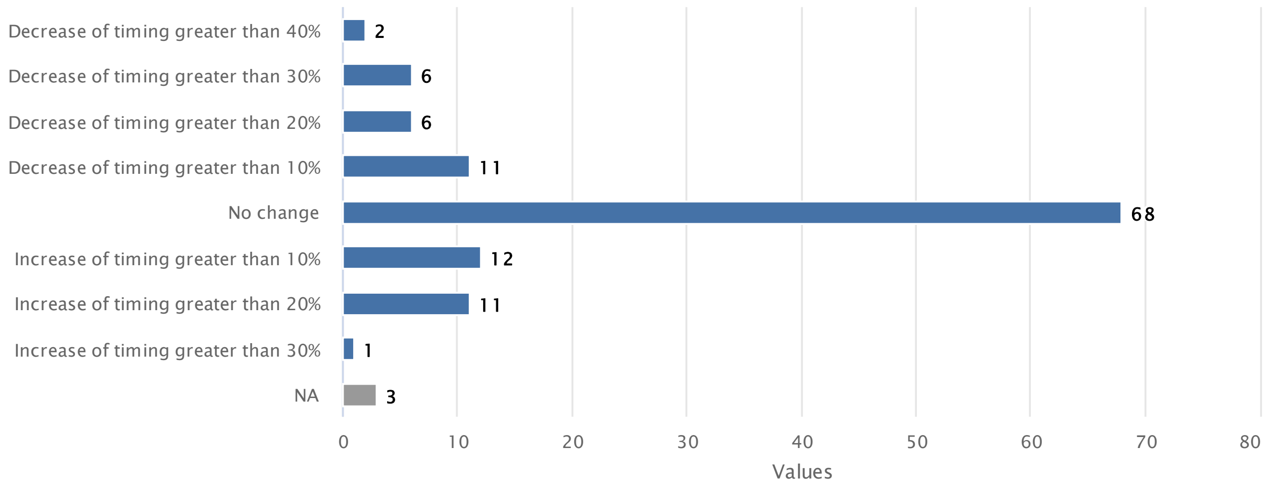
ID: **q7-1**		
Question: Please consider the overall costs of a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of such rules.		
Answer	**Freq**	**Freq %**
NA	4	3.3 %
Decrease of costs greater than 40%	3	2.5 %
Decrease of costs greater than 30%	8	6.7 %
Decrease of costs greater than 20%	4	3.3 %
Decrease of costs greater than 10%	15	12.5 %
No change	65	54.2 %
Increase of costs greater than 10%	8	6.7 %
Increase of costs greater than 20%	8	6.7 %

Increase of costs greater than 30%	4	3.3 %
Increase of costs greater than 40%	1	0.8 %
Tot	120	100.0 %



ID: **q7-2**		
Question: Please consider the overall timing to complete a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of such rules.		
Answer	**Freq**	**Freq %**
NA	3	2.5 %
Decrease of timing greater than 40%	2	1.7 %
Decrease of timing greater than 30%	6	5 %
Decrease of timing greater than 20%	6	5 %
Decrease of timing greater than 10%	11	9.2 %
No change	68	56.7 %
Increase of timing greater than 10%	12	10 %

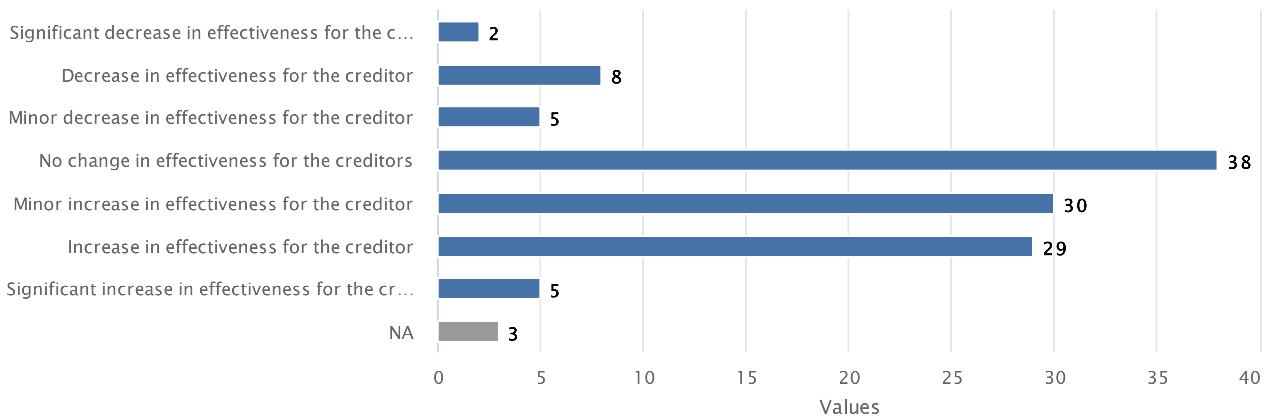
Increase of timing greater than 20%	11	9.2 %
Increase of timing greater than 30%	1	0.8 %
Tot	120	100.0 %



ID: **q7-3**		
Testo domanda: Considering the overall effectiveness of the cross-border insolvency procedure, as concerns the liquidation of debts and the satisfaction of the claims of creditors and the preservation of business assets and the conservation of the continuity of viable businesses, please provide us your estimate of the change in the overall effectiveness determined by the introduction of such rules.		
Testo	**Freq**	**Freq %**
NA	3	2.5 %
Significant decrease in effectiveness for the creditor	2	1.7 %
Decrease in effectiveness for the creditor	8	6.7 %

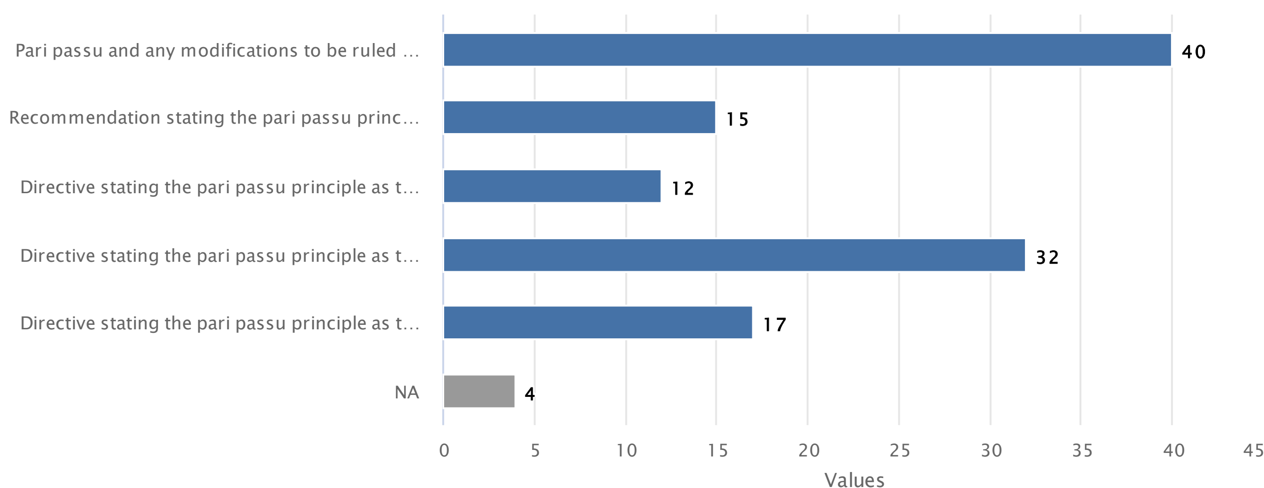
Minor decrease in effectiveness for the creditor	5	4.2 %
No change in effectiveness for the creditors	38	31.7 %
Minor increase in effectiveness for the creditor	30	25.0 %
Increase in effectiveness for the creditor	29	24.2 %
Significant increase in effectiveness for the creditor	5	4.2 %
Tot	120	100.0 %

Considering the overall effectiveness of the cross-border insolvency procedure, as concerns the liquidation of debts and the satisfaction of the claims of creditors and the preservation of business assets and the conservation of the continuity of viable businesses, please provide us your estimate of the change in the overall effectiveness determined by the introduction of such rules.



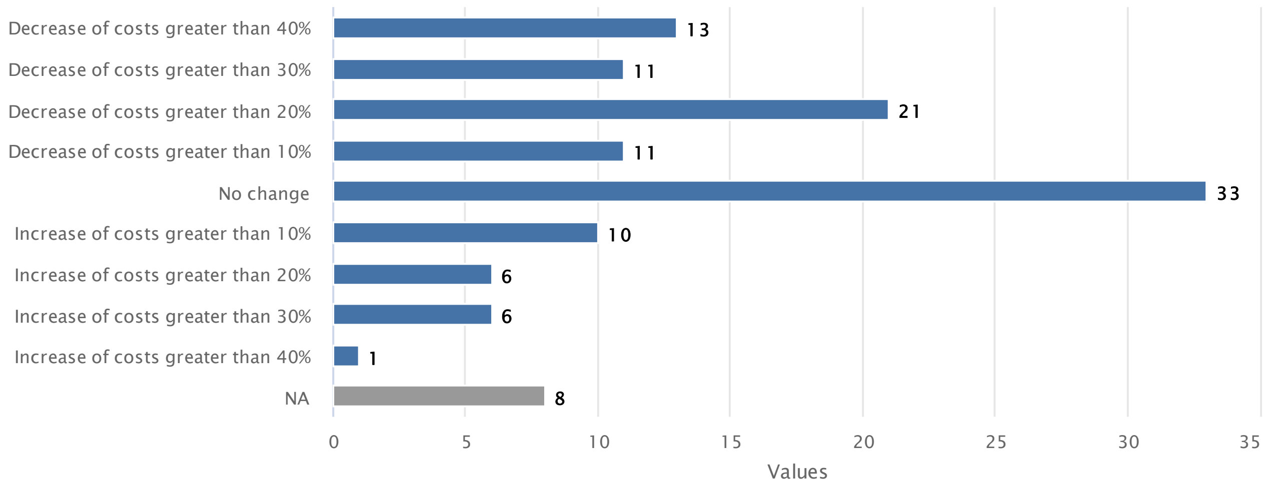
ID: **q7-4**		
Question: Considering the available policy options to introduce EU rules on modification of *pari passu* principle, please rank the policy instrument according to their effectiveness		
Answer	**Freq**	**Freq %**
NA	4	3.3 %

Pari passu and any modifications to be ruled according to Member States laws, without any further EU intervention	40	33.3 %
Recommendation stating the *pari passu* principle as to general unsecured creditors with the defined preferences an in particular i) subordination of adjusting - creditors to non – adjusting creditors, reinforcing the position of non-adjusting creditors in the context of insolvency proceedings and ii) subordination of shareholders loans to other general creditors	15	12.5 %
Directive stating the *pari passu* principle as to general unsecured creditors with the defined preferences and in particular subordination of adjusting - creditors to non – adjusting creditors, reinforcing the position of non-adjusting creditors in the context of insolvency proceedings	12	10 %
Directive stating the *pari passu* principle as to general unsecured creditors with the defined preferences and in particular i) subordination of adjusting – creditors to non – adjusting creditors reinforcing the position of non-adjusting creditors in the context of insolvency proceedings, and ii) subordination of shareholders loans to other general creditors.	32	26.7 %
Directive stating the *pari passu* principle as to general unsecured creditors with the defined preferences and in particular: i) subordination of adjusting – creditors to non – adjusting creditors, by introducing a specific sub – type of company with inactivated security interest based on the premise that security interests are nothing but inter – creditor agreements between adjusting creditors and therefore, only in case insolvency proceedings are opened, such security interests should be not opposable to non – adjusting creditors, which additionally should as a rule be ranked as senior to adjusting creditors ; and ii) subordination of shareholders loans to other general creditors. In this case the Directive would reinforce the position of non-adjusting creditors by	17	14.2 %
Tot	120	100.0 %



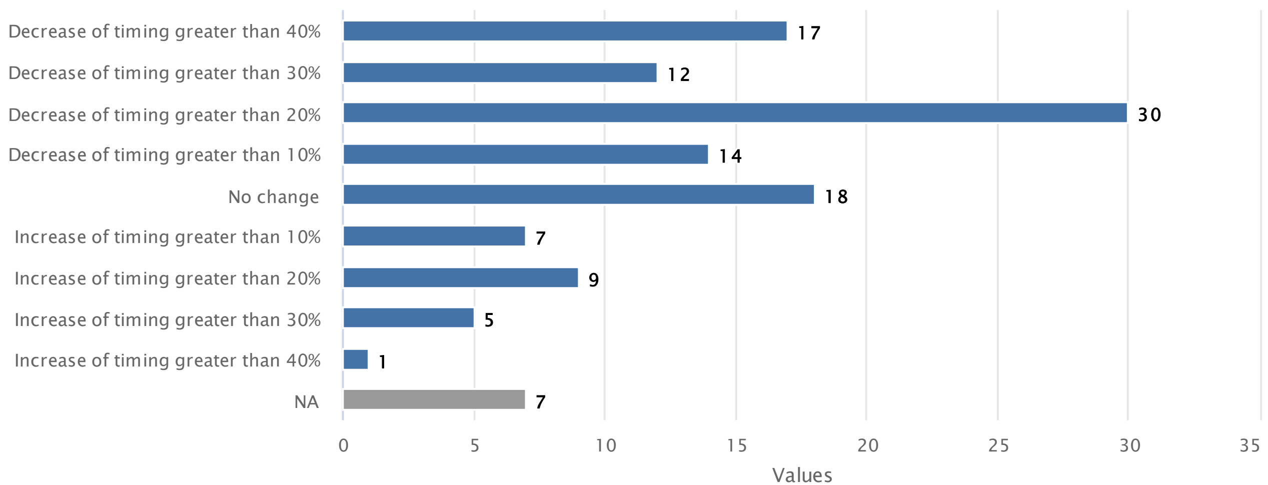
ID: **q8-1**		
Question: Please consider the overall costs of a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of the above EU rules.		
Answer	**Freq**	**Freq %**
NA	8	6.7 %
Decrease of costs greater than 40%	13	10.8 %
Decrease of costs greater than 30%	11	9.2 %
Decrease of costs greater than 20%	21	17.5 %
Decrease of costs greater than 10%	11	9.2 %
No change	33	27.5 %
Increase of costs greater than 10%	10	8.3 %
Increase of costs greater than 20%	6	5 %

Increase of costs greater than 30%	6	5 %
Increase of costs greater than 40%	1	0.8 %
Tot	120	100.0 %



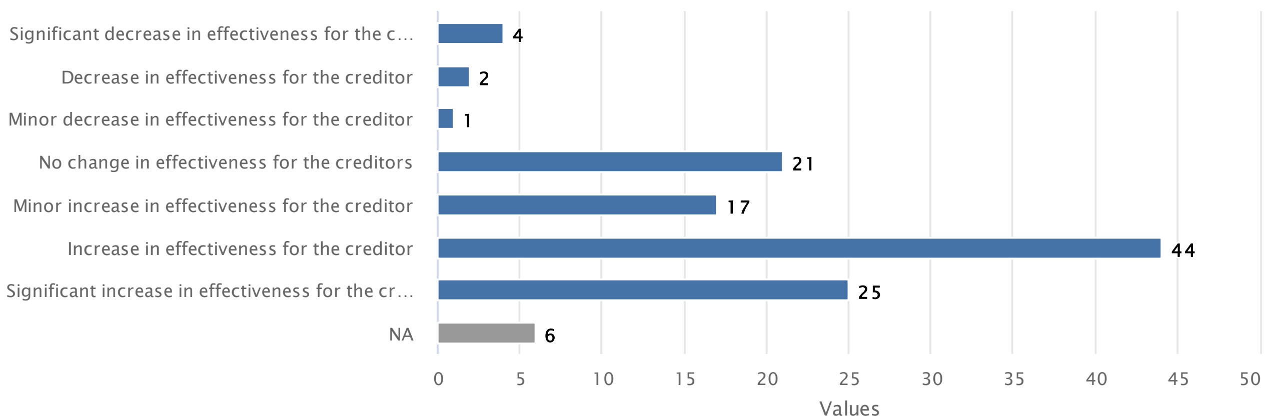
ID: **q8-2**		
Question: Please consider the overall timing to complete a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of the above EU rules.		
Answer	**Freq**	**Freq %**
NA	7	5.8 %
Decrease of timing greater than 40%	17	14.2 %
Decrease of timing greater than 30%	12	10 %
Decrease of timing greater than 20%	30	25 %
Decrease of timing greater than 10%	14	11.7 %

No change	18	15 %
Increase of timing greater than 10%	7	5.8 %
Increase of timing greater than 20%	9	7.5 %
Increase of timing greater than 30%	5	4.2 %
Increase of timing greater than 40%	1	0.8 %
Tot	120	100.0 %



ID: **q8-3**		
Question: Considering the overall effectiveness of the cross-border insolvency procedure, as concerns the liquidation of debts and the satisfaction of the claims of creditors, the preservation of business assets and the conservation of the continuity of viable businesses, please provide us your estimate of the change in the overall effectiveness determined by the introduction of such rules.		
Answer	**Freq**	**Freq %**
NA	6	5 %
Significant decrease in effectiveness for the creditor	4	3.3 %

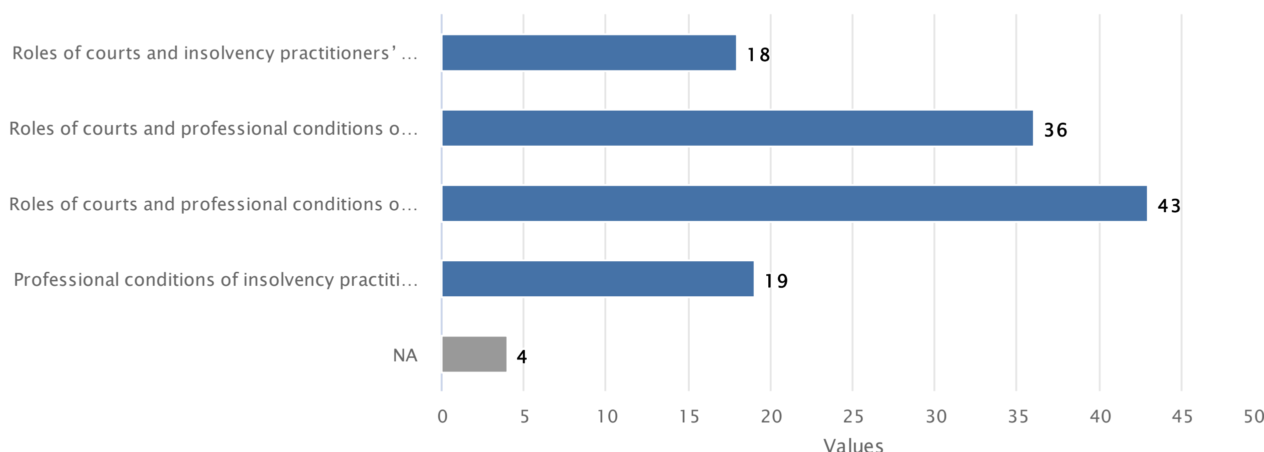
Decrease in effectiveness for the creditor	2	1.7 %
Minor decrease in effectiveness for the creditor	1	0.8 %
No change in effectiveness for the creditors	21	17.5 %
Minor increase in effectiveness for the creditor	17	14.2 %
Increase in effectiveness for the creditor	44	36.7 %
Significant increase in effectiveness for the creditor	25	20.8 %
Tot	120	100.0 %



ID: **q8-4**		
Question: Impacts of the introduction of EU rules on specialisation of insolvency courts and training of insolvency judges and more concrete requirements for insolvency practitioners' when it comes to conditions for eligibility, appointment, suitable, training, or necessary expertise.		
Answer	**Freq**	**Freq %**
NA	4	3.3 %

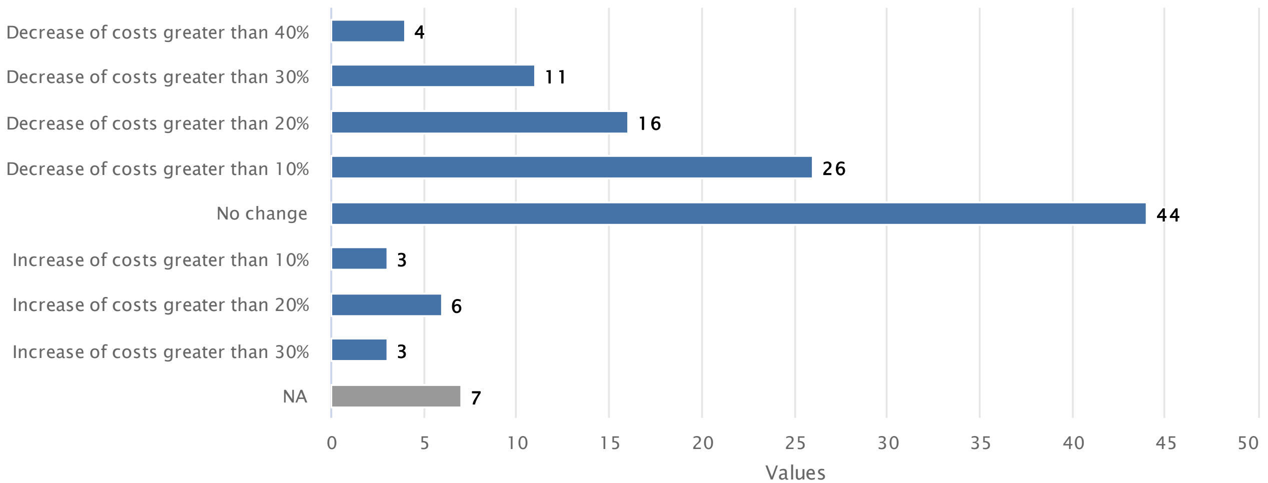
Roles of courts and insolvency practitioners' professional conditions should be ruled according to Member State laws, without any further EU intervention	18	15 %
Roles of courts and professional conditions of insolvency practitioners should be ruled by means of a EU Recommendation setting forth principles on specialisation of insolvency courts and training of judges and principles on requirements for insolvency practitioners' when it comes to conditions for eligibility, appointment, suitable, training, or necessary expertise;	36	30 %
Roles of courts and professional conditions of insolvency practitioners should be ruled by means of a EU Directive with more concrete rules on specialisation of insolvency courts and training of judges and on requirements for insolvency practitioners' when it comes to conditions for eligibility, appointment, suitable, training, or necessary expertise;	43	35.8 %
Professional conditions of insolvency practitioners should be ruled by means of a EU Directive with a more detailed set of rules regarding the various aspects of the insolvency practitioners' profession.	19	15.8 %
Tot	120	100.0 %

Impacts of the introduction of EU rules on specialisation of insolvency courts and training of insolvency judges and more concrete requirements for insolvency practitioners' when it comes to conditions for eligibility, appointment, suitable, training, or necessary expertise.



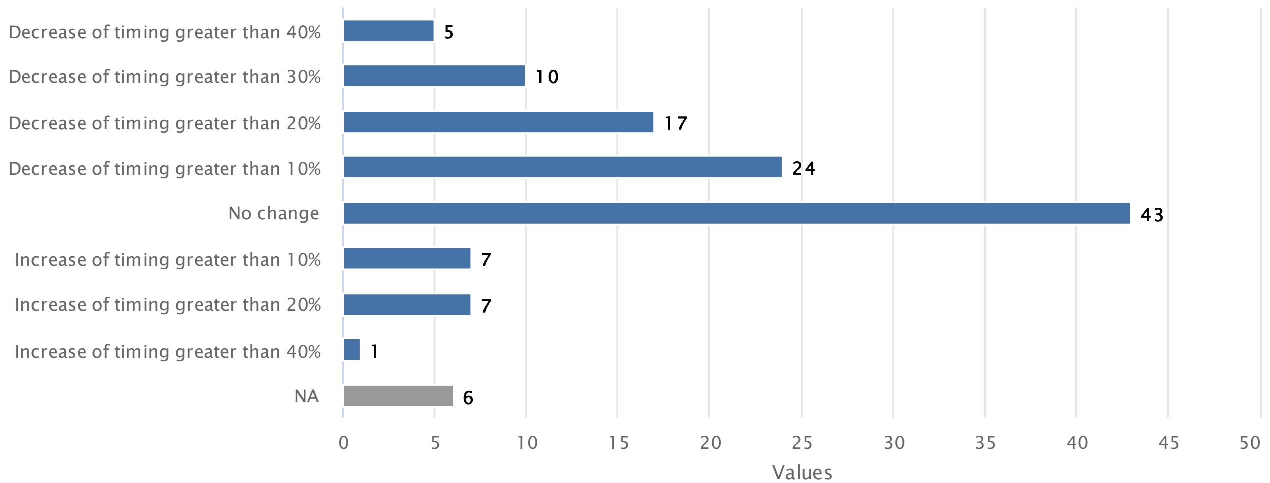
ID: **q9-1**		
Question: Please consider the overall costs of a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of the above EU standards.		
Answer	**Freq**	**Freq %**
NA	7	5.8 %
Decrease of costs greater than 40%	4	3.3 %
Decrease of costs greater than 30%	11	9.2 %
Decrease of costs greater than 20%	16	13.3 %
Decrease of costs greater than 10%	26	21.7 %
No change	44	36.7 %
Increase of costs greater than 10%	3	2.5 %
Increase of costs greater than 20%	6	5 %

Increase of costs greater than 30%	3	2.5 %
Tot	120	100.0 %



ID: **q9-2**		
Question: Please consider the overall timing to complete a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of the above EU rules.		
Answer	**Freq**	**Freq %**
NA	6	5 %
Decrease of timing greater than 40%	5	4.2 %
Decrease of timing greater than 30%	10	8.3 %
Decrease of timing greater than 20%	17	14.2 %
Decrease of timing greater than 10%	24	20 %
No change	43	35.8 %
Increase of timing greater than 10%	7	5.8 %
Increase of timing greater than 20%	7	5.8 %

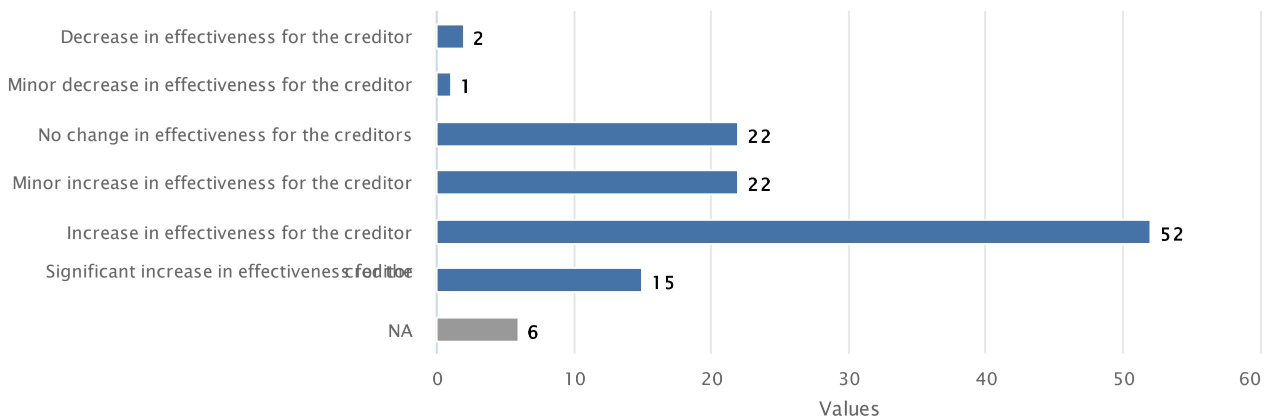
Increase of timing greater than 40%	1	0.8 %
Tot	120	100.0 %



ID: **q9-3**		
Question: Considering the overall effectiveness of the cross-border insolvency procedure, as concerns the liquidation of debts and the satisfaction of the claims of creditors, the preservation of business assets and the conservation of the continuity of viable businesses, please provide us your estimate of the change in the overall effectiveness determined by the introduction of such rules.		
Answer	**Freq**	**Freq %**
NA	6	5 %
Decrease in effectiveness for the creditor	2	1.7 %
Minor decrease in effectiveness for the creditor	1	0.8 %
No change in effectiveness for the creditors	22	18.3 %
Minor increase in effectiveness for the creditor	22	18.3 %
Increase in effectiveness for the creditor	52	43.3 %

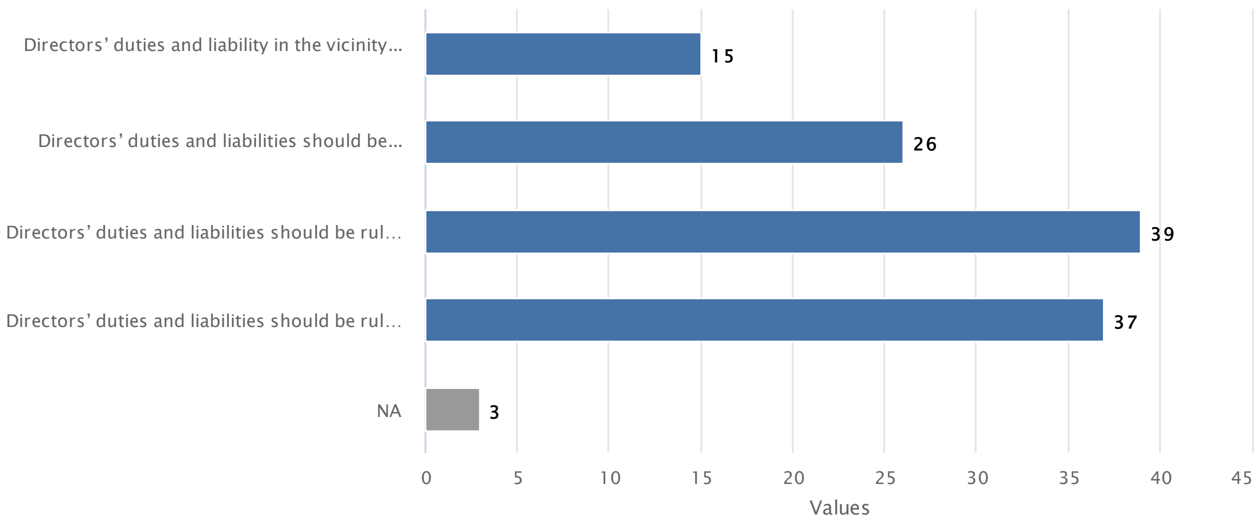
Significant increase in effectiveness for the creditor	15	12.5 %
Tot	120	100.0 %

Considering the overall effectiveness of the cross-border insolvency procedure, as concerns the liquidation of debts and the satisfaction of the claims of creditors, the preservation of business assets and the conservation of the continuity of viable businesses, please provide us your estimate of the change in the overall effectiveness determined by the introduction of such rules.



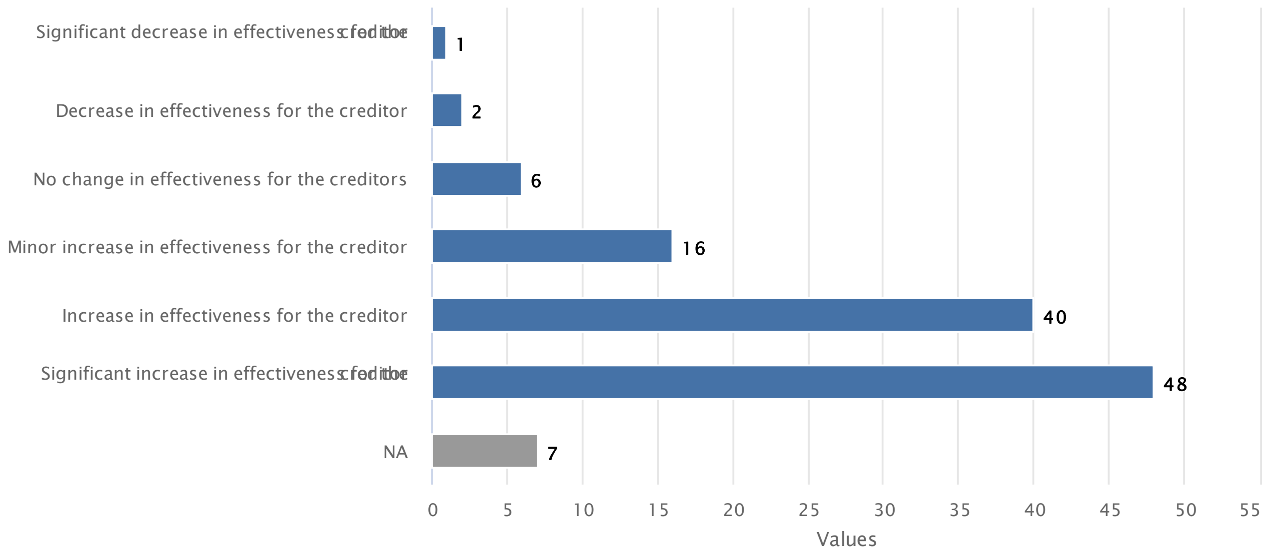
ID: **q9-4**		
Question: Considering the available policy options to introduce such rules, please rank the policy instrument according to their effectiveness		
Answer	**Freq**	**Freq %**
NA	3	2.5 %
Directors' duties and liability in the vicinity of insolvency should be ruled according to Member State laws, without any further EU intervention	15	12.5 %
Directors' duties and liabilities should be ruled by means of a EU Recommendation	26	21.7 %
Directors' duties and liabilities should be ruled by means of a EU Directive on the directors' duties and liability in the vicinity of insolvency (including details on the decisions to be taken once the shareholders meeting has been convened,	39	32.5 %

conditions under which insolvency should be filed and liability against wrongful trading		
Directors' duties and liabilities should be ruled by means of a EU Directive on the directors' duties and liability in the vicinity of insolvency (including details on the decisions to be taken once the shareholders meeting has been convened, conditions under which insolvency should be filed and liability against wrongful trading, displacing national conflicting law	37	30.8 %
Tot	120	100.0 %



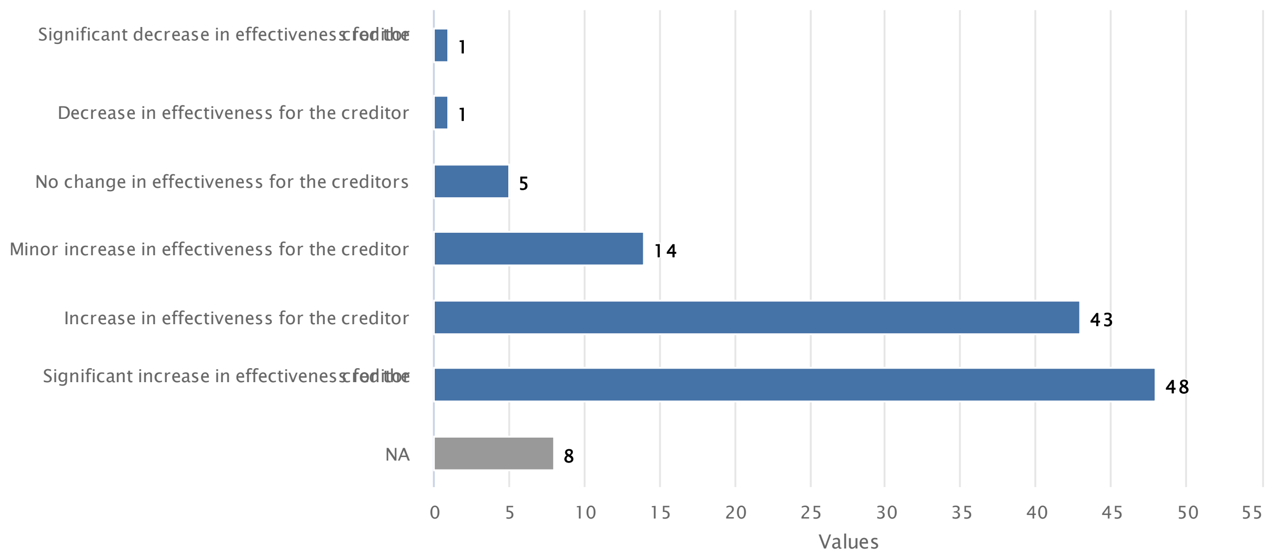
ID: **q10-01**		
Question: Cross-border access to registries of insolvent business actors		
Answer	**Freq**	**Freq %**
NA	7	5.8 %
Significant decrease in effectiveness for the creditor	1	0.8 %

Decrease in effectiveness for the creditor	2	1.7 %
No change in effectiveness for the creditors	6	5 %
Minor increase in effectiveness for the creditor	16	13.3 %
Increase in effectiveness for the creditor	40	33.3 %
Significant increase in effectiveness for the creditor	48	40 %
Tot	120	100.0 %



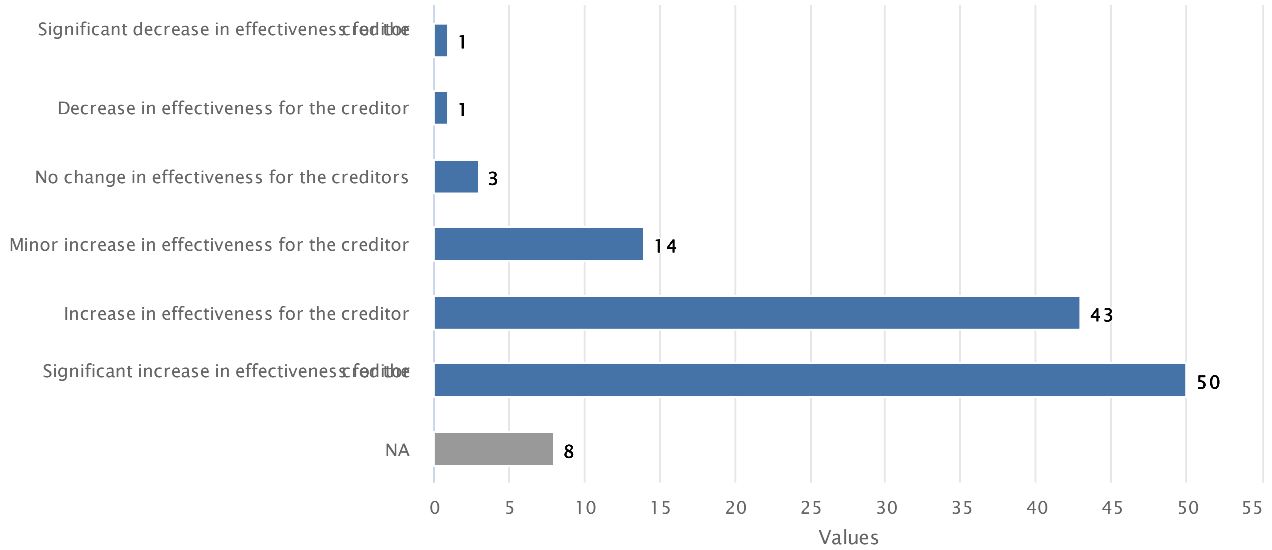
ID: **q10-02**		
Question: Cross-border access to registries of initiated insolvency procedures		
Answer	**Freq**	**Freq %**
NA	8	6.7 %
Significant decrease in effectiveness for the creditor	1	0.8 %
Decrease in effectiveness for the creditor	1	0.8 %
No change in effectiveness for the creditors	5	4.2 %

Minor increase in effectiveness for the creditor	14	11.7 %
Increase in effectiveness for the creditor	43	35.8 %
Significant increase in effectiveness for the creditor	48	40.0 %
Tot	120	100.0 %

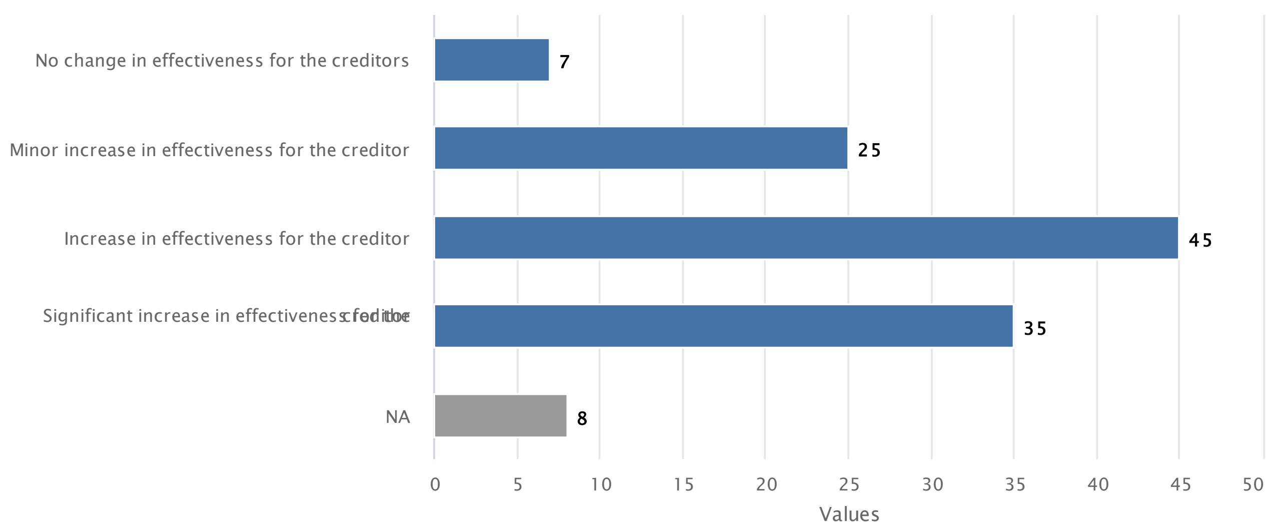


ID: **q10-03**		
Question: Cross-border access to registries for the purpose of asset tracing		
Answer	**Freq**	**Freq %**
NA	8	6.7 %
Significant decrease in effectiveness for the creditor	1	0.8 %
Decrease in effectiveness for the creditor	1	0.8 %
No change in effectiveness for the creditors	3	2.5 %
Minor increase in effectiveness for the creditor	14	11.7 %
Increase in effectiveness for the creditor	43	35.8 %
Significant increase in effectiveness for the creditor	50	41.7 %

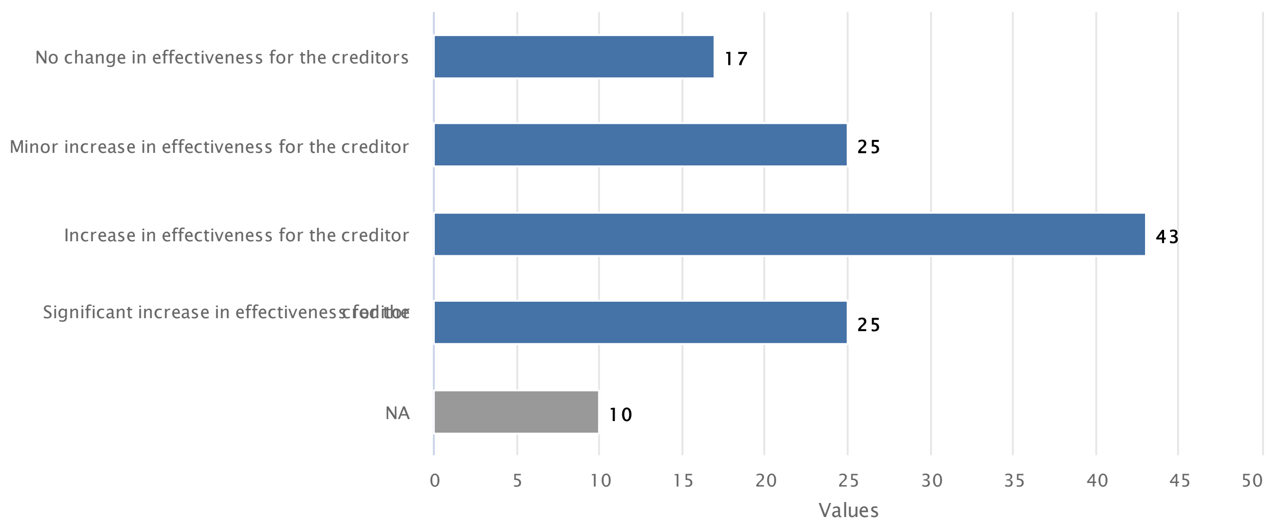
Tot	120	100.0 %



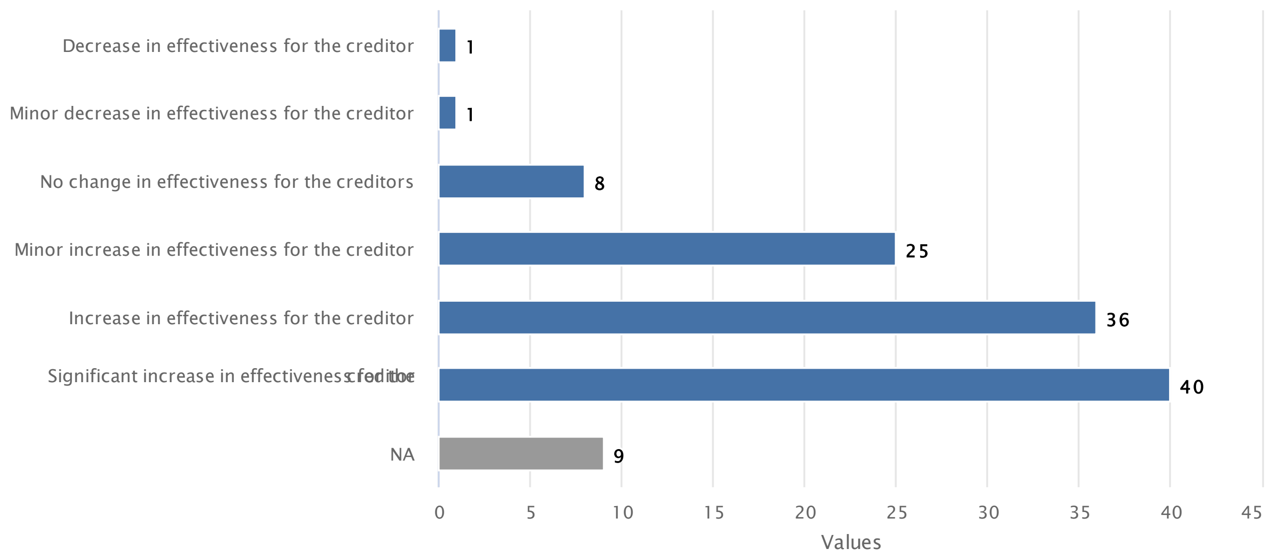
ID: **q10-04**		
Question: Development of a glossary of insolvency terms and of the equivalent professional figures in different jurisdictions to aid translation of claims filing.		
Answer	**Freq**	**Freq %**
NA	8	6.7 %
No change in effectiveness for the creditors	7	5.8 %
Minor increase in effectiveness for the creditor	25	20.8 %
Increase in effectiveness for the creditor	45	37.5 %
Significant increase in effectiveness for the creditor	35	29.2 %
Tot	120	100.0 %



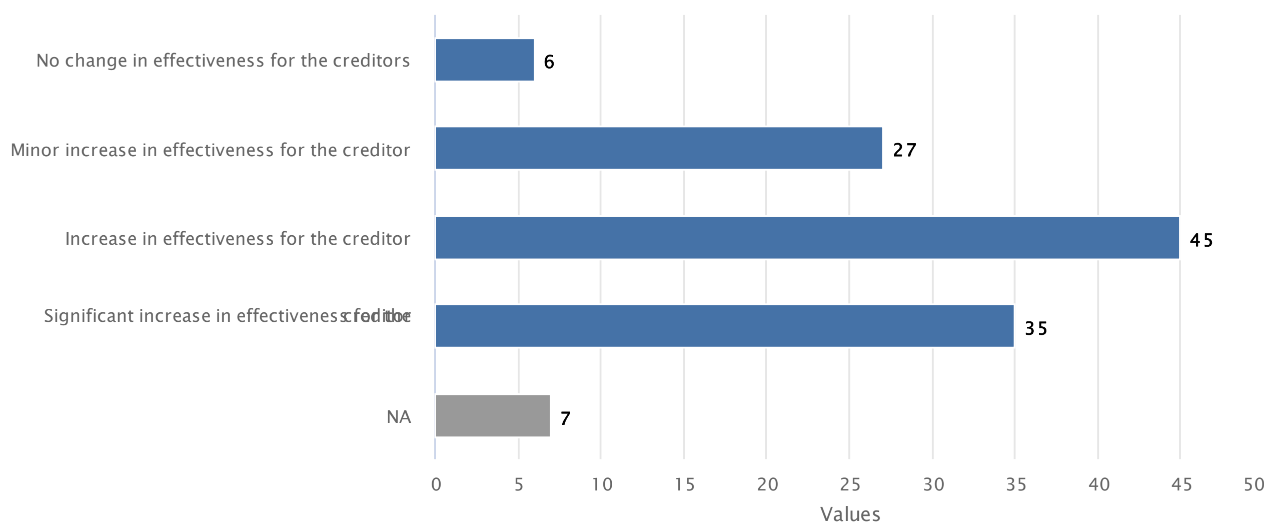
ID: **q10-05**		
Question: Standard ontologies (A set of concepts and categories in the insolvency subject area and domain showing their properties and the relations between them)		
Answer	**Freq**	**Freq %**
NA	10	8.3 %
No change in effectiveness for the creditors	17	14.2 %
Minor increase in effectiveness for the creditor	25	20.8 %
Increase in effectiveness for the creditor	43	35.8 %
Significant increase in effectiveness for the creditor	25	20.8 %
Tot	120	100.0 %



ID: **q10-06**		
Question: Standardised models for filing claims		
Answer	**Freq**	**Freq %**
NA	9	7.5 %
Decrease in effectiveness for the creditor	1	0.8 %
Minor decrease in effectiveness for the creditor	1	0.8 %
No change in effectiveness for the creditors	8	6.7 %
Minor increase in effectiveness for the creditor	25	20.8 %
Increase in effectiveness for the creditor	36	30 %
Significant increase in effectiveness for the creditor	40	33.3 %
Tot	120	100.0 %



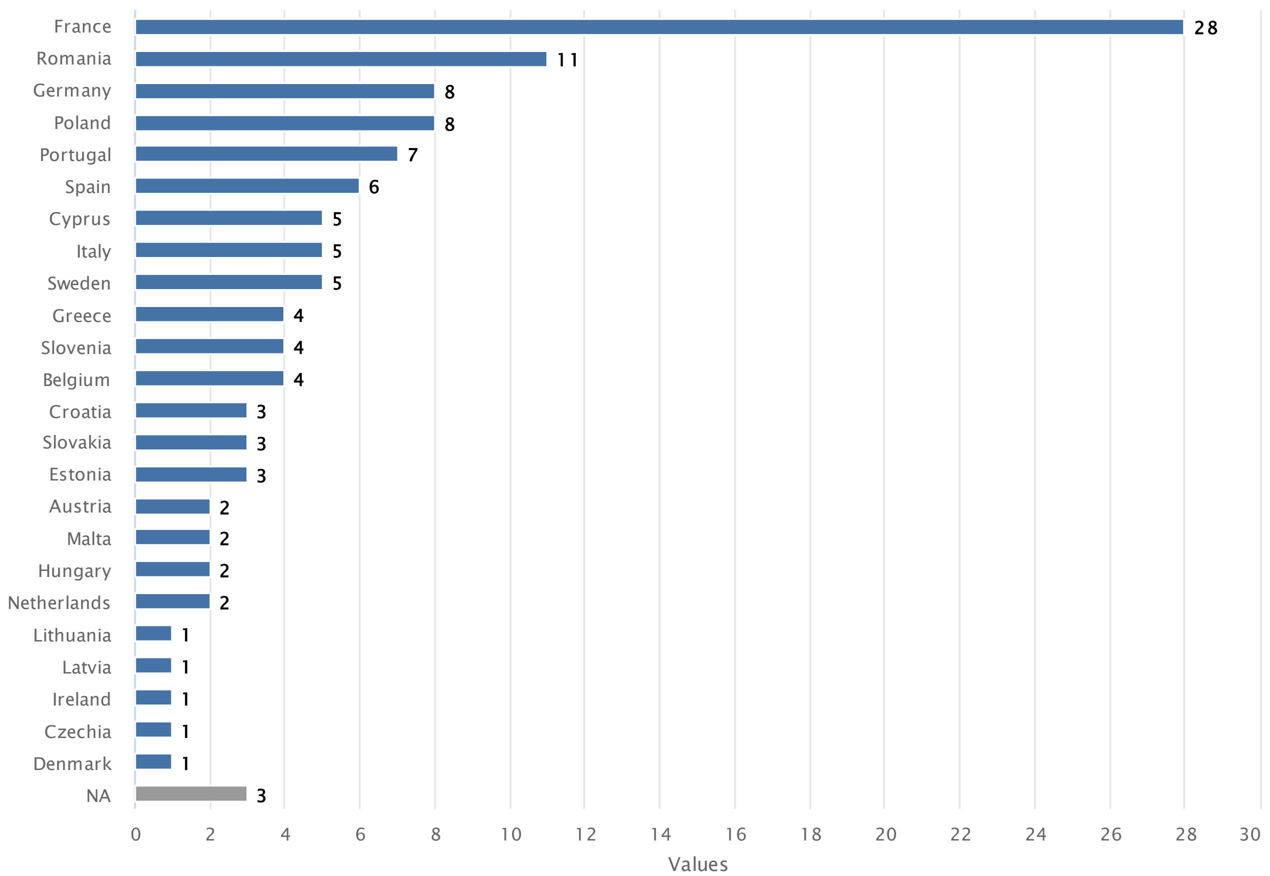
ID: **q10-07**		
Question: Insolvency-dedicated automated translation tools for documents, inscriptions into registries, insolvency proceedings		
Answer	**Freq**	**Freq %**
NA	7	5.8 %
No change in effectiveness for the creditors	6	5 %
Minor increase in effectiveness for the creditor	27	22.5 %
Increase in effectiveness for the creditor	45	37.5 %
Significant increase in effectiveness for the creditor	35	29.2 %
Tot	120	100.0 %



ID: **q10-08**		
Question: Authentication and validation of claimants to ensure legitimacy of access and claims filing		
Answer	**Freq**	**Freq %**
NA	9	7.5 %
Minor decrease in effectiveness for the creditor	1	0.8 %
No change in effectiveness for the creditors	12	10 %
Minor increase in effectiveness for the creditor	24	20 %
Increase in effectiveness for the creditor	41	34.2 %
Significant increase in effectiveness for the creditor	33	27.5 %
Tot	120	100.0 %

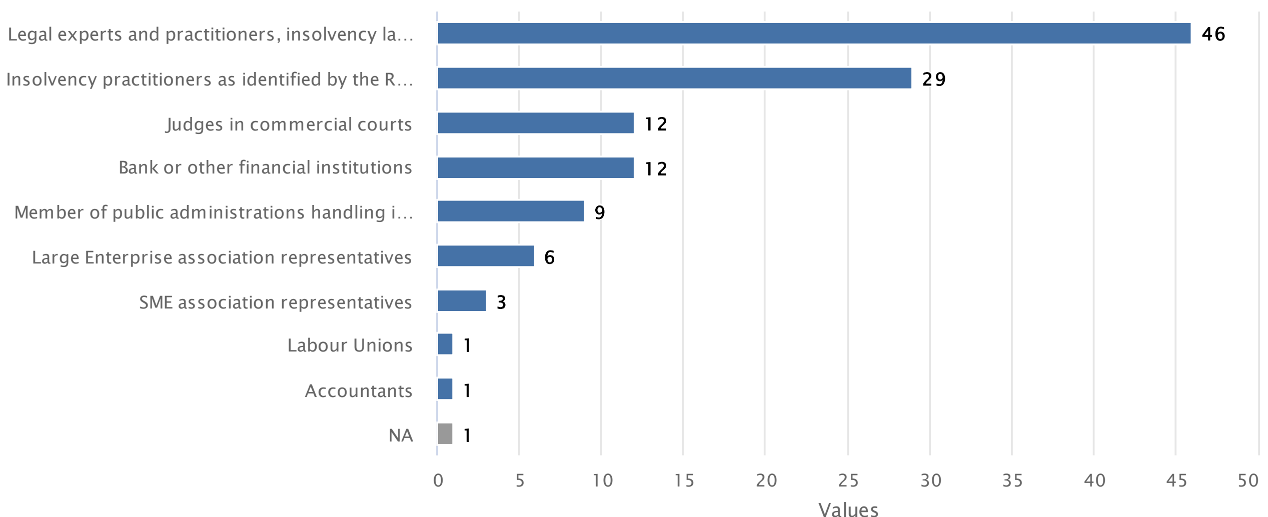
ID: **countrym**		
Question: In which jurisdiction do you operate mainly:		
Answer	**Freq**	**Freq %**
France	28	23.3 %
Romania	11	9.2 %
Germany	8	6.7 %
Poland	8	6.7 %
Portugal	7	5.8 %
Spain	6	5.0 %
Cyprus	5	4.2 %
Italy	5	4.2 %
Sweden	5	4.2 %
Greece	4	3.3 %
Slovenia	4	3.3 %
Belgium	4	3.3 %
NA	3	2.5 %
Croatia	3	2.5 %
Slovakia	3	2.5 %
Estonia	3	2.5 %
Austria	2	1.7 %
Malta	2	1.7 %
Hungary	2	1.7 %
Netherlands	2	1.7 %
Lithuania	1	0.8 %

Latvia	1	0.8 %
Ireland	1	0.8 %
Czechia	1	0.8 %
Denmark	1	0.8 %
Tot	120	100.0%

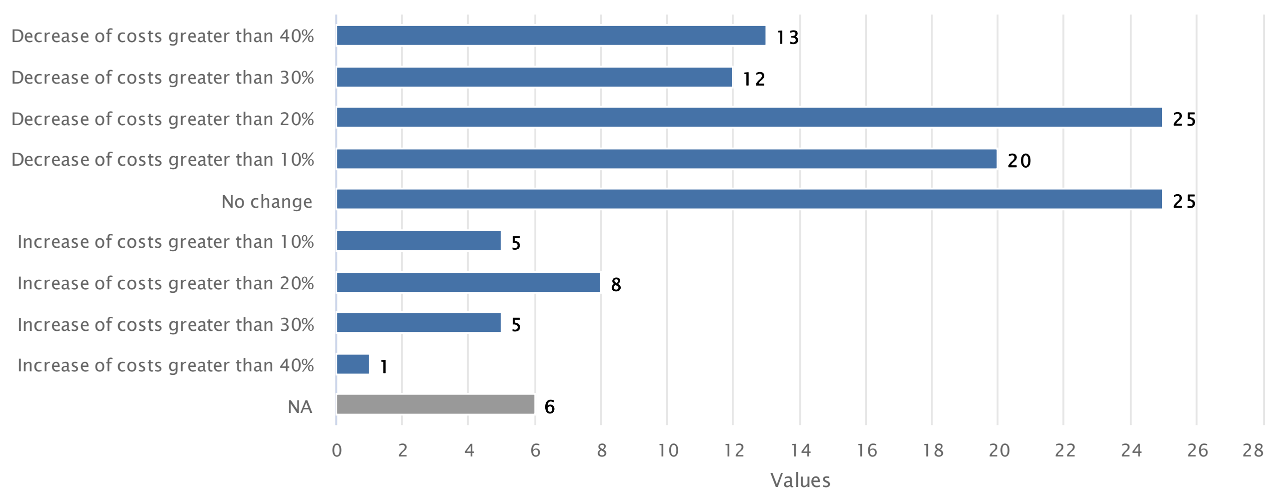


ID: **orgtype**		
Question: To which main category of insolvency actors do you belong (please indicate the main one):		
Answer	**Freq**	**Freq %**

Legal experts and practitioners, insolvency lawyers	46	38.3 %
Insolvency practitioners as identified by the Regulation	29	24.2 %
Judges in commercial courts	12	10.0 %
Bank or other financial institutions	12	10.0 %
Member of public administrations handling insolvency	9	7.5 %
Large Enterprise association representatives	6	5.0 %
SME association representatives	3	2.5 %
Labour Unions	1	0.8 %
Accountants	1	0.8 %
NA	1	0.8 %
Tot	120	100.0 %

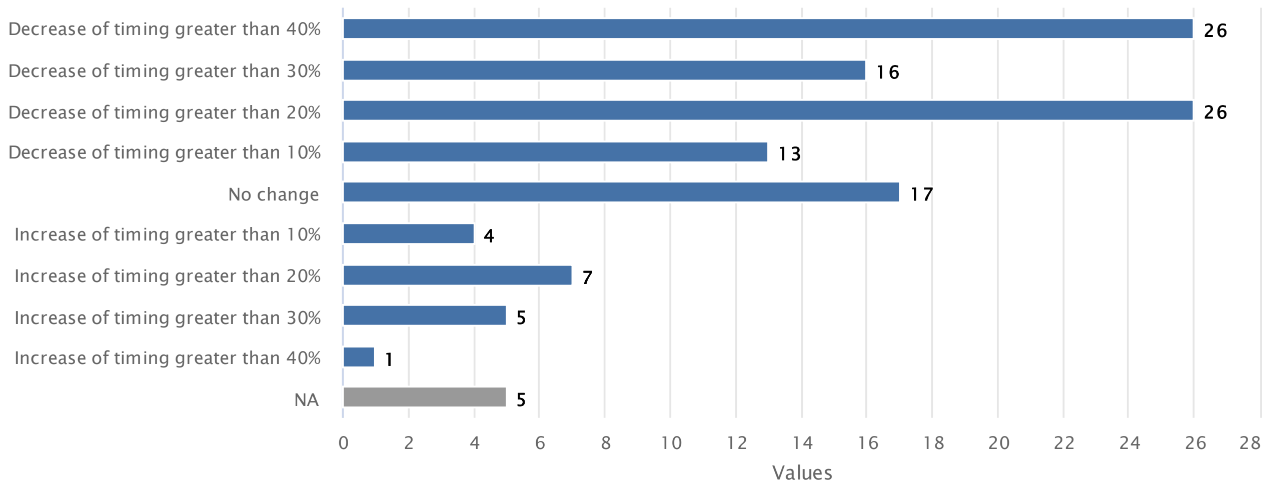


ID: **q1-1**		
Question: Please consider the overall costs of a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of EU rules on pre-pack sales.		
Answer	**Freq**	**Freq %**
NA	6	5 %
Decrease of costs greater than 40%	13	10.8 %
Decrease of costs greater than 30%	12	10 %
Decrease of costs greater than 20%	25	20.8 %
Decrease of costs greater than 10%	20	16.7 %
No change	25	20.8 %
Increase of costs greater than 10%	5	4.2 %
Increase of costs greater than 20%	8	6.7 %
Increase of costs greater than 30%	5	4.2 %
Increase of costs greater than 40%	1	0.8 %
Tot	120	100.0 %



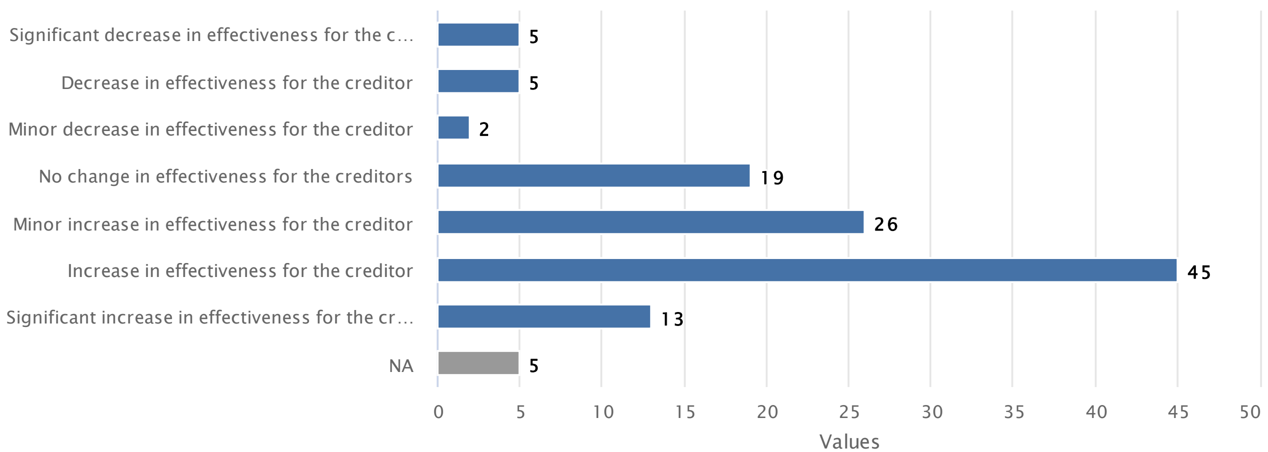
ID: **q1-2**		
Question: Please consider the overall timing to complete a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of EU rules on pre-pack sales.		
Answer	**Freq**	**Freq %**
NA	5	4.2 %
Decrease of timing greater than 40%	26	21.7 %
Decrease of timing greater than 30%	16	13.3 %
Decrease of timing greater than 20%	26	21.7 %
Decrease of timing greater than 10%	13	10.8 %
No change	17	14.2 %
Increase of timing greater than 10%	4	3.3 %
Increase of timing greater than 20%	7	5.8 %
Increase of timing greater than 30%	5	4.2 %

Increase of timing greater than 40%	1	0.8 %
Tot	120	100.0 %



ID: **q1-3**		
Question: Considering the overall effectiveness of the cross-border insolvency procedure, as concerns the liquidation of debts and the satisfaction of the claims of creditors, please provide us your estimate of the change in the overall effectiveness determined by the introduction of EU rules on pre-pack sales..		
Answer	**Freq**	**Freq %**
NA	5	4.2 %
Significant decrease in effectiveness for the creditor	5	4.2 %
Decrease in effectiveness for the creditor	5	4.2 %
Minor decrease in effectiveness for the creditor	2	1.7 %
No change in effectiveness for the creditors	19	15.8 %
Minor increase in effectiveness for the creditor	26	21.7 %

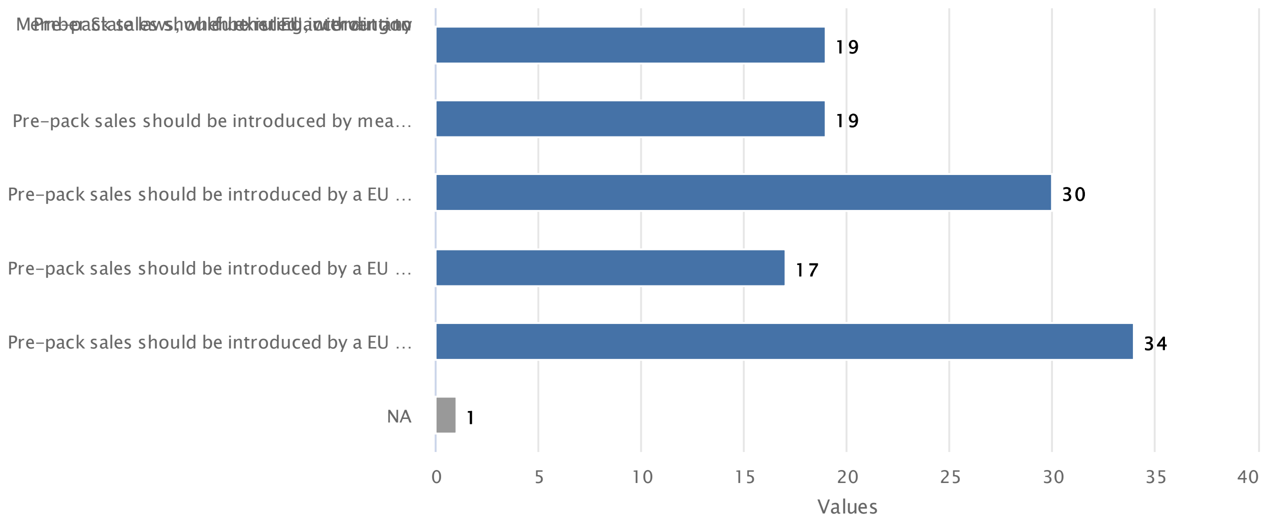
Increase in effectiveness for the creditor	45	37.5 %
Significant increase in effectiveness for the creditor	13	10.8 %
Tot	120	100.0 %



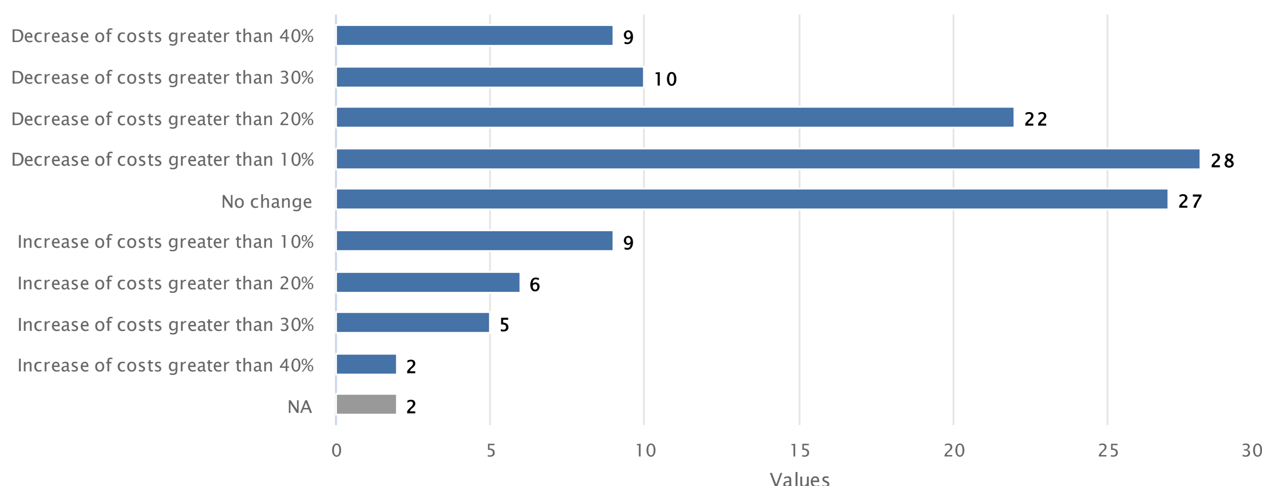
ID: **q1-4**		
Question: Considering the available policy options to introduce EU regulation of pre-pack sales, please rank the policy instrument according to their effectiveness		
Answer	**Freq**	**Freq %**
NA	1	0.8 %
Pre-pack sales should be ruled according to Member State laws, when existing, without any further EU intervention	19	15.8 %
Pre-pack sales should be introduced by means of a EU Recommendation including the features to introduce the instrument in each Member State but no further regulatory instrument shall be adopted	19	15.8 %

Pre-pack sales should be introduced by a EU Directive as an insolvent liquidation proceedings, merely establishing the main features of the instrument and defining the minimum transparency and standards in relation to the transparency of the negotiation process	30	25 %
Pre-pack sales should be introduced by a EU Directive, precisely regulating the features of the instrument, the role of the Advisor and its appointment as an IP, the assignment or termination of civil and commercial executory contracts	17	14.2 %
Pre-pack sales should be introduced by a EU Directive or Regulation, precisely regulating the features of the instrument, the role of the Advisor and its appointment as an IP, the assignment or termination of civil and commercial executory contracts, the criteria to choose the best bid, and the measures to maximize the value of the business subject to pre – pack, displacing existing national provisions	34	28.3 %
Tot	120	100.0 %

Considering the available policy options to introduce EU regulation of pre-pack sales, please rank the policy instrument according to their effectiveness

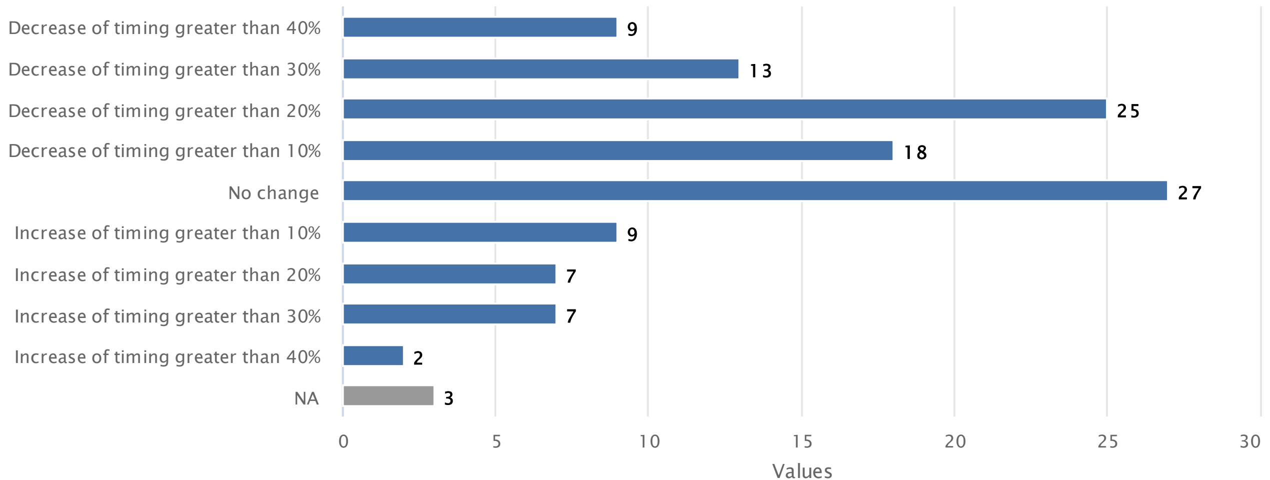


ID: **q2-1**		
Question: Please consider the overall costs of a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of the EU rules of such rules.		
Answer	**Freq**	**Freq %**
NA	2	1.7 %
Decrease of costs greater than 40%	9	7.5 %
Decrease of costs greater than 30%	10	8.3 %
Decrease of costs greater than 20%	22	18.3 %
Decrease of costs greater than 10%	28	23.3 %
No change	27	22.5 %
Increase of costs greater than 10%	9	7.5 %
Increase of costs greater than 20%	6	5 %
Increase of costs greater than 30%	5	4.2 %
Increase of costs greater than 40%	2	1.7 %
Tot	120	100.0 %



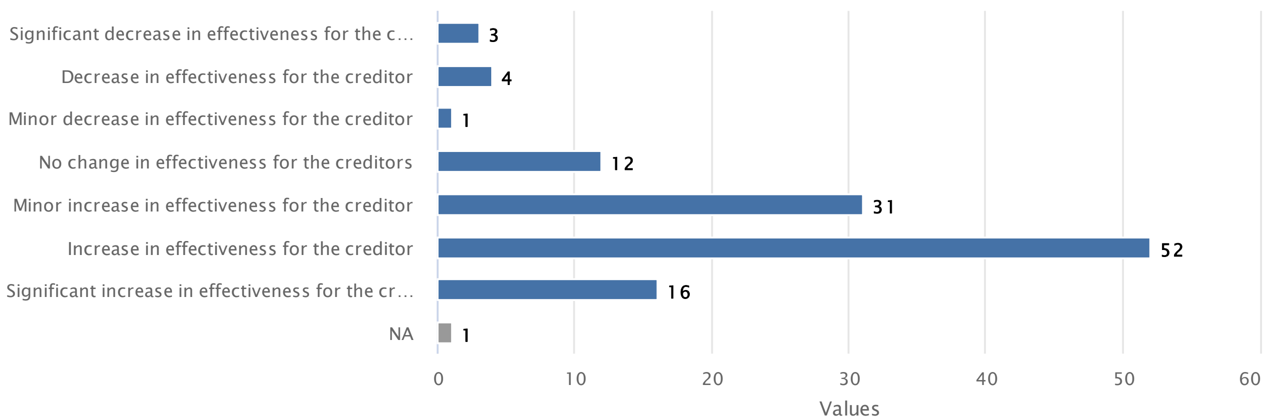
ID: **q2-2**		
Question: Please consider the overall timing to complete a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of such rules.		
Answer	**Freq**	**Freq %**
NA	3	2.5 %
Decrease of timing greater than 40%	9	7.5 %
Decrease of timing greater than 30%	13	10.8 %
Decrease of timing greater than 20%	25	20.8 %
Decrease of timing greater than 10%	18	15 %
No change	27	22.5 %
Increase of timing greater than 10%	9	7.5 %
Increase of timing greater than 20%	7	5.8 %
Increase of timing greater than 30%	7	5.8 %
Increase of timing greater than 40%	2	1.7 %

Tot	120	100.0 %



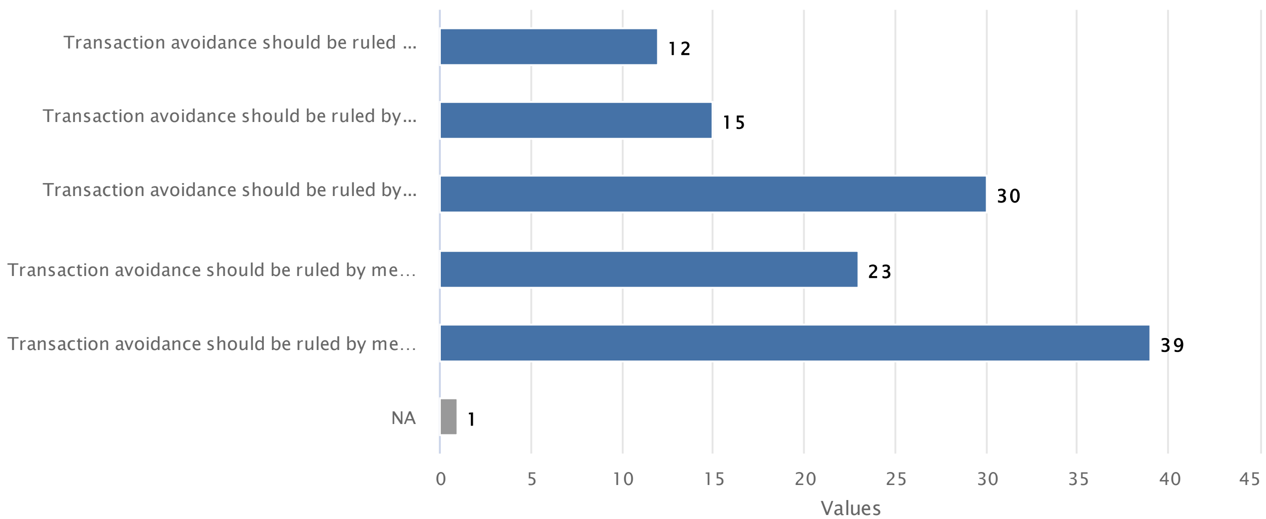
ID: **q2-3**		
Question: Considering the overall effectiveness of the cross-border insolvency procedure, as concerns the liquidation of debts and the satisfaction of the claims of creditors and the preservation of business assets and the conservation of the continuity of viable businesses, please provide us your estimate of the change in the overall effectiveness determined by the introduction of such rules.		
Answer	**Freq**	**Freq %**
NA	1	0.8 %
Significant decrease in effectiveness for the creditor	3	2.5 %
Decrease in effectiveness for the creditor	4	3.3 %
Minor decrease in effectiveness for the creditor	1	0.8 %
No change in effectiveness for the creditors	12	10 %
Minor increase in effectiveness for the creditor	31	25.8 %
Increase in effectiveness for the creditor	52	43.3 %

Significant increase in effectiveness for the creditor	16	13.3 %
Tot	120	100.0 %



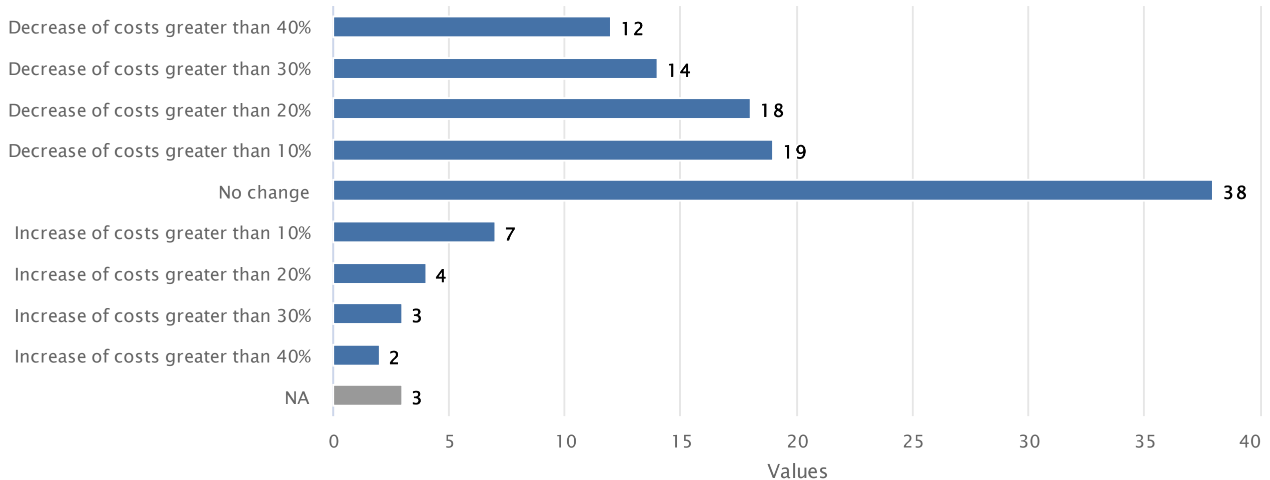
ID: **q2-4**		
Question: Considering the available policy options to introduce EU rules on transaction avoidance, please rank the policy instrument according to their effectiveness		
Answer	**Freq**	**Freq %**
NA	1	0.8 %
Transaction avoidance should be ruled according to Member State laws, without any further EU intervention	12	10 %
Transaction avoidance should be ruled by means of a EU Recommendation but no further regulatory instrument	15	12.5 %
Transaction avoidance should be ruled by means of a Directive providing general rules on transaction avoidance	30	25 %

Transaction avoidance should be ruled by means of a Directive providing a non-exhaustive set of specific rules on transaction avoidance displacing conflicting national law	23	19.2 %
Transaction avoidance should be ruled by means of a Directive or a Regulation providing a exhaustive specific set of rules on transaction avoidance displacing conflicting national law	39	32.5 %
Tot	120	100.0 %



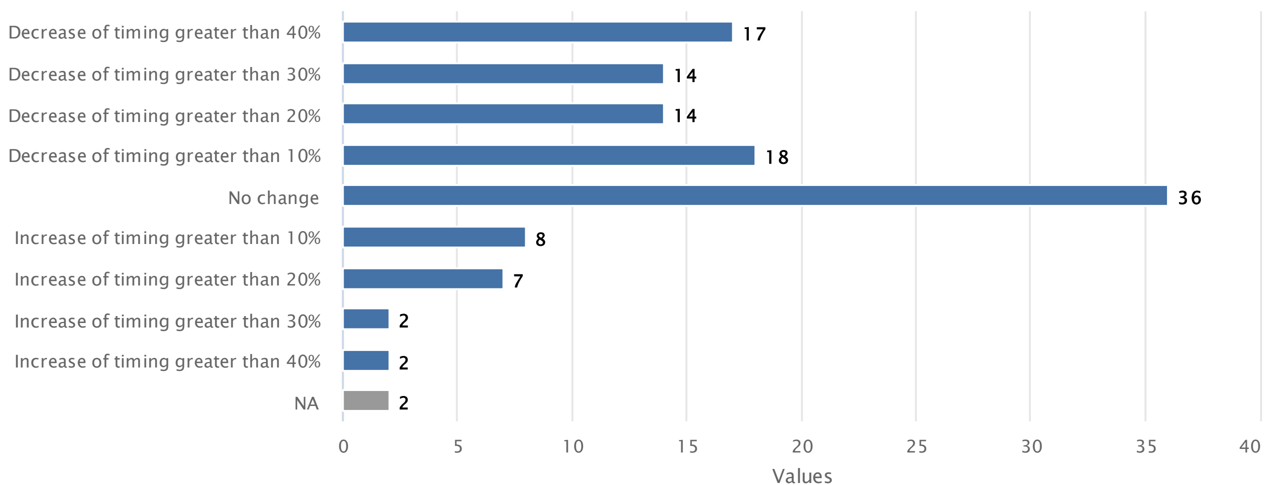
ID: **q3-1**		
Question: Please consider the overall costs of a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of a special regime of MSEs.		
Answer	**Freq**	**Freq %**
NA	3	2.5 %

Decrease of costs greater than 40%	12	10 %
Decrease of costs greater than 30%	14	11.7 %
Decrease of costs greater than 20%	18	15 %
Decrease of costs greater than 10%	19	15.8 %
No change	38	31.7 %
Increase of costs greater than 10%	7	5.8 %
Increase of costs greater than 20%	4	3.3 %
Increase of costs greater than 30%	3	2.5 %
Increase of costs greater than 40%	2	1.7 %
Tot	120	100.0 %



ID: **q3-2**
Question: Please consider the overall timing to complete a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of a special regime for MSEs.

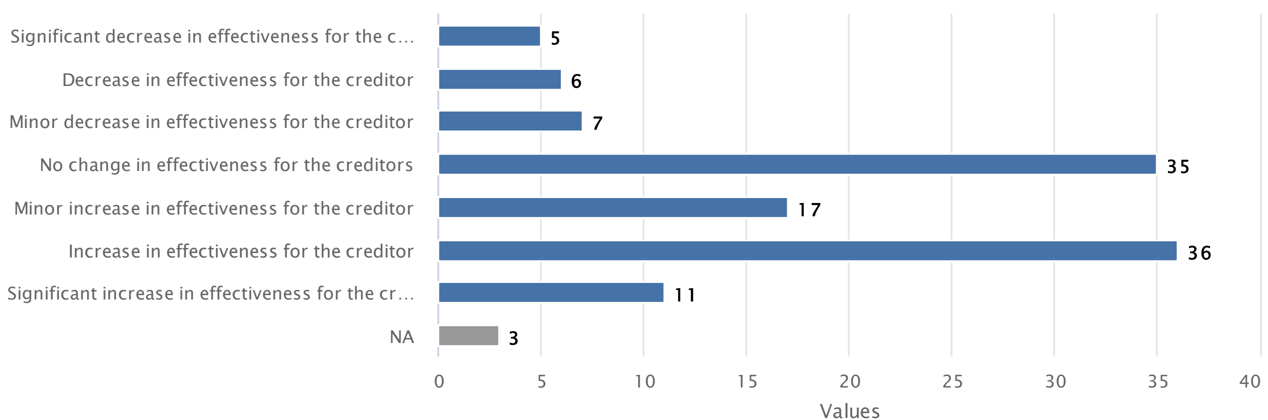
Answer	Freq	Freq %
NA	2	1.7 %
Decrease of timing greater than 40%	17	14.2 %
Decrease of timing greater than 30%	14	11.7 %
Decrease of timing greater than 20%	14	11.7 %
Decrease of timing greater than 10%	18	15 %
No change	36	30 %
Increase of timing greater than 10%	8	6.7 %
Increase of timing greater than 20%	7	5.8 %
Increase of timing greater than 30%	2	1.7 %
Increase of timing greater than 40%	2	1.7 %
Tot	120	100.0 %



ID: **q3-3**
Question: Considering the overall effectiveness of the cross-border insolvency procedure, as concerns the liquidation of debts and the

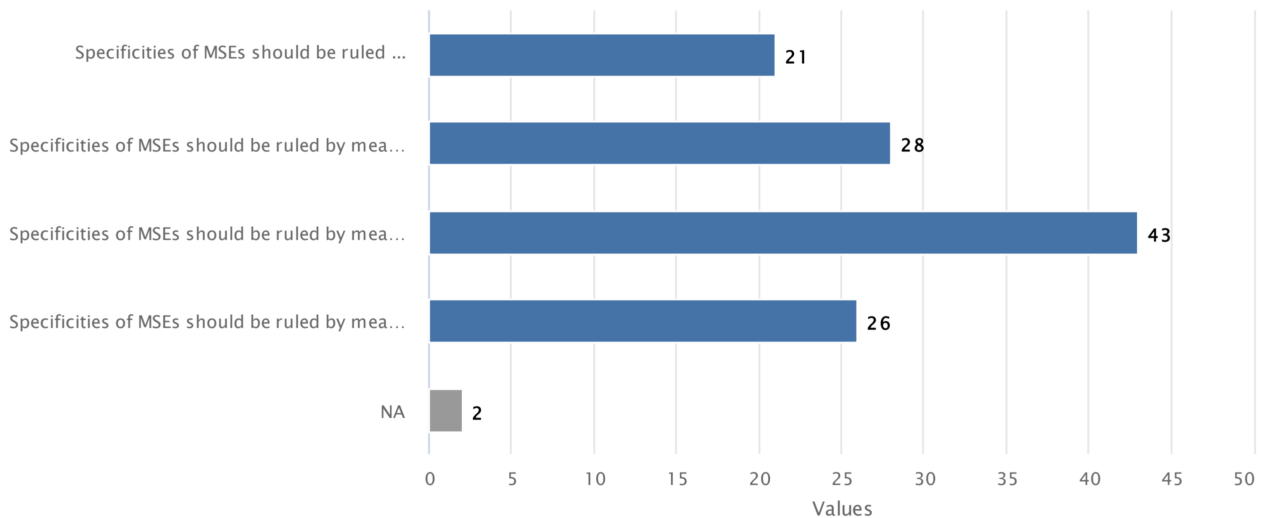
satisfaction of the claims of creditors and on the preservation of business assets and the conservation of the continuity of viable businesses, please provide us your estimate of the change in the overall effectiveness determined by the introduction of a special regime for MSEs.		
Answer	**Freq**	**Freq %**
NA	3	2.5 %
Significant decrease in effectiveness for the creditor	5	4.2 %
Decrease in effectiveness for the creditor	6	5 %
Minor decrease in effectiveness for the creditor	7	5.8 %
No change in effectiveness for the creditors	35	29.2 %
Minor increase in effectiveness for the creditor	17	14.2 %
Increase in effectiveness for the creditor	36	30 %
Significant increase in effectiveness for the creditor	11	9.2 %
Tot	120	100.0 %

Considering the overall effectiveness of the cross-border insolvency procedure, as concerns the liquidation of debts and the satisfaction of the claims of creditors and on the preservation of business assets and the conservation of the continuity of viable businesses, please provide us your estimate of the change in the overall effectiveness determined by the introduction of a special regime for MSEs

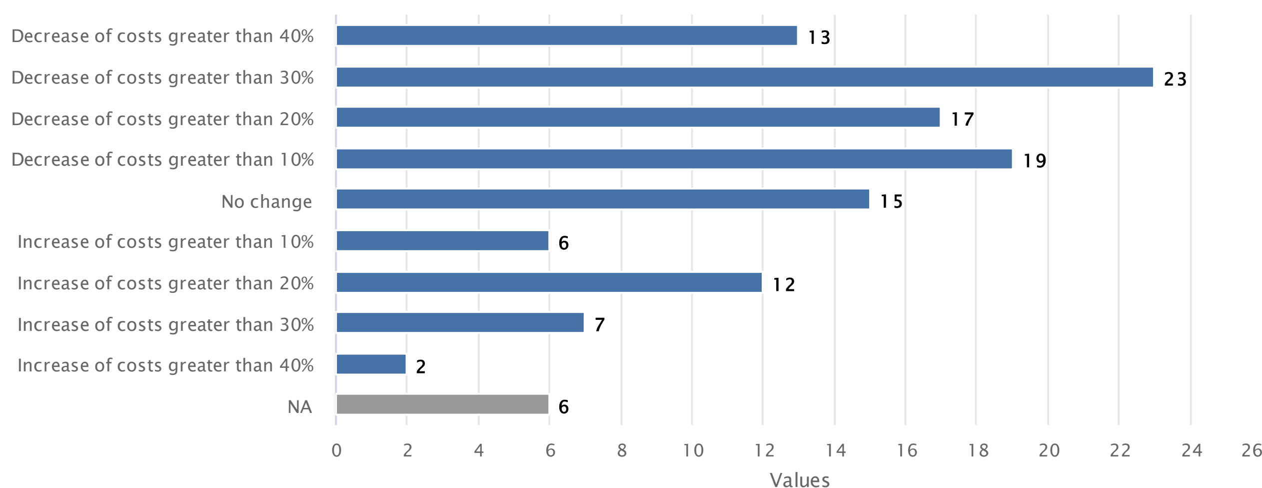


ID: **q3-4**		
Question: Considering the available policy options, please rank the policy instrument according to their effectiveness		
Answer	**Freq**	**Freq %**
NA	2	1.7 %
Specificities of MSEs should be ruled according to Member State laws, without any further EU intervention	21	17.5 %
Specificities of MSEs should be ruled by means of a EU Recommendation, with no further regulatory instrument, on specific treatment for MSEs including: definition of the scope of special provisions; access to orderly proceedings regardless available assets to cover the cost of the proceedings; postponement of the payment of procedural costs; the possible public funding of procedural costs; lowering the complexity and duration of the MSEs cases; providing for a scrutiny of the honesty of the debtor in the course of the proceedings instead of imposing heavy tests on the first day of the proceedings or setting forth extensive filing requirements; reflecting the rational creditor passivity in the rules on the decision about the insolvency, a sale of the business, or a piecemeal liquidation by a deemed approval rule; considering having proceedings outside the courts systems and involving courts only for appeals or objections; limiting the administrative burden by using mandatory templates and IT tool, providing for a very short periods of a stay of a plan proposal;	28	23.3 %
Specificities of MSEs should be ruled by means of Directive providing specific regime and/or exemptions from general insolvency requirements in case of MSEs in the form of targeted modifications of the general insolvency system including the following: definition of the scope of special provisions; access to orderly proceedings regardless available assets to cover the cost of the proceedings; postponement of the payment of procedural costs; the possible public funding of procedural costs; lowering the complexity and duration of the MSEs cases; providing for a scrutiny of the honesty of the debtor in the course of the	43	35.8 %

proceedings instead of imposing heavy tests on the first day of the proceedings or setting forth extensive filing requirements; reflecting the rational creditor passivity in the rules on the decision about the insolvency, a sale of the business, or a piecemeal liquidation by a deemed approval rule; considering having proceedings outside the courts systems and involving courts only for appeals or objections; limiting the administrative burden by using mandatory templates and IT tool, providing for a very short periods of a stay of a plan proposal		
Specificities of MSEs should be ruled by means of Directive providing for a specific separate system for MSEs and outside the ordinary insolvency system, which is flexible and cost-effective and composed of a core procedure with two possible outcomes: entry into liquidation, with short period and reduced formalities, or insolvency where the debtor remains in control of its assets and the day - to - day operation of its business under the supervision and assistance of the competent authority.	26	21.7 %
Tot	120	100.0 %

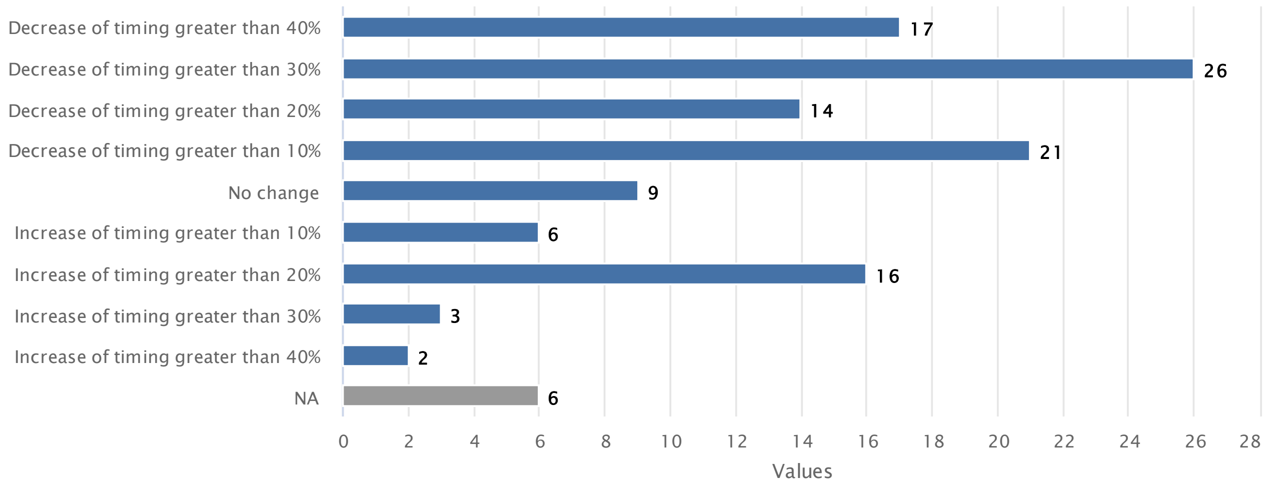


ID: **q4-1**		
Question: Please consider the overall costs of a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of the above EU rules.		
Answer	**Freq**	**Freq %**
NA	6	5 %
Decrease of costs greater than 40%	13	10.8 %
Decrease of costs greater than 30%	23	19.2 %
Decrease of costs greater than 20%	17	14.2 %
Decrease of costs greater than 10%	19	15.8 %
No change	15	12.5 %
Increase of costs greater than 10%	6	5 %
Increase of costs greater than 20%	12	10 %
Increase of costs greater than 30%	7	5.8 %
Increase of costs greater than 40%	2	1.7 %
Tot	120	100.0 %



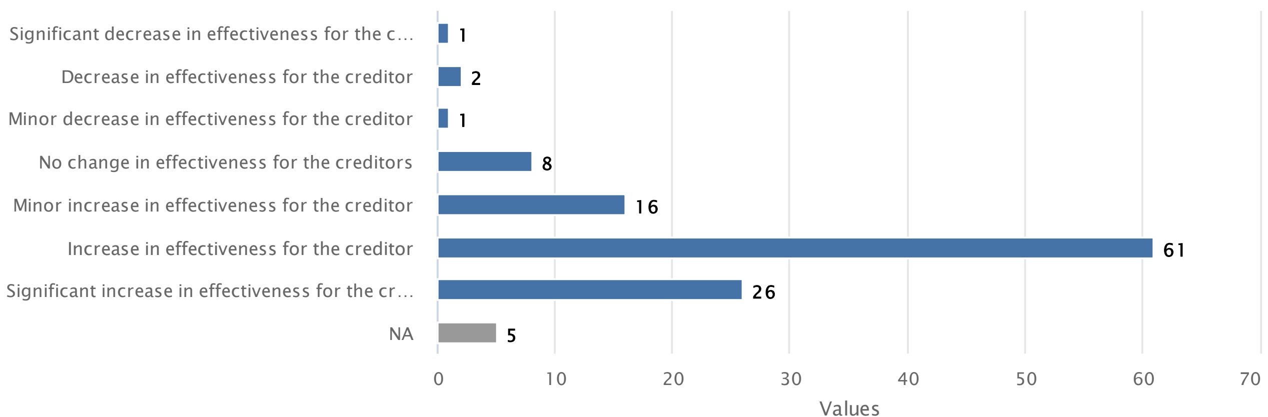
ID: **q4-2**		
Question: Please consider the overall timing to complete a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of the above EU rules.		
Answer	**Freq**	**Freq %**
NA	6	5 %
Decrease of timing greater than 40%	17	14.2 %
Decrease of timing greater than 30%	26	21.7 %
Decrease of timing greater than 20%	14	11.7 %
Decrease of timing greater than 10%	21	17.5 %
No change	9	7.5 %
Increase of timing greater than 10%	6	5 %
Increase of timing greater than 20%	16	13.3 %
Increase of timing greater than 30%	3	2.5 %
Increase of timing greater than 40%	2	1.7 %

Tot	120	100 %



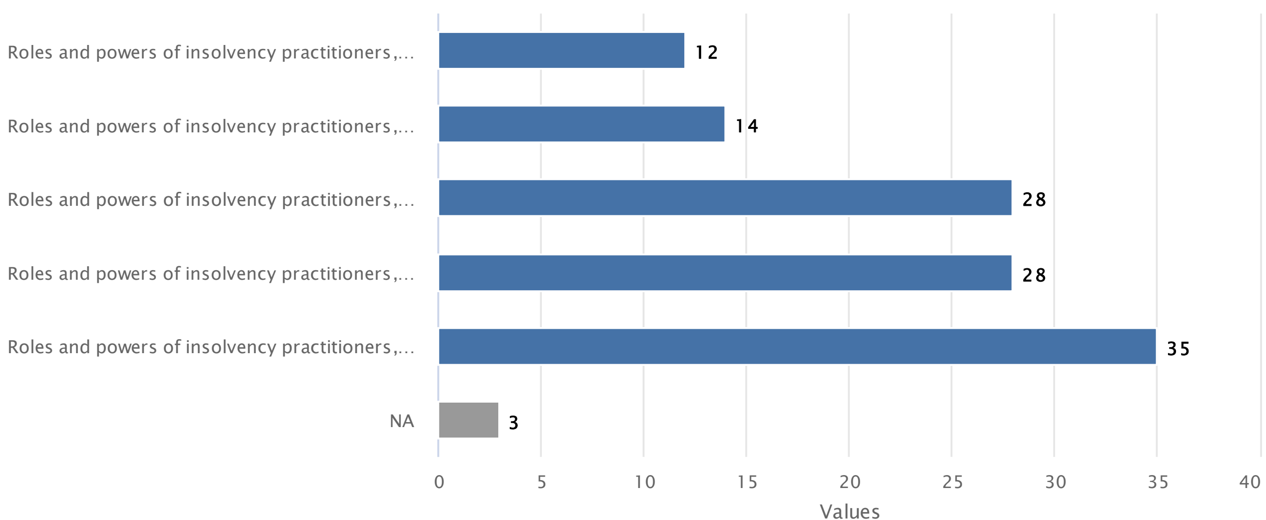
ID: **q4-3**		
Question: Considering the overall effectiveness of the cross-border insolvency procedure, as concerns the liquidation of debts and the satisfaction of the claims of creditors, the preservation of business assets and the conservation of the continuity of viable businesses, please provide us your estimate of the change in the overall effectiveness determined by the introduction of such rules.		
Answer	**Freq**	**Freq %**
NA	5	4.2 %
Significant decrease in effectiveness for the creditor	1	0.8 %
Decrease in effectiveness for the creditor	2	1.7 %
Minor decrease in effectiveness for the creditor	1	0.8 %
No change in effectiveness for the creditors	8	6.7 %
Minor increase in effectiveness for the creditor	16	13.3 %
Increase in effectiveness for the creditor	61	50.8 %

Significant increase in effectiveness for the creditor	26	21.7 %
Tot	120	100.0 %

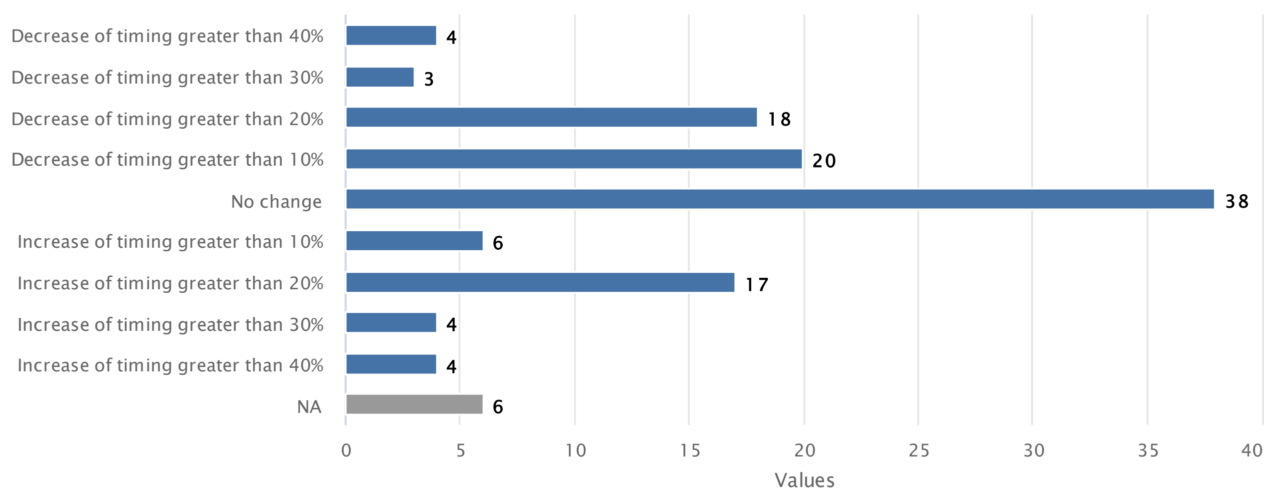


ID: **q4-4**		
Question: Considering the available policy options to introduce such rules, please rank the policy instrument according to their effectiveness		
Answer	**Freq**	**Freq %**
NA	3	2.5 %
Roles and powers of insolvency practitioners, with regard to asset tracing and asset recovery should be ruled according to Member State laws, without any further EU intervention	12	10 %
Roles and powers of insolvency practitioners, with regard to asset tracing and asset recovery should be ruled by means of a EU Recommendation on these powers, including how insolvency practitioners can have access to information on assets but no further regulatory instrument	14	11.7 %

Roles and powers of insolvency practitioners, with regard to asset tracing and asset recovery should be ruled by means of a Directive providing a non-exhaustive set of specific rules on asset tracing and recovery, including granting access to national registers across borders	28	23.3 %
Roles and powers of insolvency practitioners, with regard to asset tracing and asset recovery should be ruled by means of a Directive or a Regulation reconsidering the current logic of powers granted to the insolvency practitioners in cross – border cases and in particular: disregarding the limitation of the law in the State of the opening of the proceedings; including granting access to insolvency practitioners to national registers across borders and on granting full access to BORIS for the purposes of insolvency cases	28	23.3 %
Roles and powers of insolvency practitioners, with regard to asset tracing and asset recovery should be ruled by means of a Directive or a Regulation providing an exhaustive list of powers and tools for insolvency practitioners asset tracing and recovery in cross border insolvency cases	35	29.2 %
Tot	120	100.0 %

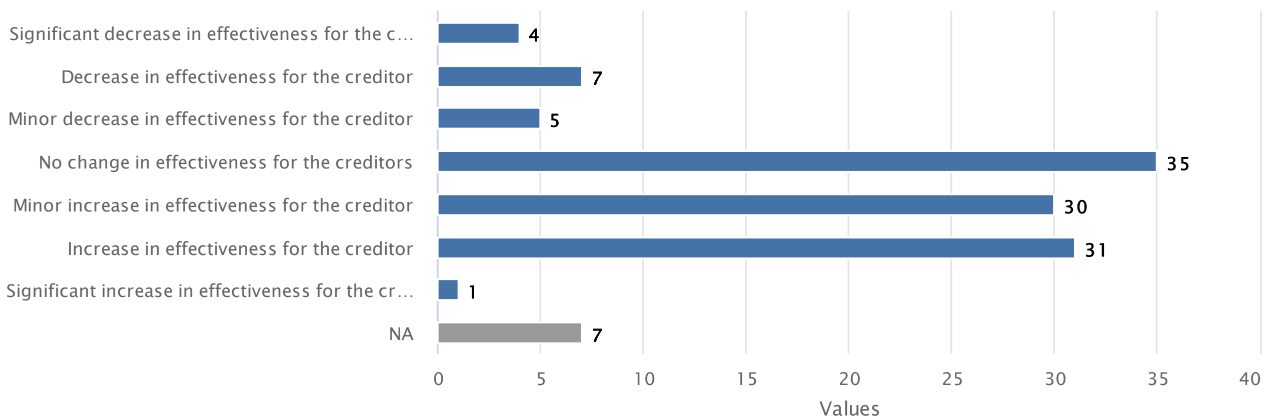


ID: **q5-1**		
Question: Please consider the overall timing to complete a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of a special regime for MSEs.		
Answer	**Freq**	**Freq %**
NA	6	5 %
Decrease of timing greater than 40%	4	3.3 %
Decrease of timing greater than 30%	3	2.5 %
Decrease of timing greater than 20%	18	15 %
Decrease of timing greater than 10%	20	16.7 %
No change	38	31.7 %
Increase of timing greater than 10%	6	5 %
Increase of timing greater than 20%	17	14.2 %
Increase of timing greater than 30%	4	3.3 %
Increase of timing greater than 40%	4	3.3 %
Tot	120	100.0 %



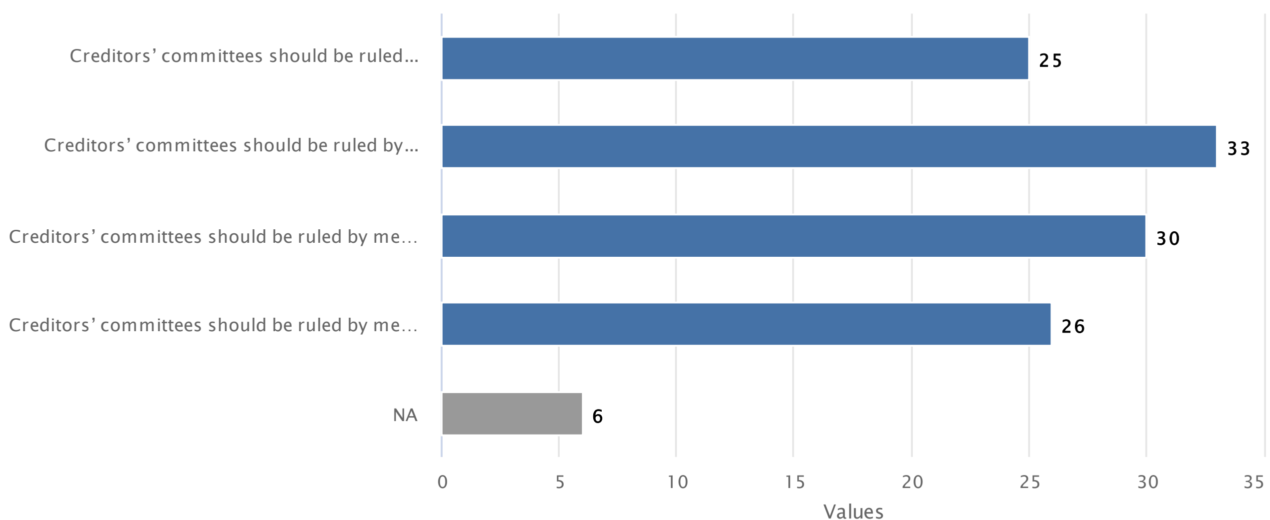
ID: **q5-2**		
Question: Considering the overall effectiveness of the cross-border insolvency procedure, as concerns the liquidation of debts and the satisfaction of the claims of creditors, please provide us your estimate of the change in the overall effectiveness determined by the introduction of such an optional regime for creditors' committee.		
Answer	**Freq**	**Freq %**
NA	7	5.8 %
Significant decrease in effectiveness for the creditor	4	3.3 %
Decrease in effectiveness for the creditor	7	5.8 %
Minor decrease in effectiveness for the creditor	5	4.2 %
No change in effectiveness for the creditors	35	29.2 %
Minor increase in effectiveness for the creditor	30	25 %
Increase in effectiveness for the creditor	31	25.8 %

Significant increase in effectiveness for the creditor	1	0.8 %
Tot	120	100.0 %



ID: **q5-3**		
Question: Considering the available policy options, please rank the policy instrument according to their effectiveness		
Answer	**Freq**	**Freq %**
NA	6	5 %
Creditors' committees should be ruled according to Member State laws, without any further EU intervention	25	20.8 %
Creditors' committees should be ruled by means of a EU Recommendation with some principles on formation of creditors' committees	33	27.5 %
Creditors' committees should be ruled by means of a EU Recommendation with some principles on formation of creditors' committees and by means of a EU Directive providing rules on working method	30	25 %

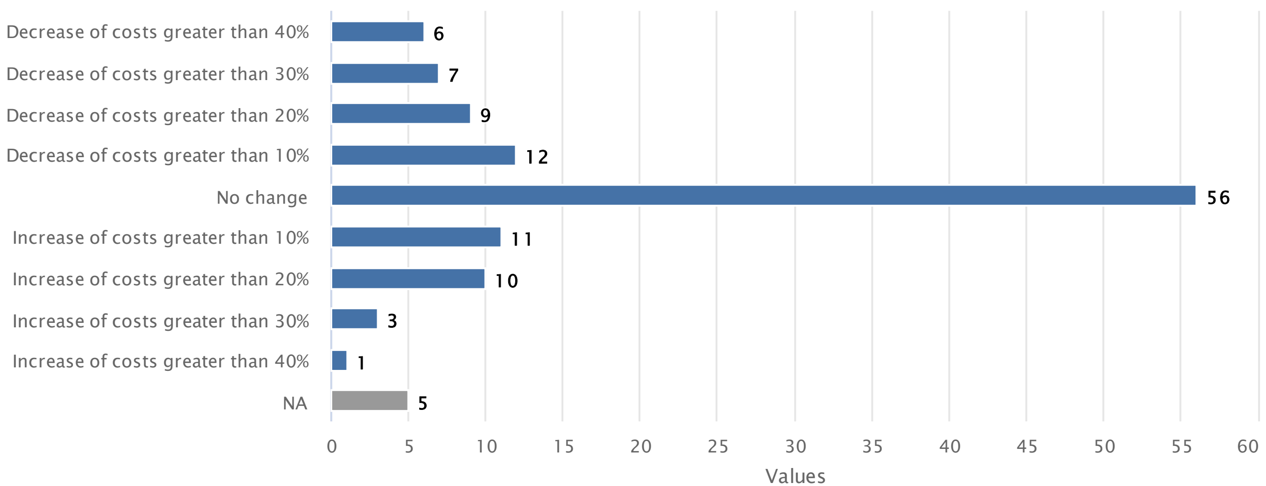
(rules on electronic voting) and rules on determination of majority		
Creditors' committees should be ruled by means of a Directive providing specific rules on formation, composition, powers and governing certain aspects of majority voting in those committees	26	21.7 %
Tot	120	100.0 %



ID: **q6-1**		
Question: Please consider the overall costs of a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of such rules.		
Answer	**Freq**	**Freq %**
NA	5	4.2 %
Decrease of costs greater than 40%	6	5 %

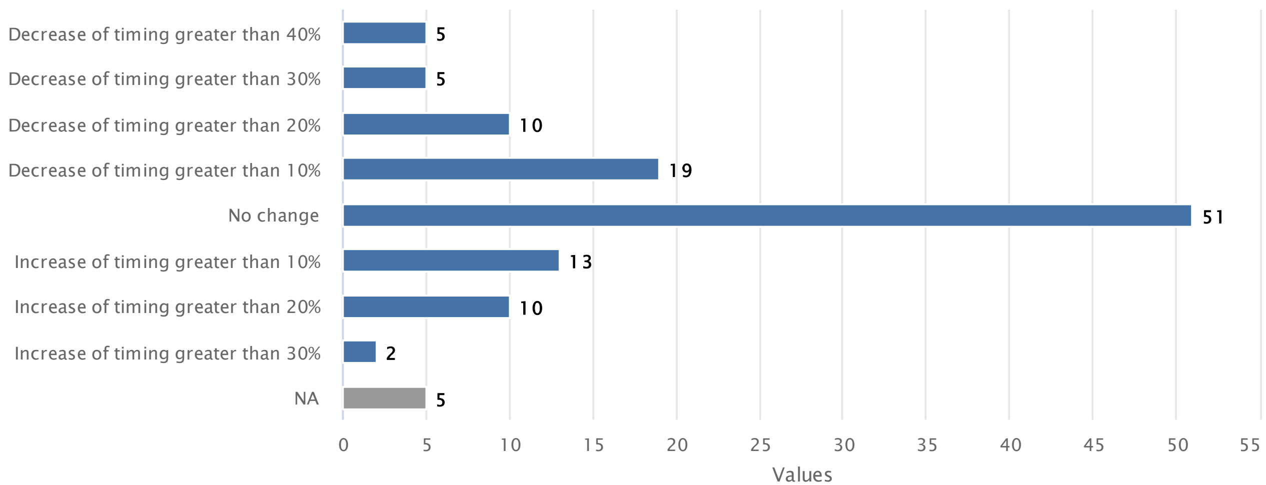
Decrease of costs greater than 30%	7	5.8 %
Decrease of costs greater than 20%	9	7.5 %
Decrease of costs greater than 10%	12	10 %
No change	56	46.7 %
Increase of costs greater than 10%	11	9.2 %
Increase of costs greater than 20%	10	8.3 %
Increase of costs greater than 30%	3	2.5 %
Increase of costs greater than 40%	1	0.8 %
Tot	120	100.0 %

Please consider the overall costs of a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of such rules.



ID: **q6-2**		
Question: Please consider the overall timing to complete a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of such rules.		
Answer	**Freq**	**Freq %**
NA	5	4.2 %

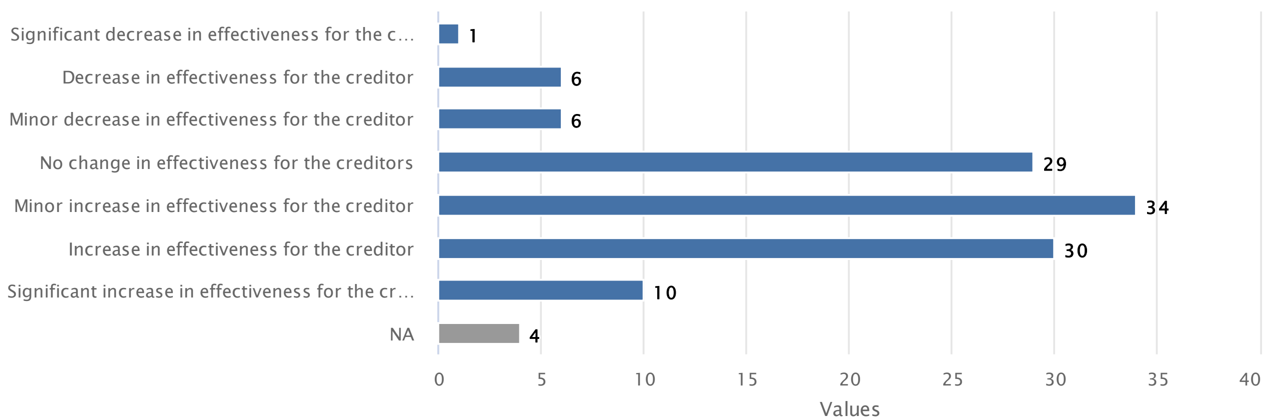
Decrease of timing greater than 40%	5	4.2 %
Decrease of timing greater than 30%	5	4.2 %
Decrease of timing greater than 20%	10	8.3 %
Decrease of timing greater than 10%	19	15.8 %
No change	51	42.5 %
Increase of timing greater than 10%	13	10.8 %
Increase of timing greater than 20%	10	8.3 %
Increase of timing greater than 30%	2	1.7 %
Tot	120	100.0 %



ID: **q6-3**
Question: Considering the overall effectiveness of the cross-border insolvency procedure, as concerns the liquidation of debts and the satisfaction of the claims of creditors and the preservation of business assets and the conservation of the continuity of viable businesses, please provide us your estimate of the change in the overall effectiveness determined by the introduction of such rules.

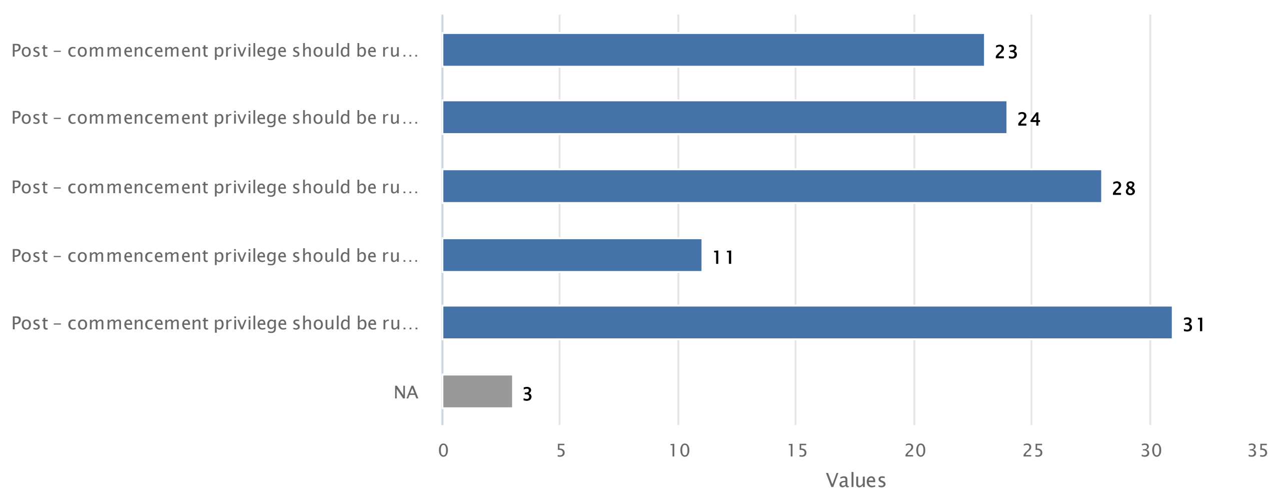
Answer	Freq	Freq %
NA	4	3.3 %
Significant decrease in effectiveness for the creditor	1	0.8 %
Decrease in effectiveness for the creditor	6	5 %
Minor decrease in effectiveness for the creditor	6	5 %
No change in effectiveness for the creditors	29	24.2 %
Minor increase in effectiveness for the creditor	34	28.3 %
Increase in effectiveness for the creditor	30	25 %
Significant increase in effectiveness for the creditor	10	8.3 %
Tot	120	100.0 %

Considering the overall effectiveness of the cross-border insolvency procedure, as concerns the liquidation of debts and the satisfaction of the claims of creditors and the preservation of business assets and the conservation of the continuity of viable businesses, please provide us your estimate of the change in the overall effectiveness determined by the introduction of such rules.



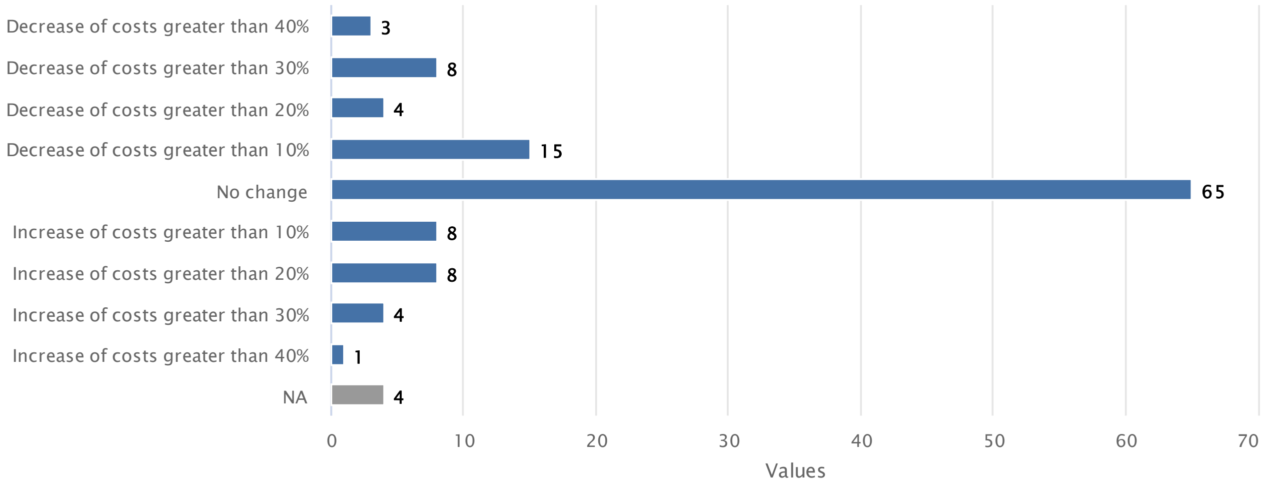
ID: **q6-4**
Question: Considering the available policy options to introduce EU rules on post – commencement privilege, please rank the policy instrument according to their effectiveness

Answer	Freq	Freq %
NA	3	2.5 %
Post – commencement privilege should be ruled according to Member State laws, without any further EU intervention	23	19.2 %
Post – commencement privilege should be ruled by means of a EU Recommendation stating priority preferences for privileged creditors to general unsecured creditors and listing in NON – exhaustive manner the positive priority preferences for privileged creditors (cost of proceedings, administrative expensive, interim or new financing) and negative priority preferences	24	20 %
Post – commencement privilege should be ruled by means of a Directive stating priority preferences for privileged creditors to general unsecured creditors and listing in NON – exhaustive manner the positive priority preferences for privileged creditors (cost of proceedings, administrative expensive) and extending current protection granted by the EU framework to interim or new financing	28	23.3 %
Post – commencement privilege should be ruled by means of a Directive stating priority preferences for privileged creditors to general unsecured creditors and listing in NON – exhaustive manner the negative priority preferences	11	9.2 %
Post – commencement privilege should be ruled by means of a Directive stating priority preferences for privileged creditors to general unsecured creditors and listing in NON – exhaustive manner the positive priority preferences and the negative priority preferences	31	25.8 %
Tot	120	100.0 %



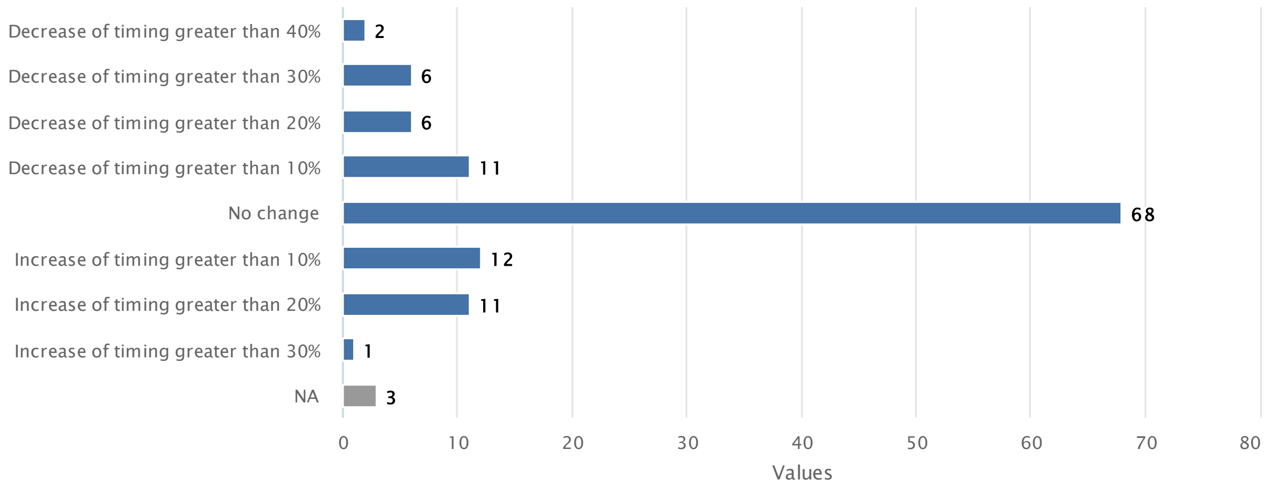
ID: **q7-1**		
Question: Please consider the overall costs of a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of such rules.		
Answer	**Freq**	**Freq %**
NA	4	3.3 %
Decrease of costs greater than 40%	3	2.5 %
Decrease of costs greater than 30%	8	6.7 %
Decrease of costs greater than 20%	4	3.3 %
Decrease of costs greater than 10%	15	12.5 %
No change	65	54.2 %
Increase of costs greater than 10%	8	6.7 %
Increase of costs greater than 20%	8	6.7 %

Increase of costs greater than 30%	4	3.3 %
Increase of costs greater than 40%	1	0.8 %
Tot	120	100.0 %



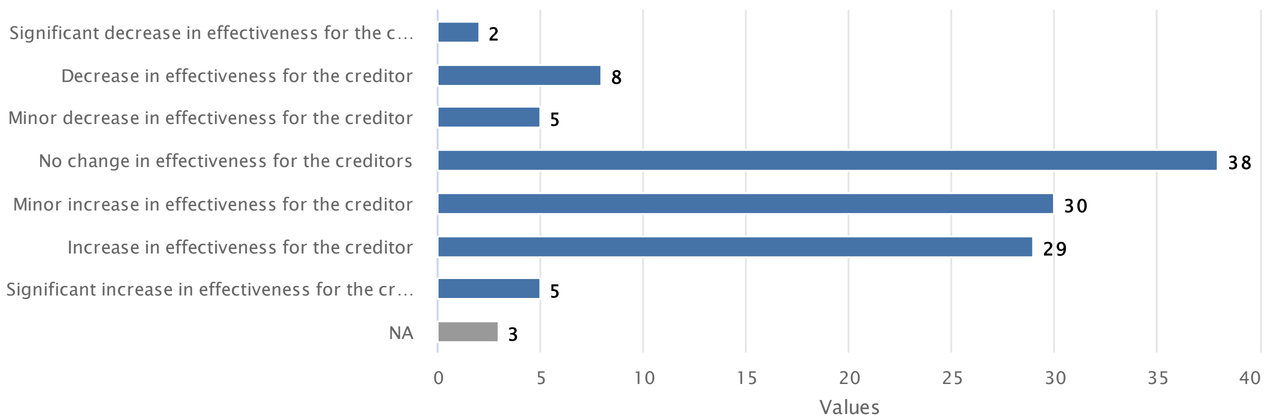
ID: **q7-2**		
Question: Please consider the overall timing to complete a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of such rules.		
Answer	**Freq**	**Freq %**
NA	3	2.5 %
Decrease of timing greater than 40%	2	1.7 %
Decrease of timing greater than 30%	6	5 %
Decrease of timing greater than 20%	6	5 %
Decrease of timing greater than 10%	11	9.2 %
No change	68	56.7 %
Increase of timing greater than 10%	12	10 %

Increase of timing greater than 20%	11	9.2 %
Increase of timing greater than 30%	1	0.8 %
Tot	120	100.0 %



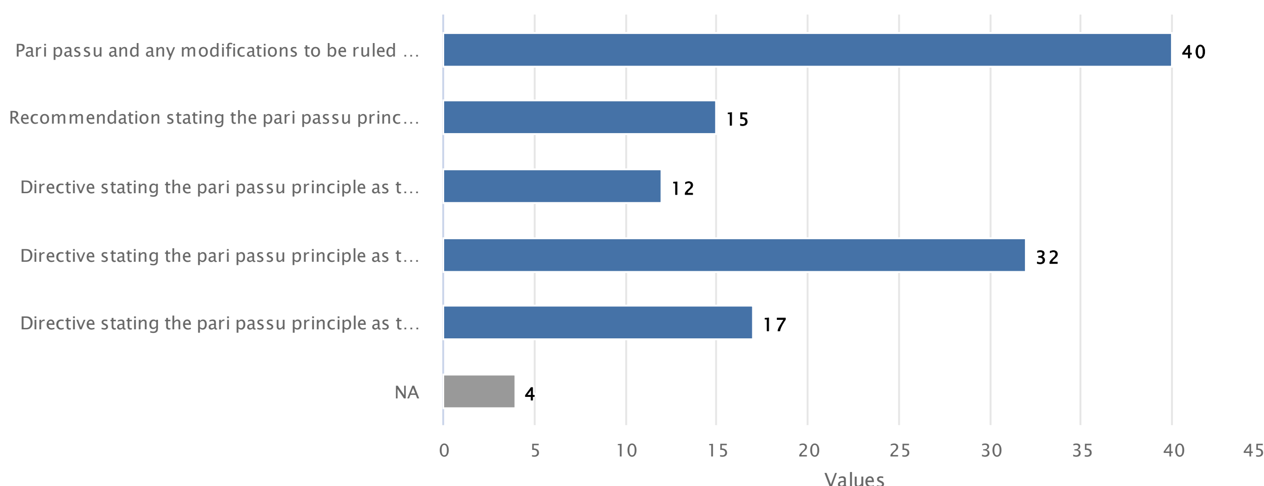
ID: **q7-3**		
Testo domanda: Considering the overall effectiveness of the cross-border insolvency procedure, as concerns the liquidation of debts and the satisfaction of the claims of creditors and the preservation of business assets and the conservation of the continuity of viable businesses, please provide us your estimate of the change in the overall effectiveness determined by the introduction of such rules.		
Testo	**Freq**	**Freq %**
NA	3	2.5 %
Significant decrease in effectiveness for the creditor	2	1.7 %
Decrease in effectiveness for the creditor	8	6.7 %

Minor decrease in effectiveness for the creditor	5	4.2 %
No change in effectiveness for the creditors	38	31.7 %
Minor increase in effectiveness for the creditor	30	25.0 %
Increase in effectiveness for the creditor	29	24.2 %
Significant increase in effectiveness for the creditor	5	4.2 %
Tot	120	100.0 %



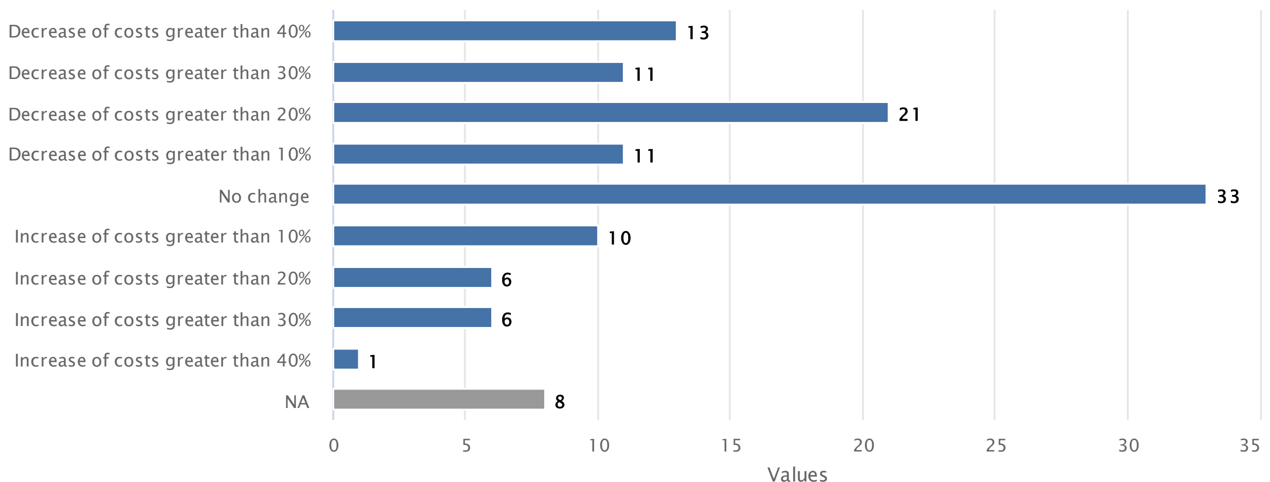
ID: **q7-4**		
Question: Considering the available policy options to introduce EU rules on modification of *pari passu* principle, please rank the policy instrument according to their effectiveness		
Answer	**Freq**	**Freq %**
NA	4	3.3 %

Pari passu and any modifications to be ruled according to Member States laws, without any further EU intervention	40	33.3 %
Recommendation stating the *pari passu* principle as to general unsecured creditors with the defined preferences an in particular i) subordination of adjusting - creditors to non – adjusting creditors, reinforcing the position of non-adjusting creditors in the context of insolvency proceedings and ii) subordination of shareholders loans to other general creditors	15	12.5 %
Directive stating the *pari passu* principle as to general unsecured creditors with the defined preferences and in particular subordination of adjusting - creditors to non – adjusting creditors, reinforcing the position of non-adjusting creditors in the context of insolvency proceedings	12	10 %
Directive stating the *pari passu* principle as to general unsecured creditors with the defined preferences and in particular i) subordination of adjusting – creditors to non – adjusting creditors reinforcing the position of non-adjusting creditors in the context of insolvency proceedings, and ii) subordination of shareholders loans to other general creditors.	32	26.7 %
Directive stating the *pari passu* principle as to general unsecured creditors with the defined preferences and in particular: i) subordination of adjusting – creditors to non – adjusting creditors, by introducing a specific sub – type of company with inactivated security interest based on the premise that security interests are nothing but inter – creditor agreements between adjusting creditors and therefore, only in case insolvency proceedings are opened, such security interests should be not opposable to non – adjusting creditors, which additionally should as a rule be ranked as senior to adjusting creditors ; and ii) subordination of shareholders loans to other general creditors. In this case the Directive would reinforce the position of non-adjusting creditors by	17	14.2 %
Tot	120	100.0 %



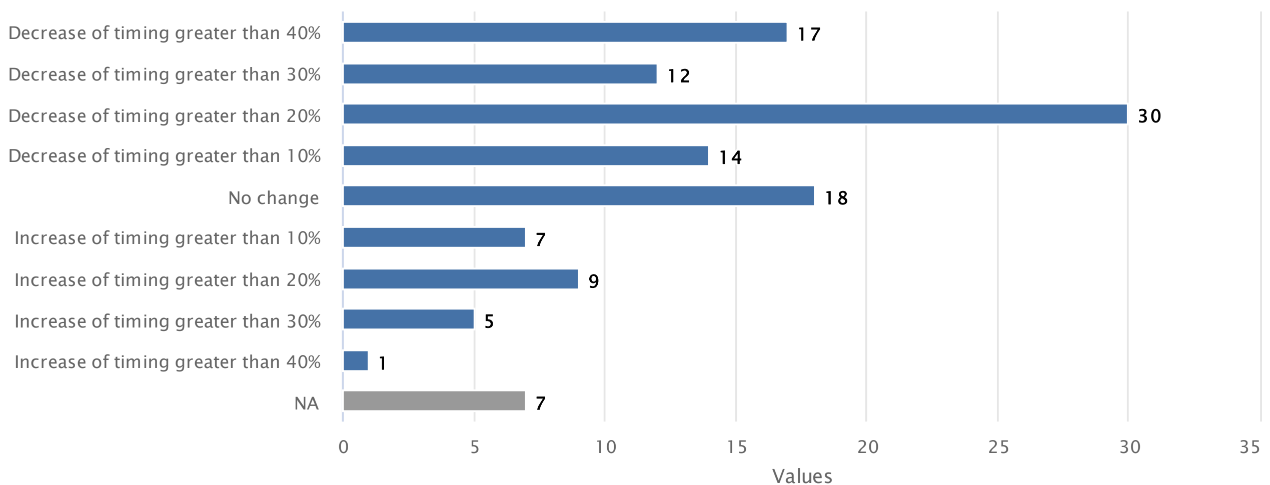
ID: **q8-1**		
Question: Please consider the overall costs of a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of the above EU rules.		
Answer	**Freq**	**Freq %**
NA	8	6.7 %
Decrease of costs greater than 40%	13	10.8 %
Decrease of costs greater than 30%	11	9.2 %
Decrease of costs greater than 20%	21	17.5 %
Decrease of costs greater than 10%	11	9.2 %
No change	33	27.5 %
Increase of costs greater than 10%	10	8.3 %

Increase of costs greater than 20%	6	5 %
Increase of costs greater than 30%	6	5 %
Increase of costs greater than 40%	1	0.8 %
Tot	120	100.0 %



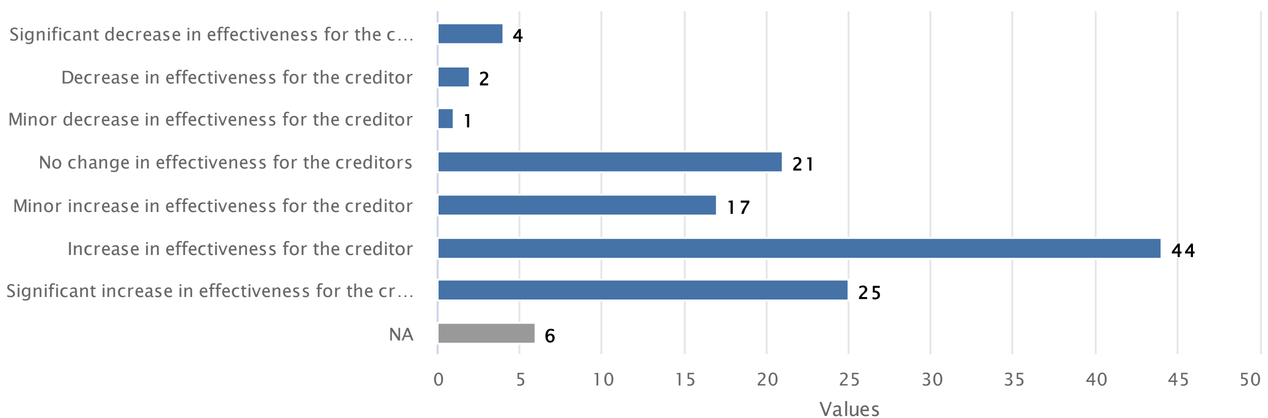
ID: **q8-2**		
Question: Please consider the overall timing to complete a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of the above EU rules.		
Answer	**Freq**	**Freq %**
NA	7	5.8 %
Decrease of timing greater than 40%	17	14.2 %
Decrease of timing greater than 30%	12	10 %
Decrease of timing greater than 20%	30	25 %

Decrease of timing greater than 10%	14	11.7 %
No change	18	15 %
Increase of timing greater than 10%	7	5.8 %
Increase of timing greater than 20%	9	7.5 %
Increase of timing greater than 30%	5	4.2 %
Increase of timing greater than 40%	1	0.8 %
Tot	120	100.0 %



ID: **q8-3**		
Question: Considering the overall effectiveness of the cross-border insolvency procedure, as concerns the liquidation of debts and the satisfaction of the claims of creditors, the preservation of business assets and the conservation of the continuity of viable businesses, please provide us your estimate of the change in the overall effectiveness determined by the introduction of such rules.		
Answer	**Freq**	**Freq %**
NA	6	5 %

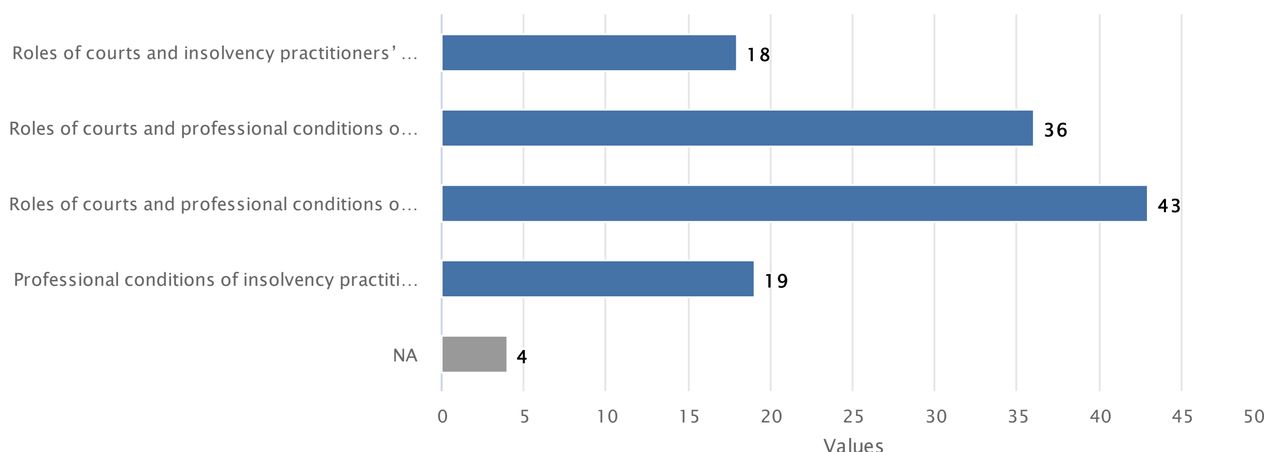
Significant decrease in effectiveness for the creditor	4	3.3 %
Decrease in effectiveness for the creditor	2	1.7 %
Minor decrease in effectiveness for the creditor	1	0.8 %
No change in effectiveness for the creditors	21	17.5 %
Minor increase in effectiveness for the creditor	17	14.2 %
Increase in effectiveness for the creditor	44	36.7 %
Significant increase in effectiveness for the creditor	25	20.8 %
Tot	120	100.0 %



ID: **q8-4**		
Question: Impacts of the introduction of EU rules on specialisation of insolvency courts and training of insolvency judges and more concrete requirements for insolvency practitioners' when it comes to conditions for eligibility, appointment, suitable, training, or necessary expertise.		
Answer	**Freq**	**Freq %**

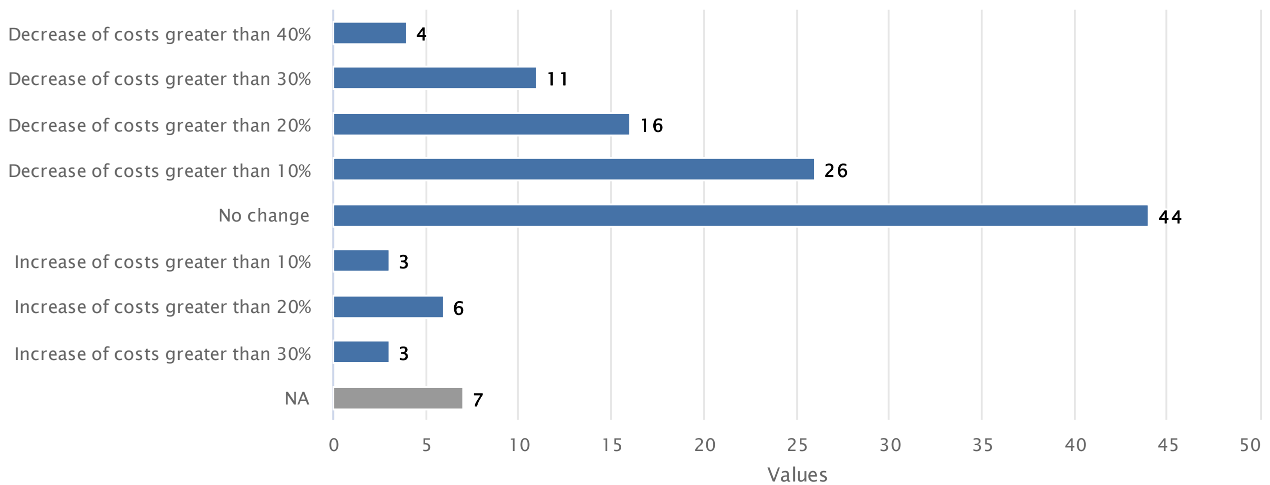
NA	4	3.3 %
Roles of courts and insolvency practitioners' professional conditions should be ruled according to Member State laws, without any further EU intervention	18	15 %
Roles of courts and professional conditions of insolvency practitioners should be ruled by means of a EU Recommendation setting forth principles on specialisation of insolvency courts and training of judges and principles on requirements for insolvency practitioners' when it comes to conditions for eligibility, appointment, suitable, training, or necessary expertise;	36	30 %
Roles of courts and professional conditions of insolvency practitioners should be ruled by means of a EU Directive with more concrete rules on specialisation of insolvency courts and training of judges and on requirements for insolvency practitioners' when it comes to conditions for eligibility, appointment, suitable, training, or necessary expertise;	43	35.8 %
Professional conditions of insolvency practitioners should be ruled by means of a EU Directive with a more detailed set of rules regarding the various aspects of the insolvency practitioners' profession.	19	15.8 %
Tot	120	100.0 %

Impacts of the introduction of EU rules on specialisation of insolvency courts and training of insolvency judges and more concrete requirements for insolvency practitioners' when it comes to conditions for eligibility, appointment, suitable, training, or necessary expertise.



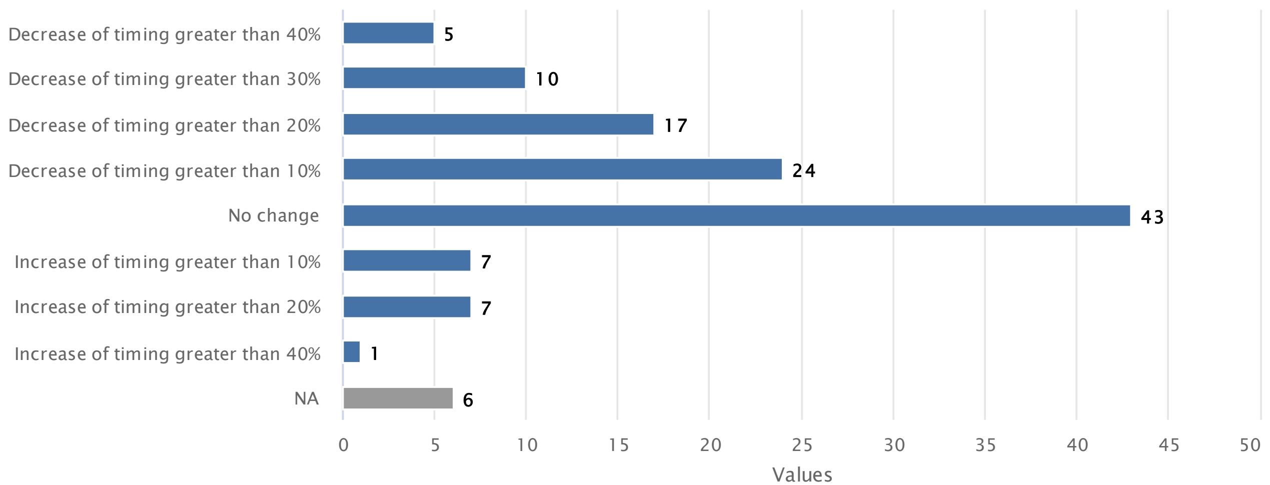
ID: **q9-1**		
Question: Please consider the overall costs of a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of the above EU standards.		
Answer	**Freq**	**Freq %**
NA	7	5.8 %
Decrease of costs greater than 40%	4	3.3 %
Decrease of costs greater than 30%	11	9.2 %
Decrease of costs greater than 20%	16	13.3 %
Decrease of costs greater than 10%	26	21.7 %
No change	44	36.7 %
Increase of costs greater than 10%	3	2.5 %
Increase of costs greater than 20%	6	5 %

Increase of costs greater than 30%	3	2.5 %
Tot	120	100.0 %



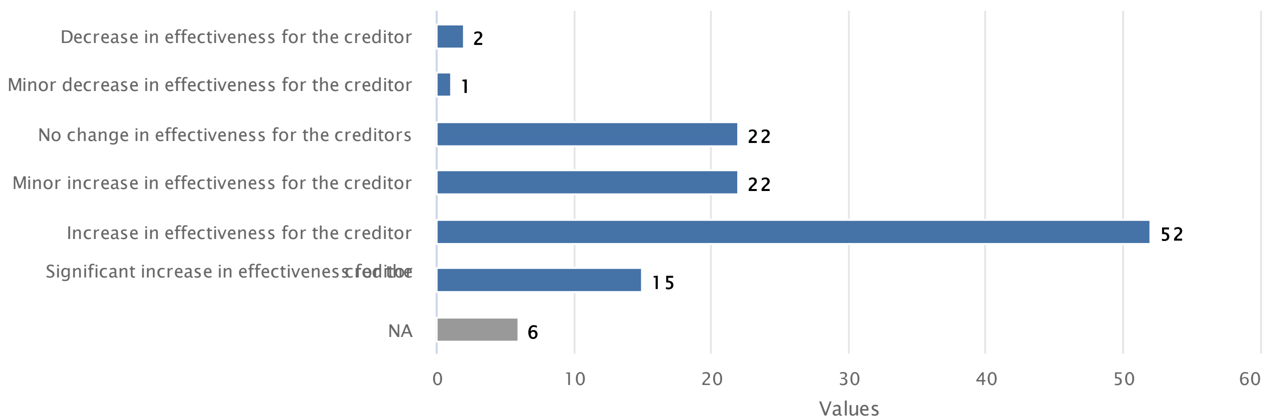
ID: **q9-2**		
Question: Please consider the overall timing to complete a cross-border insolvency procedure. Please provide us your estimate of the change determined by the introduction of the above EU rules.		
Answer	**Freq**	**Freq %**
NA	6	5 %
Decrease of timing greater than 40%	5	4.2 %
Decrease of timing greater than 30%	10	8.3 %
Decrease of timing greater than 20%	17	14.2 %
Decrease of timing greater than 10%	24	20 %
No change	43	35.8 %
Increase of timing greater than 10%	7	5.8 %
Increase of timing greater than 20%	7	5.8 %

Increase of timing greater than 40%	1	0.8 %
Tot	120	100.0 %



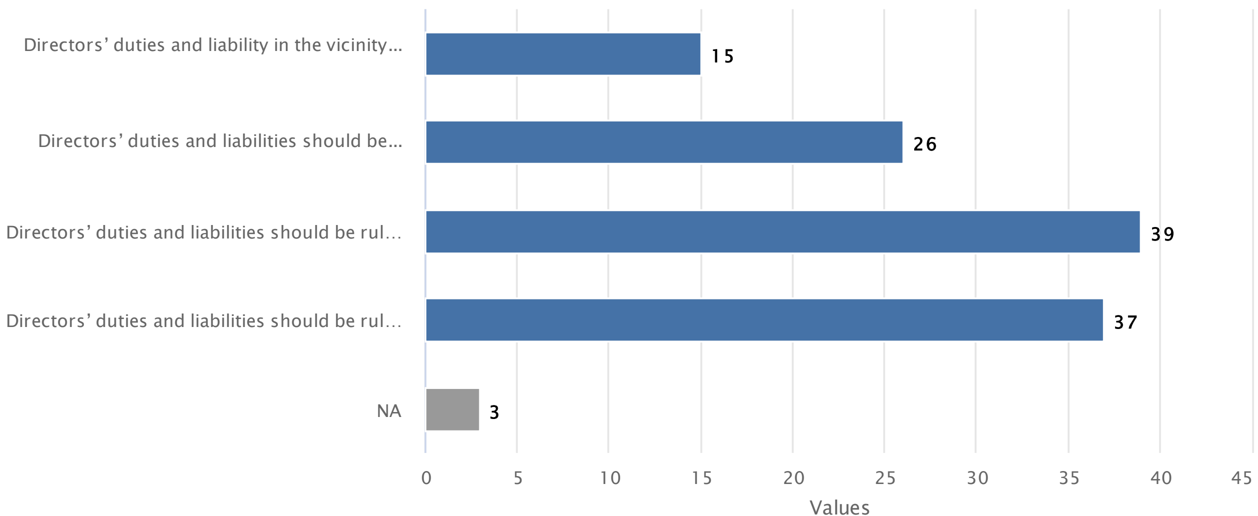
ID: **q9-3**		
Question: Considering the overall effectiveness of the cross-border insolvency procedure, as concerns the liquidation of debts and the satisfaction of the claims of creditors, the preservation of business assets and the conservation of the continuity of viable businesses, please provide us your estimate of the change in the overall effectiveness determined by the introduction of such rules.		
Answer	**Freq**	**Freq %**
NA	6	5 %
Decrease in effectiveness for the creditor	2	1.7 %
Minor decrease in effectiveness for the creditor	1	0.8 %
No change in effectiveness for the creditors	22	18.3 %
Minor increase in effectiveness for the creditor	22	18.3 %
Increase in effectiveness for the creditor	52	43.3 %

Significant increase in effectiveness for the creditor	15	12.5 %
Tot	120	100.0 %



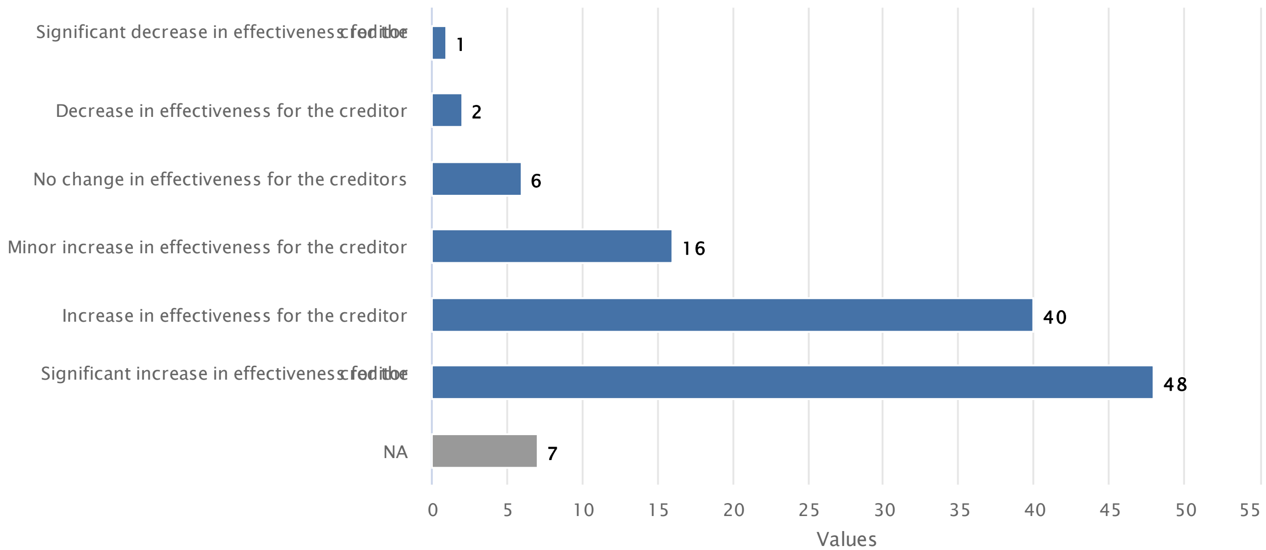
ID: **q9-4**		
Question: Considering the available policy options to introduce such rules, please rank the policy instrument according to their effectiveness		
Answer	**Freq**	**Freq %**
NA	3	2.5 %
Directors' duties and liability in the vicinity of insolvency should be ruled according to Member State laws, without any further EU intervention	15	12.5 %
Directors' duties and liabilities should be ruled by means of a EU Recommendation	26	21.7 %
Directors' duties and liabilities should be ruled by means of a EU Directive on the directors' duties and liability in the vicinity of insolvency (including details on the decisions to be taken once the shareholders meeting has been convened,	39	32.5 %

conditions under which insolvency should be filed and liability against wrongful trading		
Directors' duties and liabilities should be ruled by means of a EU Directive on the directors' duties and liability in the vicinity of insolvency (including details on the decisions to be taken once the shareholders meeting has been convened, conditions under which insolvency should be filed and liability against wrongful trading, displacing national conflicting law	37	30.8 %
Tot	120	100.0 %



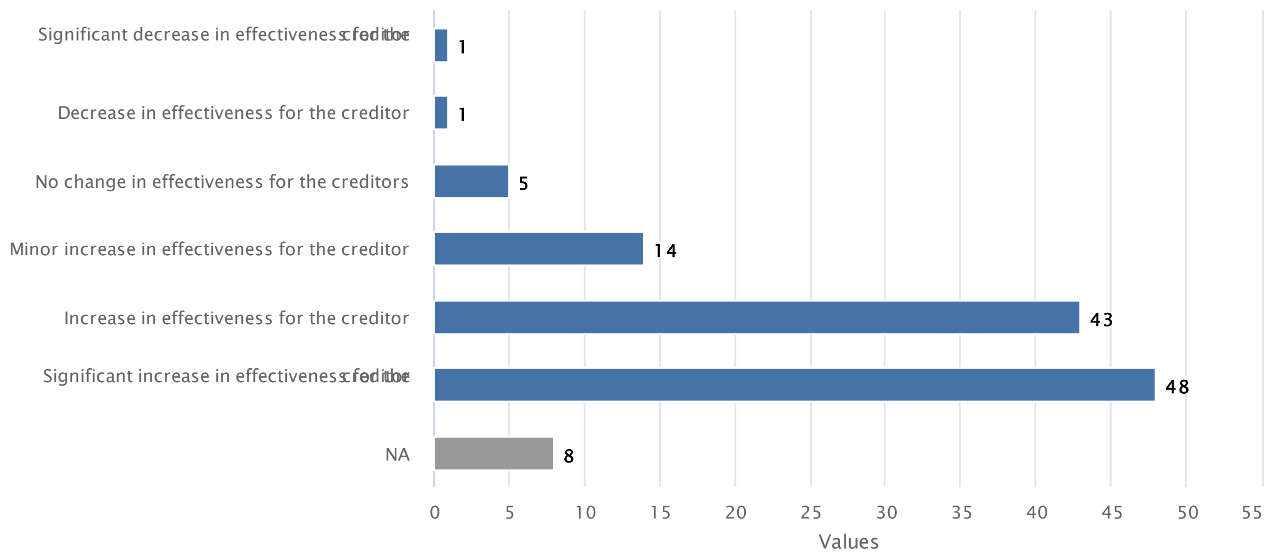
ID: **q10-01**		
Question: Cross-border access to registries of insolvent business actors		
Answer	**Freq**	**Freq %**
NA	7	5.8 %
Significant decrease in effectiveness for the creditor	1	0.8 %

Decrease in effectiveness for the creditor	2	1.7 %
No change in effectiveness for the creditors	6	5 %
Minor increase in effectiveness for the creditor	16	13.3 %
Increase in effectiveness for the creditor	40	33.3 %
Significant increase in effectiveness for the creditor	48	40 %
Tot	120	100.0 %



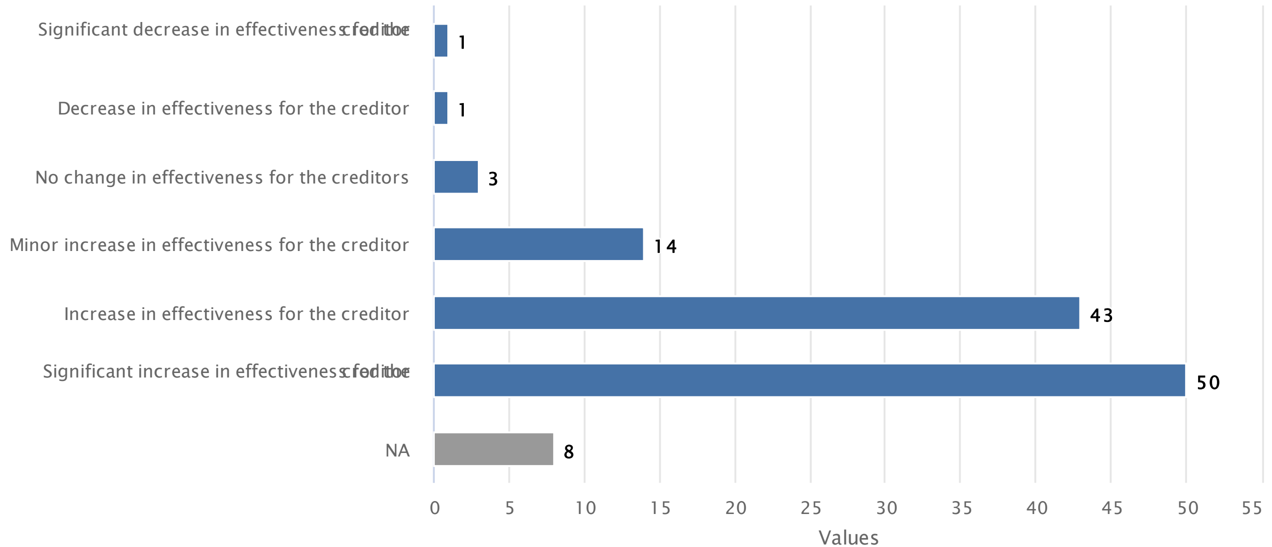
ID: **q10-02**		
Question: Cross-border access to registries of initiated insolvency procedures		
Answer	**Freq**	**Freq %**
NA	8	6.7 %
Significant decrease in effectiveness for the creditor	1	0.8 %
Decrease in effectiveness for the creditor	1	0.8 %
No change in effectiveness for the creditors	5	4.2 %

Minor increase in effectiveness for the creditor	14	11.7 %
Increase in effectiveness for the creditor	43	35.8 %
Significant increase in effectiveness for the creditor	48	40.0 %
Tot	120	100.0 %

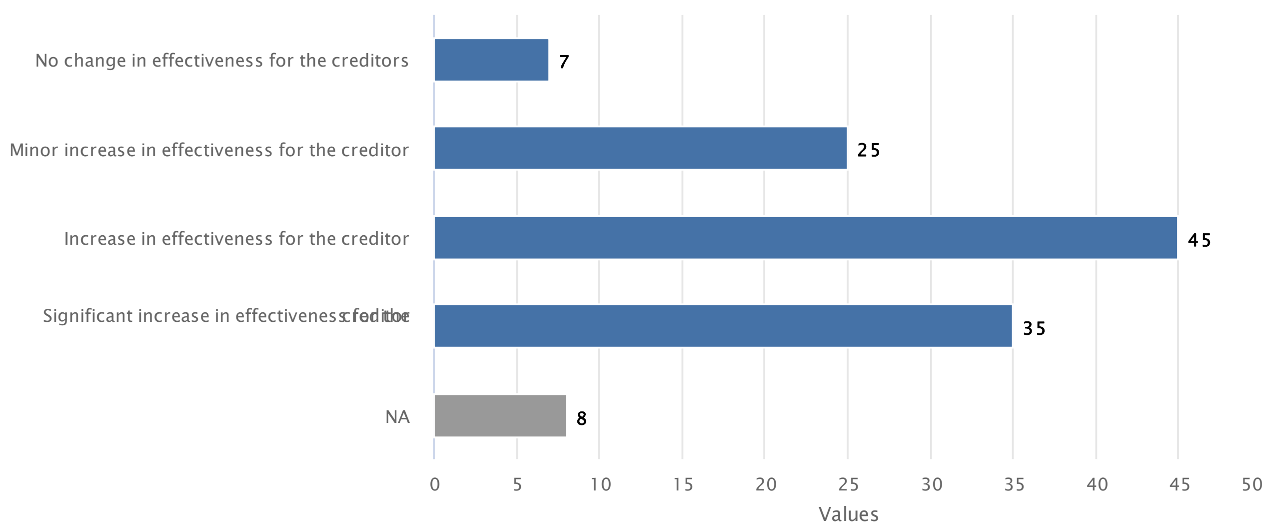


ID: **q10-03**		
Question: Cross-border access to registries for the purpose of asset tracing		
Answer	**Freq**	**Freq %**
NA	8	6.7 %
Significant decrease in effectiveness for the creditor	1	0.8 %
Decrease in effectiveness for the creditor	1	0.8 %
No change in effectiveness for the creditors	3	2.5 %
Minor increase in effectiveness for the creditor	14	11.7 %
Increase in effectiveness for the creditor	43	35.8 %
Significant increase in effectiveness for the creditor	50	41.7 %

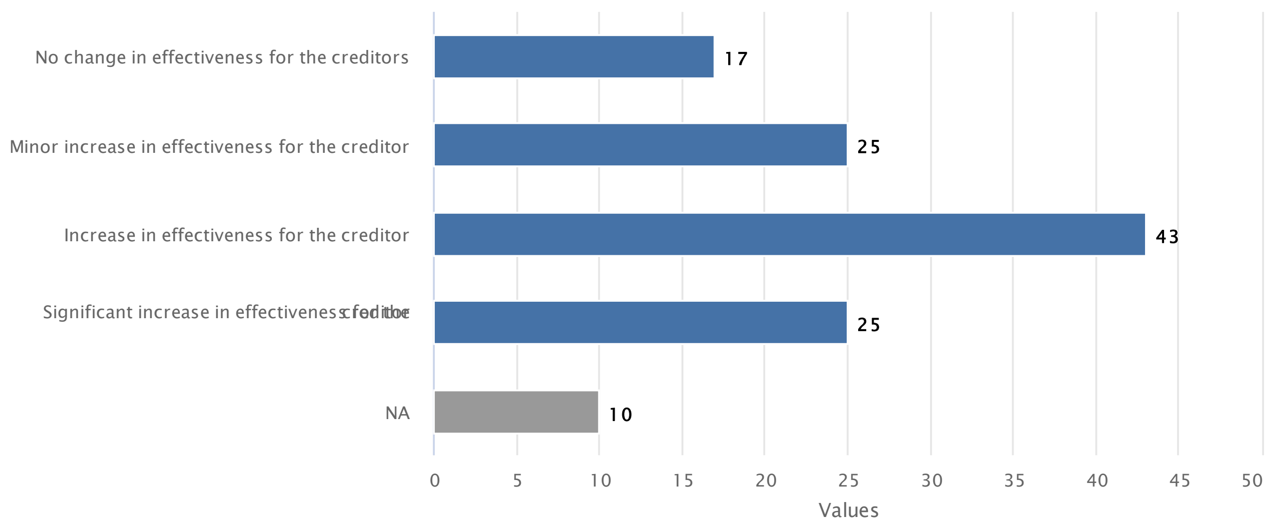
Tot	120	100.0 %



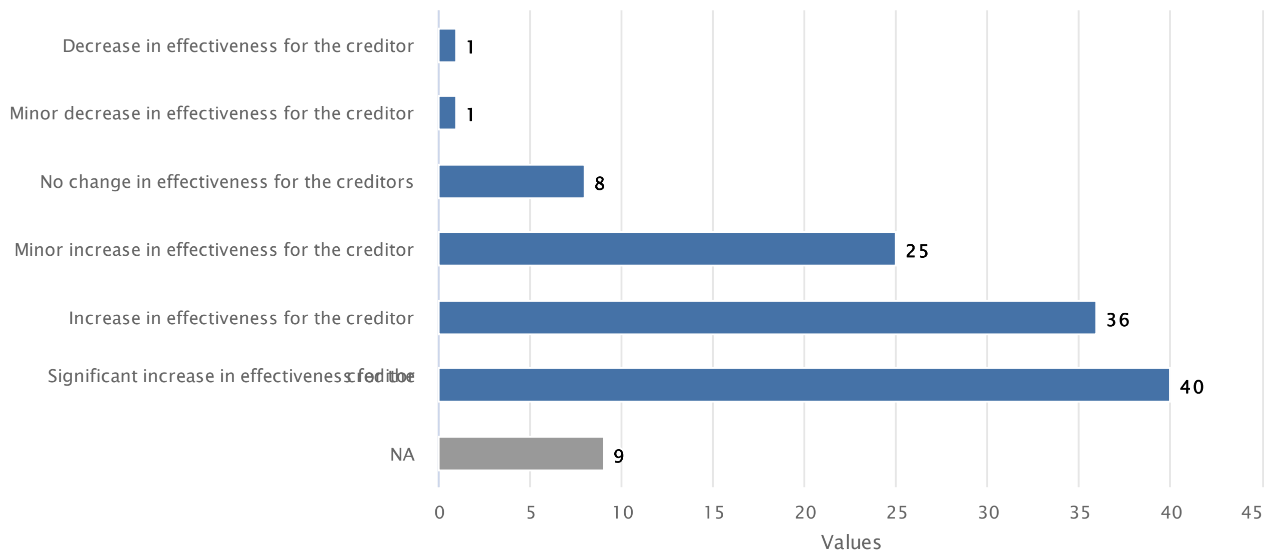
ID: **q10-04**		
Question: Development of a glossary of insolvency terms and of the equivalent professional figures in different jurisdictions to aid translation of claims filing.		
Answer	**Freq**	**Freq %**
NA	8	6.7 %
No change in effectiveness for the creditors	7	5.8 %
Minor increase in effectiveness for the creditor	25	20.8 %
Increase in effectiveness for the creditor	45	37.5 %
Significant increase in effectiveness for the creditor	35	29.2 %
Tot	120	100.0 %



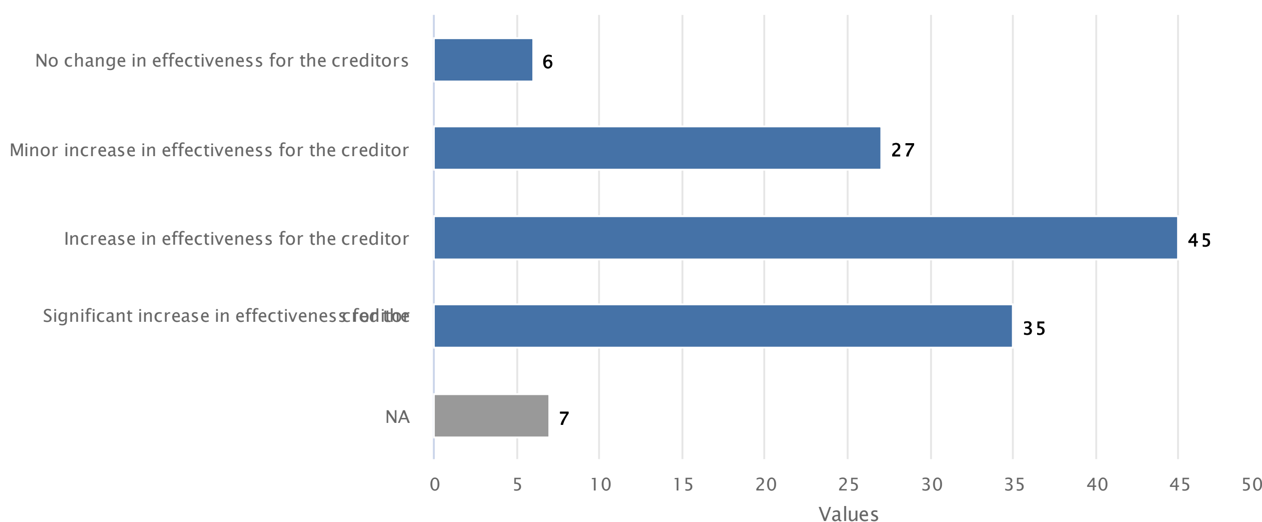
ID: **q10-05**		
Question: Standard ontologies (A set of concepts and categories in the insolvency subject area and domain showing their properties and the relations between them)		
Answer	**Freq**	**Freq %**
NA	10	8.3 %
No change in effectiveness for the creditors	17	14.2 %
Minor increase in effectiveness for the creditor	25	20.8 %
Increase in effectiveness for the creditor	43	35.8 %
Significant increase in effectiveness for the creditor	25	20.8 %
Tot	120	100.0 %



ID: **q10-06**		
Question: Standardised models for filing claims		
Answer	**Freq**	**Freq %**
NA	9	7.5 %
Decrease in effectiveness for the creditor	1	0.8 %
Minor decrease in effectiveness for the creditor	1	0.8 %
No change in effectiveness for the creditors	8	6.7 %
Minor increase in effectiveness for the creditor	25	20.8 %
Increase in effectiveness for the creditor	36	30 %
Significant increase in effectiveness for the creditor	40	33.3 %
Tot	120	100.0 %

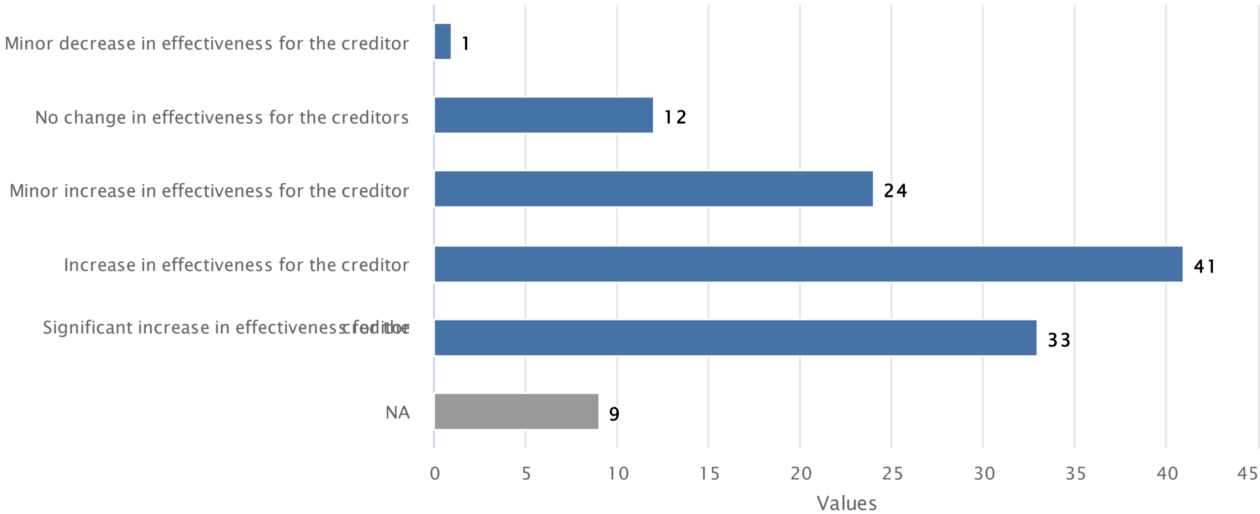


ID: **q10-07**		
Question: Insolvency-dedicated automated translation tools for documents, inscriptions into registries, insolvency proceedings		
Answer	**Freq**	**Freq %**
NA	7	5.8 %
No change in effectiveness for the creditors	6	5 %
Minor increase in effectiveness for the creditor	27	22.5 %
Increase in effectiveness for the creditor	45	37.5 %
Significant increase in effectiveness for the creditor	35	29.2 %
Tot	120	100.0 %



ID: **q10-08**		
Question: Authentication and validation of claimants to ensure legitimacy of access and claims filing		
Answer	**Freq**	**Freq %**
NA	9	7.5 %
Minor decrease in effectiveness for the creditor	1	0.8 %
No change in effectiveness for the creditors	12	10 %
Minor increase in effectiveness for the creditor	24	20 %
Increase in effectiveness for the creditor	41	34.2 %
Significant increase in effectiveness for the creditor	33	27.5 %
Tot	120	100.0 %

Authentication and validation of claimants to ensure legitimacy of access and claims filing



		Building blocks				3		4		5		6		7		8		9	
		Pre-pack sales		Transaction avoidance		Specificities of MSEs		Role and powers of Ips		Creditor's committee		Pre – commencement entitlements		Preferences to certain types of CREDs		Role of the courts		Directors' duties and liability	
PROG	OPTIONS	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*
1	Option 0	19	15,97%	12	10,08%	21	17,80%	12	10,26%	25	21,93%	23	19,66%	40	34,48%	18	15,52%	15	12,82%
2	Option 1	19	15,97%	15	12,61%	28	23,73%	14	11,97%	33	28,95%	24	20,51%	15	12,93%	36	31,03%	26	22,22%
3	Option 2	30	25,21%	30	25,21%	43	36,44%	28	23,93%	30	26,32%	28	23,93%	12	10,34%	43	37,07%	39	33,33%
4	Option 3	17	14,29%	23	19,33%	26	22,03%	28	23,93%	26	22,81%	11	9,40%	32	27,59%	19	16,38%	37	31,62%
5	Option 4	34	28,57%	39	32,77%	0	0,00%	35	29,91%	0	0,00%	31	26,50%	17	14,66%	0	0,00%	0	0,00%
		0	100,00%	0	100,00%	0	100,00%	0	100,00%	0	100,00%	0	100,00%	0	100,00%	0	100,00%	0	100,00%
	BEST OPTION		Option 4		Option 4		Option 2		Option 4		Option 1		Option 4		Option 0		Option 2		Option 2
	(score)		34		39		43		35		33		31		40		43		39

PROG	*STAKEHOLDER*	*NUMBER*	*PERCENTAGE*
1	Bank or other financial institutions	11	9,17%
2	Legal experts and practitioners, insolvency lawyers	38	31,67%
3	Judges in commercial or civil courts	13	10,83%
4	Accountants	1	0,83%
5	Member of public administrations handling insolvency	8	6,67%
6	Insolvency practitioners as identified by the Regulation	30	25,00%
7	Labour Unions	1	0,83%
8	Academic	9	7,50%
9	Enterprise and other association representative	9	7,50%
		0	100,00%

1 Bank or other financial institutions 11

		Pre-pack sales		Transaction avoidance		Specificities of MSEs		Role and powers of Ips		Creditor's committee		Pre – commencement		Preferences to certain types of		Role of the courts		Directors' duties and liability	
PROG	OPTIONS	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*
1	Option 0	4	36,36%	3	27,27%	3	27,27%	3	27,27%	4	36,36%	3	27,27%	7	70,00%	4	36,36%	3	27,27%
2	Option 1	1	9,09%	1	9,09%	5	45,45%	1	9,09%	5	45,45%	5	45,45%	1	10,00%	5	45,45%	6	54,55%
3	Option 2	4	36,36%	4	36,36%	2	18,18%	3	27,27%	0	0,00%	1	9,09%	1	10,00%	2	18,18%	2	18,18%
4	Option 3	1	9,09%	1	9,09%	1	9,09%	2	18,18%	2	18,18%	0	0,00%	1	10,00%	0	0,00%	0	0,00%
5	Option 4	1	9,09%	2	18,18%	0	0,00%	2	18,18%	0	0,00%	2	18,18%	0	0,00%	0	0,00%	0	0,00%
		109	100,00%	109	100,00%	109	100,00%	109	100,00%	109	100,00%	109	100,00%	109	100,00%	109	100,00%	109	100,00%
	BEST OPTION		Option 0		Option 2		Option 1		Option 0		Option 1		Option 1		Option 0		Option 1		Option 1
	(score)		4		4		5		3		5		5		7		5		6

2 Legal experts and practitioners, insolvency lawyers 38

		Pre-pack sales		Transaction avoidance		Specificities of MSEs		Role and powers of Ips		Creditor's committee		Pre – commencement		Preferences to certain types of		Role of the courts		Directors' duties and liability	
PROG	OPTIONS	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*
1	Option 0	3	7,89%	2	5,26%	7	18,92%	2	5,41%	9	25,00%	4	10,81%	10	27,03%	5	13,51%	4	10,81%
2	Option 1	8	21,05%	7	18,42%	8	21,62%	4	10,81%	10	27,78%	8	21,62%	6	16,22%	8	21,62%	7	18,92%
3	Option 2	9	23,68%	8	21,05%	18	48,65%	9	24,32%	10	27,78%	10	27,03%	6	16,22%	19	51,35%	10	27,03%
4	Option 3	6	15,79%	9	23,68%	4	10,81%	9	24,32%	7	19,44%	2	5,41%	9	24,32%	5	13,51%	16	43,24%
5	Option 4	12	31,58%	12	31,58%	0	0,00%	13	35,14%	0	0,00%	13	35,14%	6	16,22%	0	0,00%	0	0,00%
		82	100,00%	82	100,00%	82	100,00%	82	100,00%	82	100,00%	82	100,00%	82	100,00%	82	100,00%	82	100,00%
	BEST OPTION		Option 4		Option 4		Option 2		Option 4		Option 1		Option 4		Option 0		Option 2		Option 3
	(score)		12		12		18		13		10		13		10		19		16

	3 Judges in commercial or civil courts				13														
		Pre-pack sales		Transaction avoidance		Specificities of MSEs		Role and powers of Ips		Creditor's committee		Pre – commencement		Preferences to certain types of		Role of the courts		Directors' duties and liability	
PROG	OPTIONS	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*
1	Option 0	1	7,69%	1	7,69%	1	7,69%	0	0,00%	2	15,38%	1	7,69%	1	7,69%	1	7,69%	1	7,69%
2	Option 1	3	23,08%	0	0,00%	2	15,38%	1	7,69%	5	38,46%	1	7,69%	1	7,69%	7	53,85%	1	7,69%
3	Option 2	2	15,38%	5	38,46%	6	46,15%	7	53,85%	2	15,38%	5	38,46%	1	7,69%	3	23,08%	7	53,85%
4	Option 3	2	15,38%	2	15,38%	4	30,77%	2	15,38%	4	30,77%	2	15,38%	8	61,54%	2	15,38%	4	30,77%
5	Option 4	5	38,46%	5	38,46%	0	0,00%	3	23,08%	0	0,00%	4	30,77%	2	15,38%	0	0,00%	0	0,00%
		107	100,00%	107	100,00%	107	100,00%	107	100,00%	107	100,00%	107	100,00%	107	100,00%	107	100,00%	107	100,00%
	BEST OPTION		Option 4		Option 2		Option 2		Option 2		Option 1		Option 2		Option 3		Option 1		Option 2
	(score)		5		5		6		7		5		5		8		7		7

	4 Accountants				1														
		Pre-pack sales		Transaction avoidance		Specificities of MSEs		Role and powers of Ips		Creditor's committee		Pre – commencement		Preferences to certain types of		Role of the courts		Directors' duties and liability	
PROG	OPTIONS	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*
1	Option 0	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%
2	Option 1	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%
3	Option 2	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%
4	Option 3	0	0,00%	0	0,00%	1	100,00%	0	0,00%	1	100,00%	0	0,00%	1	100,00%	1	100,00%	1	100,00%
5	Option 4	1	100,00%	1	100,00%	0	0,00%	1	100,00%	0	0,00%	1	100,00%	0	0,00%	0	0,00%	0	0,00%
		119	100,00%	119	100,00%	119	100,00%	119	100,00%	119	100,00%	119	100,00%	119	100,00%	119	100,00%	119	100,00%
	BEST OPTION		Option 4		Option 4		Option 3		Option 4		Option 3		Option 4		Option 3		Option 3		Option 3

	5 Member of public administrations handling insolvency				8														
		Pre-pack sales		Transaction avoidance		Specificities of MSEs		Role and powers of Ips		Creditor's committee		Pre – commencement		Preferences to certain types of		Role of the courts		Directors' duties and liability	
PROG	OPTIONS	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*
1	Option 0	1	12,50%	1	12,50%	0	0,00%	1	12,50%	2	25,00%	2	25,00%	3	37,50%	1	12,50%	0	0,00%
2	Option 1	4	50,00%	4	50,00%	5	62,50%	4	50,00%	4	50,00%	5	62,50%	3	37,50%	5	62,50%	5	62,50%
3	Option 2	1	12,50%	1	12,50%	1	12,50%	0	0,00%	1	12,50%	0	0,00%	0	0,00%	1	12,50%	1	12,50%
4	Option 3	0	0,00%	0	0,00%	2	25,00%	2	25,00%	1	12,50%	1	12,50%	2	25,00%	1	12,50%	2	25,00%
5	Option 4	2	25,00%	2	25,00%	0	0,00%	1	12,50%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%
		112	100,00%	112	100,00%	112	100,00%	112	100,00%	112	100,00%	112	100,00%	112	100,00%	112	100,00%	112	100,00%
	BEST OPTION		Option 1		Option 1		Option 1		Option 1		Option 1		Option 1		Option 0		Option 1		Option 1

	6 Insolvency practitioners as identified by the Regulation				30														
		Pre-pack sales		Transaction avoidance		Specificities of MSEs		Role and powers of Ips		Creditor's committee		Pre – commencement		Preferences to certain types of		Role of the courts		Directors' duties and liability	
PROG	OPTIONS	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*
1	Option 0	4	13,33%	2	6,67%	5	16,67%	3	10,00%	4	13,79%	6	20,69%	9	32,14%	4	13,79%	4	13,33%
2	Option 1	2	6,67%	2	6,67%	7	23,33%	2	6,67%	5	17,24%	4	13,79%	3	10,71%	8	27,59%	5	16,67%
3	Option 2	11	36,67%	8	26,67%	7	23,33%	5	16,67%	12	41,38%	8	27,59%	2	7,14%	10	34,48%	12	40,00%
4	Option 3	5	16,67%	6	20,00%	11	36,67%	8	26,67%	8	27,59%	4	13,79%	7	25,00%	7	24,14%	9	30,00%
5	Option 4	8	26,67%	12	40,00%	0	0,00%	12	40,00%	0	0,00%	7	24,14%	7	25,00%	0	0,00%	0	0,00%
		90	100,00%	90	100,00%	90	100,00%	90	100,00%	90	100,00%	90	100,00%	90	100,00%	90	100,00%	90	100,00%
	BEST OPTION		Option 2		Option 4		Option 3		Option 4		Option 2		Option 2		Option 0		Option 2		Option 2

	7 Labour Unions				1														
		Pre-pack sales		Transaction avoidance		Specificities of MSEs		Role and powers of Ips		Creditor's committee		Pre – commencement		Preferences to certain types of		Role of the courts		Directors' duties and liability	
PROG	OPTIONS	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*
1	Option 0	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%
2	Option 1	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%
3	Option 2	0	0,00%	0	0,00%	1	100,00%	1	100,00%	1	100,00%	1	100,00%	0	0,00%	1	100,00%	1	100,00%
4	Option 3	0	0,00%	1	100,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	1	100,00%	0	0,00%	0	0,00%
5	Option 4	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%
		119	0,00%	119	100,00%	119	100,00%	119	100,00%	119	100,00%	119	100,00%	119	100,00%	119	100,00%	119	100,00%
	BEST OPTION		Option 0		Option 3		Option 2		Option 2		Option 2		Option 2		Option 3		Option 2		Option 2

	8 Academic				9														
		Pre-pack sales		Transaction avoidance		Specificities of MSEs		Role and powers of Ips		Creditor's committee		Pre – commencement		Preferences to certain types of		Role of the courts		Directors' duties and liability	
PROG	OPTIONS	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*
1	Option 0	3	33,33%	1	12,50%	2	25,00%	0	0,00%	0	0,00%	2	25,00%	5	55,56%	0	0,00%	1	12,50%
2	Option 1	1	11,11%	1	12,50%	0	0,00%	1	12,50%	3	42,86%	1	12,50%	1	11,11%	3	37,50%	1	12,50%
3	Option 2	1	11,11%	3	37,50%	4	50,00%	2	25,00%	2	28,57%	2	25,00%	1	11,11%	2	25,00%	4	50,00%
4	Option 3	1	11,11%	1	12,50%	2	25,00%	3	37,50%	2	28,57%	2	25,00%	1	11,11%	3	37,50%	2	25,00%
5	Option 4	3	33,33%	2	25,00%	0	0,00%	2	25,00%	0	0,00%	1	12,50%	1	11,11%	0	0,00%	0	0,00%
		111	100,00%	111	100,00%	111	100,00%	111	100,00%	111	100,00%	111	100,00%	111	100,00%	111	100,00%	111	100,00%
	BEST OPTION		Option 0		Option 2		Option 2		Option 3		Option 1		Option 0		Option 0		Option 1		Option 2

	9 Enterprise and other association representative				9														
		Pre-pack sales		Transaction avoidance		Specificities of MSEs		Role and powers of Ips		Creditor's committee		Pre – commencement		Preferences to certain types of		Role of the courts		Directors' duties and liability	
PROG	OPTIONS	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*	*SCORE*	*SCORE %*
1	Option 0	3	33,33%	2	22,22%	3	33,33%	3	37,50%	4	50,00%	5	55,56%	5	55,56%	3	37,50%	2	25,00%
2	Option 1	0	0,00%	0	0,00%	1	11,11%	1	12,50%	1	12,50%	0	0,00%	0	0,00%	0	0,00%	1	12,50%
3	Option 2	2	22,22%	1	11,11%	4	44,44%	1	12,50%	2	25,00%	1	11,11%	1	11,11%	5	62,50%	2	25,00%
4	Option 3	2	22,22%	3	33,33%	1	11,11%	2	25,00%	1	12,50%	0	0,00%	2	22,22%	0	0,00%	3	37,50%
5	Option 4	2	22,22%	3	33,33%	0	0,00%	1	12,50%	0	0,00%	3	33,33%	1	11,11%	0	0,00%	0	0,00%
		111	100,00%	111	100,00%	111	100,00%	111	100,00%	111	100,00%	111	100,00%	111	100,00%	111	100,00%	111	100,00%
	BEST OPTION		Option 0		Option 3		Option 2		Option 0		Option 0		Option 0		Option 0		Option 2		Option 3

Annex E | Explanatory note on the macroeconomic model

Table 13 - Explanatory note on the macroeconomic level

VARIABLE	EQUATIONS	PROPERTIES	UNITS
Avg_initial_amount_of_cash(t)	Avg_initial_amount_of_cash(t - dt) + ("Net_cash-inflow" - Cash_outflow) * dt	INIT Avg_initial_amount_of_cash = 100000	Euros
Business_recovering_or_liquidating(t)	Business_recovering_or_liquidating(t - dt) + (Effective_proceeding_rate - Recovering_debt_situation - Liquidating) * dt	INIT Business_recovering_or_liquidating = 500000	Business
Business_undergoing_insolvency_procedures(t)	Business_undergoing_insolvency_procedures(t - dt) + (Becoming_insolvent - Effective_proceeding_rate - Partially_liquidating) * dt	INIT Business_undergoing_insolvency_procedures = 500000	Business
"Business_with_debt-to-equity_ratio_<_2"(t)	"Business_with_debt-to-equity_ratio_<_2"(t - dt) + (Business_collecting_debts - Resolving_debt - Becoming_insolvent - Business_ending_2) * dt	INIT "Business_with_debt-to-equity_ratio_<_2" = 500000	Business
"Business_with_debt-to-equity_ratio_<=_1"(t)	"Business_with_debt-to-equity_ratio_<=_1"(t - dt) + ("New_cross-border_Business" + Resolving_debt + Recovering_debt_situation - Business_collecting_debts - Business_ending) * dt	INIT "Business_with_debt-to-equity_ratio_<=_1" = 10000000	Business
Insolvency_proceedings_costs(t)	Insolvency_proceedings_costs(t - dt) + (Proceedings_costs) * dt	INIT Insolvency_proceedings_costs = 0	
Liquidated(t)	Liquidated(t - dt) + (Liquidating) * dt	INIT Liquidated = 50000	Business
"Non-performing_loans"(t)	"Non-performing_loans"(t - dt) + (Increasing_NPL - credit_recovery) * dt	INIT "Non-performing_loans" = 5*10^9	Euros
"Overall_intra-EU_investment"(t)	"Overall_intra-EU_investment"(t - dt) + (Increasing_private_investment + Increasing_banks_investment - Using_reserve_for_existing_and_new_business) * dt	INIT "Overall_intra-EU_investment" = 200*10^9	Euros
Partially_liquidated(t)	Partially_liquidated(t - dt) + (Partially_liquidating) * dt	INIT Partially_liquidated = 500000	Business
Becoming_insolvent	(1-Percentage_of_business_fully_repaying_debts)*"Business_with_debt-to-equity_ratio_<_2"/Avg_debt_lifecycle	OUTFLOW PRIORITY: 2	Business/Years
Business_collecting_debts	"Business_with_debt-to-equity_ratio_<=_1"/Avg_time_after_which_Bus_make_debts	OUTFLOW PRIORITY: 1	Business/Years
Business_ending	"Business_with_debt-to-equity_ratio_<=_1"/Avg_business_lifetime	OUTFLOW PRIORITY: 2	Business/Years
Business_ending_2	"Business_with_debt-to-equity_ratio_<_2"/Avg_business_lifetime	OUTFLOW PRIORITY: 3	Business/Years
Cash_outflow	Ordinary_cash_outflow		Euros/Years
credit_recovery	Effective_proceeding_rate*Average_amount_of_loans_per_business		Euros/Years
Effective_proceeding_rate	Business_undergoing_insolvency_procedures*Percentage_of_proceeding_with_effective_resolution/Time_to_close_insolvency_procedures	OUTFLOW PRIORITY: 1	Business/Years
Increasing_banks_investment	Max_volume_of_banks_investment_in_EU*Banks'_funds_availability_for_investment		Euros/Years
Increasing_NPL	Becoming_insolvent*Average_amount_of_loans_per_business		Euros/Years
Increasing_private_investment	Max_volume_of_private_investment_in_EU*Private_investor_confidence		Euros/Years
Liquidating	Business_recovering_or_liquidating/Average_time_to_liquidate	OUTFLOW PRIORITY: 2	Business/Years
"Net_cash-inflow"	Ordinary_incomes+EU_investment_for_existing_Bus		Euros/Years
"New_cross-border_Business"	Using_reserve_for_existing_and_new_business*("Percentage_of_EU_investing_for_new_cross-border_business"/100)/"Proxy_Average_investment_in_new_cross-border_business"		Business/Years

Partially_liquidating	(Business_undergoing_insolvency_procedures*(1-Percentage_of_proceeding_with_effective_resolution))/Time_to_close_insolvency_procedures	OUTFLOW PRIORITY: 2	Business/Years
Proceedings_costs	(Partially_liquidating+Effective_proceeding_rate)*Cost_per_single_procedure		
Recovering_debt_situation	Business_recovering_or_liquidating/Time_to_recover	OUTFLOW PRIORITY: 1	Business/Years
Resolving_debt	Percentage_of_business_fully_repaying_debts*"Business_with_debt-to-equity_ratio_<_2"/Avg_debt_lifecycle	OUTFLOW PRIORITY: 1	Business/Years
Using_reserve_for_existing_and_new_business	"Overall_intra-EU_investment"		Euros/Years
Average_amount_of_loans_per_business	20000		Euros
Average_time_to_liquidate	1		Per Year
Avg_business_lifetime	21		Years
Avg_debt_lifecycle	10		Years
Avg_time_after_which_Bus_make_debts	Standard_time_after_which_Bus_make_debts*Cash_coverage		
Avg_time_to_recovery	1		Years
Banks'_funds_availability_for_investment	GRAPH(LOG10("Non-performing_loans")) Points: (0,00, 1,000), (2,00, 0,900), (4,00, 0,800), (6,00, 0,700), (8,00, 0,600), (10,00, 0,500), (12,00, 0,400), (14,00, 0,300), (16,00, 0,200), (18,00, 0,100), (20,00, 0,000)		
Cash_coverage	GRAPH("Net_cash-inflow"/Cash_outflow) Points: (0,000, 0,0267714036971), (0,400, 0,0719448398484), (0,800, 0,18970349271), (1,200, 0,476811688088), (1,600, 1,07576568548), (2,000, 2,000), (2,400, 2,92423431452), (2,800, 3,52318831191), (3,200, 3,81029650729), (3,600, 3,92805516015), (4,000, 3,9732285963)		Dimensionless
Cost_per_single_procedure	Standard_cost_per_single_procedure-Standard_cost_per_single_procedure*Module_1."Total_effect_on_cost_(%)"		
EU_investment_for_existing_Bus	Using_reserve_for_existing_and_new_business*(1-"Percentage_of_EU_investing_for_new_cross-border_business"/100)/Total_number_of_business		
Insolvency_Framework_Inefficiency	(Business_undergoing_insolvency_procedures+Partially_liquidated)/Total_business		
Insolvency_rate_for_50%_private_investor_confidence	60		
Max_volume_of_banks_investment_in_EU	500*10^9		
Max_volume_of_private_investment_in_EU	200*10^9		
Ordinary_cash_outflow	20000		
Ordinary_incomes	(Ordinary_revenue*Perc_of_margin/100)		Euros/Years
Ordinary_revenue	200000		Euros/Years
Perc_of_margin	10		
Percentage_of_business_fully_repaying_debts	GRAPH(Cash_coverage) Points: (0,000, 0,000), (0,200, 0,33583091167), (0,400, 0,560945103841), (0,600, 0,7118436595), (0,800, 0,812993986277), (1,000, 0,880797077978), (1,200, 0,926246849528), (1,400, 0,956712742486), (1,600, 0,977134641257), (1,800, 0,99082384938), (2,000, 1,000)		
"Percentage_of_EU_investing_for_new_cross-border_business"	80		
Percentage_of_proceeding_with_effective_resolution	(Standard_percentage_of_effective_resolution+Standard_percentage_of_effective_resolution*Module_1."Total_effect_on_effectiveness_(%)")/100		
Private_investor_confidence	GRAPH(Insolvency_Framework_Inefficiency/(Insolvency_rate_for_50%_private_investor_confidence/100)) Points: (0,000, 0,976), (0,250, 0,900), (0,500, 0,787), (0,750, 0,659), (1,000, 0,500), (1,250, 0,360), (1,500, 0,285), (1,750, 0,114), (2,000, 0,000)		
"Proxy_Average_investment_in_new_cross-border_business"	10000		Euros/Business
	1400		Euros

Standard_cost_per_single_procedure			
Standard_percentage_of_effective_resolution	33,8		
Standard_time_after_which_Bus_make_debts	5		
Standard_time_to_close_insolvency	2,3		Years
Time_to_close_insolvency_procedures	Standard_time_to_close_insolvency-(Standard_time_to_close_insolvency*Module_1."Total_effect_on_time_(%)")		
Time_to_recover	Avg_time_to_recovery-(Avg_time_to_recovery*Module_1."Total_effect_on_time_(%)")		
Total_business	Business_undergoing_insolvency_procedures+"Business_with_debt-to-equity_ratio_<_2"+"Business_with_debt-to-equity_ratio_<=_1"+Partially_liquidated+Business_recovering_or_liquidating+Liquidated		
Total_number_of_business	"Business_with_debt-to-equity_ratio_<=_1"+"Business_with_debt-to-equity_ratio_<_2"		

Annex F | Report on public consultation

Figure 13 – Differences in insolvency frameworks in EU Member States deter cross-border investment/lending

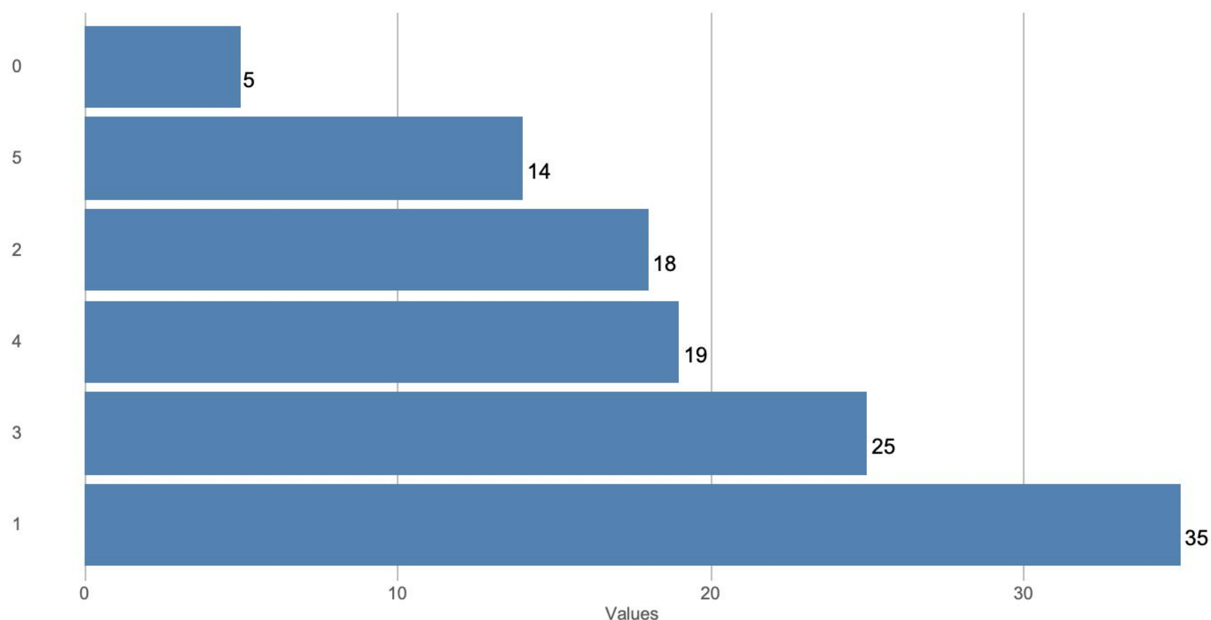


Figure 14 - Differences in corporate (non-bank) insolvency frameworks in EU Member States pose a problem for the functioning of the internal market

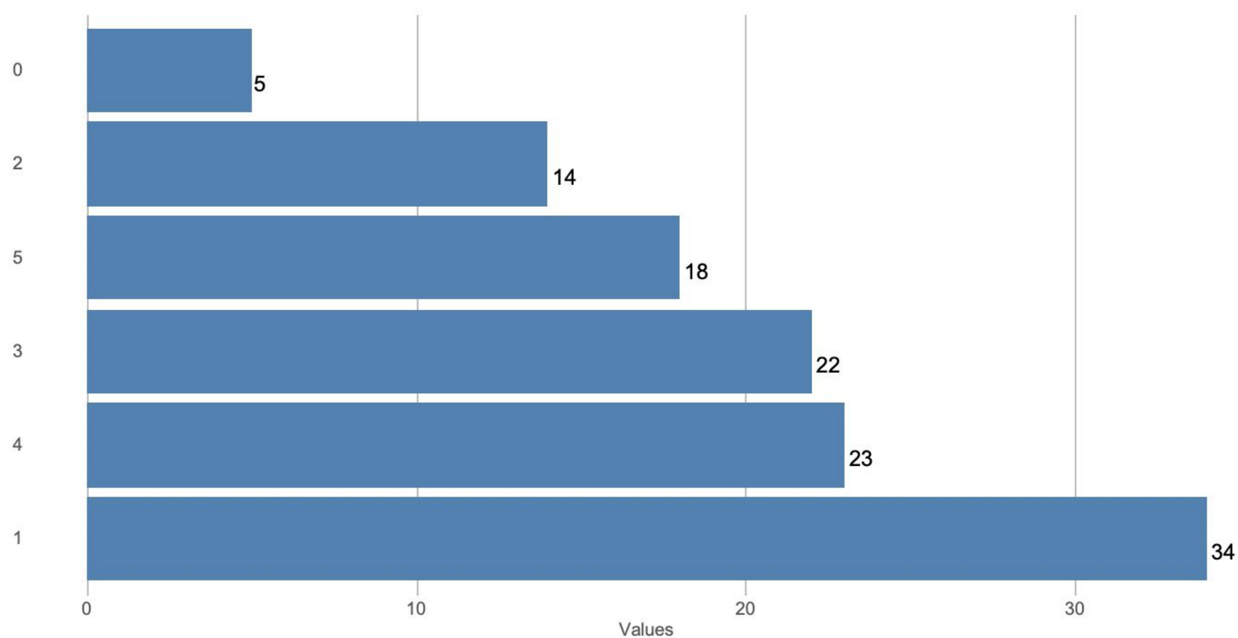


Figure 15 - Which of the existing differences between the laws of the Member States most affect the functioning of the Internal Market? Differences in the definition of insolvency

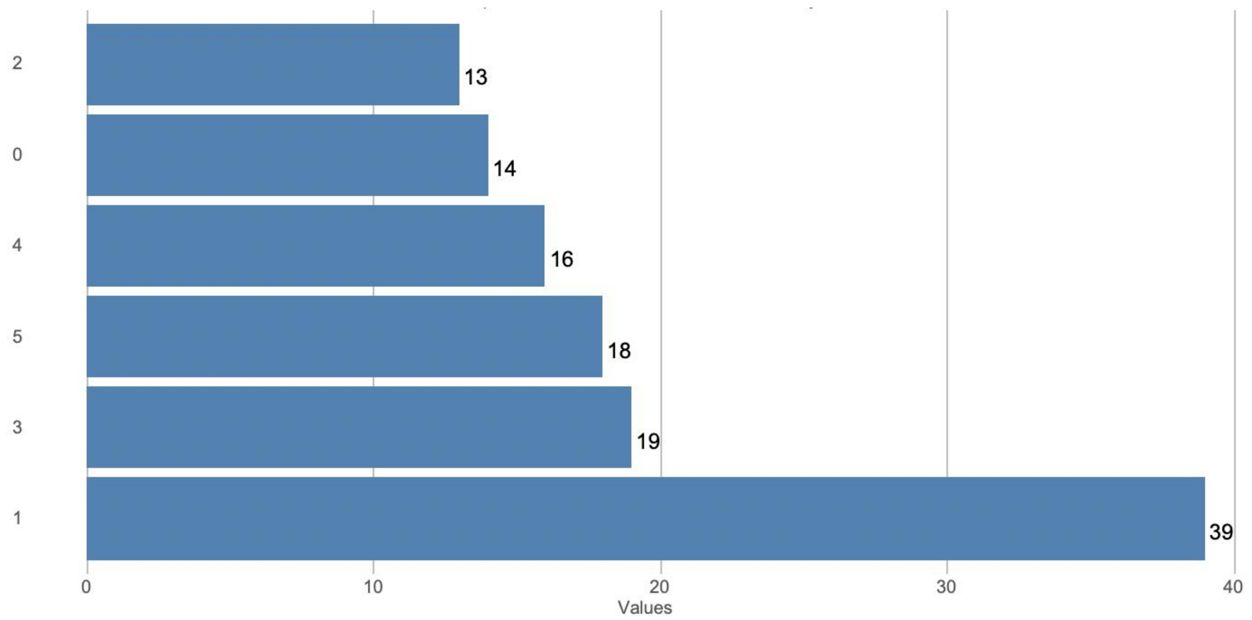


Figure 16 - Which of the existing differences between the laws of the Member States most affect the functioning of the Internal Market? Differences in how insolvency proceedings are triggered - obligations of debtors and rights of creditors to file for insolvency

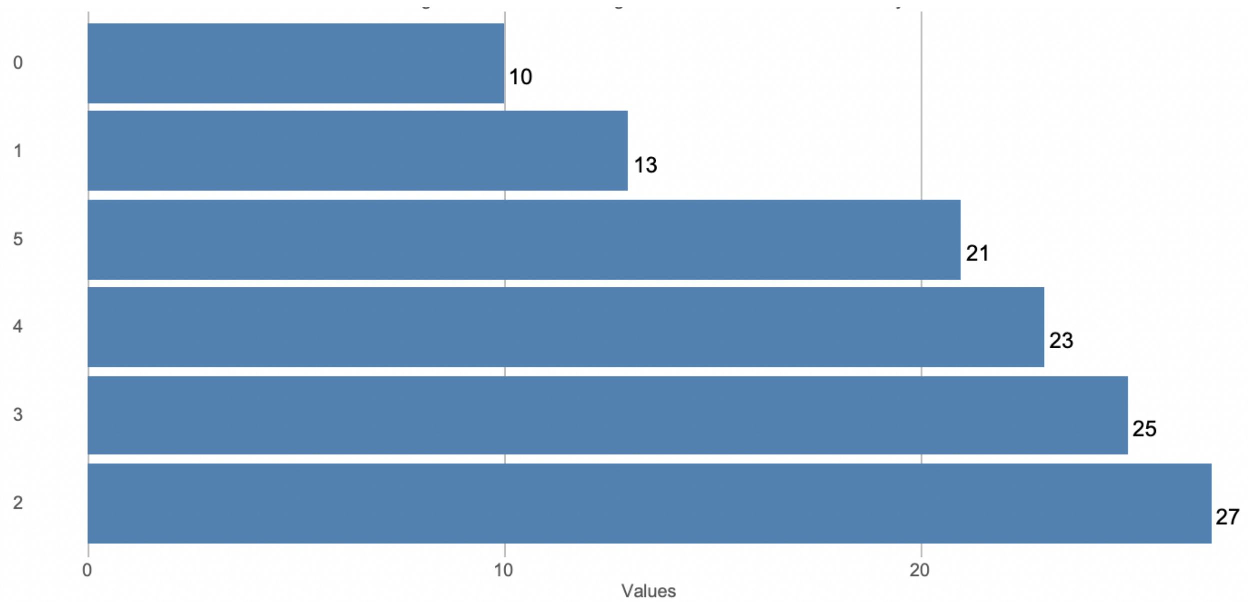


Figure 17 - Which of the existing differences between the laws of the Member States most affect the functioning of the Internal Market? Differences in the duties and liabilities of directors in vicinity of insolvency and in insolvency proceedings

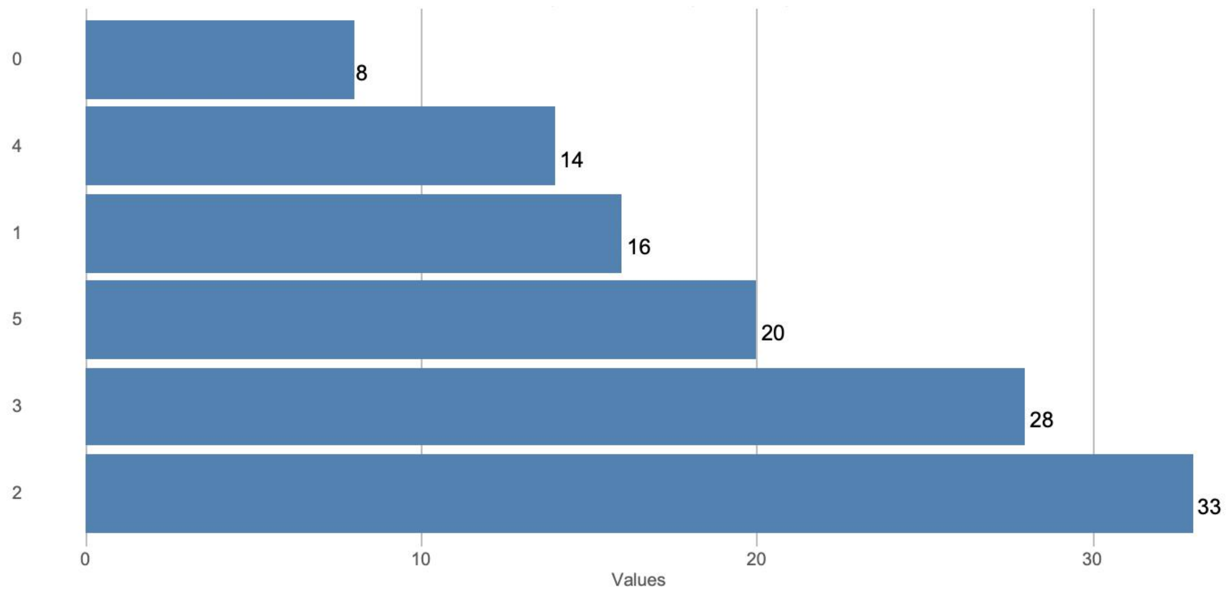


Figure 18 - Which of the existing differences between the laws of the Member States most affect the functioning of the Internal Market? Differences in the duties and liabilities of insolvency practitioners

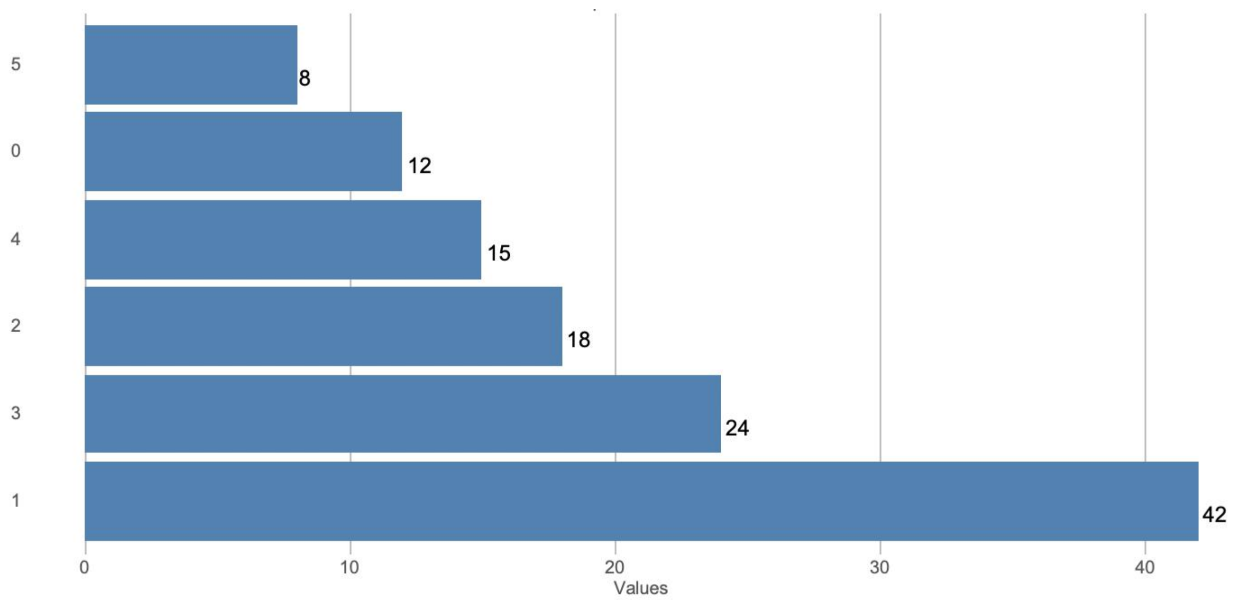


Figure 19 - Which of the existing differences between the laws of the Member States most affect the functioning of the Internal Market? Differences in the identification and tracing of assets that belong to the insolvency estate

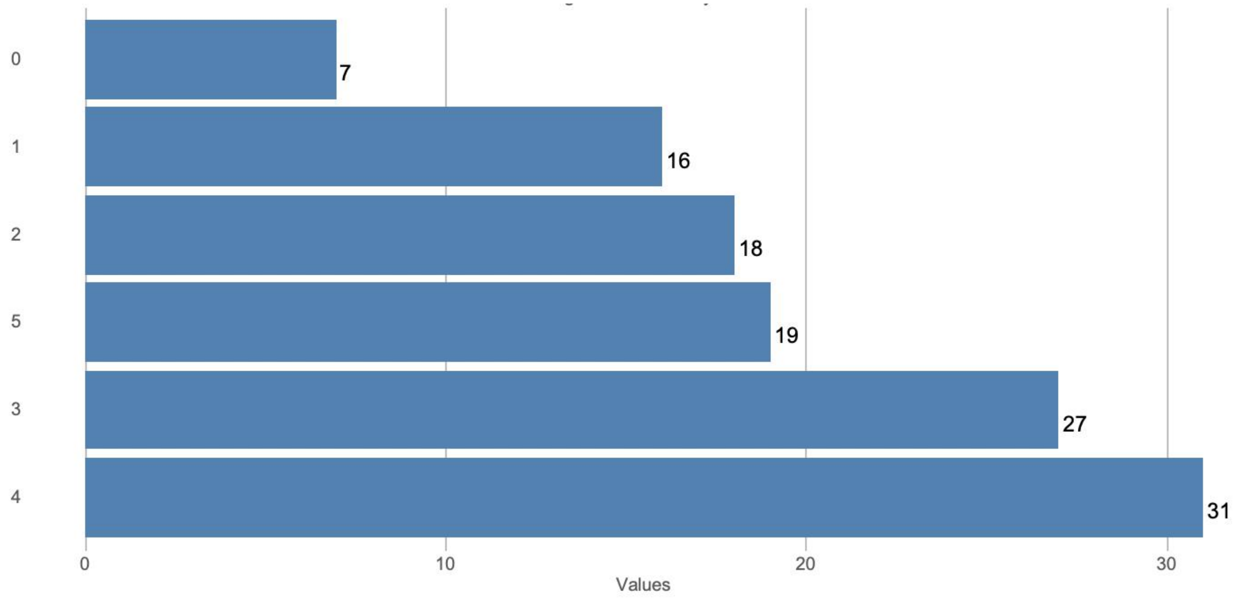


Figure 20 - Which of the existing differences between the laws of the Member States most affect the functioning of the Internal Market? Differences in the ranking of claims

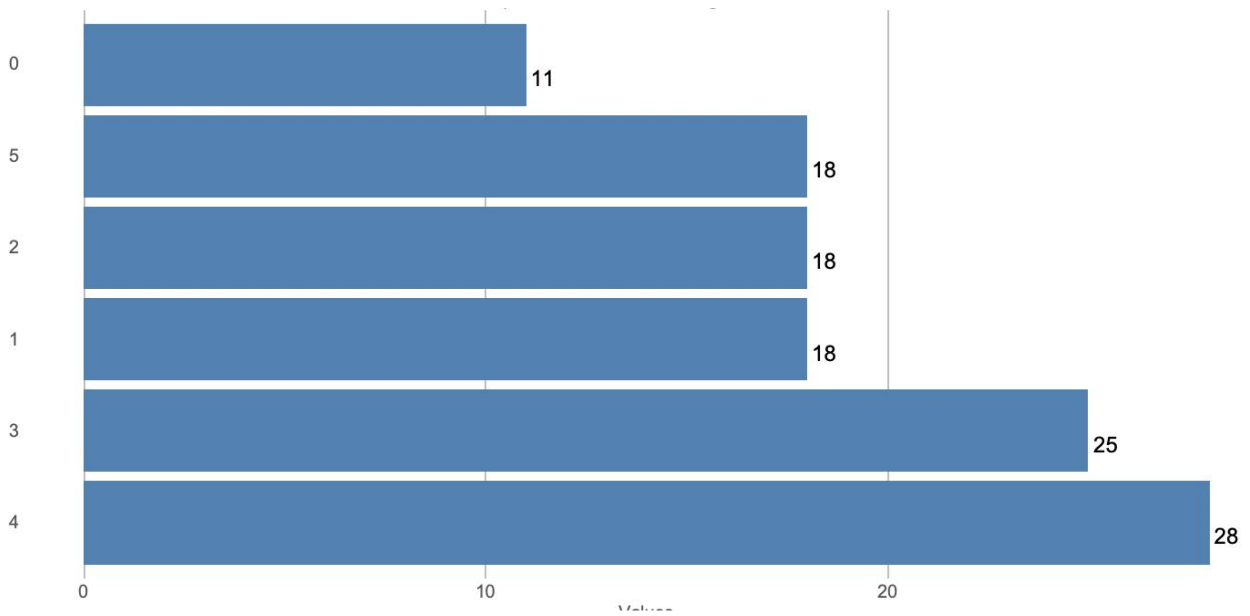


Figure 21 - Which of the existing differences between the laws of the Member States most affect the functioning of the Internal Market? Differences in relation to avoidance action

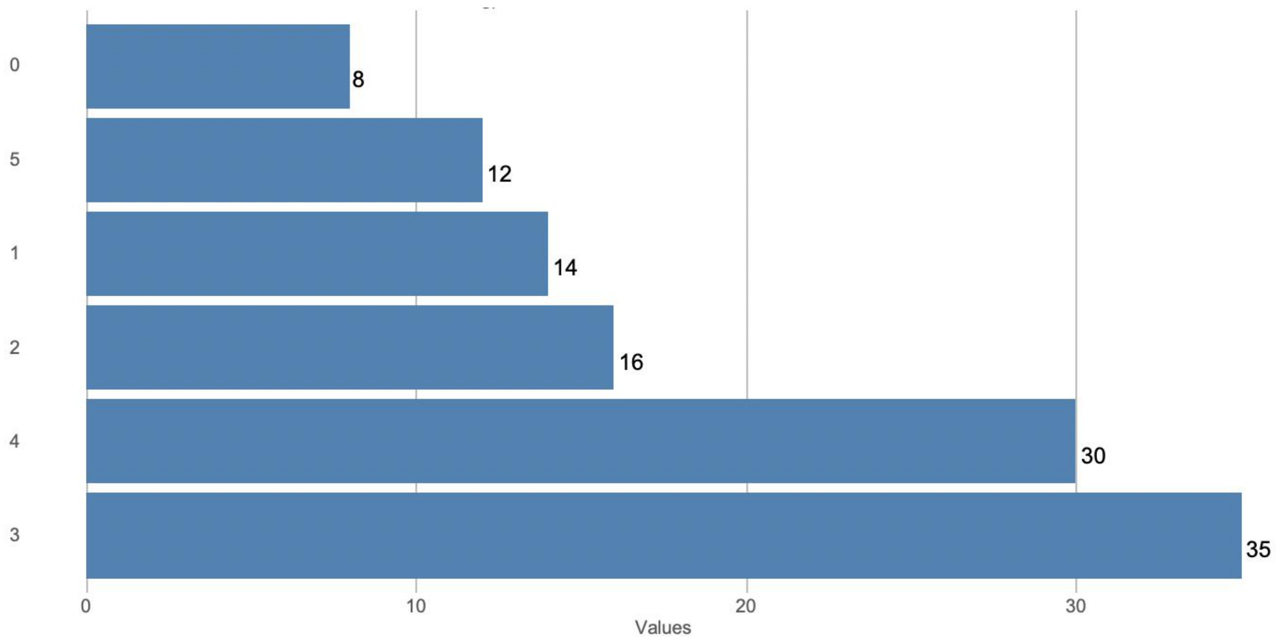


Figure 22 - In which area do you consider the insolvency framework of the jurisdiction where you operate is to be reformed? Differences in the definition of insolvency

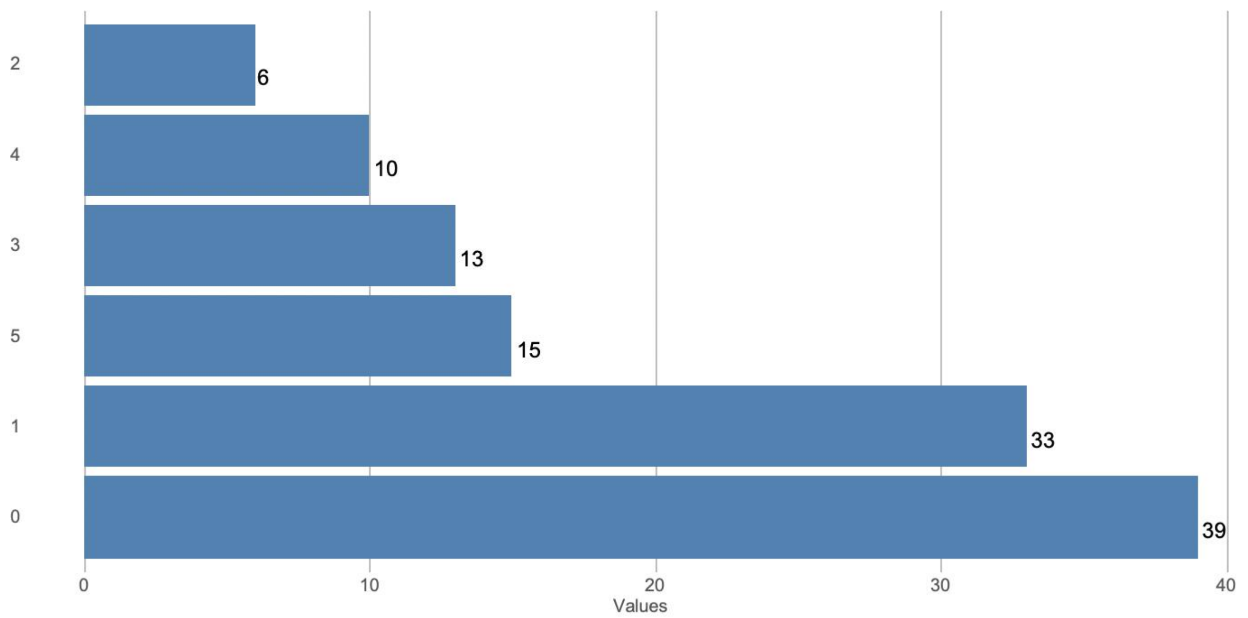


Figure 23 - In which area do you consider the insolvency framework of the jurisdiction where you operate is to be reformed? Differences in how insolvency proceedings are triggered - obligations of debtors and rights of creditors to file for insolvency

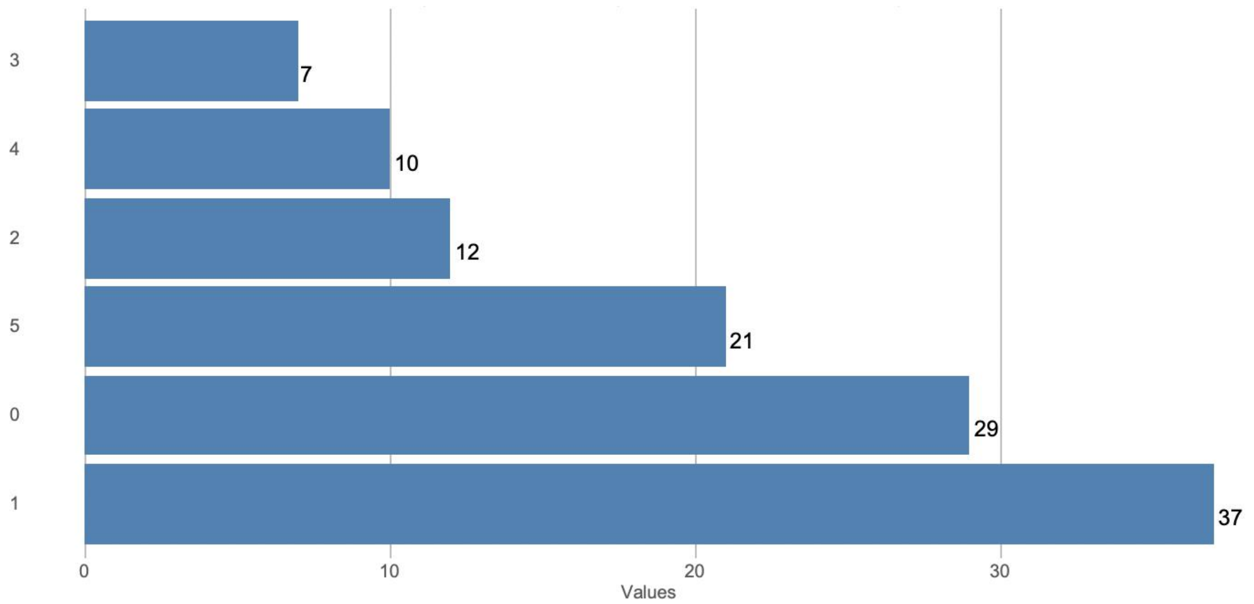


Figure 24 - In which area do you consider the insolvency framework of the jurisdiction where you operate is to be reformed? Differences in the duties and liabilities of directors in vicinity of insolvency and in insolvency proceedings

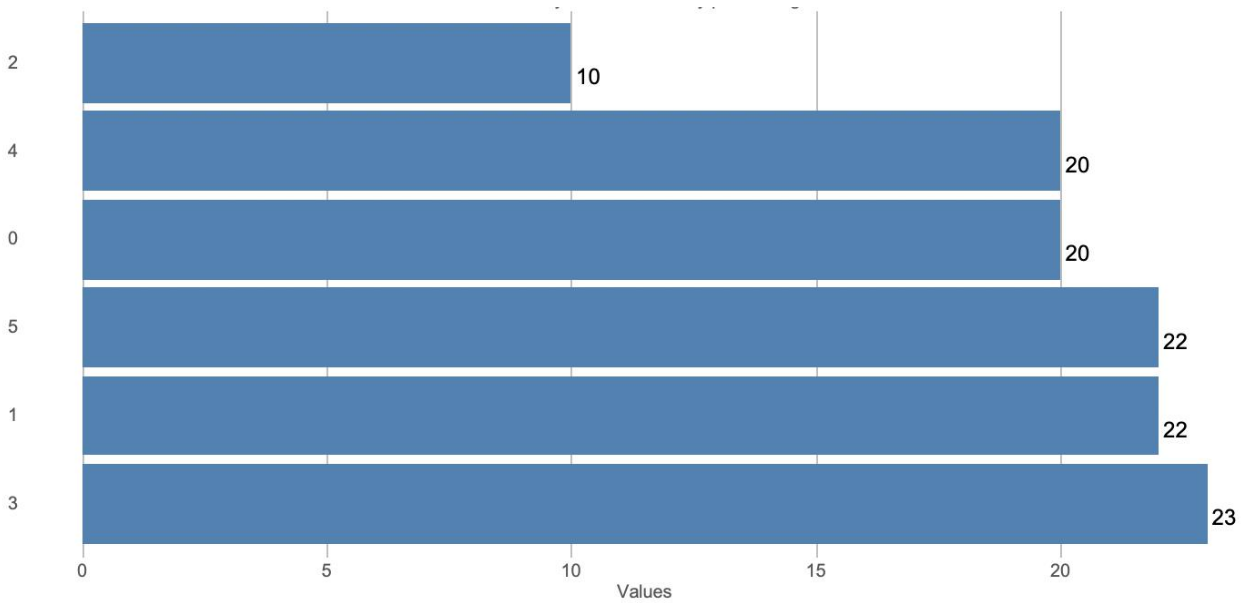


Figure 25 - In which area do you consider the insolvency framework of the jurisdiction where you operate is to be reformed? Differences in the duties and liabilities of insolvency practitioners

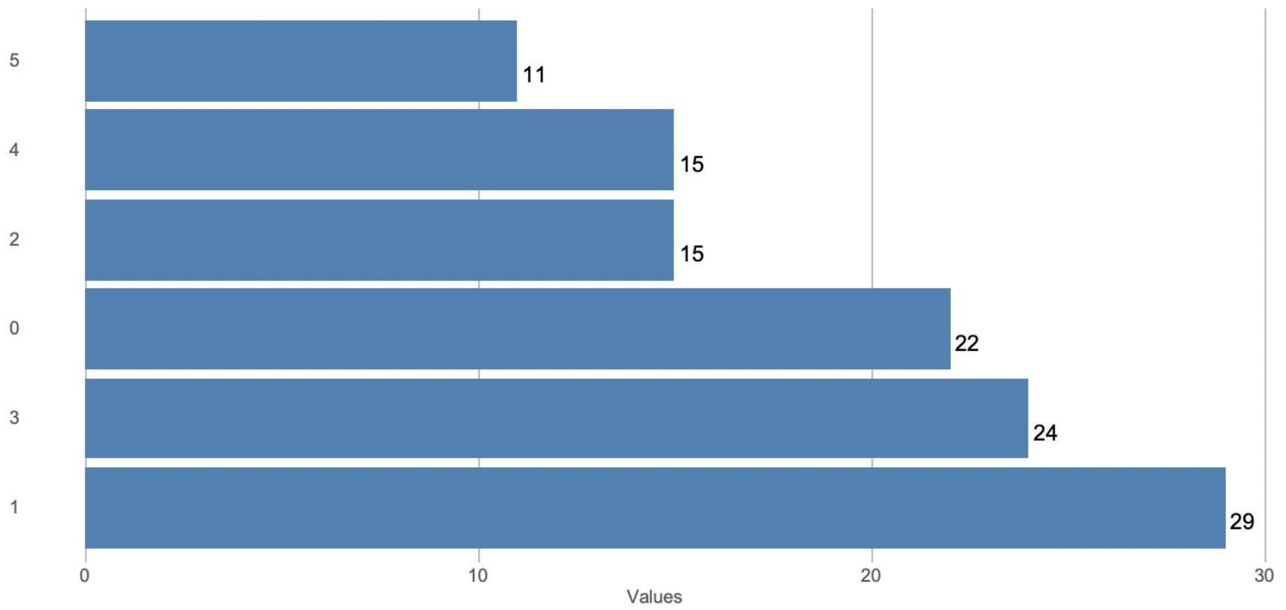


Figure 26 - In which area do you consider the insolvency framework of the jurisdiction where you operate is to be reformed? Differences in the identification and tracing of assets that belong to the insolvency estate

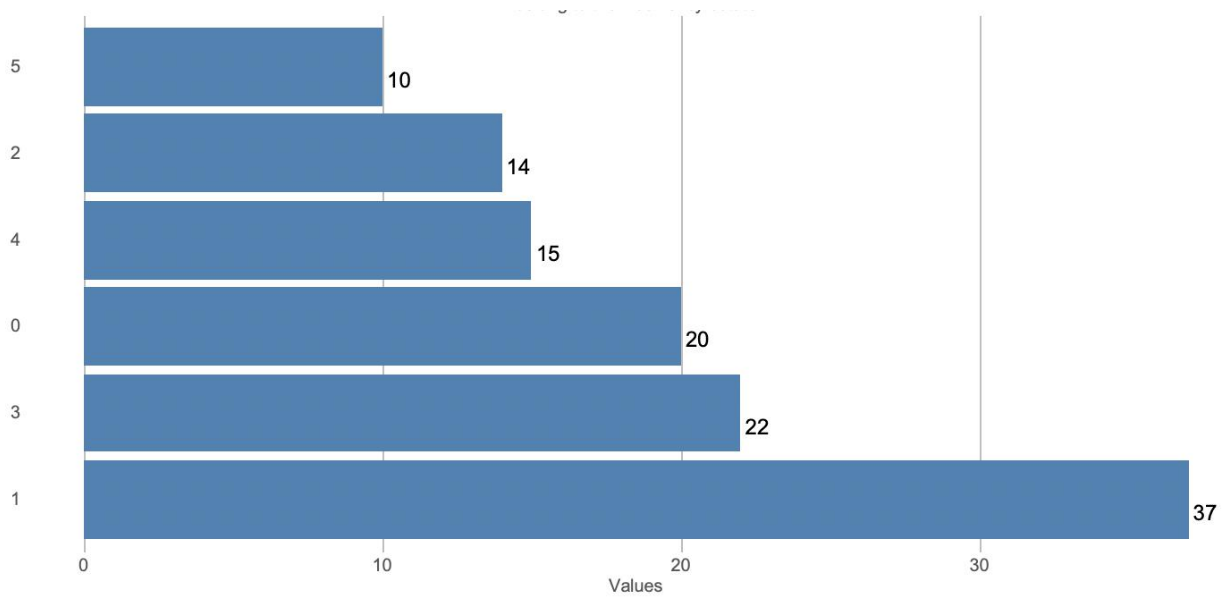


Figure 27 - In which area do you consider the insolvency framework of the jurisdiction where you operate is to be reformed? Differences in the ranking of claims

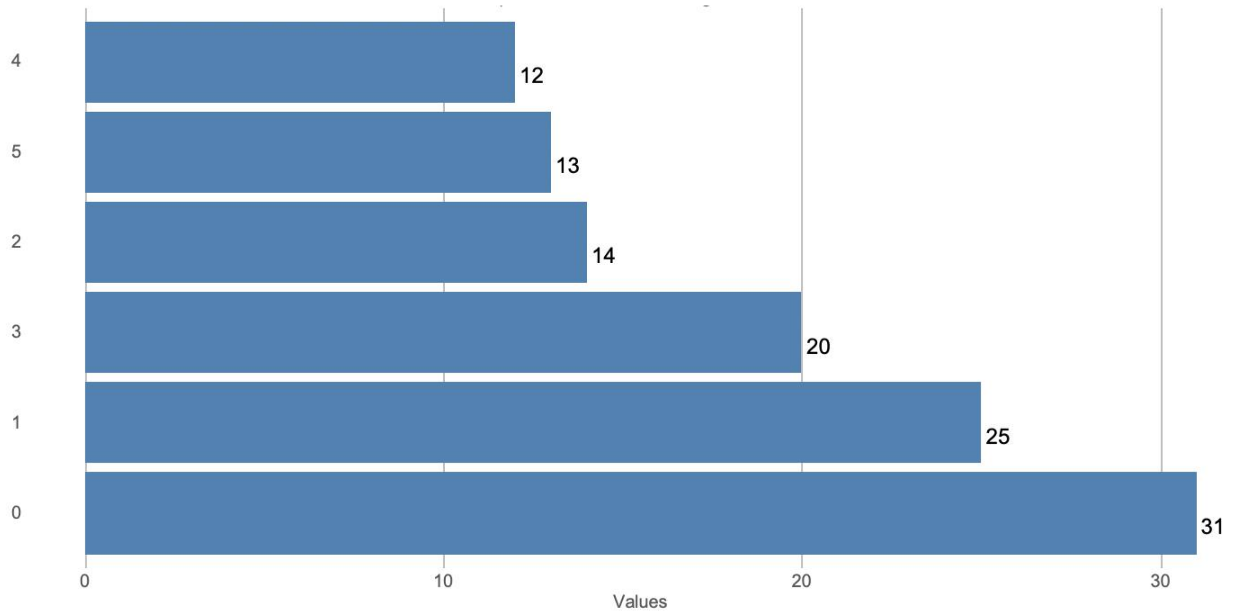


Figure 28 - In which area do you consider the insolvency framework of the jurisdiction where you operate is to be reformed? Differences in relation to avoidance action

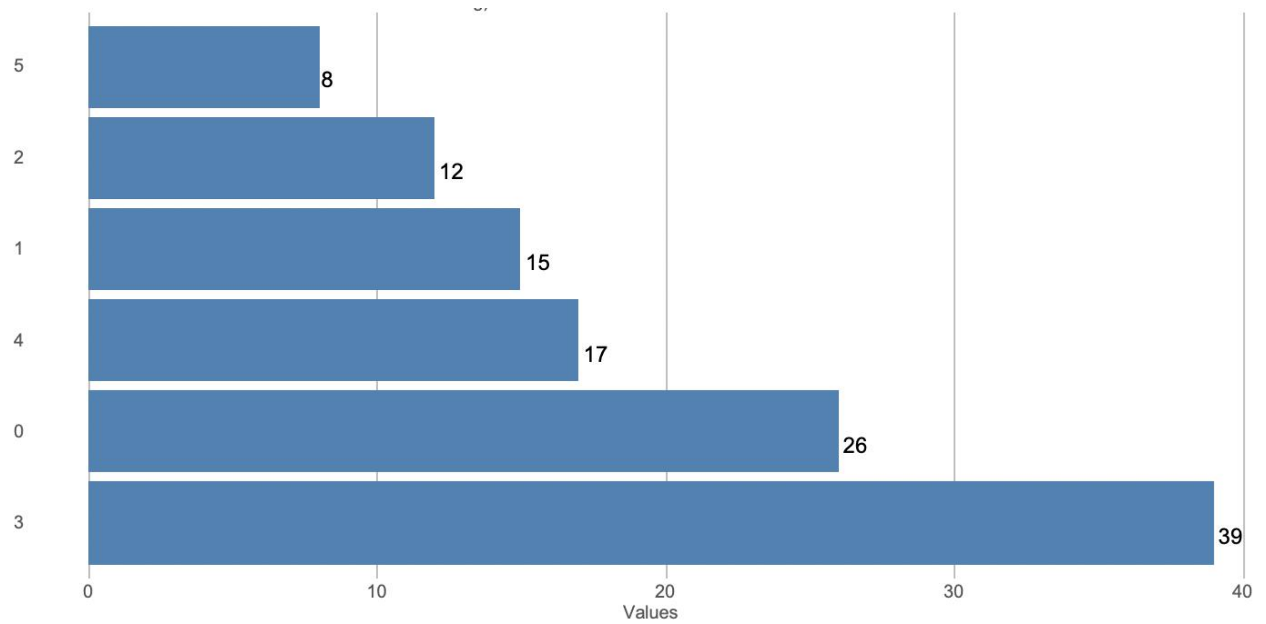


Figure 29 - Which measures should be taken at the EU level to bring about greater convergence of insolvency frameworks?

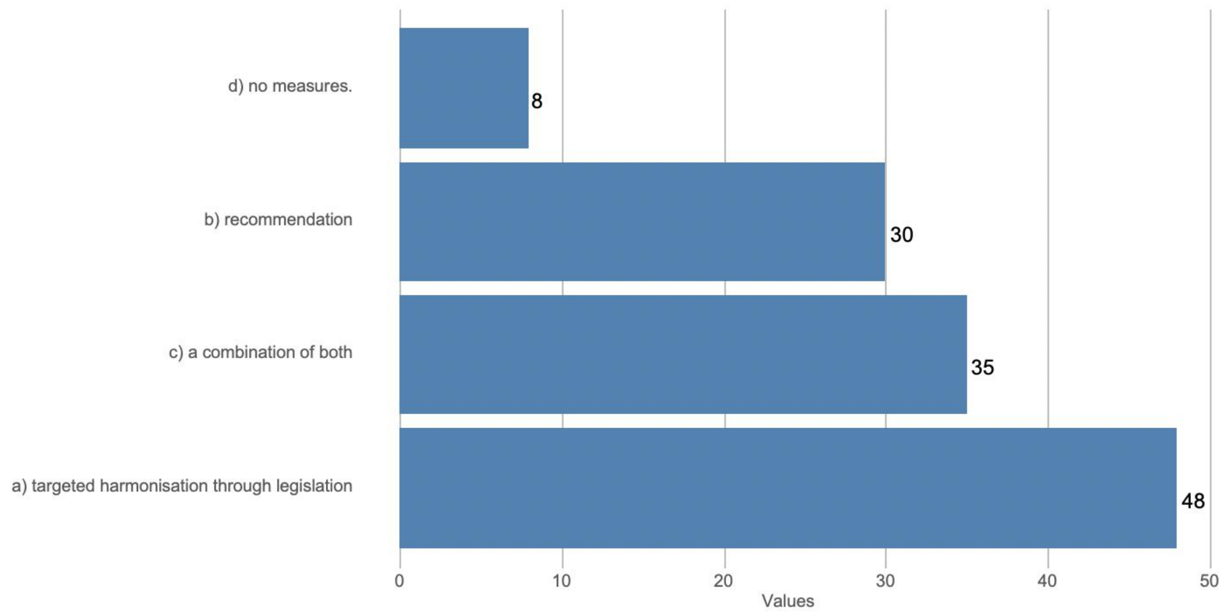


Figure 30 - In your opinion, should there be any minimum harmonization at EU level on the duties and obligations of directors in the event of vicinity of insolvency or when the company is insolvent?

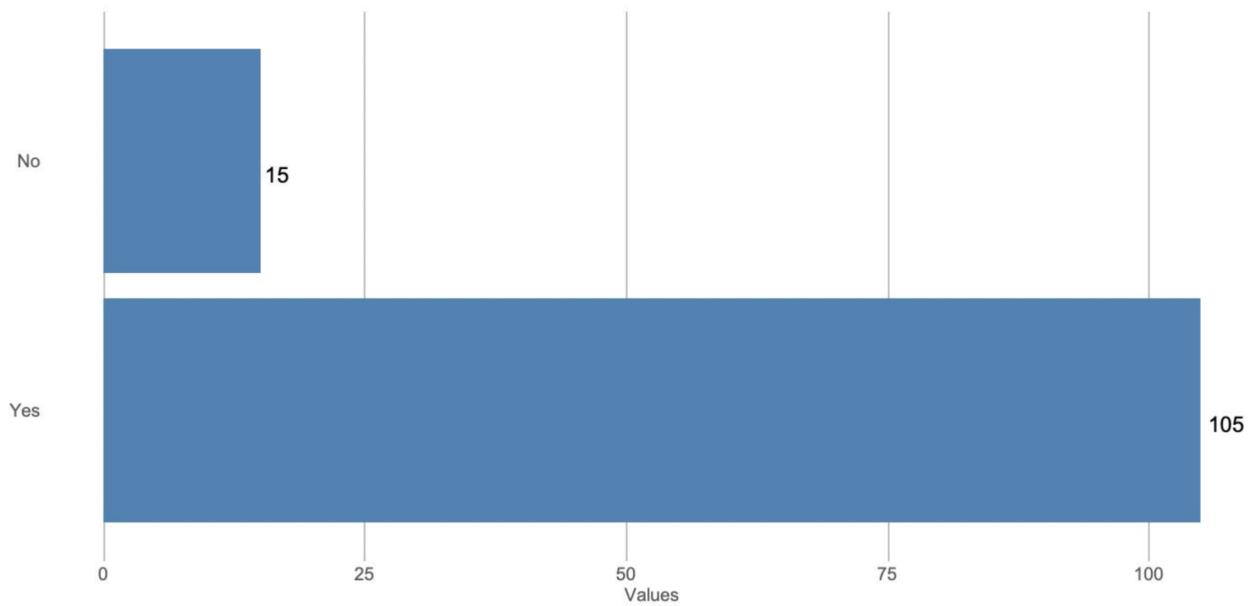


Figure 31 - If your answer to the preceding question is in the affirmative, in which aspects of the question do you consider the harmonization of national laws at EU level beneficial?

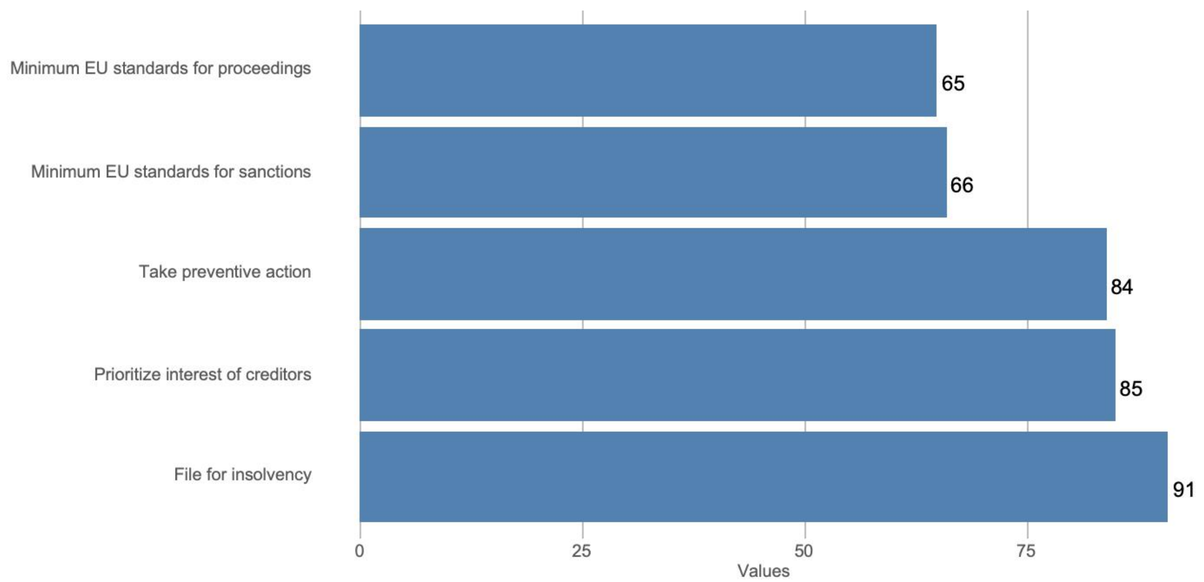


Figure 32 - What measures at EU level do you consider favourable for the enhancement of the effective implementation of decisions disqualifying directors as a consequence of breaching their duties in the vicinity of insolvency?

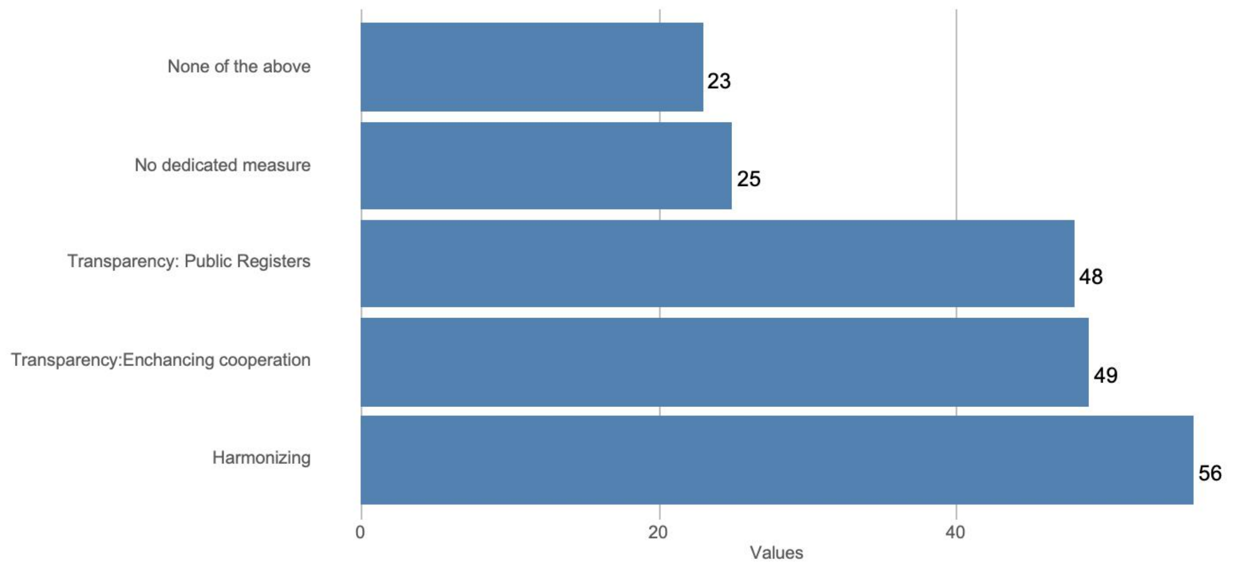


Figure 33 - Which questions in the following list would benefit from a harmonization at EU level

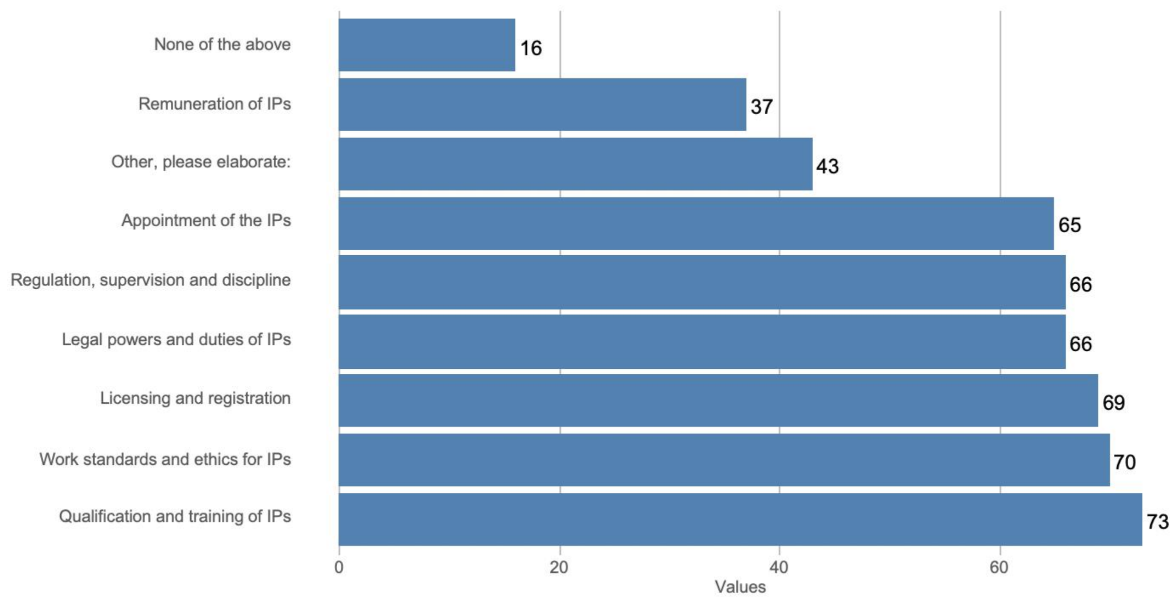


Figure 34 - Standards and guidelines for the qualifications of insolvency practitioners/insolvency office holders: licensing and registration - IPs should hold some form of official authorisation to act.

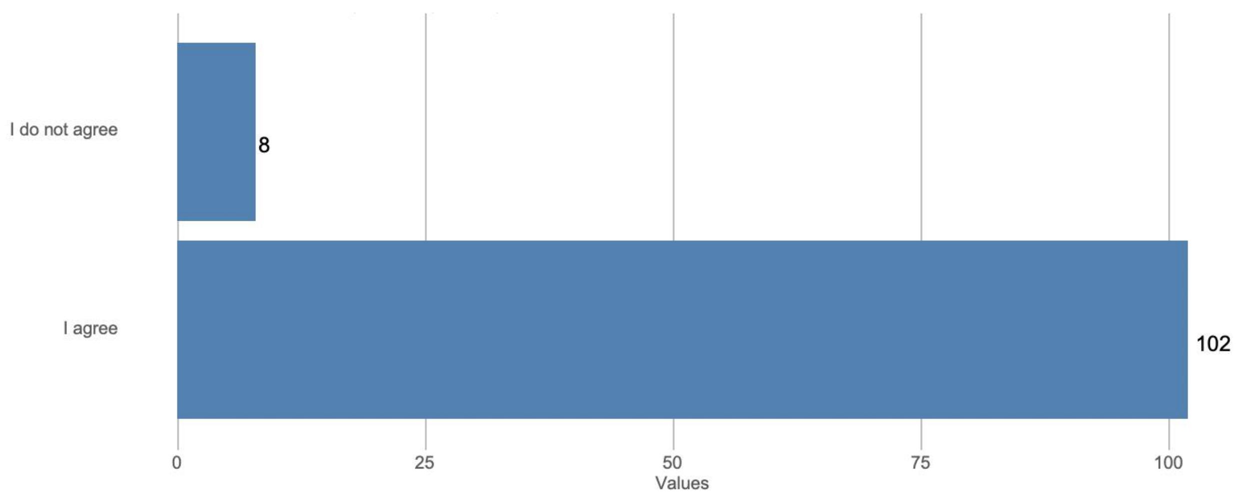


Figure 35 - Standards and guidelines for the qualifications of insolvency practitioners/insolvency office holders: regulation, supervision and discipline - given the nature of their work and responsibilities, IP should be subject to a regulatory framework with supervisory monitoring and disciplinary features.

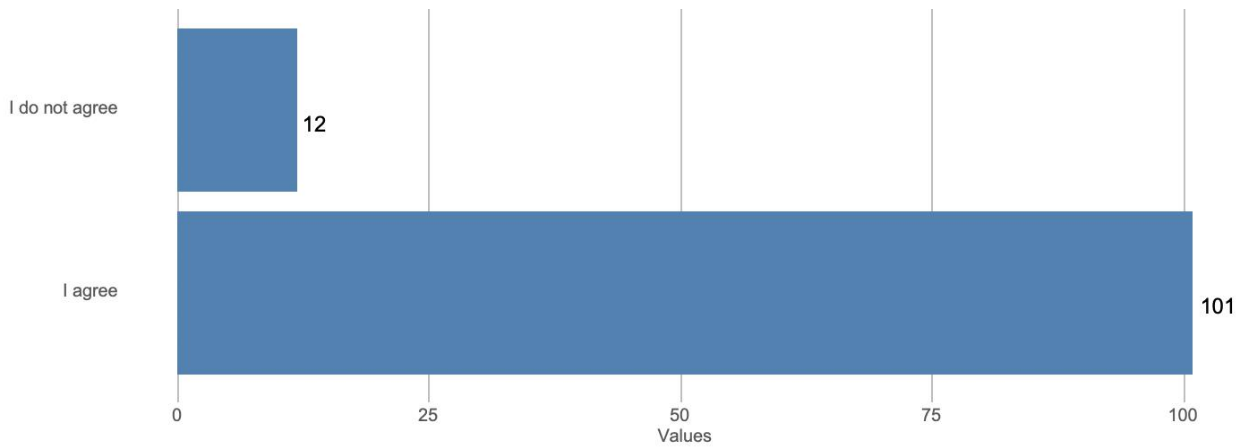


Figure 36- Standards and guidelines for the qualifications of insolvency practitioners/insolvency office holders: qualification and training - IPs candidates should meet relevant qualification and practical training standards. Qualified IPs should keep their professional skills updated with regular continuing training.

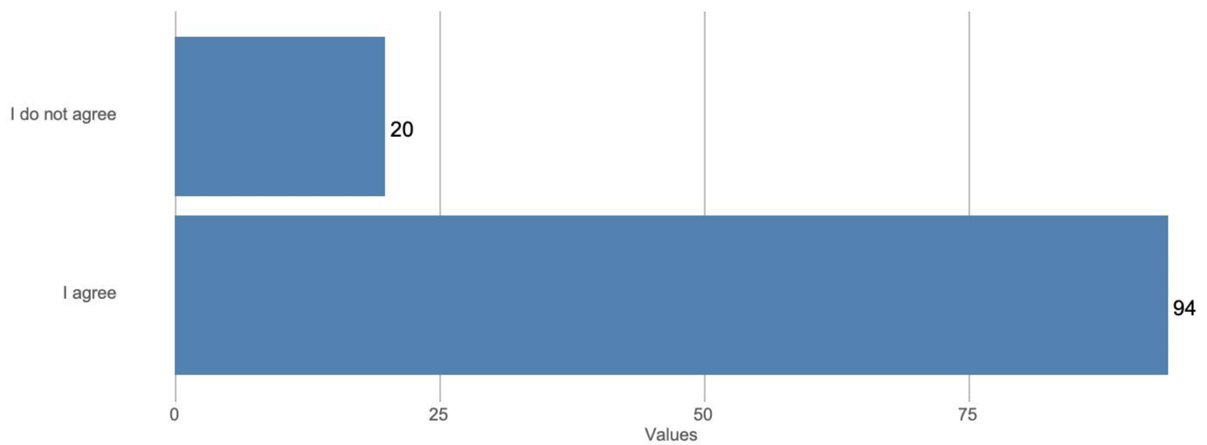


Figure 37 - Standards and guidelines for the qualifications of insolvency practitioners/insolvency office holders: appointment system - there should be a clear system for the appointment of IPs, which reflects debtor and creditor preferences and encourages the appointment of an appropriate IP candidate.

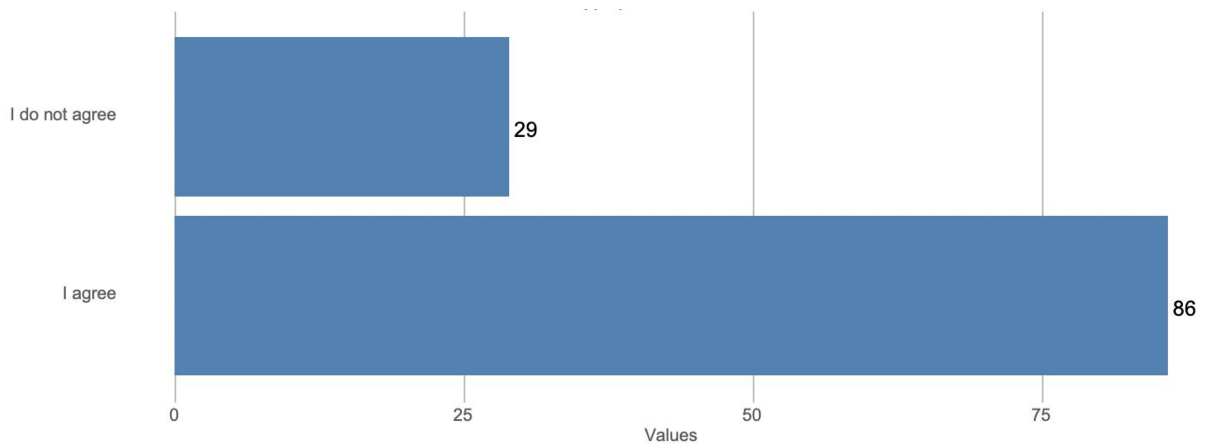


Figure 38- Standards and guidelines for the qualifications of insolvency practitioners/insolvency office holders: work standards and ethics - the work of IPs should be guided by a set of specific work standards and ethics for the profession

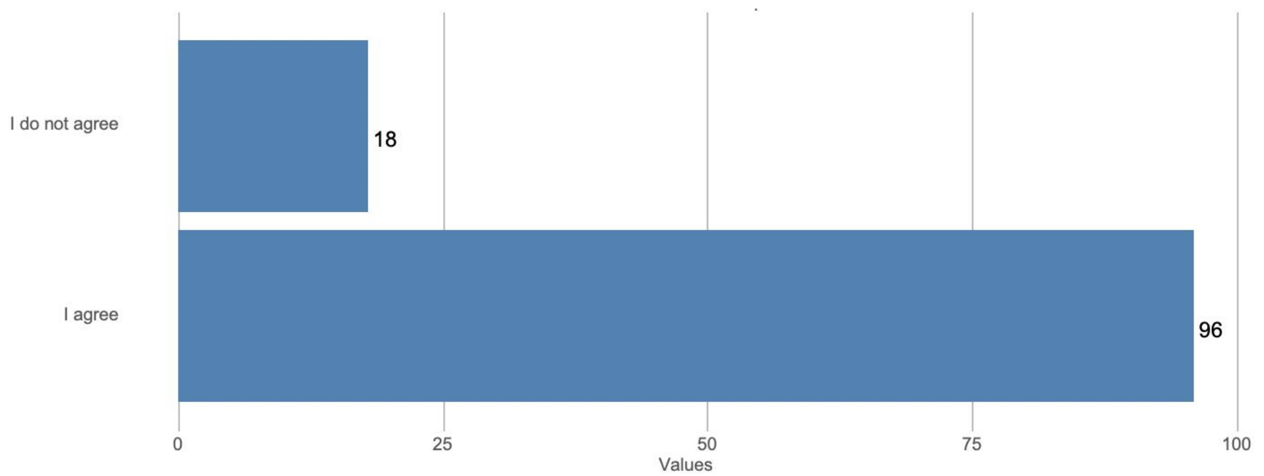


Figure 39 - Standards and guidelines for the qualifications of insolvency practitioners/insolvency office holders: legal powers and duties - IPs should have sufficient legal powers to carry out their duties, including powers aimed at recovery of assets belonging to the debtor's estate.

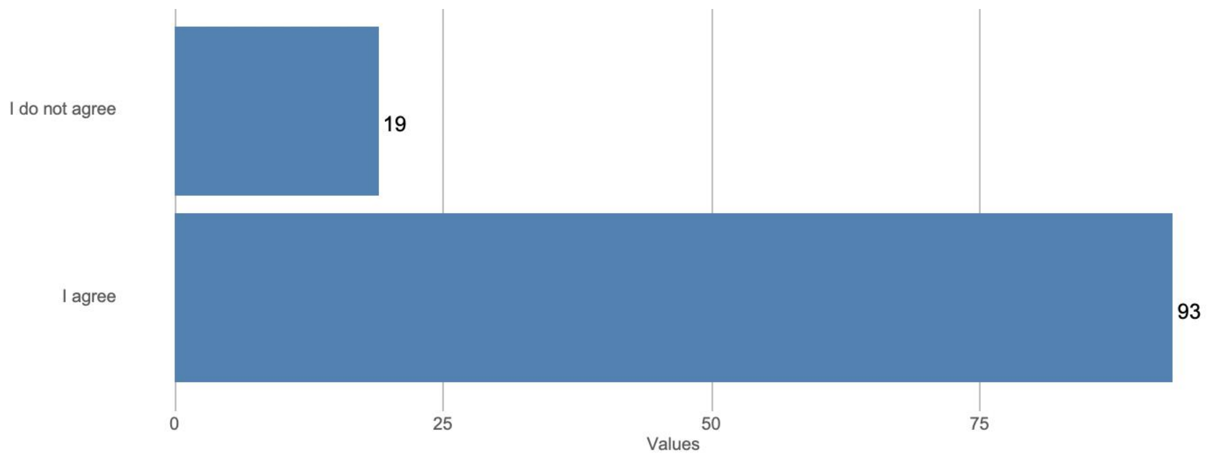


Figure 40 - Standards and guidelines for the qualifications of insolvency practitioners/insolvency office holders: IPs should be subject to a duty to keep all stakeholders regularly informed of the progress of the insolvency case.

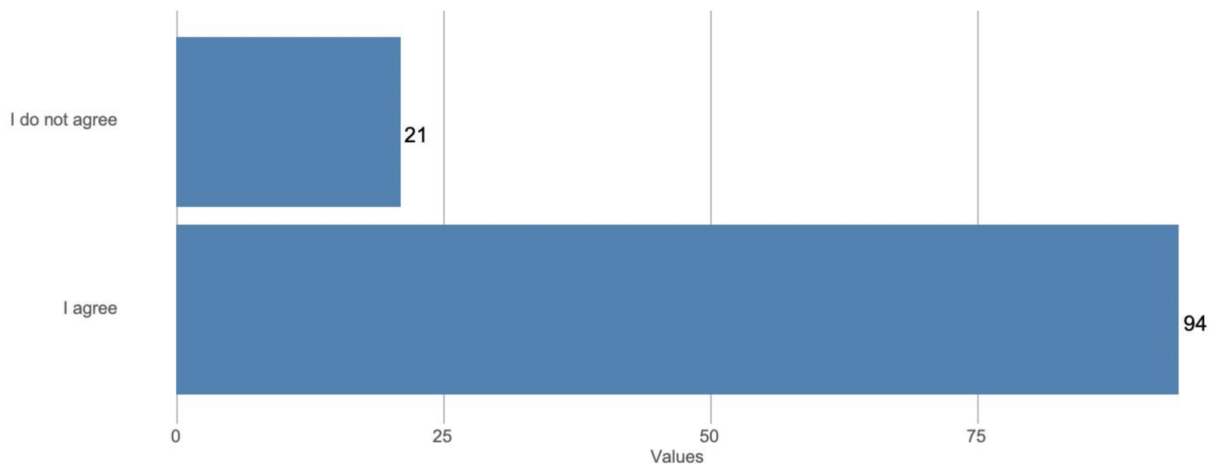


Figure 41 - Standards and guidelines for the qualifications of insolvency practitioners/insolvency office holders: remuneration - a statutory framework for IP remuneration should exist to regulate the payment of IP fees and

protect stakeholders. The framework should provide ample incentives for IPs to perform well and protection for IP fees in liquidation

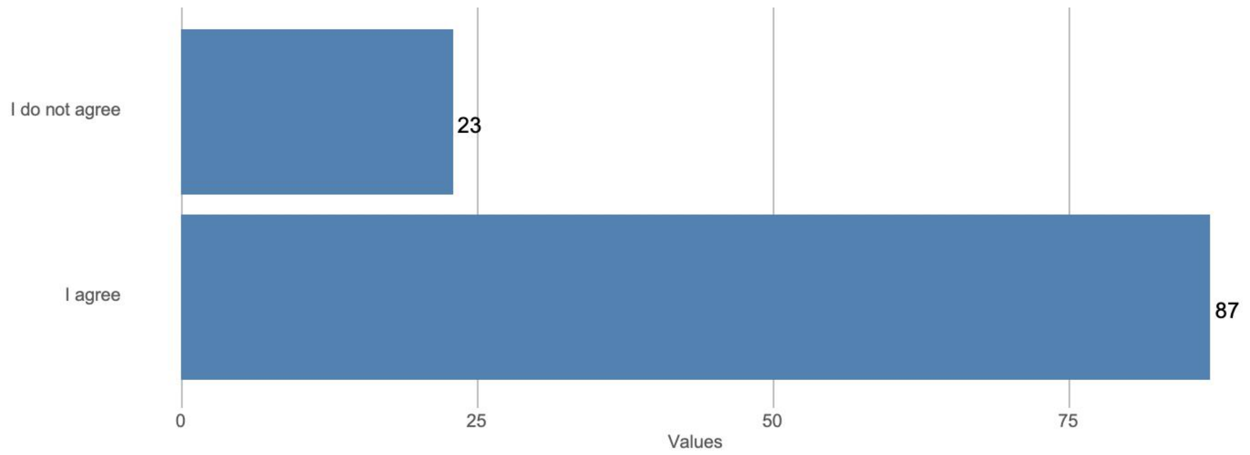


Figure 42 - Which aspect of the rules on the ranking of claims would benefit most from a harmonization at EU level

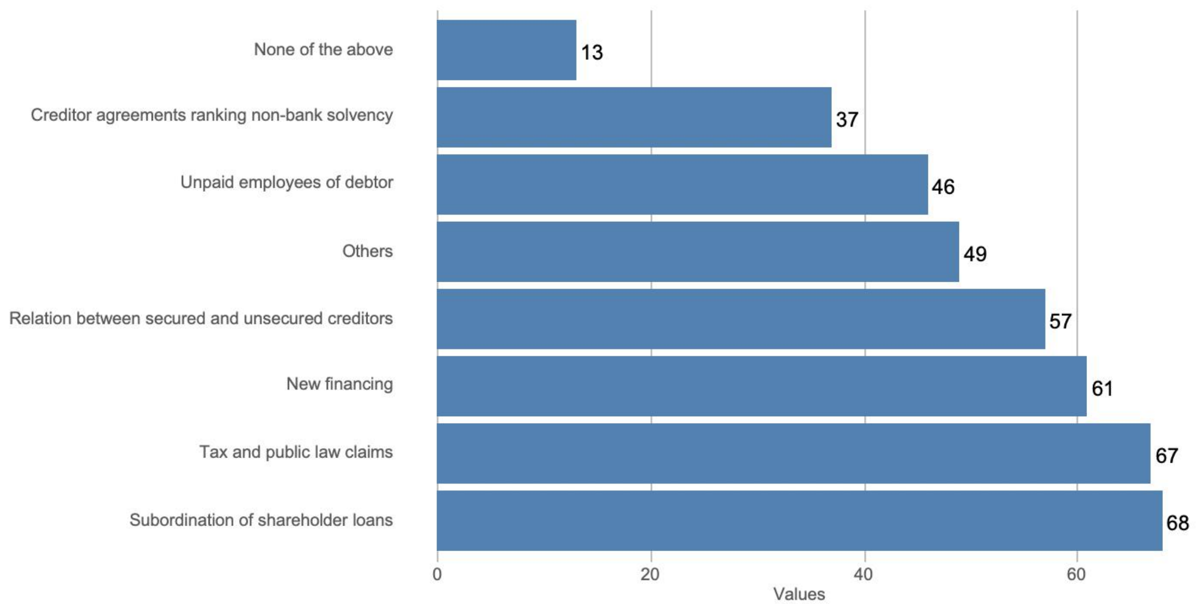


Figure 43 - If your answer to the previous point was in the affirmative, what types of safeguard would you find necessary to ensure the proportionate nature of such rules

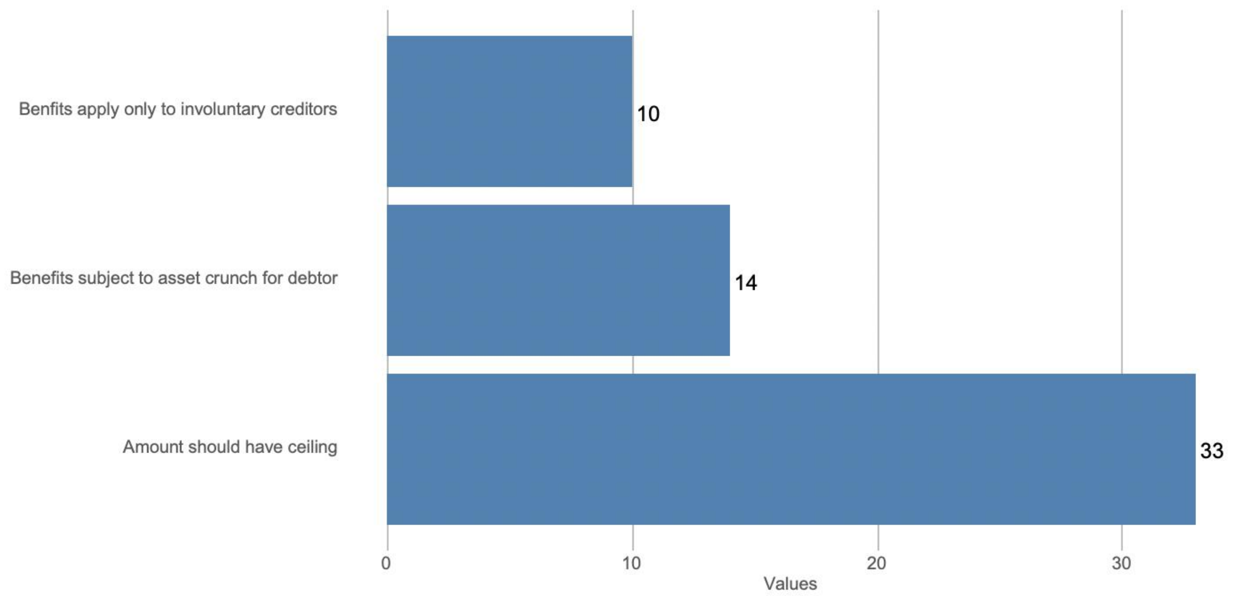


Figure 44 - Do you agree that the priority status of unpaid taxes and other public contributions in the context of insolvency proceedings shall be abolished at EU level

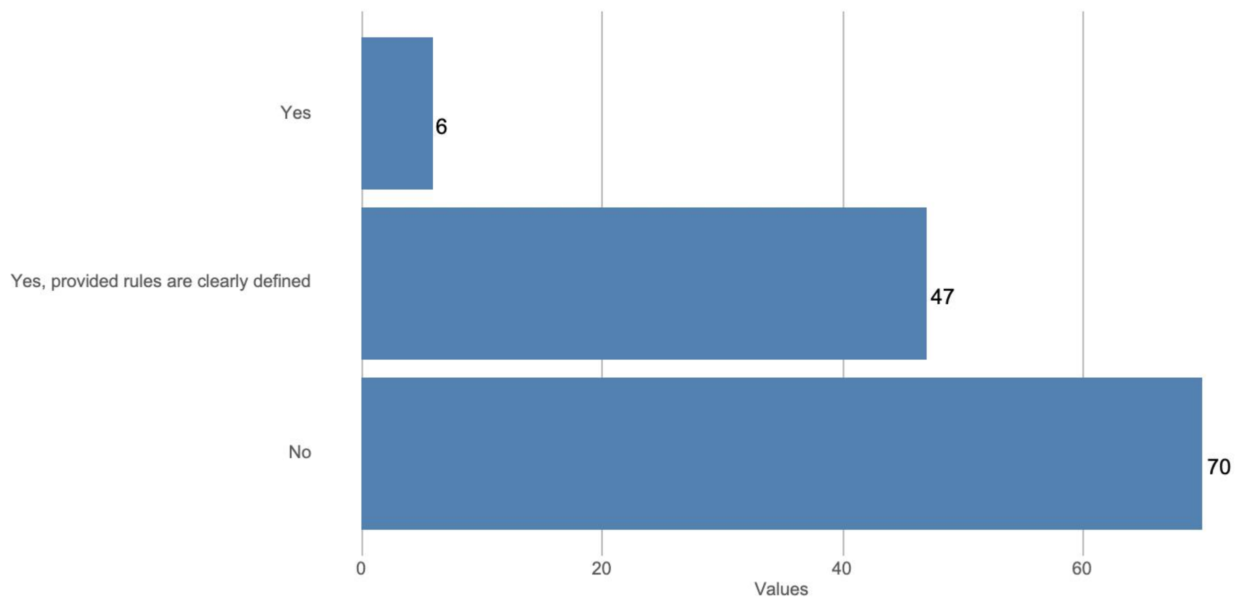


Figure 45 – Improvement of the position of the employees at the event of insolvency at EU level

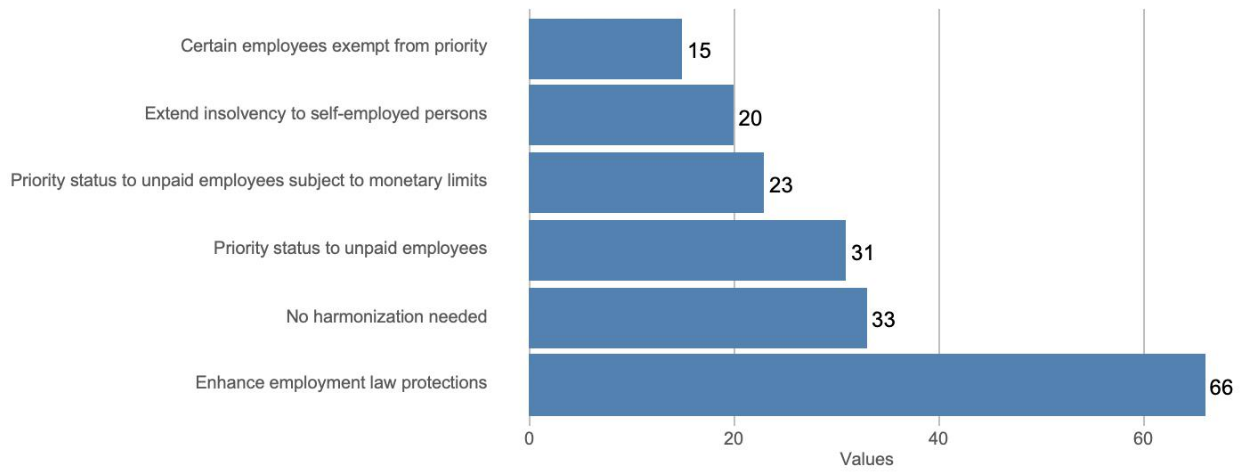


Figure 46 - Priority status of unpaid taxes and other public contributions in the context of insolvency proceedings shall be abolished at EU level

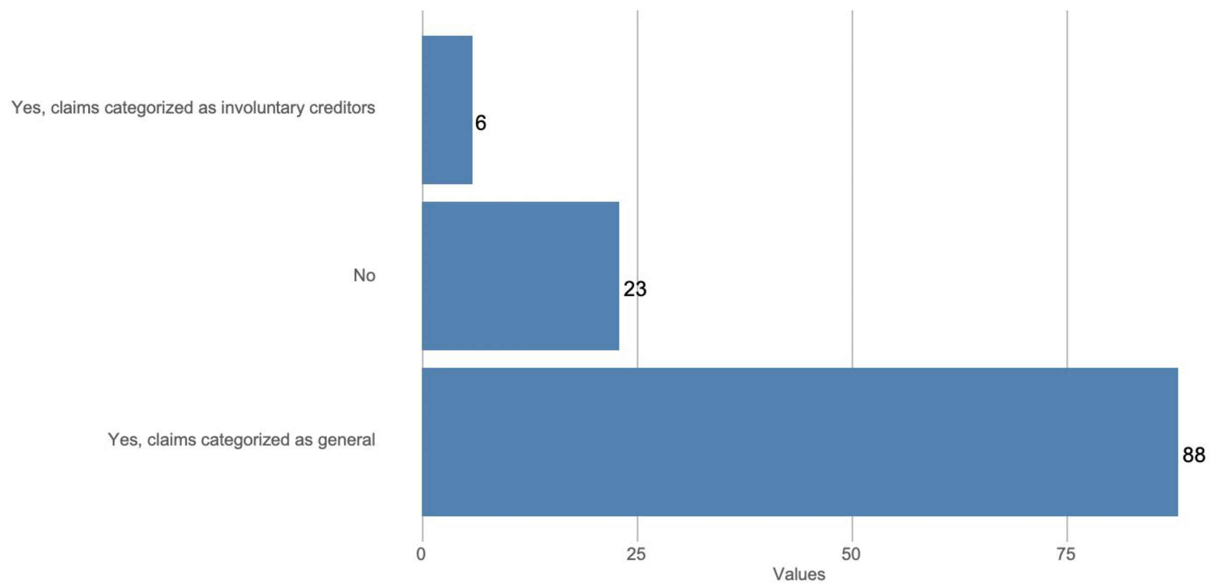


Figure 47 - Harmonized rules at EU level that subordinate claims arising out of shareholder loans to claims of other creditors (i.e. subordinate shareholder claims to debt claims)?

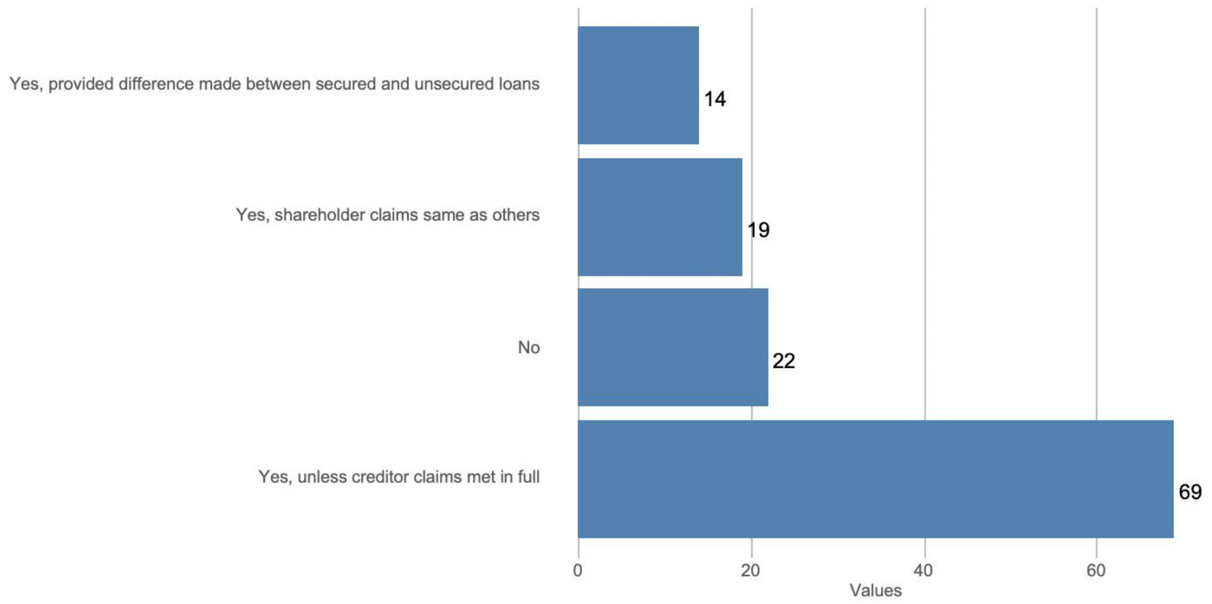


Figure 48 - If yes: should new finance rank above prior unsecured claims but below secured claims

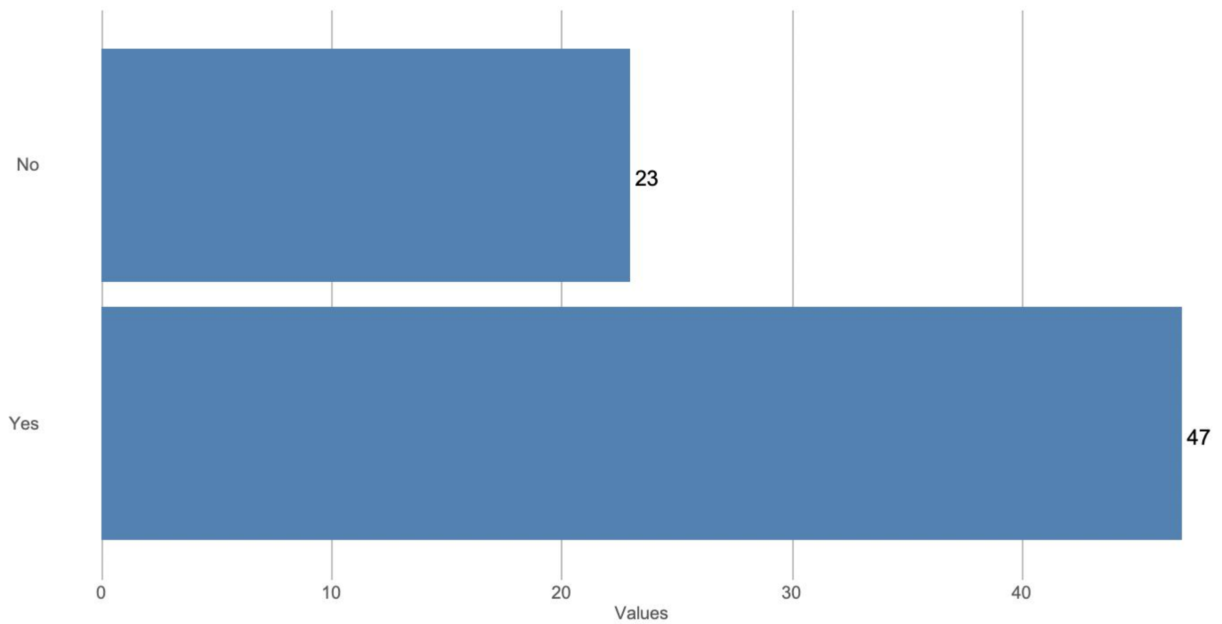


Figure 49 - Should there be rules at EU level protecting "new financing" with a view to promoting corporate restructuring in insolvency in addition to the rules in Directive 2019/1023 for pre-insolvency restructuring

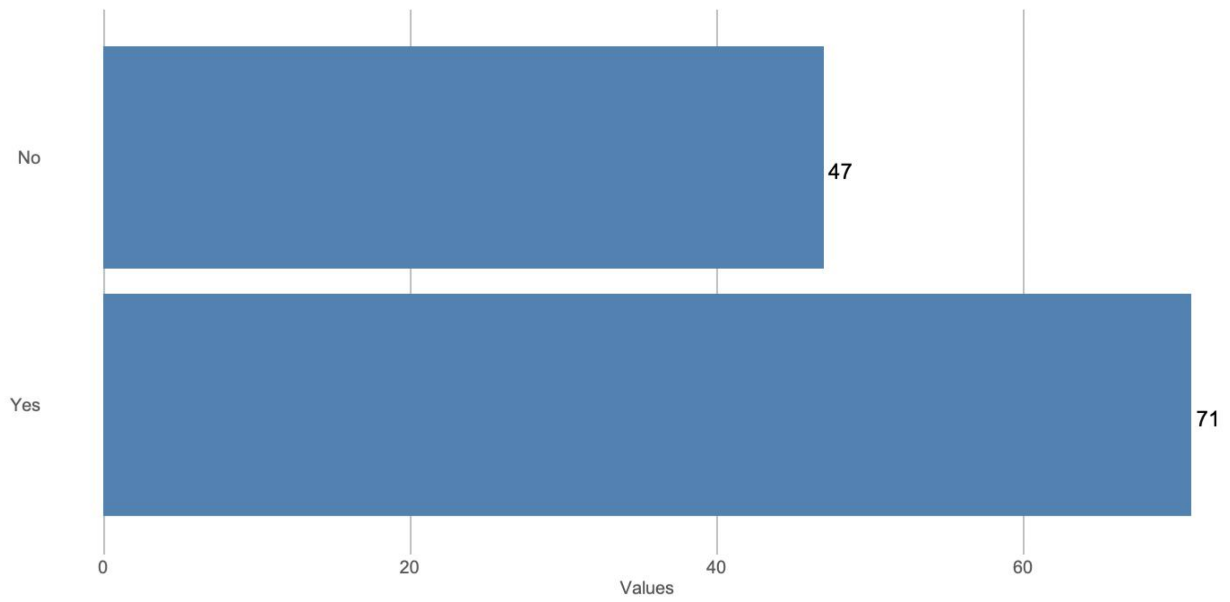


Figure 50 - Should the general priority rules determining the ranking of claims that apply in liquidation proceedings also apply in restructuring proceedings within insolvency

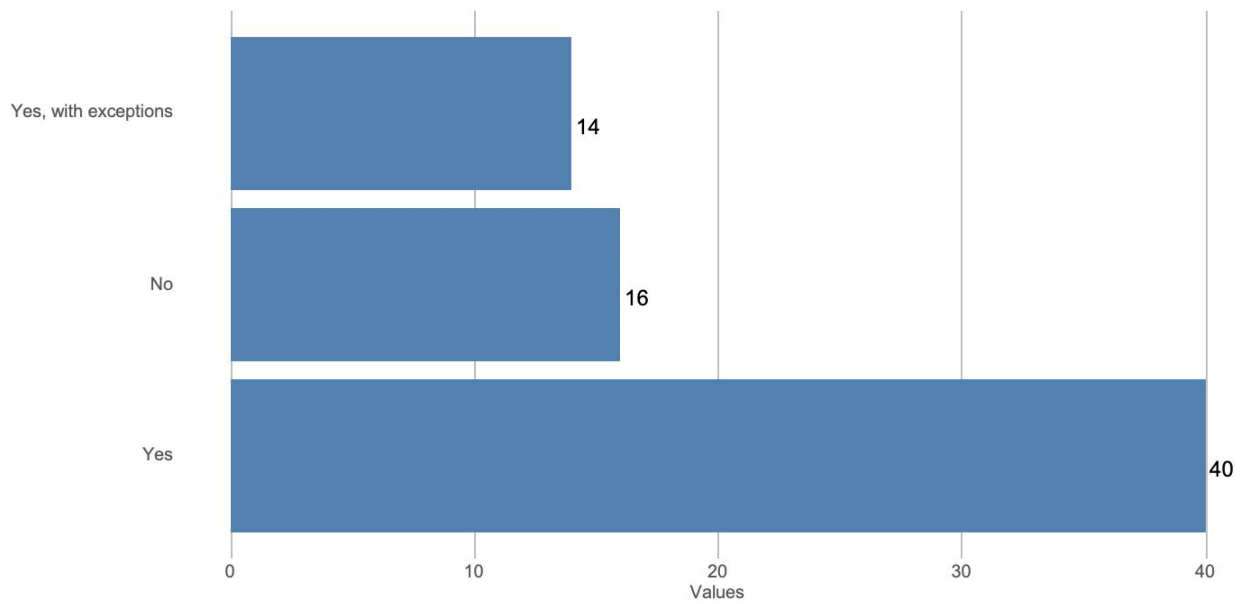


Figure 51 - Which kinds of transactions should be covered by the harmonised rules at EU level governing avoidance action

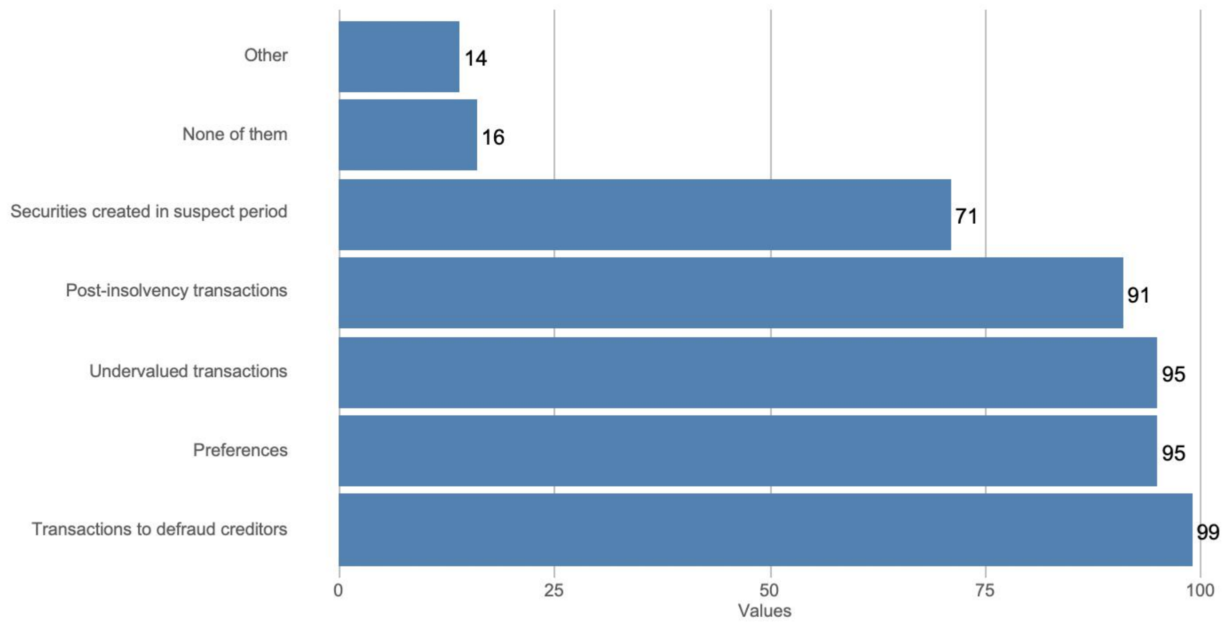


Figure 52 - The fact that the transaction was performed when the payment was not yet due have any effect on the EU rules on avoidance in insolvency proceedings

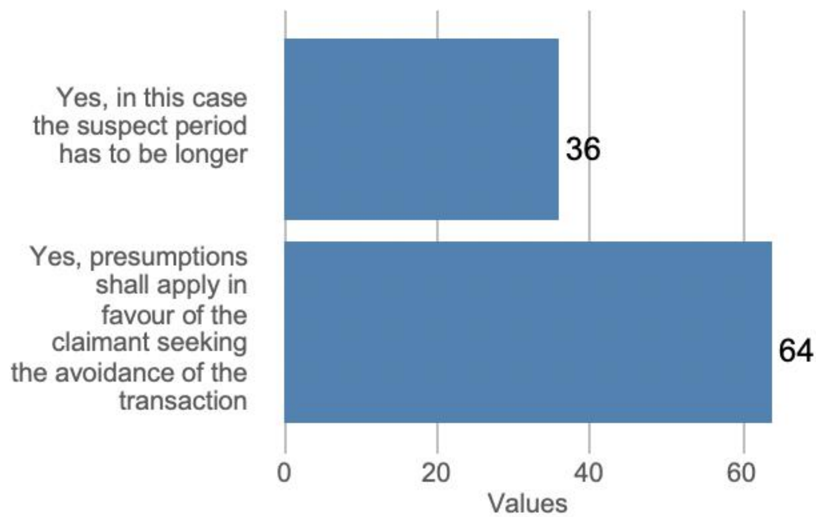


Figure 53 - The fact that the transaction was made outside of the normal course of commerce/business of the debtor have any effect on the EU rules on avoidance in insolvency proceedings

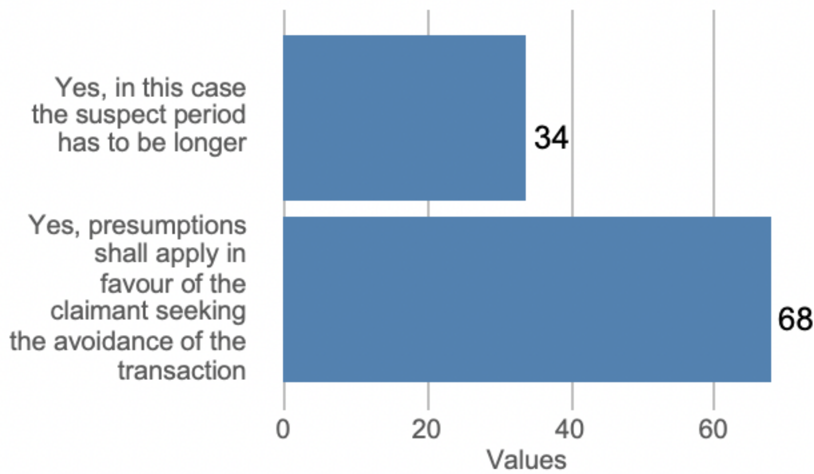


Figure 54 - The fact that the person who benefited from the transaction (the creditor or a third party) is connected (family members, group of companies) with the debtor have any effect on the EU rules on avoidance in insolvency proceedings

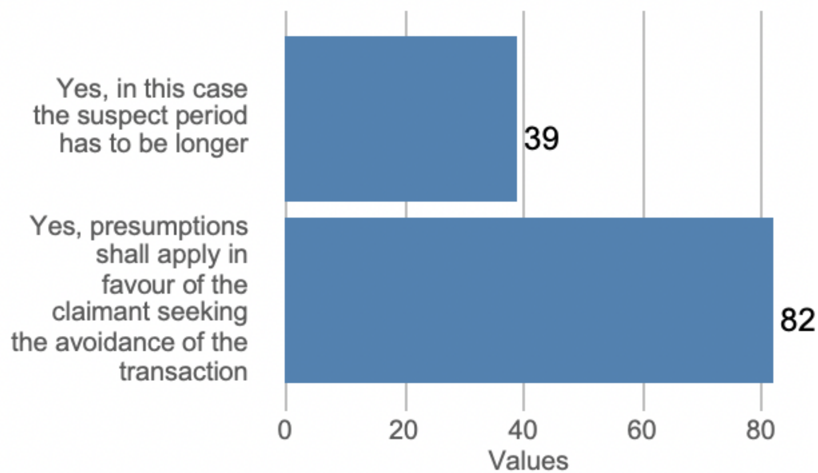


Figure 55 - Appropriate length of harmonized time-period(s) with regard to the various transaction types: general preferences

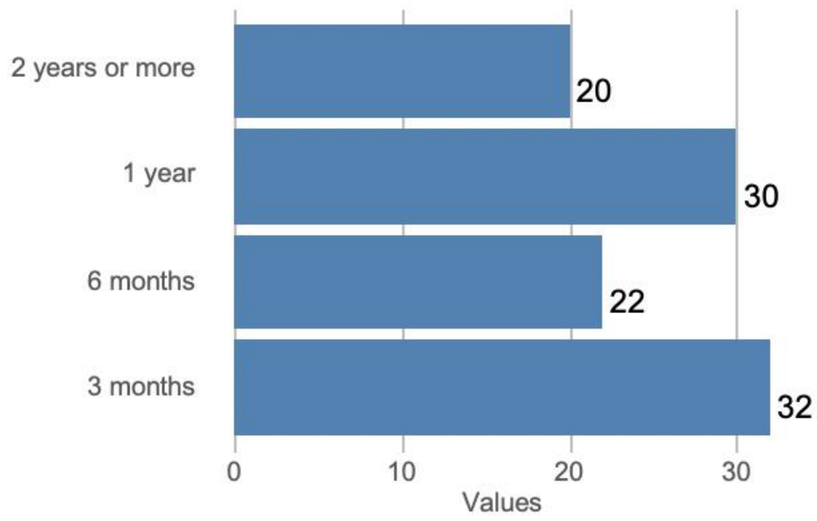


Figure 56 - Appropriate length of harmonized time-period(s) with regard to the various transaction types: where connected party involved

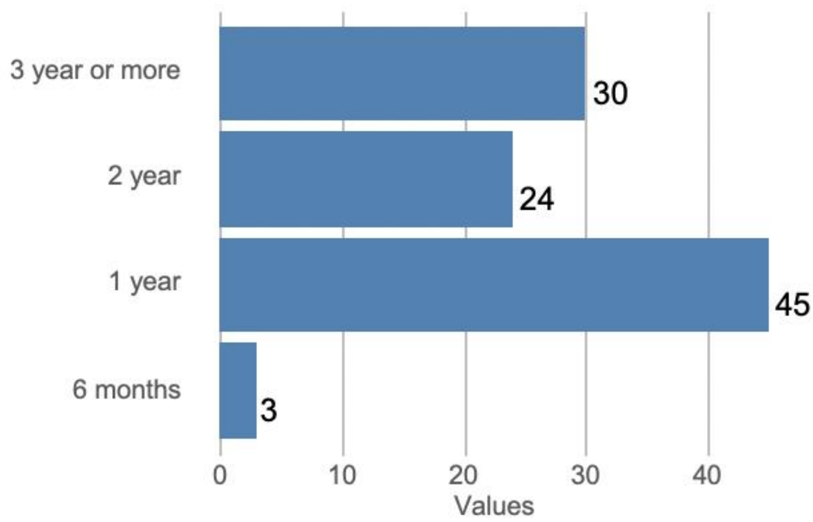


Figure 57 - Appropriate length of harmonized time-period(s) with regard to the various transaction types: undervalued transactions/ gifts - general

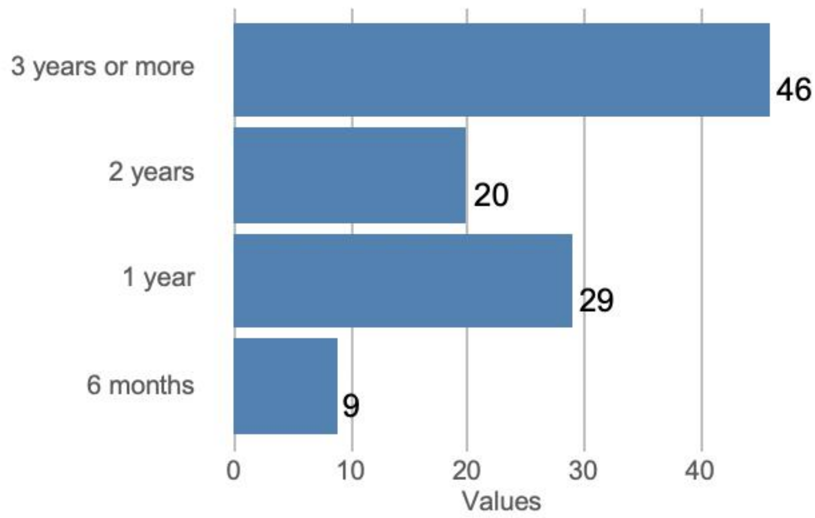


Figure 58 - Appropriate length of harmonized time-period(s) with regard to the various transaction types: undervalued transactions/ gifts - where connected party involved

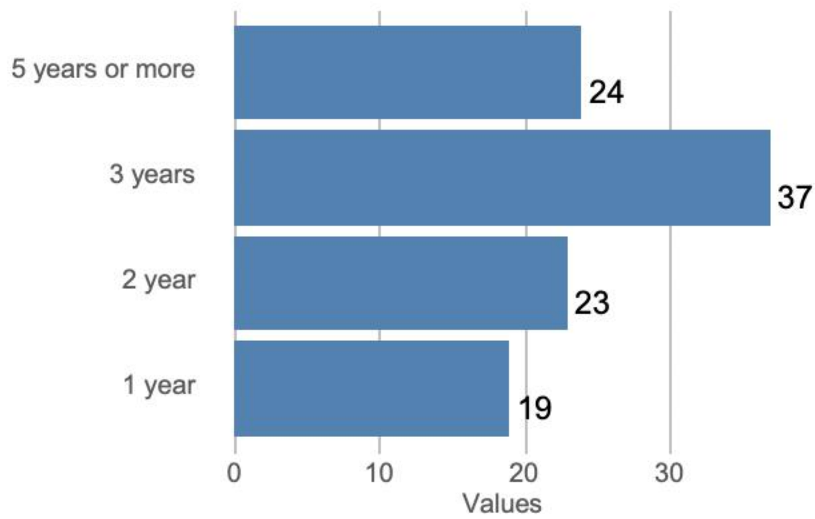


Figure 59 - Appropriate length of harmonized time-period(s) with regard to the various transaction types: transactions to defraud creditors - general

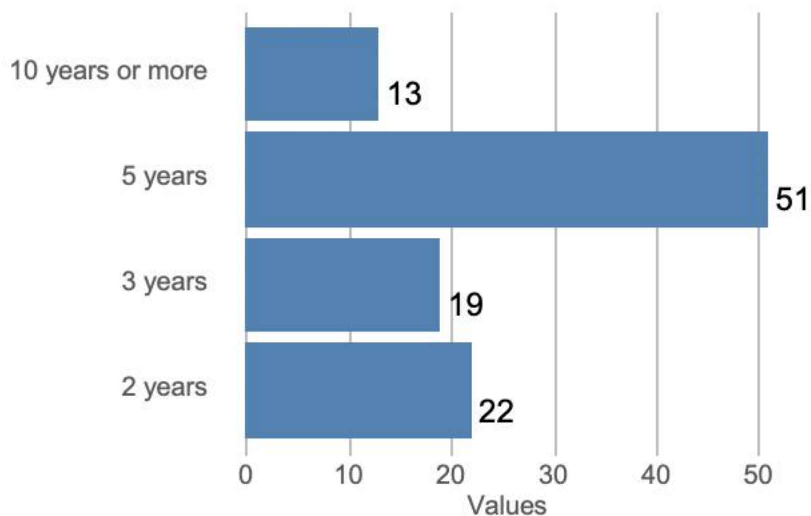


Figure 60 - Appropriate length of harmonized time-period(s) with regard to the various transaction types: transactions to defraud creditors - where connected party involved

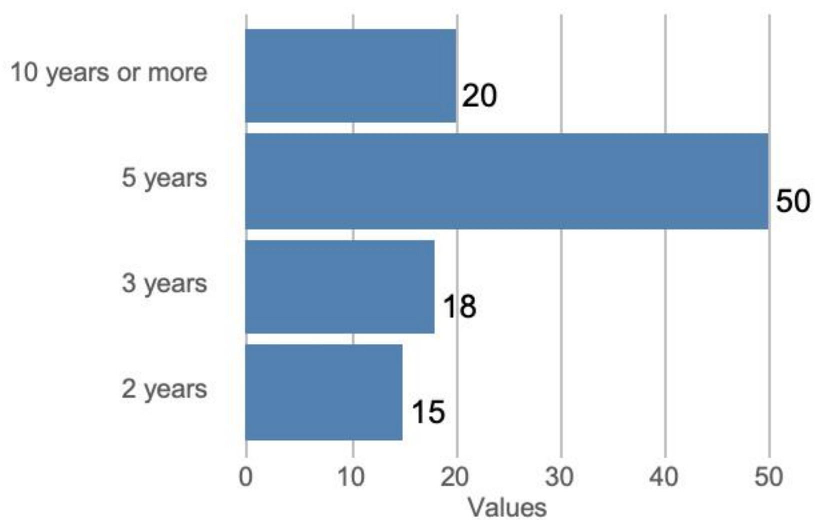


Figure 61 - Point in time from which the “suspect period” shall be counted from

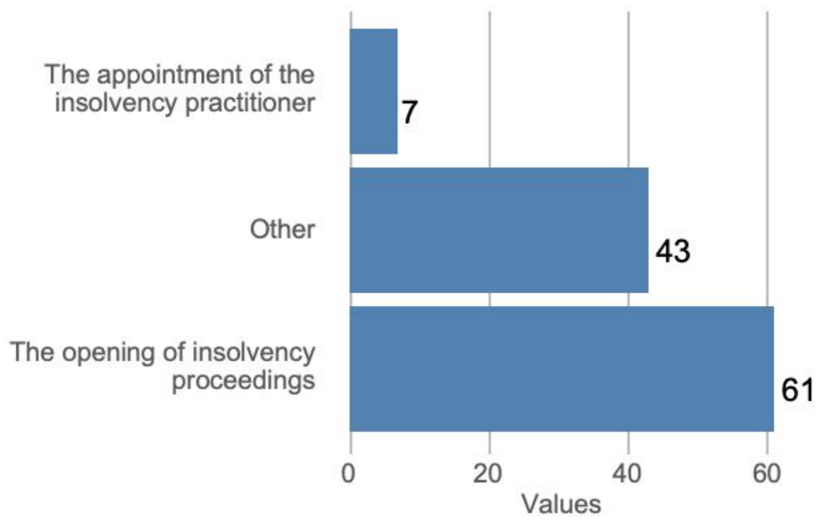


Figure 62 – The time-periods before the opening of insolvency proceedings in which a transaction must have been entered into for it to be avoidable (the “suspect period”) should be harmonized at EU level

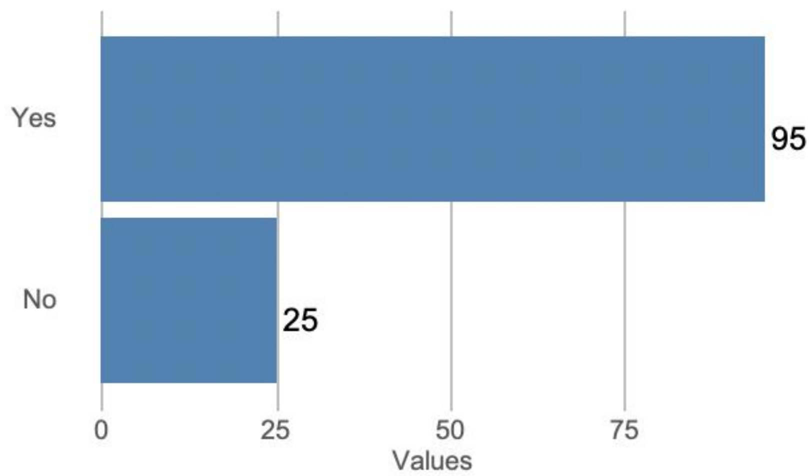


Figure 63 - Who should be entitled to take action in the courts in relation to the avoidance of transactions

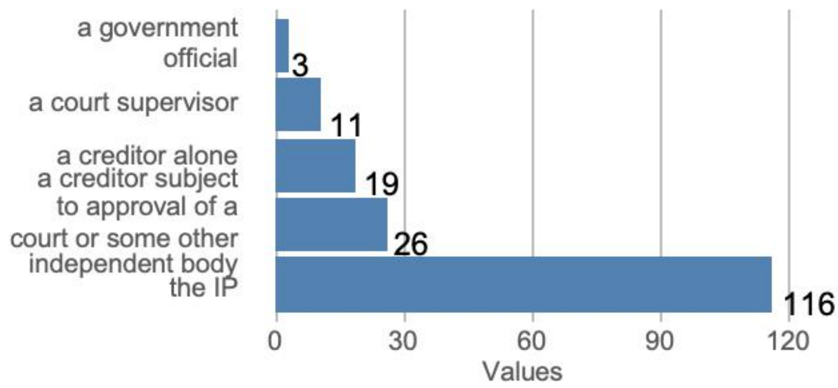


Figure 64 - There should be a harmonized limitation period as far as the institution of avoidance proceedings

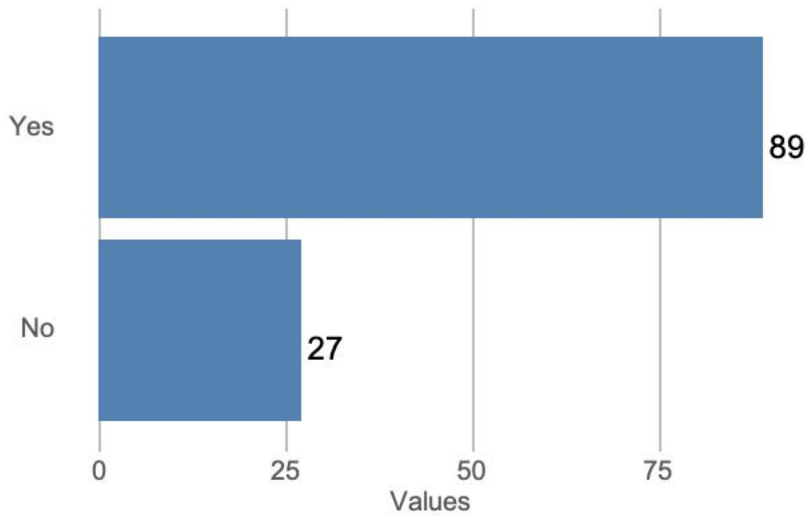


Figure 65 – The definition of insolvency should be based on value

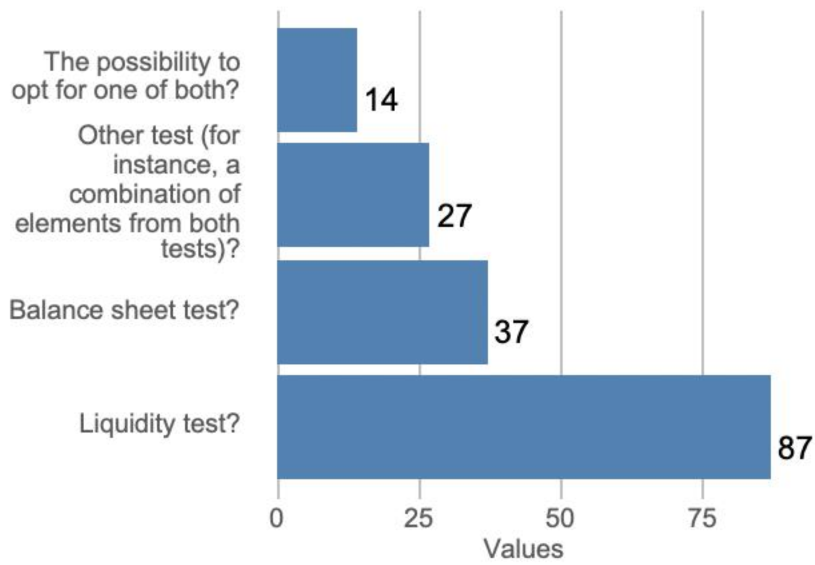


Figure 66 – There should be a harmonized definition of insolvency at EU level

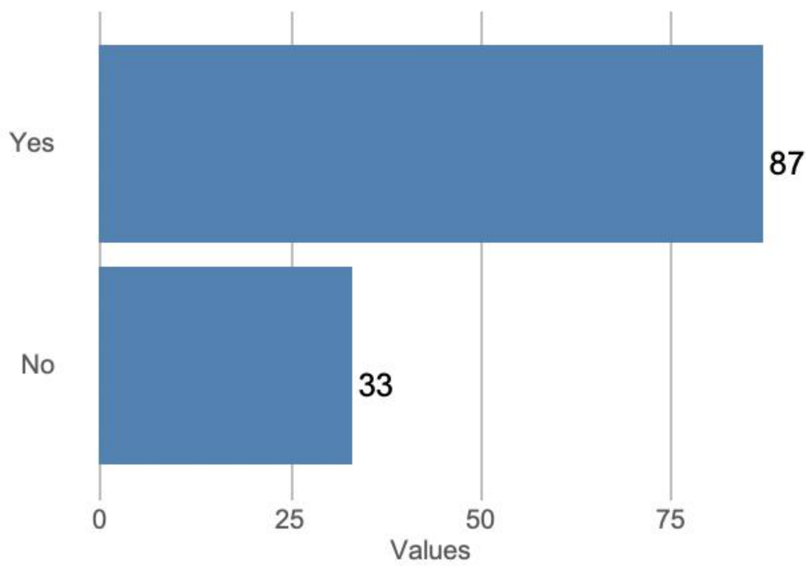


Figure 67 – Introduction of a rebuttable legal presumptions that would facilitate proving that a debtor is insolvent

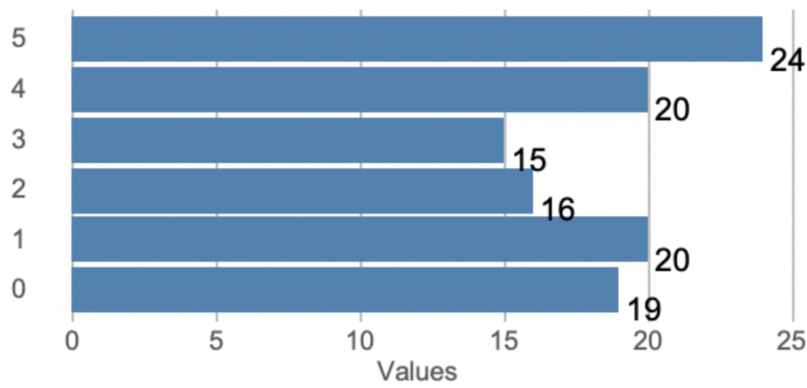


Figure 68 - There should be harmonised rules on how insolvency proceedings are opened

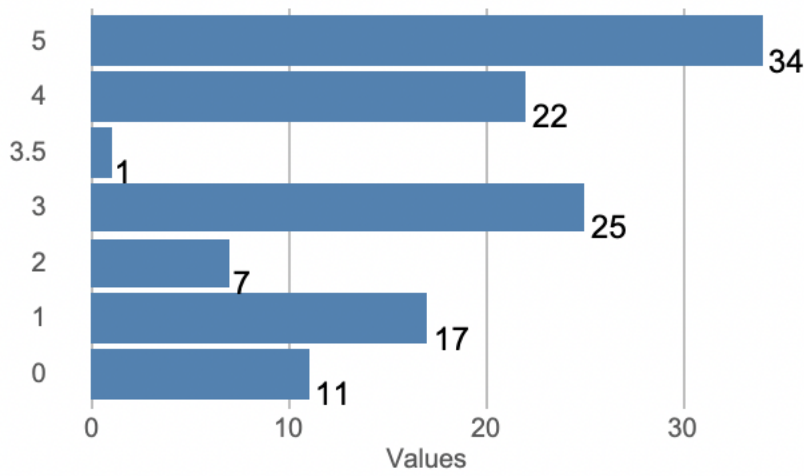


Figure 69 - There should be harmonised rules on how insolvency proceedings are opened

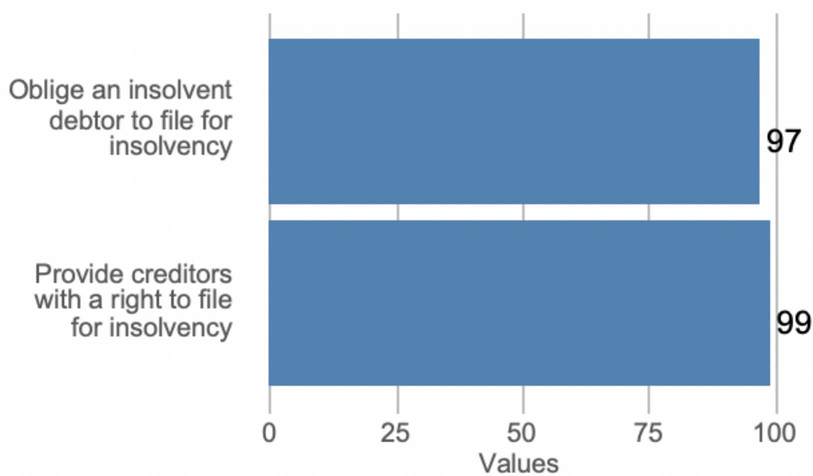


Figure 70 - National insolvency registers and the interconnectivity of national insolvency registers at EU are functioning properly

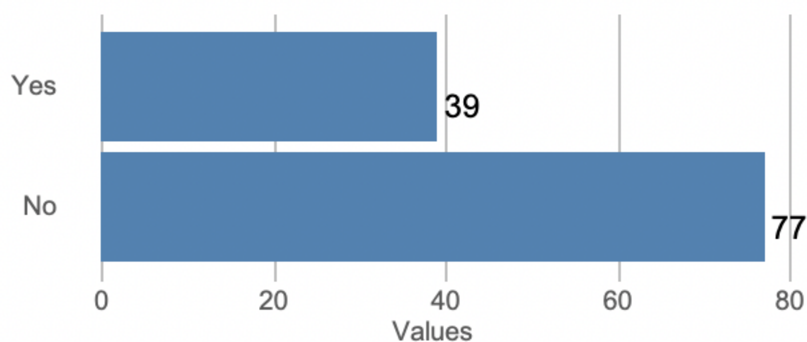


Figure 71 - Merit in harmonising national rules on the time-limits for creditors as regards the lodging of their claims

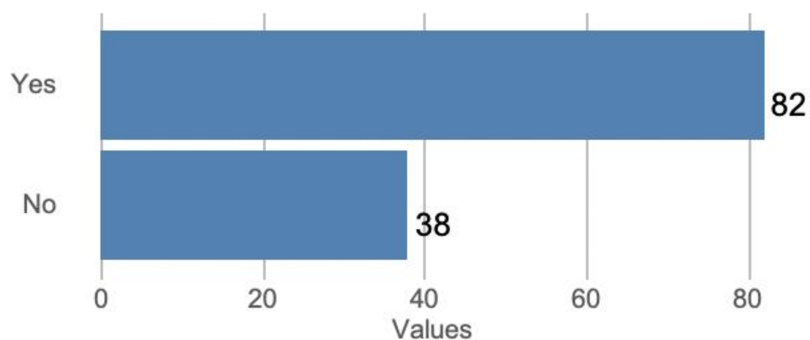


Figure 72 – Rules on minimum training requirements/professional qualifications for judges should be harmonised at the EU level

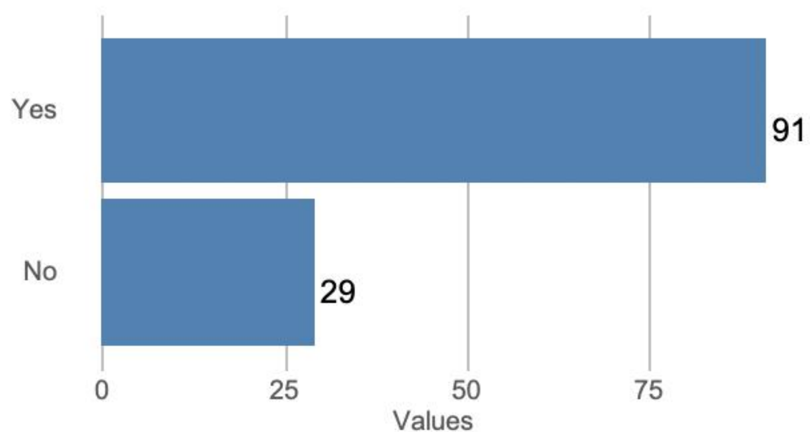


Figure 73 - Would it contribute to the efficiency of insolvency proceedings if Member States designated specialised chambers at the appropriate court instances for the handling of insolvency cases

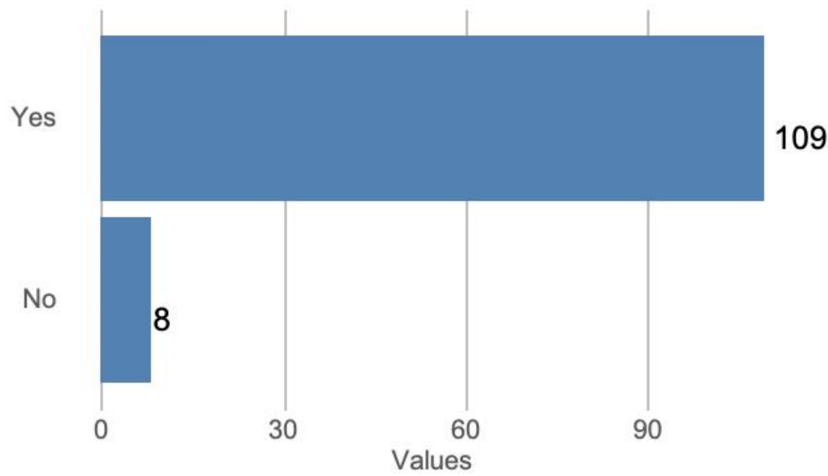


Figure 74 – Harmonization of the "ipso facto clauses" would enhance legal predictability and security for businesses

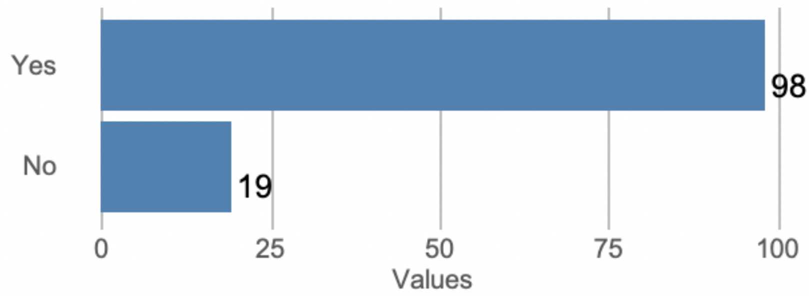


Figure 75 – There should be EU harmonised rules on assistance in the cross-border tracing of assets of the insolvent debtor

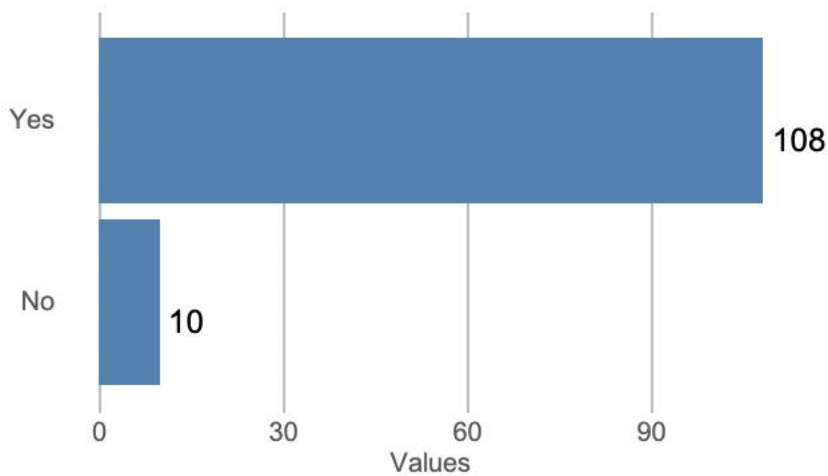


Figure 76 - Powers and duties that insolvency practitioners should have /observe in order to trace, secure and recover assets

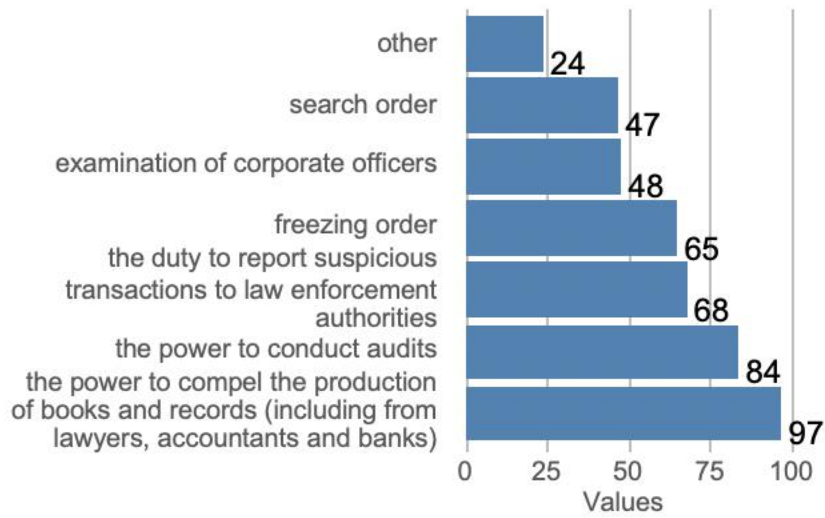


Figure 77 - Insolvency practitioners should have full access to property and collateral database

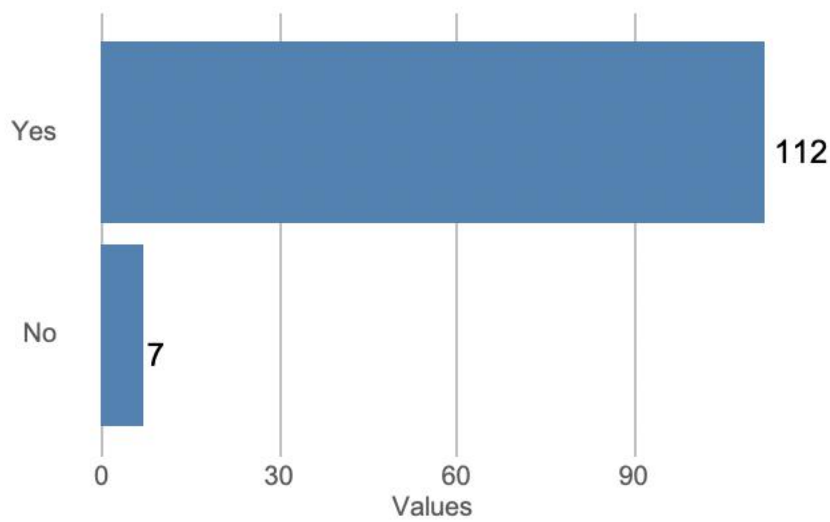
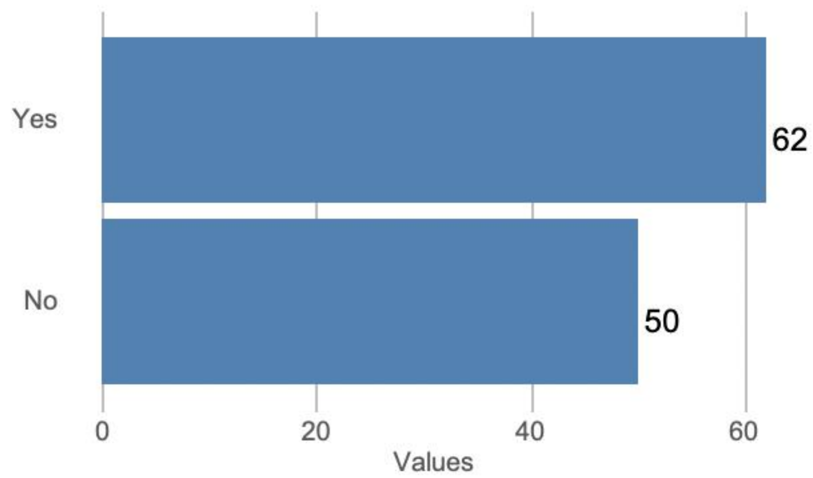


Figure 78 - The insolvency practitioner (and other interested parties) should be allowed to participate at an early stage of criminal investigation, in order to obtain an easier and wider access to evidence



Annex G | List of Sources

The list of sources used for the report is outlined below.

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Annex H | List of acronyms and key terms

The following list contains the list of acronyms and key terms present throughout the Final Report.

Table 14 - List of acronyms and key terms

Acronyms	Meaning of acronym and / or description of term
AFME	Association for Financial Market in Europea
BCA	Business Continuity Act
BORIS	Beneficial Ownership Registers Interconnection System
BRIS	Business Register Interconnection System
COMI	Centre of Main Interests
CMU	Capital Market Union
EAPO	European Preservation Order Procedure
EBA	European Banking Authority
EBRD	European Bank of Reconstruction and Development
EIR	European Insolvency Regulation
EU	European Union
EC	European Commission
ERD	European Restructuring Directive
DG Just	Directorate-General for Justice and Consumers
IP	Insolvency Practitioner
IRI	Insolvency Register Interconnection
ISI	Inactivated Security Interest
MLCBI	Model Law on Cross-Border Insolvency
MSEs	Micro and Small Medium Enterprises
PEC	Certified Email
SME	Small & Medium Enterprise
TFEU	Treaty on the Functioning of the European Union
ToR	Terms of Reference
IP	Insolvent Practitioners

Annex I | Equations of the economic model

Table 15 - Equations

Total	Count	Including Array Elements
Variables	78	78
Modules	1	
Stocks	8	8
Flows	12	12
Converters	58	58
Constants	19	19
Equations	51	51
Graphicals	1	1

VARIABLE	**Equation**	**Initial Properties**
Amount_of_debt_fully_recovered(t)	Amount_of_debt_fully_recovered(t - dt) + (Effective_proceeding_rate - Recovering_debt_situation - Liquidating) * dt	INIT Amount_of_debt_fully_recovered = 0,3*10^9
Amount_of_debt_Liquidated(t)	Amount_of_debt_Liquidated(t - dt) + (Liquidating) * dt	INIT Amount_of_debt_Liquidated = 0,2*10^9
Amount_of_debt_not_recovered(t)	Amount_of_debt_not_recovered(t - dt) + (Debt_not_recovered) * dt	INIT Amount_of_debt_not_recovered = 0,7*10^9
"Amount_of_investments_with_debt-to-equity_ratio_<=_2"(t)	"Amount_of_investments_with_debt-to-equity_ratio_<=_2"(t - dt) + ("EU_Cross-border_Investments" - Business_ending - Flow_1) * dt	INIT "Amount_of_investments_with_deb

		t-to-equity_ratio_<=_2" = 320*10^9
Insolvency_judicial_costs(t)	Insolvency_judicial_costs(t - dt) + (Proceedings_costs) * dt	INIT Insolvency_judicial_costs = 0
Investments_recovered(t)	Investments_recovered(t - dt) + (Recovering_debt_situation - Business_ending_1 - Flow_2) * dt	INIT Investments_recovered = 0,3*10^9
Investments_undergoing_insolvency_procedures(t)	Investments_undergoing_insolvency_procedures(t - dt) + (Flow_1 + Flow_2 - Effective_proceeding_rate - Debt_not_recovered) * dt	INIT Investments_undergoing_insolvency_procedures = 1*10^9
"New_cross-border_intra-EU_investment"(t)	"New_cross-border_intra-EU_investment"(t - dt) + (Investments_growth_fraction - Investing_in_new_or_existing_businesses) * dt	INIT "New_cross-border_intra-EU_investment" = 100*10^9
Business_ending	"Amount_of_investments_with_debt-to-equity_ratio_<=_2"/Avg_business_lifetime	OUTFLOW PRIORITY: 1
Business_ending_1	Investments_recovered/Avg_business_lifetime	OUTFLOW PRIORITY: 1
Debt_not_recovered	(Investments_undergoing_insolvency_procedures*(1-Expected_Recovery_Rate))/Time_to_close_insolvency_procedures	OUTFLOW PRIORITY: 2
Effective_proceeding_rate	Investments_undergoing_insolvency_procedures*Expected_Recovery_Rate/Time_to_close_insolvency_procedures	OUTFLOW PRIORITY: 1
"EU_Cross-border_Investments"	Investing_in_new_or_existing_businesses	

Flow_1	"Amount_of_investments_with_debt-to-equity_ratio_<=_2"*Percentage_of_investments_becoming_insolvent	OUTFLOW PRIORITY: 2
Flow_2	Investments_recovered*Percentage_of_recovered_investments_becoming_insolvent	OUTFLOW PRIORITY: 2
Investing_in_new_or_existing_businesses	"New_cross-border_intra-EU_investment"	
Investments_growth_fraction	Max_volume_of_Investments_in_EU*Investor_confidence/Standard_time_to_invest	
Liquidating	Amount_of_debt_fully_recovered*(Average_debt_liquidated/100)	OUTFLOW PRIORITY: 2
Proceedings_costs	(Debt_not_recovered+Effective_proceeding_rate)*Judicial_costs_per_debt	
Recovering_debt_situation	Amount_of_debt_fully_recovered*(1-(Average_debt_liquidated/100))	OUTFLOW PRIORITY: 1
"Average_costs_vs_notional_debt_(%)"	3,5	
Average_debt_liquidated	10	
Average_Recovery_rate_EU27	38,94	
Avg_business_lifetime	50	
Expected_Recovery_Rate	(Average_Recovery_rate_EU27/100)	
Insolvency_Framework_Inefficiency	(Investments_undergoing_insolvency_procedures+Amount_of_debt_not_recovered)/Total_business	
Insolvency_rate_for_50%_Investor_confidence	55	
Investor_confidence	GRAPH(Insolvency_Framework_Inefficiency/(Insolvency_rate_for_50%_Investor_confidence/100)) Points: (0,000, 0,976), (0,250, 0,900), (0,500, 0,787), (0,750, 0,659), (1,000, 0,500), (1,250, 0,360), (1,500, 0,285), (1,750, 0,114), (2,000, 0,000)	
Judicial_costs_per_debt	("Average_costs_vs_notional_debt_(%)"/100)-Module_1."Total_effect_on_cost_(%)"	
Max_volume_of_Investments_in_EU	300*10^9	
Percentage_of_investments_becoming_insolvent	0,5	

Percentage_of_recovered_investments_becoming_insolvent	0,01	
Standard_time_to_close_insolvency	3,3	
Standard_time_to_invest	1	
Time_to_close_insolvency_procedures	Standard_time_to_close_insolvency-Module_1."Total_effect_on_time_(%)"	
Total_business	Investments_undergoing_insolvency_procedures+"Amount_of_investments_with_debt-to-equity_ratio_<=_2"+Amount_of_debt_not_recovered+Amount_of_debt_fully_recovered+Amount_of_debt_Liquidated+Investments_recovered	
Converter_cost_Creditors'_committee	IF Creditors'_committee = 1 THEN 0 ELSE 0	
Converter_cost_Directors'_duties_and_liability_in_the_vicinity_of_the_insolvency	IF Directors'_duties_and_liability_in_the_vicinity_of_the_insolvency = 1 THEN (0,44/100) ELSE 0	
"Converter_cost_Pre-pack_sales"	IF"Pre-pack_sales" = 1 THEN (0,63/100) ELSE 0	
Converter_cost_Preferences_to_certain_types_of_unsecured_creditors	IF Preferences_to_certain_types_of_unsecured_creditors = 1 THEN 0 ELSE 0	
Converter_cost_Ranking_of_claims	IF Ranking_of_claims = 1 THEN (0,17/100) ELSE 0	
"Converter_cost_Role_and_powers_of_insolvency_practitioners_in_asset_tracing_and_recovery,_including_asset_to_registers"	IF "Role_and_powers_of_insolvency_practitioners_in_asset_tracing_and_recovery,_including_asset_to_registers" = 1 THEN (0,6/100) ELSE 0	
Converter_cost_Role_of_the_courts_and_regulating_insolvency_practitioners'_professional_conditions	IF Role_of_the_courts_and_regulating_insolvency_practitioners'_professional_conditions = 1 THEN (0,51/100) ELSE 0	
Converter_cost_Specificities_of_micro_and_small_enterprises	IF Specificities_of_micro_and_small_enterprises = 1 THEN (0,58/100) ELSE 0	
Converter_cost_Transaction_avoidance	IF Transaction_avoidance = 1 THEN (0,48/100) ELSE 0	
Converter_effect_Creditors'_committee	IF Creditors'_committee = 1 THEN (2,16/100) ELSE 0	
Converter_effect_Directors'_duties_and_liability_in_the_vicinity_of_the_insolvency	IF Directors'_duties_and_liability_in_the_vicinity_of_the_insolvency = 1 THEN (6,44/100) ELSE 0	

"Converter_effect_Pre-pack_sales"	IF"Pre-pack_sales" = 1 THEN (4,77/100) ELSE 0	
Converter_effect_Preferences_to_certain_types_of_unsecured_creditors	IF Preferences_to_certain_types_of_unsecured_creditors = 1 THEN 0 ELSE 0	
Converter_effect_Ranking_of_claims	IF Ranking_of_claims = 1 THEN (3,73/100) ELSE 0	
"Converter_effect_Role_and_powers_of_insolvency_practitioners_in_asset_tracing_and_recovery,_including_asset_to_registers"	IF "Role_and_powers_of_insolvency_practitioners_in_asset_tracing_and_recovery,_including_asset_to_registers" = 1 THEN (8,22/100) ELSE 0	
Converter_effect_Role_of_the_courts_and_regulating_insolvency_practitioners'_professional_conditions	IF Role_of_the_courts_and_regulating_insolvency_practitioners'_professional_conditions = 1 THEN (6,46/100) ELSE 0	
Converter_effect_Specificities_of_micro_and_small_enterprises	IF Specificities_of_micro_and_small_enterprises = 1 THEN (3,31/100) ELSE 0	
Converter_effect_Transaction_avoidance	IF Transaction_avoidance = 1 THEN (5,99/100) ELSE 0	
Converter_time_Creditors'_committee	IF Creditors'_committee = 1 THEN 0,06 ELSE 0	
Converter_time_Directors'_duties_and_liability_in_the_vicinity_of_the_insolvency	IF Directors'_duties_and_liability_in_the_vicinity_of_the_insolvency = 1 THEN 0,31 ELSE 0	
"Converter_time_Pre-pack_sales"	IF"Pre-pack_sales" = 1 THEN 0,69 ELSE 0	
Converter_time_Preferences_to_certain_types_of_unsecured_creditors	IF Preferences_to_certain_types_of_unsecured_creditors = 1 THEN 0 ELSE 0	
Converter_time_Ranking_of_claims	IF Ranking_of_claims = 1 THEN 0,14 ELSE 0	
"Converter_time_Role_and_powers_of_insolvency_practitioners_in_asset_tracing_and_recovery,_including_asset_to_registers"	IF "Role_and_powers_of_insolvency_practitioners_in_asset_tracing_and_recovery,_including_asset_to_registers" = 1 THEN 0,52 ELSE 0	
Converter_time_Role_of_the_courts_and_regulating_insolvency_practitioners'_professional_conditions	IF Role_of_the_courts_and_regulating_insolvency_practitioners'_professional_conditions = 1 THEN 0,52 ELSE 0	

Converter_time_Specificities_of_micro_and_small_enterprises	IF Specificities_of_micro_and_small_enterprises = 1 THEN 0,44 ELSE 0	
Converter_time_Transaction_avoidance	IF Transaction_avoidance = 1 THEN 0,33 ELSE 0	
Creditors'_committee	0	
Directors'_duties_and_liability_in_the_vicinity_of_the_insolvency	0	
"Pre-pack_sales"	0	
Preferences_to_certain_types_of_unsecured_creditors	0	
Ranking_of_claims	0	
"Role_and_powers_of_insolvency_practitioners_in_asset_tracing_and_recovery,_including_asset_to_registers"	0	
Role_of_the_courts_and_regulating_insolvency_practitioners'_professional_conditions	0	
Specificities_of_micro_and_small_enterprises	0	
"Total_effect_on_cost_(%)"	"Converter_cost_Role_and_powers_of_insolvency_practitioners_in_asset_tracing_and_recovery,_including_asset_to_registers"+Converter_cost_Preferences_to_certain_types_of_unsecured_creditors+Converter_cost_Role_of_the_courts_and_regulating_insolvency_practitioners'_professional_conditions+Converter_cost_Directors'_duties_and_liability_in_the_vicinity_of_the_insolvency+Converter_cost_Ranking_of_claims+Converter_cost_Creditors'_committee+Converter_cost_Specificities_of_micro_and_small_enterprises+Converter_cost_Transaction_avoidance+"Converter_cost_Pre-pack_sales"	
"Total_effect_on_effectiveness_(%)"	Converter_effect_Specificities_of_micro_and_small_enterprises+"Converter_effect_Role_and_powers_of_insolvency_practitioners_in_asset_tracing_and_recovery,_including_asset_to_registers"+Converter_effect_Role_of_the_courts_and_regulating_insolvency_practitioners'_professional_conditions+Converter_effect_Directors'_duties_and_liability_in_the_vicinity_of_the_insolvency+Converter_effect_Preferences_to_certain_types_of_unsecured_creditors+Converter_effect_Transaction_avoidance+Converter_effect_Ranking_of_claims+Converter_effect_Creditors'_committee+"Converter_effect_Pre-pack_sales"	
"Total_effect_on_time_(%)"	Converter_time_Role_of_the_courts_and_regulating_insolvency_practitioners'_professional_conditions+Converter_time_Directors'_duties_and_liability_in_the_vicinity_of_the_insolvency+Converter_time_Ranking_of_claims+"Converte	

	r_time_Role_and_powers_of_insolvency_practitioners_in_asset_tracing_and_recovery,_including_asset_to_registers"+Converter_time_Preferences_to_certain_types_of_unsecured_creditors+Converter_time_Creditors'_committee+Converter_time_Specificities_of_micro_and_small_enterprises+Converter_time_Transaction_avoidance+"Converter_time_Pre-pack_sales"	
Transaction_avoidance	0	