COMPARATIVE ANALYSIS OF THE INDICATORS USED IN INSOLVENCY PROCEDURES AT EUROPEAN UNION LEVEL

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Abstract: *The present paper analyzes the following indicators used in insolvency procedures at EU level: period of time in which the insolvency procedure takes place, the share of cost in total assets in insolvency, recovery rate of creditor claims. These indicators are analyzed for the period 2009-2013. At EU level we found that the time to solve an insolvency case maintains constant, except for the Czech Republic where a reduction by half is registered. The share of cost of an insolvency procedure in total assets is maintained constant, an exception being Austria where it is reduced almost half. The recovery rate of creditor claims in EU is highest in Finland 90.2%, Netherlands 89.2%, Belgium 89%, England 88.6%, and Romania ranking last with 30%.*

Key words: *insolvency, indicators used in insolvency procedures, recovery rate of creditor claims*

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INTRODUCTION

In international trade law, the terms insolvency and bankruptcy are considered and used as being equivalents and define, where appropriate, both the debtor's incapacity to pay, and the collective procedure conducted under judicial control, which through the reorganization or liquidation of the debtor's property intends to cover the claims of the creditors (Comșa, Marcela, 2011, pp. 11).

The insolvency procedure is relatively new for Romania as opposed to the economies of other countries, for which bankruptcy enactment was achieved hundreds of years before us, but also in this context the numerous modifications of the law on insolvency procedure have led to the emergence of some legislative niches that undermine the creditor in this stage of insolvency.

We share the opinion of some authors (Bufan, R., Folea, F. 2007, pp. 146), expressed categorically, that the balance between the interests of the creditors and the debtor, the balance should tilt in favor of creditors. To support this opinion we can say that the status of a functioning market economy requires the removal of nonviable companies from the system, because some debtors are kept "alive" artificially though state aids and other such practices prohibited in the European Union. A severe and effective approach of the bankruptcy procedure, in the sense of declaring bankruptcy in all cases where required, would lead to an improvement in the education of traders, regarding the compliance with the undertaken obligations.

MATERIAL AND METHODS

In this article we used the comparison method by studying the evolution in time of some indicators of the 27 EU countries. We have also made some comparisons between different EU countries regarding the level of these indicators.

To analyze the effectiveness of insolvency within the European Union we will measure the time for resolution, the cost of the procedure and the recovery rate of creditor claims.

RESULTS AND DISCUSSION

A first indicator examined is the **period of time in which an insolvency procedure is conducted in EU**. This indicator measures the period allocated for the resolution of an insolvency procedure, starting from the date of opening the insolvency procedure (submission in court) until the closing of the procedure and the deregistration of the company.

Table no. 1. *Evolution of the time period relevant for conducting an insolvency procedure in EU*

Country/period of analysis	2009	2010	2011	2012	2013
Austria	1,1	1,1	1,1	1,1	1,1
Belgium	0,9	0,9	0,9	0,9	0,9
Bulgaria	3,3	3,3	3,3	3,3	3,3
Cyprus	1,5	1,5	1,5	1,5	1,5
Czech republic	***6,5***	3,2	3,2	3,2	***2,1***
Denmark	***3***	1,1	1	1	***1***
England	1	1	1	1	1
Estonia	*1,2*	3	3	3	*3*
Finland	0,9	0,9	0,9	0,9	0,9
France	1,9	1,9	1,9	1,9	1,9
Germany	1,1	1,2	1,2	1,2	1,2
Greece	***2***	2	2	2	***3,5***
Hungary	2	2	2	2	2
Ireland	0,4	0,4	0,4	0,4	0,4
Italy	1,8	1,8	1,8	1,8	1,8
Latvia	**3**	3	3	3	**1,5**
Lithuania	1,5	1,5	1,5	1,5	1,9
Luxemburg	2	2	2	2	2
Malta	n.a.	n.a.	3	3	3
Netherlands	1,1	1,1	1,1	1,1	1,1
Poland	3	3	3	3	3
Portugal	2	2	2	2	2
România	3,3	3,3	3,3	3,3	3,3
Slovak republic	4	4	4	4	4
Slovenia	2	2	2	2	2
Spain	1	1	1,5	1,5	1,5
Sweden	2	2	2	2	2

(*Source:* Data processed according to reports „*Doing Business*" 2010-2014)
Where – n. a. – not available (no data available)

In 2013 it is observed from table 1 that the shortest periods related to an insolvency procedure are applied in Ireland, approximately 5 months, followed by Belgium and Finland with approximately 10 months.

The longest period in which an insolvency procedure is conducted is applied in former communist countries. First place, with the longest period allocated for the resolution of an insolvency procedure is Slovakia, respectively 4 years, followed by Greece, with a period of 3.5 years, and third place are Bulgaria and Romania.

By analyzing the period 2009-2013 is noted that at the level of the European Union some countries have reduced the period of resolving an insolvency procedure, such an example is Czech Republic, which in the last 5 years reduced the period from 6.5 years in 2009 to 2.1 years in 2013, this is due to the emergence of a new insolvency law according to which the preferred method of resolving insolvency is reorganization.

Latvia also registered a halving of the time allocated to the resolution of insolvencies, from 3 years to 1.5 years, and Denmark registered a decrease of the period of over 66% compared to the beginning of the period analyzed, from 3 years in 2009 to 1 year in 2013. Spain registered an increase of half a year of the period allocated to resolve an insolvency procedure, from 1 year to 1.5 years, and Greece from 2 years to 3.5 years. In developed countries, time periods remained constant throughout the five years analyzed.

Table no. 2. *Share of cost in total assets in insolvency in EU companies during 2009-2013*

Country/period of analysis	2009	2010	2011	2012	2013
Austria	**18**	18	18	10	**10**
Belgium	4	4	4	4	4
Bulgaria	9	9	9	9	9
Cyprus	15	15	15	15	15
Czech republic	15	17	17	17	17
Denmark	4	4	4	4	4
England	6	6	6	6	6
Estonia	9	9	9	9	9
Finland	4	4	4	4	4
France	9	9	9	9	9
Germany	8	8	8	8	8
Greece	9	9	9	9	9
Hungary	15	15	15	15	15
Ireland	9	9	9	9	9
Italy	22	22	22	22	22
Latvia	**13**	13	13	13	**10**
Lithuania	7	7	7	7	7
Luxemburg	15	15	15	15	15
Malta	n.a.	n.a.	n.a.	10	10
Netherlands	4	4	4	4	4
Poland	**20**	20	15	15	**15**
Portugal	9	9	9	9	9
România	11	11	11	11	11
Slovak republic	18	18	18	18	18
Slovenia	**8**	4	4	4	**4**
Spain	**15**	11	11	11	**11**
Sweden	9	9	9	9	9

(*Source:* Data processed according to reports *„Doing Business"* 2010-2014)
Where – n. a. – not available (no data available)

Another indicator used in the study of insolvency procedures in the European Union is the one regarding **the cost of procedures as a percentage of the value of the**

debtor's property, meaning the share of cost in total assets, presented in table 2. Cost includes legal expenses and government taxes, fees of insolvency and tender administrators, evaluators and attorneys, as well as any other fees and costs.

From the study presented in table 2 it is observed that in the European Union in 2013 the lowest cost of an insolvency procedure from total assets was achieved by countries such as Belgium, Denmark, Netherlands and Slovenia, respectively 4% of the value of the debtor's property.

At European Union level the highest cost of an insolvency procedure from total assets is achieved by Italy (22% of the debtor's assets), followed by Slovakia (18%), Czech Republic (17% of the debtor's assets), Hungary, Luxembourg and Cyprus with 15% of the debtor's assets. From this point of view we can say that Romania is doing quite well with a share of the cost of 11%, having a cost higher than Bulgaria only by 2 percent, country that entered the EU at the same as we did.

By comparing 2009 with 2013 we can observe that the share of the cost of an insolvency procedure in total assets reduced almost by half in Austria (from 18% in 2009 to 10 % in 2013). Poland registered a decrease of 5 percent and Latvia 3 percent, for the rest of the states of the European Union the percentages remained constant throughout the five year period.

We can say that the indicator cost of an insolvency procedure in total assets has a margin of relativity because it is expressed as a percentage of the value of assets subject to liquidation, in this procedure the conclusion being that in these countries where insolvency procedures are relatively expensive, the creditors are disadvantaged when they have amounts to recover from insolvency procedures.

Another important indicator for our study is the **recovery rate of creditor claims** in companies in the community that reflect the share in total creditor claims they manage to recover the amounts owed by debtors.

The recovery rate is registered in cents per dollar recovered by creditors through reorganization, liquidation or debt enforcement (foreclosure).

The recovery rate for creditors depends on whether the distressed company emerges from the proceedings as a going concern or its assets are sold piecemeal. The rate is recorded as cents on the dollar recouped by secured creditors through reorganization, liquidation or debt collection (foreclosure or receivership) proceedings.

From table 3 it is observed that the recovery rate of creditor claims in the European Union in 2013 is the highest in Finland at 90.2 cents per dollar, Netherlands 89.2 cents per dollar, Belgium 89 cents per dollar, England 88.6 cents per dollar, and unfortunately Romania ranks last with a recovery rate of claims of only 30 cents per dollar.

By comparing the period 2009-2013, the recovery rate of creditor claims in companies of the European Union, we can observe an increase of this percentage in Austria from 71.5 cents per dollar to 82.4 cents per dollar, Czech Republic also registers a significant increase from 20.9 cents per dollar to 65 cents per dollar (an increase of over 300%), Germany from 52.2 cents per dollar to 82.9 cents per dollar (an increase of almost 60%), Italy from 56.6 cents per dollar to 62.7 cents per dollar, Latvia from 29 cents per dollar to 48.4 cents per dollar, and Poland from 29.8 cents per dollar to 54.8 cents per dollar.

Regarding Romania, we can also see a positive side, respectively an increase in the recovery rate of creditor claims from 28.5% per dollar in 2009 to 30 cents per dollar in 2013 (an increase of 5%), this is much better than in the case of Greece, which registered a decrease of this indicator by 23% (from 44.2 cents per dollar to 34 cents per dollar).

Table no. 3. *Recovery percentage of creditor claims in EU companies (cents per dollar)*

Country/period of analysis	2009	2010	2011	2012	2013
Austria	71,5	73,1	72,7	83,3	82,4
Belgium	86,3	87,6	87,3	88,7	89
Bulgaria	32,1	31	31,4	31,7	32,6
Cyprus	70,7	70,4	70,8	70,7	70,5
Czech republic	**20,9**	55,9	56	56,3	**65**
Denmark	86,5	89,4	87,3	87,1	87
England	84,2	88,6	88,6	88,6	88,6
Estonia	37,5	35,5	36,9	38,5	38,9
Finland	87,3	89,4	89,1	89,7	90,2
France	44,7	45,2	45,8	48,4	48,3
Germany	**52,2**	53,1	53,8	78,1	**82,9**
Greece	44,2	43,2	41,8	44,5	34
Hungary	38,4	37,9	39,2	38,8	38,3
Ireland	86,6	87,4	86,9	87,5	87,6
Italy	**56,6**	58	61,1	63,4	**62,7**
Latvia	**29**	31,9	56,2	59,8	**48,4**
Lithuania	49,4	49,6	50,9	51	48,4
Luxemburg	41,7	43,7	43,5	43,5	43,5
Malta	n.a.	n.a.	n.a.	39,2	39,2
Netherlands	82,7	81,9	87,7	88,8	89,2
Poland	**29,8**	31,3	31,5	54,5	**54,8**
Portugal	69,4	72,6	70,9	74,6	71,6
România	28,5	25,7	28,6	29,2	30
Slovak republic	45,9	55,3	54,3	53,6	54,1
Slovenia	45,5	50,9	51,1	49,8	50,1
Spain	73,2	76,3	75,6	76,5	72,3
Sweden	75,1	77,3	**75,8**	74,7	75,5

(*Source:* Data processed according to reports *„Doing Business"* 2010-2014)
Where: n.a. – not available

CONCLUSIONS

A first conclusion that can be drawn from this study is that the time period in which an insolvency procedure takes place influences the recovery rate of creditor claims in companies in European Union, because the countries where the time period during which an insolvency procedure takes place is the highest (Romania, Bulgaria, Greece, Estonia and Malta), the recovery rate is the lowest (except Poland). Instead, in the countries where the time period during which an insolvency procedure takes place is the lowest (for example England) the recovery rate of claims is very high (88.6 cents per dollar).

Another conclusion of our study is that the share of cost in total assets does not influence the recovery rate of creditor claims in EU countries. An example is Italy, which has the highest cost of an insolvency procedure in total assets (22% of the value of the debtor's property) has a recovery rate of claims of 62.7 cents per dollar, instead Romania with a cost of an insolvency procedure in total assets of 11% of the value of the debtor's property has a recovery rate of creditor claims of only 30%.

The third conclusion that emerges from this study is that the creditors of Romanian companies are the most harmed in their own interests because they can't recover the amounts from the insolvent debtor since the insolvency procedure lasts very long.

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