

7. INDICATORS TO ASSESS TO WHAT EXTENT NATIONAL BANKRUPTCY LAWS ACT AS DETERRENT TO BUSINESS SURVIVAL AND FRESH START

In this section we have developed indicators to assess to what extent national bankruptcy laws act as deterrent to early warning, business survival and to fresh start.

We then made a comparison of these various indicators in the EU Member States and the U.S., in order to determine national best practice.

7.1. INDICATORS

7.1.1. Early warning

Our study reveals that formal early warning procedures are very rare, and often fail to intervene in time. Our study highlights that the underlying causes for the failure of the various early warning procedures may, among others, be as follows:

- *Late recognition:*

Entrepreneurs can sometimes have difficulties in recognising that their business is in financial difficulty. They cannot believe that ‘their’ business is in trouble and quietly hope for recovery or are persuaded that they have discovered the hole in the market¹. Under this pretext they put off or delay commencing rehabilitation proceedings, which leads to irretrievably lost businesses, for which liquidation becomes the only option. Speed is the essence in rescue proceedings and fast action is required in order to safeguard the assets of the enterprise.

- *Disclosure of information*

Certain laws fail to prescribe the substance of the information to be disclosed and how and when that information is to be provided. Many jurisdictions do not provide for a means of control or review of this information. A lack of transparency and accurate information regarding the financial statement of the debtor can lead to misconceptions and the inaccurate assessment of the viability of the business by creditors. As a result the early warning process fails.

7.1.2. Business survival

Our study reveals that formal rehabilitation proceedings aimed at rescuing viable businesses have been introduced in many jurisdictions. Examples are the ‘*redressement judiciaire*’ in France, the ‘*concordat judiciaire*’ in Belgium, the ‘*examinership*’ in Ireland. It seems however that these forms of rescue are not successful everywhere. In some countries they are rarely used and often do not achieve their aim of preventing bankruptcy proceedings². Our research highlights that

¹ Trends, 6 september 2001, “De bloedkamer gaat on line”.

² In the year 2001, 126 procedures of ‘*concordat judiciaire*’ were ordered against 7.062 bankruptcy orders.

the underlying (legal) causes of the failure of these rescue proceedings could, amongst others be the following:

- *Ignorance surrounding and complexity of the legal possibilities to rescue businesses*

Rehabilitation proceedings, in contrast to bankruptcy, are in some jurisdictions not well known. The proceedings can be very complex and external specialised advice is mandatory to guide the enterprises towards and through the proper process. In some cases it is then too late to initiate rehabilitation proceedings, where the enterprise is beyond salvage.

- *Requirements for entry*

High thresholds for entry result are not conducive to the use of rehabilitation proceedings. This is the case if the proceedings can only be initiated by guaranteeing the creditors immediate payment. For example, in Austria, in addition to the conditions of insolvency, a certain percentage of unsecured debts must be paid to benefit from the procedure (see table).

- *Publicity*

The vast majority (see table) of jurisdictions require publication of the court order granting the rehabilitation process in the official gazette of the court, which results in panic or at least negative publicity and therefore loss of customers. The fact that court hearings (and meeting of creditors) are public and that parties who are not directly affected can follow the proceedings can have a negative impact on the course of the process. The surrounding publicity can unnecessarily damage the business.

It is therefore recommended that confidential procedures be provided for, based on the agreement of the major creditors, who would have a duty of confidentiality regarding the process.

- *Costs*

Rehabilitation proceedings are often too expensive for small and medium sized companies. The proceedings can be relatively complex and external advice and assistance to commence and follow the process is unavoidable. Additionally the costs associated with external advice, where the enterprise has to bear the fees of the administrator(s) is prohibitive. The cost of rehabilitation proceedings is in some cases a stumbling block to the initiation of the rehabilitation process. Most Member States have stressed that out-of-court proceedings are usually cheaper, even though the fees and expenses of the third party appointed must be paid.

- *Administration of the regime*

The long delay and the formalism of the procedure were criticised by many experts from the Member States, as a factor that deters the enterprise to initiate reorganisation proceedings.

- *Degree of protection against creditors during the procedures*

A clear factor in the lack of success of reorganisation proceedings in certain EU Member States is the level of protection given to secured creditors (i.e.: the rights of secured creditors' are not affected by the reorganisation procedure). In fact the rights of secured creditors generally take priority over all other interests: VAT, social security... Without the consent of these creditors to the reorganisation procedure, without a reduction of credit or delays to pay, the procedure has no chance of success!

- *Knowledge and functioning of the relevant courts*

7.1.3. Fresh start

In many Member States, there is an unmistakable negative attitude towards entrepreneurs who have failed. Bankruptcy law sometimes contributes to this stigma by imposing various kinds of restrictions, disqualifications or prohibitions on bankrupts. We have developed in our report a number of possible underlying (legal) causes of this stigma. It appears that many Member States are reluctant to give a second chance to those who have failed (even honestly).

In this section a number of indicators to assess those insolvency laws which contain obstacles to a fresh start, are described.

- *Effects of bankruptcy*

Stigmatisation can be created by the particular legal effects of a bankruptcy as such. In Belgium for example the bankrupt is to some extent limited in his freedom of action: possible interrogation by the Administrator; obligation to inform the administrator of changes of address. Belgian bankruptcy law also stipulates, as in Italy, that correspondence addressed to the bankrupt is handed over to and opened by the administrator. In a majority of countries, the bankrupt is automatically divested of control of (almost) all of his assets. This measure exists to ensure that he will not dispose of his assets and by doing so, breaching the equality between the creditors. In Italy, the bankrupt cannot abandon his domicile without the permission of the judge to whom he shall report whenever requested. In Portugal, the bankrupt's residence is fixed in the bankruptcy declaratory sentence and he may not stay away from this assigned residence for more than 5 days without notification to the court.

These effects tend to stigmatise the bankrupt and moreover can cause an adverse attitude towards entrepreneurial activity because of the possible financial and social costs of a failure.

- *Restrictions, disqualifications and prohibitions*

Bankruptcy laws can sometimes impose automatic restrictions, disqualifications or prohibitions on those who are subject to bankruptcy proceedings. This results in stigmatisation and leads to an aversion towards entrepreneurial activity. In Italy for example, a bankrupt cannot pursue an occupation as a lawyer or statutory auditor.

- *Distinction between honest and dishonest bankrupts*

If no clear distinction is made between honest but unlucky and dishonest or fraudulent bankrupts, honest bankrupts will be stigmatised through association with the dishonest. As long as honest and dishonest bankrupts remain subject to the same bankruptcy regime, third parties are unable to see a distinction and the negative attitude will persist.

- *Discharge from remaining debts*

Bankruptcy legislation that has a conservative approach in its application to discharge of debts, that remain after the bankruptcy proceedings are closed, can also have a negative effect on a fresh start. In Italy for example discharge can only be obtained by the bankrupt producing evidence of good behaviour during a period of 5 years. In Germany discharge is allowed only after 6 years of good behaviour and in Greece, it will be granted only after 10 years. Long discharge periods obstruct the possibility of a fresh starts. However, it is not only the discharge period that gives us an indication of the obstacles, but also the requirements necessary to obtain the discharge. In some Member States discharge is automatic but in others certain criteria must be fulfilled (for example the need to obtain an agreement with the creditors in Denmark or Italy) or opposition to the discharge is possible. Early and automatic discharge for honest bankrupts is vital to encouraging fresh starts.

For directors of a bankrupt company discharge is also important. The director of an undercharged company can be stigmatised when his mandate as director of an undischarged company is disclosed.

7.2. NATIONAL COMPARISON OF THESE INDICATORS

7.2.1. Early warning

a) *Performance indicator: “Timely recognition of financial difficulties”*

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

b) *Performance indicator: “Disclosure of information by debtor”.*

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

Example of best practice: Belgium

7.2.1. Business survival

a) *Performance indicator: “ignorance and complexity”*

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

Example of best practice: None

b) Performance indicator: “requirements for entry”

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

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

Comparative table:

CONDITIONS	
Austria	
<i>Ordinary reorganisation</i>	<ul style="list-style-type: none"> • illiquidity, impending illiquidity or over indebtedness • 40 % of the unsecured debts shall be paid • within 2 years
<i>Compulsory reorganisation</i>	<ul style="list-style-type: none"> • illiquidity, impending illiquidity or over indebtedness • 20 % of the unsecured debts shall be paid • within 2 years
<i>Out-of-court proceedings</i>	<ul style="list-style-type: none"> • in the course of a bankruptcy proceeding • Agreement of creditors
Belgium	
	<ul style="list-style-type: none"> • Temporary inability to pay debts • Continuity of the trader is threatened by problems that may • lead to cessation of payments
Denmark	
<i>Suspension of payments</i>	<ul style="list-style-type: none"> • inability to fulfil its obligations
<i>Compulsory composition</i>	<ul style="list-style-type: none"> • no particular conditions
<i>Out-of-court proceeding</i>	<ul style="list-style-type: none"> • agreement of creditors
Finland	
<i>Restructuring of enterprises</i>	<ul style="list-style-type: none"> • Financial difficulties

<i>Out-of-court proceedings</i>	<ul style="list-style-type: none"> • Indebtedness • viability of the enterprise • Agreement of creditors
France	
<i>Independent preliminary bankruptcy Amicable settlement procedure</i>	<ul style="list-style-type: none"> • No default of payment • No default of payment
Germany	
<i>Reorganisation based on insolvency plan</i>	<ul style="list-style-type: none"> • No default of payment • In the course of a bankruptcy proceeding
<i>Out-of-court proceedings</i>	<ul style="list-style-type: none"> • No default of payment
Greece	
	<ul style="list-style-type: none"> • Suspension or discontinuation of operations • Cessation of payments • Bankrupt trader or trader under administration of the creditors or under provisional order of liquidation • Total of debts five times more than the sum of their share capital and the reserves • Inability to pay debts
Ireland	
<i>Examinership</i>	<ul style="list-style-type: none"> • Inability to pay debts • No resolution of winding up • Reasonable prospect of survival
<i>Scheme of arrangement</i>	
Italy	
<i>Controlled administration procedure</i>	<ul style="list-style-type: none"> • no bankruptcy or composition in the prior five years • no bankruptcy offence or other specified crimes • possibility to rescue the trader • difficulties to meet its obligations
<i>Preventive creditors' settlement procedure</i>	<ul style="list-style-type: none"> • no bankruptcy or composition in the prior five years • no bankruptcy offence or other specified crimes • trader shall offer guarantees to pay all secured debts and

	<ul style="list-style-type: none"> • 40 % of unsecured debts • trader offers to sell its assets
Luxembourg	
<i>Relieve from payment</i>	<ul style="list-style-type: none"> • Temporary cessation of payments because of • Extraordinary circumstances • sufficient assets to satisfy all creditors • strong potential of survival
<i>Controlled management</i>	<ul style="list-style-type: none"> • lost of creditworthiness • difficulties to meet its obligations • no bankruptcy decision
The Netherlands	
<i>Suspension of payments</i>	<ul style="list-style-type: none"> • Anticipation of inability to pay due and payable debt
<i>Out-of-court proceedings</i>	<ul style="list-style-type: none"> • Agreement of the creditors
Portugal	
	<ul style="list-style-type: none"> • Difficult economic situation or insolvency • Economic viability and financial possibility to recover
Sweden	
<i>Reorganisation</i>	<ul style="list-style-type: none"> • Inability to pay debts as they fall due or anticipation of • Such inability
<i>Composition</i>	<ul style="list-style-type: none"> • Inability to pay debts as they fall due or anticipation of • Such inability • Reasonable prospect of survival • In the course of a bankruptcy proceeding
Spain	
	<ul style="list-style-type: none"> • Temporary financial distress
UK	
<i>Receivership</i>	<ul style="list-style-type: none"> • No particular conditions
<i>Administration</i>	<ul style="list-style-type: none"> • Inability to pay debts as they fall due or anticipation of • Such inability • The survival of the company, or an arrangement or • Composition, or a better realisation than in a winding-up,

<i>Company voluntary arrangement</i>	<ul style="list-style-type: none"> • May be expected • No particular conditions
USA	
<i>Chapter 11</i>	<ul style="list-style-type: none"> • If filed by the debtor: no requirement • If filed by creditors: proof that debtor is not paying debts as they become due
<i>Out-of-court proceedings</i>	<ul style="list-style-type: none"> • Called a “workout” – consensual agreement between debtor and major creditors

c) Performance indicator: “**publicity**”

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

Example of best practice: France, USA

Comparative table:

PUBLICITY OF THE PROCEDURE	
Austria	
	<ul style="list-style-type: none"> • publication through Internet
Belgium	
	<ul style="list-style-type: none"> • official gazette • newspapers
Denmark	
	<ul style="list-style-type: none"> • official gazette
Finland	
	<ul style="list-style-type: none"> • official gazette • newspapers • trade register • public access to court files
France	

<i>Independent preliminary Bankruptcy Amicable settlement Procedure</i>	<ul style="list-style-type: none"> • no publicity • no publicity • duty of confidentiality
Germany	
	<ul style="list-style-type: none"> • official gazette • newspapers • trade register
Greece	
	<ul style="list-style-type: none"> • no publicity
Ireland	
	<ul style="list-style-type: none"> • official gazette • newspapers • trade register • mention "in examination" on every invoice, order of goods and business letters
Italy	
	<ul style="list-style-type: none"> • trade register
Luxembourg	
	<ul style="list-style-type: none"> • official gazette • newspapers
The Netherlands	
	<ul style="list-style-type: none"> • official gazette • newspapers • public access to court files
Portugal	
	<ul style="list-style-type: none"> • official gazette • newspapers
Spain	
	<ul style="list-style-type: none"> • if decided by the court: official gazette • trade register

	<ul style="list-style-type: none"> • other measures of publicity decided by the court
Sweden	
	<ul style="list-style-type: none"> • official gazette • newspapers
UK	
	<ul style="list-style-type: none"> • official gazette • newspapers • trade register • mention of the reorganisation procedure on every invoice, order of goods and business letters
USA	
	<ul style="list-style-type: none"> • publication through Internet • newspapers, TV • public access to court files

d) *Performance indicator: “costs”*

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

Example of best practice: None

e) *Performance indicator: “administration of the regime”*

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

Example of best practice: Portugal

Comparative table:

ADMINISTRATION OF THE PROCEDURE
Austria

<i>Ordinary reorganisation</i>	Debtor retains control Supervision of the administrator
<i>Compulsory reorganisation</i>	Bankruptcy administrator retains control
Belgium	
	Debtor retains control Supervision of administrator Authorisation of administrators required for certain operations
Denmark	
	Debtor retains control Supervision of the administrator
Finland	
	Debtor retains control Supervision of the administrator
France	
<i>Independent preliminary Bankruptcy</i>	Debtor retains control Supervision of independent receiver
<i>Amicable settlement Procedure</i>	Debtor retains control Conciliator prepares the plan
Germany	
	Trustee in insolvency retains control (except if self-management ordered)
Greece	
	Debtor retains control Supervision of administrator If debtor fails to comply with the agreement: administrator shall retain control
Ireland	
<i>Examinership</i>	Debtor retains control on business Examiner retains control on the procedure
<i>Scheme of arrangement</i>	Debtor retains control No administrator
Italy	
	Debtor retains control

	Supervision of the administrator
Luxembourg	
	Debtor retains control, BUT Authorisation of administrator required
The Netherlands	
	Debtor and administrator retain control jointly
Portugal	
<i>Composition</i>	Debtor retains control, either under conditions or not
<i>Entrepreneurial</i>	Entrepreneurial reconstitution : the board of the new company retains control
<i>Reconstitution</i>	
<i>Financial restructuring</i>	Debtor retains control, either under conditions or not
<i>Controlled management</i>	The new board of directors retains control
Spain	
	Debtor retains control, BUT Authorisation of administrator required
Sweden	
	Debtor retains control Supervision of the administrator Authorisation of administrators required for certain operations
UK	
<i>Receivership</i>	Receiver maintains control
<i>Administration</i>	Administrator maintains control
<i>Company voluntary</i>	Debtor maintains control
<i>Arrangement</i>	
USA	
	Debtor maintains control Chapter 11 trustee or US trustee appointed by court only on request of an interested party or in case of fraud

f) Performance indicator: “**degree of protection against creditors during the procedures**”

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

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

Comparative table:

DEGREE OF PROTECTION OF CREDITORS	
Austria	
	<ul style="list-style-type: none"> • privilege of debts arising after initiation of the procedure • unsecured creditors are bound by the agreement
Belgium	
	<ul style="list-style-type: none"> • privilege of debts arising after initiation of the procedure • all creditors are bound by the agreement
Denmark	
	<ul style="list-style-type: none"> • privilege of debts arising after initiation of the procedure • unsecured creditors are bound by the agreement
Finland	
	<ul style="list-style-type: none"> • privilege of debts arising after initiation of the procedure • all creditors are bound by the agreement
France	
	<ul style="list-style-type: none"> • privilege of debts arising after initiation of the procedure • all creditors are bound by the agreement
Germany	
	<ul style="list-style-type: none"> • privilege of debts arising after initiation of the procedure • all creditors are bound by the agreement
Greece	
	<ul style="list-style-type: none"> • Privilege of debts arising after initiation of the procedure • all creditors are bound by the agreement (except the employees)
Ireland	
	<ul style="list-style-type: none"> • privilege of debts arising after initiation of the procedure • all creditors are bound by the agreement
Italy	
	<ul style="list-style-type: none"> • privilege of debts arising after initiation of the procedure • unsecured creditors are bound by the agreement

Luxembourg	
<i>Relieve from payments</i>	<ul style="list-style-type: none"> • privilege of debts arising after initiation of the procedure • unsecured creditors are bound by the agreement
<i>Controlled management</i>	<ul style="list-style-type: none"> • privilege of debts arising after initiation of the procedure • all creditors are bound by the agreement
The Netherlands	
	<ul style="list-style-type: none"> • Privilege of debts arising after initiation of the procedure • unsecured creditors are bound by the agreement
Portugal	
	<ul style="list-style-type: none"> • Privilege of debts arising after initiation of the procedure • all creditors are bound by the agreement
Spain	
	<ul style="list-style-type: none"> • privilege of debts arising after initiation of the procedure • unsecured creditors are bound by the agreement
Sweden	
	<ul style="list-style-type: none"> • privilege of debts arising after initiation of the procedure • unsecured creditors are bound by the agreement
UK	
	<ul style="list-style-type: none"> • privilege of debts arising after initiation of the procedure • Unsecured creditors are bound by the agreement
USA	
	<ul style="list-style-type: none"> • privilege of debts arising after initiation of the procedure • all creditors are bound by the agreement •

g) *Performance indicator*: “**knowledge and functioning of the relevant courts**”

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

Example of best practice: all except Spain

Comparative table:

STRUCTURE OF THE COURT	
Austria	Specialised court, or specialised section or unit of civil courts
Belgium	Specialised court, or specialised section or unit of civil courts
Denmark	Specialised court, or specialised section or unit of civil courts
Finland	Specialised court, or specialised section or unit of civil courts
France	Specialised court, or specialised section or unit of civil courts
Germany	Specialised court, or specialised section or unit of civil courts
Greece	Specialised court, or specialised section or unit of civil courts
Ireland	Specialised court, or specialised section or unit of civil courts
Italy	Specialised court, or specialised section or unit of civil courts
Luxembourg	Specialised court, or specialised section or unit of civil courts
The Netherlands	Specialised court, or specialised section or unit of civil courts
Portugal	Specialised court, or specialised section or unit of civil courts
Spain	Neither specialised court, nor specialised section or unit of civil courts
Sweden	Specialised court, or specialised section or unit of civil courts
UK	Specialised court, or specialised section or unit of civil courts
USA	Specialised court, or specialised section or unit of civil courts

7.2.3. Fresh start

a) Performance indicator: “effects of bankruptcy”

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

Example of best practice: all countries

b) Performance indicator: “restrictions, disqualification and prohibitions”

Objective: to determine whether national legislation imposes automatic restrictions, disqualifications and prohibitions that result in the stigmatising of the bankrupt person.

Example of best practice: Greece

Comparative table:

<p>POSSIBLE PROHIBITION OF CARRYING OUT COMMERCIAL ACTIVITIES AND CONDITIONS THEREFORE</p>

Austria	Prohibition from engaging in an independent trade or business (with exemptions)
Belgium	Prohibition from carrying out certain professions (auditor) or mandate (management of insurance company) under certain conditions (fraud...)
Denmark	Business prohibitions (if illegal removal of company's assets)
Finland	Possible business prohibitions
France	Prohibition to practice certain activities (in case of fraudulent bankruptcy)
Germany	Prohibition to practice for 5 years for directors who committed criminal offenses.
Greece	Individual bankrupts are excluded from any commercial or industrial profession, and from certain functions (civil servant, lawyer...)
Ireland	Restriction from being appointed director of a company or incorporating a new company for a term of five years (unless proof of good conduct)
Italy	Prohibition against carrying out certain professions (lawyer, stockbroker) or charges (trustee, director..)
Luxembourg	Under certain conditions (gross and indisputable mistake that lead to bankruptcy), prohibition from performing business activity
The Netherlands	Prohibition unless "declaration of non-objection" obtained with the Ministry of Justice
Portugal	Prohibition from carrying out any business, unless judge provides that they may and if no criminal proceedings
Spain	Prohibition from engaging in any business, unless rehabilitated.
Sweden	Prohibition from carrying out a business if in public interest and if severe negligence
UK	Prohibition from being a director, receiver or incorporating a company under certain conditions (if criminal offense, wrongful trading...)
USA	None, except where directors are criminally prosecuted

c) *Performance indicator: “distinction between honest and dishonest bankrupts”*

Objective: to identify whether a national legislation distinguishes between fraudulent bankruptcy and honest bankruptcy, so as to avoid stigmatising the honest bankrupt.

Example of best practice: Spain

d) *Performance indicator: “discharge from remaining debts”*

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

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

Comparative table:

<p>LIABILITY FOR THE REMAINING DEBTS AND POSSIBILITY OF DISCHARGE</p>

Austria	<ul style="list-style-type: none"> - Directors liable if committed a fault (e.g. did not file for judicial insolvency on time) - Discharge if reorganization or in the course of private bankruptcies (non-traders)
Belgium	<ul style="list-style-type: none"> - Directors liable if committed a serious fault that led to bankruptcy or if did not declare bankruptcy on time - Discharge if excusability is granted by the court (in case of innocent bankruptcy)
Denmark	<ul style="list-style-type: none"> - Directors liable after <i>bankruptcy/winding-up</i> procedure but not after <i>compulsory composition</i> - Discharge in case of release after 5 or 20 years or in case of debt rescheduling
Finland	<ul style="list-style-type: none"> - Directors liable if did not file for bankruptcy on time or did not convene shareholders on time - Discussion on discharge
France	<ul style="list-style-type: none"> - Directors liable in case of mismanagement - Yes, unless specific offenses committed
Germany	<ul style="list-style-type: none"> - Directors liable if failed to petition for bankruptcy on time - Discharge under customer insolvency procedure
Greece	<ul style="list-style-type: none"> - Directors liability if committed tort or did not notify creditors of cessation of payments - Discharge for individual bankrupts after 10 years or in case of judicial composition
Ireland	<ul style="list-style-type: none"> - Directors liable if fraudulent/reckless trading, misfeasance proceedings... - Discharge: possible
Italy	<ul style="list-style-type: none"> - Directors liable if do not respect their duty to protect the company's creditors - Discharge for individual bankrupts if good behavior or creditors' settlement
Luxembourg	<ul style="list-style-type: none"> - Directors liable for misconduct in management or fault that led to company's bankruptcy - Discharge if composition after bankruptcy or rehabilitation
The Netherlands	<ul style="list-style-type: none"> - Directors liable if their failure contributed to bankruptcy - Discharge if scheme of arrangement reached with creditors
Portugal	<ul style="list-style-type: none"> - Directors liable if significantly contributed to the company's bankruptcy - Discharge
Spain	<ul style="list-style-type: none"> - Directors liable if did not file for bankruptcy on time - Discharge if rehabilitation is granted (in case of non-fraudulent bankruptcy)
Sweden	<ul style="list-style-type: none"> - Directors liable if deliberately or negligently caused damage to company - Discharge
UK	<ul style="list-style-type: none"> - Directors liable if misfeasance, fraudulent / wrongful trading - Discharge if non-fraudulent insolvency
USA	<ul style="list-style-type: none"> - Individual debtor discharged from debt, except certain debts (e.g. alimony, taxes, damages for fraud...) - Corporate debtor discharged from debts