A PERSPECTIVE ON INSOLVENCY PROCEDURES IN THE ROMANIAN ECONOMY[1)]

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Abstract. *In the process of EU integration, the key criterion[2)] Romania has to meet is the economic one, which presupposes a functioning market economy. Even though the concept of functioning market economy is rather ambiguous and judgmental, there is a wide consensus that market exit constitutes one of the main characteristics of a market economy, in the sense that there should not be any legal, administrative, and political or other type of barriers to market exit for the loss-making companies. The market exit process is mainly defined by the institution of bankruptcy, which plays an important role in the reallocation of resources and the improving of the business environment. Starting from the perspective of Romania becoming an EU member, and from the need to develop a healthy domestic economy, this study makes an attempt to evaluate bankruptcy procedures. It tries to explain the current situation and to suggest possible developments that may contribute to upgrading the competitiveness and the functionality of the Romanian economy.*

Introduction

The methodology of this article is tailored to cover an analysis of the bankruptcy legislation, at both the national and the international level. In addition to the interpretation of legal texts, this study also provides an economic perspective on bankruptcy and insolvency, based on a comparative analysis of the bankruptcy procedures at regional and international levels.

The article has three sections. The first section analyses the economic implications of bankruptcy, explaining the economic rationale for this procedure, describing how to increase its effectiveness, and evaluating the potential impact of bankruptcy.

The second section draws upon the experience of transition countries in a few key aspects related to the field of insolvency.

The third section is focused on the case of Romania. Apart from discussing the legal aspects, which give the juridical and procedural framework, the emphasis is placed on the state's role and involvement in the bankruptcy procedure, and on the consequences this state policy has on the market exit process. A particular attention is being paid to the EU harmonized provisions.

Last but not least, the forth and final section will summarize the main ideas and draft a few possible recommendations for improving the bankruptcy institution in Romania.

[1)] *This article is based on the Study "Features of bankruptcy in the Romanian economy", commissioned by the European Institute of Romania as part of the Pre-accession Impact Studies programme - PAIS II.*

[2)] *According to the accession criteria set in Copenhagen, in 1993*

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I. THE ECONOMIC IMPLICATIONS OF BANKRUPTCY

Principles and goals

The concept of bankruptcy has been studied by commercial law specialists and by economists with increasing interest for the last two decades. This analytical effort resulted in a considerable amount of works, theoretical and empirical, devoted to the efficacy of bankruptcy procedures and to the reform process in the area of insolvency. Despite a vast number of works and approaches in the relevant literature, there are premises for reaching a consensus regarding the goals of bankruptcy and the most important characteristics of an effective bankruptcy procedure. Yet, there is no single, harmonized system, to be recommended as „best practice" for any country.

It has to be emphasized, from the very beginning, that the reform of the bankruptcy procedure should not be regarded separately, but in the larger context of other juridical and institutional reforms, such as educating the judges, improving the corporate governance, consolidating the banking and financial sector, observing laws in general.

Regarding bankruptcy, the first question that needs to be asked is why we need to institutionalise such a complex procedure. The economic agents end up indebted for various reasons. Maybe the most important reason is the capacity to obtain financial resources in the present by anticipating their future revenues. If the anticipation process is misjudged, or from whatever other causes, one may reach the situation of incapacity of payment – in other words, insolvency. The latter must be distinguished from the liquidity crisis, which regards only the temporary shortage of the means of payment. The bankruptcy legislation is mainly built to address the problems generated by insolvency.

In the absence of a bankruptcy procedure, the creditor has two alternatives (Hart, 2003). He can forcefully execute the assets used as collateral, in the case of a guaranteed loan; and he can ask in court to sell the debtor's assets, in the case of a loan without guarantees. The second option to collect debts is nevertheless ineffective when there are more creditors and when the debtor's assets do not cover his liabilities. Under such circumstances, the creditors would compete one against another to have the debts repaid. Such a race between creditors may however lead to the partition of the debtor's assets, which at its turn may result in a drastic decrease of the aggregated, functional value of assets, having a negative effect on other creditors' chances to get their money back.

Therefore, it is in the collective interest of creditors that the debtor's assets are executed in a regulated and effective way, through a bankruptcy procedure.

Shall the necessity of a bankruptcy procedure do not need to be further demonstrated, it is still not easy to establish the fundamentals of such a regulation. Stiglitz holds that there is no national legislation of bankruptcy that would be clearly the best solution for all interested parties in a society, which means there is no Pareto-optimal[3] bankruptcy legislation. Still, it can be agreed that there is always legislation better than the other existing alternatives, under the given circumstances, from the viewpoint of a national economy. Different bankruptcy legislations impose different informational costs and risks' allocations, part of which might prove ineffective.

Although the bankruptcy regime is not universal, and neither is the respective legislation, the goals of bankruptcy are nevertheless generally accepted worldwide. The World Bank, within its

[3] *A Pareto optimum describes the situation in which the resource allocation at the level of the entire society is undertaken in such a manner that no other alternative resource allocation could give someone a welfare gain without producing a welfare loss to someone else.*

initiatives to develop an international cooperation in the area of insolvency, and to set a series of general principles and recommendations, suggests three fundamental goals attributed to bankruptcy (World Bank, 2004).

The first goal is the maximization of the total value distributed to creditors, shareholders, employees, and to the other interested parties. The respective firms can be reorganized, sold or liquidated – whatever maximizes the total value.

The second goal is the rehabilitation of the viable businesses and the closure of the non-viable ones. The bankruptcy legislation should be neither too harsh on companies that may have a future, nor too gentle with companies that only have a past.

The third goal is the prioritisation of creditors' claims in a simple, predictable way: secured creditors must be paid first. In this manner, the institution of credit is consolidated and the costs of crediting are significantly diminished.

Premises for the effectiveness of an insolvency regime

The implementation of the bankruptcy legislation requires strong, independent institutions, able to resist political interventions. Another prerequisite would be a proper and functional legislation on debt collection, banking prudential rules and tax laws In particular, an effective debt-collection system maximizes bankruptcy's effectiveness. Otherwise, no legislation on bankruptcy will manage, acting independently, to solve out the problems in an economy where the culture of non-payment prevails. Therefore, the bankruptcy legislation is merely a part of the transition to a functional market economy, and it cannot act effectively without strong institutions and a harmonized legislative framework.

Bankruptcy implementation does not depend on strong institutions and related legislation alone. Another determinant factor is the economic philosophy chosen by governments. The Asian countries implemented an active industrial policy, which meant significant state aid and resistance to closing down large enterprises. This policy was supported by import substitution and a more permissive competition policy that sheltered domestic firms. Even at the heart of Europe there are countries with a history of massive state aids. France is an example, among the well-known cases of state aid being Renault (automotive industry), Thomson (defence), Bull (IT), and more recently Alsthom. Italy is another example; Parmalat is just a case from a more extensive list including corporations like FIAT, which were supported in times of financial distress.

Systemic bankruptcy

The bankruptcy legislation, aiming at regulating individual cases, cannot act efficiently when a large part of the economy faces major financial distress. Hence, a distinction has to be made (Stiglitz, 2003) between the individual bankruptcy and the systemic bankruptcy.

When a single company goes bankrupt, that company has probably made a mistake that other companies have not (e.g. bad management, too large debts). When many companies fail to pay their debts, the wrongdoing is not individual anymore, but it pertains to the system. Many well managed companies in the advanced economies would probably go bankrupt the next day after the interest rate reaches the levels at which it has been in many emergent economies for the last decade (and it still is in some cases, Romania included).

Furthermore, when there is systemic financial distress, ascertaining the net worth of a firm, or

indeed valuing many of the financial claims, becomes difficult. This is because many of the assets of a corporation may be claims on other firms that are themselves bankrupt.

Maybe the most important aspect of the systemic bankruptcy refers to its macroeconomic consequences: mass unemployment, shortage of financial flows in the banking system, an entire vicious circle including production cuts and, in the end, slowing down the economic growth or, if it is the case, deepening the economic recession. The efficiency of the judicial system, and hence that of the designated administrators for bankrupt firms, is also low when a systemic bankruptcy occurs.

Within systemic bankruptcy, and the environments encouraging systemic bankruptcy, loss-making state enterprises play a major role, in particular in those economies where the state still holds a large share of total assets. The bankruptcy of state enterprises in transition economies has a series of macroeconomic implications more serious than a simple case of insolvency; Johnson (1999) details some of them.

If the state is the owner, the debtor, and the creditor at the same time, then the normal incentives and trade-off solutions are distorted. When the state uses debt forgiveness to avoid the liquidation of his assets, the financial system runs an additional risk, and the banks and other credit institutions implement additional prudential measures leading to higher credit costs. A second macroeconomic implication is the potential moral hazard. A debt forgiveness policy may stimulate other debtors, state and private alike, not to pay their commercial or fiscal debts. However, without debt forgiveness, the enterprises facing financial distress usually continue to make losses.

Another macroeconomic implication is the unemployment – we mentioned earlier that bankruptcy affects third parties. When state enterprises are at stake, the employees often have a better negotiation position and they can slow down the needed restructuring. On the other hand, even if the restructuring goes along with job cuts, the problem of labour market absorption appears. In many transition and emerging economies the absorption capacity is reduced, especially because working for years in loss making firms and in downsizing sectors, the new unemployed are less qualified for the booming sectors. These redundancies put further budgetary pressures.

In theory, bankruptcy, as a market exit mechanism, frees resources that are then transferred to more productive uses. In the reality of economies facing systemic bankruptcy, markets may not be capable to absorb new resources. The net effect is that either the assets lose value in the liquidation process or while waiting for a potential buyer to pay their nominal value, or the assets are sold for only a fraction of their nominal value. One of the bankruptcy's goals, that of maximizing the total distributed value, can no longer be attained in the case of systemic bankruptcy.

The systemic bankruptcy concept has been developed around the big financial crises, and particular attention has been paid to it after the 1997-1998 Asian crisis. Nevertheless, that Asian crisis was rather a liquidity crisis, than a systemic one. An argument in this direction is that most of the countries affected recovered very fast. The systemic bankruptcy concept is better fit to describe the situation of the Central and Eastern European transition economies that started economic transformations with an inherited "structural strain" (Daianu, 1996) which was a determinant and negative factor influencing systemic bankruptcy.

In Romania, the systemic crisis was combined

with a liquidity crisis (the latter had a number of episodes, among which 1991 and 1999). This situation has not yet been fully reversed. Almost half of the total assets in the economy are still state owned, and they continue to accumulate debts. Moreover, one can find in the Romanian economy most of the set of specific elements (Johnson, 1999), which undermine the efficient redressing of the state enterprises' financial difficulties in transition economies, namely:

- political involvement and conflict of interests;
- weak financial systems; after the banking sector crisis in 1998-1999, the National Bank introduced proper prudentially measures, but their effectiveness is yet to be proven;
- the domestic capital market is underdeveloped; the level of financial intermediation is very low (non-governmental credits represented about 14% of GDP in 2003), the Stock Exchange capitalization is very low (about 7% of GDP in 2003), the spread between the active and the passive interest rates is still too large (more than 10 percentage points);
- corporate governance is thin; a non-compulsory regulation introduced by the Stock Exchange and a Government ordinance mentioning some corporate governance principles for state enterprises and regies autonomes are still too little and rather too late;
- the business environment does not provide for enough competition and some entrepreneurs may find it hostile. State aids are widespread, and in some sectors the first comers (by privatisation deals) got market power inducements that allowed them to behave detrimental to the final consumers. Moreover, the quasi-fiscal arrears, another widespread practice, are in fact a way to take rents from the state.
- the legislative framework has witnessed frequent changes and it has not been yet fully implemented.

II. TRANSITION COUNTRIES' EXPERIENCE IN THE FIELD OF INSOLVENCY

An important feature of the market system is the dynamic selection mechanism by which new products and process are replacing the old ones. Some entrepreneurs and some firms cannot face the competitive pressure and they leave the market, allowing for a more efficient resource reallocation. The Schumpeterian concept of "creative destruction" integrates this dynamism. The establishment of new systems in the transition economies has enhanced the selection process, which got a higher importance than in the more mature economies.

The main goal of the bankruptcy law (or of the insolvency procedures) is to regulate the selection process.

In the transition economies, the insolvency process is linked to other two fundamental processes: restructuring and privatisation. Restructuring requires the change of the former state owned enterprises to market-oriented firms, by changing the passive administrative unit behaviour into independent economic agents, capable to make their own decisions with the aim of profit maximizing.

On the other hand, the privatisation process (which is also of paramount importance for the systemic transformation) emphasized the dilemma of indebted companies that could not be privatised. The bankruptcy law provided a solution

for the problems of arrears and insolvency; it also fastened the privatisation of bankrupt companies (e.g., special liquidation procedure).

Apart from those already said, the bankruptcy law plays an important role for the process of transformation itself: it gives credibility to changes, telling companies that they must face the competition alone, in order to survive on the market.

Although the governments in most transition economies have adopted modern bankruptcy laws, they were not coherent in the implementation of the basic insolvency procedure. After more than a decade of experience, many of these countries have not yet came to terms with the fact that not all former state companies can survive in a market economy, either because the demand suffered dramatic changes, or because their inner inefficiency. Instead of allowing these large enterprises to go bankrupt, and hence to provide for the transfer of assets to more efficient owners, the governments in some transition economies excluded these companies from the normal bankruptcy procedure and wasted financial resources (which were insufficient anyway) for inefficient subsidies. In many cases, the real motifs of such a policy were rather of a political, than of an economic nature.

The recurrent debt forgiveness and the non-implementation of the bankruptcy law during privatisation are examples of such behaviour. In some countries, the so-called "strategic enterprises" were moved under the authority of a restructuring agency supporting their financial recovery. They were ruled out from insolvency procedures and were not included in the privatisation program. The results were often negative: the state subsidies were used for prolonging their inescapable bankruptcy.

The lesson of the more advanced transition economies and the experience of the laggards, is that the insolvency process must be the same for all firms, in order to: (a) signal government's commitment to systemic transformation; (b) determine companies' managers to change their attitude and to engage in massive restructuring; (c) fasten the reallocation of resources from the insolvable firms from old sectors to the new firms in the new sectors.

The table below presents the range of the insolvency procedures in some selected transition economies (Germany is included for its Eastern lands). They indicate that, while none of these countries has solved the problem of customers' insolvency, in some countries the state has reassumed additional powers and it has imposed a variety of exceptions and extra-procedural measures. Addressing insolvency is a private law issue and all firms should be treated equally, at least in principle.

Next, we will present a comparative analysis of the legal and administrative framework regarding the insolvency in the transition countries, starting with several essential benchmarks of the market exit process.

Table 1: The enforcement of the insolvency procedures in selected transition economies

Country	Individuals	Legal persons: exemptions and special rules
Bulgaria	Commercial agents only	Some sectors have preferential rules (non-commercial juridical persons)
Croatia	Commercial agents only	Juridical persons in the military and defence sector are exempted only on approval from the Defence Ministry; farmers and private pension funds are exempted
Czech Republic	Commercial agents only	Political parties are exempted during the electoral campaigns; farmers are exempted between April and September
Germany	Consumers' insolvency/ minor procedures	None
Hungary		Private pension funds are exempted
Poland	Commercial agents only; other entrepreneurs, non-registered, especially farmers, are excluded	Following are exempted: sickness funds; institutions and organizations created by Parliament laws; a number of six state enterprises
Slovakia	Commercial agents only	Farmers are exempted from April to September; "strategic" suppliers are also exempted

Source: Balcerowicz et al., 2003

The commencement of insolvency proceedings

The first essential benchmarks of insolvency proceedings are given by the definitions of trigger mechanisms through which the insolvency is opened, as well as by ascertaining the responsibilities for declaring the insolvency status.

The criteria for opening the insolvency proceedings must be clear, objective and easily to be verified. In transition countries, three such criteria are used: the lack of liquidities criterion, the over-debt criterion and the imminent insolvency criterion.

The first criterion, the incapacity of paying the real, liquid and due debts is the most frequent. Normally, a combination of several criteria is used as trigger mechanisms.

The over-debt criterion is based on analysing the balance sheet, the document reflecting the financial situation of a company. Theoretically, the balance sheet analysis should offer a better perspective over the existence of

Table 2. Criteria for opening the insolvency proceedings

Country	Lack of liquidity	Over-debt	Imminent insolvency
Bulgaria	✔	✔	-
Czech Republic	✔	✔	✔
Hungary	✔	-	-
Poland	✔	✔	-
Slovakia	✔	✔	-
Romania	✔	-	✔

Source: Balcerowicz et al., 2003

an insolvency situation than the default, maybe accidentally, of payments. This mechanism is successfully used in Germany for opening the proceedings. However, in the transition countries, and not only in their case, a major problem remains the evaluation of the assets. The evaluation process is difficult because of the differences between the accounting value and the market value of the assets.

The imminent insolvency criterion appeared recently in legislation dealing with insolvency. This criterion encourages the debtor, more exactly the manager of the debtor, to take measures before reaching the default of payments. Therefore, the chances of saving the enterprise and of re-enter the market are considerably are bigger compared to a company which already has the insolvency status.

Liquidation vs. reorganisation

Following the opening of the insolvency proceedings, accepted by the Court, the debtor has two main options – liquidation or judicial reorganisation. In general, both the debtor and the creditors state their option, but the final decision is given by the Court. Either liquidation or reorganisation, the debtor's credits are suspended for ensuring a fair treatment for all creditors, classified by the priority of their credits (in the case of liquidation) or for preparing a successful reorganisation plan (in the case of reorganisation).

The developed countries and the international institutions[4] suggest that the reorganisation should be preferable, as the revitalisation of debtor firms would lead to achieving better results for the creditors and for the economy. Even if the liquidations are a faster process, it can be sometimes premature.

For transition countries, reorganisation can be a better solution as the financial difficulties of the debtors may be due to the external business environment and not to the internal management of the company. The important volume of inter-enterprises systemic arrears[5] makes the viable enterprises to be in default of payments because of the clients who, at their turn, did not paid the their debts.

On the other hand, in transition countries one can observe the distort effects of the emphasis put on the reorganisation. The reorganisation can be an excuse for prolonging an incompetent management or the life of inefficient enterprise (especially in the case of own-state enterprises).

Another essential element of the reorganisation proceedings is the decision to change or not the management of the debtor enterprise. On the one hand, if kept in charge, the managers have the advantage of knowing the enterprise, from inside, better than an out-comer. Moreover, maintaining the management encourages the managers' preventive behaviour, co-interested in the success of the reorganisation process. Poland and Hungary chose such a modality, inspired by the USA model.

On the other hand, the experience demonstrates that the managers of debtor enterprises have the tendency to opt for desperate measures, often affecting the debtors. This is the reason for which in the Czech Republic, as well as in Germany and other developed European countries, accepting the insolvency status automatically leads to replacing the managers with outside experts – liquidators or administrators.

[4] *e.g. IMF, the World Bank or the European Commission;*
[5] *mostly public, but also private;*

Allocation of assets as a result of the insolvency status

If the reorganisation is not possible – the plan proposed is rejected by the creditors or the solutions for saving the enterprise are unrealistically – the insolvency process leads to liquidation. An efficient liquidation process has to accelerate the allocation of the assets, but also to find the best way to value the existing assets. One of the most important aspects of liquidation is the payment of debts, on priority criteria. For example, the real creditors or the secured creditors have priority compared to other categories of creditors. Prioritisation of the secured credits is based on the idea that the guarantees subscribed have exactly the role to facilitate collecting the debts, as well as to encouraging the credits.

In transition countries, the privileges for secured creditors are not similar to those from developed countries. For example, in Poland and Hungary, the privileges are not strictly respected. In both countries, the state's credits are privileged even if they are not secured. The main problem in respecting the secured credits is related to the fact that, by paying them, the enterprise can lose the key assets. Therefore, the option for reorganisation is negatively affected.

In transition countries, the state has still an important word to say concerning the recuperation of budgetary arrears, passing out all the other secured credits.

Insolvency institutional framework in transition countries

Insolvency proceedings cannot be efficient without market economy institutions. For example, the legal system has to function excellent so that the insolvency declarations could be justly processed in due time.

The involvement of Courts in the insolvency process brings all the legal problems in transition countries. Important barriers are still persisting in various juridical systems from Central and South-Eastern European countries.

In the Czech Republic, some experts state that the more important implication of Courts slows down the insolvency proceedings. The judicial systems still face problems linked to their administrative capacity. Observing the lack of specialised personnel and the lack of minimal technical equipment, one can assert that the Courts from transition countries are overwhelmed and cumbersome.

One of the possible solutions is to involve more third-party neutral bodies, to deal with the procedural details. The first body is formed of insolvency experts, who can facilitate the Courts' obligations.

III. ROMANIA: WHERE DO WE STAND?

The regulatory framework of bankruptcy

Romanian legislation regarding bankruptcy has suffered many substantial changes after 1989. Presently the regulatory framework is provided by Law No. 64/1995 regarding the proceedings of judicial reorganization and bankruptcy, with the subsequent additions and modifications, of which the most important are: Law No. 99/1999, Law No. 82/2003 for the approval of GO 38/2002 and Law No. 149/2004.

In fact, the last main regulatory modification is has been enacted recently: the Law No. 149/2004 is in force since May 12th 2004[6]. This law has been anticipated for quite a while, as it is the result of the approved law draft (PL 322/2003), which

[6] *Published in the National Gazette of Romania No 424 May 12th 2004*

was forwarded to the Chamber of Deputies by the Ministry of Justice in 2003.

The debates concerning bankruptcy are related to several EU accession negotiations chapters, such as Free movement of services, Competition Policy and Enterprises Law.

Consequently, if we want a dynamic view of the legislative development regarding insolvency and bankruptcy in Romania it would be useful if we refer to three legislative reforms:

- the legal framework until 2002, provided by the old version of Law No. 64/1995, consolidated and republished in 1999 after the approval of Law No. 99/1999;
- the legal framework during 2002-2004, which contains the modifications introduced in 2002/2003 by GO 38/2002 (approved by Law No. 82/2003);
- the current legal framework defined by the modifications introduced by Law No. 149/2004.

The methodology for the analysis of the legislation regarding bankruptcy is not concordant, but there are similar research fields among insolvency law experts, similarities that produced important foundations on which the investigation of the efficiency of a certain legal framework can be based. In the following we will refer, in a more or less random order, to the key aspects of bankruptcy legislation, but this time by way of direct explanation of legislation in Romania.

Insolvency, bankruptcy and the role of the state

The first question that arises when we analyse the bankruptcy legislation in Romania is undoubtedly connected to identifying the purpose of this type of legislation from the point of view of public policies. The European Bank for Reconstruction and Development (BERD 2003) recognized three possible instruments for bankruptcy legislation.

1. The policy of the new beginning – which allows the honest but bankrupt entrepreneur to restore his business, by cutting back his liabilities due to the misfortunes encountered by his previous affairs

2. The policy of equity – which promotes the even distribution of the bankrupt debtor's possessions among creditors.

3. The rescuing policy– which disposes the restructure and rehabilitation of an enterprise in order to preserve the employment, reimburses creditors, bring profit and produce value.

Although Romanian legislation secures the de jure framework for the fulfilment of these three economic policies purposes, the previous experience shows that the practice of bankruptcy in Romania has been focused more towards the rescuing policy, concerning particularly the fate of recently insolvent state enterprises.

This focus proved to be rather counterproductive, as it implied an unequal treatment of firms. As a result, public firms were protected by special laws, thus becoming immune to regular market exit regulations.

A key point that in this analysis of insolvency and bankruptcy in Romania is the investigation of the State's behaviour as a shareholder and/or creditor. In a transition economy, such as the Romanian economy, the state partnerships and liabilities are mostly related to the privatisation process and the restructuring of public enterprises, as we already noticed in the analysis on the transition countries.

On one hand, there is a number of enterprises that are non-competitive, that cannot be privatised and constantly produce losses as they are kept

floating by state support. The political decision to keep some enterprises in public hands, because of their strategic importance or in the hope of a future restructuring and privatisation deal has direct consequences on the avoidance of initiating proceedings of insolvency.

On the other hand, the enterprises that have been privatised sometimes encounter difficulties, generating post privatisation pressures so they still receive support or even be bought back by the state. In all these situations the enterprises register important debts to the state, debts that at a macroeconomic level are translated into significant arrears.

The avoidance of bankruptcy through the artificial preservation of enterprises in the business environment is the result of the weak budgetary constraint policy that has contributed to the overall lack of fiscal discipline in Romania. Besides the negative consequences on the business environment, proved by disloyal competition between the honest entrepreneurs that pay their debts and those that create arrears, there are negative consequences at the macroeconomic level too, particularly regarding the budgetary deficit, the fiscal collection process and external deficits.

The ambivalence of the state's policy as a creditor is puzzling. The State either plays the part of the benevolent parent, accepting the errors and the lack of competitiveness of some enterprises and overlooking their debts or suddenly flexing its muscles in order to prove that the state's objectives come first by emphasizing the importance of immediate return of public debts.

Unfortunately, this *Ianus Bifrons* type of policy, in other words the one where the state changes its appearance according to political and social circumstances or as a result of external institutional pressure, entails negative consequences that transform the state in a special market player that does not obey common law.

In other words, it is enough for the State to decide that an enterprise must not go bankrupt in order for this enterprise to be rescued without any economic motivations and without a transparent proceeding that might be applied to other similar future events. We deal here with a discretional selection, meaning that the choice of saving enterprises is made on an individual basis and does not follow any distinct objectives of an economic policy.

Just the same, at the other end, when the state is the creditor, the law that applies is an exceptional one. The Romanian bankruptcy legislation does not differentiate between particular creditors and the state as a creditor. Bankruptcy is a common proceeding with a syndic judge acting as an arbiter and seeking to reimburse creditors according to their liabilities. But, if the State is one of the creditors, it creates an exceptional position for itself, defending itself from the other creditors using the two agencies APAPS and AVAB recently united as AVAS to create regulations that go beyond the judicial framework settled by The Ministry of Justice.

Bankruptcy initiation

In Romania, the criteria for opening the insolvency proceedings are the lack of liquidities and the imminent insolvency, allowing both the creditors and the debtor to take the initiative.

In the first case, the creditors may start the procedure by filling in a petition in one of the following situations:

- creditors have not been paid for at least 30 days;
- the commercial agent's debts that arise

from work or civil actions are larger then six national average wages as determined by law;
- the commercial agent's debts that arise from commercial activities exceed 3000 euros[7].

As regards the imminent insolvency, this criterion was introduced in 2002[8] and it is found in the Art 25, Paragraph 2[9], stipulating that a debtor threatened by insolvency may open the procedure, in conformity with the law. The formulation is vague and it does not objectively define the notion of "threaten". Although, the amendments adopted in 2004[10] bring some light through the Paragraph 4 of the same article, stipulating that the "premature introduction and in bad-will by the debtor of a request to open the proceeding brings along the debtor's patrimonial responsibility […] for the caused prejudices". This way the potential abuses are limited.

It is worth mentioning that until 2004, Romanian legislation stipulated the patrimonial responsibilities of managers in the case of declaring "too late"[11] the insolvency status. It is bizarre that by amending the law in 2004, this provision disappears, although the obligation of declaring the insolvency status, with 30 days before, still exists. Obviously, it is a lack of the present legislation, reducing the incentive of applying the law.

It is important to mention that Romanian legislation does not contain legal premises for the automatic initiation of bankruptcy, similar to other European countries that had or still have such stipulations. In Romania the proceeding begins only on the premises of a petition forwarded by the debtor or creditors. As a result, there is no over-debt criterion to act as a trigger.

As we have explored earlier, several transition countries have decided to add this criterion as an additional instrument enabling the opening of the bankruptcy procedure.

Liquidation vs. Reorganization

Another part of the analysis of the legal framework regarding insolvency and bankruptcy is the choice between liquidation and judicial reorganization. As we earlier anticipated, this choice may be founded on different economic policy priorities. In conclusion, it is important to achieve a balance between protecting creditors' interests and supporting the reorganization, favourable to employees.

The European and international trend is to modify the bankruptcy legislation towards encouraging the judicial reorganization process[12]. In Romania, proposals seem to be oriented exactly the opposite way, encouraging the creditors. The explanation of these proceedings is based on our country's previous experience, which shows that the practice of judicial reorganization has not been a success solution in many cases. On the contrary it transformed itself in a very strong barrier to market exit, with negative implications on both creditors and structural reforms.

According to the last regulatory changes introduced by Law No. 149/2004, the maximum period for carrying out the judicial reorganization, in the event of its approval, has been shortened from three to only two years. At the same time, a greater control is secured over the liquidators and

[7] The minimum amount of commercial debts that can get the bankruptcy proceeding started has been recently reduced by Law no 149/2004 from Euro 5000 to Euro 3000. This is a welcomed change, in the sense that it will impose either a greater severity in the payment of obligations, either it will lead to the more rapid market exit for agents that cannot pay their debts;

[8] GO 38/2002;

[9] Law 64/1995 amended and republished after adopting the Law 149/2004;

[10] Law 149/2004;

[11] According to Art. 25, paragraph 4

[12] One of the reasons behind this world-wide reorientation is the fact that through reorganizations certain intangible assets, that in the case of bankruptcy would have disappeared, can be kept (Hart, 2003)

administrators in order to avoid abuses and uneconomic behaviour.

Beyond current or future procedural regulations, it is important to emphasize the fact that through liquidation, non-competitive commercial agents that due to business cycles or to their own managerial deficiencies are not able to perform a lucrative activity are removed from the market. Liquidation plays a role in the improvement of the market economy and the smoothing of commerce, something that for the Romanian economy's present stage and also in view of European integration is not only necessary, but indispensable for a good development of its market economy. In these circumstances the role liquidation plays must be properly understood and must be separated from any negative connotations that our society might have imposed on it.

In the context of Romania's likely EU accession (2007), we can appreciate that the tendency to prefer liquidations, in the detriment of judiciary reorganization, could prove to be a mere transitory phenomenon. The trend could reverse when the legal system will be more efficient, administrators and syndic judges more competent, the institutions authorized to intervene stronger – in order to re-establish the trust in the proceeding of judicial reorganization. More so, it is not stated that the reorganization has to be enacted at all costs, it must not allow the rescue of untenable companies – and in Romania there still is a large number of such companies.

In addition, Romania is in the process of adapting to the UE procedural standards (EC Regulation1346/2000), and, as the legislative reform at the community level progresses, if it will take place, it will probably try to adapt to the new practices in adjacent fields, for example, corporate auditing.

Insolvency institutional framework

We should remark that Romanian insolvency experts established a professional organisation (UNPRL) playing a role in a new profession self-regulation – reorganisation and liquidation expert.

Even if the activity of reorganisation and liquidation experts is only at its beginnings in Romania, it is not unlikely for liquidators to have a more and more important role in the insolvency proceedings, going that far to be able to predict the difficult situations of enterprises and to have prerogatives in the anticipated commencement of the insolvency procedure.

Insolvency, bankruptcy and state-aid policy

An important aspect of our case on bankruptcy in Romania is the situation of public enterprises that prove to be non-competitive and become insolvent. In various such situations, the government has intervened through state support schemes in order to keep those companies on the market.

In general, we can easily notice that the state-aid volume is very high in Romania, (up to 6% of GDP (2001)). Moreover, it seems to rise in both absolute and relative numbers, in other words it evolves in the exact opposite direction to the European integration process.

Regarding the nature of state support, it seems that the portion of income concessions, such as deductions and discounts has substantially increased. Indirectly this shows a chronic incapacity of payment of long overdue debts. In a functional market economy these companies would already face liquidation proceedings. On the Romanian market, though, they persist despite the macroeconomic consequences: contribution to budget and current account deficit, hidden unemployment, negative example and unlawful competition.

The rescue and restructuring state-aid measures are accepted in the EU only in a few very specific situations, and only as an exception (not as a rule). In Romania, the most disregarded rule is probably the one referring to the single occurrence of state-aid: far from being granted only once, there are numerous cases in which the state-aid has been recurring – for example, failed privatisations, in which facilities like cancellation of debts and debt-for-share swaps were offered at the beginning of the privatisation process, the state finding itself anew as a majority shareholder (the most recent case is Rafo Oneşti); or granted on a regular basis – as it is with the perpetually loss-making public companies.

But the rescue-restructuring aid is not the only field in which Romanian practices are out of line with the EU norm. Table 3 reflects other discrepancies.

considering both direct support (budgetary subventions) as well as indirect assistance (rescheduled debts, etc).

- as part of state-aid, the relative weight for rescue and restructuring is increasing, rather than decreasing. This situation is indicative of a possible mass-bankruptcy phenomenon in several sectors. From here derives the fear of many companies of the rigorous implementation of competition policy;
- as part of state-aid, the relative weight of penalties exemptions and reductions is increasing, showing a generalized inability to pay the long-overdue debts (premise of bankruptcy);
- as part of state-aid, the pro-active ones, encouraged by the EU – such as aid for research and development, and career training, are quite neglected in Romania.

Table 3: State-aid characteristics, comparison between Romania and the EU

	Romania	EU 15
% of GDP, yearly average 1998-2001	4.5	1
Trend 1998-2001, total aid	Increasing	Decreasing
Trend 1998-2001, aid for manufacturing, absolute volume/number of employees	Increasing	Decreasing
Priority objectives (excl. agriculture)	Sectoral	Horizontal
As part of horizontal objectives, greatest weight represented by:	Saving-restructuring	SMEs and research and development

Romania's situation, although unsatisfying, is not unique; other transition countries, such as Poland for instance, are faced with similar problems. In the context of the approaching final negotiation with the EU, the following realizations are of great concern:

- state-aid, instead of being a decreasing phenomenon, is increasing[13]. Although it should be mentioned that here we are

These trends need to be reversed in a short time-span and, as this reversal takes place, more and more companies, particularly public ones that do not restructure, are threatened by bankruptcy.

Even the EU finds itself in a situation in which it is rethinking state-aid. Simultaneously with the expiration of the CECA agreement, in 2002, the rescue and restructuring aid for the metallurgic industry became illegal. More so, at the end of

[13] *Although estimation techniques may seem doubtful, because both historic and present liabilities are being weighed.*

2003, when the current regulations expire, the EU will reform the state-aid policy in an even more restrictive direction, aiming to provide, at a European level, a single definition of a company in difficulties, and how the efficiency of the compensatory measures can be evaluated; on the other hand, companies that are part of a group may become eligible for state-aid.

We have to mention that although the Commission argues in favour of state-aid reform, there are Member States that practice active industrial policies; either for saving various companies that are considered to be of strategic importance (Bull, Alsthom in France; or banks in Germany), either to promote 'national companies', seen as examples of excellence in the process of economic development (Nokia, in Finland). In these situations, sometimes the Commission becomes more lenient, avoiding conflicts with Member States, particularly with the more developed ones (France, Italy, Sweden, Finland etc).

This double standard is observed even in the rough treatment applied by the Commission in the relationship with the new member states. For example, on May 19th 2004, less than a month after the accession of Poland, the European Commission has decided to investigate whether or not the state-aid for the restructuring of the steel-plant company Huta Czestochowa SA has violated EU regulations. It is the first such investigation in any of ten new member states. The Commission believes that the liquidation of the company was avoided by convincing the creditors to accept a restructuring plan (until 2006) and by cancelling some of the debts.

The same stringent conditions will be applied in Romania, and there will be serious problems in this field if Romania does not accelerate the reform of the manner in which the state supports economic development. In particular, this reform is related to the implementation of the regulations regarding insolvency and bankruptcy, to the formulation of the clearest possible criteria for direct state-aid (budgetary subventions) as well as for the cases in which the state can allow the postponement of budgetary obligations.

Harmonisation of Romanian legislation with EC Regulation regarding insolvency

The main benchmark at the European Union level for bankruptcy area is given by Council Regulation (EC) 1346/2000 of 29 May 2000 concerning insolvency proceedings. The Regulation is already applicable to all Member States, being in force since 31 May 2002.

Seeing that entrepreneurial activities have more and more cross-border components, the European Union had to regulate, at Community level, more and more aspects related to business environment. As the market-exit proceeding can affect the Internal Market, it was necessary to adopt a Community act in order to coordinate legal provisions related to assets of insolvent debtors. It is also obvious the fact that, if the assets management would be different among Member States, it will lead to transfers among EU countries, infringing the principles of common market.

The above mentioned EC Regulation is the outcome of over 40 years of analysis and practice and by its 47 articles enforces the international jurisdiction of a court from one Member State, aiming at opening the insolvency procedure, automatic recognition of proceeding in the other Member State, as well as at cross-border acknowledgement of "liquidator" rights.

The main objective of the EC Regulation

regarding insolvency is to be contained by a Community law measure, generally applicable, biding for all debtors, whether the debtor is a natural person or a legal person, a trader or an individual. As an exception, the insolvency Regulation does not apply in the case of financial institutions[14] (Wessels, 2003).

The Regulation establishes the juridical framework regarding the law that should be applied, replacing the common provisions of private international law.

The EC Regulation regarding insolvency proceedings is an important step ahead in establishing a juridical framework in order to facilitate interactions and harmonisation of different systems of insolvency in the EU. Given the diversity of bankruptcy legislations it is clear that their harmonisation at Community level for creating a unique bankruptcy proceeding would be totally unpractical.

The aim of the Regulation is to replace the various bilateral agreements of mutual recognition of bankruptcy proceedings, and not to standardize a type of proceeding.

But the Regulation has also some weak points. Despite the fact that the Regulation is binding effect, being directly and unconditionally applicable to Member States, most of them have to amend the internal law of insolvency in order to implement the provisions of the Regulation. The need for these amendments denotes that we cannot yet discuss of a total and veritable harmonisation in the insolvency area at Community level. Member States do not show much interest to bring into line their insolvency legislations, following their own policy in the field.

Furthermore, the territorial limit of Regulation applicability – only at Community level – it is an important shortcoming, especially in the context of business globalisation. Therefore, a global regulation for cross-border insolvency is desirable. Six years ago, a world standard was developed in cross-border cooperation field, called UNCITRAL Law Model for cross-border insolvency. Even if the Law Model does not have a binding character, it has as main objective to stimulate the harmonisation process of national insolvency laws.

The implementation of UNCITRAL Law Model is supported by international institutions, such as the World Bank, the IMF or the Asian Bank for Development. The solutions provided by the UNCITRAL Model seem to be optimal for the present circumstances. According to Art. 3 of the Law Model, the international obligations of the states adopting this law are respected, which means that the provisions of the EC Regulation are still applicable, while the juridical framework proposed by UNCITRAL would regulate the system of relations between the EU Member States and third countries.

The Romanian legislation was mostly harmonized with the provision of EC Regulation no. 1346/2000, by adopting Law no. 637/2002 regarding the international law practices in the insolvency area and by the recently adopted Law no. 149/2004 regarding judicial restructuring and bankruptcy.

Law no. 637/2002 defines the applicable law in international civil law relations for insolvency, proceedings to be followed in such cases, as well as cooperation proceedings between Romanian authorities and the international one in order to solve international and European insolvency cases.

[14] *Insolvency proceedings for insurance companies are stipulated by Parliament and Council Directive 17/200 (OJ L 110, 20/04/2001), and for credit institutions regulations are given by Parliament and Council Directive 24/2001 (OJ L 125, 05/05/2001). Unlike the regulations, the directives should pass through a legislative implementation in each Member State of the EU. The deadlines for implementing these Directives were 20 April 2003 for insurance companies and 5 May 2004 for credit institutions.*

Recommendations of good practice in European insolvency field

In March 2000, Lisbon European Council established as strategic objective for European Union to become until 2010 "the most competitive and dynamic knowledge-based economy in the world". In this context, the European Commission was given the mandate to initiate an open cooperation for helping the Member States develop their own economic policies. The methodology of the cooperation process establishes a series of recommendations at European level, in order to reach specific objectives within the deadlines, recommendations to be transposed in regional and national laws customized to local conditions.

Thus, at the Feira European Council, in June 2000, the Charter of Small Enterprises was adopted. It emphasis the importance of market-exit process for economic competitiveness and it considers necessary an evaluation of national bankruptcy legislations for underlining the good practices, as model to be followed.

Enterprises Directorate – General from the European Commission created a methodology known as the "best procedure", based on coordination process mentioned above. The proposed methodology consists in analysing the elements identified as essential for reaching the objectives of Lisbon Agenda and in defining the benchmarks& performance indicators, actual status and operational targets for improving the present situation.

In this context, in 2002, in the field of insolvency and bankruptcy was launched a project named "Restructuring, Bankruptcy and a Fresh Start", aiming to evaluate the way to be followed for optimising the market-exit proceedings at European level.

The project was finalised in September 2003 and it resulted in a series of recommendation and observations. They are not binding but they could be considered part of the so-called soft acquis, meaning that the recommendations should not be ignored in order to reach the common goals of the acquis itself[15].

Mainly, the recommendations mentioned above aim four broad action lines:

1. Early warning;
2. Legal system;
3. Chance for a new beginning;
4. Social attitude.

Regarding the early warning, the main recommendation made by the experts reunited under the aegis of Enterprise Directorate – General of the European Commission was to create mechanisms or institutions to counsel entrepreneurs, for early prevent the bankruptcy. At the same time, it is very important to have transparent information on alternatives to be followed in financial crises.

The recommendations regarding the legal system aims to streamline and speed up the insolvency proceeding, so that the entrepreneurs not to be discouraged by the idea of bankruptcy. Obviously, in possible, a grater stress should be put on judicial restructuring which would save the firms temporarily found in difficulty.

Also, the recommendations highlight the importance of giving a new chance to those entrepreneurs which gone bankrupted due to a general unfavourable context and not to intentional prejudices. As a result, it is recommended to eliminate any barriers which can lead to discrimination between entrepreneurs gone bankrupt in their trial to start a new business. A study asked by the European Commission and done by

[15] *Romania has signed at Maribor the European Charter for Small Enterprises and it is interested in preparing in advance for the Lisbon Agenda, in the view of becoming a Member State in 2007*

Boston Consulting Group shows that the entrepreneurs with a bad experience in terms of bankruptcy have more success in second business than the entrepreneurs having their first business.

Last, but not least, the recommendations sustained by the European Commission illustrates the necessity of eliminating the social stigma related to bankruptcy. Therefore, the market-exit through bankruptcy should be regarded as a normal step in the life of any economic agent, being a good act for the market and for the economy, as it makes available resources that re-enters in a short time in the economic cycle and they could be used in a more efficient way.

For each of these action lines, specific measures are proposed. They are, more or less, defined in concrete terms, but they are sustained by examples of good practice from the EU Member States.

For Romania, the study coordinated by the European Commission suggests that there should be taken action in the following domains:

i. Entrepreneurs information regarding the bankruptcy proceeding and its implications, as well as the access to counselling, in acceptable conditions, for financial difficulties and ways to be followed;

ii. Transparency of accountability information and of financial data that would allow signalling the financial health of firms;

iii. Through available trainings, to promote the new beginning for entrepreneurs gone bankrupt, to change the negative mentalities at the address of economic agents involved bankruptcy processes;

iv. In the final decision of the syndic judge, it should be mentioned the "pardonable behaviour" of entrepreneurs bankrupted due to external causes, and not due to their detrimental behaviour.

IV. MAIN IDEAS AND RECOMMENDATIONS

The analysis of bankruptcy institution supposes, on one hand, the evaluation of legal and procedural framework of insolvency regulations and, on the other hand, the investigation of implementation process's efficiency of the proceeding thus enforced. Concerning the legal framework, one can observe that there is not a universal bankruptcy code, a unique law applicable at worldwide level. National laws regarding bankruptcy are still, in a large measure, an adaptation of each country's specificities. Yet, there are basic principles[16] in mostly all legislations regarding the insolvency proceeding which are based on the logic, the basic aims of bankruptcy. Moreover, several good practices in the field are accepted for their role in reaching more easily the aims of the bankruptcy proceeding.

In the last few years, insolvency legislations, at international level, were constantly renewed, changes being caused by two important factors: pressure of legislation harmonisation and adjustment at national specificity. The harmonisation trend in the insolvency field is the result of institutional cooperation at regional and international level, as well as the result of informal pressures from partner countries. In the last years, a series of international institutions (IMF, World Bank, UNCITRAL[17], European Commission etc.) drawn up recommendations, conventions, consultancy mechanisms or other cooperation agreements, in order to establish common practices for bankruptcy proceeding. These institutional mechanisms aimed the bankruptcy field in a direct way, as well as indirectly through regulations and linked

[16] *The "golden" principle is that structurally non-viable firms must exit the market. Another principle is the existence for all competitors of equal (symmetric) conditions;*
[17] *UNCITRAL – United Nation Commission on International Trade Law;*

agreements in fields such as competition policy.

The most advanced exercise of harmonisation has been achieved in the field of cross-border cooperation on insolvency problems. For this specific case, at European Union and international level, compulsory and, respectively, voluntary regulations, have strengthened the international cooperation regarding the bankruptcy.

In transition economies, the insolvency proceeding is linked to two fundamental processes: reorganisation and privatisation. The reorganisation presupposes the change of former state enterprises into market-oriented firms, capable to take their own decisions to maximise the profit and to take responsibilities for their management decisions. If the enterprises are taken out from the protector shield of the state, their capacity to take radical measures for reorganisation in order to survive on the market is more reduced. It is the same for the privatisation process, where the firms must prepare for the market competition, and not to wait for the investor to miraculously fix the disastrous result of several years of inefficiency. Romanian legislation regarding bankruptcy is harmonised with the acquis communautaire in the field of cross-border insolvency. Moreover, the legislation in force is in accordance with UNICTRAL recommendations, which have not only a regional perspective, but also a universal one of cross-border cooperation in the insolvency area.

Concerning the general legal framework of insolvency proceeding in Romania, it mostly respects the regional and international guidelines and principles. Through the new adopted regulations, Romanian insolvency legislation corrects a series of uncertain or inefficient features.

The present trend to relatively favour liquidation against judiciary reorganisation may be considered as one of the few elements of divergence with the international trend, but this could be only a transitory stage. This option can be reversed when the juridical system would become more efficient, the administrators and syndic judges would become more skilled, institutions able to intervene would become stronger – in order to ensure the trust in the judicial reorganisation proceeding. At the same time, the reorganisation should not be done regardless its cost. It must not permit to safeguard the firms without any chance to become competitive.

Concerning the implementation of regulations regarding the insolvency, Romania's track record is rather poor. The failures in the implementing process could be explained by a series of hindering factors.

The judicial system is not fully consolidated, obstacles hindering the fluidisation of juridical proceeding. These obstacles are related to human and material resources within the system, as well as to general mentality regarding the state of law. Moreover, the expertise in commercial area is relatively small. Related legislation in commercial area is sometime ambiguous, leaving ways opened for interpreting the law, which corrupt, procedural and juridical, the decisions taken.

State involvement has reduced the application area of the general insolvency law only to the private sector. The public sector received a character of exception, being separately regulated for avoiding mass bankruptcy and the potential negative consequences at economic and social level.

Avoiding the bankruptcy of firms through artificial support from the state is the result of a soft budgetary constraint policy, supporting the lack of fiscal discipline in Romania. Apart from negative consequences on business environment brought by unfair competition between truthful taxpayers and those creating arrears, there are negative consequences at macroeconomic level especially regarding the budgetary deficit, the process of fiscal collection and external deficits.

State-aid policy is affecting, in a direct way, the insolvency and bankruptcy field. In Romania, in the total amount of state aid, the aids for safeguard – reorganisation were growing in the last years, instead of decreasing. This observation shows that we are facing, in reality, with a frequent insolvency in important areas of public sector, and even of recently privatised enterprises. Thus, the risk of mass bankruptcy in some sectors of the economy is still present. The amount of aids for erasing, reducing and re-phasing the debts and penalties is growing, which demonstrate an aggravation of payment incapacity for long outstanding debts. Moreover, passing from direct subsidies to support through exemptions and re-phasing, leads to a reduced transparency and to the fact that the state cannot plan in advance the amount of state aid[18]. This fact is in obvious contradiction with the acquis communautaire. The state aid should be redirected from the category of safeguard measures to the areas of measures encouraged by the European Union, such as the research and development, vocational training etc., fields which are in the present time neglected in Romania.

After the recent efforts to improve legislation regarding insolvency, in the case of Romania, defining the insolvency legal system (legal provisions, priorities, characteristics) is less important than the effort required for implementing the system.

The field of bankruptcy should not be regarded stricto sensus, only from the point of view of legal proceeding. Measures for improving the market-exit process should be taken in others domains too, such as financial and banking sector, competition, entrepreneurs and public opinion education, respect for the law etc.

Bankruptcy policy in Romania should take into account the EU' recommendations for informing entrepreneurs concerning bankruptcy proceedings, for ensuring a counselling framework regarding the situations of financial difficulty and ways to follow, for creating of a more transparent framework regarding accounts information and financial data, allowing warning alarms about financial health of enterprises, for promoting a new start for bankrupted entrepreneurs, as well as for changing the negative mentality at the address of firms which became insolvent only for conjuncture reasons.

State aid policy should be re-thought, in order not to prolong the existence of firms not able to face the market competition pressure and having no chance of recovering.

On the other hand, we cannot apply ad literam, in all cases, the community rules in the field of competition; it is not the case to be "more catholic than the Pope" when we deal with social and economic exceptionally situations. The important thing is that the state aid for safeguard – reorganisation to really become the exception which confirms the rule and not an instrument used for postpone unpopular decisions.

Strengthening the judicial sector is necessary, through an appropriate endowment and through judges' education, specialised in bankruptcy field, within the framework of the new commercial courts, stipulated in the law project regarding the judicial reorganisation.

Creation of a veritable guild of professionals in liquidation and reorganisation is another important priority, in order to relieve the judicial sector of additional burdens related to bankruptcy proceeding. Liquidation and reorganisation expert must focus the necessary economic and judicial expertise in order to find efficient solutions for insolvency situations.

[18] *Because the state cannot foresee the exact level of future arrears.*

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