

****

 **SME Policy Index**

**Western Balkans and Turkey 2022**

 **ASSESSING THE IMPLEMENTATION OF THE SMALL BUSINESS ACT FOR EUROPE**

**DIMENSION 2 - Bankruptcy and second chance for SMEs**

**Qualitative indicators government questionnaire**

**Bankruptcy and second chance for SMEs**

**Bankruptcy and second chance for SMEs** dimension assesses the provision of policies that promote access to early warning tools for SMEs to avoid potential or forthcoming financial distress; existence of polices on advisory support services to mentor SMEs to resolve financial issues; legislation framework solutions for out-of-court settlement with creditors under granted moratorium on enforcement of claims with SME restructuring and stabilisation plan confirmation by court; degree of informal preventive restructuring framework, integration with formal insolvency proceedings, including: cram-down of dissenting creditors, debt discharge and second chance for honest entrepreneurs; digitalisation of restructuring and insolvency proceedings; existence of insolvency registers and publication of insolvency information and behaviour of small and medium-sized enterprises (SMEs) in the Western Balkans and Turkey.

This dimension is structured around three sub-dimensions:

* Sub-dimension 1: **Preventive measures**, which considers bankruptcy prevention policy aspects in national insolvency legislation frameworks,
* Sub-dimension 2: **Survival and Bankruptcy procedures**, which reviews the existence of various formal proceedings, institutes and options in place to support SMEs recovery and rehabilitation in their restructuring efforts.
* Sub-dimension 3: **Promoting second chance,** which considers the policies for support and promotion of failed honest entrepreneurs, to have a fresh start of sustainable business operations.

Figure 1. Assessment framework for Dimension 2: Bankruptcy and second chance for SMEs

|  |
| --- |
| **Outcome indicators**Average time of insolvency proceedingsAverage cost of insolvency proceedings (% of the estate) Recovery rate (cents on the dollar) |
| **Sub-dimension 2.1: Preventive measures** | **Sub-dimension 2.2 :** **Survival and bankruptcy procedures** | **Sub-dimension 2.3: Second Chance** |
| **Thematic block 1:**Design and implementation  | **Thematic block 2:**Performance, monitoring and evaluation | **Thematic block 1:**Design and implementation  | **Thematic block 2:**Performance, monitoring and evaluation | No thematic blockExistence, design and plan |
| **Quantitative indicators:**Average time to obtain full discharge from bankruptcyAverage time until a negative score is removed after discharge |

## Sub-dimension 1: Preventive measures

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Question** | **Response *[expand box as necessary]*** | **Source/evidence/links** |
| **Thematic block 1. Design and implementation**  |
| 1.1.1. | **Is there a strategy for implementation of programmes/schemes/tools/ measures preventing SMEs financial distress and/or insolvency?** | Yes [ ]No [ ] |  |
|  | If yes | Please provide information on all designed/planned for implementation and active programmes/schemes/tools/ measures |  |  |
| 1.1.2. | **Are there any official self-test websites available for entrepreneurs before starting a business (self-assessment questionnaires for entrepreneurs and start-ups)?** | Yes [ ]No [ ] |  |
|  | If yes | Please state which government strategies include SMEs self-testing as part of an overall policy for SME access to Early Warning Tools? |  |  |
| 1.1.3. | **Does the government or any public or private institution provide any informational or public awareness campaigns on available government support programmes for entrepreneurs experiencing administrative and/or financial difficulties?** | Yes [ ]No [ ] |  |
|  | If yes | Please provide evidence/examples, communication plans or strategy, scalability of campaign, information channels, targeted audience, number of repetitions in selected media channels etc. |  |  |
| 1.1.4. | **Are there any websites/call centres providing answers or advice to entrepreneurs that fear failure[[1]](#footnote-2)?** | Yes [ ]No [ ] |  |
|  | If yes | Please specify them |  |  |
| 1.1.5 | **Are there any institutional or private support services offered by public agencies to SME’s to avoid financial distress or bankruptcy?** | Yes [ ]No [ ] |  |
|  | If yes | Please specify them |  |  |
| 1.1.6 | **Are there any public or private institutions that provide training courses for entrepreneurs that fear business failure or mentoring and coaching advice services that assist SMEs to overcome current issues leading to future financial distress?** | Yes [ ]No [ ] |  |
|  | If yes | Please specify them (e.g. under which programme are these courses conducted, what is the leading institution). |  |  |
| 1.1.7 | **Are there early-warning systems in place offered to SMEs to identify their financial status (level of financial distress) before filing for bankruptcy?** | Yes [ ]No [ ] |  |
|  | If yes | Please specify them and state the areas that are assessed (financial, legal, sales & marketing, management, HR)? |  |  |
|  |  | a) Provide 5 most important early-warning signals (financial indicators/ratios) that are detected and analysed, if any |  |  |
|  |  | b) Is assessment followed by recommendations? If so, please provide examples. | Yes [ ]No [ ] |  |
|  |  | c) Are recommendations final for implementation or these redirect SME to another support service? Please explain the process and include examples. | Yes [ ]No [ ] |  |
| 1.1.8 | **Is there any scheme, which provides protection from creditors enforcement actions and allows time for restructuring, i.e. moratorium on creditors’ claims enforcement/automatic-stay or preventive concordat in extrajudicial proceeding (out-of-court settlement)?** | Yes [ ]No [ ] |  |
|  | If yes | Provide a legal ground for such proceeding (law and provisions in law), main actors, responsible institutions who manage the proceedings, process-flow, final decision binding to all creditors and debtor or not? Explain process of integration with formal court proceedings. |  |  |
|  | If yes | How many SMEs have successfully been restructured under this regime (since January 2019)?  |  |  |
| 1.1.9 | **Is there official government or institutional programme or policy that provides technical support advisory and mentoring services to SMEs in financial distress?**  | Yes [ ]No [ ] |  |
|  | If yes,  | Please specify the programme and the implementing institution, scope of intervention, duration and programme budgeting. Does the programme provide financing, access to financing or guarantees to lending institutions? If yes, please explain and specify how many SMEs have successfully been restructured under this regime.  |  |  |
| 1.1.10. | **Are there any bodies/authorities advocating the interests of SMEs in the preparation preventive restructuring and insolvency framework SMEs?** | Yes [ ]No [ ] |  |
|  | If yes | Please specify them.  |  |  |
| 1.1.11. | **Which business associations (or other channels, such as research institutes, consultants) have been active in providing support to SMEs for restructuring, turnaround and insolvency recovery plans?** |  |  |
| 1.1.12 | **Has a government strategy or budget been mobilised for financing the programmes preventing SMEs’ financial distress (i.e. early warning, extrajudicial preventive restructuring, technical support advisory and mentoring services, preventive programmes providing early restructuring for SMEs to recover from current issues leading to financial distress)?** | Yes [ ]No [ ] |  |
|  | If yes | What is the budget dedicated to each of the SMEs’ preventive support services/programmes? |  |  |
| 1.1.13. | **Which SME preventive measures/schemes/programmes for informal and out-of-court debt settlement proceedings have been implemented?** |  |  |
| 1.1.14. | **What targets of the strategy have been achieved?** |  |  |
| 1.1.15. | **Is there a specific allocation of funding for the promotion of SMEs’ technical support advisory services, and if so under what initiative?** | Yes [ ]No [ ] |  |
|  | If yes | Please specify the latest available annual amount and its source (national budget, donor funds, other).  |  |  |
| 1.1.16. | **Is there a government body responsible for providing guidance for SMEs to build back fully operational and avoid insolvency (e.g. Agency for support of SMEs or similar)?** | Yes [ ]No [ ] |  |
|  | If yes | How do you ensure that the responsible body has the adequate capacity to perform its role (capacity building, trainings, mentoring)? Please list key opportunities available for capacity building/training of the government staff and whether government is engaging external technical service advice providers through public procurement process? |  |  |
| 1.1.17 | **Did government provide any support/compensation measures to SMEs whose operations were restrained as a result of introduced measures to fight the COVID-19 pandemic?**  | Yes [ ]No [ ] |  |
|  | If yes  | a) What interim measures did the government introduce for preventing business and SMEs from becoming financially distressed or going bankrupt due to coping with COVID-19 pandemic? If any, provide a representative study on number of SMEs becoming financially distressed and facing bankruptcy. |  |  |
| b) Describe measures related to moratorium of debt repayment or moratorium of initiating bankruptcy proceedings with dates of introduction and duration, if any. |  |  |
| **Thematic block 2. Performance, monitoring and evaluation**  |
| 1.2.1 | **Are preventive policies targeted towards SMEs being regularly monitored?**  | Yes [ ]No [ ] |  |
|  | If yes | Describe KPI (key performance indicators) being monitored in each monitored programme, scheme or support measure and provide samples of completed reports.  |  |  |
| 1.2.2. | **Did the government plan and execute impact assessment/s on the preventive insolvency policies targeted towards SMEs?** | Yes [ ]No [ ] |  |
|  | If yes | What actions did the government undertake following the assessment results, if any? Please provide assessment reports.  |  |  |
| 1.2.3. | **Is there an annual report on performance of preventive measures and actions?** | Yes [ ]No [ ] |  |
|  | If yes | Provide statistics and results from performance reports (KPIs monitored and evaluated). Have these been published entirely or just on a form of a summary? |  |  |
|  | a) | What is the newly business registration rate in the last 5 years? Please give the number of creation per year.  |  |  |
|  | b) | What is the number of self-assessment tests on existing websites that government or private institutions have developed to provide access to early warning tools of SMEs to evaluate their current financial status, if any? |  |  |
|  | c) | What is the coverage rate of questions asked by entrepreneurs that fear a failure? |  |  |
|  | d) | What is the recovery rate of distressed companies after the prevention phase? |  |  |
| 1.2.4. | **Does the government body or institution, in charge of providing guidance on preventive measures for SMEs to avoid insolvency, monitor effectiveness of programmes implementation (early second chance)? Please explain.** | Yes [ ]No [ ] |  |
| 1.2.5 | **What are the immediate steps after an early warning and/or technical advice on overcoming identified issues? Are there any financial protection or support measures for SMEs provided by the government (gov. guarantees or financing through development programmes)?**  |  |  |
| *Optional - Please provide any further information on the* ***preventive measures*** *in your economy that you deem relevant for the assessment:* |  |  |

|  |  |
| --- | --- |
| **Question** | **Response** |
| Self-assessed level (1 through 5, whole and half numbers) |  |
| Brief justification |  |
| Assessor name and institution |  |

## Sub-dimension 2: Survival and bankruptcy procedures

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Question** | **Response *[expand box as necessary]*** | **Source/evidence/links** |
| **Thematic block 1 Design and implementation**  |
| 2.1.1. | **Have there been any new laws or amendments to existing procedures on dealing with distressed companies, receivership and bankruptcy since the last assessment (January 2019)?** | Yes [ ]No [ ] |  |
|  | If yes | Are the laws/procedures in line with international standards and recent 2020-2021 EU trends on preventive restructuring (featuring implementation of [EU Directive 2019/1023](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32019L1023) through national legislation of the EU member states)? | Yes [ ]No [ ] |  |
|  | a) | Are the courts neutral[[2]](#footnote-3) in terms of collected fee and taxes to all participants? | Yes [ ]No [ ] |  |
|  | b) | Are the laws/procedures being systematically applied in a transparent way? | Yes [ ]No [ ] |  |
|  | c) | Do the laws/procedures apply to state-owned enterprises? Exemptions, State aid? | Yes [ ]No [ ] |  |
|  | d) | Do you have a formal public digital bankruptcy and insolvency register accessible by cross-border international creditors? | Yes [ ]No [ ] |  |
| 2.1.2 | **Are there free or sponsored business advisory service provided by government or private institutions to SMEs including on financial distress and insolvency facing? Please specify.**  | Yes [ ]No [ ] |  |
| 2.1.3 | **Are there free or sponsored consulting/legal/accounting advice by government technical support services to SMEs?** | Yes [ ]No [ ] |  |
| 2.1.4 | **Based on the rule of Law, are out-of-court settlements available as less expensive alternatives to filing for bankruptcy?** | Yes [ ]No [ ] |  |
|  | If yes | Are the courts involved in out-of-court settlements procedures (e.g. via appointing a mediator to guide the settlement procedure)? | Yes [ ]No [ ] |  |
|  | If a restructuring plan has to be written, are there IPs, advisers or independent legal experts qualified to advise on the feasibility of the plan and its negotiation by classes of creditors? | Yes [ ]No [ ] |  |
| 2.1.5. | **Does the current insolvency law allow for filing of pre-packaged bankruptcy reorganisation plans or for hybrid proceedings agreed out-of-court and only filed for confirmation of plan by the court?**  | Yes [ ]No [ ] |  |
|  | If yes | How many of these reorganisation plans have been filed and approved by year for 2019, 2020 and 2021 (if the data is available for 2021)? |  |  |
| 2.1.6. | **Are there restrictions in your legislation for managers that formally filed for bankruptcy to register new companies and perform duties as a member of board of directors or as public service servant?** | Yes [ ]No [ ] |  |
|  | If yes | Is there a legal option for restoration of full rights upon completion of bankruptcy reorganisation or liquidation? Explain and cite provisions of the law that allow for this.  |  |  |
| 2.1.7 | **Does the applicable national legislation contain formal procedures for discharge of debt in bankruptcy liquidation[[3]](#footnote-4)?** | Yes [ ]No [ ] |  |
|  | If yes | Please specify them: i.e. what is the level and terms of discharge? |  |  |
|  | a) | Does the legislation specify a maximum time for full discharge? | Yes [ ]No [ ] |  |
|  | b) | If a maximum time for full discharge is specified, is it within a maximum of 3 years after final court decision? | Yes [ ]No [ ] |  |
|  | c) | Is removal from bankruptcy register automatic after full discharge or petitioner has to undertake special proceeding or apply to court for it? | Yes [ ]No [ ] |  |
|  | d) | Is removal from national credit black list automatic after full discharge, i.e. automatic restoration of rights? | Yes [ ]No [ ] |  |
| 2.1.9 | **Since the last assessment (January 2019), have there been any developments in the legal framework on secured rights? If so, please specify.**  |  |  |
| 2.1.10. | **Does the legal framework on secured rights include the following elements:** |  |  |
|  | a) | secured creditors are able to seize their collateral after reorganisation (no automatic stay) | Yes [ ]No [ ] |  |
|  | b) | restrictions such as creditor consent must be observed when a debtor files for reorganisation | Yes [ ]No [ ] |  |
|  | c) | secured creditors are paid first out of proceeds from sale of their security, upon deduction of all costs associated to securing, protecting and maintaining of their secured asset by the Bankruptcy Administrator? | Yes [ ]No [ ] |  |
|  | d) | if secured creditors will be paid in full by deferred payments in time, they are considered that have no material interest and have voted for plan? The non-payment of interest rate is not considered a substantial material violation of their rights as interest rates are negative in 2019-2021? If not explain | Yes [ ]No [ ] |  |
|  | e) | Secured creditors are obliged to assess the coverage of their claim and file the reminder of their claim as general unsecured claim vs. regime allowing for unpaid part of a secured claim to be considered as unsecured claim by law which creates preferential treatment of secured creditors. | Yes [ ]No [ ] |  |
| 2.1.10 | **Do debt towards the state tax administration form a priority separate class?** | Yes [ ]No [ ] |  |
|  | If not | Does tax administration support reorganisation plans, and if so, what type of plans (for example 100% deferred payments only) and what is the target recovery rate that Tax authorities are willing to receive by plan in %?  |  |  |
|  | If yes | Please explain and assess the degree of importance on tax administration voting the reorganization plans (on scale 1 to 100). |  |  |
| 2.1.11 | **Does insolvency legislation include cross class[[4]](#footnote-5) cram-down provisions?**  | Yes [ ]No [ ] |  |
|  | If yes,  | Please specify whether a mechanism is based on a fact that a dissenting creditor, who votes against reorganisation would receive higher recovery by plan as compared to a situation when there was no plan.  |  |  |
| 2.1.12. | **Does the insolvency framework in you economy define simplified and shortened (fast-track) proceedings for bankruptcy reorganisation and liquidation for SMEs? Does the insolvency framework envisage any reduction in administrative burden when debtor is an SME?** |  |  |
|  | If yes | Please explain and provide provisions of the law.  |  |  |
|  | a) | Are there special procedures for SMEs insolvency that are more flexible and quicker? If yes please describe. |  |  |
|  | b) | Have there been any reforms in the area of corporate insolvency since January 2019? If so, please describe.  |  |  |
| 2.1.13. | **To what extent has the backlog of cases[[5]](#footnote-6) on distressed companies, receivership and bankruptcy been reduced in 2020 and 2021 as compared to pre COVID-19 years (2018 and 2019)? Please explain.** |  |  |
| 2.1.14. | **Have KPIs (on duration of proceeding, cost of proceedings and recovery rate as % of bankruptcy estate) improved since last assessment (January 2019) compared to the OECD benchmark countries as evaluated by the WB Doing Business?**  | Yes [ ] No [ ]  |  |
|  | If yes  | Please explain the reasons, i.e. what measures led to these improvements.  |  |  |
|  | If no  | Please specify what bottlenecks exist in the current insolvency framework. |  |  |
| 2.1.15. | **Have there been any improvements on transparency regarding insolvency (e.g. providing transparent information to all economic agents by maintaining up-to-date national insolvency registers)?**  |  |  |
|  | If yes | Please provide updated information on improvements of co-ordination mechanisms/policies among institutions involved in implementation of insolvency framework (both extra-judicial and judicial).  |  |  |
| 2.1.16 | **How do you maintain the capacity building of the IPs and Administrators? Provide information on national obligatory professional trainings and monitoring and evaluation procedures for 2020-2021.** |  |  |
| 2.1.17 | **Since the last assessment (January 2019), what initiatives have the government developed to reduce cultural stigma surrounding entrepreneurs’ failure? Please specify if your legislation provides a clear distinction between fraudulent insolvency transactions and positive cases of insolvency recovery through bankruptcy reorganisation plan?** |  |  |
| **Thematic block 2 Performance, monitoring and evaluation**  |
| 2.2.1 | **Are formal bankruptcy and reorganisation (survival) policies being regularly monitored and publicly reported?**  | Yes [ ]No [ ] |  |
|  | If yes | Describe KPI (key performance indicators) being monitored, like duration of proceedings, cost and claims recovery as % of bankruptcy estate differentiated by type of proceeding (bankruptcy or reorganisation, pre-bankruptcy reorganization plan or preventive stabilisation proceeding)  |  |  |
|  | a) | What is the number of bankruptcy and reorganizations finalised on a yearly basis for the last 5 years since 2017? |  |  |
|  | b) | What is the average duration of bankruptcy and insolvency proceedings for each of the last 5 years since 2017?  |  |  |
|  | c) | What is the average annual cost of bankruptcy and reorganisation procedures finalised on a yearly basis for the last 5 years since 2017? |  |  |
|  | d) | What is average annual rate of bankruptcy and insolvency proceedings for each of the last 5 years since 2017?  |  |  |
|  | e) | What is the survival rate of recovered companies or part of businesses in the first, second, third, fourth and fifth year of operation? (Please give the rate for each year since 2017). |  |  |
|  | g) | What is the distribution of recovered companies in insolvency based size of business that recovered in reorganisation proceedings in terms of total assets or annual turnover and number of workers? Please draw sector conclusions. |  |  |
| 2.2.2. | **Have any gaps assessment analyses been conducted on performance of liquidation and reorganisation proceedings with recommendations for legislative improvements to allow for more recoveries than liquidations? Alternatively, has an impact assessment on the introduced insolvency framework legislative changes been conducted since the last assessment in January 2019?** | Yes [ ]No [ ] |  |
|  | If yes | Provide assessment reports and explain future plans for legislation improvement.  |  |  |
| 2.2.3. | **Is there an annual report on performance of pre-bankruptcy reorganisation proceedings, formal bankruptcy reorganisation proceedings and liquidations?** | Yes [ ]No [ ] |  |
|  | If yes | Provide statistics and results from performance reports (KPIs monitored and evaluated). Have these been published entirely or just in summary?  |  |  |
| 2.2.4. | **Does the government body or institution in charge of providing guidance on formal court bankruptcy reorganisation and liquidation proceedings, monitor effectiveness and efficiency of legislation implementation (National Insolvency regulator and/or Agency/Ministry in charge)? If so, please specify.** | Yes [ ]No [ ] |  |
| *Optional - Please provide any further information on the policies targeting* ***survival and bankruptcy procedures i****n your economy that you deem relevant for the assessment:* |  |  |

|  |  |
| --- | --- |
| **Question** | **Response** |
| Self-assessed level (1 through 5, whole and half numbers) |  |
| Brief justification |  |
| Assessor name and institution |  |

## Sub-dimension 3: Promoting Second Chance

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Question** | **Response *[expand box as necessary]*** | **Source/evidence/links** |
| **No Thematic block – Existence, Design and Plan**  |
|  | **Does the government have an overall national strategy to promote second chance to entrepreneurs?** | Yes [ ]No [ ] |  |
|  | If yes | Please explain national concept/principles on which second chance programme is based and elements it covers (that have been either discussed or adopted): |  |  |
|  |  | a) Second chance for honest entrepreneurs or SMEs upon debt discharge and restoration of rights (if the latter exists as a legal option in formal insolvency proceedings). | Yes [ ]No [ ] |  |
|  |  | b) Second chance for SMEs upon preventive insolvency extrajudicial restructuring. | Yes [ ]No [ ] |  |
|  |  | c) Second chance for SMEs upon early warning and by provision of technical support advisory and mentoring services avoiding formal and informal insolvency proceedings. | Yes [ ]No [ ] |  |
|  | **Does the government have an information campaign on promoting second chance?**  | Yes [ ]No [ ] |  |
|  | If yes | Is information on second chance procedures available online through the government website or implementation agency’s website? | Yes [ ]No [ ] |  |
|  | **Are there any disabilities that relate to restrictions imposed during the period of bankruptcy that might prevent entrepreneurs from having a fresh start?** | Yes [ ]No [ ] |  |
|  | If yes | Are there any civic disabilities? | Yes [ ]No [ ] |  |
|  | Are there any economic disabilities? | Yes [ ]No [ ] |  |
|  | Are there any interference with privacy and/or liberty? | Yes [ ]No [ ] |  |
|  | **Does national system have qualified and trained advisors to support the implementation of a Second Chance Programme?** | Yes [ ]No [ ] |  |
|  | If yes | Please provide description of selection and approval criteria |  |  |
|  | **Does government implementation body of Second Chance SME programme have the capacity of trained officers to run the programme?** | Yes [ ]No [ ] |  |
|  | If yes | Provide information on training topics covered and implementation Operation Manual compliance |  |  |
|  | **Is there training provided to entrepreneurs on starting fresh upon successful implementation of Second Chance Programme?** | Yes [ ]No [ ] |  |
|  | If yes | Please provide information on training and relation to mentoring and coaching technical support advisory assistance programmes. |  |  |
| *Optional - Please provide any further information on the policies targeting* ***Second Chance of SMEs*** *in your economy that you deem relevant for the assessment* |  |  |

|  |  |
| --- | --- |
| **Question** | **Response** |
| Self-assessed level (1 through 5, whole and half numbers) |  |
| Brief justification |  |
| Assessor name and institution |  |

|  |  |
| --- | --- |
| **Self-assessed level (1 through 5, whole and half numbers) for the overall dimension – Bankruptcy and second chance for SMEs:**  |  |

1. Fear of Failure -An aspect of risk: the potential loss of self-image and self-respect (Ray 1994) however, under dimension 2 fear of failure is also perceived as entrepreneurs who experience financial difficulty. [↑](#footnote-ref-2)
2. Courts are defined as not neutral if they favour either debtors or creditors. [↑](#footnote-ref-3)
3. A bankruptcy discharge releases the debtor from personal liability for certain specified types of debts. In other words, the debtor is no longer legally required to pay any debts that are discharged. The discharge is a permanent order prohibiting the creditors of the debtor from taking any form of collection action on discharged debts, including legal action and communications with the debtor, such as telephone calls, letters, and personal contacts. [↑](#footnote-ref-4)
4. Cross class cram-down: confirmation by a judicial or administrative authority of a restructuring plan over the dissent of one or several affected classes of creditors. [↑](#footnote-ref-5)
5. This refers to the backlog of unresolved legal cases relating to bankruptcy, distressed companies and receivership. [↑](#footnote-ref-6)