BUSINESS DYNAMICS:

START-UPS, BUSINESS TRANSFERS AND BANKRUPTCY

The economic impact of legal and administrative procedures for licensing, business transfers and bankruptcy on entrepreneurship in Europe

European Commission
Enterprise and Industry

European Commission

Business Dynamics:

Start-ups, Business Transfers and Bankruptcy

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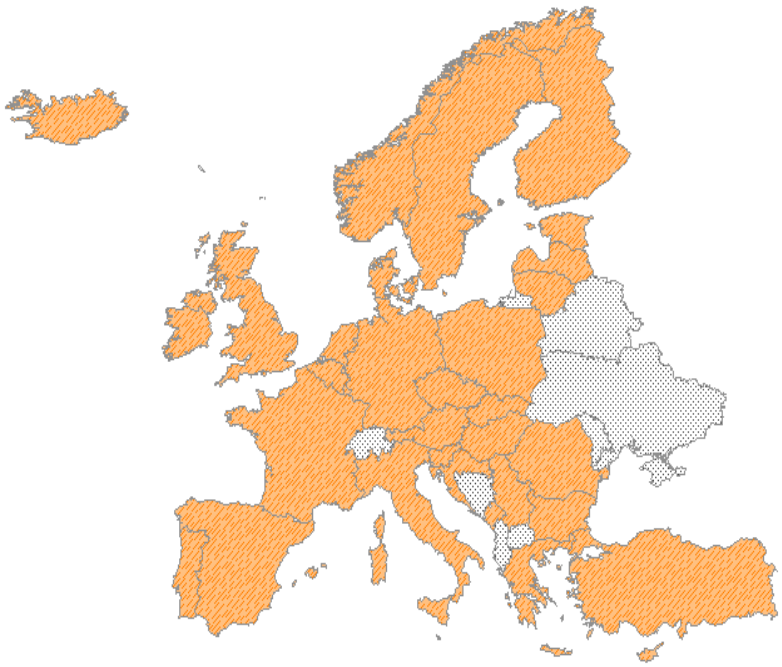

Final Report

January 2011

Bruxelles 2011

This report is financed under the Competitiveness and Innovation Framework Programme which aims to encourage the competitiveness of European enterprises.

Published by:
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Full Title: "Business Dynamics: Start-ups, Business Transfers and Bankruptcy". *The economic impact of legal and administrative procedures for licensing, business transfers and bankruptcy on entrepreneurship in Europe.*

This report was prepared in 2010 for the European Commission, DG Enterprise and Industry.

Abstract:
The study analyses the economic impact of legal and administrative procedures for licensing, business transfers and bankruptcy on entrepreneurship in Europe. The study encompasses the 27 EU member states plus Croatia, Turkey, Iceland, Norway, Serbia and Montenegro. For each of the focus areas, the study analyses the following: (i) Licensing procedures: to what extent do these administrative procedures delay the creation of new enterprises? (ii) Business transfers: to what extent have the recommendations included in the 1994 Commission Recommendation to improve transfers of business been implemented and which are the main obstacles still remaining to successful business transfers? and (iii) Bankruptcy procedures and Second Chance: what is the impact of bankruptcy law and practices on the availability of a Second Chance (re-starter) for failed entrepreneurs?

Key Subjects:
SMEs, businesses, licensing, licenses, permits, authorisation, bankruptcy, insolvency, Second Chance, business transfers

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The views expressed herein are those of the experts and do not represent any official view of the institutions mentioned above.

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Reference:
Calogirou, C., Fragozidis, K., Houdard-Duval, E., Perrin-Boulonne, H. (2010) Business Dynamics: Start-ups, Business Transfers and Bankruptcy, PLANET S.A., CCIP, DTI and GFA, Published by the European Commission, DG Enterprise and Industry.

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EXECUTIVE SUMMARY

This "Business Dynamics: Start-ups, Business Transfers and Bankruptcy" study focuses on the legal provisions and administrative procedures impacting four key moments in the life of an enterprise: licensing procedures, business transfers, bankruptcy procedures and conditions for re-starting - "Second Chance" - for failed entrepreneurs. The duration of the study was 12 months from November 2009 to October 2010.

The study aimed to:

1. assess how well the laws and administrative procedures across Europe are suited:

- to easily and swiftly obtain the licenses needed to operate a new firm
- to transfer a firm to a new owner as a going concern
- to close and wind up a bankrupt firm
- to have a Second Chance as an honest entrepreneur (i.e. undertake a re-start in the case of honest entrepreneurs that have gone through a non-fraudulent bankruptcy)

2. analyse their impact on:

- the number of newly created enterprises
- the preservation of the existing enterprises as going concerns

3. provide information to policy makers and other stakeholders.

The study encompassed the 27 EU countries plus Iceland, Norway, Croatia, Turkey, Serbia and Montenegro. The methodology used consisted of:

- Surveys using interviews (face-to-face, telephone) and online questionnaires, receiving 1467 replies from:
  - Different Professional Associations (i.e. Fédération Belge de la Distribution, Greek Association of Plumbers)
  - Chambers of Commerce & Industry
  - Government Institutions
  - SME Organizations
  - Entrepreneurs
  - Legal, Banking and Business Experts
- Desk Research of key publications and statistics on the subject matters from sources such as:
  - EU Publications
  - Eurostat

  - OECD
  - National Statistics
- Economic analysis to assess the impact on GDP and employment, of the regulatory framework and practices related to the four study areas.

Overall, 3 key conclusions emerge after synthesis of the study results, namely:

1. Reduction of regulatory framework complexity is important since it has a considerable impact on entrepreneurial activity.
2. An integrated approach in improving the regulatory framework is needed to ensure all aspects of enterprise life cycle are addressed simultaneously.
3. Regulatory framework should be more supportive of the active population of entrepreneurs in terms of fiscal conditions, transparency and co-ordinated actions across different stages of the enterprise life cycle.

Findings for each of the four study areas include:

I. Licensing

- Licensing complexity has low impact on:
  - birth rate of new firms,
  - total entrepreneurial activity,
  - levels of entrepreneurship in general.

  Yet the costs associated with (1) information gathering in relation to the licenses to be obtained and (2) costs and time out of market whilst processing the licenses, indicate that marginal GDP gains in terms of quicker access to market could be obtained.

II. Business Transfers

- Approximately 450.000 firms with 2 million employees are being transferred each year across Europe. The study estimated that every year, there is a risk of losing approximately 150.000 firms and 600.000 jobs due to inefficiencies in the business transfers system.
- The smallest businesses are the most vulnerable to failed transfers. Other factors of vulnerability are the legal status of a company (sole proprietorships are the most vulnerable) as well as its age (companies less than three years old are very vulnerable).
- A transfer-friendly regulatory framework is under development in some European countries, yet awareness of the entrepreneurial community and stakeholders (professional associations, legal firms and consultants to entrepreneurs) is still low.

- Systematic monitoring of business transfers activity to obtain concrete evidence in support of relevant national and European policy making is lacking.
- Both sides involved in a transfer transaction need support for successful execution of business transfers and creation of awareness of the related benefits.

III. Bankruptcy

- Differences in legal systems (common law or civil law and its variations) do not relate to efficiency in bankruptcy procedures.
- Best performing countries complement an efficient legal framework for bankruptcy with early warning systems.
- Early warning systems have a positive effect on both employment (in particular by new or surviving firms) and firm-birth rate.

IV. Second Chance

- Second Chance is not adequately recognized by national legislations, honest bankrupt entrepreneurs are in almost all countries treated more or less like fraudulent bankrupts. Thus, honest and experienced bankrupt entrepreneurs are not appreciated as a source of new enterprises and jobs.
- Suitable financing instruments for re-starters need to be put in place.
- Increased networking among entrepreneurs / re-starters is important to foster the Second Chance.

1 INTRODUCTION

For over a decade the European Commission has been championing measures to create a more entrepreneurship-friendly business environment in order to promote economic growth and jobs. This issue currently lies at the very heart of the Europe 2020 Strategy, the flagship framework policy of the Commission for the coming decade. One of the five targets of this strategy is that 75% of the EU population aged 20-64 should be employed. Raising employment levels and ensuring the sustainability of European socio-economic models, while 'baby-boomers' retire, requires the creation of appropriate conditions for a sufficient level of entrepreneurship to develop and persist.

1.1 Objectives

The aim of the present study is to analyse the economic impact of legal and administrative procedures of licensing, business transfers, bankruptcy and Second Chance on entrepreneurship in Europe. These focus areas correspond to key phases of the life-cycle of an enterprise and are specifically addressed by the Small Business Act (SBA)[1] and the Review of the SBA for Europe of 2011[2].

For each focus area, the rationale for and specific objectives of the study are:

(i) Licensing procedures: The European Commission's initiatives in the area of licensing are based on the assumption that simplification in licensing procedures leads to the creation of more firms. The study's objective in this area is to assess the impact of the level of complexity of licensing procedures on business dynamics (i.e. birth rate and total entrepreneurial activity).

(ii) Business transfers: A substantial number of viable businesses are lost in Europe every year due to failed business transfers[3]. Nevertheless, considerable efforts to facilitate business transfers have already been made by Member States in the last 15 years. The study's objective is to examine improvements on business transfers legal procedures as a

[1] COM(2008) 394 final - Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: "Think Small First" A "Small Business Act" for Europe

[2] COM(2011) 78 final - Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Review of the "Small Business Act" for Europe

3 COM(2006) 117 final: Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Implementing the Lisbon Community Programme for Growth and Jobs, Transfer of Businesses – Continuity through a new beginning

result of measures taken by the Member States in response to the objectives set by the 1994 Recommendation and reinforced in the 2006 Communication of the Commission[4].

(iii) Bankruptcy and Second Chance: The 2007 Commission Communication[5] underlined that a less harsh environment towards bankruptcy and bankrupt entrepreneurs would facilitate a more entrepreneurial Europe especially among former bankrupt entrepreneurs. The objective in this area is to examine the impact of current legal practices on the availability and facilitation of a Second Chance (re-start) for failed entrepreneurs.

1.2 Issues Analysed within each of the Four Thematic Areas

The next table summarises the issues that the study investigated in each area[6]:

Table 1-1: Key issues addressed in the Business Dynamics Study

Licensing	Business Transfer
• Measure time required to obtain licenses following the Commission's methodology and models, i.e.: the licenses required for 5 model companies. • Quantify the effect achievable by improved licensing procedures in terms of more companies created. • Propose best practices and policy recommendations.	• Identify the main obstacles for a successful transfer of ownership of SMEs from one owner to the next - be it to members of the business owner's family or to third parties (e.g. employees). • Identify the reasons for failed business transfers. • Estimate the economic cost of failed business transfers in terms of enterprise and job losses, etc. • Identify which SMEs (according to size, occupation, sector, legal form/ownership structure, etc.) are most vulnerable to transfer failure. • Propose business support and policy solutions to respond to the obstacles.
Bankruptcy	**Second Chance**
• Review existing bankruptcy procedures and identify the gains in terms of salvaged companies and the effect on jobs to be obtained from simplified and faster procedures. • Quantify the value of lost entrepreneurship in terms of more jobs, and enterprises. • Propose best practices and policy recommendations.	• Measure the direct and indirect impact of bankruptcy legislation and legal, economic and social stigmatisation on the number of start-ups/new entrepreneurs. • Identify and prioritise by effectiveness public interventions or programmes that successfully support companies undergoing financial difficulties, and present national/regional programmes that are successful in this field.

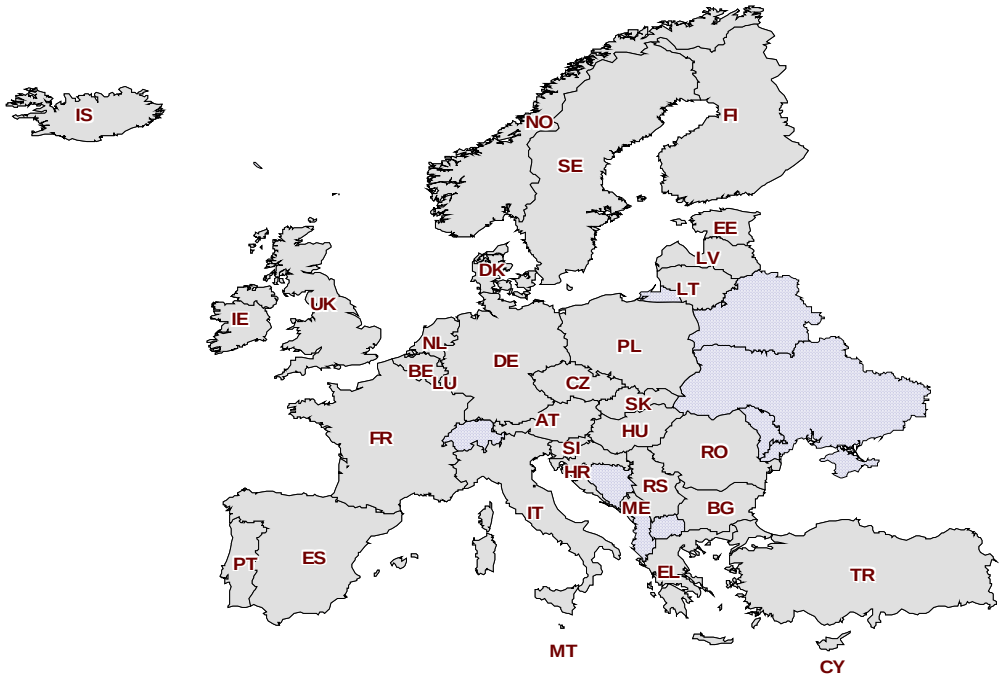
[4] Ibid COM(2006) 117 final

[5] COM(2007) 584 final: Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – Overcoming the stigma of business failure – for a Second Chance policy, Implementing the Lisbon Partnership for Growth and Jobs

[6] The issues investigated per thematic area are in accordance with the study's Technical Specifications

The study encompassed the 27 EU member countries plus Iceland, Norway, Croatia, Turkey, Serbia and Montenegro.

Figure 1-1: Geographical coverage of the Business Dynamics Study



2 PRIOR SITUATION

The European Commission has acknowledged on various occasions the need for the Union and its Member States to support small and medium-sized enterprises (SMEs) given the fundamental role they play in economic growth and cohesion. Within the political and economic context set by EU Treaties and policies, the European Commission has put particular emphasis on a number of issues related to SMEs, including business start-ups and licensing, transfers, bankruptcy and Second Chance.

Several of the policies adopted by the European Commission have been, directly or indirectly linked to SME development. From 2000 onwards, when the Lisbon Strategy was adopted by the Lisbon European Council, this effort was intensified. The European Charter for Small Enterprises was approved by EU leaders in 2000. The Charter is a self-commitment from the Member States and participating regional governments to improve the business environment for small enterprises through the adoption of ten action lines[7]. Moreover, an annual Charter conference was organised to provide a forum for information and good practice exchange between all participating countries.

The mid-term review of the Lisbon Strategy in 2005, defined SMEs as "indispensable for the delivery of stronger, lasting growth and more and better jobs"[8]. Within this context, the European Commission launched a Better Regulation Policy for the simplification and improvement of existing regulation, in which it set itself the goal of reducing red tape associated with EU legislation by 25% by 2012, and asked Member States for an equivalent effort. This process was launched in January 2007 with the Commission Communication "Action programme for reducing administrative burdens in the EU"[9],[10] which developed the methodology framework for assessing administrative costs and reducing administrative burdens. The Commission's 100 initiatives to draw up a "simplification rolling programme" for the period 2005 to 2008 have been progressively extended to all policy areas, reaching 185 initiatives in 2009. Although initial progress was slow, by 2009 Commission had tabled proposals to simplify 132 of them. 75 of these proposals have been adopted, and a further 50 are pending before the Council

7 http://ec.europa.eu/enterprise/policies/sme/documents/charter/index_en.htm

8 Modern SME Policy for Growth and Employment, European Commission, COM(2005)551 final, 10.11.2005

9 COM(2007) 23 final – Green Paper, Entrepreneurship in Europe

10 The recently presented Commission's progress report "3rd Strategic review of better regulation in the EU" shows that the European Union is on track to meet its ambitious target, without including detailed information on licensing of start-ups.

and the Parliament. In 2008 the Commission finalised the codification of 229 acts out of a total of 436[11].

The 2008 Communication "Think Small First" / A "Small Business Act" for Europe (SBA)[12] set 10 principles to guide the development and implementation of policies both at EU and Member State level. It called on the Union and its Member States to develop an environment "within which entrepreneurs and family businesses can thrive and entrepreneurship is rewarded". At the peak of the global financial and economic crisis, the Small Business Act focused on a set of principles and priorities which should guide the conception and implementation of policies for SMEs both at EU and national level.

Out of the 10 principles set by the SBA, 3 are directly relevant to this study:

- Principle 1:"Create an environment in which entrepreneurs and family businesses can thrive and entrepreneurship is rewarded". Includes the need for the Member States to put in place schemes for matching transferable businesses with potential new owners, and to provide mentoring and support for business transfers.
- Principle 2: "Ensure that honest entrepreneurs who have faced bankruptcy, quickly get a Second Chance". Includes the Commission's commitment to continue promoting a Second Chance policy by facilitating exchanges of best practices among Member States. In parallel, the Member States should promote a positive attitude towards giving entrepreneurs a fresh start, aim to complete all legal procedures to wind up the business in case of non-fraudulent bankruptcy within a year, and ensure that re-starters are treated on an equal footing with new start-ups.
- Principle 4: "Make public administrations responsive to SMEs' needs". Includes the need for the Member States to reduce the level of fees requested by the administrations for registering a business, continue the work to reduce the time required to set up a business to less than one week, and accelerate the commencement of SMEs' commercial operations by reducing and simplifying business licenses and permits.

Progress of the implementation of SBA is being monitored, assessed and regularly published[13].

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[11] Source : http://ec.europa.eu/enterprise/policies/better-regulation/administrative-burdens/action-programme/index_en.htm

[12] COM(2008) 394 final - Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: "Think Small First" A "Small Business Act" for Europe

[13] See for example P6_TA(2009)0100 - European Parliament resolution of 10 March 2009 on the Small Business Act, 10306/09 (Press 155) – Press Release, 2945th Council meeting, Competitiveness (Internal Market, Industry and Research), COM(2009) 680 – Report on the implementation of SBA

In relation to the policy measures addressing the specific themes contained in this study, i.e. licensing, business transfers, bankruptcy and Second Chance, the following measures and actions have already been taken.

Licensing

In 1997 the European Commission proposed measures to speed up start-ups with the adoption of the 97/344/EC Recommendation[14]. The Recommendation set out specific measures for the simplification of start-up procedures and how Member States could improve the cost and time imposed by the administrative procedures to start and run a small firm.

The Lisbon Strategy adopted in 2000, called for a "benchmarking exercise on issues such as the length of time and the costs involved in setting up a company". The European Charter for Small Enterprises, included the action "Cheaper and faster start-ups» as one of its ten action lines. In 2002, the Commission published a study titled "Benchmarking the Administration of Business Start-ups", in order to simplify and speed up business registration procedures among 15 (at that time) EU Member States and to assist in the identification of operational improvements for third countries and other interested parties.

In 2007 the Commission issued a Staff Working Document "Assessing Business Start-up Procedures in the context of the renewed Lisbon strategy for growth and jobs"[15]. The document defines that the "*procedural cycle for a start-up can be considered complete when a company is fully operational to develop its economic activities*."[16] Procedures include registration (start-up for a new legal entity) and contemplate all the processes and documentation required by all different layers of administration (licenses required for a new legal entity to become fully capable of carrying out an economic activity). Thus a clear distinction is made between start-up and licensing procedures. Moreover, the document presented 5 model companies (a manufacturer of steel products, a manufacturer of small IT devices, a hotel with a restaurant, a plumbing company and a wholesale or retail distributor) to be used as benchmarks for quantifying the burden imposed by public administration on licensing procedures (not only for setting up a business). At the same time, the document provides the opportunity to choose and develop common methods for measuring the administrative burden, an issue that has always been contentious[17].

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[14] 97/344/European Commission: Commission Recommendation of 22 April 1997 on improving and simplifying the business environment for business start-ups

[15] SEC(2007) 129 "Assessing Business Start-up procedures in the context of the renewed Lisbon strategy for growth and jobs"

[16] Ibid – SEC (2007) 129

[17] See for example Chittenden, F.; Kauser, S.; Poutziouris, P., *Regulatory Burden of Small Business: A Literature Review*.

Since 2006 the European Commission has been monitoring progress in start-up procedures (progress in the reduction of time and costs to start a new legal entity)[18]. In addition, licensing procedures need also to be monitored and relevant recommendations and proposals issued. The present study, based on the principles and definitions set by the Commission's document[19], examined the licensing area in order to provide the necessary information on:

- basic data on the situation of licensing procedures in all surveyed countries
- available evidence of tangible economic impact produced by administrative simplification in licensing procedures

Business Transfers

In 1994 the Commission adopted a Recommendation to improve the framework conditions in the EU member states for business transfers, accompanied by a detailed explanatory Communication[20].

Four years later the 1998 Communication reported[21] on the progress of Member States in response to the 1994 Recommendations. More specifically, the 1998 Communication mentioned that most of the measures taken related to modifications of the legal environment in order to encourage and facilitate transfers of businesses. Member States had modified the fiscal treatment of transfers, notably through the reduction of inheritance and gift taxes. Other initiatives aimed also at improving the financial prospects of businesses when they were transferred. The 1998 Communication showed also that despite the improvements made, there were wide variations among different Member States.

Quoting from this Communication, "the general picture of all Member States shows that the various suggestions set out in the recommendation have not been followed to an extent which would be sufficient to overcome the specific obstacles met by businesses facing their transfer"[22]. Thus, according to the 1998 Communication, Member States should continue strengthening their efforts to facilitate the transfer of businesses through legislative and administrative simplification, effective tax reductions and easier access to financial support for the takeover of a business. Intermediaries should be well informed and trained in all relevant aspects of the business transfers. The Communication asked the Commission to monitor the situation and

[18] http://ec.europa.eu/enterprise/policies/sme/business-environment/start-up-procedures/
[19] Licenses: Definitions for the 5 model companies – Criteria for the determination of applicable licenses and time measurement, version 30/09/2009 – European Commission, Enterprise and Industry Directorate - General
[20] Communication on the Commission recommendation of 7 December 1994 on the transfer of small and medium-sized enterprises, OJ C 400, 31.12.1994, pp. 1 – 9
[21] Communication from the Commission on the transfer of small and medium-sized enterprises (98/C 93/02)
[22] Ibid. – 1998 Communication

contribute to awareness raising, information and training of all parties concerned[23].

In 2006 the Commission Communication "Implementing the Lisbon Community Programme for Growth and Jobs: Transfer of Businesses - Continuity through a new beginning"[24] highlighted the main focus areas in which more effort was required[25] and invited Member States to improve conditions for business transfers by ensuring support for more awareness raising measures, adequate financial conditions, tax systems that are transfer-friendly and by organising transparent markets for business transfers.

The present study, based on the 1994, 1998 and 2006 Commission's Recommendations, analysed the situation regarding:

- Information and training: i.e. the role of public and private initiatives to increase the information and training provided to businessmen in order to ensure the right preparation for a successful transfer.
- Preparation for transfer: i.e. provision of appropriate instruments for the preparation of the transfer (change from one legal form to another, establishment of public limited companies with a very small number of shareholders or with only one partner, application of the principle of fiscal neutrality, etc.).
- Continuity of partnership and sole proprietorship: i.e. ensuring business continuity in the event of the death of one of the partners or the owner (family and inheritance law, etc.).
- Taxation: i.e. provision of appropriate fiscal treatment of transfers to ensure the survival of the business.
- Transfer to third parties: i.e. facilitation of transfer to third parties including employees.

Bankruptcy and Second Chance

Second Chance and business failure entered the political agenda in 2000. At that time it was widely understood that in Europe in general business failure led to social, economic and legal stigmatization of the failed entrepreneur and

[23] Ibid. – 1998 Communication

[24] COM(2006) 117 final: Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Implementing the Lisbon Community Programme for Growth and Jobs, Transfer of Businesses – Continuity through a new beginning

[25] According to the Communication (COM(2006) 117 final), more efforts should be required in the areas of awareness raising for business transfers, financial facilities designed to finance a transfer, legal transformation, taxation policy

therefore acted as an obstacle to entrepreneurship and entrepreneurial initiative.

In May 2001 a seminar regarding business failure was organized by the Commission and the Dutch Ministry of Economic Affairs in Noordwijk[26]. Amongst the proposals made was the need for institutional changes to promote the notion that prevention is more efficient than healing.

In 2002 an expert group on "Restructuring, Bankruptcy and a Fresh Start" was set up to implement a study of which the main areas of focus were: a) early warning, b) legal system, c) fresh start and d) social attitudes. For each of these main thematic areas a list of indicators was set, policy suggestions were made and good practices were identified[27].

The impact of European Commission's measures was reflected in the National Reform Programmes, prepared by Member States in 2005. One third of these programmes contained plans to reform the national insolvency legislation[28].

The 2007 Communication from the Commission, "Overcoming the stigma of business failure – for a Second Chance policy; implementing the Lisbon Partnership for Growth and Jobs"[29], recognized that EU countries should facilitate "Second Chance for entrepreneurs who are at risk or have failed"[30]. A policy commitment to address the issue of business failure and promote fresh starts exists to varying degrees in many European countries, which has led to progress in improving insolvency law in many European countries. The Communication considered that there was room to go further to foster a more positive attitude towards entrepreneurship. Moreover, through this Communication the Commission invited Member States to act in order to reduce stigmatization of business failure[31] by taking actions in:

- Public image, education and media
- The role of insolvency law
- Actively supporting businesses at risk
- Actively supporting re-starters

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[26]http://ec.europa.eu/enterprise/policies/sme/files/sme2chance/doc/concl_noordwijk_en_10-2201_en.pdf

[27]European Commission (2003).*Best Project on Restructuring Bankruptcy and a Fresh Start; Final Report of the Expert Group*.

[28]http://europa.eu/rapid/pressReleasesAction.do?reference=IP/06/387&format=HTML&aged=0&language=EN&guiLanguage=en

[29]COM(2007) 584 final: Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Implementing the Lisbon Community Programme for Growth and Jobs, Overcoming the stigma of business failure – for a Second Chance policy

[30]Ibid. – COM(2007) 584

[31] Ibid. – COM(2007) 584

Principle II of the 2008 Small Business Act" for Europe[32] requested that Member States *should ensure that honest entrepreneurs who have faced bankruptcy quickly get a Second Chance.* In order to translate this principle into practice the Commission promotes a Second Chance policy by facilitating exchanges of best practices among Member States, and invites them to:

- promote a positive attitude in society towards giving entrepreneurs a fresh start, for example through public information campaigns,
- aim to complete all legal procedures to wind up the business in the case of non-fraudulent bankruptcy within a year,
- ensure that re-starters are treated on an equal footing with new start-ups, including support schemes.

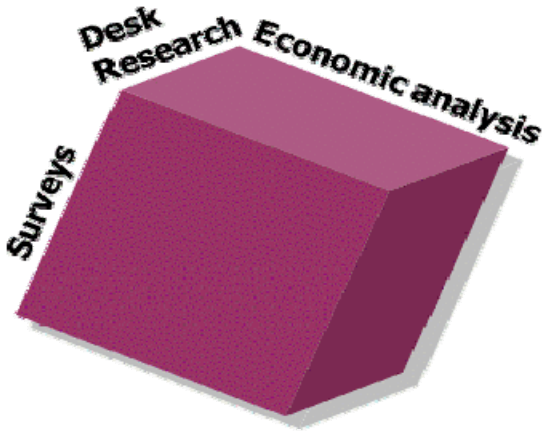
The present study, based on the aforementioned Commission's Communications, analysed the bankruptcy and Second Chance area to provide information on the legal bankruptcy procedures across Europe and the impact of such procedures to facilitate a Second Chance for failed entrepreneurs who want to re-start and found a new enterprise.

[32] COM(2008) 394 final - Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: "Think Small First" A "Small Business Act" for Europe

3 RESEARCH METHODOLOGY

Three research methods have been implemented to meet the requirements of this study: (a) desk research, (b) surveys and (c) economic analysis. The three methods are highly interdependent. In particular the data collected from the desk research and the surveys were jointly evaluated and utilised for the economic analysis.

Figure 3-1: Research methods of the Business Dynamics Study



Desk Research – Key Publications (Commission's Communications – COM(2006) 117 final, COM(2007) 584 final, COM(2008) 394 final, COM(2009) 15 final, 1994 Recommendation, SEC(207) 129, Bankruptcy laws and national documents related to the four thematic areas, as presented in Annex III of the study, Eurostat data, OECD data, National Statistics.

Surveys – 1467 replies from targeted respondents from the 27 EU member states plus Iceland, Norway, Croatia, Turkey, Serbia and Montenegro, covering the four thematic areas of the study.

Economic analysis – development of several indices to measure the efficiency of licensing procedures, of business transfers and of the bankruptcy legal framework and practices, to assess the impact of the legislative framework on

The same research methodology was used for all 4 thematic areas: licensing, business transfers, bankruptcy and Second Chance.

3.1 Desk Research

The background information collected on the four thematic areas of the study was:

- *Key publications/ references*: references on studies, data and working papers related to licensing procedures, business transfers, bankruptcy procedures and Second Chance for failed entrepreneurs (provided in **Annex III).**
- *Statistical Data*: available statistics have been collected primarily from Eurostat as well as from official national sources (e.g. Statistical Offices) on: the number of firms by sector / size/ legal form and the number of closures and liquidations. This data has been used primarily to support the economic analysis. Relevant data is presented within the main body of the

[33]. It should be noted that for the majority of countries, there is lack of statistical data on the number of business transfers, firms facing insolvency problems, the number of out-of-court settlements and the number of re-starters.

- *List of key actors*: the relevant organisations (public or private) were identified for each of the four thematic areas of the study (licensing procedures, business transfers, bankruptcy and Second Chance). These lists are provided in **Annex II**. The lists of key actors were a useful starting point for the development of the targeted list of participants within the surveys.

3.2 Surveys

The implementation of four pan-European surveys, one per each thematic area of the study (licensing, business transfers, bankruptcy and Second Chance) was the *key data collection method* of this study. The surveys targeted entrepreneurs, legal experts and representatives of professional associations, chambers of commerce and the public administration, rather than broader unstructured population.

It should be noted that the existence of diverging views expressed by participants on issues that are objectively factual (such as, whether fast track procedures for honest entrepreneurs, exist or not), reveals a potential lack of broad knowledge and/or awareness on the provisions of the law, related also to complexity of legal procedures.

3.2.1 Key Issues Addressed per Survey

A brief overview of the logic and key issues addressed by each survey.

Licensing Survey

The aim of the survey on licensing was to measure the complexity of licensing procedures (in terms of cost, time, and effort) for the five model companies in each of the 33 countries. The Commission has identified five "benchmark" model companies[34] in order to enable the comparable assessment of data across countries and across different studies:

- Hotel with a restaurant
- Plumbing company

[33] Please refer to sections entitled "Statistics from existing sources" as well as within the economic analysis section for each thematic area.
[34] SEC(2007) 129 "Assessing Business Start-up procedures in the context of the renewed Lisbon strategy for growth and jobs".

- Wholesale or retail distributor
- Manufacturer of steel products
- Manufacturer of small IT devices

In the context of this study, licenses refer to the complete "package" of compulsory permits, certificates, authorizations, other documents or procedures required in order to start producing and/or offering a company's products and/or services after registration of the company. Thus, the survey addresses the period following the legal establishment of a company[35]. Each questionnaire covered the entire range of potential licenses required and provided the option for the respondents to add other licenses specific to their country.

A questionnaire was developed for each model company, addressing the following types of licenses:

- Industry licenses: conformity of the products or services provided by the company so that they may be sold in the entirety of the national territory of the Member State.
- Licenses related to products/services: compliance with environmental, health and safety regulations affecting the company premises and manufacturing processes.
- Licenses related to premises: compliance with the requirements for storage of raw materials, intermediate goods or finished products related to the operations of the company.
- Licenses related to employees: compliance with processes related to the safety of employees.
- Conformity with any other requirement that is compulsory for the company in order to operate.

Business Transfers Survey

The aim of the survey on business transfers was to identify the legal processes in place for the transfer of SMEs and the factors that make SMEs more vulnerable to transfer failure in each of the 33 countries. The questionnaire addressed the economic framework for business transfers, the legal framework, taxation procedures as well as "soft" factors.

The questionnaire addressed the following issues:

- Information and training.

[35] Procedures and documents required for the sole legal start-up (registration, establishment of legal entity) of a company were not addressed in the surveys.

- Preparation for transfer.
- Continuity of partnership and sole proprietorship.
- Taxation.
- Transfer to third parties.

Bankruptcy Survey

The aim of the survey on bankruptcy was to identify the legal and regulatory procedures in place for bankruptcy in each of the 33 European countries.

The questionnaire addressed the following issues:

- Legal overview: legal framework in place for bankruptcy and insolvency procedures.
- Early warning system: existence of early warning tools and their perceived effectiveness.
- Out-of-court settlements: procedures in place.
- In court reorganisation: bankruptcy procedures.
- Tax regulation related to bankruptcy.
- Existence of specialised bankruptcy courts .
- Existence of creditors' committees in bankruptcy procedures.
- Efficiency of the bankruptcy procedures (delays, unbiased judgements).

Second Chance Survey

The aim of the survey on Second Chance was to identify the processes in place for entrepreneurs who have faced bankruptcy and to assess the key enablers and barriers for a Second Chance/re-start for honest entrepreneurs.

The questionnaire guide on Second Chance addressed the following issues:

- Distinction between honest and dishonest entrepreneurs.
- Stigmatising effects – limitation of an entrepreneur's freedom of entrepreneurial action following bankruptcy.
- Support provided to re-starters.

The questionnaires developed for each subject area are provided in **Annex IV.**

3.2.2 Targeted Parties

The specific profile of parties (organisations and individuals) targeted for each survey theme is described below. The actual allocation of respondents among the parties is presented for each theme in each relevant sub-chapter of the study.

Table 3-1 : Profile of targeted parties per survey

Party*	Licensing	Business Transfers	Bankruptcy	Second Chance
Government actors at Central Level	√	√	√	√
Government actors at Regional Level	√	√		
Chambers of Commerce & Industry	√	√	√	√
Professional Associations	√	√	√	√
SME Organisations	√			
One-stop-shops for company start-ups	√			
SMEs (5 model companies)	√			
Legal Experts		√	√	√
Banking Experts			√	
Mergers & Acquisitions Advisors		√		
SMEs Entrepreneurs		√	√	√

3.2.3 Channels Used to Execute the Surveys

The surveys were carried out using a combination of channels:

- *Face-to-face interviews*: this channel was employed primarily for the Second Chance and business transfers themes, but also proved very effective for the other themes.
- *Telephone interviews*: this was the main channel in all survey themes; the telephone conversation was supported when possible, by offering the respondents the possibility to view the questionnaire either online or in a document sent by email.
- *Online questionnaires*: this channel was deployed primarily for the licensing survey, yet it was also used by respondents in all other themes.

In some cases, responses to the questionnaires were also received by email (as document attachments). Irrespective of the channel used, all completed responses were uploaded in a single online database.

3.2.4 Geographical Allocation of Responses per Survey

The surveyed countries were divided into four categories based on the size of their population. In order to ensure adequate participation, the questionnaires for the four thematic areas – licensing, bankruptcy, Second Chance and business transfers were distributed to a higher number of targeted respondents than those foreseen in the Technical Specifications.

As the Table below shows, **1467 replies were received** (all thematic areas combined), which was above the minimum required of 1328 replies (coverage 110.5%). By thematic area, 426 replies were received for the licensing area, whereas 328 were required (coverage 128.3%), 363 replies for the business transfers area (coverage 109.3%), 345 replies for the bankruptcy area (coverage 103.9%), and 333 replies for the Second Chance area (coverage 100.3%).

At country level, for 17 countries the total number of replies surpassed the number of required replies (coverage higher than 110%), in 14 countries the total number of replies covered the required replies (coverage between 100% and 109%), while 2 countries (Germany and Turkey) were under the minimum number of replies despite the fact that in both countries the effort to contact target respondents (65 for Germany including 20 cross-domain targets and 69 for Turkey including 15 cross-domain targets) exceeded the required numbers, yet our effort met local reluctance to participate.

Table 3-2: Overview of responses received per country in the 4 surveys

Countries	Licensing					Bankruptcy	Second Chance	Business Transfer	Total	% Total	% Licensing	% Bankruptcy	% Second Chance	% Business Transfer
	Hotel	IT Devices	Steel Products	Plumbing Company	Wholesale / Retail Food Distributor									
Austria	4	4	4	4	4	12	12	12	56	116.7%	166.7%	100.0%	100.0%	100.0%
Belgium	3	3	2	2	2	12	12	12	48	100.0%	100.0%	100.0%	100.0%	100.0%
Bulgaria	3	2	1	3	3	12	13	18	55	114.6%	100.0%	100.0%	108.3%	150.0%
Cyprus	1	1		1	1	4	4	4	16	100.0%	100.0%	100.0%	100.0%	100.0%
Czech Republic	3	2	2	3	2	12	12	14	50	104.2%	100.0%	100.0%	100.0%	116.7%
Denmark	1	2	2	3	2	8	10	9	37	115.6%	125.0%	100.0%	125.0%	112.5%
Estonia	1	1	1	1	1	4	4	4	17	106.3%	125.0%	100.0%	100.0%	100.0%
Finland	4	3	3	4	3	9	9	9	44	137.5%	212.5%	112.5%	112.5%	112.5%
France	5	2	4	3	3	16	16	20	69	107.8%	106.3%	100.0%	100.0%	125.0%
Germany	10		1			12	11	12	46	71.9%	68.8%	75.0%	68.8%	75.0%
Greece	3	1	3	3	2	12	13	14	51	106.3%	100.0%	100.0%	108.3%	116.7%
Hungary	4	8	5	8	2	12	13	12	64	133.3%	225.0%	100.0%	108.3%	100.0%
Ireland	5	2	2	1	2	13	9	21	55	171.9%	150.0%	162.5%	112.5%	262.5%
Italy	9	4	1	1	5	17	16	16	69	107.8%	125.0%	106.3%	100.0%	100.0%
Latvia	3	4	4	4	6	8	8	8	45	140.6%	262.5%	100.0%	100.0%	100.0%
Lithuania	1	2	2	1	2	9	8	8	33	103.1%	100.0%	112.5%	100.0%	100.0%
Luxembourg	1		1	1	1	4	4	4	16	100.0%	100.0%	100.0%	100.0%	100.0%
Malta	1	1	1	1	1	4	4	4	17	106.3%	125.0%	100.0%	100.0%	100.0%
Netherlands	2	3	3	2	2	12	12	15	51	106.3%	100.0%	100.0%	100.0%	125.0%
Poland	2	4	4	2	4	17	16	17	66	103.1%	100.0%	106.3%	100.0%	106.3%
Portugal	5	1	2	1	3	18	13	12	55	114.6%	100.0%	150.0%	108.3%	100.0%
Romania	3	5	4	4	2	15	14	13	60	125.0%	150.0%	125.0%	116.7%	108.3%
Slovakia	2	2	2	2	2	8	8	8	34	106.3%	125.0%	100.0%	100.0%	100.0%
Slovenia	1	2	3	1	1	4	5	4	21	131.3%	200.0%	100.0%	125.0%	100.0%
Spain	9	6	4	7	7	16	16	22	87	135.9%	206.3%	100.0%	100.0%	137.5%
Sweden	4	4	4	4	3	13	12	12	56	116.7%	158.3%	108.3%	100.0%	100.0%
United Kingdom	3	3	3	3	4	17	18	20	71	110.9%	100.0%	106.3%	112.5%	125.0%
Croatia	2	2	2	2	2	13	11	9	43	134.4%	125.0%	162.5%	137.5%	112.5%
Turkey	1	1	1	1	2	2	3	4	15	23.4%	37.5%	12.5%	18.8%	25.0%
Serbia	2	2	2	2	2	10	10	9	39	121.9%	125.0%	125.0%	125.0%	112.5%
Montenegro	1	1	1	1	1	4	4	4	17	106.3%	125.0%	100.0%	100.0%	100.0%
Norway	2	2	1	2	5	12	9	9	42	131.3%	150.0%	150.0%	112.5%	112.5%
Iceland	2	2	2	2	2	4	4	4	22	137.5%	250.0%	100.0%	100.0%	100.0%
TOTAL	103	82	77	80	84	345	333	363	1467	110.5%	128.3%	103.9%	100.3%	109.3%
			426											

3.3 Economic Analysis

The aim of the economic analysis was to measure the impact of the legislative framework on SME business dynamics. Three types of information were used:

- Legislative framework
- Economic data (Eurostat, national and other statistical sources)
- Perceptions of the legislative framework by the surveys' respondents (collected via the study surveys)

In terms of licensing procedures, the study classified the countries by level of complexity. This classification was cross-examined with the level of entrepreneurship in each country. Entrepreneurship was measured as birth rate and entrepreneurial activity. The study has used entrepreneurship indicators developed by OECD, GEM and other academic studies[36].

Several academic studies[37] and empirical studies[38] show that administrative complexity or red tape[39] has a negative impact on the level of entrepreneurship. The study measured the impact of licensing complexity on business dynamics (birth rate, total entrepreneurial activity).

Moreover, the study measured the impact of different contexts of bankruptcy legislation, such as legal framework basis (common or civil law) and practices (early warning systems, out-of-court settlements, in-court reorganization, etc.) on the growth of firms in the economy[40] and in particular the efficiency of removing the less efficient firms out of the market.

In order to be able to identify the main problems faced by entrepreneurs during key points in the lifecycle of an enterprise or an entrepreneur

[36] Audretsch D., Thurik R. (2001) Linking entrepreneurship to growth, OECD; OECD(2009) Measuring entrepreneurship a collection of indicators ; Ahmad N (2006), A proposed Framework for Business Demography Statistics, OECD ; OECD (2010) Structural and Demographic Business Statistics, OECD; GEM Global reports http://www.gemconsortium.org/about.aspx?page=pub_gem_global_reports

[37] Audretsch D., Thurik R. (2001) Linking entrepreneurship to growth, OECD; OECD(1996) SMEs and Employment creation: overview of selected quantitative studies in OECD member countries

[38] http://www.doingbusiness.org/

[39] "Red tape" is a term used to denote excessive regulation or rigid conformity to formal rules that is considered redundant or bureaucratic and hinders or prevents action or decision-making. It generally involves the filling out of seemingly unnecessary paperwork, obtaining unnecessary licenses, having multiple people or committees approve decisions and various detailed rules that make execution of operations slower, more difficult, or both.

[40] In studying the growth of firms in the economy, study experts used the "creative destruction" concept. This was made popular by and is most associated with Joseph Schumpeter, particularly in his book "Capitalism, Socialism and Democracy", first published in 1942. According to this book, innovative entry by entrepreneurs is the force that sustains long-term economic growth, even as it destroys the value of established but outdated and inefficient companies.

(licensing, transfer of business, bankruptcy / Second Chance), the study has developed and calculated indices to measure the:

(a) Efficiency of licensing procedures

Based on the results of the survey on licensing, the countries were classified by level of complexity in terms of licensing procedures.

An **index of total licensing complexity** was developed that took into account two types of costs:

(a) direct costs (i.e. monetary costs related to fees, taxes, duties towards public administration and non-monetary internal effort / number of person-days required to apply for licenses)

(b) indirect costs (i.e. monetary costs related to external support such as consultants, lawyers, and non-monetary, time out-of-market (the time - calendar days - during which a company cannot operate in the market while waiting to obtain required licenses).

The index of total licensing complexity reflects the level of complexity in terms of the above mentioned direct and indirect costs. The index has been calculated for all five model companies, while the average of the five is used as an aggregate to assess cross-sector complexity.

According to the economic literature[41] reviewed administrative complexity may have two potential consequences on business dynamics:

- "Time consuming procedures for licensing and setting up a firm, result in delayed market entrance". This hypothesis has been assessed by measuring the impact of licensing complexity on birth rate level (see section 4.1.3).
- "Red tape may discourage new entrepreneurs". This hypothesis has been assessed by measuring the impact of licensing complexity on total entrepreneurial activity (see section 4.1.3).

(b) Efficiency of regulatory framework on business transfers

Due to the lack of data concerning the number of transfers in Europe, it was not feasible to develop indices to investigate a potential correlation between the regulatory framework and the volume of business transfers. The impact on entrepreneurship has been tested examining correlations between the number of 1994 Commission Recommendations implemented and companies out of market.

[41] See Appendix 2: Bibliography for economic analysis

(c) Efficiency of bankruptcy law and practices (bankruptcy and Second Chance)

The indices were developed based on the findings of the bankruptcy and Second Chance surveys for those questions for which a sufficient number of responses existed, while some questions have been excluded due to low response rates.

In order to develop the value of the indices, all responses were quantified and ranked according to the methodology described below.

Composite index of ex-ante efficiency of dealing with enterprises in trouble:

The index was calculated by aggregating the values assigned to the factors listed below, each of which was awarded points on a scale of 0 to 1, in accordance with the extent of a favourable effect on increasing the efficiency of the bankruptcy law.

- Average time of out-of-court settlements
- Promotion of out-of-court settlements
- Creditors willing to use out-of-court settlements
- Access to out-of-court settlements for debtors
- Rate of success of out-of-court settlements
- Existence of fast track procedures for SMEs

Composite index of efficiency of the bankruptcy law procedures:

The index was calculated by aggregating values assigned to the factors listed below, all of which are considered to have a favourable effect on increasing ex-ante efficiency of the bankruptcy law.

- Court neutrality
- Existence of plans for debt repayment
- Length of time for debt repayment plan
- Separation of judicial and administrative roles
- Existence of creditors' committees
- Existence of tax legislation increasing the recovery rate of the creditors
- Expertise, ethics, independence of judges
- Average time of bankruptcy procedures

Composite index to measure possibility of fresh start (Second Chance):

The index was calculated by aggregating values assigned to the factors listed below, all of which are considered to have a favourable effect on increasing the number of fresh starts.

- Fast track liquidation
- Separate liquidation proceedings for firms in a fraudulent bankruptcy
- Length of time of discharge of the bankrupt entrepreneur
- Special discharge proceedings for honest bankrupts

Composite index to measure the severity of the bankruptcy law (Second Chance):

The index was calculated by aggregating the values assigned to the factors listed below, each of which was awarded points on a scale of 0 to 1, in accordance with the extent of severity of the bankruptcy law.

- Deprivation of right to start a business
- Restriction of participation to public tender
- Restriction to participate in public programmes offering financial support
- Percentage of discouraged entrepreneurs to re-start.

Values used for the calculation of all indices derive from survey responses.

4 STUDY RESULTS

4.1 Licensing

The study of this thematic area focused on the procedures required for licensing the 5 model companies defined by the European Commission[42] as benchmarks, namely:

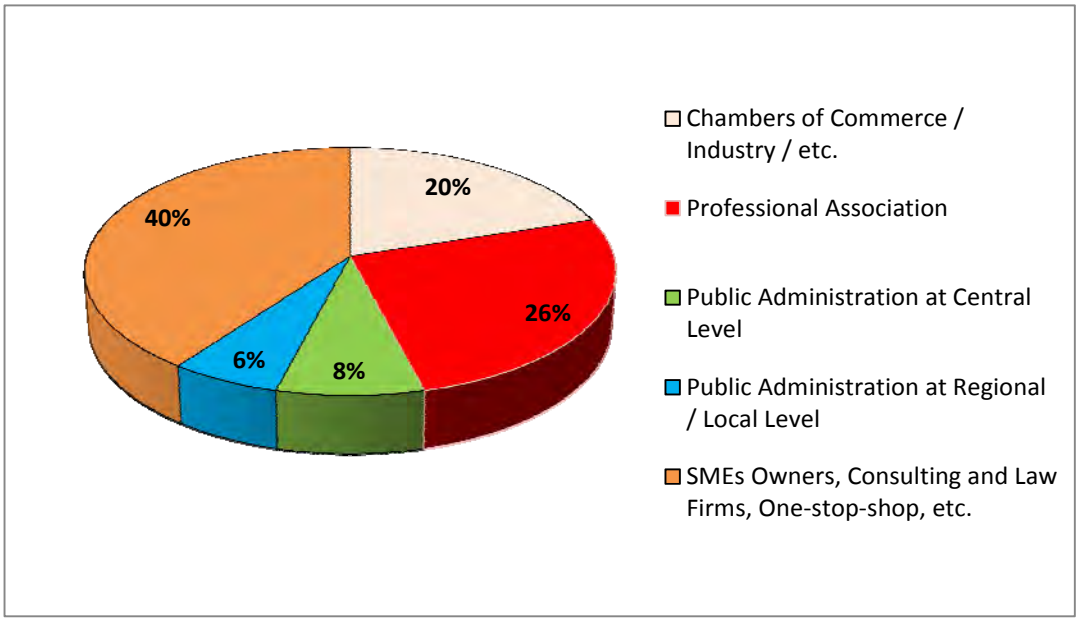
- Hotel with Restaurant
- Wholesale / Retail Food Distributor
- Plumbing Company
- Manufacturer of small IT devices
- Manufacturer of Steel Products

Survey questionnaires were developed for each model company. Annex IV of the study presents all questionnaires covering industry licenses, licenses related to products and services, licenses related to premises and certificates related to employees. The questions were formulated to gather both qualitative and quantitative information. In total, 426 replies were received and processed:

Model Company	Number of Replies
Hotel and Restaurant	103
Manufacturer of small IT devices	82
Manufacturer of Steel Products	77
Plumbing Company	80
Wholesale / Retail Food Distributor	84
Total	426

[42] SEC(2007) 129, Commission Staff Working Document – Assessing Business Start-up Procedures in the context of the renewed Lisbon strategy for growth and jobs

The profile of the respondents is shown in the following pie chart:



The economic analysis was performed both per type of model company and by country (i.e. based on the average country performance across all five types of model companies).

4.1.1 Desk Research

4.1.1.1 Literature Review / Key References

In 2002, the European Commission study "Benchmarking the Administration of Business Start-ups"[43] identified benchmarks related to key performance indicators in procedures for starting-up a business. The study was not limited to procedures related to the registration of a company, but extended to other post-registration licensing procedures required for a new company to start operating. The study acknowledged the heterogeneity of licensing requirements within Europe and hence the difficulty to compare results among countries, as well as the need to create and use a series of reference companies as models.

Equally important was the Commission Staff Working Document "Assessing Business Start-up Procedures in the context of the renewed Lisbon strategy for growth and jobs"[44]. This document proposes an assessment method to establish comparability at EU level. The document describes and models

[43] http://ec.europa.eu/enterprise/newsroom/cf/itemshortdetail.cfm?item_id=3368
[44] SEC(2007) 129

licensing procedures for 5 types of model companies[45] to be used as benchmarks for quantifying and assessing administrative burdens.

The key references[46] on licensing at pan-European level are:

- "Benchmarking the Administration of Business Start-ups", 2002 report presenting the main performance indicators in procedures for starting-up a business and 'operational' benchmarks in the EU-15.
- European Council of 23/24 March 2006 - Presidency conclusions (Council document 7775/06 of 24 March 2006)
- "Assessing business start-up procedures in the context of the renewed Lisbon strategy for growth and jobs", 2007 Commission Staff Working Document (SEC(2007)129 of 26 January 2007)
- 2008 Commission Communication Think small first: a "Small Business Act" for Europe, (COM(2008)394 of 25 June 2008)

Other relevant references on licensing at a country level are presented in **Annex III**.

4.1.1.2 Statistics on Enterprise Creation

Table 4-1 following table presents Eurostat data on the births of enterprises for the year 2007.

Table 4-1: 2007 Statistics on enterprises birth*

	Number of births of enterprises	Number of persons employed in the population of births	Net business population growth (2)	Birth rate (3)	Density of birth rate: (4)
Austria	24 543	57 301	1,0	7,5	30,2
Belgium	34 387	40 848	2,2	7,0	n.a.
Bulgaria	39 368	73 870	7,2	15,1	37,2
Croatia	n.a.	n.a.	n.a.	n.a.	n.a.
Cyprus	1 679	4 838	9,4	3,3	42,9
Czech Republic	83 415	144 281	-1,1	9,5	75,7
Denmark	28 031	30 717	2,8	12,9	49,7
Estonia	6 771	10 876	7,8	13,2	50,7
Finland	27 172	12 099	3,9	10,1	39,4

[45] As mentioned earlier, the five model companies are: Hotel with Restaurant, Wholesale / Retail Food Distributor, Plumbing Company, Manufacturer of small IT devices, Manufacturer of Steel Products.
[46] All references listed are available at http://ec.europa.eu/enterprise/policies/sme/documents/start-ups/index_en.htm

	Number of births of enterprises	Number of persons employed in the population of births	Net business population growth (2)	Birth rate (3)	Density of birth rate: (4)
France	259 125	395 053	12,7	10,1	33,4
Germany	272 077	449 281	0,9	9,5	33,5
Greece	n.a.	n.a.	n.a.	n.a.	n.a.
Hungary	50 707	83 302	-1,6	9,0	51,9
Iceland	n.a.	n.a.	n.a.	n.a.	n.a.
Ireland	n.a.	n.a.	n.a.	n.a.	n.a.
Italy	338 656	526 414	1,5	8,4	52,6
Latvia	8 255	16 175	6,2	11,1	31,6
Lithuania	36 468	56 844	10,7	24,7	90,2
Luxembourg	2 576	5 066	3,3	10,4	48,4
Malta	n.a.	n.a.	n.a.	n.a.	n.a.
Montenegro	n.a.	n.a.	n.a.	n.a.	n.a.
Netherlands	92 494	190 245	7,7	13,3	38,4
Norway	26 898	22 624	5,7	10,3	52,2
Poland	n.a.	n.a.	n.a.	n.a.	n.a.
Portugal	122 895	175 785	0,4	13,8	110,3
Romania	74 918	186 239	8,0	15,6	35,2
Serbia	n.a.	n.a.	n.a.	n.a.	n.a.
Slovakia	45 218	102 638	1,0	13,3	80,7
Slovenia	10 722	13 172	4,6	10,2	42,0
Spain	313 254	523 541	3,9	9,6	73,2
Sweden	45 091	63 908	2,6	7,4	45,2
Turkey	n.a.	n.a.	n.a.	n.a.	n.a.
United Kingdom	296 040	653 667 (1)	4,2	14,3	44,7

* Enterprise birth occurs when an enterprise starts from scratch and actually starts activity
(1) 2006
(2) Definition of "net business population growth": The number of active employer enterprises in year t divided by the number of active employer enterprises in t-1 as a percentage change
(3) Number of enterprise births in the reference period (t) divided by the number of enterprises active in t.
(4) Definition of "density of birth rate": number of enterprises births in the reference period (t) divided by the population (in 10,000) in t
Source: Eurostat (database extraction – January 2011)

4.1.2 Survey Findings

The surveys were conducted in order to assess the effectiveness of the licensing procedures (in terms of cost, time, and effort) for the five model companies[47] across the 33 countries surveyed. The key findings are presented for each of the five model companies.

4.1.2.1 Hotel with Restaurant

The survey examined the applicable licenses that are required for the operation of a hotel with restaurant that fulfils the following characteristics (in accordance with the European Commission's model company definition):

- Hotel has 50 rooms
- Restaurant has its own kitchen producing most of the items on its menu, serving 30 meals per day
- Restaurant serves alcoholic beverages
- Restaurant has 6 double fridges with a power of 640 W each
- Hotel classification (rating) will have to be considered
- Is not a member of a franchise
- Legal form of company is a private limited company
- None of the processes produce toxic effluents or discharges
- Hotel uses gas/fuel as well as electricity
- No transportation of raw materials or final products is required

According to the survey results (Appendix 1), 3 groups of countries emerge with respect to the number of total licenses required to operate a hotel with restaurant:

- Less than 5 licenses: Austria, the Czech Republic, Germany, Malta, Slovakia, Serbia, Denmark, France, the United Kingdom.
- Between 6 and 9 licenses: Finland, Sweden, Luxembourg, Montenegro, Croatia, Estonia, Portugal, the Netherlands, Norway and Lithuania.
- Over 10 licenses: Belgium, Italy, Ireland, Iceland, Slovenia, Spain, Hungary, Turkey, Romania, Cyprus, Greece and Bulgaria.

[47] The characteristics of the five model companies have been defined by the European Commission , in order to allow for comparative measurement and analysis of data across countries

In terms of specific licenses required across countries, the majority of countries require licenses for operating a hotel, licenses related to food safety / hygiene and for selling alcohol.

With regard to the average time and costs required in each country to obtain all licenses for operating a hotel with restaurant, there seems to be no emerging patterns among countries. However, based on the respondents views, the Czech Republic has an exceptional overall performance (in all dimensions), followed by Denmark, Norway and to a lesser extent Latvia. In contrast, data collected for Greece, Bulgaria, Serbia, Portugal, Malta and Luxembourg show a relatively low performance, since these countries require many licenses coupled with a relatively high cost to obtain them.

The next four figures present the results of the licensing survey across each of the following four dimensions: time to obtain all licences (time out-of-market), cost towards public sector, cost towards private sector and required internal company effort.

In terms of the **time required to obtain all licences** (time out-of-market) only 2 countries (the Czech Republic and the United Kingdom) require less than 7 days based on the respondents' views. These countries may be considered as representative of good practices. It is interesting to note that the time out-of-market for the vast majority of countries surveyed (30 out of 33 in total) is over 31 days.

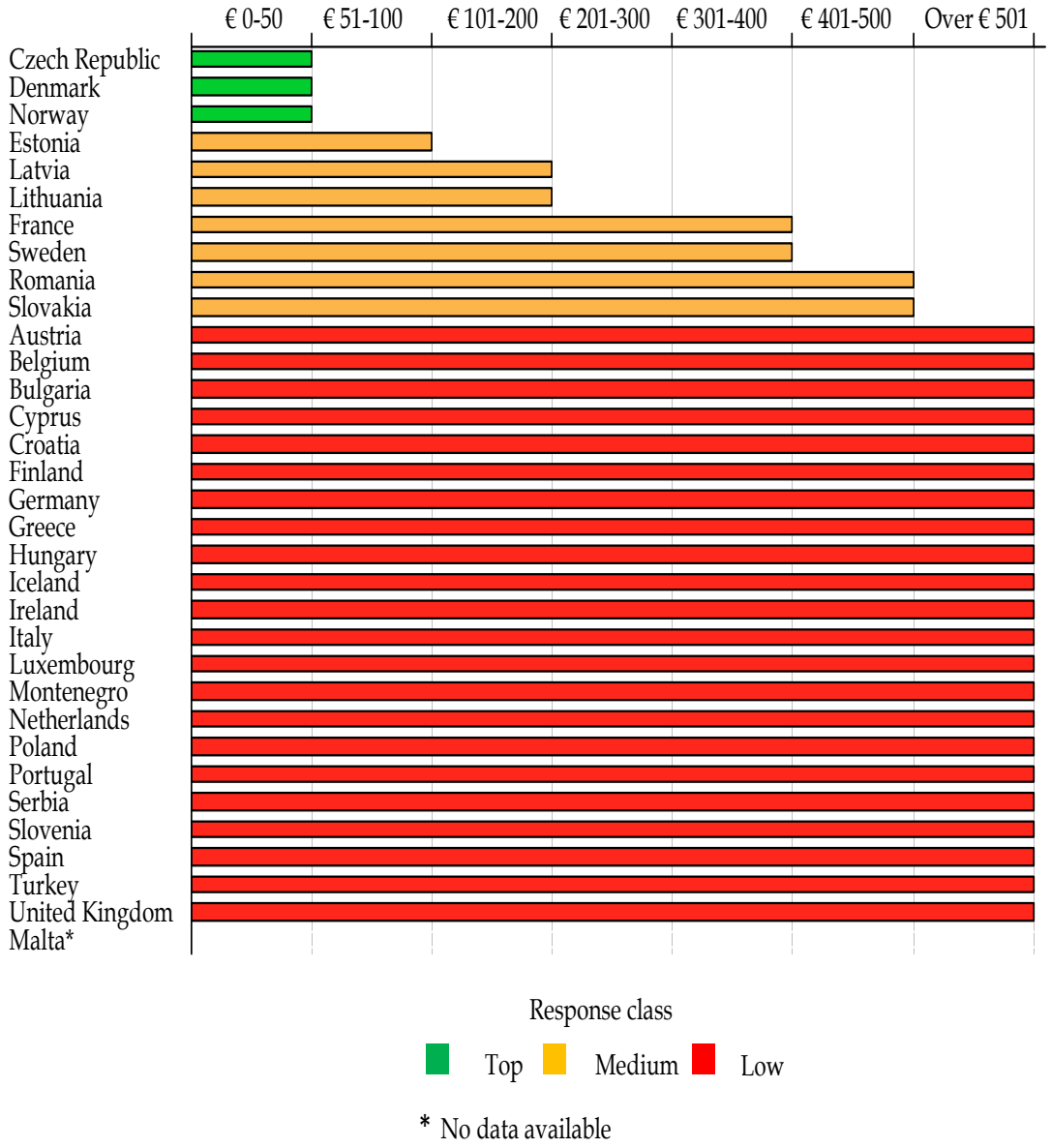
Out of these countries, 13 require over 60 days according to the survey's respondents (i.e. Bulgaria, Cyprus, Greece, Hungary, Iceland, Luxembourg, Malta, Portugal, Romania, Serbia, Spain, Sweden and Turkey).

Figure 4-1: Time required to obtain all licenses – in calendar days (Hotel with Restaurant)

Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

The next figure presents the required **cost towards public sector authorities** (i.e. taxes, stamp duties, etc.). Best practices according to respondents' views are to be found in the Czech Republic, Denmark and Norway that require less than €50 for public sector fees. It should be noted that the majority of the countries (22 in total) require over €500 for costs towards the public sector.

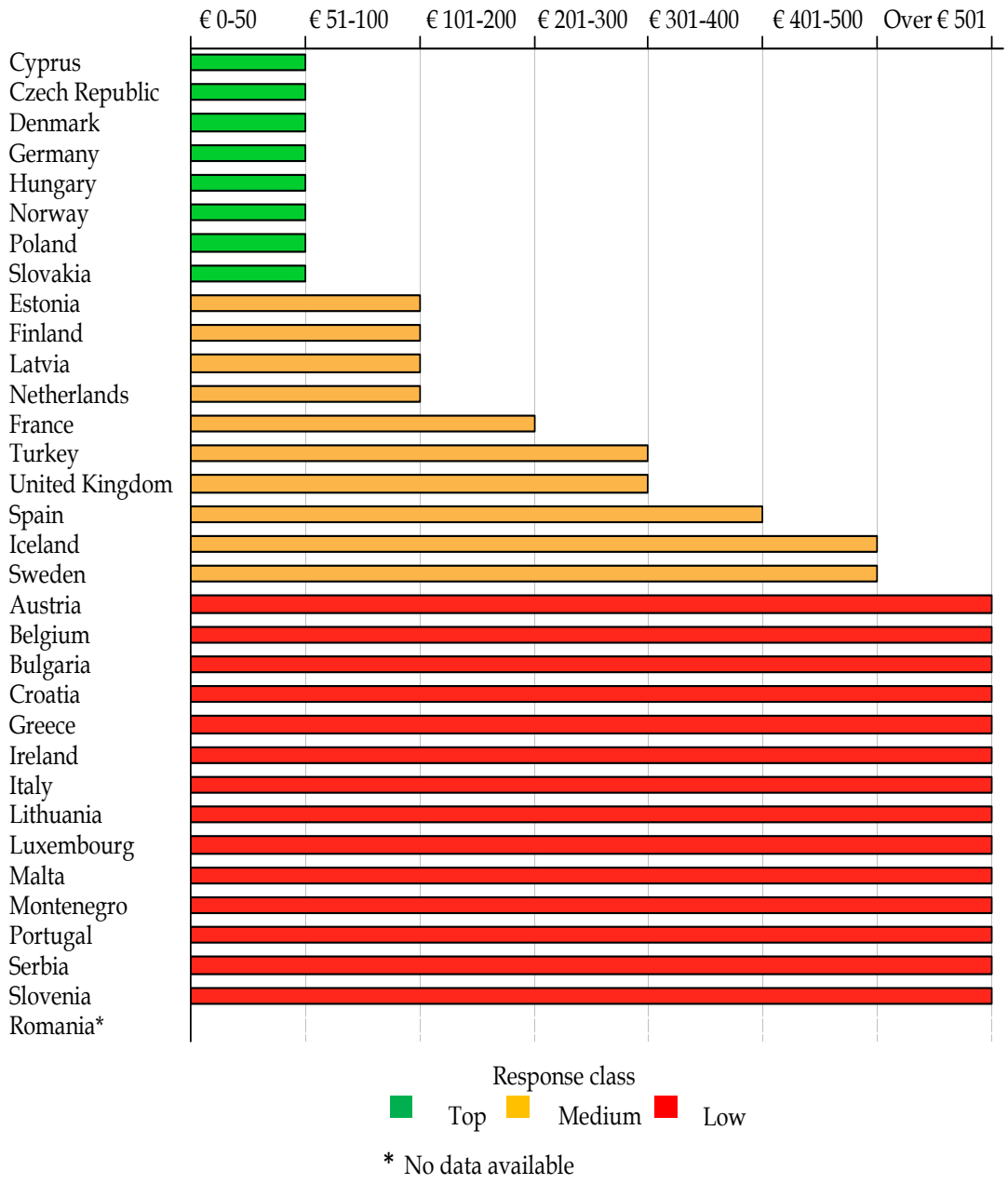
Figure 4-2: Cost towards public sector to obtain all licenses – in euro (Hotel with Restaurant)



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

Eight countries (namely Cyprus, the Czech Republic, Denmark, Germany, Hungary, Norway, Poland and Slovakia) have the lowest level of costs (0 to €50) related to the private sector (i.e. fees for consultants, lawyers etc.) to obtain all licences to operate a hotel with restaurant. Estonia, Finland, Latvia and the Netherlands also have a relatively good performance, since the respective cost ranges from €51 to €100. It should be noted that 14 countries require over €500.

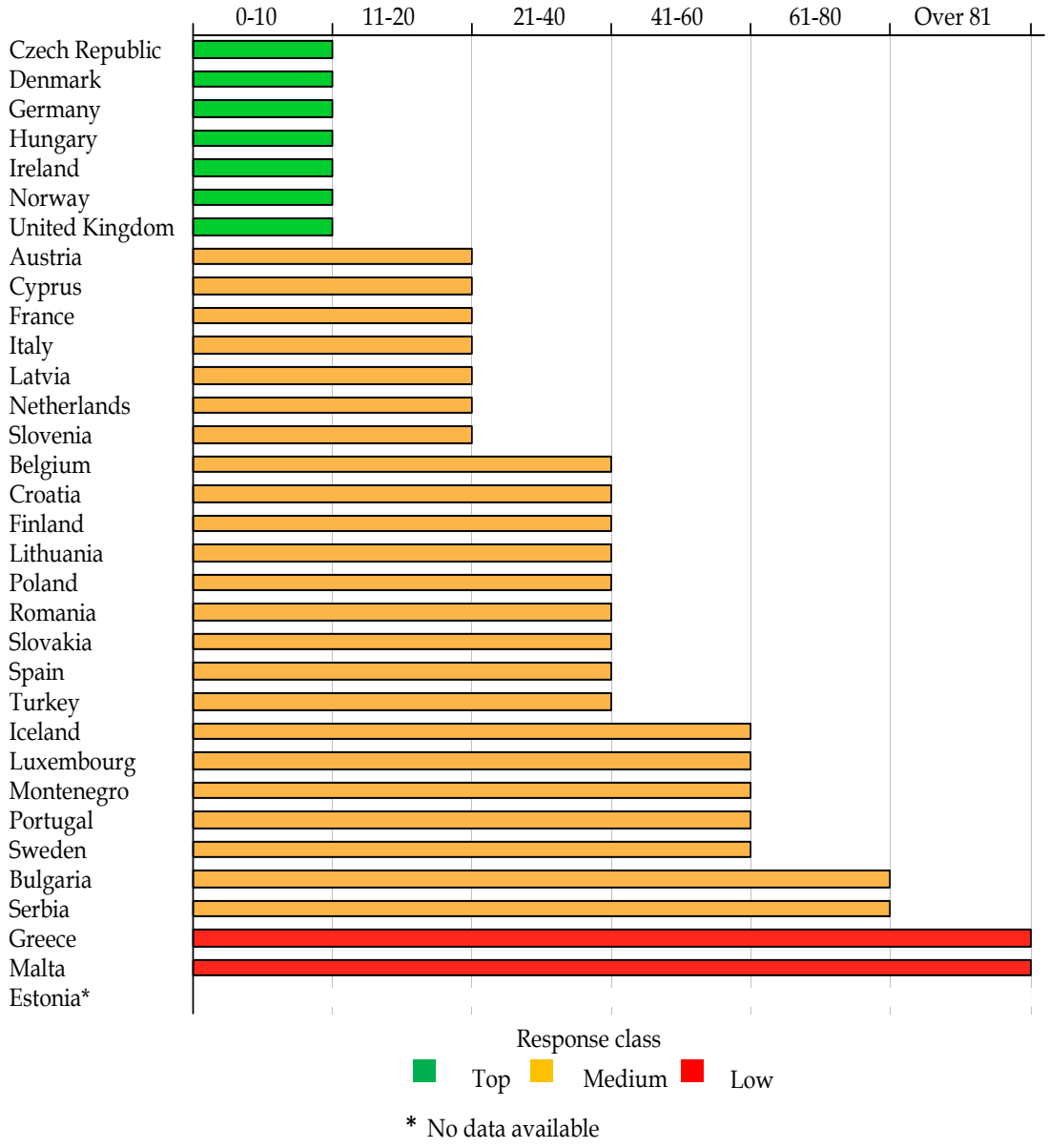
Figure 4-3: Cost towards private sector to obtain all licenses – in euro (Hotel with Restaurant)



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

Finally, with respect to the **internal company effort** (in person days) required to obtain all licences, the Czech Republic, Germany, Denmark, Hungary, Ireland, Norway and the United Kingdom require less than 10 person days based on the respondents' view. At the higher end, Greece and Malta require over 81 days, while 16 countries require between 11 and 40 days.

Figure 4-4: Internal company effort in person days to obtain all licenses - in calendar days (Hotel with Restaurant)



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

4.1.2.2 Wholesale / Retail Food Distributor

The survey examined the applicable licenses that are required for the operation of a wholesale or retail food distributing company that fulfils the following characteristics (in accordance with the European Commission's model company definition):

- Company distributes food items
- Company has sales area of 300sq. meters
- Has its own warehouse of 20sq. meters
- Part of the company's sales will be via e-business and/or mail order

- No handling of raw food will be carried out in the premises
- Company sells alcoholic beverages
- Has 4 double fridges with a power of 640 W each, 3 refrigerated showcases (2-6 Celsius) of a power of 400 W each and 3 deepfreeze tanks (-10 Celsius) of a power of 800 W each
- Legal form of company is a private limited company
- None of the processes produce toxic effluents or discharges
- Hotel uses gas/fuel as well as electricity
- No transportation of raw materials or final products is required

According to the survey results (Appendix 1), three groups of countries are identified with respect to the number of total licenses required to operate a wholesale or retail food distributing company:

- Between 1 and 5 licenses: Austria, the Czech Republic, the United Kingdom, Ireland, Lithuania, Norway, Germany, Iceland, and Sweden.
- Between 6 and 9 licences: Finland, France, Croatia, the Netherlands, Serbia, Slovakia, Portugal, Estonia, Hungary, Slovenia, Belgium, Cyprus, Romania Montenegro, and Luxembourg.
- Over 10 licences: Greece, Italy, Denmark, Bulgaria, Turkey and Spain.

Countries with a high level of uncertainty among respondents with regards to the number of licenses are Latvia, Poland and to some extent the Netherlands.

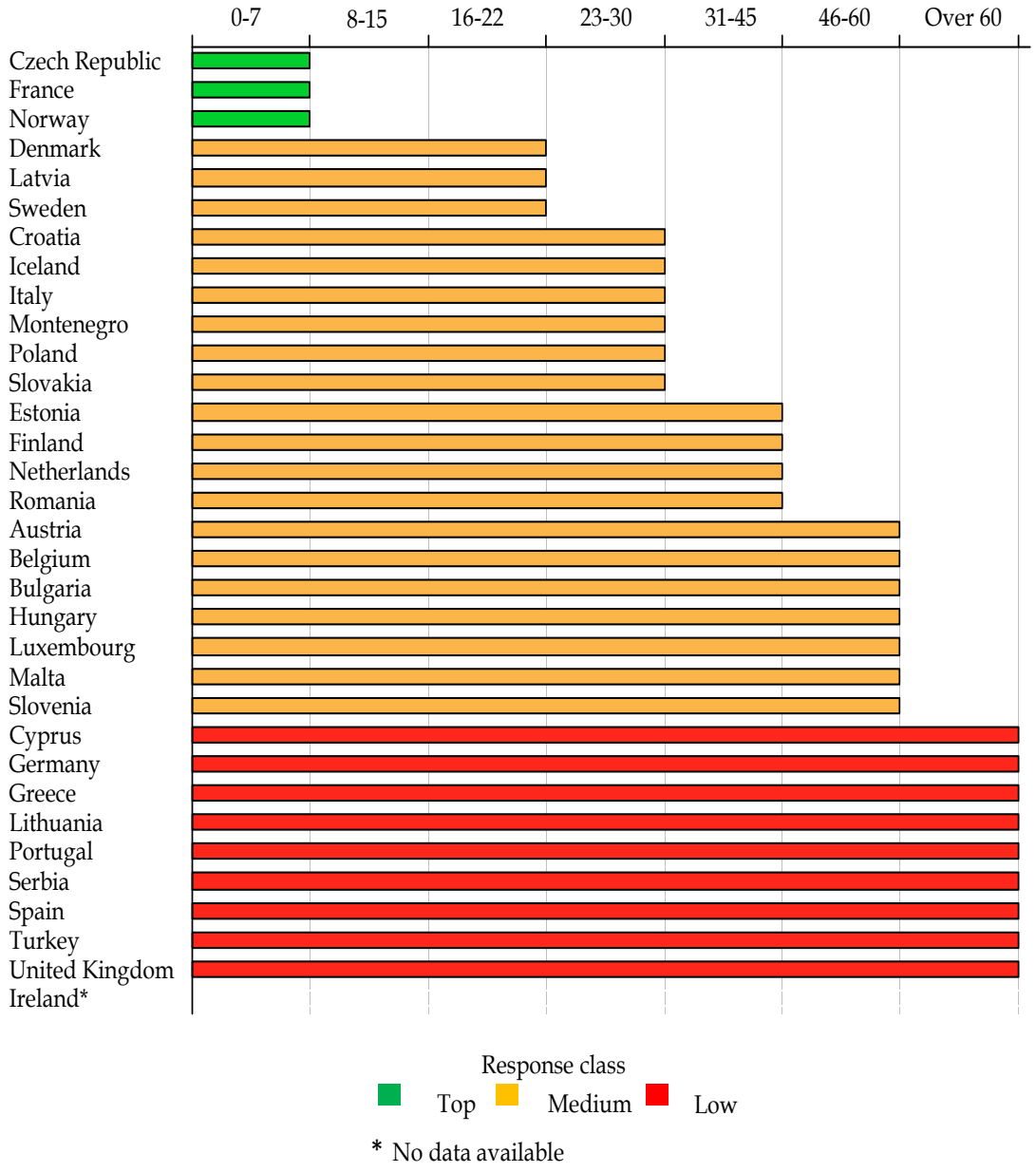
In the majority of countries, a license is required for the distribution of food items (except the United Kingdom, Ireland, Norway and Poland). A significant number of licenses are required for food safety/ hygiene, alcohol sales, sanitary compliance, as well as safety of premises.

Concerning the average time and costs in order to obtain all licenses per country for operating a wholesale/retail food distribution company no patterns emerge among the countries. It could be stated that as a whole, the Czech Republic, Norway, France, Slovakia and Latvia have the lowest level of administrative burden (based on the 4 dimensions examined), although the number of licenses they require varies significantly.

The data, provided in Appendix 1, is analysed and presented in the next four figures for the following dimensions: time to obtain all licences (time out-of-market), cost towards public sector, cost towards private sector and required internal company effort.

Figure 4.5 presents **time required to obtain all licences** (time out-of-market) for a wholesale / retail food distributor. The Czech Republic, France and Norway are the only three countries in which all licenses required can be obtained within 7 days. Nine countries require between 16 and 30 days (Denmark, Latvia, Sweden, Italy, Poland, Slovakia, Croatia, Montenegro and Iceland) while the remaining countries require over 31 days.

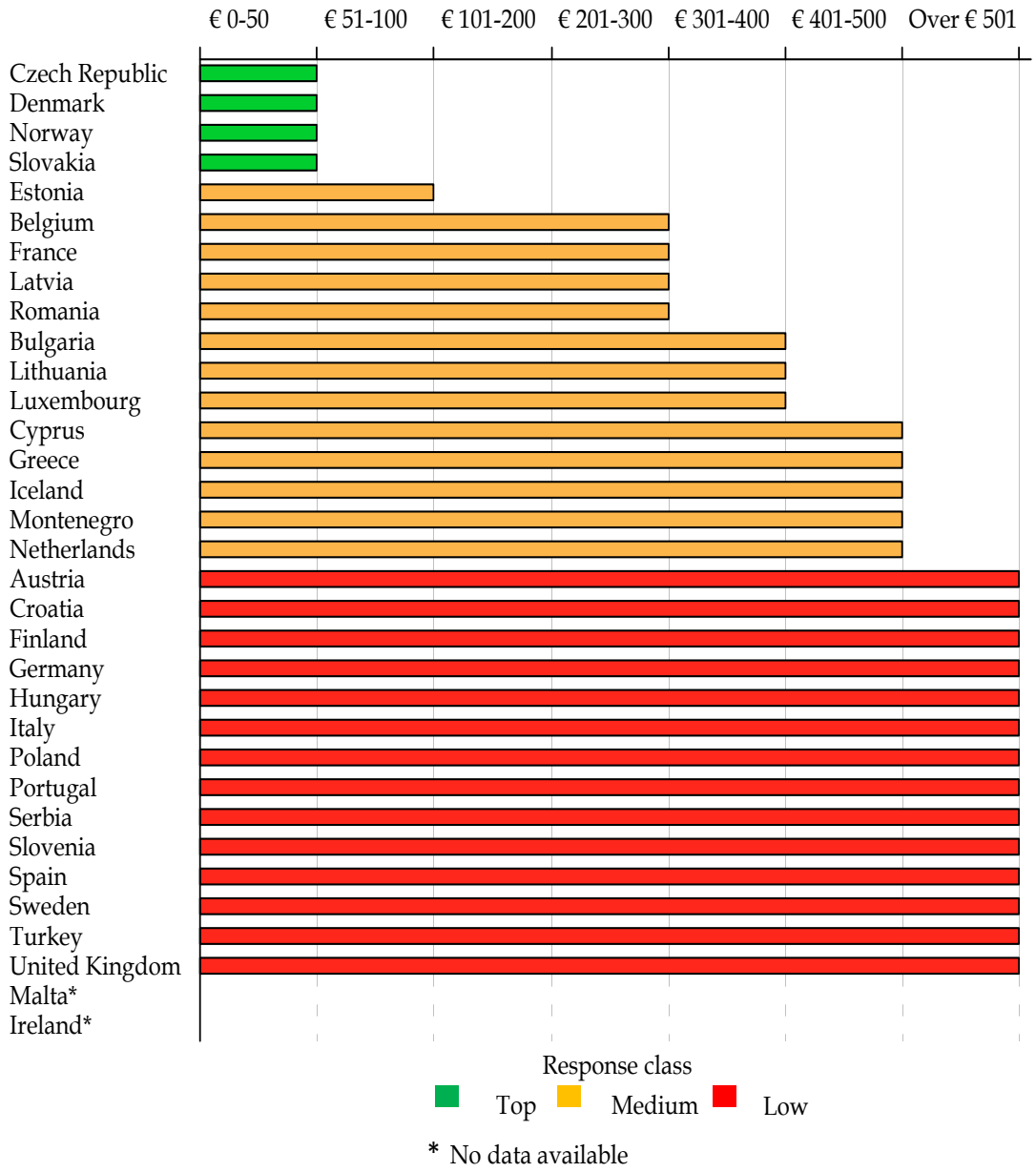
Figure 4-5: Time required to obtain all licenses – in calendar days
(Wholesale / Retail Food Distributor)



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

The Czech Republic, Denmark, Norway and Slovakia are the countries with the lowest **cost involved towards the public sector** in order to obtain all licenses (0 to €50), followed by Estonia (€51 to €100) according to the survey's respondents. The majority of countries (19 out of 33 surveyed) require over € 401, of which 14 countries require over € 500.

Figure 4-6: Cost towards public sector to obtain all licenses – in euro
(Wholesale / Retail Food Distributor)

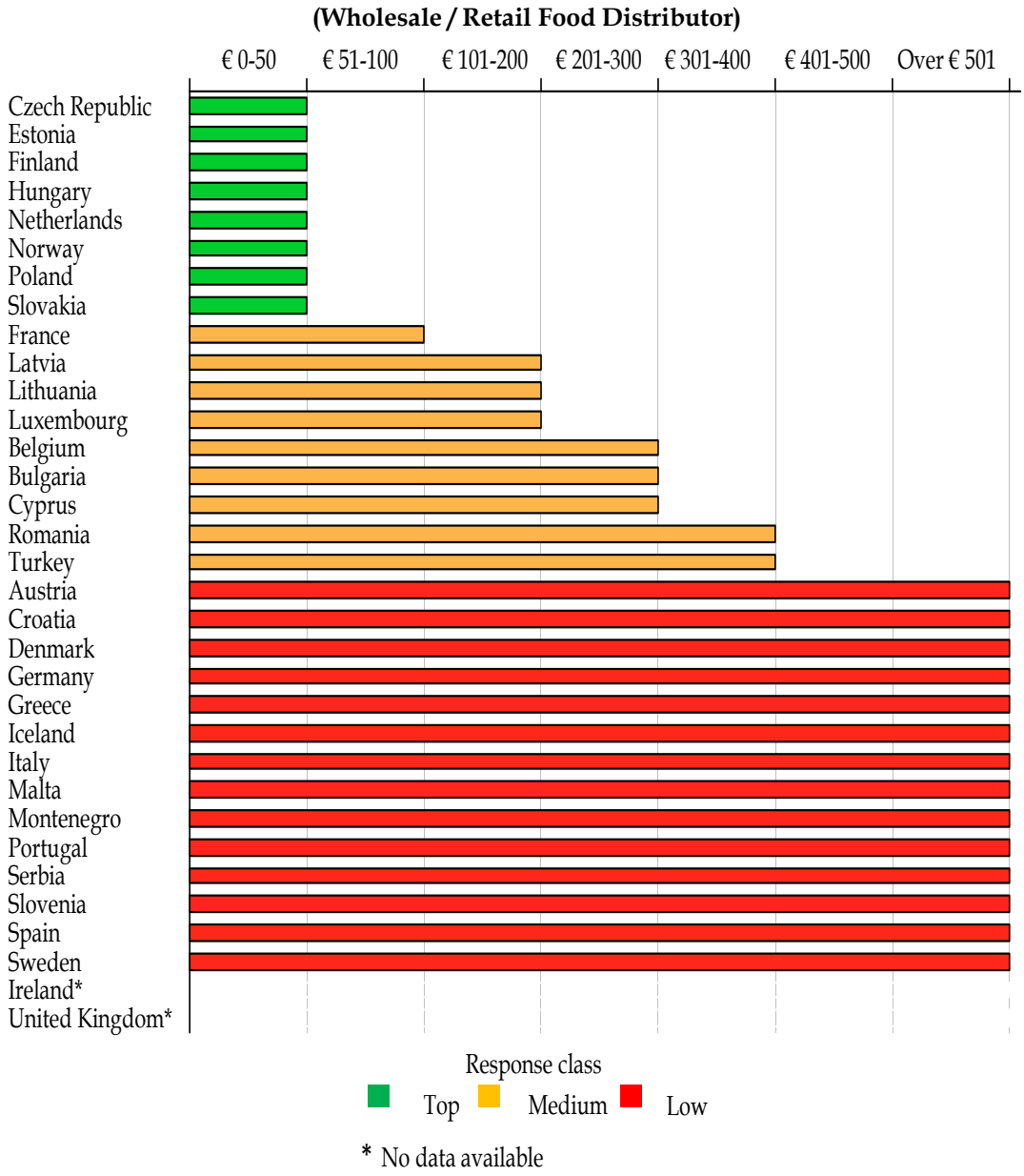


Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

According to respondent's views, the **cost towards private sector** to obtain all licenses is low in the Czech Republic, Slovakia, Finland, Hungary, Montenegro, the Netherlands, Estonia and Poland (0 to €50), while in France the cost ranges between €51 and €100. The cost is between €101 and €300 in Latvia, Lithuania, Luxembourg, Belgium, Bulgaria and Cyprus, while in all 16 remaining countries the cost exceeds €301, out of which it is over €500 for 14 countries.

In general, high cost towards public sector, in order to obtain all licenses is proportional to high cost towards private sector in the case of Wholesale/ Retail Food Distribution.

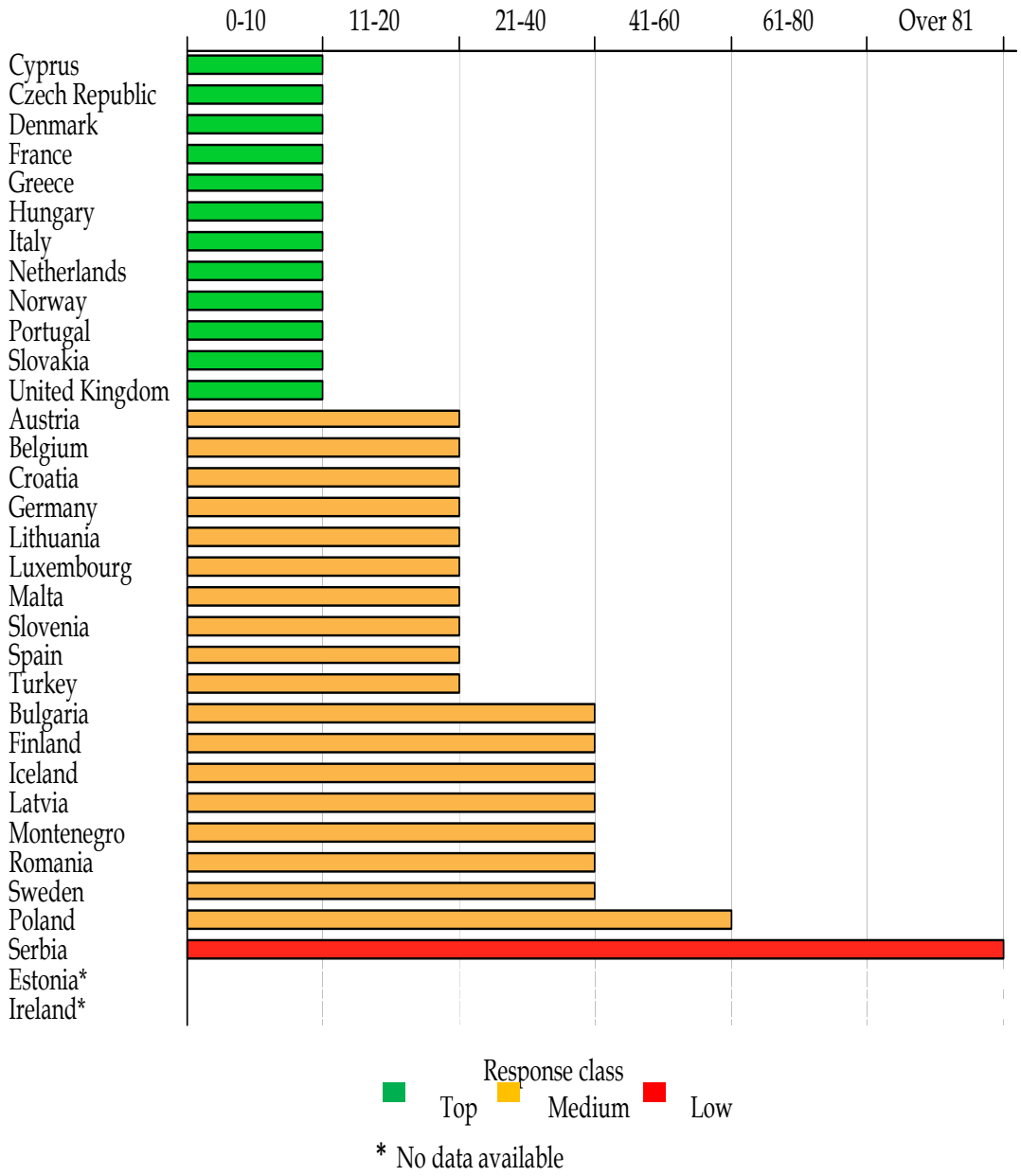
Figure 4-7: Cost towards private sector to obtain all licenses – in euro



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

Figure 4.8 presents the **internal company effort in person days** to obtain all licenses for Wholesale / Retail Food Distribution. In Cyprus, the Czech Republic, Denmark, France, Greece, Hungary, Italy, the Netherlands, Norway, Portugal, Slovakia and the United Kingdom the effort required to obtain all licenses is low (less than 10 person days). Moreover, in Austria, Belgium, Germany, Luxembourg, Slovenia, Turkey, Lithuania, Malta, Spain and Croatia the effort is also relatively low (11 to 20 days). The remaining countries range between 21 to 40 days, with the exception of Poland (between 41 to 60 days) and Serbia (over 81 days).

Figure 4-8: Internal company effort in person days to obtain all licenses – in calendar days (Wholesale / Retail Food Distributor)



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

4.1.2.3 **Plumbing Company**

The survey examined the applicable licenses that are required for the operation of a plumbing company that fulfils the following characteristics (in accordance with the European Commission's model company definition):

- Company must be certified and capable of central heating, air conditioning and industrial installations
- Dangerous substances storage of maximum 20kg (drain cleaner product, glue, solvents)
- Company does not need to be certified for public works
- Legal form of company is a private limited company
- None of the processes produce toxic effluents or discharges
- No transportation of raw materials or final products is required

According to the survey results (Appendix 1), four groups of countries are identified with respect to the number of total licenses required to operate a plumbing company:

- Up to 2 licenses: the Czech Republic, Malta, Austria, Turkey, Ireland, and Lithuania.
- Between 3 and 5 licences: Belgium, Estonia, Norway, Serbia, the United Kingdom, Germany, Luxembourg, Slovakia, Cyprus and the Netherlands.
- Between 6 and 8 licences: Croatia, Italy, France, Sweden, Hungary, Iceland, Italy, Slovenia, Portugal, Romania
- Over 10 licenses: Spain and Bulgaria.

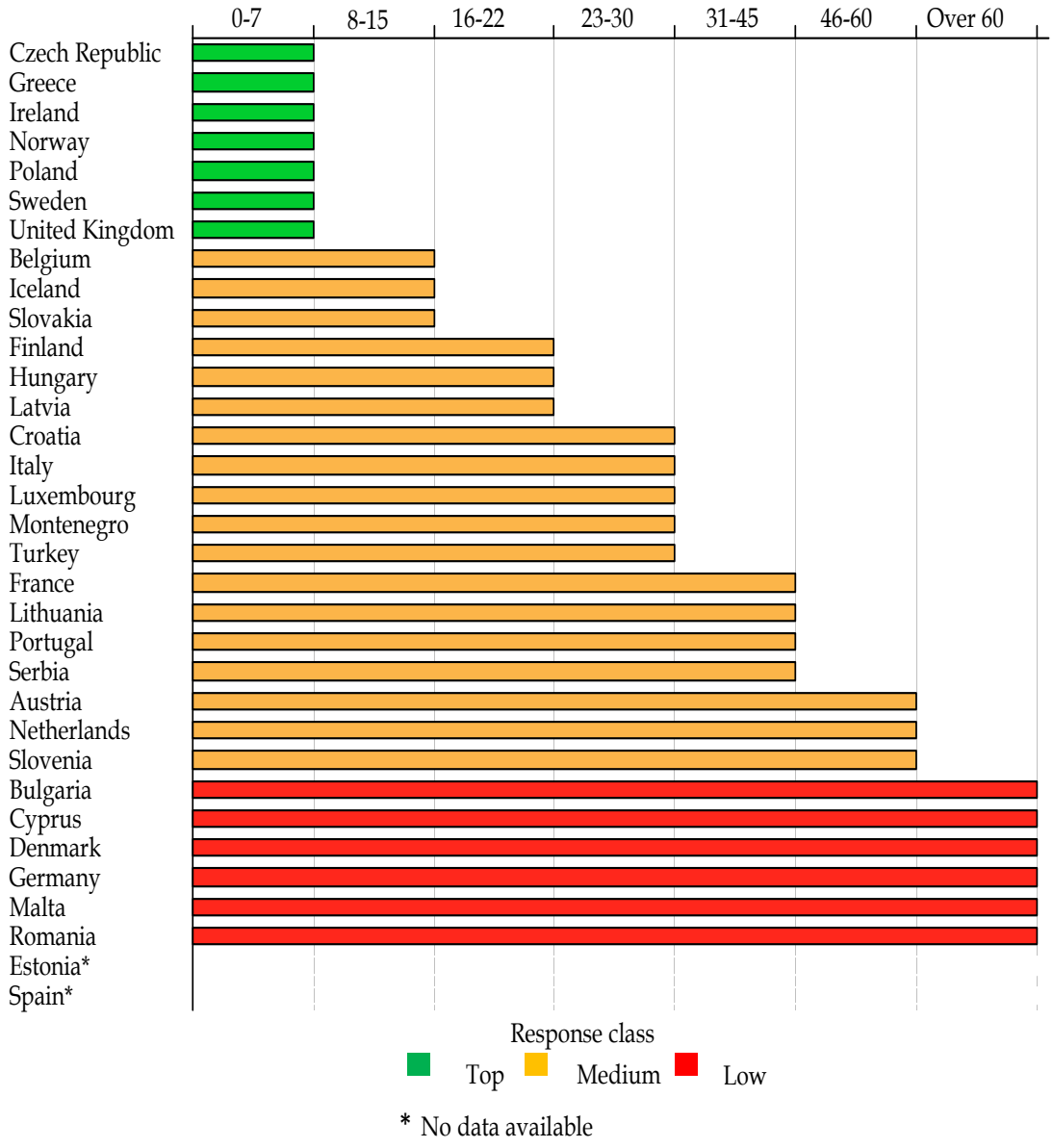
Countries with a high level of uncertainty among respondents with respect to the number of licenses are Denmark, Finland, Greece, Latvia, and Poland.

In terms of common licenses required across Europe, the majority of countries require licenses for operating a plumbing company, for performing gas installations, as well as certificates related to the qualifications and safety of employees.

Regarding the average time and costs required to obtain all licenses per country, in general, there is only a limited correlation among dimensions (data presented in Appendix 1). However, one pattern can be identified: the Czech Republic, Ireland, Latvia, Luxembourg, Norway, Poland, Slovakia and Turkey require a lower number of licenses (less or equal to 4) and at the same time overall administrative burden (in terms of time and costs) is lower.

Figure 4.9 below, presents in more detail the distribution of countries in relation to **time required to obtain all licenses** (time out-of-market). The Czech Republic, Greece, Norway, Poland, Sweden, Ireland and the United Kingdom have the best performance (within 7 days). Belgium, Iceland, Slovakia, Finland, Hungary and Latvia require 8 to 22 days. 12 countries require between 23 and 60 days, while 6 countries (Bulgaria, Cyprus, Denmark, Germany, Romania and Malta) require over 60 days for obtaining all licenses.

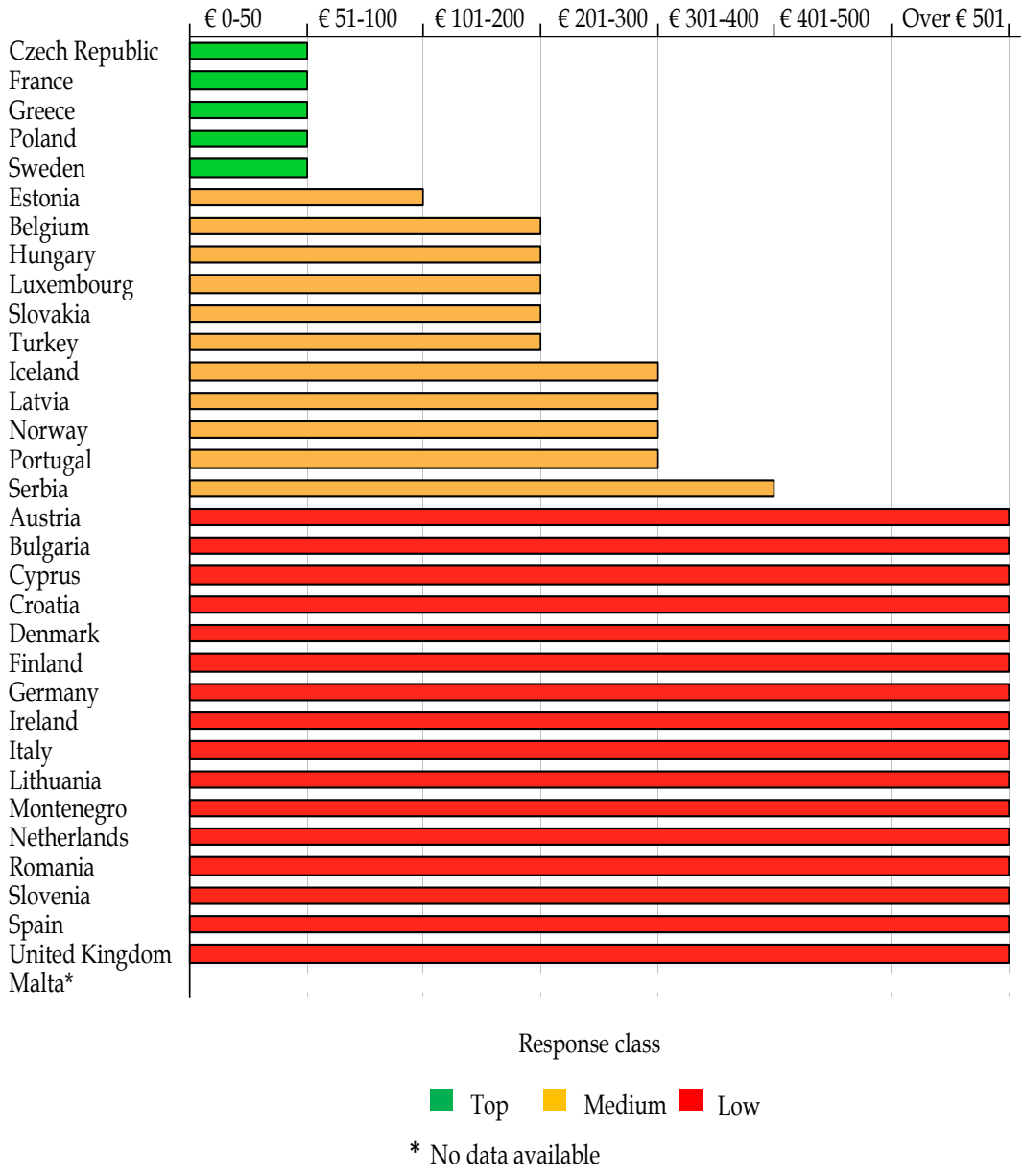
Figure 4-9: Time required to obtain all licenses – in calendar days (plumbing company)



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

Regarding the dimension of **cost (taxes, duties, fees) to public authorities** for all licenses, the Czech Republic, Greece, Poland and Sweden have the lowest level of cost involved (0 to €50). Also, France and Estonia have a relatively low cost (€51 - €100). The cost is between €101 to €300 in 9 countries (Hungary, Turkey, Luxembourg, Belgium, Slovakia, Latvia, Norway, Portugal and Iceland). In the rest of the countries costs are comparatively high: the cost ranges between €301 and €400 in Serbia, while it is over €500 in 16 out of the 33 countries surveyed.

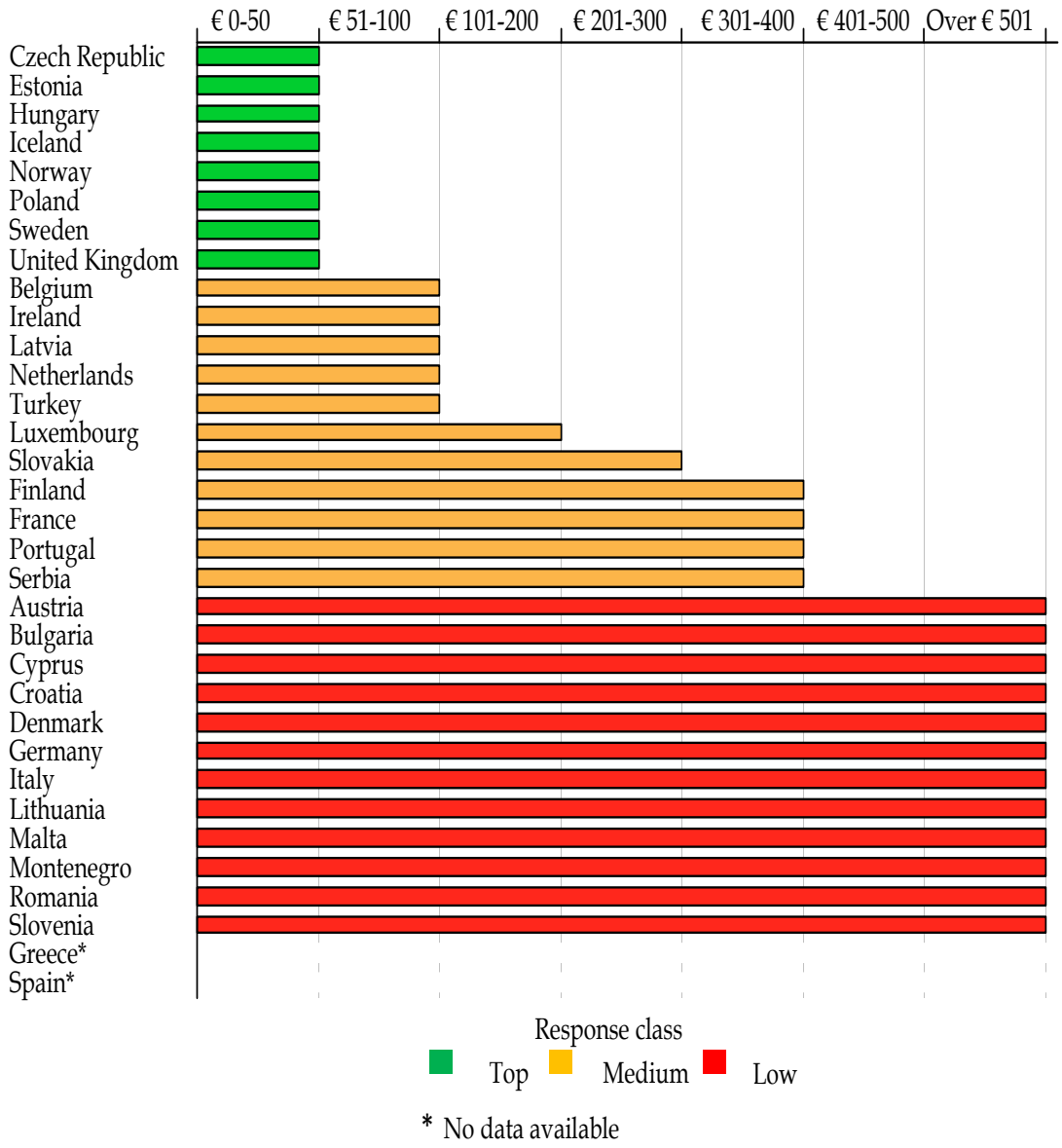
Figure 4-10: Cost towards public sector to obtain all licenses – in euro (plumbing company)



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

Cost for third parties/ private sector in order to obtain all licenses remains low (**0 to €50**) for the Czech Republic, Estonia, Iceland, Poland, Norway, Hungary, Sweden and the United Kingdom. The cost is relatively low also in Belgium, Ireland, the Netherlands, Latvia and Turkey (€51 to €100). At the higher end, in Austria, Bulgaria, Croatia, Cyprus, Denmark, Germany, Italy, Lithuania, Malta, Montenegro, Romania and Slovenia the cost for third parties/ private sector (for all licenses) exceeds €500.

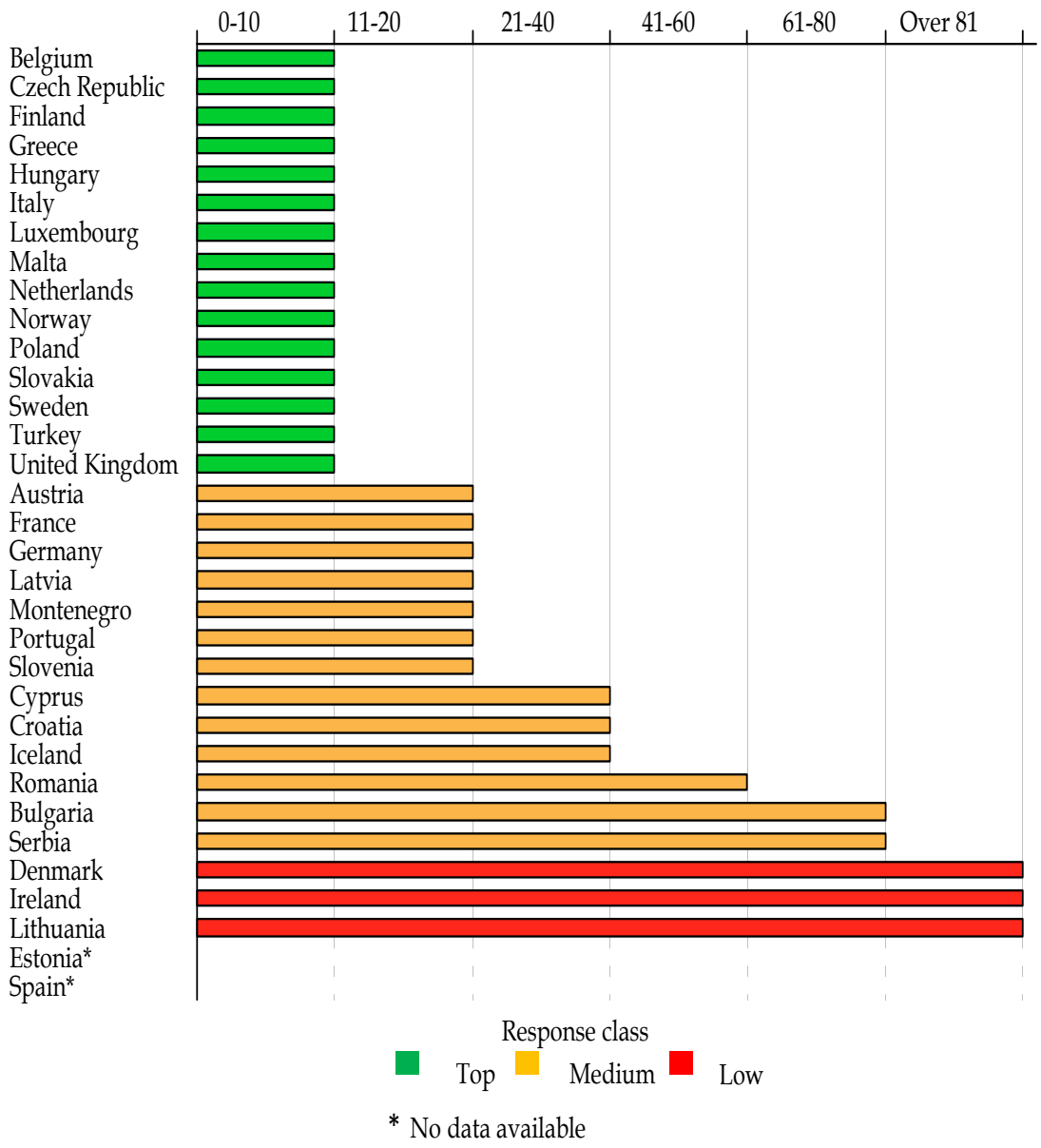
Figure 4-11 : Cost towards private sector to obtain all licenses – in euro (plumbing company)



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

Internal company effort in person days for all licenses remains low for most of the countries surveyed. Belgium, the Czech Republic, Finland, Greece, Hungary, Italy, Luxembourg, Malta, the Netherlands, Norway, Poland, Slovakia, Sweden, Turkey and the United Kingdom require a low level of internal company effort (0 to 10 person days). Austria, Germany, Montenegro, Slovenia, France, Latvia and Portugal require 11 to 20 person days. In Cyprus, Iceland, Croatia and Romania the time required ranges from 21 to 60 person days. Bulgaria and Serbia on the other hand have a relative poor performance (61 to 80 person days), while Denmark, Ireland and Lithuania require more than 80 person days.

Figure 4-12 : Internal company effort in person days to obtain all licenses - in calendar days (plumbing company)



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

4.1.2.4 Manufacturer of Small IT Devices

The survey examined the licenses that are required for the operation of a manufacturer of small IT devices that fulfils the following characteristics (in accordance with the European Commission's model company definition):

- Hardware manufacturer of small devices in low quantities to be integrated into computers or other bigger electronic devices

- Dangerous substances storage of maximum 75 kg
- Legal form of company is a private limited company
- None of the processes produce toxic effluents or discharges
- Electricity is the only source of energy used
- No transportation of materials or final products is required

According to the survey results (Appendix 1), four groups of countries are identified with respect to the number of total licenses required to operate a manufacturer of small IT devices:

- Up to 2 licenses: the Czech Republic, Finland, Malta, Luxembourg, Belgium, Norway, the United Kingdom, Ireland, Austria, Cyprus and Lithuania.
- Between 3 and 5 licences: Romania, Germany, Serbia, Slovakia, Denmark, Spain, Bulgaria, Croatia, Iceland, Turkey and Slovenia
- Between 6 and 9 licences: Portugal, Hungary, Montenegro and Italy.

Countries with a high level of uncertainty among respondents with respect to the number of licenses are: Estonia, France, Greece, the Netherlands and Sweden. It should be noted also that in France, Latvia and Poland, the exact number of licenses required could not be determined from the responses to the survey.

There is a considerable difference in the number of the various types of licenses required. The types of licences vary greatly in the surveyed countries. However, most countries demand a license to operate an IT hardware company.

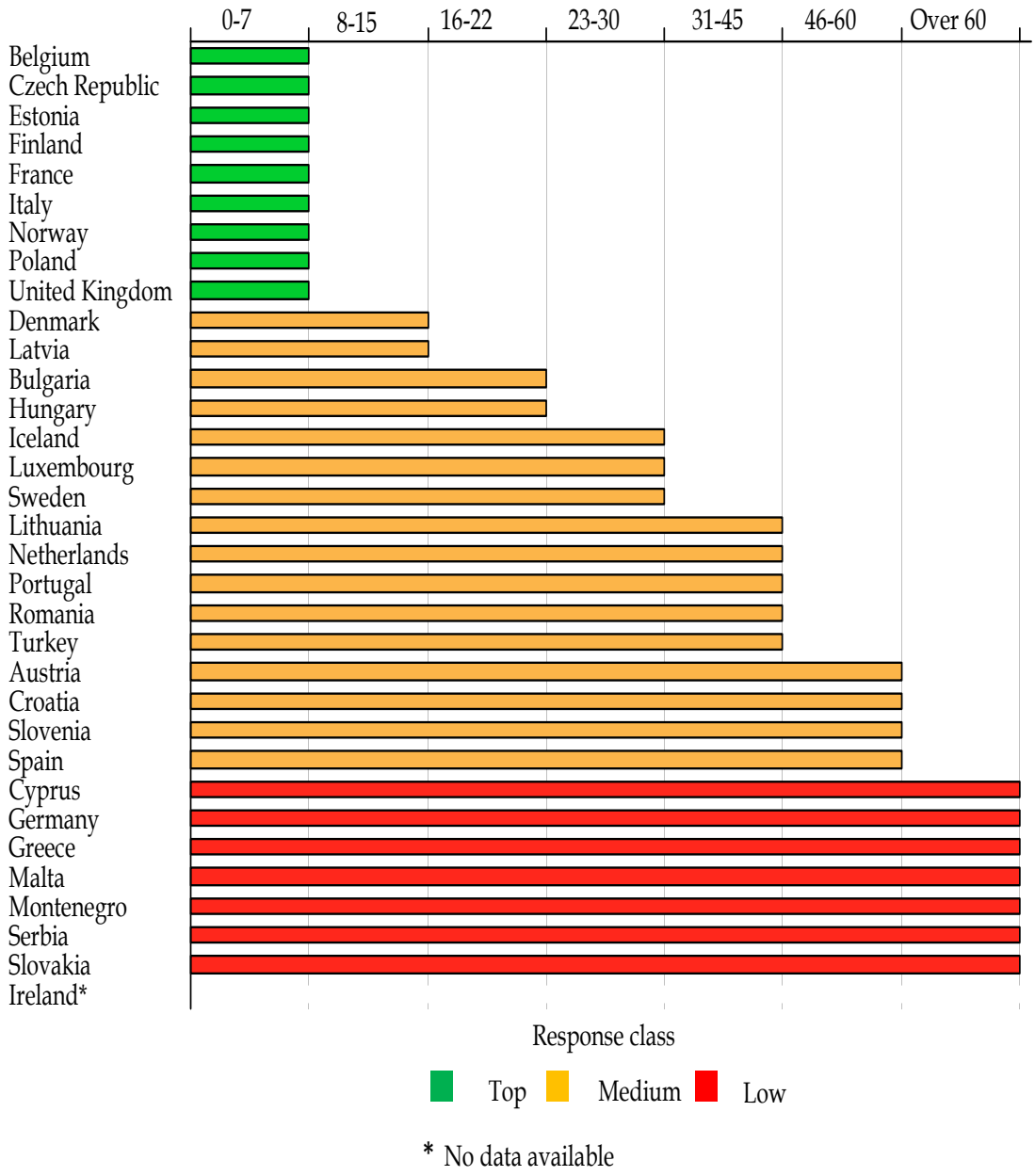
In general, the number of licenses required is very low and in several cases this has a positive effect on other dimensions. Therefore, in several countries with a low number of licenses, time required to obtain all licenses, cost towards public authorities and cost towards private sector are also low. This is more evident in the case of Belgium, the Czech Republic, Denmark, France, Norway, Poland, Latvia, Sweden, Luxembourg, Estonia and Finland. In most cases, there is also a positive degree of correlation between the number of licenses demanded and internal company effort in person days.

Figure 4.13, below, shows the average **time required to obtain all licences** (time out-of-market).

Belgium, the Czech Republic, Finland, Estonia, France, Italy, Norway, Poland and the United Kingdom have the best performance in this dimension, since in those countries it takes less than 7 days to obtain all applicable licenses.

At the higher end, Cyprus, Greece, Germany, Malta, Montenegro, Serbia and Slovakia require over 60 days.

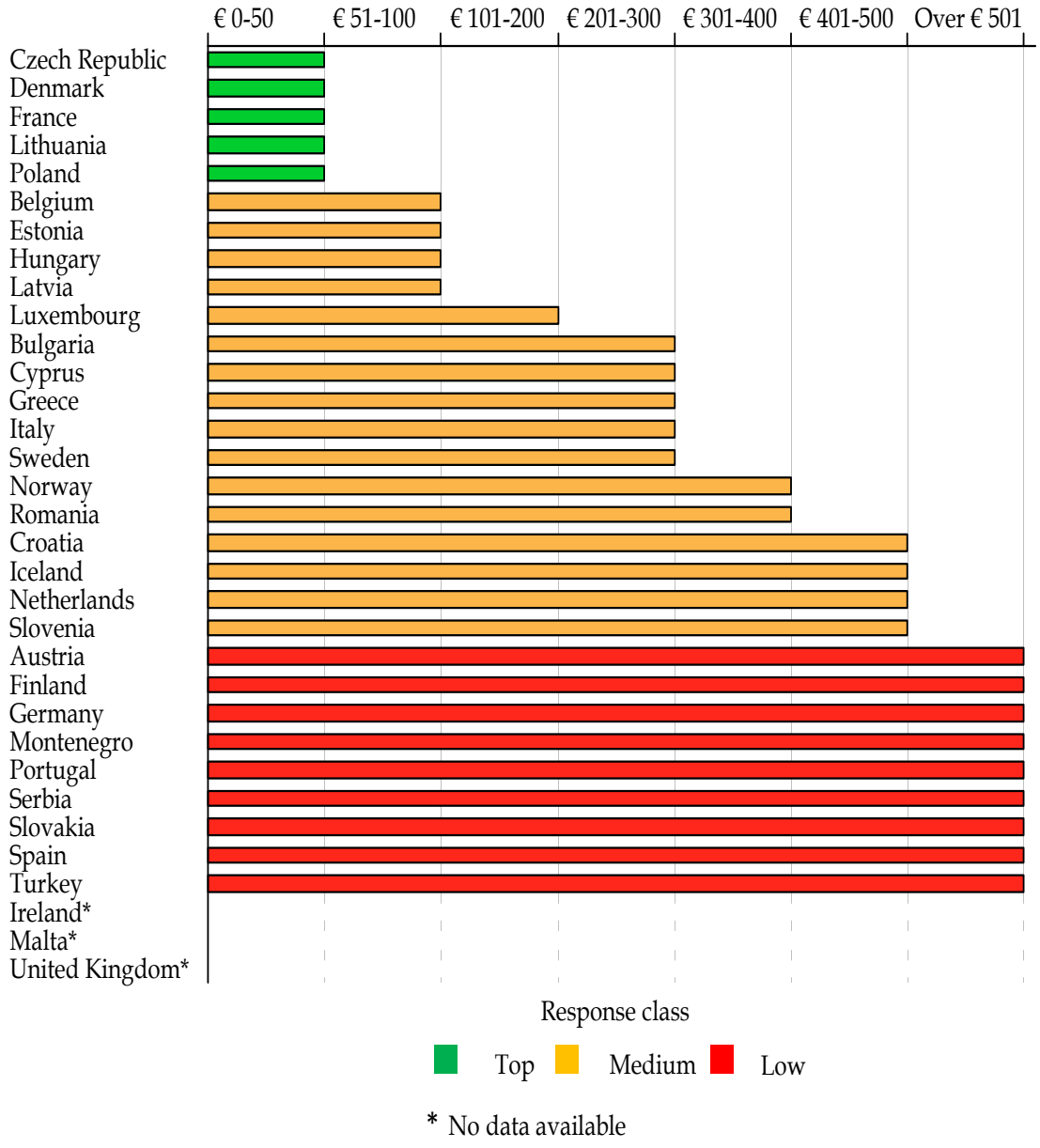
Figure 4-13 : Time required to obtain all licenses (manufacturer of small IT devices)



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

The following figure presents the **average cost towards public sector authorities** (taxes, duties and other fees) to obtain all licenses. In the Czech Republic, Denmark, France, Lithuania and Poland costs are below €50, while Latvia, Iceland, Estonia, Belgium and Hungary follow with a cost that ranges from €51 to €100. The cost is average (between €101 and €300) for Luxembourg, Bulgaria, Cyprus, Greece, Italy and Sweden. In Austria, Finland, Germany, Montenegro, Portugal, Serbia, Slovakia, Slovenia, Spain and Turkey the cost exceeds €500.

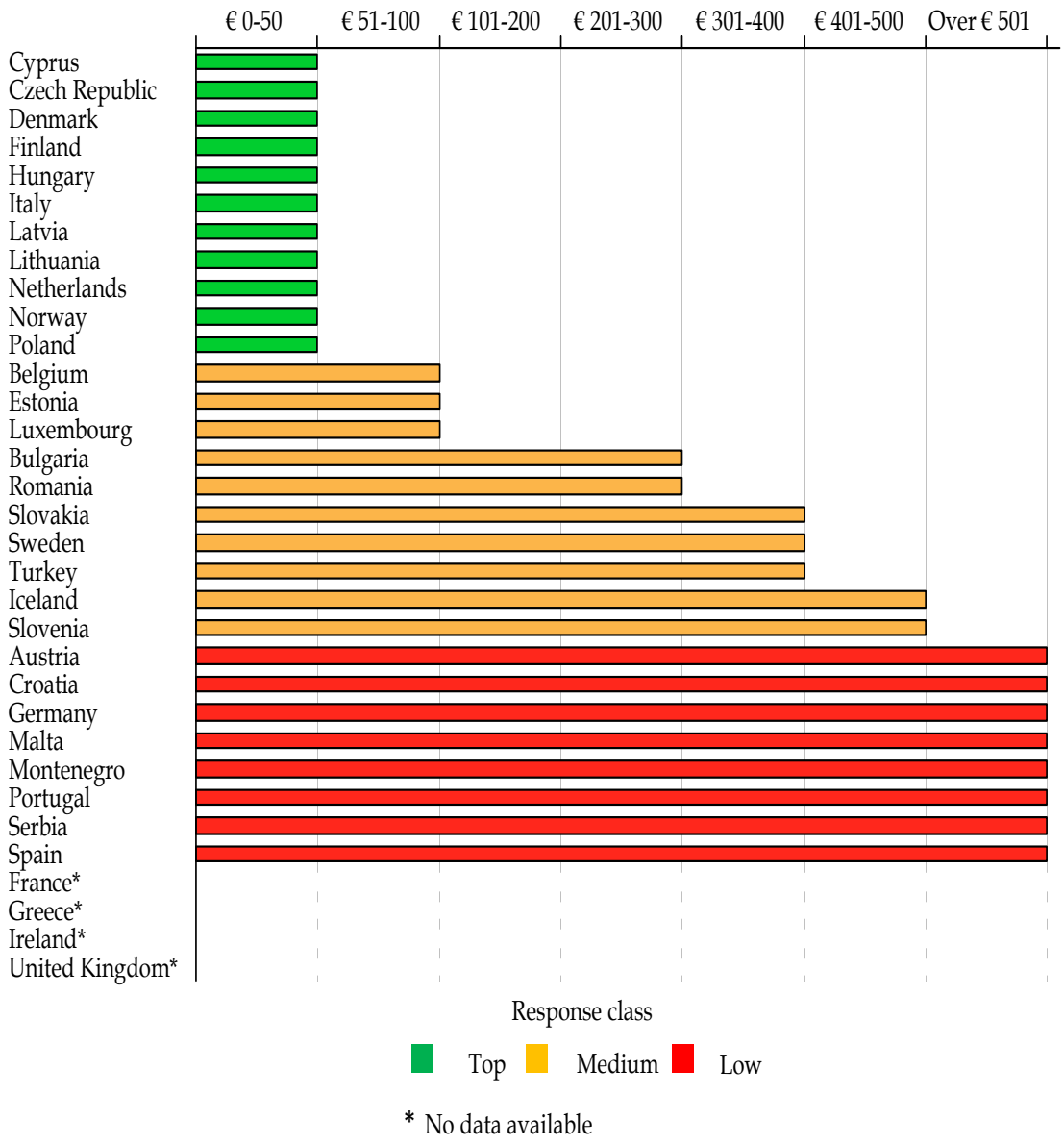
Figure 4-14: Cost towards public sector to obtain all licenses (manufacturer of small IT devices)



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

In most countries, **cost towards the private sector** remains low. As shown in the next figure, costs are lowest (0 to €50) in: Cyprus, the Czech Republic, Denmark, Finland, Hungary, Italy, Latvia, Lithuania, Norway, the Netherlands and Poland. In Belgium, Estonia, Iceland and Luxembourg the cost is between €51 and €100. In 9 countries (Austria, Croatia, Germany, Malta, Montenegro, Portugal, Serbia, Slovenia and Spain) the cost exceeds €500, making licensing for start-ups relatively expensive.

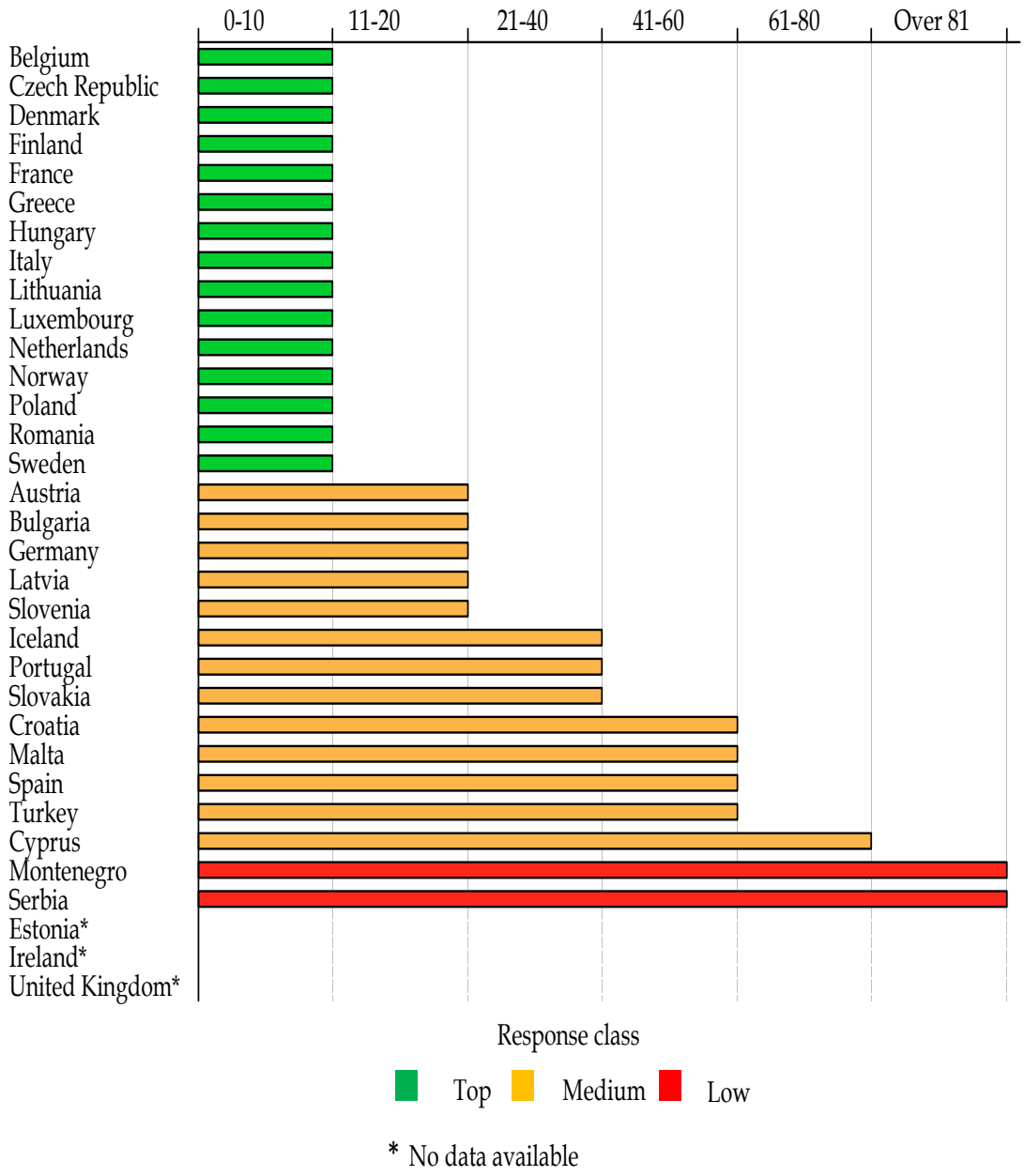
Figure 4-15: Cost towards private sector to obtain all licenses (manufacturer of small IT devices)



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

The next figure depicts **internal company effort** in person days for all licenses. The majority of countries require less than 20 days. In Belgium, Hungary, Iceland, Luxembourg, the Czech Republic, Denmark, Finland, France, Greece, Italy, Lithuania, Norway, Poland, Romania, Sweden and the Netherlands internal company effort does not exceed 10 person days. In Austria, Bulgaria, Germany, Latvia and Slovenia it ranges from 11 to 20, while in Portugal and Slovakia from 21 to 40 days. In the remaining countries over 41 days are required. Within these, Montenegro and Serbia require over 81 days.

Figure 4-16 : Internal company effort in person days to obtain all licenses (manufacturer of small IT devices)



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

4.1.2.5 Manufacturer of Steel Products

The survey examined the applicable licenses that are required for the operation of a manufacturer of steel products that fulfils the following characteristics (in accordance with the European Commission's model company definition):

- Steel / alloys production facility involving forging, casting or stamping

- Installations for the melting of ferrous metals with melting installations (production capacity per day of max. 400kg)
- Operation of small electric furnace with a power of 75kW
- Legal form of company is a private limited company
- Company located in an industrial estate
- None of the processes produce toxic effluents or discharges
- Electricity is the only source of energy used
- No transportation of materials or final products is required

Three groups of countries are identified with respect to the number of total licenses required to operate a Steel Products manufacturing company:

- Up to 2 licenses: the Czech Republic, Ireland, Latvia, Lithuania, Estonia, Finland, Slovakia, Austria and France.
- Between 3 and 5 licences: Germany, Serbia, the United Kingdom, Romania, Belgium, Italy, Sweden, Hungary, the Netherlands, Slovenia, Turkey and Poland.
- Between 6 and 9 licences: Croatia, Denmark, Luxembourg, Montenegro, Portugal, Iceland, Greece, Bulgaria and Spain.

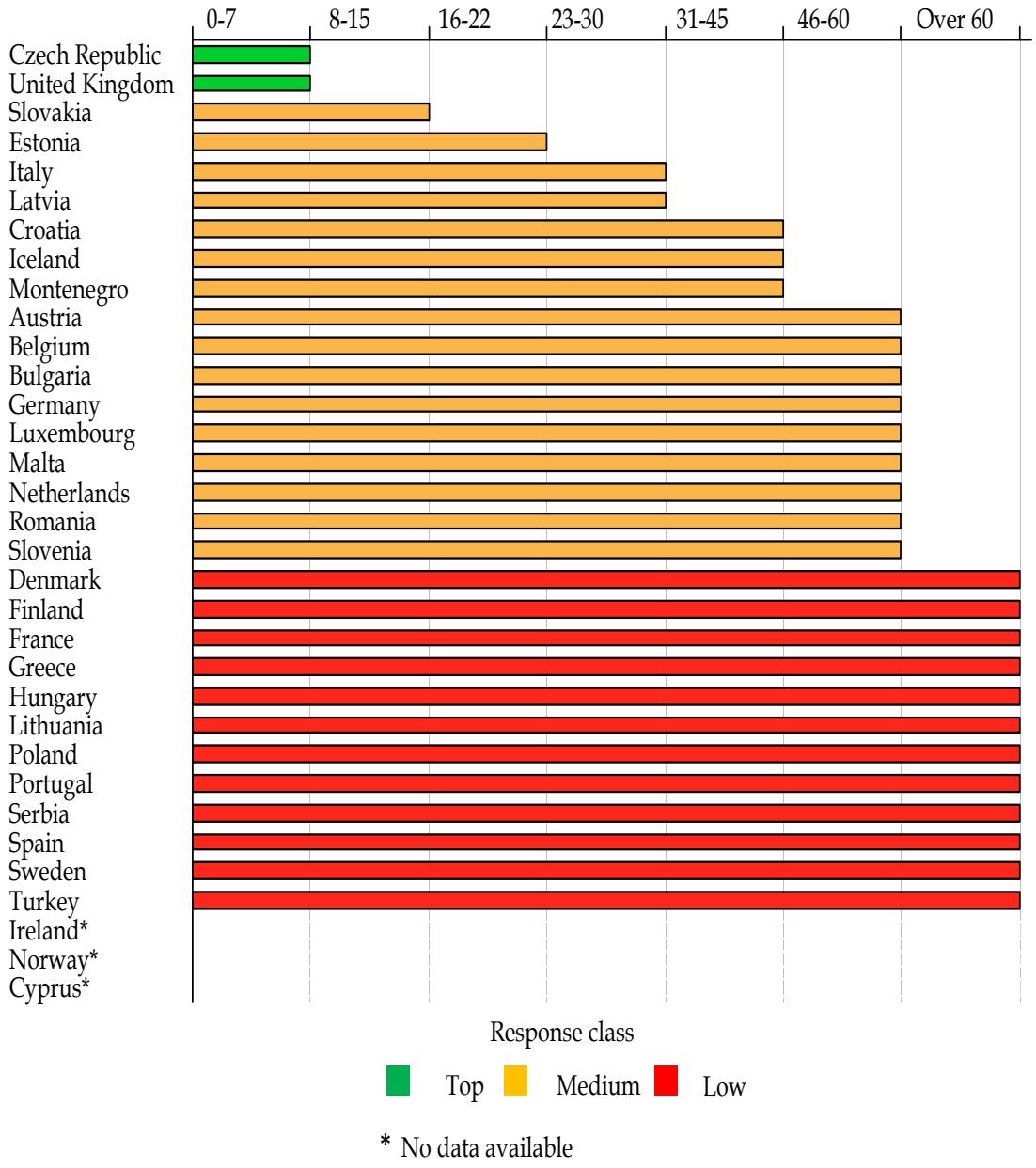
Countries with a high level of uncertainty among respondents with respect to the number of licenses are Spain and to a smaller extent Iceland, Poland and the Netherlands.

In terms of the types of licenses required, the vast majority of the countries demand a license in order to operate a steel product manufacturing company and a license for environmental compliance of the premises. A safety license related to premises is also required by many countries, as well as a license related to the safety of employees.

It should be noted that administrative burden (in terms of time and cost) is not always proportional to the total number of licenses required. In Malta or Lithuania, for instance, the high administrative burden is disproportional to the number of licenses required (one). Duration is long (over 46 days) and costs towards the public sector authorities (exceeding €500) are high in 12 countries: Austria, Bulgaria, Finland, France, Germany, Greece, Hungary, Poland, Portugal, Serbia, Sweden and Turkey.

The next figure presents **the time required to obtain all licenses** (time out-of-market). In the Czech Republic and the United Kingdom the time required for all licenses is less than 7 days. At the higher end, Denmark, Finland, France, Greece, Hungary, Lithuania, Poland, Portugal, Serbia, Spain, Sweden and Turkey require more than 60 days to obtain all licenses.

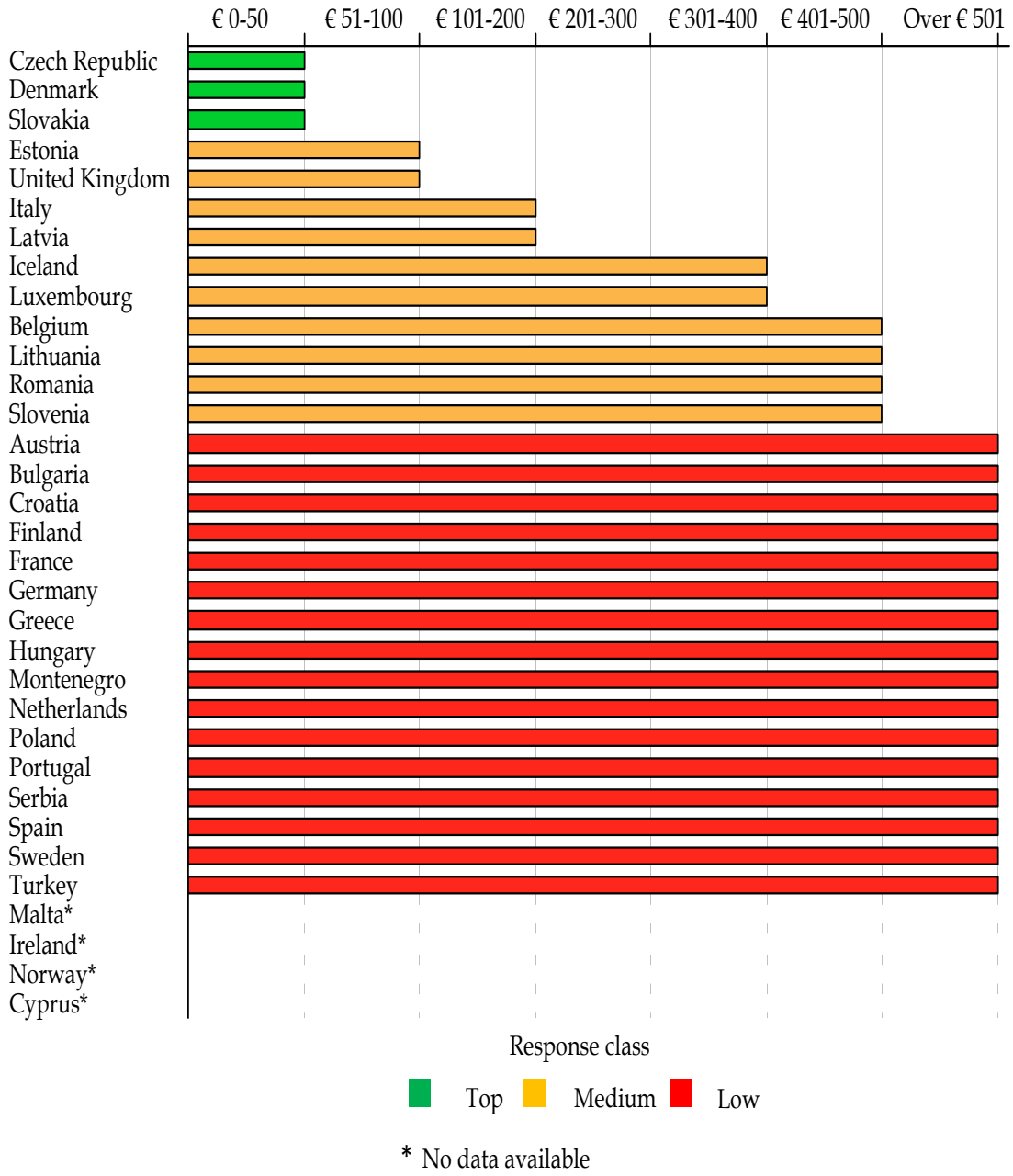
Figure 4-17: Time required to obtain all licenses (manufacturer of Steel Products)



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

Figure 4.18 depicts the **costs towards public sector authorities** (taxes, duties, fees) to obtain all licenses. It is lowest in the Czech Republic, Slovakia and Denmark, which have the lowest cost (0 to €50), while the cost in Estonia and the United Kingdom is also relatively low (€51 to €100). The cost in Italy and Latvia is between €101 and €200, while in Iceland and Luxembourg it ranges from €301 to €400. In the remaining countries costs are higher than € 401 and they exceed € 500 in 16 countries.

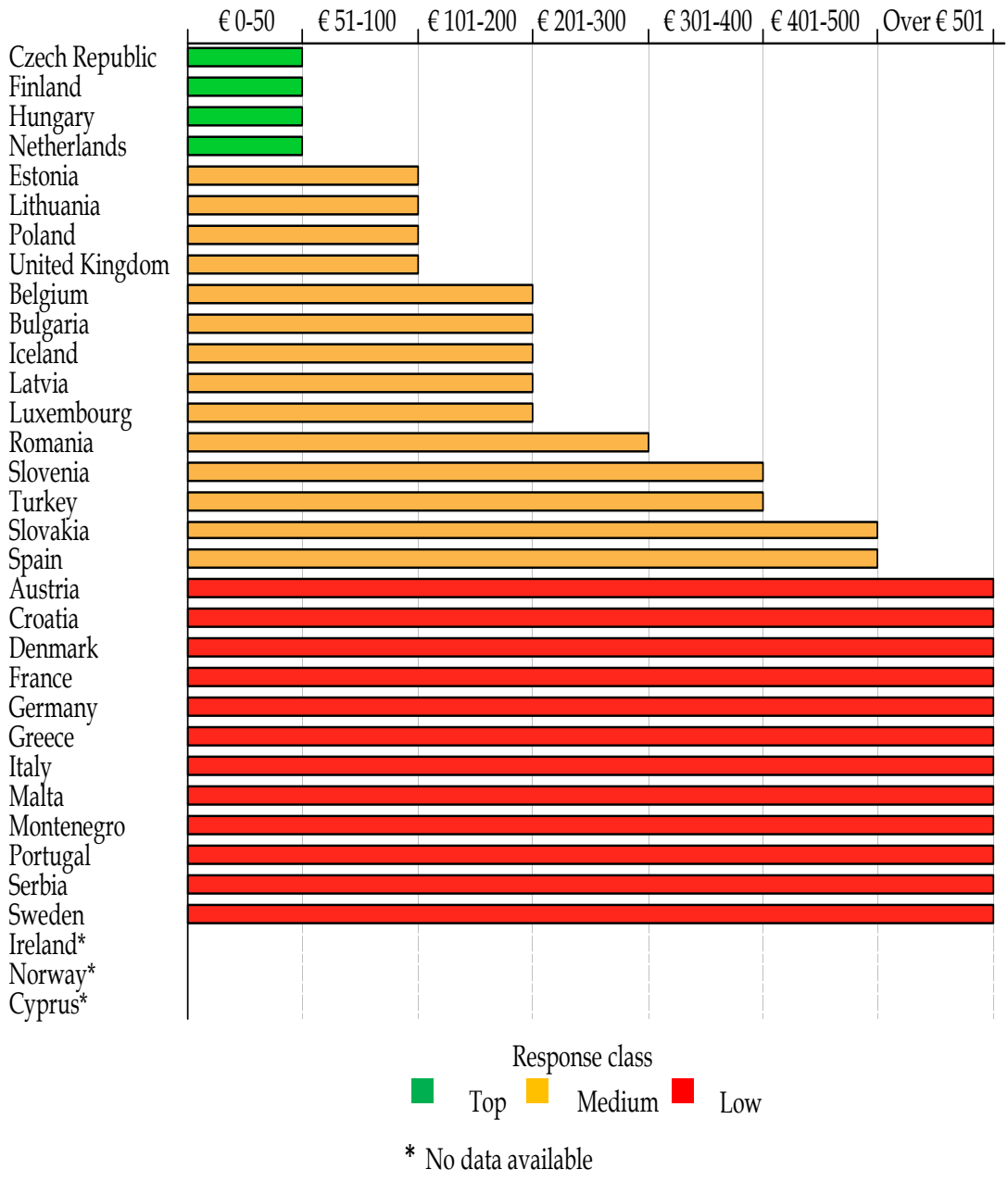
Figure 4-18: Cost towards public sector to obtain all licenses (manufacturer of Steel Products)



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

Cost for **third parties/ private sector** is very low (0 to €50) in the Czech Republic, Hungary, the Netherlands and Finland, and relatively low (€51 to €100) in Lithuania, Estonia, Poland and the United Kingdom, as depicted in the next figure. Costs in Austria, Croatia, Germany, Greece, Denmark, France, Italy, Malta Montenegro, Portugal, Serbia and Sweden exceed €500.

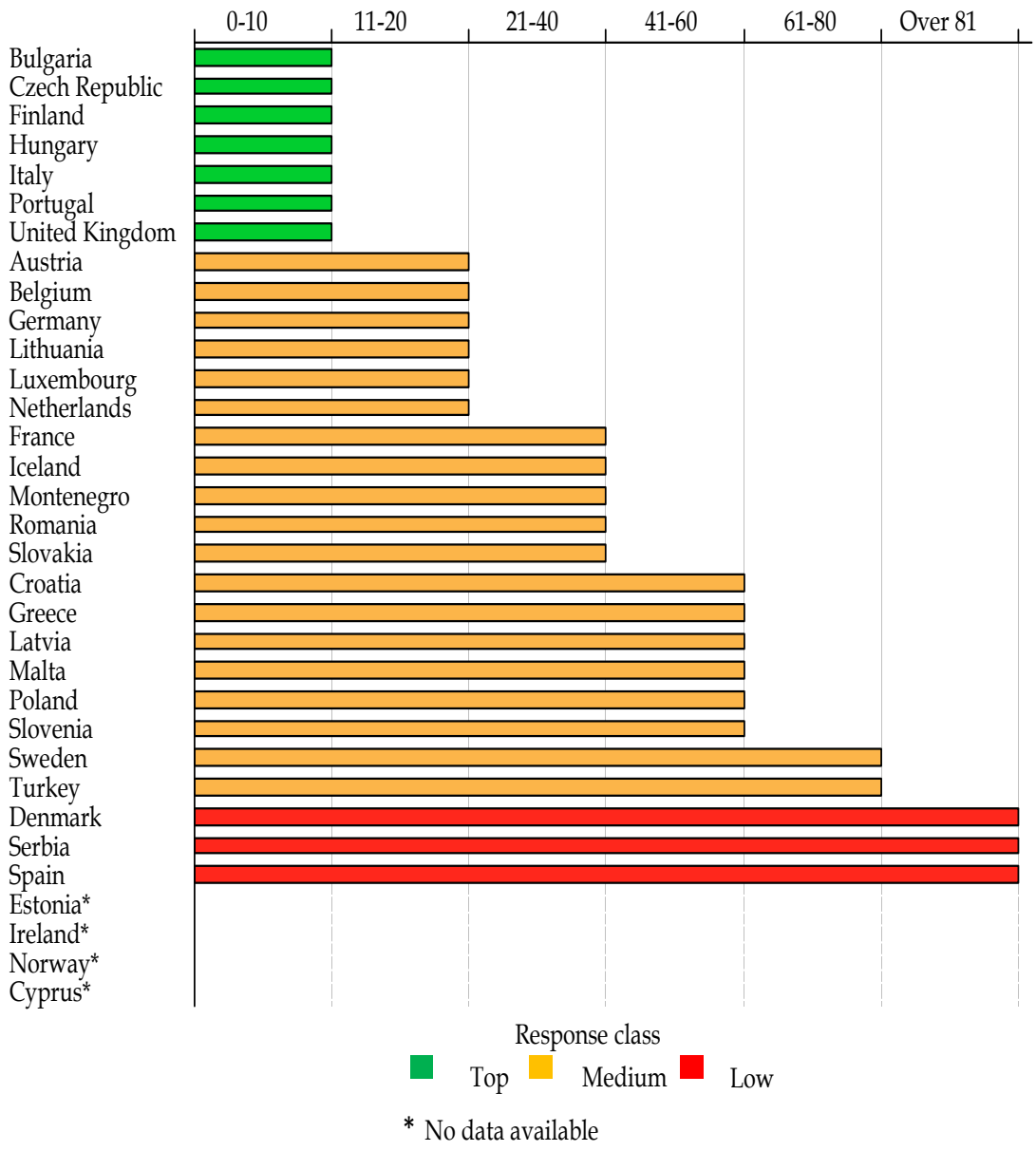
Figure 4-19: Cost towards private sector to obtain all licenses (manufacturer of Steel Products)



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

Internal company effort for all licenses is **up to 10 person days** for the Czech Republic, Finland, the United Kingdom, Hungary, Italy, Bulgaria and Portugal. It remains relatively low for Austria, Belgium, Germany, Luxembourg, the Netherlands and Lithuania (11 to 20). At the higher end, in Sweden and Turkey the effort required ranges from 61 to 80 days, while Spain, Denmark and Serbia it is over 81 days.

Figure 4-20: Internal company effort in person days to obtain all licenses (manufacturer of Steel Products)



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

4.1.3 Economic Analysis

The aim of this section is to assess the impact of the complexity of licensing procedures on business dynamics (i.e. birth rate, employment level, total entrepreneurial activity).

4.1.3.1 Complexity of licenses

Licensing complexity takes into account two types of costs:

Direct costs:

- Taxes, duties, fees paid to public sector
- Internal company effort (number of person-days) required in order to apply for licenses and prepare relevant company documentation

Indirect costs:

- Fees paid for support from third parties/private sector (consultancies, lawyers, etc.)
- Time out-of-market in calendar days i.e. the time during which a company cannot operate in the market while waiting to obtain required licenses.

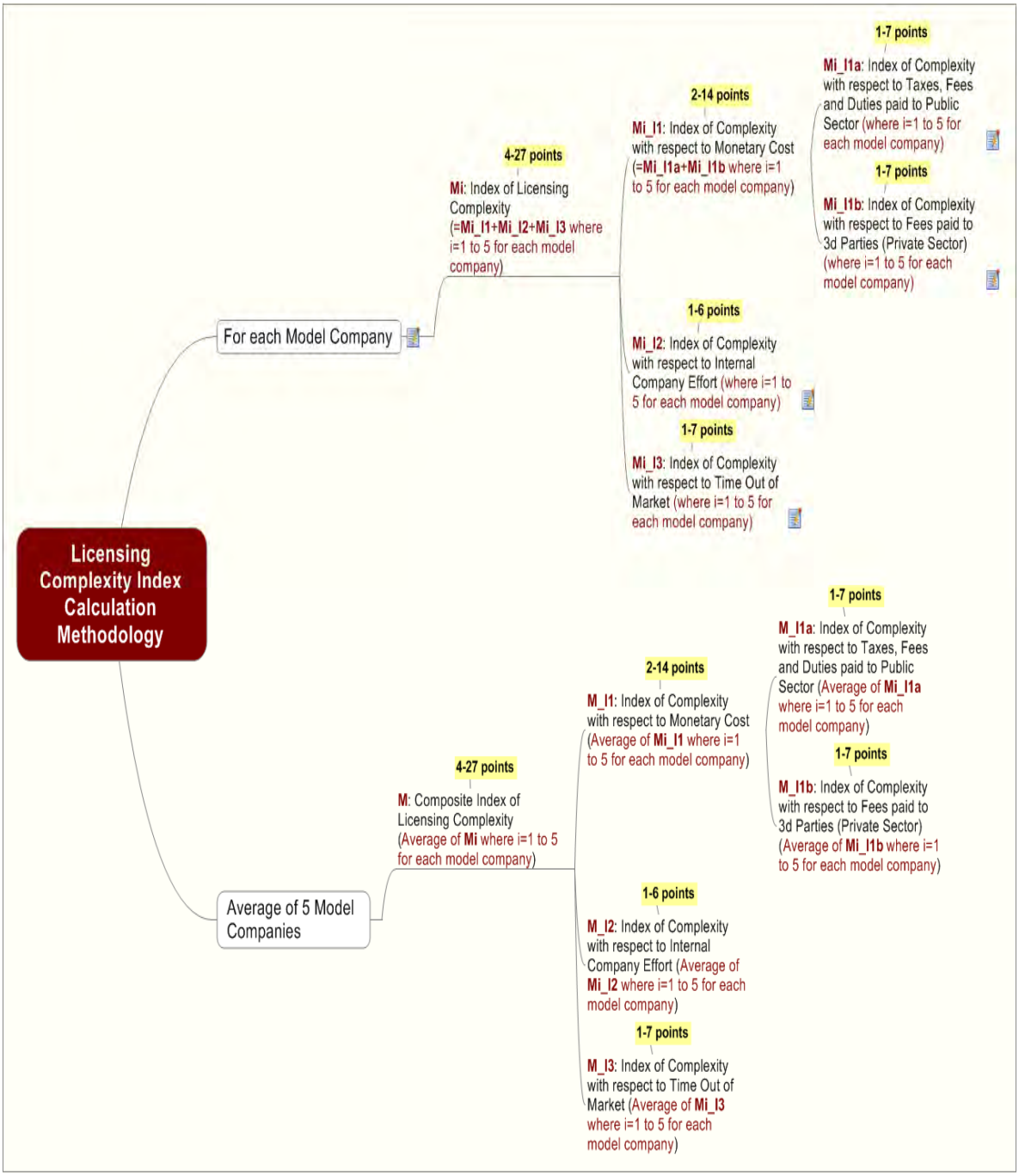
Survey responses with respect to these costs have been used to assess the complexity of licensing procedures across the surveyed European countries. To do so, a composite index was developed by calculating the following individual indices:

1. One index was developed for monetary cost. This index aggregates the cost related to public sector fees/taxes and cost related to private sector fees.
2. One index was developed for the internal company effort
3. One index was developed for time-out-of-market

These indices were calculated for each model company, while their average across all 5 model companies was used to assess the overall complexity of licensing procedures in each surveyed European country.

The calculation methodology and formulas for each index are shown in the next graph, while further details are provided in Appendix II.

Figure 4-21 : Licensing Complexity Index Calculation Methodology



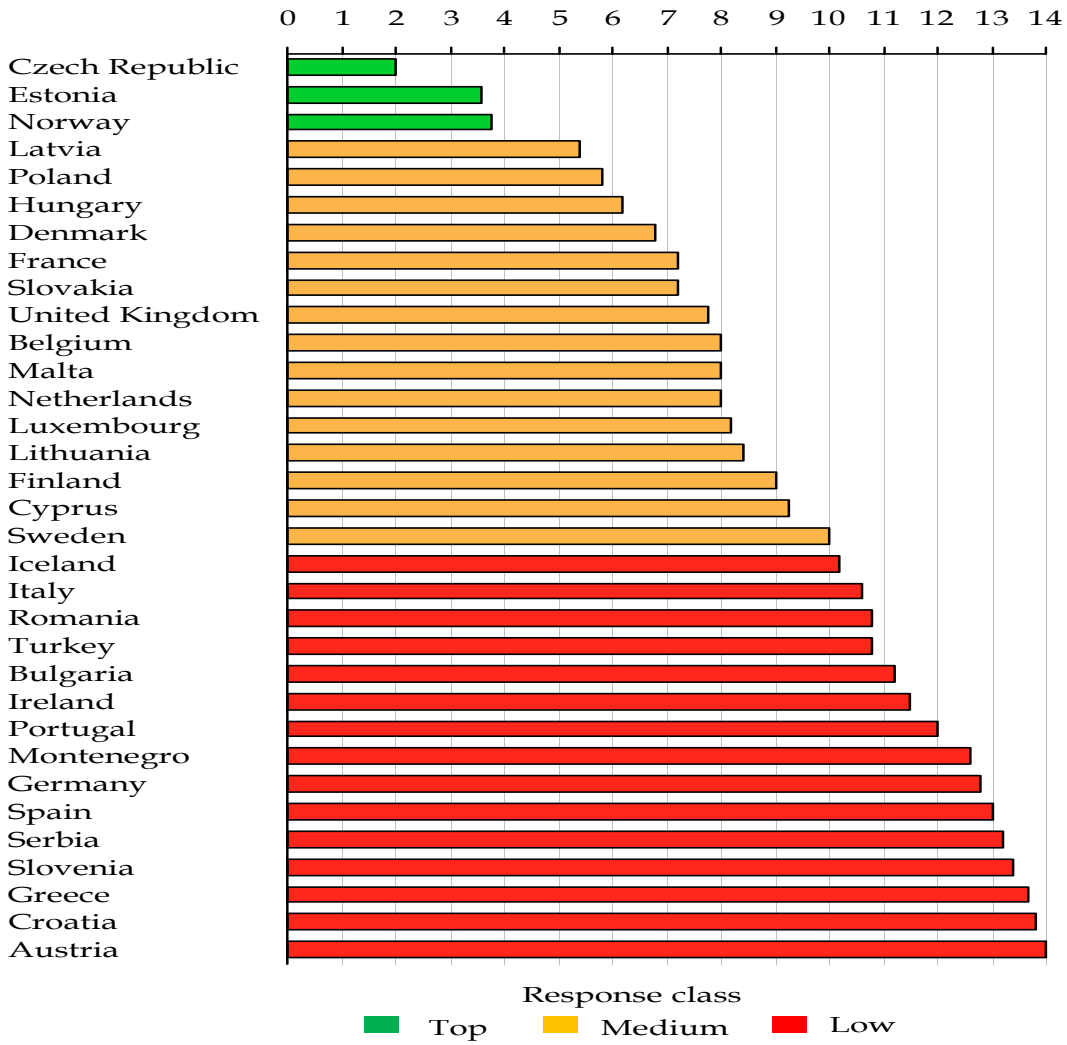
4.1.3.2 Total Licensing Complexity for All Model Companies

Index of complexity with respect to monetary cost

The next figure presents the complexity index with respect to costs based on average fees to public administration (duties, taxes etc.) and fees to third parties/private sector.

The Czech Republic, Estonia, Norway, Latvia and Poland are considered as the best performing countries since the costs related to public and private fees are under € 450 on average for all model companies.

Figure 4-22: Index of licensing complexity with respect to monetary cost (public and private sector fees)



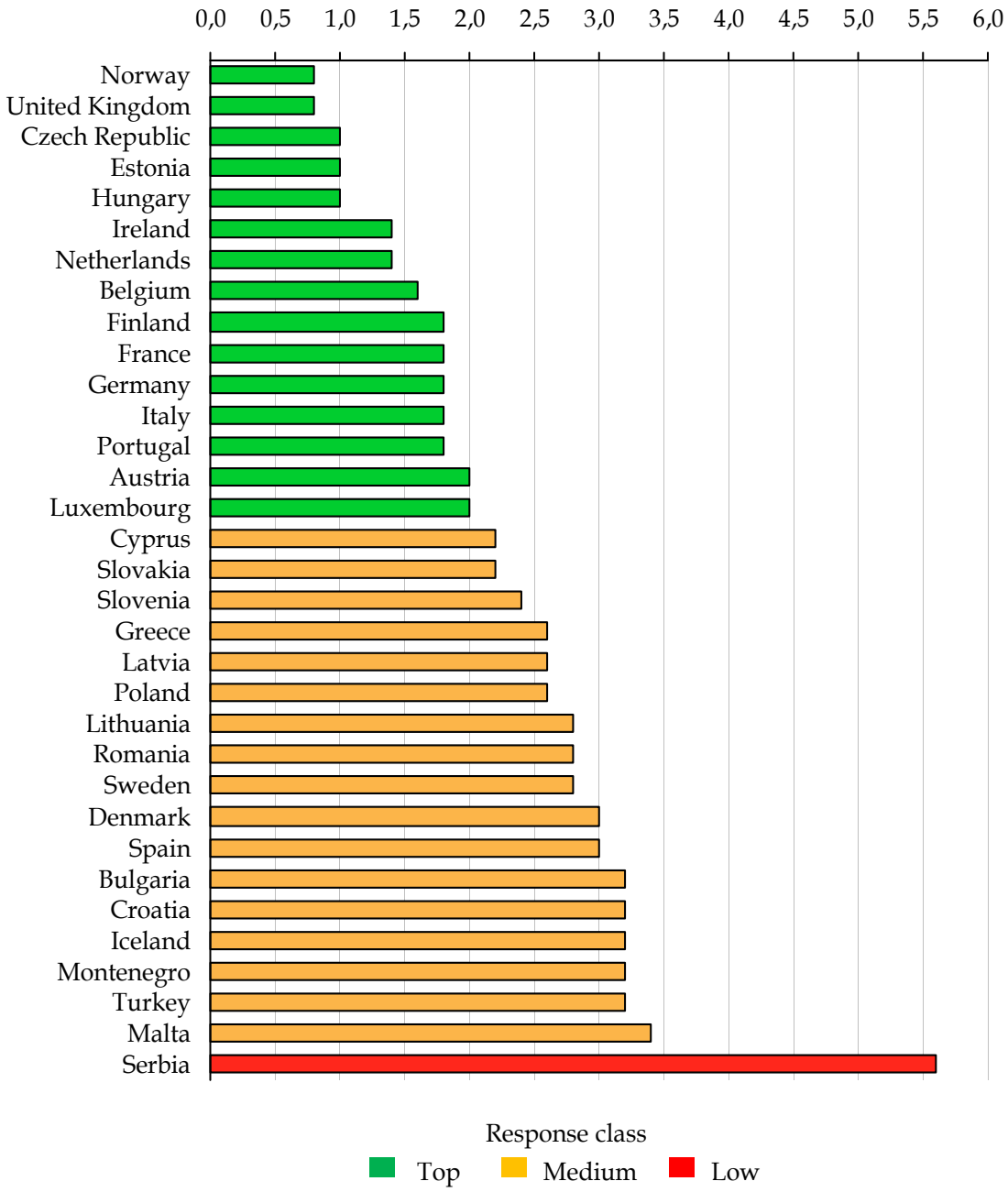
1 (lowest level of complexity) to 14 (highest level of complexity)

Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents
The seven complexity points for each type of cost are presented in Appendix II

Index of complexity with respect to internal company effort

The next figure presents the complexity index with respect to internal company effort (in person days). The index has been calculated as an average of all 5 model companies.

Figure 4-23: Index of licensing complexity with respect to time (internal company effort)



1 (lowest level of complexity) to 6 (highest level of complexity)

Source: Business Dynamics Survey 2010

Note: Data is based solely on the views and perceptions of the survey's respondents

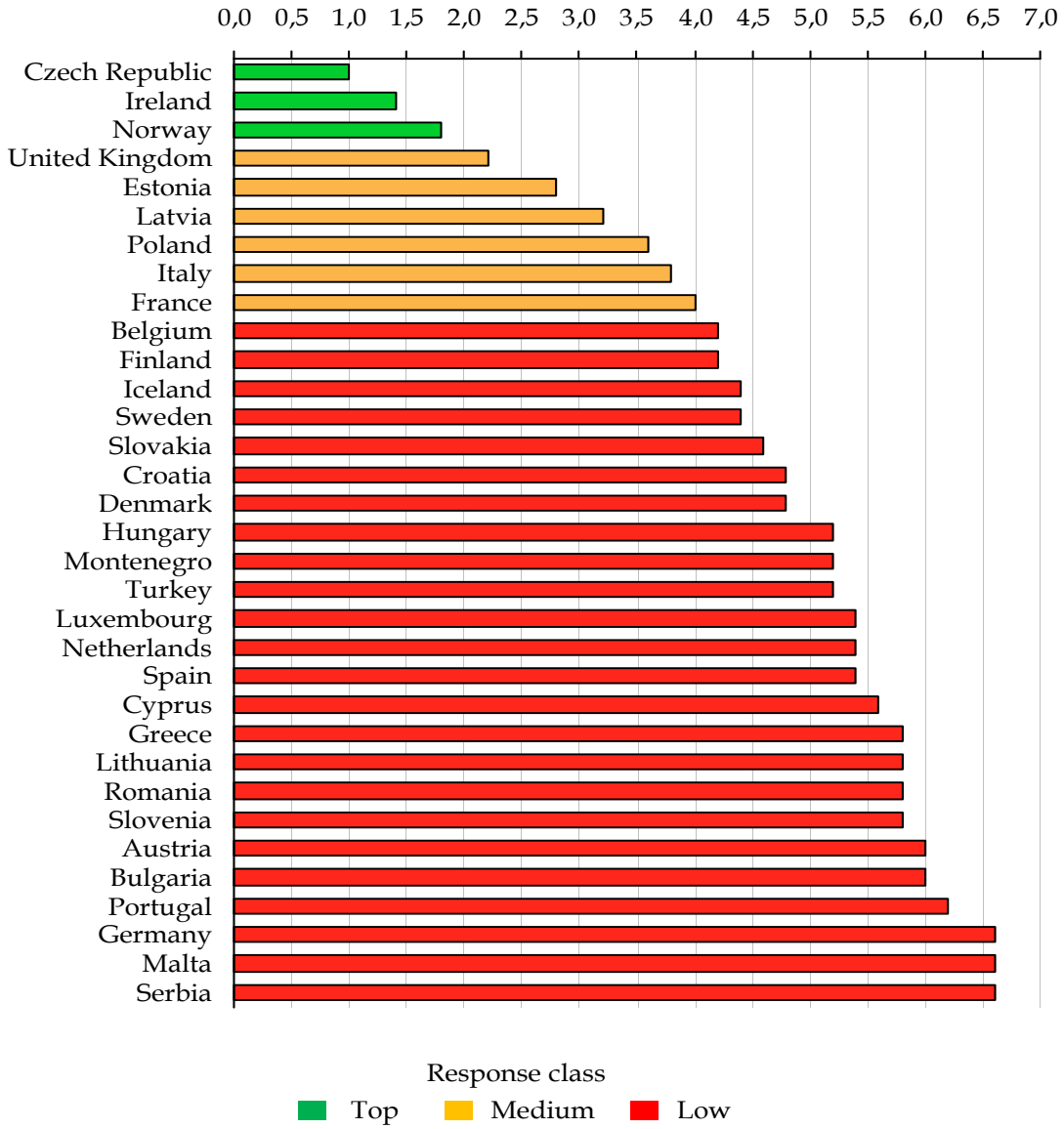
The complexity index with respect to internal company effort has 6 complexity points as presented in Appendix II

Index of complexity with respect to time out-of-market

The next figure shows the level of licensing complexity with respect to time out-of-market.

Countries that have up to 30 calendar days time-out-of market are the Czech Republic, Ireland, Italy, Latvia, Norway, Poland and the United Kingdom. The average time out-of-market (in calendar days) in the majority of countries ranges between 23 and 60 days.

Figure 4-24: Index of licensing complexity with respect to time out-of-market



1 (lowest level of complexity) to 8 (highest level of complexity)

Source: Business Dynamics Survey 2010

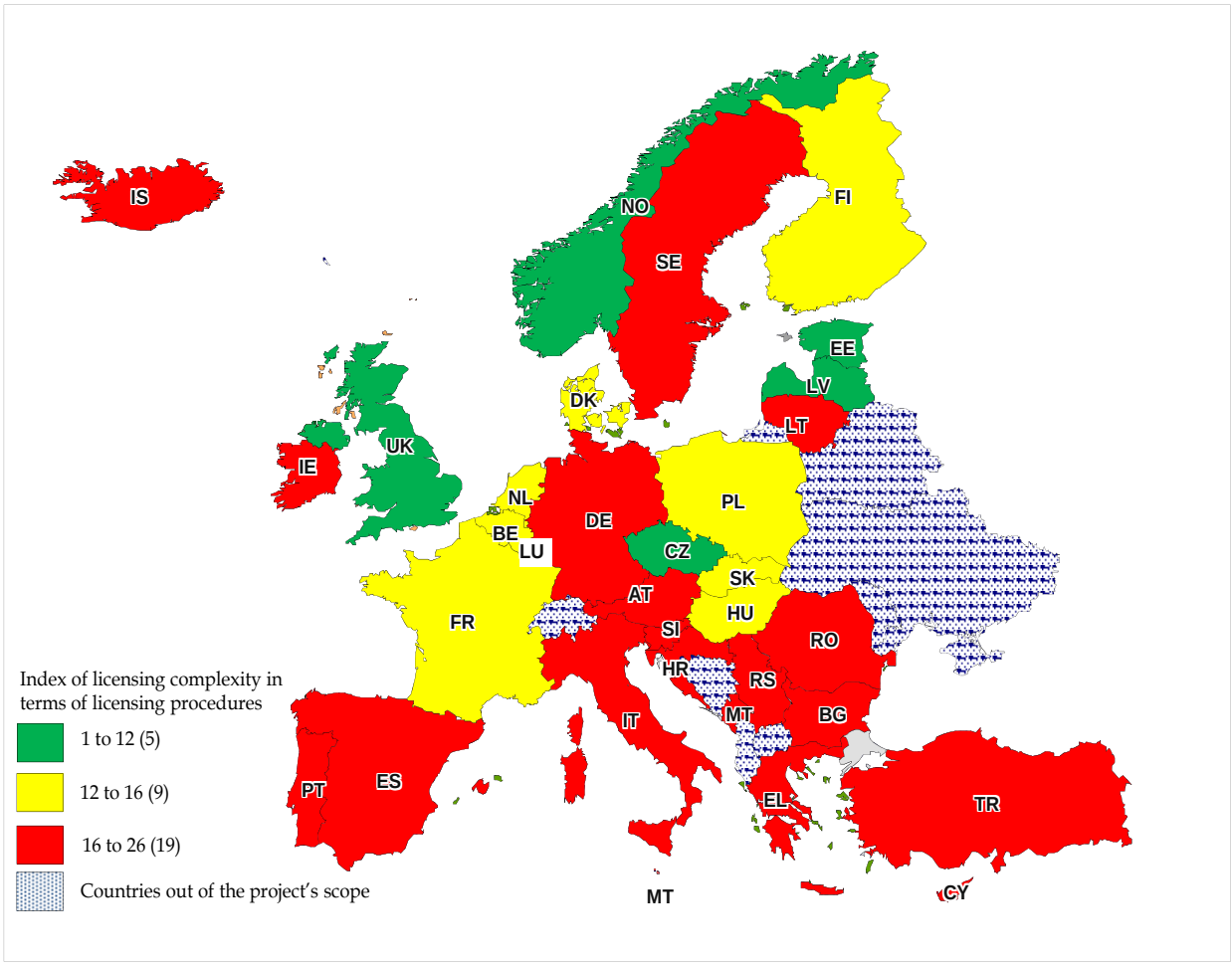
Note: Data is based solely on the views and perceptions of the survey's respondents.
The complexity index with respect to out-of-market time has 7 complexity points as presented in Appendix II.

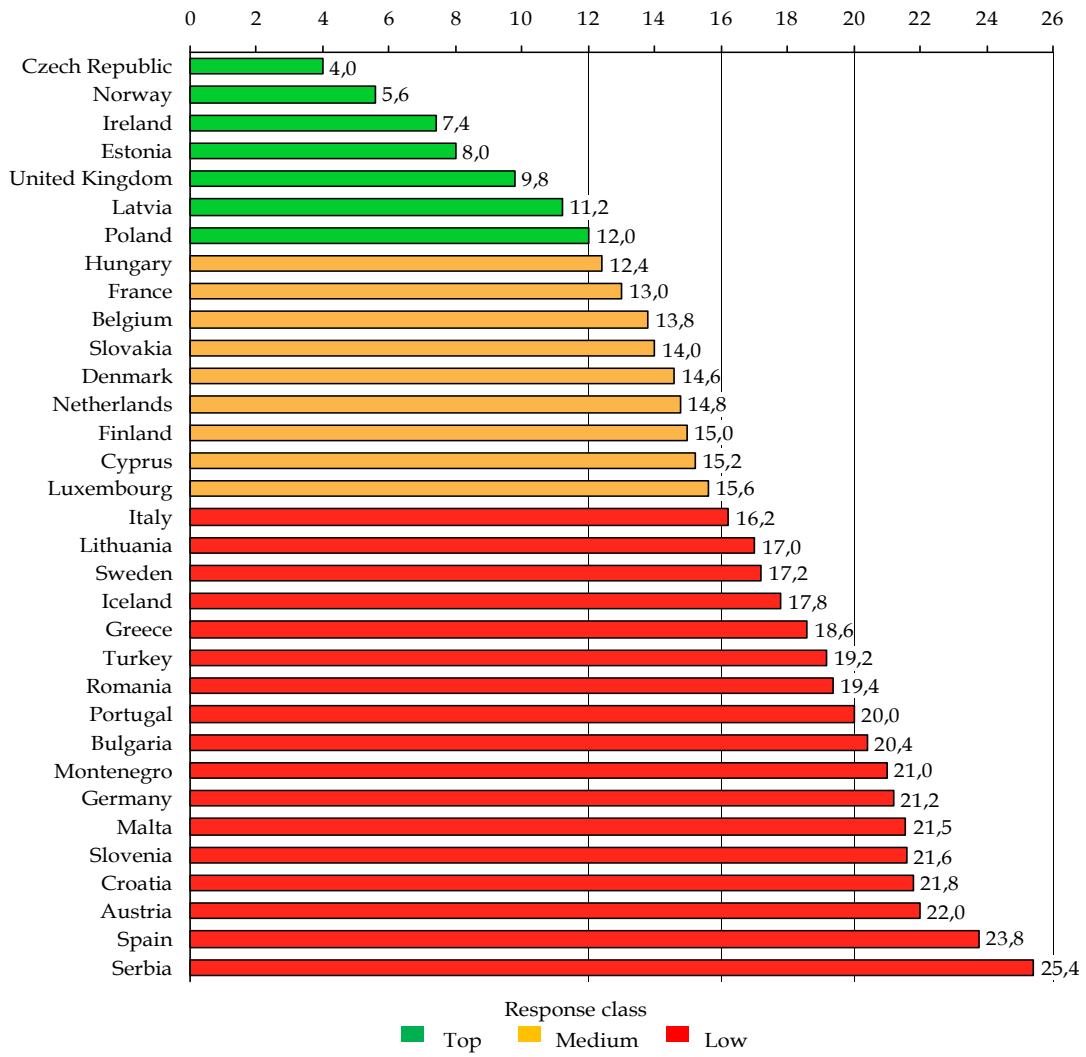
Composite index of licensing complexity

The index of total licensing complexity is developed on the basis of all direct and indirect costs as reflected by the three indices calculated above (monetary cost, time out-of-market, internal company effort).

Figure 4-25: Index of composite (total) licensing complexity (Map and Bar Chart)

1 to 12 (5)	the Czech Republic, Estonia, Latvia, Norway, the United Kingdom
12+ to 16 (9)	Belgium, Denmark, Finland, France, Hungary, Luxembourg, the Netherlands, Poland, Slovakia
16+ to 26 (19)	Austria, Bulgaria, Croatia, Cyprus, Germany, Greece, Iceland, Ireland, Italy, Lithuania, Malta, Montenegro, Portugal, Romania, Serbia, Slovenia, Spain, Sweden, Turkey,





1 (lowest level of complexity) to 26 (highest level of complexity)

Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

The index of total licensing complexity has 26 complexity points. A three level scale is used for the representation of this index, where:

- Green represents the lowest level of complexity (levels **1 to 12**, in the scale). It indicates: less than 7 days to obtain licenses; taxes, duties and fees paid to public administration under €50 cost for third parties under €50 and internal company effort less than 10 days. **Total costs up to €100 and total time up to 17 days.**
- Yellow represents a medium level of complexity (levels **12+ to 16** in the scale). It indicates: 8 to 30 days to obtain licenses; taxes, duties and fees paid to public administration between €51 and €300; cost for third parties between €51 and €300 and internal company effort from 11 to 40 days. **Total costs from €102 to €600 and total time from 19 up to 70 days.**

- Red represents a high level of complexity, of which:
    - The scale of **16+ to 20** represents high level of complexity, featuring cases with: 31 to 60 days to obtain licenses; taxes, duties and fees paid to public administration between €301 and €500; cost for third parties between €301 and €500 and internal company effort from 40 to 80 days. **Total costs from €602 to €1.000 and total time from 71 up to 140 days.**
    - The scale of **20 to 26** represents the highest level of complexity, which includes countries that require over 60 days to obtain all licences, over €501 for public sector and private sector costs and over 81 days in terms of internal effort. **Total costs over €1.002 and total time over 141 days.**

As shown in the map above, the level of total licensing complexity varies significantly across Europe. Some "old" EU countries like Spain, Germany and Austria have a very high level of total licensing complexity, while some "new" eastern and central European countries have a very low level of complexity (such as the Czech Republic, Estonia and Latvia).

Moreover, a low level of complexity most often reflects a low level of licensing regulation in terms of number and complexity of licences. The Czech Republic, Norway, Estonia and the United Kingdom have the lowest level of licensing complexity. The United Kingdom is largely self-regulated and as such there are very few licensing requirements. Similarly, in Norway obtaining licenses in order to operate a new business is a relatively straightforward procedure.

The system of trade licensing in the Czech Republic has been significantly simplified since 2008, however entrepreneurs undertaking trading activities must comply with specific legislative requirements (such lists for individual trades/branches are published and updated by the Chambers of Commerce).

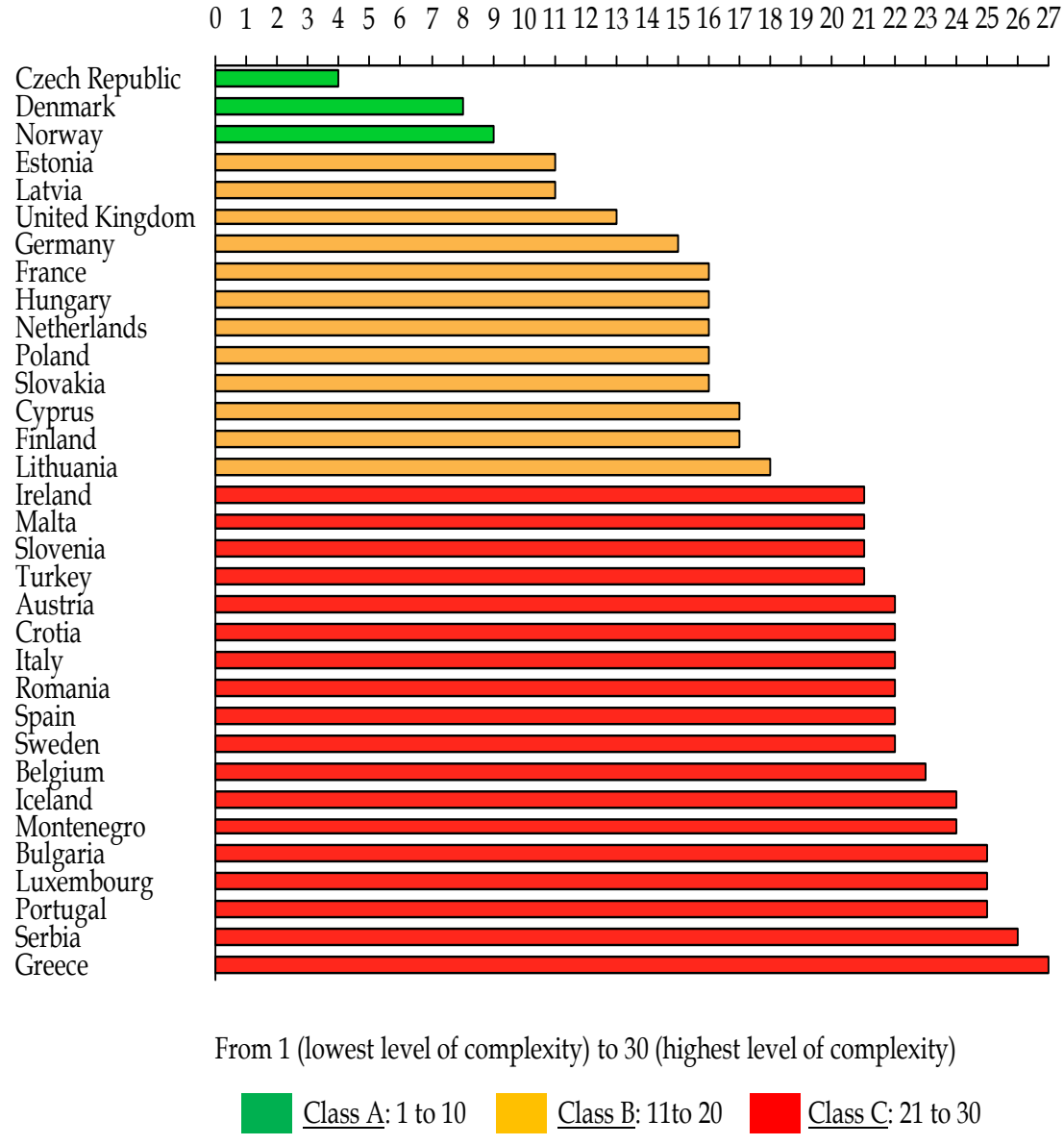
In some countries a high index corresponds mostly to a high degree of regulations rather than a high level of complexity in terms of direct and indirect costs. That is the case for Austria, where its appearance in the top scale of the index is due to high demands regarding compliance with regulations and in particular environmental regulations: the '*Betriebsanlagen-genehmigung*'. The license related to premises, security, hygiene as well as waste management, has been earmarked as a particularly complicated procedure. The respondents stated that it is absolutely not recommended to apply for the license without assistance from specialised lawyers and consultants. Nevertheless, the overall system itself in Austria is considered to be effective based on the views of the survey's respondents and no discriminatory actions were reported by any of the respondents.

It is also noted that in Spain the high level of the index derives from responses that were given prior to recent improvements (second half of 2010) that have been implemented in administrative licensing procedures. Namely, for a long time it has been time and cost consuming for entrepreneurs to obtain all required licenses. Currently "statements of responsibility" have replaced "licenses" in many instances which have led to shorter processing times and costs. However, this recent change does not appear to be sufficiently known by the business community.

4.1.3.3 Index of Total Complexity per Model Company

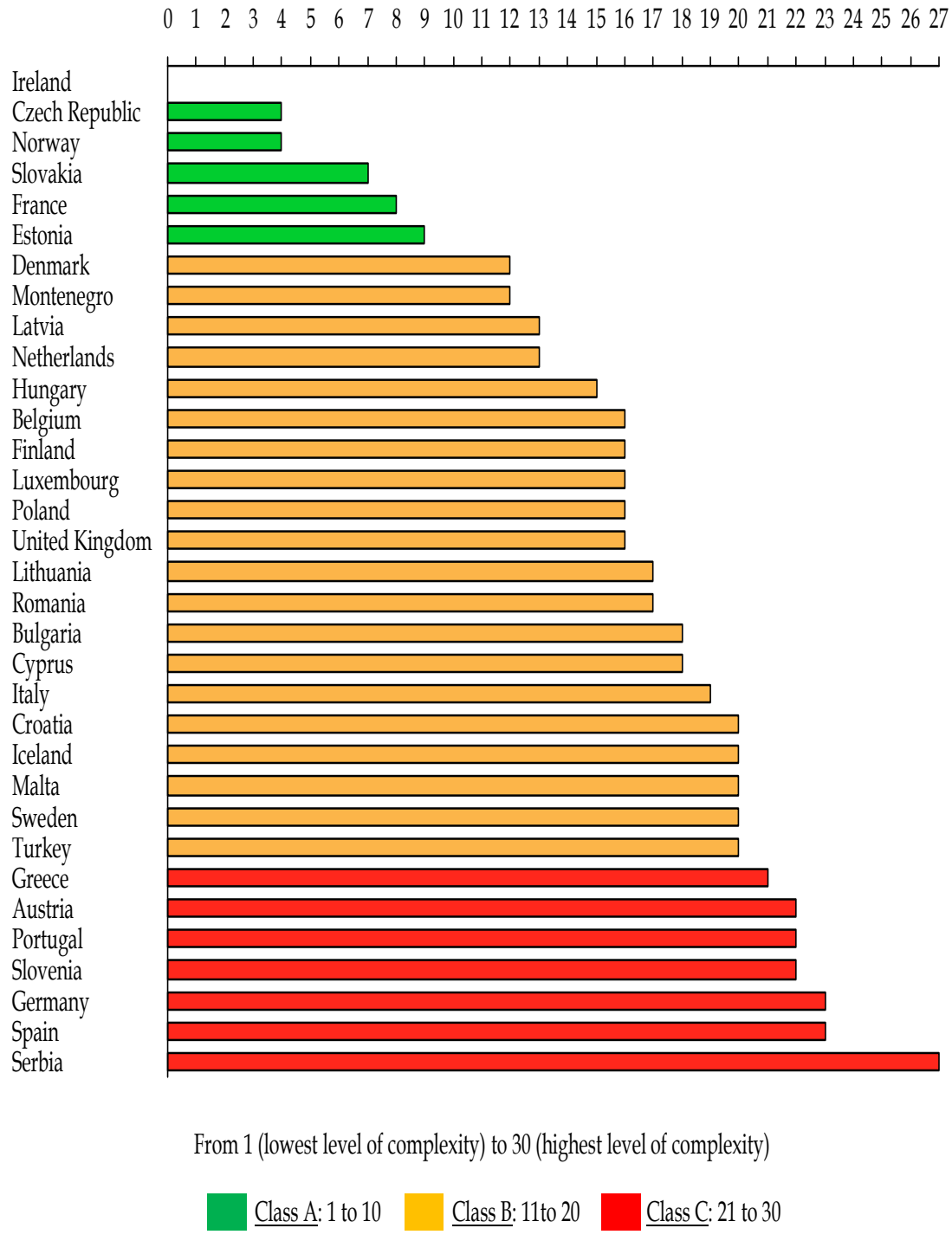
In the following five figures, indices of licensing complexity are shown for each model company based on the licensing survey results.

Figure 4-26: Index of total licensing complexity – Hotel with Restaurant



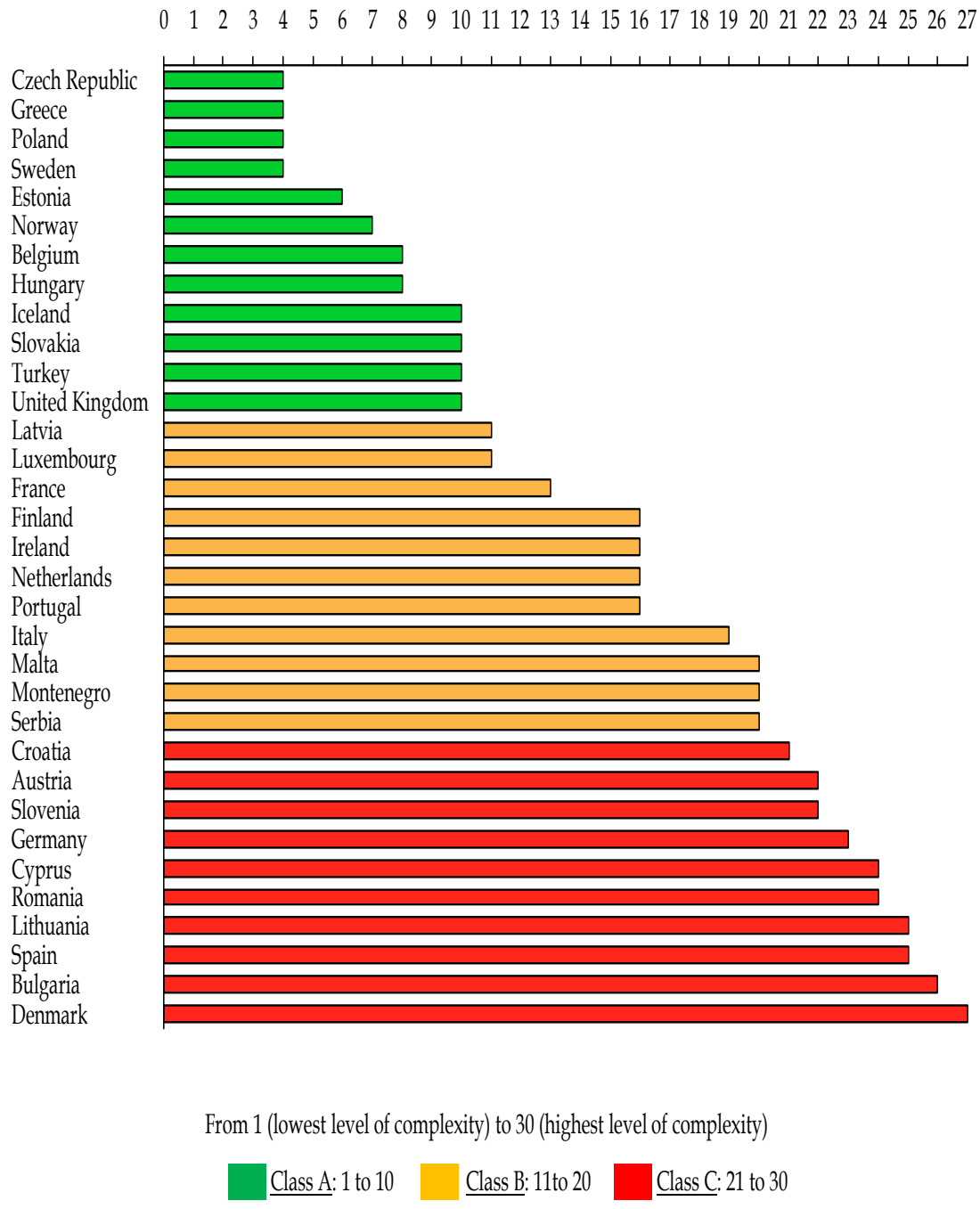
Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

Figure 4-27: Index of total licensing complexity – Wholesale / Retail Food Distributor



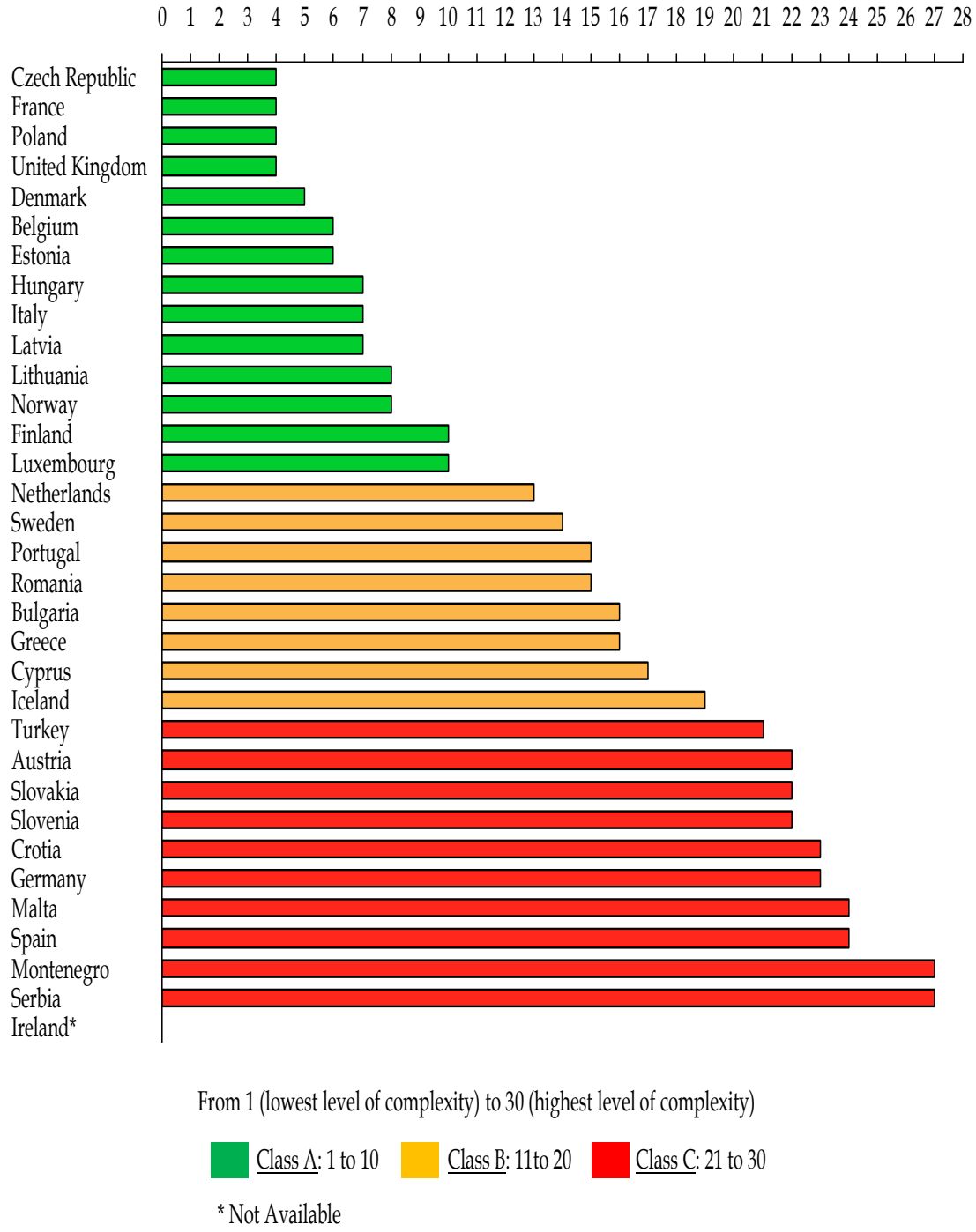
Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

Figure 4-28: Index of total licensing complexity – Plumbing company



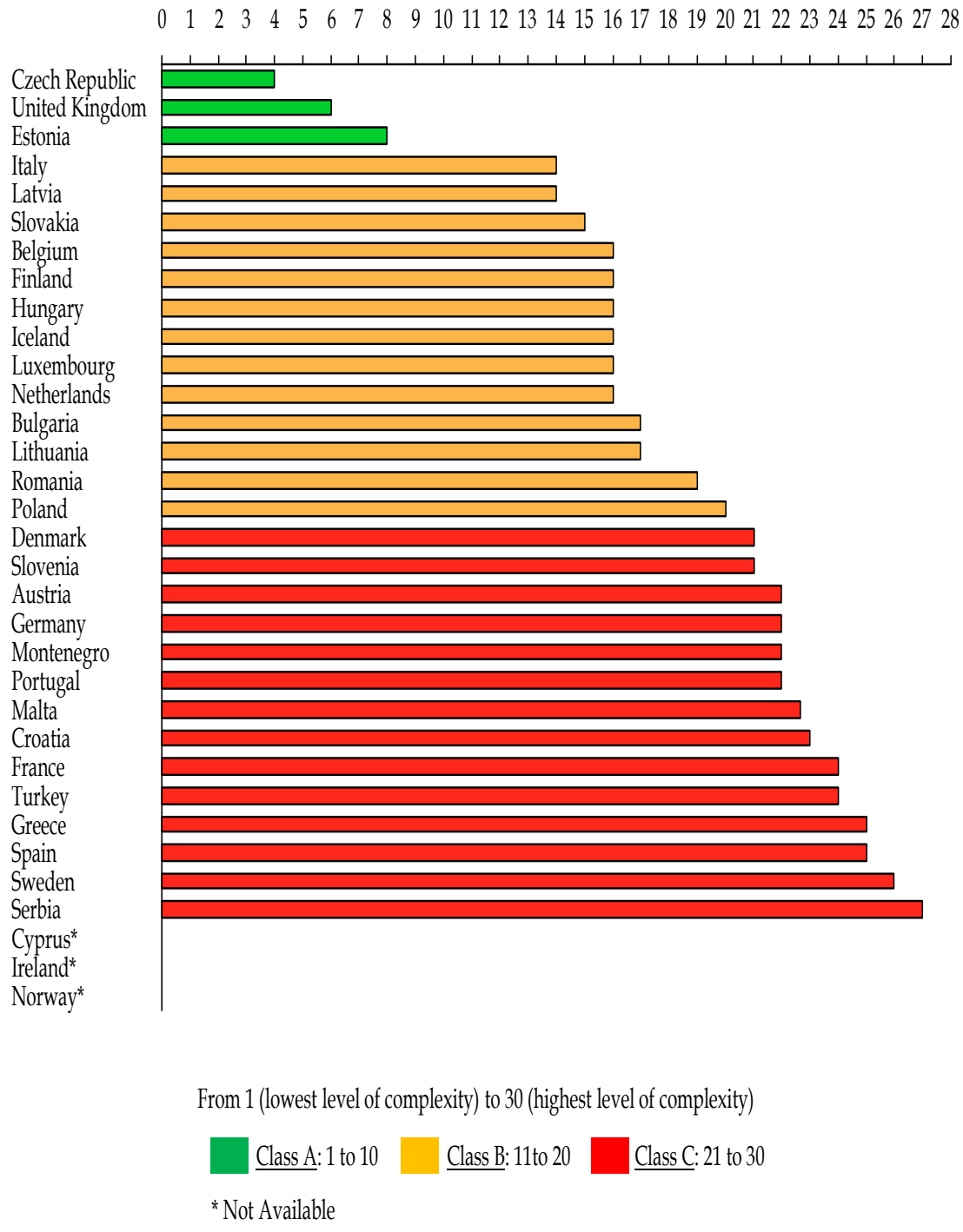
Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

Figure 4-29: Index of total licensing complexity – Manufacturer of Small IT Devices



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

Figure 4-30: Index of total licensing complexity – Manufacturer of Steel Products

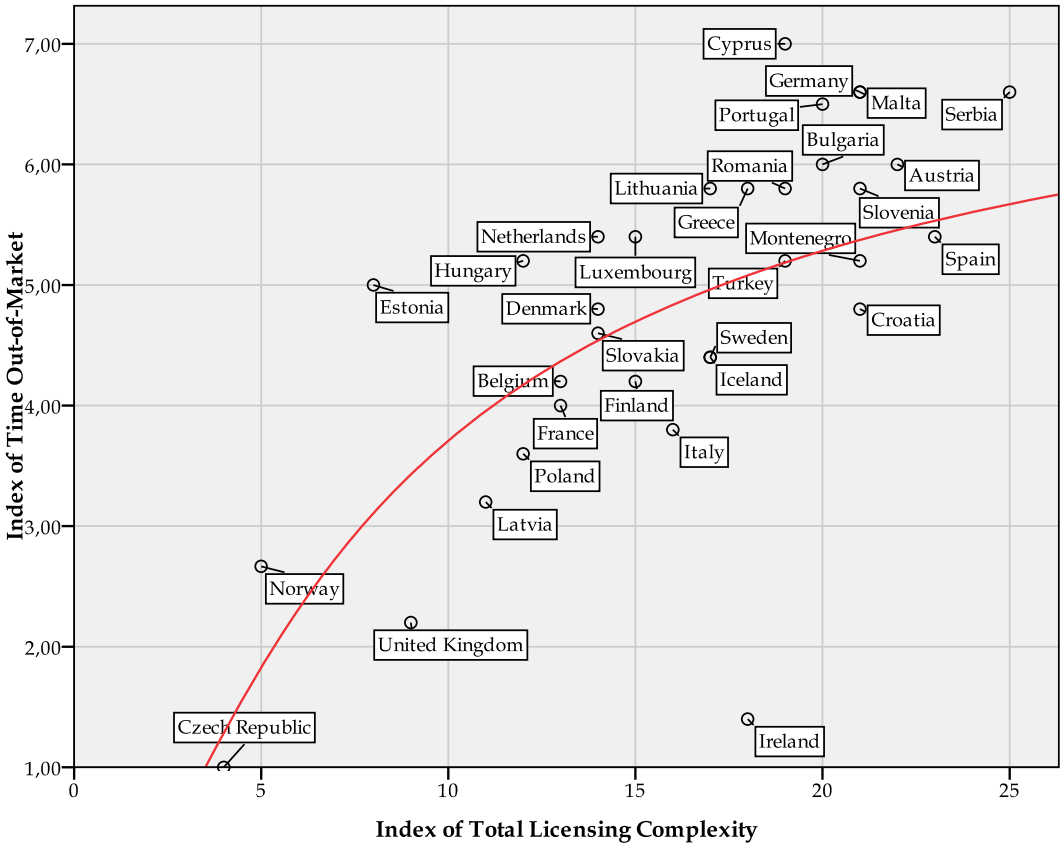


Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

4.1.3.4 Total Licensing Complexity with Respect to Time Out-of-Market

In order to investigate the relationship between ''Index of total licensing complexity'' and ''Index of time out-of-market',' a regression analysis was performed. As a result of this analysis the following graph presents:
(a) the positioning of each country with respect to these two variables
(b) the best fit curve (S-shaped) to measure their correlation.

Figure 4-31: Licensing complexity with respect to time out of market



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

Regression analysis based on a calculated correlation coefficient of Corr(X,Y)=0.709, suggests that there is a strong positive correlation between the two variables ''Index of total licensing complexity'' and ''Index of time out-of-market''.

In the majority of countries surveyed, total licensing complexity and time out-of-market are positively correlated (i.e. when the licensing complexity is high, the duration to obtain all licenses is also reported to be high).

Countries that can be considered as best practices in terms of obtaining licenses in a short time and at a low licensing complexity (based on the views of the surveys' respondents) are the **Czech Republic** followed by the **United Kingdom, Norway, Latvia and Poland**.

4.1.3.5 Licensing Complexity Impact on Business Dynamics

In relation to the impact of licensing complexity the following two hypotheses were tested[48]:

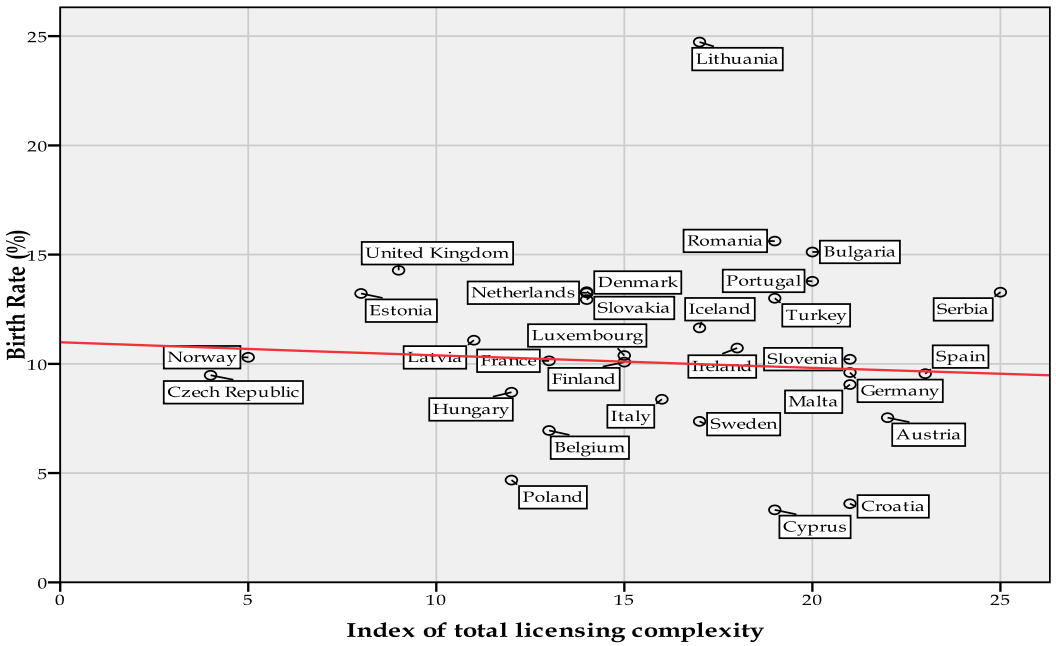
1. "Time consuming procedures for licensing result in delayed market entrance".
2. "Red tape discourages new entrepreneurs".

4.1.3.6 Impact of Licensing Complexity on the Level of Firm Birth Rate

To examine the 1st hypothesis the study analysed the relation between licensing complexity and level of new firms. As a result of this analysis the following graph presents:

(a) the positioning of each country with respect to these two variables
(b) the best fit curve (linear) to measure their correlation.

Figure 4-32: Licensing complexity towards birth rate



Source: Business Dynamics Survey 2010
Note: birth rate[49] is the percentage of new firms in year t compared to the number of existing firms in year t, the graph uses an average of the birth rate for years 2003-2007.

[48] See above: section 3.3. Economic Analysis

Regression analysis based on a calculated correlation coefficient of Corr(X,Y)=-0.018, suggests that there is no correlation between the two variables ''Birth Rate (%)'' and ''Index of total licensing complexity''.

As such, the 1st hypothesis, i.e. licensing complexity delaying market entrance, could not be substantiated by an emerging correlation. Nevertheless, the following is observed:

- Eastern European countries often have a high level of complexity, but also a high level of new firms due to the dynamism of their relatively young economies (transition economies).
- Although some countries (i.e. France, Belgium) have low licensing complexity, the level of firms' births is low.

4.1.3.7 Impact of Licencing Complexity on the Level of Total Entrepreneurial Activity (TEA)

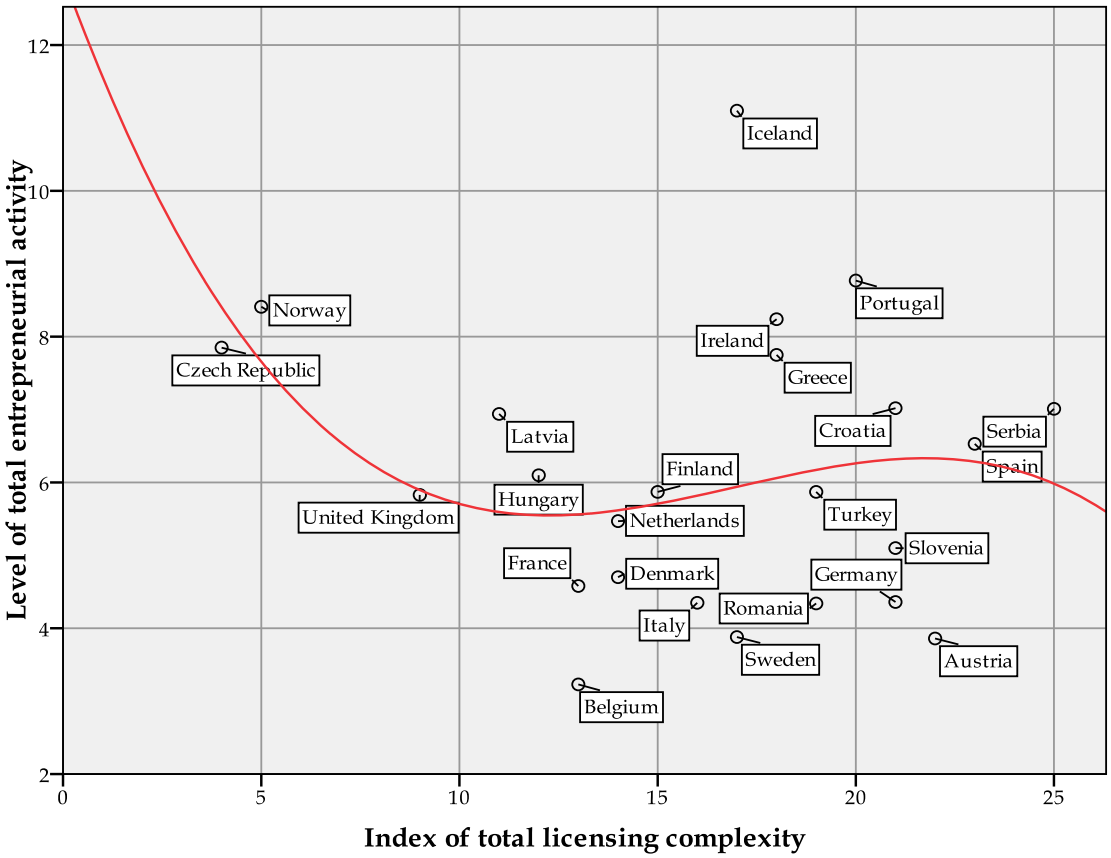
To verify the 2nd hypothesis, the total entrepreneurial activity index (TEA) was used. This index has been developed by EIM[50] and measures (in percentage form) the number of people currently setting up a business or owning/managing a business existing for up to 3.5 years, relative to the adult population (18-64 years old).

In order to investigate the relationship between ''Index of total licensing complexity'' and ''Level of Total Entrepreneurial Activity'' a regression analysis was performed.

[49] An enterprise birth relates to the creation of a combination of production factors considering that no other enterprises are involved in this. Births do not include entries into the firms population due to mergers, break-ups, split-off or restructuring of enterprises. Also births do not include entries resulting only from a change of activity. A birth occurs when an enterprise starts from scratch and actually starts activity. An enterprise creation can be considered an enterprise birth, if new production factors, in particular new jobs, are created. If a dormant unit is reactivated within two years, this event is not considered a birth.

[50] www.entrepreneurship-sme.eu

Figure 4-33: Licensing complexity towards level of total entrepreneurial activity



Source: Business Dynamics Survey 2010, EIM

Regression analysis based on a best-fit cubic curve indicates a correlation coefficient of Corr(X,Y)=-0.117, suggesting that there is no correlation between the two variables ''Level of total entrepreneurial activity'' and ''Index of total licensing complexity''.

The results of the regression analysis confirm the fact that licensing complexity is only a minor factor among a wide range of other parameters that drive an entrepreneur to start a business. The licensing complexity influences mainly the time out-of-market that a new entrepreneur will have to go through when starting a new business.

However, the following can be noticed:

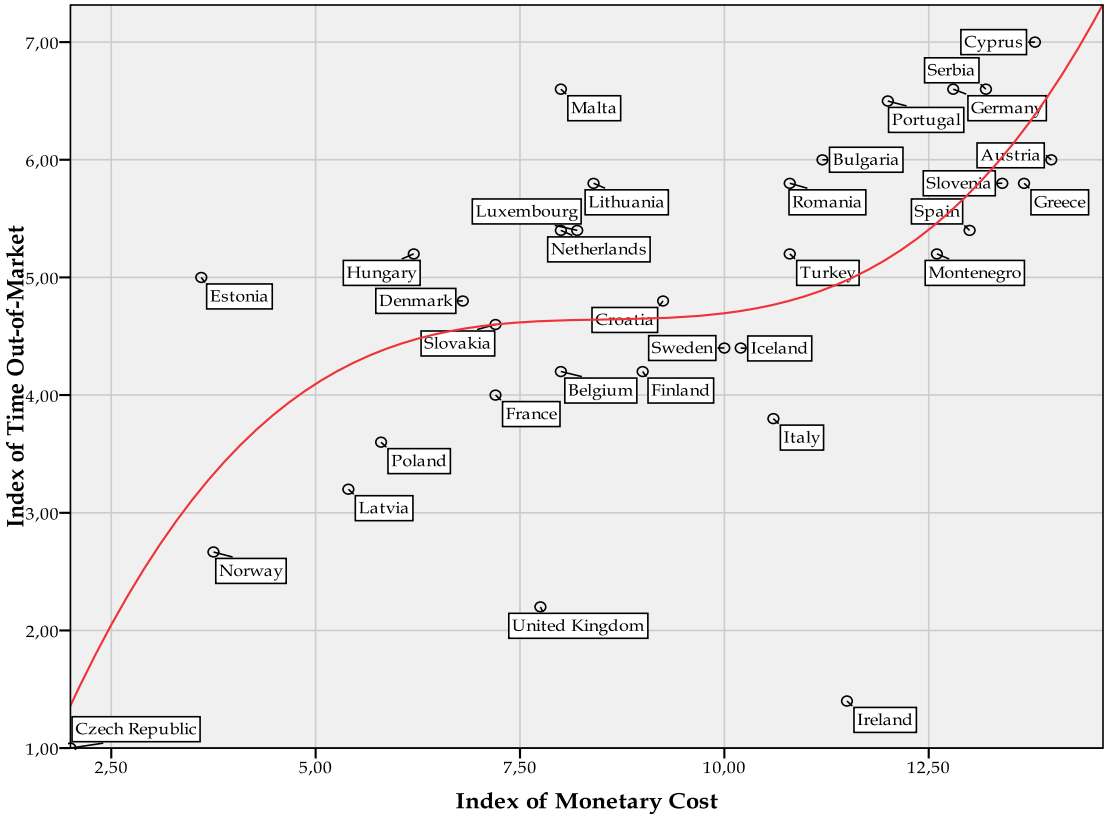
- Portugal, Ireland, Croatia, Greece have a high level of TEA despite a high level of licensing complexity
- France, Denmark, Italy, Belgium have a low level of TEA despite a low level of complexity.

For the rest of the countries, the Czech Republic, Latvia, Norway and the United Kingdom can be considered as examples of good practices having high levels of TEA combined with low levels of complexity.

4.1.3.8 Licensing complexity with respect to time out-of-market and monetary cost

In order to investigate the relationship between ''Index of monetary cost'' and ''Index of time out-of-market',' a regression analysis was performed. As a result of this analysis the following graph presents:
(a) the positioning of each country with respect to these two variables
(b) the best fit curve (cubic) to measure their correlation.

Figure 4-34: Licensing complexity with respect to time out of market and monetary cost



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

Regression analysis based on a calculated correlation coefficient of Corr(X,Y)=0.594, suggests that there is a moderate positive correlation between the two variables ''Index of time out-of-market'' and ''Index of monetary cost''.

In the majority of countries surveyed, cost and time out-of-market are positively correlated (i.e. when the cost is high, the duration to obtain all licenses is also reported to be high).

Countries that can be considered as best practices in terms of obtaining licenses in a short time and at a low cost (based on the views of the surveys' respondents) are the **Czech Republic** followed by **Norway, Latvia and Poland**.

4.1.3.9 Summary: Impact of Licensing Complexity on the Level of Entrepreneurial Activity

The results of the study do not fully confirm the hypothesis of a strong link between the level of licensing complexity and the level of entrepreneurship[51].

The impact of complexity on the level of entrepreneurship is rather ambiguous:

- Eastern European countries often have a high level of complexity, but high level of entrepreneurship, due to the dynamism of their economies.
- Some countries, like France have simplified licensing procedures and reduced associated public sector costs however the level of new firms is still low.

Thus, the examined countries can be classified in 4 groups:

		Level of New Firms			
		High		Low	
Level of Complexity	High	Bulgaria Croatia Greece[52] Ireland Portugal Turkey Spain (to a lesser extent)	For these countries, the complex administrative framework for licensing and start-up is balanced by a high dynamism of the economy. They also have a high turnover of firms.	Austria Cyprus Germany Italy Slovenia Sweden	One effect of licensing complexity could be the lack of new firms. For the countries of this group the hypothesis can be made that by simplifying their licensing procedures, they will improve the level of entrepreneurship.
	Low	Czech Republic Estonia Latvia[53] Norway Slovakia United Kingdom	These countries should be regarded as "best practices". It should also be noted that the new Member states (the Czech Republic, Slovakia, Estonia and Latvia) have a high level of GDP growth.	Belgium Denmark Finland France Hungary Luxembourg Netherlands	For the countries of this group, barriers are not mainly administrative but refer to other issues, as e.g. lack of entrepreneurial culture, etc.

[51] According to OECD Working Paper: Defining Entrepreneurial Activity by Ahmad, Seymour (2008): Entrepreneurship is the phenomena associated with entrepreneurial activity which is defined as the enterprising human action in pursuit of the generation of value, through the creation or expansion of economic activity, by identifying and exploiting new products, processes or markets. It is measured by several indicators such as: enterprise birth, high-growth enterprises, business ownership rates.

[52] The data do not fully reflect the impact of the recent economic crisis in Europe, primarily evident in Greece, Ireland, Portugal and Spain (as the statistical data used in the surveys refer to a period prior to the peak of the financial crisis in these countries).

[53] However, due to the high level of uncertainty in the answers obtained for Latvia, this should be treated with caution.

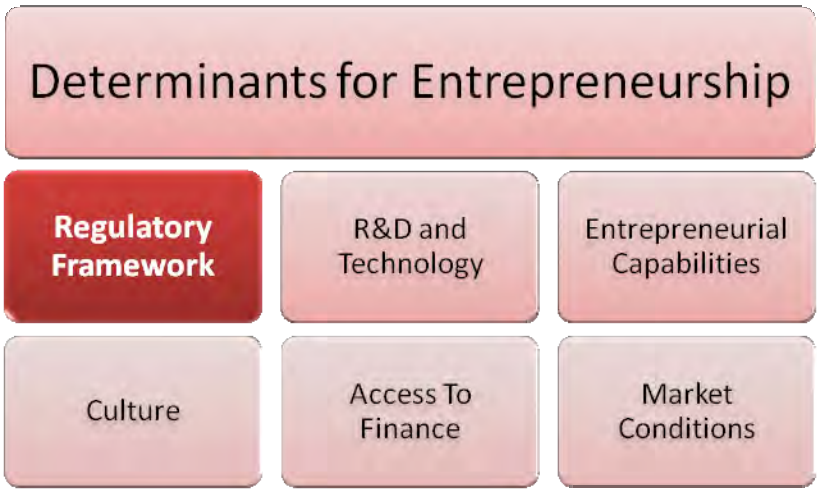
4.1.4 Conclusions

4.1.4.1 Conclusions on Licensing

Licensing complexity does not affect conclusively the creation of new enterprises; nevertheless awareness of procedures needs to be increased

Licensing is part of the Regulatory Framework that forms one of the six determinants for entrepreneurship set by the "OECD work on entrepreneurship"[54].

Figure 4-35: Determinants for Entrepreneurship



Source: OECD, Measuring entrepreneurship

Considering relevant findings of the study (section 4.1.3 Economic Impact), it was found that:

Licensing complexity has low impact on:

- birth rate of new firms,
- total entrepreneurial activity,
- level of entrepreneurship in general.

These findings are in line with results of the Eurobarometer on Entrepreneurship[55] according to which only 3.5% of the participants consider red tape (administrative complexity) as the reason preventing them from becoming entrepreneurs.

Nevertheless, the survey also revealed an awareness gap among different respondents with respect to licensing requirements as defined by regulations.

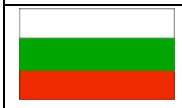
[54] Measuring Entrepreneurship – A Digest of Indicators, OECD, 2008

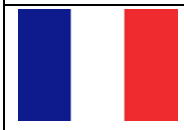
[55] Eurobarometer – Entrepreneurship in the EU and beyond, A survey in the EU, EFTA countries, Croatia, Turkey, The US, Japan, South Korea and China, December 2009

It appears that in the majority of the countries (more than 20), only a few respondents (and in certain cases only one respondent) were aware of all licences and relevant procedures, thus manifesting deficiencies in the information system for would-be entrepreneurs. This could call for measures supporting information dissemination and awareness building initiatives in these countries (e.g. staff training in business support organizations, enhanced information and services via internet portals).

4.1.4.2 Conclusions per Country

The following table presents conclusions based on the comments of the respondents and the overall state of each country regarding licensing procedures as it is emerging from the present study:

	**Austria** demonstrates a very high level of licensing complexity largely due to the high costs involved (towards public and private sector) and long duration for obtaining licenses. On the other hand, the procedures *per se* involve a very small number of licenses (two licenses the so called 'Gewerbeanmeldung' and 'Betriebsanlagen-genehmigung' embrace all required licenses) and are considered to be effective and non-discriminatory by the survey's respondents. With respect to the 'Betriebsanlagengenehmigung'license (related to prem-ises, security, hygiene as well as waste management) the respondents stated that it is absolutely not recommended to start the application of this license without the help of specialised lawyers and consultants. The respondents recommend the introduction of one stop shops in order to further simplify licensing procedures.
	**Belgium** demonstrates a diversified level of licensing complexity across the five model companies. Licensing complexity is relatively high in all dimensions (number of licenses, time, and cost) for Hotels with Restaurant and Wholesale/Retail Food Distributors. The survey's respondents suggested simplification of licensing procedures in these two sectors. On the other hand, licensing complexity is low to moderate in all dimensions for Manufacturers of Steel Products, Plumbing Companies and Manufacturers of Small IT Devices.
	**Bulgaria** demonstrates a very high level of licensing complexity across dimensions. Licensing procedures require extensive simplification across the five model company sectors according to respondents' views. Specific recommendations mentioned are the re-duction of state fees, elimination of licences and the introduction of one stop shops. Moreover, decisions made by involved institutions are perceived to be subjective and vulnerable to corruption according to the respondents. It is suggested that corruption could be eradicated through the adoption of online licensing procedures.
	In **Cyprus,** the level of licensing complexity (in terms of number of licenses, time, cost) is relatively high *vis a vis* the other countries ac-cording to the respondents' views. Certain licenses can be avoided and the time for obtaining them reduced. The main problems identi-

	fied are time out-of-market due to red tape, lack of qualified personnel in public administrations and lack of specialised consultants. Hence, simplification of procedures is required along with hiring additional staff for governmental agencies involved in licensing procedures. It should be noted that with respect to sectors that have an impact on public health, (i.e. food industry), the respondents mention that although more time is required to obtain relevant licenses, the procedure should not change regardless of time loss, in the interest of public health and safety.
	The **Czech Republic** demonstrates the lowest level of licensing complexity in all dimensions (number of licenses, time, and costs) *vis a vis* the other countries based on the data obtained in the survey. To be able to start operation in the five model companies, the general requirement includes notification of the related trades. The system of trade licensing in the Czech Republic was markedly simplified since 2008 especially for so called 'unqualified trades', but also in the case of skilled trades the requirements were reduced significantly. The maximum duration to obtain licenses for skilled trades (such as plumbing and hotels) is specified by the law as 5 days. Trades that are not skilled require only notification to the relevant authorities, while the company can commence its activity from the first day.
	**Denmark** demonstrates a relatively low level of licensing complexity. According to the respondents, licensing regimes are not characterised by unnecessary procedures that slow down start-ups, while the time required to obtain a license varies among the model companies. Licenses are furthermore not very expensive, with the exception of plumbing companies. Finally, the ability to obtain licenses online promotes transparency of procedures.
	**Estonia** is ranked among the first three countries with the lowest level of licensing complexity for all model companies. According to the survey's respondents, licensing procedures are not considered as complex (no special requirements are necessary except for companies handling food). Moreover, the licensing procedures are not discriminatory, while the cost involved is very low. Nevertheless, the awareness level of licensing procedures by SMEs associations in Estonia is considered to be low. The required information on licensing is not easily accessible, which constitutes a key barrier to the formation of new companies.
	**Finland** demonstrates a relatively low level of administrative complexity, with variations across the model companies. For instance, steel manufacturers need very few licenses while hotels with a restaurant need several licenses. The survey's respondents mentioned the necessity of reducing bureaucracy in licensing procedures.
	**France** demonstrates a relatively low level of overall licensing complexity (ranking 8th among the 33 countries surveyed). However, complexity and financial cost of licensing procedures vary across the five model companies. It should be noted that France is in the final stage of setting up a one-stop shop for licensing.

	**Germany** demonstrates a high level of licensing complexity largely due to the high costs involved (towards public and private sector). On the other hand, the number of licenses involved is considerably low while several public authorities have very good websites with information and downloadable forms. The procedures *per se* also considered to be straightforward generally. The respondents were satisfied with the current hotel licensing procedures that have been simplified considerably since 2005. For the remaining model companies (based on the findings of desktop research solely), licensing procedures also appear to be transparent and non-discriminatory.
	**Greece** demonstrates a very high level of licensing complexity in all model companies except plumbing. According to the respondents, the time and cost to obtain licenses should be reduced (i.e. through the establishment of one-stop shops and on line procedures). Some respondents also mention that self-declaration procedures of compliance with standards set by legislation should be foreseen to allow SME owners to operate temporarily in cases where licensing procedures times cannot be reduced (i.e. due to required on-site inspections).
	**Hungary** demonstrates a relatively low level of overall licensing complexity (ranking 7th among the 33 countries surveyed). Procedures in order to obtain the necessary licenses are generally well regulated, with most of the licenses provided by local government. According to the respondents, expansion of e-government services could improve effectiveness and efficiency of licensing procedures.
	**Ireland** demonstrates a relatively high level of licensing complexity for all dimensions considered. However, respondents' replies were not sufficient in order to derive safe conclusions or recommendations on improving licensing complexity.
	**Italy** has relatively high level of licensing complexity. The total number of licenses required for operating a business is generally high, which impacts time and costs required. Particularities of the products or services provided have a direct impact on the number of licenses required. According to the respondents, the cost and time to obtain licenses should be reduced.
	**Latvia** demonstrates a very low level of licensing complexity for all dimensions (time, cost towards public sector / private sector and internal effort). However, it should be noted that with respect to the number of licenses required per model company, there was a high extent of differentiation and uncertainty among the answers obtained.
	**Lithuania** demonstrates a relatively low level of licensing complexity primarily in terms of the time and costs to obtain licenses. However, a limited number of licenses are required compared to other countries. Moreover, according to the respondents, the licensing procedures are not discriminatory. Overall, it is considered easy to start business in Lithuania in all model company sectors with no major limitations or special requirements, with the exception of wholesale retail involving food.

	**Luxembourg** has a relatively low level of licensing complexity. Whereas the time required to obtain all licenses is significant, the country's performance is satisfactory in all other dimensions examined (time, cost towards public sector / private sector and internal effort).
	**Malta** demonstrates a very high level of licensing complexity. Licensing procedures are lengthy regardless of the model company mainly due to the MEPA permit (building permit) required. Although MEPA permit covers many other requirements that automatically eliminate the requirement for other licences, reduction of time in order to obtain it is required according to respondents.
	The **Netherlands** demonstrate a relatively low level of licensing complexity *vis a vis* the other countries for all dimensions considered (in particular with respect to time out of market and internal company effort). On the other hand, costs vary significantly among model company. Also it should be noted that fees and taxes for public sector are at a higher level than costs for third parties.
	**Poland** ranks sixth best among the 33 countries surveyed in terms of the level of licensing complexity. Most of the respondents consider licensing procedures fair in terms of the cost/profit ratio and non-discriminatory. Respondents suggest the introduction of one-stop shops for further streamlining of procedures.
	**Portugal** demonstrates a very high level of licensing complexity in all dimensions. Respondents mention that licensing procedures are discriminatory, not efficient and time consuming (in particular, public entities often do not meet deadlines). Improving communication among different licensing entities (especially local administration) and standardization of procedures is necessary according to the respondents.
	**Romania** has a relatively high level of licensing complexity. Licensing procedures are highly complex and bureaucratic, involving a significant number of licenses. The overall cost to obtain all licenses is also high however it varies among model company sectors (i.e. over 3000 Euro for IT companies and up to 2000 Euro for Hotels with restaurants).
	**Slovakia** has a relatively low level of licensing complexity in terms of cost and time to obtain all licenses. However, lack of online licensing procedures is considered a deficiency according to respondents and should be addressed. Different requirements set by different regional offices for the same business license is also an important drawback.
	**Slovenia** demonstrates a very high level of complexity in licensing procedures in all dimensions (cost, time, number of licenses). Licensing procedures are considered to be complex, highly bureaucratic and requiring a lot of expertise within a company. Some respondents mention that licenses protecting customers' and employees' safety are appropriate in terms of their quality standards though more simple procedures are required.

	**Spain** demonstrates a very high level of licensing complexity in all dimensions. Respondents highlighted the following deficiencies: the process to obtain licenses (in particular for hotel and food sectors, manufacturer of steel products) is lengthy, bureaucratic and a large number of input documents is required. On-site inspections cause further delays to the process. Simplification and automation of procedures is required according to the respondents' views.
	**Sweden** has a relatively high level of licensing complexity due to the fact that local authorities interpret rules and regulations independently. Moreover, there are large costs involved for third parties / consultants in order to submit technical drawings or complete applications forms (i.e. in the sector of steel manufacturing , this cost may exceed 5.000 € according to respondents). On the other hand, the overall time required to obtain all licenses is rather short and the fees related to public sector are moderate.
	The **United Kingdom** has a very low level of licensing complexity across all dimensions (number of licenses, time, and costs) due to the fact that the market is largely self-regulated. The corresponding sectors of the five model companies have very few license requirements (on average 2 licenses per model company).
	**Iceland** has a relatively high level of licensing complexity. Licensing procedures are complex and not transparent according to the survey's respondents. Only in a few cases information on how to obtain a license is accessible online, while in the majority of cases many websites have to be examined in order to collect information. On the other hand, respondents consider procedures to be non-discriminatory and cost efficient (moderate costs involved).
	**Norway** ranks second best (after the Czech Republic) with respect to the level of licensing complexity in all dimensions (number of licenses, time, costs). According to the survey's respondents, the licensing procedures are straightforward and efficient. The only model company sector with a relatively high number of licenses is hotels with a restaurant, due to the combination of services offered (i.e. serving food / alcohol, offering accommodation etc.).
	**Croatia** demonstrates a very high level of complexity primarily due to the high costs involved (towards public and private sector). On the other hand, the time required to obtain all licenses is considered to be satisfactory according to respondents.
	**Turkey** has a relatively high level of licensing complexity across model companies largely due to the high number of licenses involved. Moreover, the costs to obtain all licenses are considered to be high taking into consideration the country's per capita GDP.
	**Serbia** demonstrates a very high level of complexity in all dimensions for all model companies. The respondents perceive licensing procedures as bureaucratic, discriminatory and lacking transparency.

	**Montenegro** has a very high level of complexity in licensing procedures in terms of the number of licenses, time and associated costs. However, new measures of economic policy intend to improve slow registration procedures with the aim of facilitating foreign investments as well.

4.2 Business Transfers

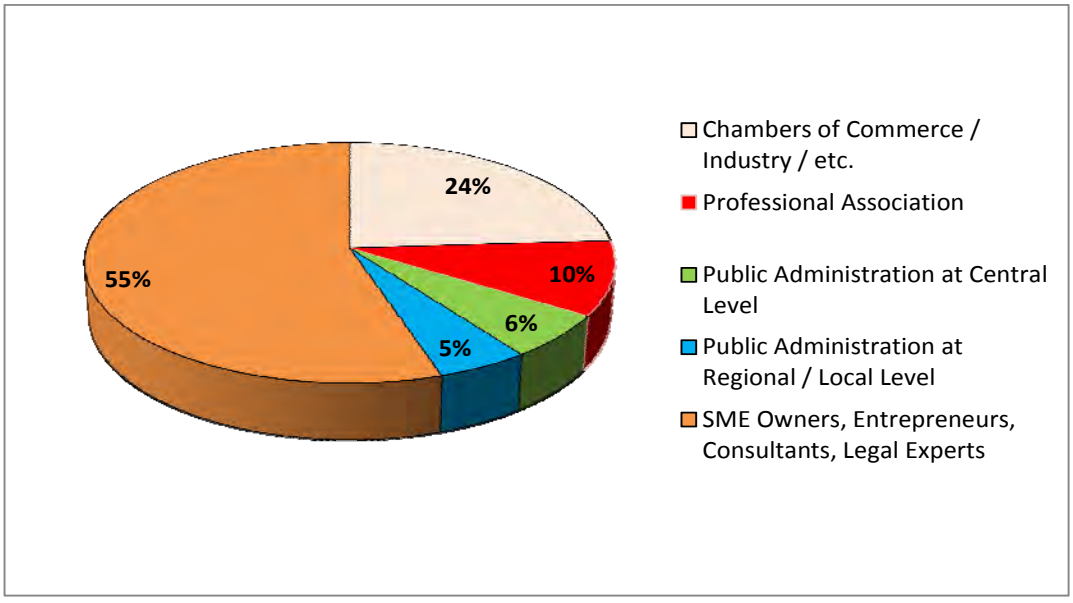
The European Commission has focused on Business Transfers following the 1994 Commission Recommendation [56] which identified four typical problems related to transfer of businesses:

- Ensuring continuity of partnerships and sole proprietorships, when the owners are retiring or want to sell the business;
- Preparation of transfers by adopting the most appropriate legal form,
- Encouraging transfers to third parties, and
- Helping both family and 3rd party transfers with appropriate tax measures.

The analysis in this section is based on literature review and survey results, as there is very limited statistical data available on the number of business transfers at European and national levels.

The desk research covered European Commission studies, statistics from national sources and national surveys (particularly in Germany and France), and key actors involved per country.

The survey was conducted in all 33 European countries targeted in the study. In total, 363 replies were received and processed. The profile of the respondents is shown in the following pie chart:



[56] 94/1069/EC: Commission Recommendation of 7 December 1994 on the transfer of small and medium-sized enterprises

This section presents the desk research, the business transfers survey findings, the economic analysis and conclusions relevant to this thematic area.

4.2.1 Desk Research

4.2.1.1 Key References

Business transfers refer to the process where "all assets representing in their totality an enterprise as a going concern" are transferred to a new owner (sometimes referred to as an assets purchase). It may also take other forms to include the transfer of all or some of the business liabilities. The new owner refers to a third party, including family members.

Thousands of economically sound businesses, mainly small and medium-sized enterprises (SMEs), disappear every year because they fail to overcome the difficulties involved in the transfer of ownership. In its 2006 Communication "Implementing the Lisbon Community Programme for Growth and Jobs: Transfer of Businesses - Continuity through a new beginning" the Commission called upon Member States to improve framework conditions for business transfers by ensuring that tax systems are transfer-friendly, by providing adequate financial conditions, by raising awareness for the need of a timely preparation and by organising transparent markets for business transfers.

The key reference documents on business transfers at European level[57] are:

- Commission Recommendation of 7 December 1994 on the transfer of small and medium-sized enterprises (94/1069/EC)
- Commission Communication from 28 March 1998 on the transfer of small and medium-sized enterprises (98/C 93/02)
- Helping the transfer of businesses, 2002 - A 'good practice guide' of measures for supporting the transfer of businesses to new ownership[58]
- The 2002 project on business transfers – Final Report[59]
- Commission Communication from 14 March 2006: "Transfer of Businesses - Continuity through a new beginning[60]"

[57] http://ec.europa.eu/enterprise/policies/sme/documents/transfers/

[58] The aim of this document is to provide policy-makers, business support organisations and other interested readers with examples of practical support for business transfers. These good practices highlight some of the cases described in the final report of the 2001 'Best procedure' project on the transfer of businesses, or presented at the European seminar on the transfer of businesses which was held in Vienna from 23 to 24 September 2002

[59] In 2002 the Enterprise Directorate-General followed up on its Best-Procedure project of 2001. A group of experts nominated by their national administrations set benchmarks for key areas of business transfers support and policy where it would be the most important to make progress. The experts described the actions already taken or planned by the different countries and by the European Commission to improve the implementation of the Commission Recommendation and to respond to the recommendations made by the Best project expert group of the previous year.

Key references on business transfers from the countries targeted in this study are presented in **Annex III**.

4.2.1.2 Statistics on Business Transfers

No statistics on business transfers are available from Eurostat. The only sources are national, but their analysis is subject to important difficulties on matching definitions employed by each country.

The 2006 European Commission Communication[61] estimated that transfers affect up to 690.000 SMEs and 2.8 million jobs every year.

4.2.2 Survey Findings

The Commission Recommendation of 7 December 1994 on the transfer of small and medium-sized enterprises set the objectives for the Member States to facilitate the transfer of SMEs and ensure their survival. In particular the Member States were invited to take the appropriate measures to improve their own legal, fiscal and administrative systems. Such measures should:

- make the business owner aware of the problems of transfer and thus encourage him to prepare for such an event at an early stage (see below section 4.2.2.1),
- provide a financial environment which helps towards successful transfers (see below section 4.2.2.2),
- enable entrepreneurs to prepare effectively for the transfer by offering adequate business and legal support including financial mentoring (see below section 4.2.2.5),
- ensure the continuity of partnerships and sole proprietorships in the event of the death of a partner or the business owner (see below section 4.2.2.7),
- ensure the successful transfer within a family by seeing that inheritance or gift taxes do not endanger the survival of the business (see below section 4.2.2.8),
- encourage the owner, through taxation measures, to pass on his business by selling it or by transferring it to the employees, particularly when there is no successor in the family (see below section 4.2.2.8).

The survey undertaken in this area, aims to measure the extent to which the 1994 Recommendation has been implemented in Members States, by examining each key element of the Recommendation.

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[60] (COM 2006/117)

[61] COM(2006) 117 final, Transfer of Businesses – Continuity through a new beginning

4.2.2.1 Quality of the Financial Information available on Firms to be Transferred

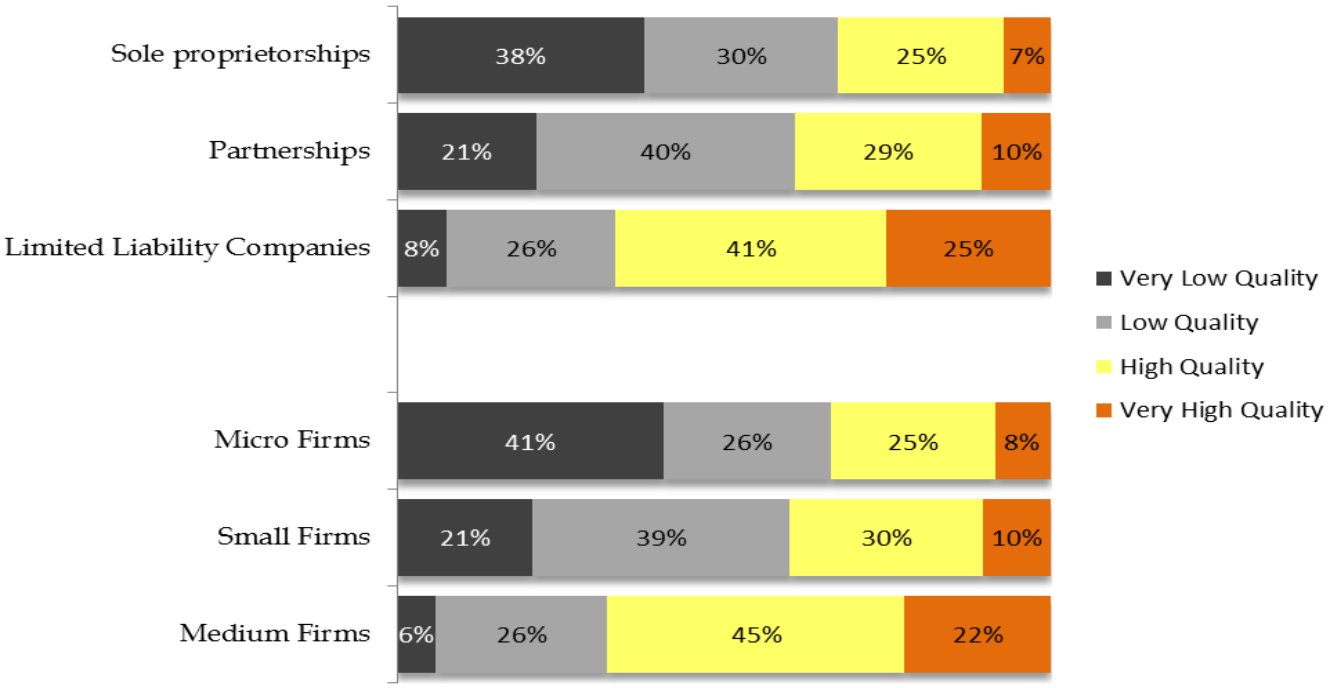
This section looks into the implementation of Article 2 of the 1994 Commission Recommendation which addresses the need for enhanced information and training of businessmen in order to ensure the right preparation for successful business transfers.

It is crucial to guarantee a minimum level of information on the financial situation of firms in order to ensure that the market of business transfers is efficient. If owners and potential buyers share the same level of financial information on the firms, it may facilitate the bargaining, and help the buyers make a realistic choice.

According to the views of the survey's respondents, the quality of information is quite low, although the level depends on the legal form of the firm. For sole proprietorship firms, more than 60% of the experts consider the level of information to be low or very low across all 33 European countries. This percentage is 61% for partnerships and 34% for limited liability companies.

The quality of information is also linked to the size of firms (the larger the firm, the higher the quality of financial information).

Figure 4-36: Quality of financial information by firm type



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

The quality of financial information has to be improved for micro firms and in particular for sole proprietorship firms.

4.2.2.2 Special Financing Products in the Financial Sector for Business Transfers

This section addresses the implementation of Article 3 of the 1994 Commission Recommendation which refers to the need for a financial environment favourable to successful transfers.

Acquiring a business or creating a business requires the support of the financial system. In most cases, buyers have to obtain loans from banks.

Countries like France, Finland and Germany have established public financial institutions (OSEO, Finnvera and KFW) focused on supporting SMEs in general and business transfers in particular. Similar institutions have also been developed in Portugal and Poland. In Portugal, IAPMEI has FACCE, an Autonomous Fund for the Support to the Concentration and Consolidation of Companies which has private partners in the financial sector.

Special financial products to support business transfers have been developed by the private sector in France, Latvia, the Netherlands, Norway and the United Kingdom. Financing comes from banks and venture capital firms.

Table 4-2: Countries with special financial products to support business transfers

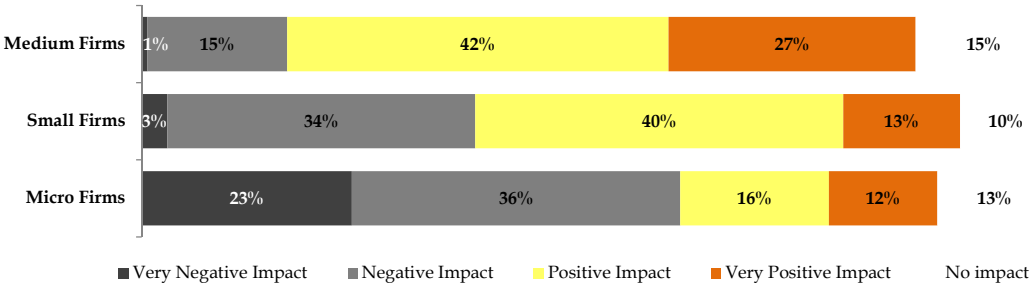
Countries	Financial Institutions	
	Public	Private
France	OSEO	
Finland	Finnvera	
Germany	KfW	
Latvia		
Netherlands		
Norway		
Poland		
Portugal	FACCE	
United Kingdom		

Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

4.2.2.3 Factors that make SMEs more vulnerable to Transfer Failures

The size of the firms has an impact on their vulnerability to failure in case of transfer. Micro firms are highly exposed to transfer failures. 59% of the respondents considered that being a micro firm increases the vulnerability in case of transfers, whereas this percentage is only 37% for small firms. At the opposite end, 69% of the respondents considered that being a medium-sized firm reduces the vulnerability in case of transfer.

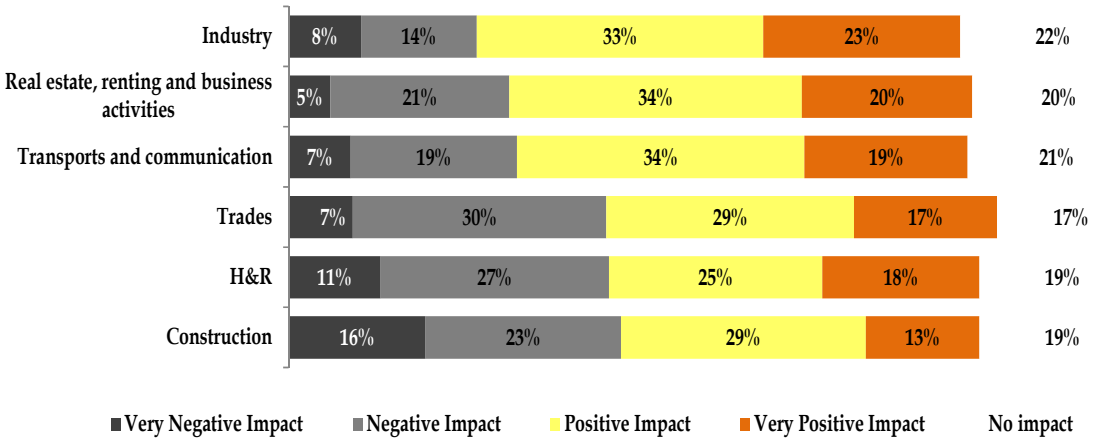
Figure 4-37: Firm size and SMEs vulnerability to transfer failure



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

A quarter of the respondents consider that the sector has no impact on vulnerability to transfer failure. Construction, Hotel & Restaurants and Trade are the most vulnerable sectors to transfer failures based on the respondents' views.

Figure 4-38: Industrial sector and SMEs vulnerability to transfer failure



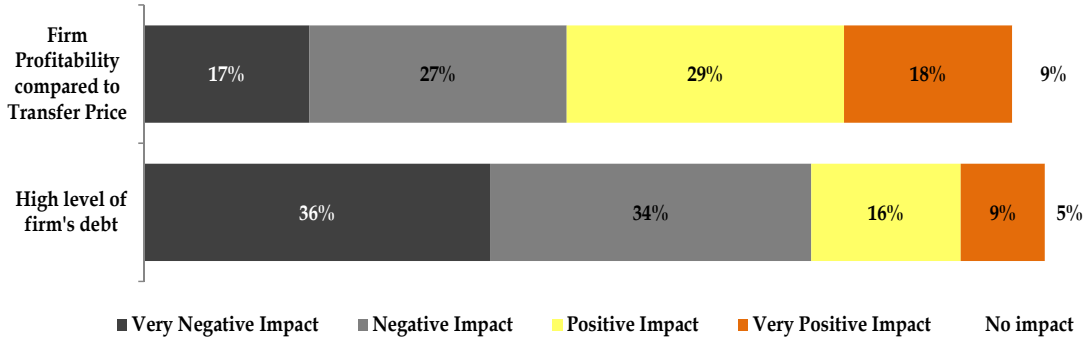
Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

When looking at the company's financial indicators:

- the relationship between the profitability of a company and the price at which a transfer is agreed does not seem to present a major inconvenience or advantage in case of business transfers
- the relationship between the debt (bank loans and liabilities towards suppliers and other third parties) compared to the equity (own capital) of a company plays a significant role

In typical cases, the transfer price is considered to be high if it exceeds 10 times the average annual profitability of a company, while the debt is considered to be high when it exceeds two times the amount of equity of a company.

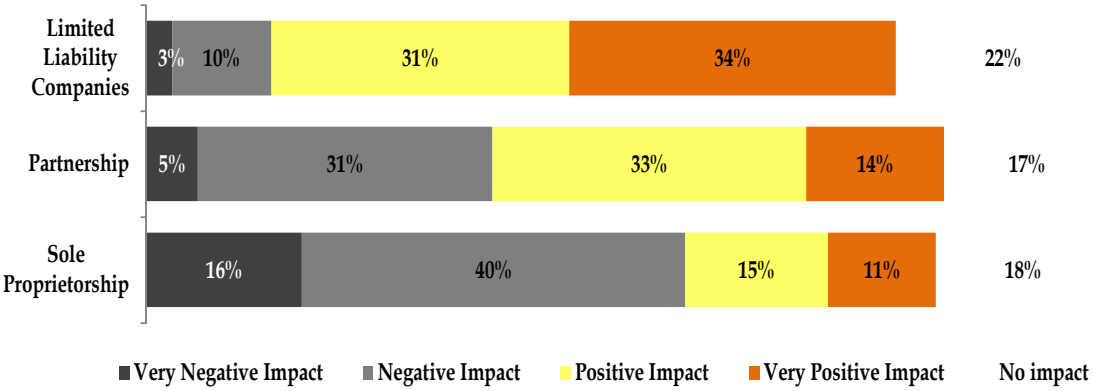
Figure 4-39: Financial indicators and SMEs vulnerability to transfer failure



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

The legal status has an important impact on the vulnerability of the firms in case of transfer. More than 50% of the respondents consider that sole proprietorship firms are more vulnerable to transfer failure, as compared to 13% considering limited liability firms to be vulnerable to transfer failure.

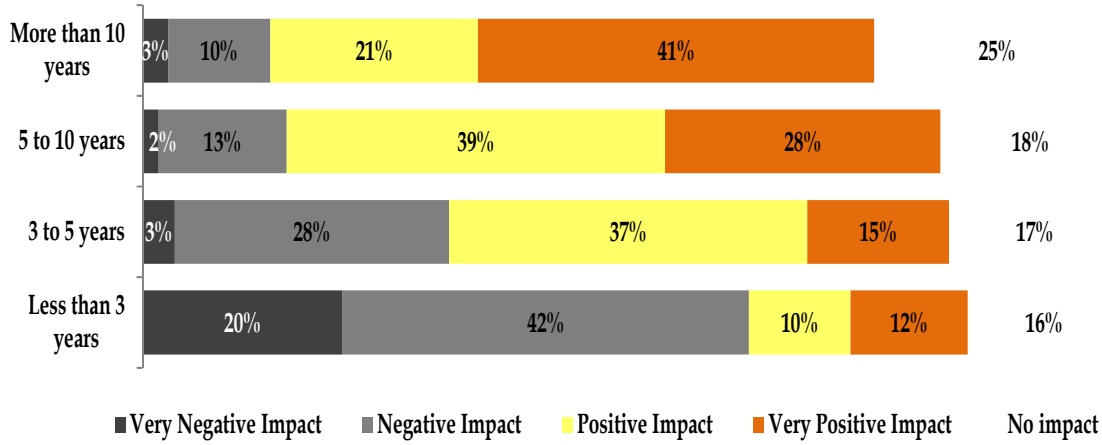
Figure 4-40: Legal status and SMEs vulnerability to transfer failure



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

With respect to the firm's age, 62% of respondents consider that companies less than three years old are very vulnerable in case of transfer to third parties/ family members.

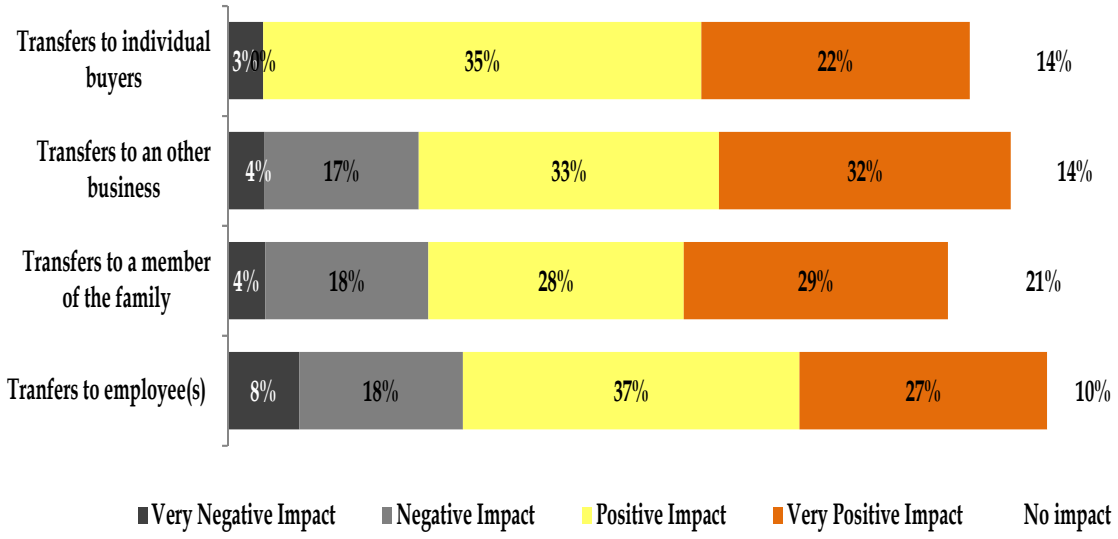
Figure 4-41: Age of firm and SMEs vulnerability to transfer failure



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

There is no clear evidence for vulnerability factors linked to the type of buyers. Transfers to another business or to members of the family rather than to employees or individual buyers are slightly more favourable.

Figure 4-42: Type of buyer and SMEs vulnerability to transfer failure



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

4.2.2.4 Environmental risk

In the industrial sector, compliance with environmental procedures plays an important role in the success of a transfer. Environmental audits are often requested by insurance companies and to a lesser extent by banks in order to secure funding.

According to the respondents' views, environmental audits are required by financial institutions in the following countries:

Figure 4-43: Environmental audit for firms in industrial sector

	ISSUES RELATED TO ENVIRONMENTAL RISK
COUNTRIES	Environmental audit for firms in industrial sector
Austria	2
Belgium	1
Bulgaria	4
Croatia	3
Cyprus	4
Czech Republic	2
Denmark	1
Estonia	4
Finland	1
France	1
Germany	1
Greece	1
Hungary	1
Iceland	2
Ireland	2
Italy	1
Latvia	2
Lithuania	1
Luxembourg	2
Malta	3
Montenegro	1
Netherlands	1
Norway	4
Poland	3
Portugal	1
Romania	1
Serbia	3
Slovakia	1
Slovenia	1
Spain	1
Sweden	1
Turkey	1
United Kingdom	2

Legend	
1	Required
2	Not Required
3	Not Required but Necessary to Implement
4	No Clear Answers

Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents.
The answer "Not required but necessary to implement" reflect the opinion of respondents regarding the necessity to implement such a measure taking into consideration the situation in their country.

4.2.2.5 Training and Mentoring

This section addresses the implementation of Article 2 of the 1994 Commission Recommendation in particular with respect to training of businessmen in order to ensure the right preparation for successful business transfers.

The respondents of the Business Transfers survey indicated that mentoring and training to prospective SME buyers and owners is provided mainly by business/ professional associations, Chambers of Commerce and Industry, public administration and private organisations. According to the replies received, the table below presents the countries where training and mentoring on business transfers is provided to prospective buyers and SME owners.

Table 4-3: Type of bodies offering training and mentoring on business transfers

	Type of organisation			
Countries	**Business / Professional Associations**	**Chambers of Commerce and Industry**	**Public Organisations**	**Private Organisations**
Austria		Training , Mentoring		Training, Mentoring
Belgium	Training , Mentoring	Training , Mentoring		Training , Mentoring
Bulgaria		Training		Training
Croatia		n/a (according to respondents)		
Czech Republic				Training
Denmark	Training		Training	
Estonia		n/a (according to respondents)		
Finland			Training	Training
France	Training	Training, Mentoring	Training	Training
Germany	Training, Mentoring	Training, Mentoring	Mentoring	Mentoring
Greece		Training		Mentoring
Hungary		n/a (according to respondents)		
Iceland				Mentoring
Ireland				Mentoring
Italy	Training	Training, Mentoring		Mentoring
Latvia		n/a (according to respondents)		
Lithuania		n/a (according to respondents)		
Luxembourg		Training, Mentoring		Mentoring
Malta				Training, Mentoring*

Countries	*Type of organisation*			
	Business / Professional Associations	**Chambers of Commerce and Industry**	**Public Organisations**	**Private Organisations**
Netherlands		Training, Mentoring		Training, Mentoring
Norway				Training, Mentoring
Poland	Training, Mentoring	Training, Mentoring		
Portugal	Training		Training	Training, Mentoring
Romania				Training, Mentoring
Serbia	n/a (according to respondents)			
Slovakia		Training	Training	Training, Mentoring
Slovenia				
Spain		Training, Mentoring		Training, Mentoring
Sweden		Training	Training	Mentoring
Turkey		Training		Training, Mentoring
United Kingdom			Training, Mentoring	Training, Mentoring

Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents
n/a = not available (according to the views of respondents)
* Offered by banks to prospective buyers in an unofficial form
Caption: Green underlying colour for rows when in a country a lot of training and mentoring is offered. Light green colour for rows when in a country medium training and mentoring is offered. Light red colour is used when little training and mentoring is offered. Finally, red colour for rows when in a country is offered no training and mentoring.

4.2.2.6 **Legal Transformation**

This section addresses the implementation of Article 4 of the 1994 Commission Recommendation which deals with the legal form of enterprises transferred.

In 28 out of 33 countries surveyed it is possible to alter the legal form of a company in order to facilitate the transfer process. In Greece, Malta and Montenegro where this possibility does not seem to exist (according to the respondents' views), the respondents mentioned that it is necessary to be implemented.

The possibility to establish public limited companies, with a very small number of shareholders is offered in 22 countries.

It is also possible to create a public limited company with only one partner in the majority of the surveyed countries: 23 of them have the relevant legislative framework.

Figure 4-44: Legal transformation

	ISSUES RELATED TO LEGAL TRANSFORMATION		
COUNTRIES	Possibility for the rights of owners / buyers to change from one legal form to another without the need to wind up the firm or create a new legal entity	Possibility to establish public limited companies with a very small number of shareholders	Possibility to create a public limited company with only one partner
Austria	1	1	1
Belgium	1	1	1
Bulgaria	1	3	3
Croatia	1	1	1
Cyprus	4	2	4
Czech Republic	1	1	1
Denmark	1	1	1
Estonia	1	1	1
Finland	1	1	1
France	1	1	1
Germany	1	4	1
Greece	3	3	4
Hungary	1	1	1
Iceland	1	1	1
Ireland	1	4	4
Italy	1	1	1
Latvia	2	2	4
Lithuania	1	2	1
Luxembourg	1	1	3
Malta	3	1	2
Montenegro	3	4	2
Netherlands	1	1	1
Norway	1	1	1
Poland	1	1	1
Portugal	1	1	1
Romania	1	1	1
Serbia	1	2	1
Slovakia	1	1	1
Slovenia	1	3	1
Spain	1	1	1
Sweden	1	1	1
Turkey	1	3	3
United Kingdom	1	1	2

Legend	
1	Required
2	Not Required
3	Not Required but Necessary to Implement
4	No Clear Answers

Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

The legal status of a firm is an important factor for business transfers success. The regulatory framework should assist business owners to legally transform their firms, anticipating the selling of a firm. This may increase the total number of successful business transfers in a country.

4.2.2.7 Continuity of Partnership

This section addresses the implementation of Article 5 of the 1994 Commission Recommendation that deals with continuity of partnership and sole proprietorships. According to the provisions of this Article, continuity should be ensured in the event of death of one of the partners or the owner.

Transfers of firms may have several drivers (i.e. retirement of the owners, selling to set up a new business, new activity), but it may be also due to an unpredictable cause such as the death of an owner. In this case, the firm is highly vulnerable. An appropriate legal framework may reduce the risk of transfer failure.

Rules to ensure the continuity of firms in case of death of an owner exist in 22 countries. In Greece, Malta, Montenegro, Luxembourg and Poland the respondents mentioned that it is necessary to adopt such rules.

Remaining partners may take decisions with or without the heirs in 20 countries. It is considered necessary to be implemented in Germany, Luxembourg, Poland and Slovenia, while this possibility does not exist in Iceland and Sweden according to the respondents' views.

Figure 4-45: Continuity of partnership

	ISSUES RELATED TO CONTINUITY OF PARTNERSHIP	
COUNTRIES	**Possibility of continuity of partnerships and sole proprietorships in the event of death of a partner or of the business owner**	**Possibility for the remaining partners to decide on the continuation of the business with or without the participation of the deceased partner's**
Austria	1	2
Belgium	4	2
Bulgaria	1	1
Croatia	1	1
Cyprus	1	4
Czech Republic	1	2
Denmark	1	1
Estonia	1	1
Finland	1	1
France	1	1
Germany	1	3
Greece	3	1
Hungary	1	1
Iceland	2	1
Ireland	1	1
Italy	1	1
Latvia	4	2
Lithuania	1	2
Luxembourg	3	3
Malta	3	2
Montenegro	3	2
Netherlands	1	1
Norway	1	1
Poland	3	3
Portugal	1	1
Romania	1	1
Serbia	1	1
Slovakia	1	1
Slovenia	1	3
Spain	4	1
Sweden	2	4
Turkey	4	1
United Kingdom	1	1

Legend	
1	Required
2	Not Required
3	Not Required but Necessary to Implement
4	No Clear Answers

Source: Business Dynamics Survey 2010

Note: Data is based solely on the views and perceptions of the survey's respondents

4.2.2.8 **Taxation**

This section deals with the implementation of Articles 6 'Inheritance and Gift Taxes' and Article 7 'Transfer to third parties' of the 1994 Commission Recommendation.

According to previous studies, the simplification of the tax framework may increase the number of transfers. In particular it may facilitate the transfer to third parties and to heirs.

A reduction of the level of taxation in case of transfers (special tax framework) may ensure the financial stability of the firms.

Fiscal neutrality (when the transfer of business to a family member or third parties is not seen as taxable event) may have an impact on the development of the market for business transfers; it may enable business owners to plan and execute transfers of business to family or employees free from tax burdens.

In 14 out of the 33 targeted countries, legislation foresees reduction of taxes on assets exclusively used for the business in the case of transfer by gift or succession (including inheritance tax, gift tax and registration fees).

Spreading or deferring payment of gift or inheritance taxes for heirs is possible in 12 countries.

In only eight countries (Austria, Denmark, Finland, Greece, Montenegro, the Netherlands, Serbia and Slovenia) it is possible for the tax assessment of the business to take account of how the value of the business has changed some months after the death of the owner.

Special taxation measures for transfers to employees were reported by the following 6 countries: Denmark, France, Greece, the Netherlands, Serbia and Slovenia.

Only 9 countries (Denmark, Estonia, France, Iceland, the Netherlands, Serbia, Slovenia, Spain, and the United Kingdom) provide tax incentives for re-investment of the profits made on the sale of a business to another enterprise not quoted on the stock exchange. In addition, 12 countries consider the adoption of such incentives necessary.

Figure 4-46: Taxation

	ISSUES RELATED TO TAXATION								
COUNTRIES	Special Tax Framework for Business Transfers	Principle of fiscal neutrality for transfer of assets	Principle of fiscal neutrality for mergers	Principle of fiscal neutrality for divisions and exchange of shares	Existence of reduced taxes on assets in the case of transfer by gift or succession	Possibility of spreading or deferring payment of the gift or inheritance taxes for the heirs	Possibility for the tax assessment to take into account changes in the value of the business some months after the death of the owner	Special taxation measure for transfers to employees	Tax Incentives for the reinvestment of the profits made on the sale of a business in other enterprise not quoted in the stock exchange
Austria	3	3	1	1	2	1	1	2	3
Belgium	1	4	1	1	1	1	4	3	4
Bulgaria	2	3	3	1	3	3	2	3	3
Croatia	2	1	1	3	1	4	2	2	2
Cyprus	1	1	1	1	1	4	3	3	3
Czech Republic	1	1	1	1	2	2	2	2	2
Denmark	1	1	1	1	1	1	1	1	1
Estonia	2	1	1	1	2	3	2	2	1
Finland	1	1	1	1	1	4	1	3	4
France	1	1	1	1	1	1	3	1	1
Germany	1	1	4	4	4	1	4	4	3
Greece	1	3	1	1	1	1	1	1	4
Hungary	2	1	1	1	3	3	2	2	3
Iceland	3	1	1	1	3	2	2	3	1
Ireland	1	1	1	1	1	3	3	3	3
Italy	1	1	1	1	1	4	4	2	4
Latvia	2	2	1	1	3	2	2	2	2
Lithuania	2	1	4	3	3	3	3	2	2
Luxembourg	4	2	4	4	4	4	2	2	4
Malta	1	3	3	3	1	3	4	3	3
Montenegro	3	3	3	3	3	3	1	4	3
Netherlands	1	1	1	1	1	1	1	1	1
Norway	2	4	4	1	3	1	4	2	4
Poland	1	3	3	1	3	1	3	3	3
Portugal	4	1	1	1	3	3	3	3	3
Romania	3	3	3	3	3	3	3	3	3
Serbia	3	1	1	4	1	1	1	1	1
Slovakia	1	1	1	1	4	1	2	4	2
Slovenia	1	1	1	3	1	3	1	1	1
Spain	1	1	1	1	1	1	3	3	1
Sweden	2	1	1	1	2	2	2	2	2
Turkey	1	3	3	3	3	3	3	2	3
United Kingdom	3	1	1	1	3	3	3	3	1

Legend	
1	Required
2	Not Required
3	Not Required but Necessary to Implement
4	No Clear Answers

Source: Business Dynamics Survey 2010

Note: Data is based solely on the views and perceptions of the survey's respondents

4.2.3 Economic Analysis

4.2.3.1 Estimating the Number of Transfers in Europe

The collection of data through the present study revealed that statistics on transfers are not available in most of the countries and when available, the definitions used vary significantly. As a result, it is very difficult to estimate the number of business transfers in European countries.

The latest European Commission Communication[62] estimates that transfers affect every year up to 690.000 SMEs providing altogether 2.8 million jobs in the European Union. This estimation was made in 2005 based on data for Germany, France, Italy, the Netherlands, Austria, Sweden, Finland, Romania and the United Kingdom.

Updated data are available for Germany and France, and the survey gave the opportunity to collect data for other countries. Therefore, it was possible to make an updated estimation for 2010 with the following main points:

- In Germany, ca. 22.000 firms will need a successor each year in the period 2010 to 2014. These 22.000 firms affect 287.000 jobs (source: Institut für Mittelstandsforschung Bonn [63]).
- In France, for the period 2005-2020, the annual transfer volume is estimated at approximately 57.000 firms; this will affect approximately 330.000 jobs in total (source OSEO[64]).

According to the findings of the Business Dynamics survey[65]:

- In Austria, 6.600 businesses were transferred in 2008.
- In Finland, around 6.000 firms are transferred each year.
- In Norway, the average number of transfers is 4.000 per year affecting 16.000 employees (2001-2009 average).
- In Romania, 35.538 firms have been transferred on average each year in the period 2007-2009.

Using the above countries as a sample and projecting proportionately the data to include the remaining countries, we estimate that**:**

Approximately 450.000 firms are being transferred each year in the EU – 27, affecting 2 million employees, an estimate lower than the previous one (of 2005)[66].

[62]COM(2006) 117 final, Transfer of Businesses – Continuity through a new beginning
[63] http://www.ifm-bonn.org/index.php?id=856
[64] OSEO (2005) La transmission des PME vu par OSEO bdpme
[65] Business Dynamics Survey 2010

The survey's respondents consider that European firms that are not transferred due to system inefficiencies could contribute an additional 150.000 firms to the EU economy, if transferred.

At the same time, no strong demand for business takeovers seems to exist. Only around 25% of Europeans[67] considering a business start-up would prefer to take over an existing business as opposed to starting a new one.

A distinction was made between due to economic reasons (i.e. no valuable assets) and other reasons. Economic reasons are a normal aspect of the business cycle. As an example, micro-firm non-transfers are often correlated with a high level of new business start-ups. This implies that instead of having firm transfers, closure and setting up a new business is preferred. In sectors like plumbing for example, owners sell their equipment to an employee who intends to establish a new business. However, this type of transfer is not visible in statistics.

According to experts' opinion, the number of firms in Europe which are not transferred because of reasons other than economic ones may be estimated at around 63%.

As such we estimate that:

Every year, there is a risk of losing approximately 150.000 firms and 600.000 jobs due to inefficiency in transferring businesses.

Furthermore, the level of information on firms to be transferred is considered to be rather low.

A transfer-friendly regulatory framework has been developed in many European countries, but firms do not take advantage of it due to lack of information.

This is the case in France for instance, where several respondents explained that despite the enterprise-friendly environment recently developed, owners are not aware of related legal and fiscal advantages.

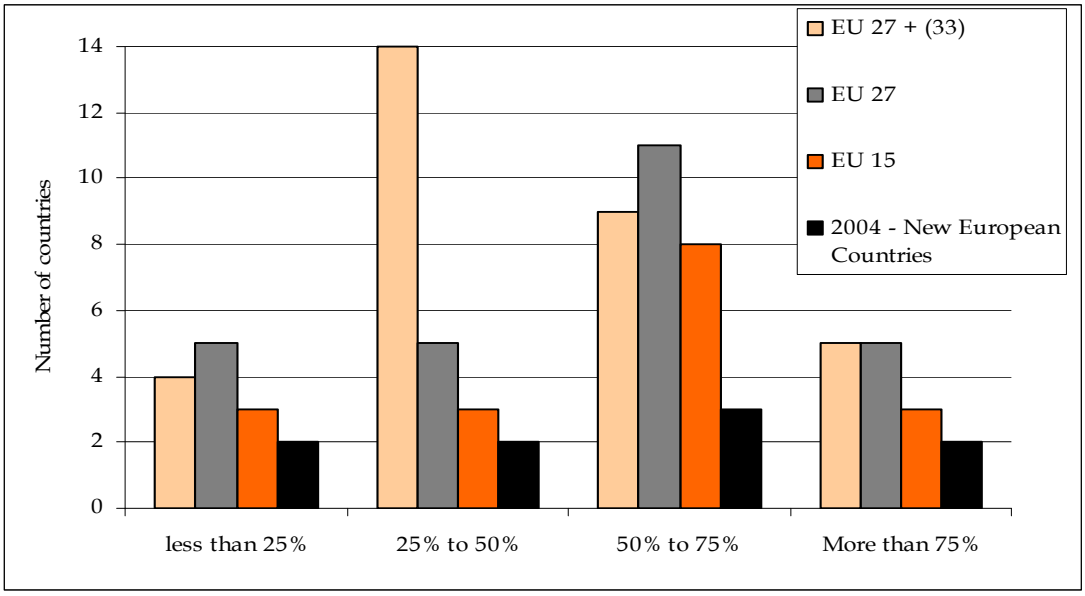
4.2.3.2 Regulatory Framework for Business Transfers

The number of European Commission recommendations[68] implemented by Member States remains low in a number of countries. Only five countries

[66]COM(2006) 117 final, Transfer of Businesses – Continuity through a new beginning
[67]Eurobarometer – Entrepreneurship in the EU and beyond, A survey in the EU, EFTA countries, Croatia, Turkey, the US, Japan, South Korea and China, December 2009
[68] Commission Communication from 14 March 2006: Transfer of Businesses - Continuity through a new beginning

(Denmark, the Netherlands, Slovakia, Slovenia and Spain) have implemented more than 75% of the European Commission recommendations regarding taxation and law.

Figure 4-47: European Commission recommendations on business transfer regulatory framework addressed by countries' legislation



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

Nevertheless, the regulatory framework has been improved and converges with the "1994 Recommendation". Large parts of the 1994 Recommendation have been implemented in new Member States.

The two tables below present the situation on 2006 according to the data extracted from the 2006 Communication, COM(2006) 117 final and the situation in 2010 according to the survey's results and desk research.

Table 4-4: Implementation of the 1994 Recommendation - Situation in 2006

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Country	Awareness raising	Financial environment	Change of legal form	Tax neutral restructuring	Simplification SMEs/PLCs	PLC with one member	Legal principle of continuity	Unanimity not required	Reduced inheritance tax	Deferring inheritance tax	Retirement tax relief	Re-investment tax relief	Sale to employees tax relief	**Total + or (+)**
Belgium	+	+	+	+	+	∅	+	∅	+	+	+	+	+	11
Czech Republic	-	-	+	+	+	∅	+	∅	+	+	+	+	∅	8
Denmark	-	+	+	+	+	+	+	-	+	∅	+	∅	+	9
Germany	+	+	+	+	+	+	+	∅	+	+	+	+	∅	11
Estonia	∅	∅	+	-	-	+	-	-	+	+	∅	∅	∅	4
Greece	-	-	-	-	-	-	-	-	+	+	-	-	-	2
Spain	+	-	+	-	+	+	+	-	+	+	-	+	+	9
France	+	+	+	+	-	+	-	-	+	∅	+	+	+	9
Ireland	+	+	∅	+	+	∅	+	-	+	+	+	∅	+	9
Italy	+	+	+	∅	∅	+	+	+	+	+	∅	∅	∅	8
Cyprus	+	∅	+	-	+	+	+	-	+	+	∅	∅	∅	7
Latvia	-	∅	+	+	∅	+	+	+	-	-	-	-	-	5
Lithuania	+	-	+	+	+	+	+	∅	+	+	∅	∅	∅	8
Luxembourg	+	+	+	-	+	+	+	∅	-	+	∅	∅	∅	7
Hungary	∅	∅	+	+	∅	+	+	+	+	-	+	∅	+	8
Malta	∅	∅	+	+	+	∅	+	∅	+	+	∅	∅	∅	6
Netherlands	+	-	+	+	+	+	+	-	+	+	∅	∅	∅	8
Austria	+	+	+	+	+	+	+	+	+	+	+	∅	+	12
Poland	-	+	+	+	∅	+	+	∅	+	-	∅	∅	∅	6
Portugal	+	-	+	-	-	∅	+	-	∅	∅	∅	∅	∅	3
Slovenia	∅	∅	+	+	+	+	+	-	-	+	∅	∅	∅	6
Slovakia	∅	∅	+	∅	∅	+	-	∅	+	-	∅	∅	∅	3
Finland	+	+	+	+	+	+	+	∅	+	+	∅	∅	∅	9
Sweden	+	-	+	+	-	+	∅	∅	+	+	-	-	∅	6
United Kingdom	+	-	+	-	-	+	-	∅	+	+	∅	+	+	7
European Union	15	10	23	16	14	19	19	4	21	18	8	6	8	181

Legend

+	Recommendation implemented, partial or planed implementation
∅	Recommendation not implemented
-	No information

	11 to 13 - Recommendations implemented, partial or planed implementation
	7 to 10 - Recommendations implemented, partial or planed implementation
	1 to 6 - Recommendations implemented, partial or planed implementation

Table 4-5: Implementation of the 1994 Recommendation - Situation in 2010

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Country	Awareness raising	Financial environment	Change of legal form	Tax neutral restructuring	Simplification SMEs/PLCs	PLC with one member	Legal principle of continuity	Unanimity not required*	Reduced inheritance tax	Deferring inheritance tax	Retirement tax relief*	Re-investment tax relief	Sale to employees tax relief	**Total + or (+)**
Belgium	+	+	+	+	+	+	+	∅	+	+	+	+	+	12
Czech Republic	+	-	+	+	+	+	+	∅	+	+	+	+	∅	10
Denmark	+	+	+	+	+	+	+	-	+	+	+	+	+	12
Germany	+	+	+	+	+	+	+	∅	+	+	+	+	∅	11
Estonia	∅	∅	+	+	+	+	+	-	+	+	∅	+	∅	8
Greece	+	-	∅	+	-	-	+	-	+	+	-	-	+	6
Spain	+	+	+	+	+	+	+	-	+	+	-	+	+	11
France	+	+	+	+	+	+	+	-	+	+	+	+	+	12
Ireland	+	+	+	+	+	∅	+	-	+	+	+	∅	+	10
Italy	+	+	+	+	+	+	+	+	+	+	∅	∅	∅	10
Cyprus	+	+	+	+	+	-	+	-	+	+	∅	∅	∅	8
Latvia	-	∅	+	+	∅	-	+	+	-	+	-	-	-	5
Lithuania	+	+	+	+	+	+	+	∅	+	+	∅	∅	∅	9
Luxembourg	+	+	+	-	+	+	+	∅	-	+	∅	∅	∅	7
Hungary	∅	∅	+	+	+	+	+	+	+	-	+	∅	+	9
Malta	+	-	+	+	+	∅	+	∅	+	+	∅	∅	∅	6
Netherlands	+	+	+	+	+	+	+	-	+	+	∅	+	+	11
Austria	+	+	+	+	+	+	+	+	+	+	+	∅	+	12
Poland	+	+	+	+	+	+	+	∅	+	+	∅	∅	∅	9
Portugal	+	+	+	+	+	+	+	-	∅	∅	∅	∅	∅	7
Slovenia	∅	+	+	+	+	+	+	-	+	+	∅	+	+	10
Slovakia	∅	+	+	+	+	+	+	∅	+	+	∅	∅	-	8
Finland	+	+	+	+	+	+	+	∅	+	+	∅	∅	∅	9
Sweden	+	-	+	+	+	+	∅	∅	+	+	-	-	∅	7
United Kingdom	+	+	+	+	+	+	+	∅	∅	+	∅	+	+	10
Bulgaria	+	+	+	+	+	∅	+		∅	∅		∅	∅	6
Romania	+	-	+	∅	+	+	+		∅	∅		∅	∅	5
European Union	22	19	26	25	25	20	26	4	21	22	8	10	11	239

Legend

+	Recommendation implemented, partial or planed implementation
∅	Recommendation not implemented
-	No information

	11 to 13 - Recommendations implemented, partial or planed implementation
	7 to 10 - Recommendations implemented, partial or planed implementation
	1 to 6 - Recommendations implemented, partial or planed implementation

*2006 Data

Source: Business Dynamics Survey 2010

Note: Data is based solely on the views and perceptions of the survey's respondents and experts

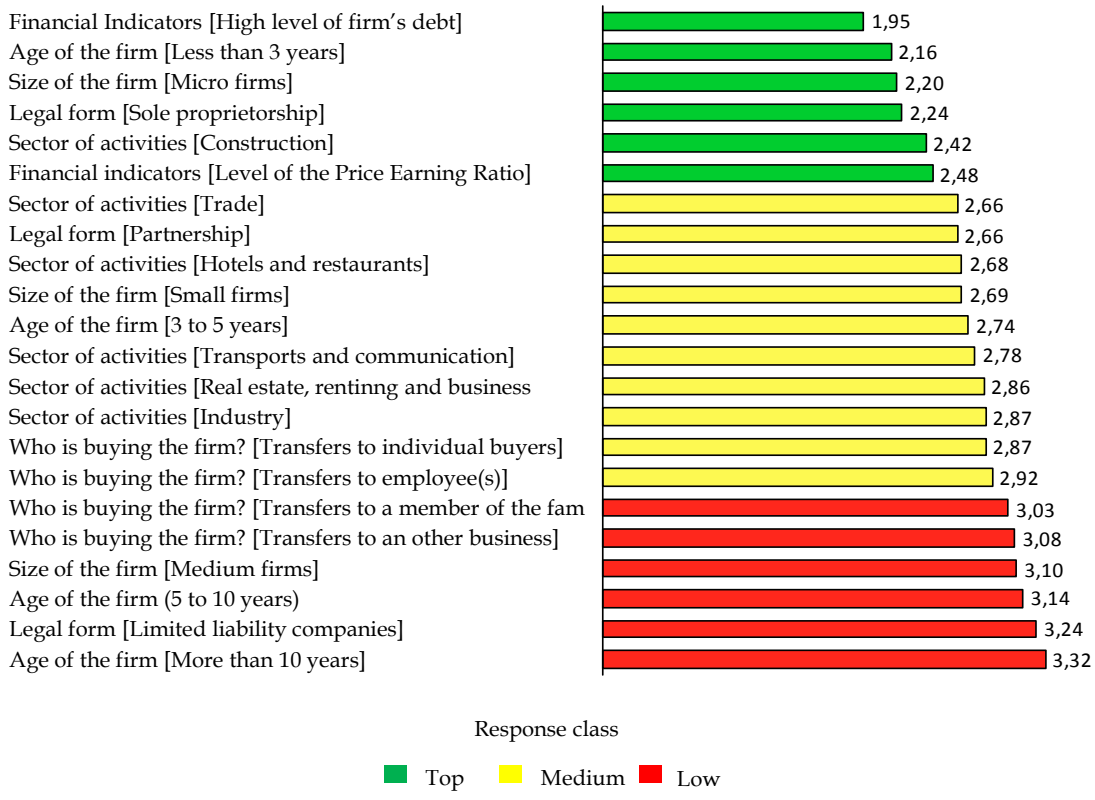
The countries that have implemented at least 11 of the 13 recommendations are Belgium, Denmark, Germany, Spain, France, the Netherlands and Austria. Those countries that have implemented less than 6 recommendations are Greece, Latvia, Malta, Bulgaria and Romania. Countries that have made the biggest progress since 2006 (more than 4 recommendations implemented or partially implemented) are Slovakia, Greece, Portugal and Slovenia.

The impact of the regulatory framework for business transfers has not been studied in academic literature. As there is no data available concerning the number of transfers across European countries, it is not feasible to explore a possible correlation between the regulatory framework and the number of transfers.

4.2.3.3 Main Obstacles for a Successful Transfer of Ownership of SMEs

The survey findings allow for a ranking of the factors that make SMEs more vulnerable to transfer failure.

Figure 4-48: Factors that make SMEs more vulnerable to transfer failure



Source: Business Dynamics Survey 2010
Note[1]: Data is based solely on the views and perceptions of the survey's respondents
Note[2]: Respondents were asked to answer the following question : Identify which are the factors that make SMEs more vulnerable to transfer failure (rate 1 very negative impact, 2

negative impact, 3 positive impact , 4 very positive impact, 0 no impact). Small numbers indicate that the factors make SMEs more vulnerable. The graph presents an average of the answers.

4.2.4 Conclusions

It is estimated that 450.000 firms with 2 million employees are being transferred each year across Europe. Furthermore, every year, there is a risk that an estimated 150.000 firms with 600.000 employees are not transferred due to inefficiencies.

Based on available data and findings of this survey the study indicates that firms not transferred, for reasons other than economic, may be estimated at 150.000 firms with 600.000 employees (i.e. jobs at risk) across Europe per year. Improving the number of transfers may increase the number of active firms in the economy, leading to economic and employment growth.

The smallest businesses are the most vulnerable to transfer failure. Companies in sole proprietorship and those that are less than 3 years old are also prone to be more vulnerable.

According to the results of the survey, the smallest businesses are the most vulnerable to failed transfers, considering that they are often closely related to their owner's skills and personality that are not easily transferable.

Additionally, the small value of their tangible assets often makes their valuation impossible as the main assets of value in these businesses are the entrepreneurs themselves.

In addition to the size of the business, the survey indicates that the legal form of the company as well as its age, are another two emerging factors of vulnerability.

A transfer-friendly regulatory framework is under development in many countries in Europe, yet awareness of this is still low.

16 countries have implemented more than 50% of European Commission Recommendations regarding the legal and fiscal framework to facilitate business transfers.

More specifically, the survey indicates that:

- In 28 countries out of the 33 surveyed it is possible to alter the legal form of a company in order to facilitate the transfer process,
- 22 countries provide legislation to facilitate continuity of firms within the family,

- On the contrary, special taxation measures for transfers to employees were reported to exist in only 6 countries.

Systematic monitoring of business transfers activity is lacking.

The present survey revealed that statistics on transfers are not available in most of the countries and when available the definitions used vary significantly.

Germany may be referred to as a "good practice" in terms of available statistics. For example, the IFM Bonn presents the following estimates for the period 2010 – 2014:

Table 4-6: Impact on firms and employment due to non-transfer of business by different causes (predictions)

Total 22.000 firms 287.000 employees		
Cause: Retirement 18.900 firms 247.000 employees	Cause: Death of the owner 2.200 firms 29.000 employees	Cause: Illness of the owners 900 firms 11.000 employees

Source: IFM Bonn

The lack of reliable descriptive (what has already happened) and predictive (what is anticipated to happen) data on business transfers results in a lack of support for governments to produce and implement specific policies to facilitate business transfers.

Within this context, it becomes clear that there is a lot of potential value in creating a common approach, methodological tools and indicators, leading to the development of a regular common monitoring mechanism for business transfers in Europe.

Support is needed for business transfers and creation of awareness.

The respondents interviewed during the survey proposed some policy recommendations:

- The concept that the high point of an entrepreneur's career is when his business is transferred into good hands, could be promoted by government institutions and of business associations in all countries,
- Business transfers should receive from public authorities the same extent of support as start-ups, or possibly more as they help preserve the existing stock of companies and jobs,

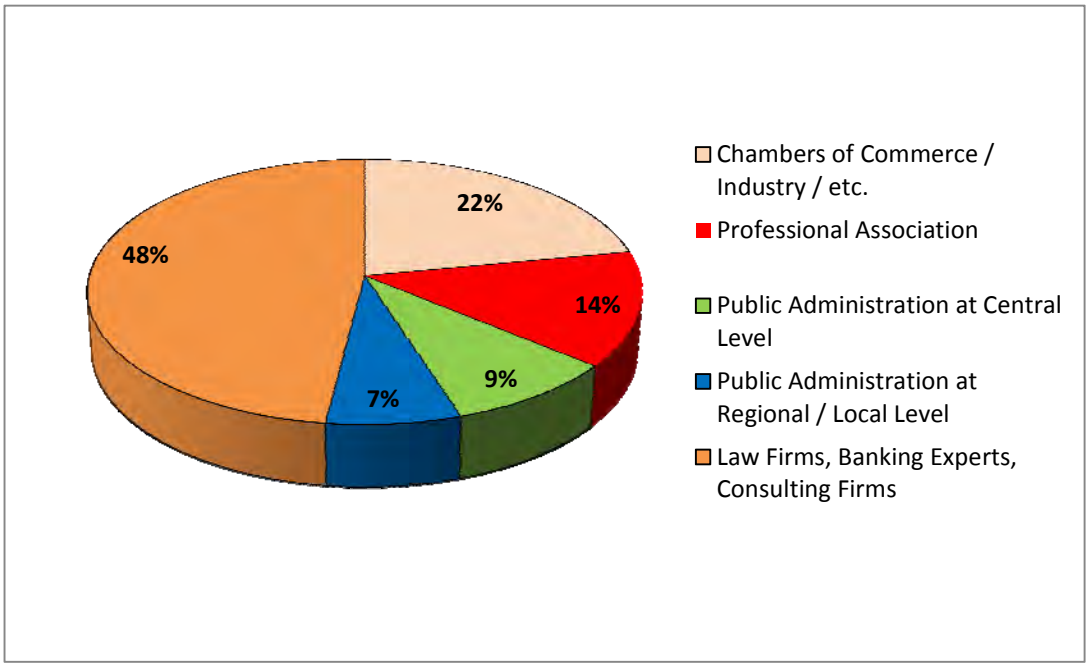
- Support instruments and best practices should be widely disseminated.

4.3 Bankruptcy

The study of the bankruptcy thematic area has been based on desk research, survey findings and economic analysis.

The desk research considered relevant studies undertaken by the European Commission, statistics from national sources and national surveys.

The survey was executed in 33 targeted European countries via a structured questionnaire. A total of 345 replies have been collected and processed. The profile of the respondents is shown in the following pie chart:



Bankruptcies are an important issue for the European economy. Business entry and exit are natural processes that are inherent to European economies, actually 50% of enterprises do not survive the first five years of their life and of all business closures, bankruptcies account in average for 15%[69]. In addition, despite the fact that only 4-6% of bankruptcies are fraudulent, public opinion makes a strong link between business failure and fraud. Furthermore, bankruptcy has an important secondary effect on entrepreneurship as many entrepreneurs do not start a company because of their fear of the consequences of business failure[70].

[69] "A Second Chance for entrepreneurs: Prevention of bankruptcy, simplification of bankruptcy procedures and support for a fresh start" – Report of the Expert Group, European Commission, DG Enterprise and Industry, January 2010

[70] According to the European Commission's Flash Eurobarometer, 283 of May 2010, 49% of entrepreneurs mentioned that the major risk to start an activity is the possibility of going bankrupt.

This section presents the desk research, the survey findings, the economic analysis and relevant conclusions pertaining to this thematic area.

4.3.1 Desk Research

4.3.1.1 Literature Review / Key References

Bankruptcy can be defined as the legal proceeding that occurs when the liabilities or debts of a firm exceed its assets or revenues over an extended period of time. When a firm declares bankruptcy, its assets are taken and allocated to various creditors and courts may impose restrictions on future borrowing capacities of firm owners".

The definitions and concepts used for bankruptcy vary significantly among countries. For instance, bankruptcy of a sole proprietorship firm is usually considered as a personal bankruptcy (bankruptcy of the physical person, proprietor of the firm, in analogy with the case of sole traders).

Within this thematic area of the study, bankruptcy is interpreted in its widest sense; it includes not just in-court procedures but also prevention measures and out-of-court settlements which usually precede a judicial bankruptcy process. In this respect the study analyses bankruptcy as a flux rather than as an event.

The key references on bankruptcy at European level include the following documents:

- Regulation 1346/2000 on insolvency proceedings.
- Directive 2002/74 on the protection of employees in insolvency cases
- Community guidelines on State aid for rescuing and restructuring firms in difficulty, Official Journal 244 , 01/10/2004 P. 0002 - 0017

Key references on bankruptcy from the countries included in this study are presented in **Annex III.**

Law and Finance theory asserts that the legal system influences financial development and economic growth, protecting investors to sustain financial development contributing to economic growth. This theory, which is adopted by a number of international studies, distinguishes the regulatory framework into two types, that of 'common law' and that of 'civil law', whereby most analyses stress the advantage of the latter over the former.

Civil law is a legal system inspired by Roman law, the primary feature of which is that laws are written into a collection, codified, and not (as in common law) developed by court and other relevant practice. All countries in Europe except the United Kingdom and Ireland have legal systems based on civil law. Among the countries with civil law, there are 3 sub-groups of legal

systems, those influenced by the French civil law (i.e. France, Belgium, Spain, Romania among others), those influenced by the German civil law (i.e. Germany, Austria, the Czech Republic among others) and those influenced by Scandinavian civil law (i.e. Denmark, Finland, Norway, Sweden, Iceland) while some countries have legal systems with elements from both the French and German civil laws (such as Portugal, Poland, Greece).

Common law, which applies in the United Kingdom and Ireland, is based on facts and decisions made on concrete court cases.

With respect to the literature addressing the impact of bankruptcy law on economic growth and entrepreneurship, two schools of thought can be distinguished.

The first school of thought on Law and Finance literature is generally in favour of the common law. Key references are:

- Rodríguez-Delgado, Jose Daniel Working Paper No. 10/41: Bankruptcy and Firm Dynamics: The Case of the Missing Firms
- Smith D., Stromberg P, (2003) Maximizing the value of distressed assets: Bankruptcy law and the efficient reorganization of firms
- Armour J., Cumming D.(2005) Bankruptcy law and entrepreneurship
- Graff M. (2005) Law and Finance: Common-law and Civil-law Countries Compared
- White M.J. (2006), CESifo DICE Report, Bankruptcy and Small Business – Lessons from the US and recent reforms
- Djankov S., Hart O., McLiesh C., Shleifer A. (2008), Debt Enforcement Around the World

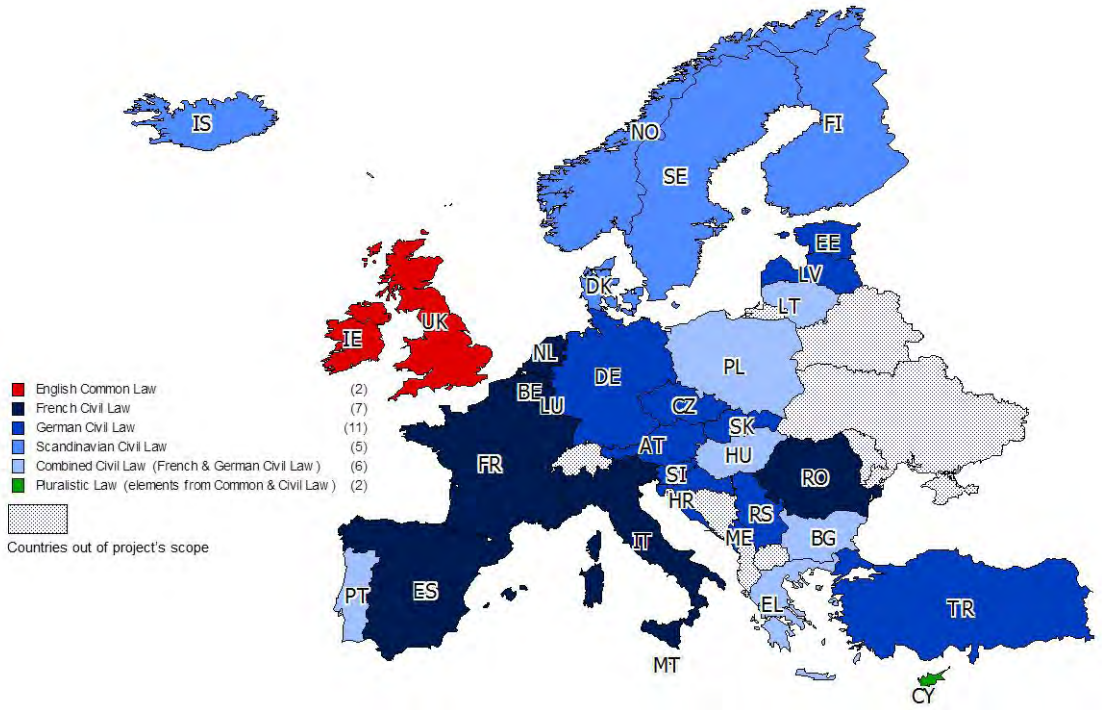
The second school of thought on Law and Finance, led by French economists, are more in favour of the civil law. Key references are:

- Blazy R., Chopard B., Fimayer A., Guigou J, Financial versus Social Efficiency of Corporate Bankruptcy Law: The French Dilemma?
- Levratto N.(2009) Quels indicateurs d'efficacité économique du droit des faillites ? Du classement de Doing Business à une analyse des procédures effectives.
- Haravon M.(2010) Doing Business 2009 : Mesurer l'efficacité des faillites

The purpose of the study is not to measure the advantages of one system over the other, but to assess whether the type of legal system has an impact on business dynamics (i.e. firm birth rate, growth, death rate, etc.).

The following figure presents the type of legal system (and thus the origin of the bankruptcy law) in the countries addressed within the study.

Figure 4-49: Type of legal system (origin of bankruptcy law)



Origin of Bankruptcy Law					
English Common Law	*Civil Law*				*Pluralistic law (elements from Common and Civil Law)*
	French Civil Law	*German Civil Law*	*Scandina-vian Civil Law*	*Combined civil law (French and German civil law)*	
Ireland, United Kingdom	Belgium, France, Italy, Luxembourg, Netherlands, Romania, Spain	Austria, Croatia, Czech Republic, Estonia, Germany, Latvia, Montenegro, Serbia, Slovakia, Slovenia, Turkey	Denmark, Finland, Iceland, Norway, Sweden	Bulgaria, Greece, Hungary, Lithuania, Poland, Portugal	Cyprus, Malta

Source: Law and Finance, R. La Porta, F. Lopez de Silanes, A. Sheifer, R.W.Vishny

4.3.1.2 **Statistics on Bankruptcy**

This section presents available statistics in the area of bankruptcy across Europe. It should be noted that Eurostat collects only data on firm deaths. Statistics on insolvencies are available only via private sources. The two main sources on insolvency are:

- Euler Hermes (2010), Les Défaillances d'entreprises dans le monde
- Creditreform, Insolvencies in Europe 2009/2010

These two sources have been used to produce the table below checking for each country the coherence of the definition of insolvency.

Collection of harmonized data by Eurostat would be very useful in order to compare the situation across countries and to measure the impact of the regulatory framework on the level of insolvencies.

Table 4-7: Deaths and Insolvencies

	Number of deaths / 10 000 firms	Number of insolvencies /10 000 firms	Percentage of insolvencies on deaths
Austria	656	208	31,7%
Belgium	n.a.	n.a.	n.a.
Bulgaria	n.a.	n.a.	n.a.
Croatia	n.a.	n.a.	n.a.
Cyprus	171	n.a.	0,0%
Czech Rep	1 206	14	1,2%
Denmark	1 489	94	6,3%
Estonia	704	74	10,5%
Finland	754	100	13,2%
France**	970	221	22,7%
Germany	2 073	100	4,8%
Greece	n.a.	n.a.	n.a.
Hungary	1 183	165	14,0%
Iceland	n.a.	n.a.	n.a.
Ireland	82	21	25,3%
Italy	769	26	3,3%
Latvia	435	124	28,6%
Lithuania	1 879	57	3,0%
Luxembourg	798	258	32,4%
Malta	n.a.	n.a.	n.a.
Montenegro	n.a.	n.a.	n.a.
Netherlands	n.a.	92	n.a.
Norway	667	123	18,4%
Poland	n.a.	n.a.	n.a.
Portugal	1 526	19	1,2%
Romania	873	0	0,0%
Serbia	n.a.	n.a.	n.a.
Slovakia	1 434	51	3,6%
Slovenia	n.a.	124	n.a.
Spain	624	3	0,4%
Sweden	576	103	17,9%
Turkey	n.a.	n.a.	n.a.
United Kingdom	1 041	144	13,9%

Source: Eurler Hermes (except for Poland, Slovenia) and the United Kingdom Credit reform; Number of deaths, Eurostat.

The next table shows the evolution of insolvency from 2000 to 2009 across the countries in this study.

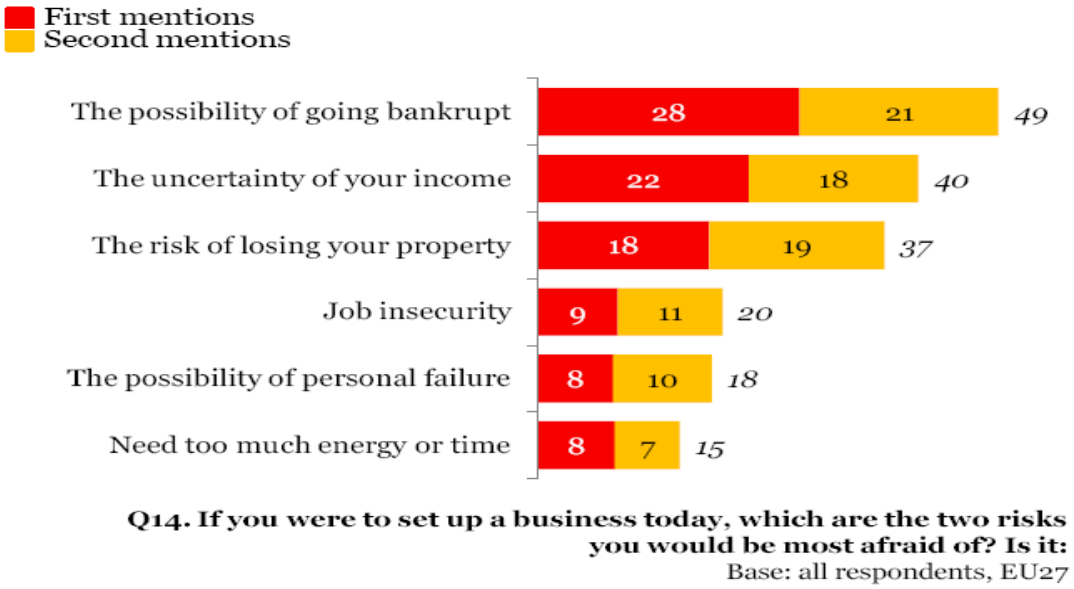
Table 4-8: Evolution of insolvency 2000- 2009 (base 100 – 2000)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Austria	100	97	99	106	118	132	126	118	118	131
Belgium	100	104	106	111	116	116	112	113	125	147
Bulgaria	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a
Croatia	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a
Cyprus	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a
Czech Rep.	100	99	87	69	59	51	51	46	45	62
Denmark	100	132	139	142	148	141	112	136	209	316
Estonia	100	88	146	157	149	143	120	69	146	280
Finland	100	98	100	98	86	80	82	81	92	126
France	100	100	102	114	113	114	109	115	133	155
Germany	100	114	132	139	139	130	121	103	104	120
Greece	100	87	72	60	72	73	67	63	70	84
Hungary	100	118	124	154	156	159	189	194	223	339
Iceland	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a
Ireland	100	129	115	101	97	94	95	97	207	383
Italy	100	92	92	90	97	104	88	52	63	86
Latvia	100	111	131	191	148	94	108	126	152	279
Lithuania	100	142	193	150	171	186	183	146	231	414
Luxembourg	100	126	115	110	112	114	105	111	98	121
Malta	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a
Montenegro	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a
Netherlands	100	121	139	178	186	189	166	129	130	228
Norway	100	100	125	146	120	99	85	80	102	152
Poland	100	130	145	139	80	76	50	37	33	48
Portugal	100	109	124	155	167	106	108	128	215	257
Romania	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a
Serbia	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a
Slovakia	100	104	125	104	82	136	142	66	48	74
Slovenia	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a
Spain	100	92	125	122	112	105	103	106	305	645
Sweden	100	110	118	122	114	101	91	86	94	121
Turkey	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a
United Kingdom	100	104	104	97	92	101	107	85	112	140

Source : Euler Hermes, Les défaillances dans le monde

Based on the findings of the Commission survey on Entrepreneurship from December 2009[71] the greatest risk would-be entrepreneurs fear, when they consider starting a new business in Europe, is the possibility of going bankrupt.

Figure 4-50: Greatest risks entrepreneurs fear when starting up a business – EU 27



Source: Flash Eurobarometer 283, May 2010

4.3.2 Survey Findings

This section presents the main findings of the survey that was implemented in the 33 countries, on views regarding legal and regulatory procedures related to bankruptcy and insolvency.

The survey covered not just the bankruptcy process *per se*, but has taken a wider view. It includes also the analysis of measures, programmes and regulations that chronologically precede the bankruptcy (in-court) procedure: from the time the company starts experiencing financial difficulties, (early warning systems) to out-of-court settlements and finally, in-court procedures.

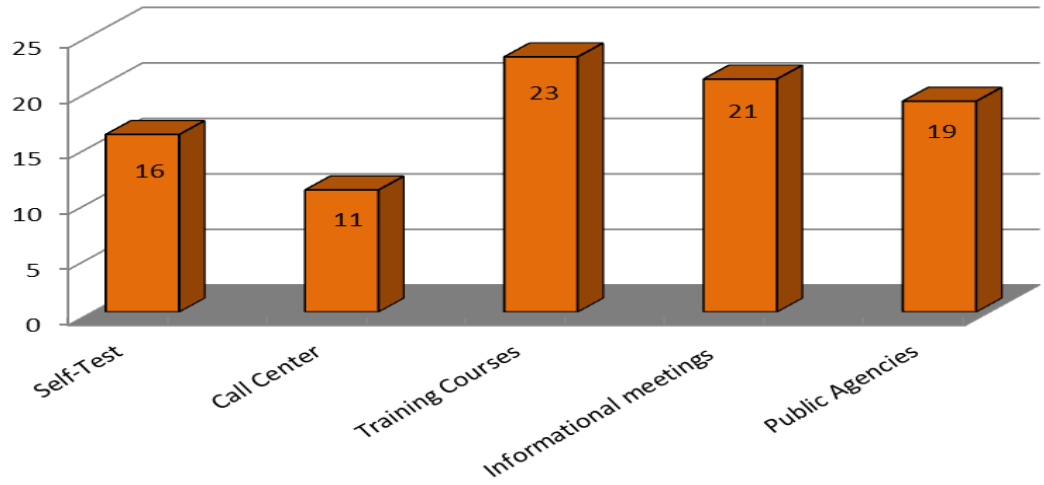
4.3.2.1 Early Warning System

Different types of early warning tools (tools that predict the probability for a business to face financial difficulties in a coming period of time) are used in the surveyed countries according to the answers received.

[71] Eurobarometer – Entrepreneurship in the EU and beyond, A survey in the EU, EFTA countries, Croatia, Turkey, the US, Japan, South Korea and China, December 2009

Training courses and informational meetings are the most common ones. Internet self – tests and call centres are not yet very widely developed[72].

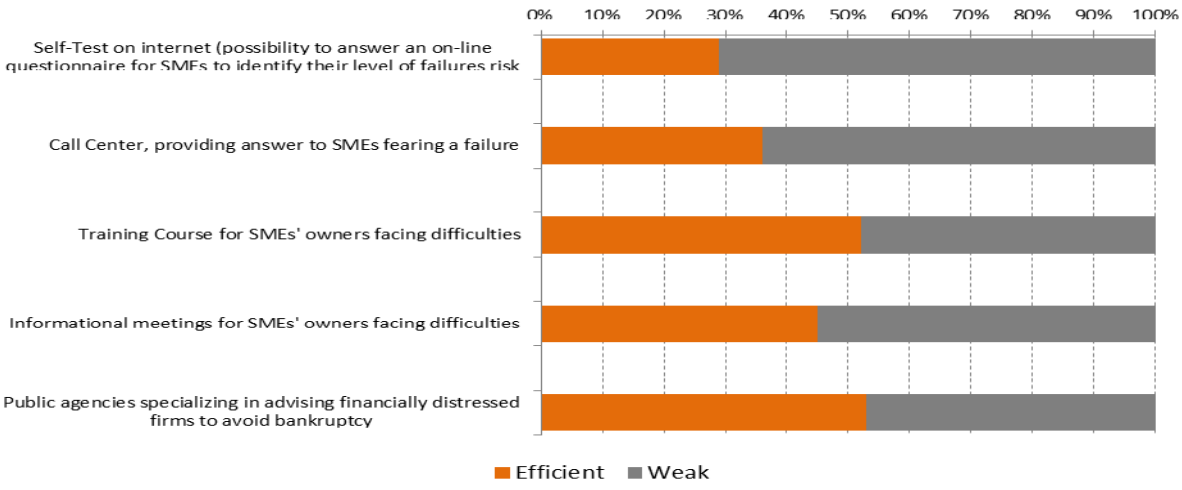
Figure 4-51: Number of countries having early warning tools



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

The level of efficiency of the different early warning tools is not perceived to be high in general. Half of the respondents consider training courses and public agencies as efficient. Self-tests on the internet and call centres are considered efficient only by 30% of the respondents.

Figure 4-52: Perceived efficiency of early warning tools (all countries)



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

[72] The European Commission has created its own web-based self-test. http://ec.europa.eu/enterprise/policies/sme/business-environment/failure-new-beginning/entrepreneurs_structure/index_en.htm

The next table presents the type of early warning tools that available per country and the respondents' perception of their efficiency.

Table 4-9: Existence and perceived efficiency of early warning tools (per country)
[Legend: 1: not efficient, 5: very efficient]

	Self-test on internet	Call centre	Training course	Informational meeting	Public Agencies
Austria					
Belgium		1	2	2	
Bulgaria			2,83	1,75	1,92
Croatia					
Cyprus				2,75	**4,50**
Czech Republic	2,36	2,56			
Denmark		**4,00**		2,75	**4,20**
Estonia	**3,33**	**3,00**	**3,50**	**3,50**	
Finland	1,89	2,56	**3,22**	**3,44**	2,67
France	2,00	2,10	2,56	2,50	4,22
Germany	**3,50**	**3,50**	**4,50**	**4,50**	**3,50**
Greece			2,29	2,29	1,57
Hungary	**4,00**				
Iceland			**3,25**		
Ireland			1,60	1,60	
Italy			1,85	1,54	
Latvia	1,75		2,67		2,75
Lithuania	2,67		**4,20**	**3,60**	**4,20**
Luxembourg			**3,00**	**3,00**	**5,00**
Malta					
Montenegro			**3,50**	2,50	
Netherlands	2,50	**3,25**	**3,25**	2,75	**3,00**
Norway	2,29		2,86	2,17	2,71
Poland	2,38		**3,69**		2,20
Portugal	1,00	1,00	1,63	1,88	1,56
Romania			**4,00**	**3,29**	
Serbia	1,50		2,60		
Slovakia			**4,25**		**4,75**
Slovenia					
Spain			2,58	2,42	1,67
Sweden	1,46	1,54	2,00	1,46	
Turkey					
United Kingdom	2,64	**3,43**	**3,29**	**3,71**	**4,07**

Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

Cells in red denote the existence of early warning tools that are considered as efficient (having average value over 3). Cells in grey refer to countries with early warning tools that are not considered to be efficient. All ratings are based on the views of the survey's respondents.
The number of early warning tools considered as efficient is generally not high, although the United Kingdom, Germany, and to a lesser extent Denmark, Estonia, Finland, Lithuania, Luxembourg, the Netherlands and Slovakia are considered to have a well-developed and efficient early warning system.
According to the respondents' knowledge, no early warning tools exist in Austria, Croatia, Malta, Slovenia and Turkey.

4.3.2.2 **Out-of-court Settlement**

Out-of-court settlement is a procedure that allows the affected creditors to find a voluntary agreement both with the debtor and among themselves in the form of recovering all or part of their receivables (with or without guarantees). It involves an agreement initiated and completed outside the judicial process (i.e. without the involvement of courts) but usually with the active involvement of lawyers. The main advantages of the out-of-court settlement procedure are lower costs, faster execution time and the fact that the debtor avoids being declared insolvent or bankrupt publicly. The disadvantages of this procedure are costs linked to the negotiation process (lawyers' fees) and the risk of non-settlement.

Out-of-court settlement exists in all countries covered by the survey except the Czech Republic. It should be noted that agreements between creditors and debtors take place in the Czech Republic (on an informal basis), however, this process cannot be part of the insolvency proceedings according to the Insolvency Act No. 182/2006. Businesses that become insolvent in the Czech Republic are required to announce this to the court to commence insolvency proceedings.

Moreover, out-of-court settlements are regulated by law or by legal practice in 16 out of the 33 countries surveyed: Belgium, Bulgaria, Croatia, Finland, France, Greece, Hungary, Iceland, Ireland, Latvia, Montenegro, the Netherlands, Poland, Portugal, Spain and the United Kingdom.

<u>In terms of the willingness to use out-of-court settlement:</u>

- In 22 countries debtors are willing to use[73] an out-of-court settlement[74].
- Banks are often willing to use an out-of-court settlement in one third of the countries[75].
- Tax authorities are the least willing to use an out-of-court settlement (only in 5 countries)[76].

In terms of the average length of time for out-of-court settlement:

The average length of time for an out-of-court settlement is difficult to estimate since it varies depending on the specific situation of a firm. The study assessed an average time for an out-of-court settlement (in months) for each country (see figure below). Marginal values have been excluded. In addition to this, the values obtained have been subject to a consistency check by comparing them with the qualitative comments of the respondents surveyed.

[73] Willing to use means that they are in principle keen or positive about using this procedure
[74] Austria, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Malta, Montenegro, the Netherlands, Norway, Slovakia, Spain, Sweden, the United Kingdom
[75] Austria, Bulgaria, Denmark, Estonia, Finland, France, Germany, Iceland, Ireland, Italy, Spain
[76] Austria, France, the Netherlands, Portugal, the United Kingdom

Figure 4-53: Average time (months) and rate of success of an out-of-court settlement

Countries	Average time of an out-of-court settlement	Rate of success of out-of-court settlements
Austria	10.8	35.5
Belgium	2	20
Bulgaria	7.1	48.3
Cyprus	7	52.5
Czech Republic	N.A	N.A
Croatia	N.A	50
Denmark	3	60
Estonia	4.5	N.A
Finland	58.6	50.8
France	5	62.5
Germany	3.5	65
Greece	8	66
Hungary	N.A	N.A
Iceland	6.8	21.7
Ireland	12	65
Italy	12	25
Latvia	3	16.5
Lithuania	9	15.75
Luxembourg	N.A	N.A
Malta	N.A	N.A
Montenegro	7	50
Netherlands	11.8	51
Norway	5.3	35
Poland	7.7	35
Portugal	9.9	44.5
Romania	3	42.5
Serbia	12	45
Slovakia	2.8	50
Slovenia	8.5	60
Spain	7.8	70
Sweden	2.4	60.8
Turkey	N.A	50
UK	5	50

Top
Medium
Low

Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

The rate of success of out-of-court settlements is approximately 42% based on the opinions of the survey's respondents.

Denmark, France and Germany have shown a higher rate of success in a short length of time (less than 5 months). Spain has an even higher level of success (70%) but reports a slightly longer duration (8 months).

The Netherlands and Italy have a low rate of success and an extended length of time (11.8 and 12 months respectively).

However, no evidence of correlation between length of time and rate of success could be found.

4.3.2.3 In-court Reorganisation

In-court reorganisation is a bankruptcy procedure, under the control of the courts, whereby continuation of the firm's business activity offers better perspectives of generating income (and thus a better recovery rate for the creditors) than liquidation. The bankrupt business is allowed to continue trading under the supervision of an administrator appointed by a court as long as it meets the agreed repayment plan. In-court reorganization gives the opportunity to firms facing financial difficulties to avoid bankruptcy.

Based on the views of the survey's respondents, in-court reorganization exists in the vast majority of countries (29 out of 33 countries). In the case of the Czech Republic the views of respondents were diverse, however, according to respondents with a legal background the legislation foresees in-court reorganisation proceedings.

In Croatia, Hungary, Slovenia and Sweden at least half of the respondents were uncertain on the existence of in-court reorganisation, while the remaining answers included both positive and negative responses without a clear lead of either of the two types of answer.

Moreover, according to the views of the survey's respondents:

- There are specific in-court reorganization procedures for sole proprietorships in Finland, France, Ireland, Italy, Lithuania and Spain.
- There are different procedures with respect to honest and dishonest entrepreneurs facing bankruptcy in Cyprus, the Czech Republic, Finland and the United Kingdom.

The possibility for in-court reorganisation procedures exists in most countries, but their application, i.e. the number of company reorganisations realized varies significantly among countries, with Austria, France, Spain, the United Kingdom and Finland showing a high rate of reorganisations.

Table 4-10: In-court reorganization

Countries	In-court-reorganisation			Specific in-court reorganisation procedures for sole proprietorships	Different procedures for honest & dishonest bankruptees	Reorganisations as % of insolvencies
	Yes	No	Unclear Answer / Not Available			
Austria	1					33%
Belgium	1					
Bulgaria	1					
Cyprus	1				1	
Czech Republic	1				1	
Croatia			3			
Denmark	1					
Estonia	1					
Finland	1			1	1	0,115
France	1			1		0,317
Germany	1					
Greece	1					
Hungary			3			0,005
Iceland	1					
Ireland	1			1		0,017
Italy	1			1		
Latvia	1					
Lithuania	1			1		
Luxembourg	1					
Malta	1					
Montenegro	1					
Netherlands	1					4%*
Norway	1					0,003
Poland	1					0,17
Portugal	1					
Romania	1					
Serbia	1					
Slovakia	1					
Slovenia			3			
Spain	1			1		0,461
Sweden			3			0,006
Turkey	1					
United Kingdom	1				1	0,193

Legend	
1	Yes
2	No
3	Unclear Answer / Not Available

Source: Business Dynamics Survey 2010,
Source for number of reorganisations as a % of insolvencies: OECD (2004), * National Source (2006)

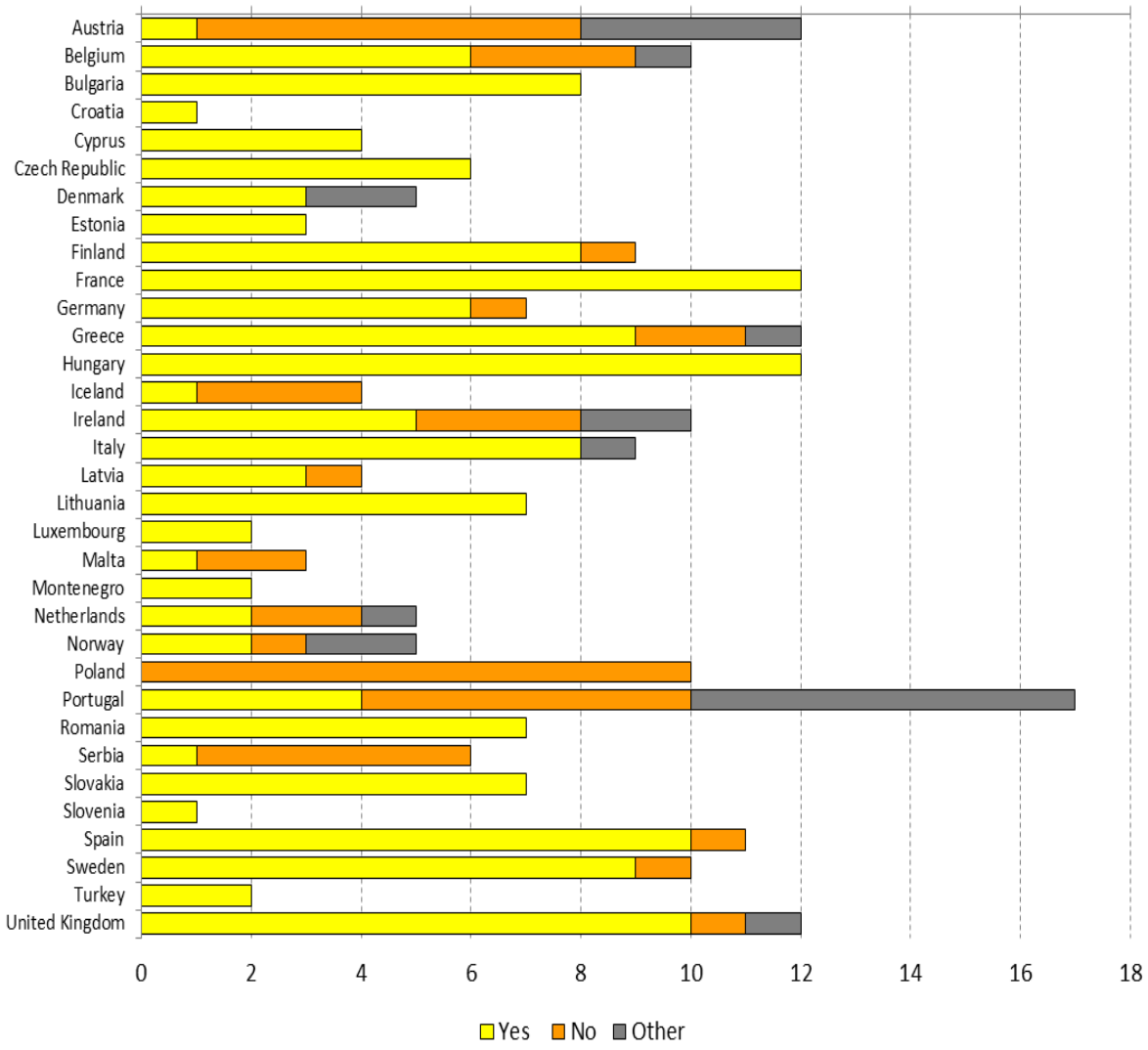
Legislation offers the possibility for reorganisation and thus continuation of firms facing difficulties, but in practice this solution is not implemented broadly. Insolvency is the outcome in the vast majority of cases.

With respect to the possibility of relief from debt not paid in accordance with the repayment plan:

According to respondents' views, in the majority of countries (except Austria, Iceland, Malta, Poland, Portugal and Serbia) the repayment plan encompasses a plan for repaying part of the debt as well as a relief from debt not paid back.

Figure 4-54: Is there any plan for repayment of part of the debt and relief from debt not paid back according to the repayment plan?

(Number of answers per country)

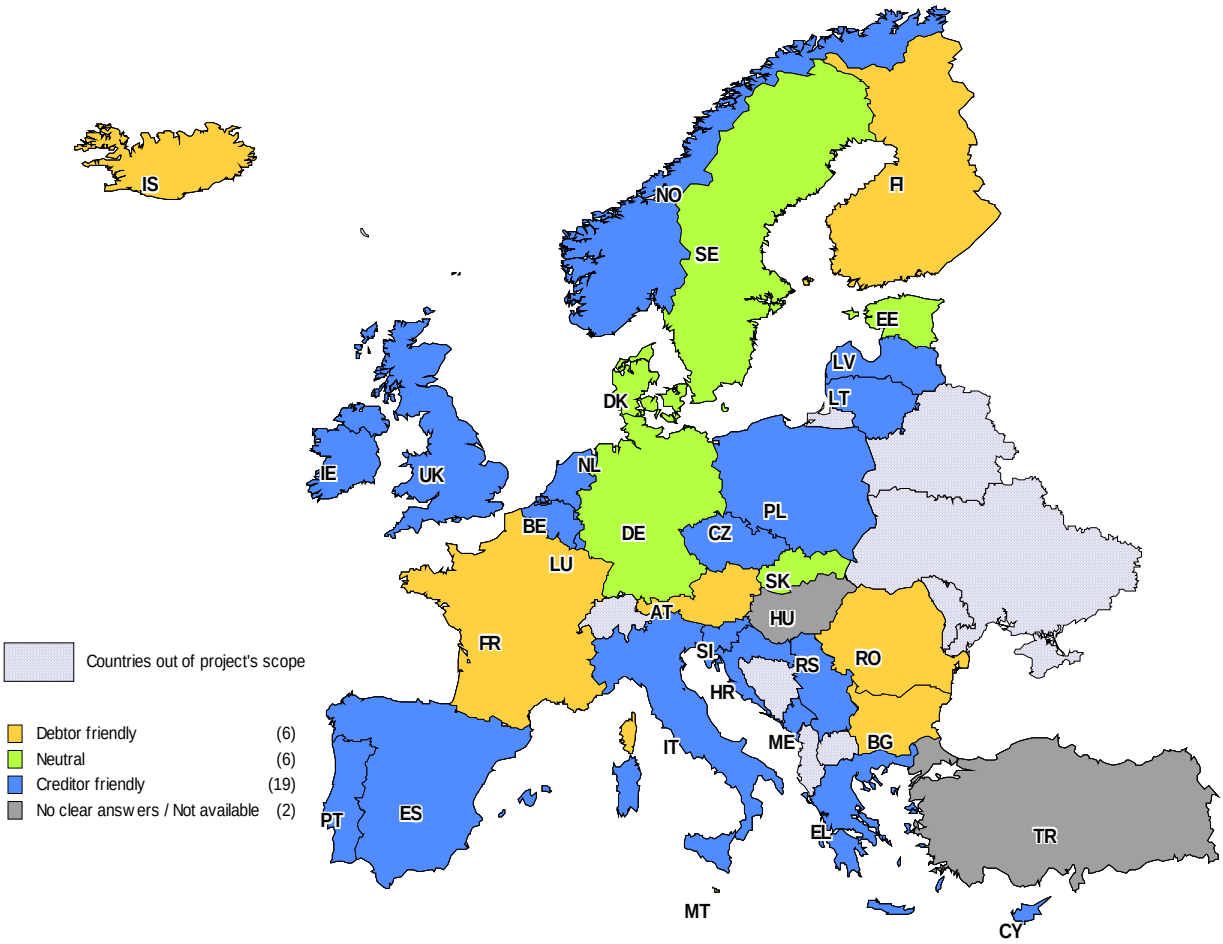


Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

With respect to the perceived 'attitude' of the courts (i.e. to what extent they are debtor or creditor friendly):

According to the views of the survey's respondents most of the courts are generally favourably disposed towards creditors, except in Austria, Bulgaria and Finland where they are considered to generally favour debtors. In Denmark, France, Germany, Iceland, Slovakia and Sweden the courts are considered to be neutral. The next map shows the prevailing perceptions among respondents per country.

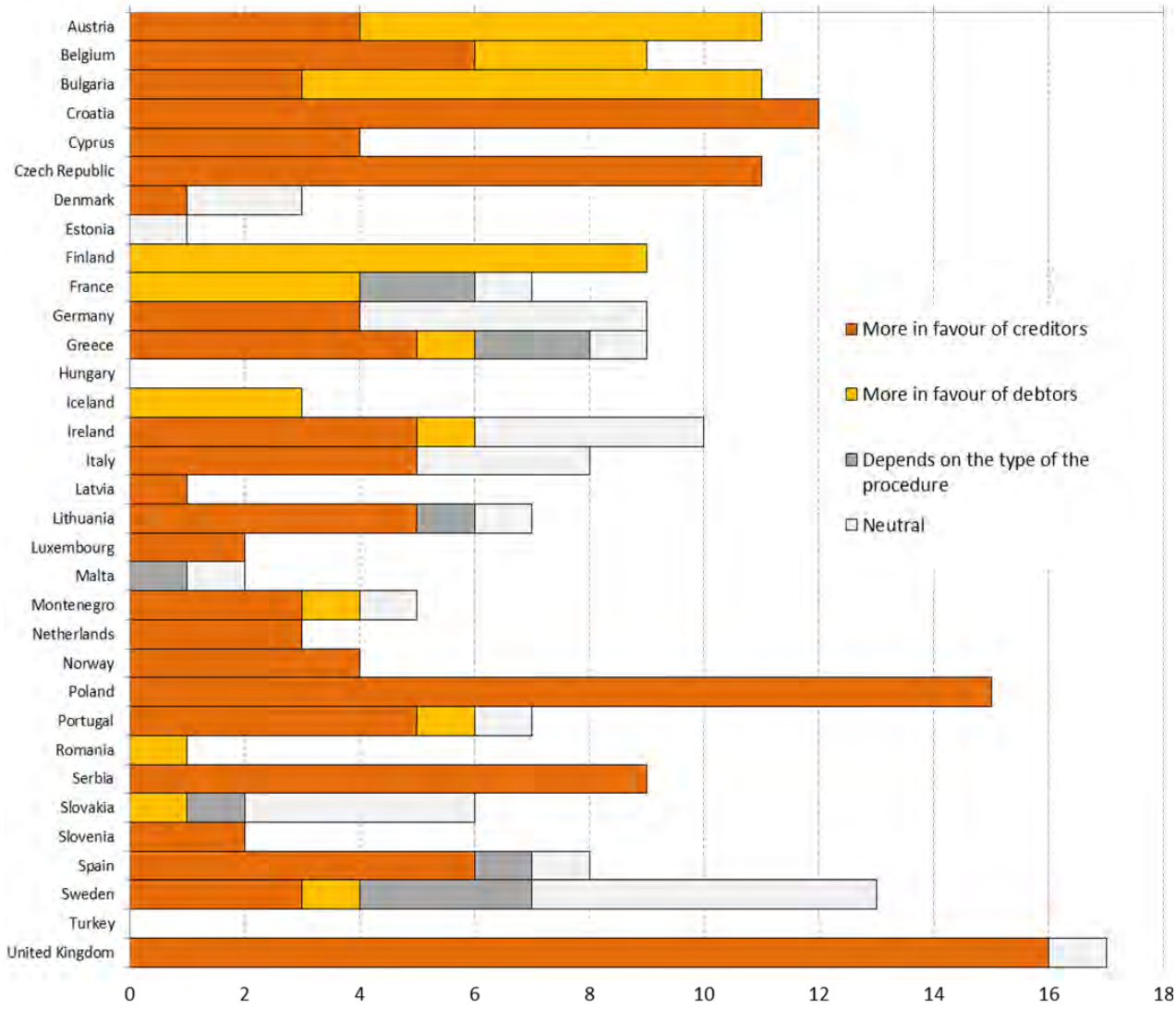
Figure 4-55: Debtor friendly/ Creditor Friendly



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

The following figure shows the allocation of answers among respondents per country.

Figure 4-56: Are courts generally in favor of creditors or debtors?



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

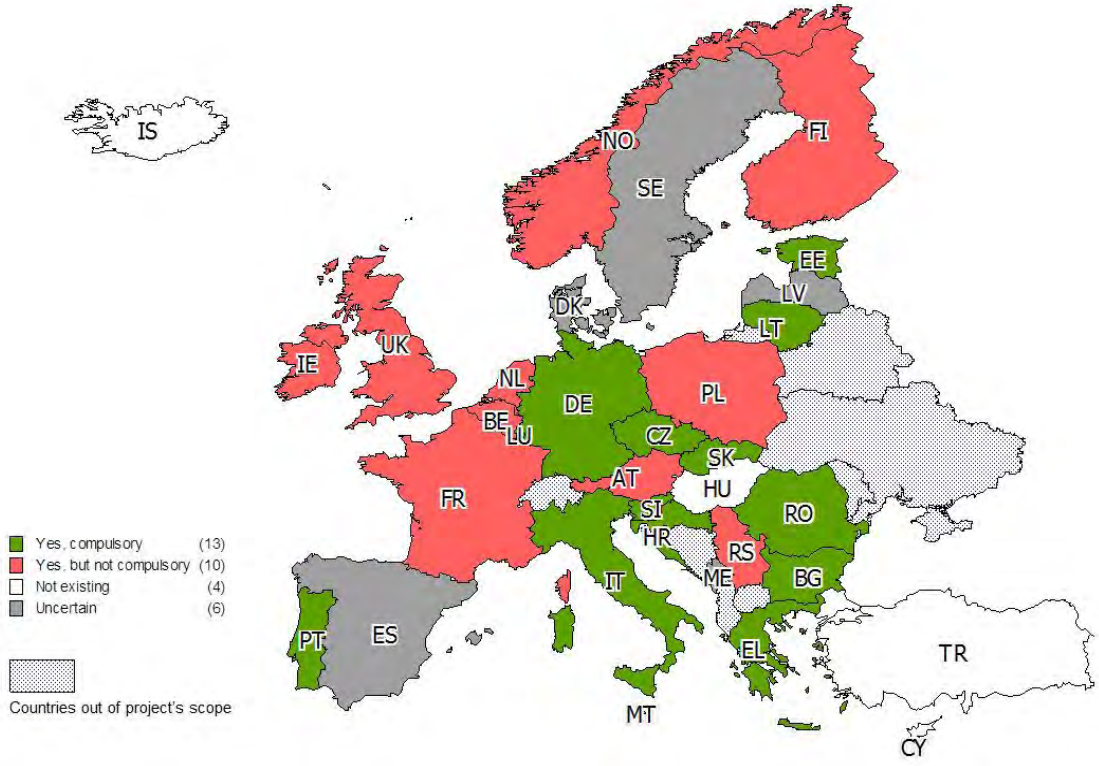
Debtor-friendly laws are considered to lead to a higher number of insolvencies because they establish ownership rights which are advantageous to the debtor. In countries with debtor-friendly legislation a business has in general a higher incentive to pursue insolvency since an insolvent company can frequently use the rules to its own benefit, as e.g. when it comes to reach an out-of-court settlement with creditors.

As an example, the French "procedure de redressement judiciaire" is debtor-friendly. Facing this debtor-friendly system, French banks have adapted their lending policies, by requesting more securities and guarantees from the firm's owner who wants to receive bank loans.

With respect to the existence of creditors' committees:

According to the respondents' views in all countries surveyed (except Cyprus and Hungary) creditors' committees[77] exist for in-court procedures.

Figure 4-57: Do creditors' committees exist for in-court procedures?



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

4.3.2.4 **Fast Track Procedures**

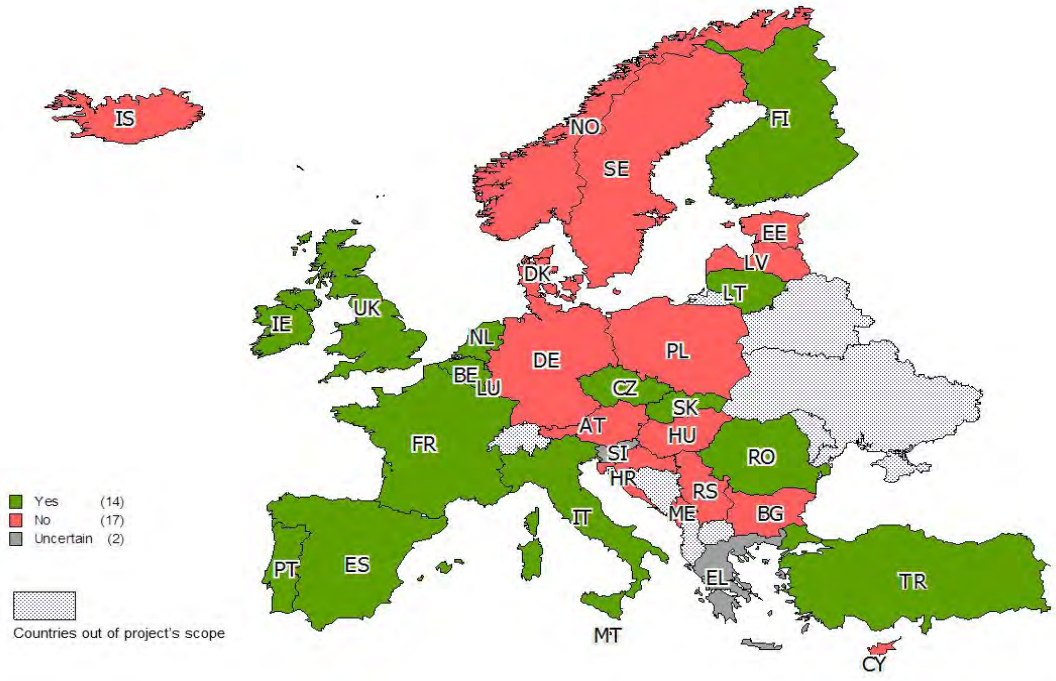
Fast track liquidation procedure is a faster and less costly procedure to liquidate the bankrupt business assets usually in cases of small number of debtors and undisputed debts. This procedure may also produce a quicker recovery of debts for some creditors (compared to other creditors), or the possibility for the debtors to quickly dispose-off some assets so that imminent due debts can be repaid and insolvency or bankruptcy may be avoided (with the risk of the debtor being later accused of reckless / fraudulent behaviour).

[77] The coordination among creditors increases the efficiency of in-court procedures. On the contrary, when there is no coordination among creditors, the first creditor to take action against the SME will be the first to obtain relief, which is not necessarily economically efficient, and encourages the creditors to rush to collect the debt.

A number of respondents to the survey had difficulties in interpreting the question "Do fast track procedures exist for SMEs that file for reorganisation?" which resulted in replies that are incoherent with the actual situation in the respective countries.

According to the views of the survey's respondents, fast track procedures exist in Belgium, the Czech Republic, Finland, France, the Netherlands, Slovakia, Spain and the United Kingdom.

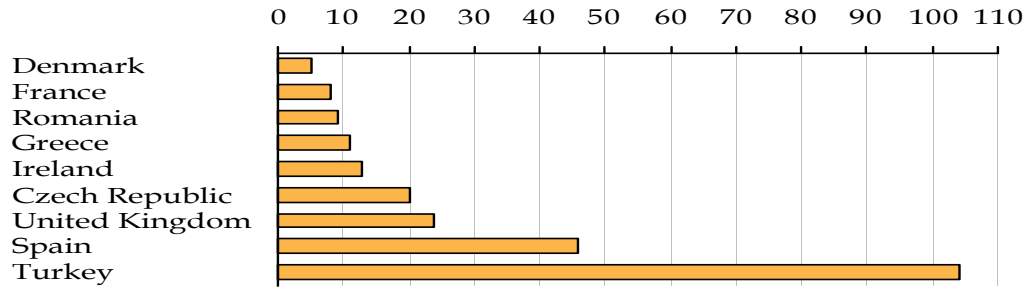
Figure 4-58: Do fast track procedures exist for SMEs that file for reorganization?



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

The average length of time for fast track procedures across the surveyed countries is reflected in the map below.

Figure 4-59: The average length of time for a fast track procedure (in months)



Source: Business Dynamics Survey 2010
Note: No fast-track procedures in Austria, Bulgaria, Cyprus, Croatia, Estonia, Germany, Hungary, Iceland, Italy, Latvia, Lithuania, Malta, Montenegro, Poland, Serbia, Sweden
No data available from Belgium, Finland, Luxembourg, the Netherlands, Norway, Portugal,

Slovakia, Slovenia
Data is based solely on the views and perceptions of the survey's respondents

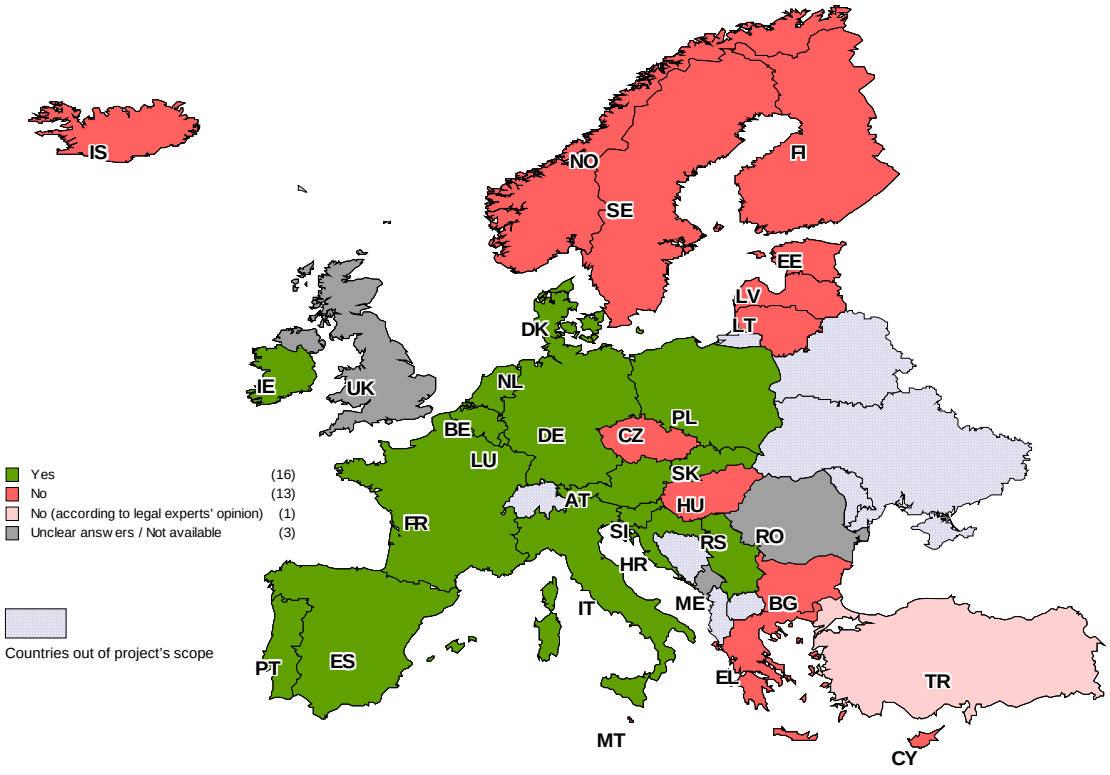
4.3.2.5 Existence of Specialized Courts for Bankruptcy

According to the survey's respondents, specialized courts (or sections within courts[78]) dealing with restructuring and liquidation exist in 16 countries.

In the case of Turkey, the views of respondents were diverse, however according to respondents with a legal background there are no specialised courts dealing with liquidation issues.

It should be noted that in the United Kingdom, Romania and Montenegro, the responses reflected uncertainty or were highly diverse.

Figure 4-60: Are there courts and/or sections within courts specialized in restructuring and liquidation?



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

[78] It should be noted that in many countries, courts do not exclusively focus on restructuring and liquidation but deal with these aspects as part of their more general duties.

4.3.2.6 Perception of Expertise, Independence and Ethics of Courts

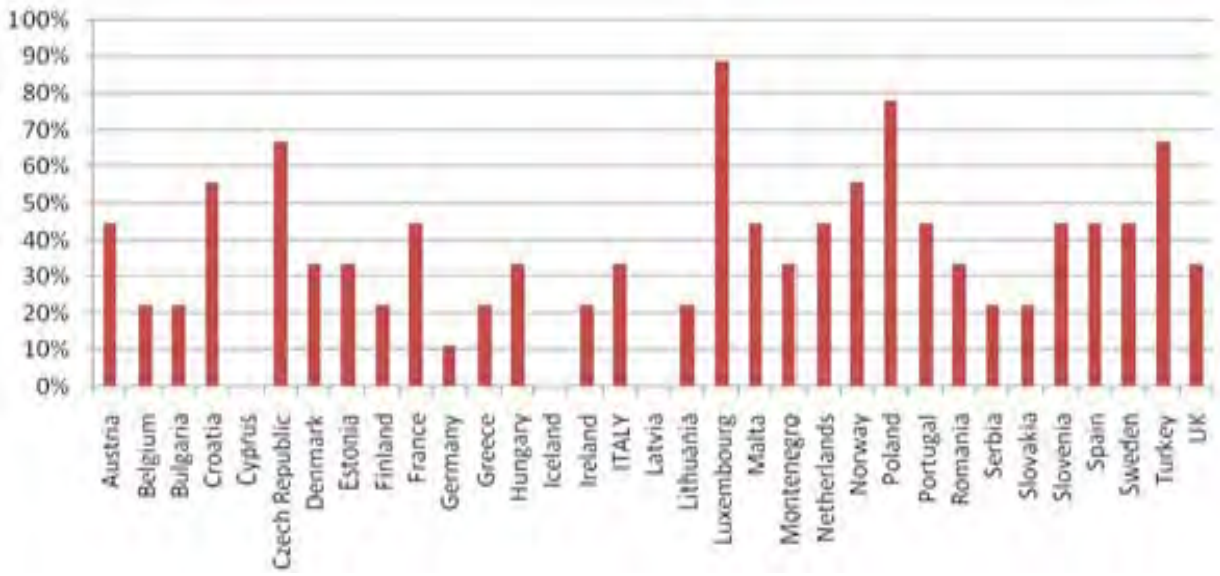
In general, ethics and independence of judges are considered to be high across Europe. 70% of the respondents rated the independence of judges as high or very high across the surveyed countries.

The evaluation of the perceived quality of judgements in Europe is highly correlated with the expertise of the judges; countries with specialized courts dealing with liquidation are considered to have judges with a higher level of expertise.

4.3.2.7 Knowledge and Comprehension of the Bankruptcy Legal Framework

Judging from the responses obtained, selected respondents did not seem to be fully familiar with the existing bankruptcy legal framework. In fact, respondents had varying reactions to questions to which one would normally expect to obtain unique answers (e.g. on the existence of specific legal provisions). The variety of answers manifests a lack of comprehensive knowledge of the bankruptcy legal framework and/or of its application in the respective country.
Among questions receiving varying responses, the most predominant are those questions related to fast track procedures and creditor committees.

Figure 4-61: Proportion of questions presenting difficulty to answer per country



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

4.3.3 Economic Analysis

In order to measure the impact of the bankruptcy law and practices on business dynamics, three indices have been developed:

(i) composite index of ex-ante efficiency
(ii) composite index of efficiency of the bankruptcy law procedures
(iii) index of efficiency of the bankruptcy framework

These indices are based on:

Efficiency:

- Ex-ante efficiency: optimal decision concerning the closure or continuation of the firm, optimal allocation of assets.
- Ex-post efficiency: facilitating negotiation among parties, facilitating access to out-of-court settlement, reorganization plans and all available procedures, efficiency of the procedures.

Bankruptcy law and impact on costs:

- Reduced direct costs (lawyers' fees, administrative expenses, opportunity cost) by forcing parties to come to an agreement within a limited period of time
- Reduced costs from liquidity constraints (the losses that occur from running the operations while the firm is financially distressed) facilitate the ability of a firm to raise new financing.

Impact of bankruptcy legislation on entrepreneurial activity:

- Ex-ante: impact on the number of potential entrepreneurs who are willing to take risks. The rational entrepreneur, considering costs and benefits of going into business, will be influenced by the severity of bankruptcy laws as they will affect his willingness to set up a business.
- Ex-post: social and financial rehabilitation, whereby the latter gives to failed entrepreneurs the ability to return to the market place.

The first two indices have been calculated based on information collected through the bankruptcy survey, while the third one is an aggregation of the other two.

4.3.3.1 Composite Index of Ex-ante Efficiency

A composite index of ex-ante efficiency of the bankruptcy law has been calculated by summing the values assigned to the factors listed below. Each value was awarded points on a scale of 0 to 1, in accordance with the extent of a favourable effect in increasing the efficiency of the bankruptcy law.

- Average time of out-of-court settlement

  Average time has been estimated by each respondent and the average for each country has been calculated after excluding extreme values among these responses. Eventually, countries have been ranked on a scale of 0 to 1, where 1 was assigned to the country where out-of-court settlement was assessed to require the least average time.

- Promotion of out-of-court settlement

  The value of 1 was assigned when respondents mentioned the existence of a tendency to promote out-of-court settlement.

- Creditors willing to use out-of-court settlement

  The questionnaire identified 4 groups of creditors: banks, institutional investors, venture capitalists and tax authorities. 1 point was assigned when all 4 types of creditors were mentioned as willing to use out-of-court settlement, while 0.7, 0.5, 0.25 or 0 was assigned when 3, 2, 1, or none of the groups of creditors, accordingly, were mentioned as willing to use out-of-court settlement.

- Access to out-of-court settlement for debtors

  The value of 1 was assigned when respondents mentioned that debtors are "very often" willing to use out-of-court settlement, while 0.5 was assigned in cases where the response was "often".

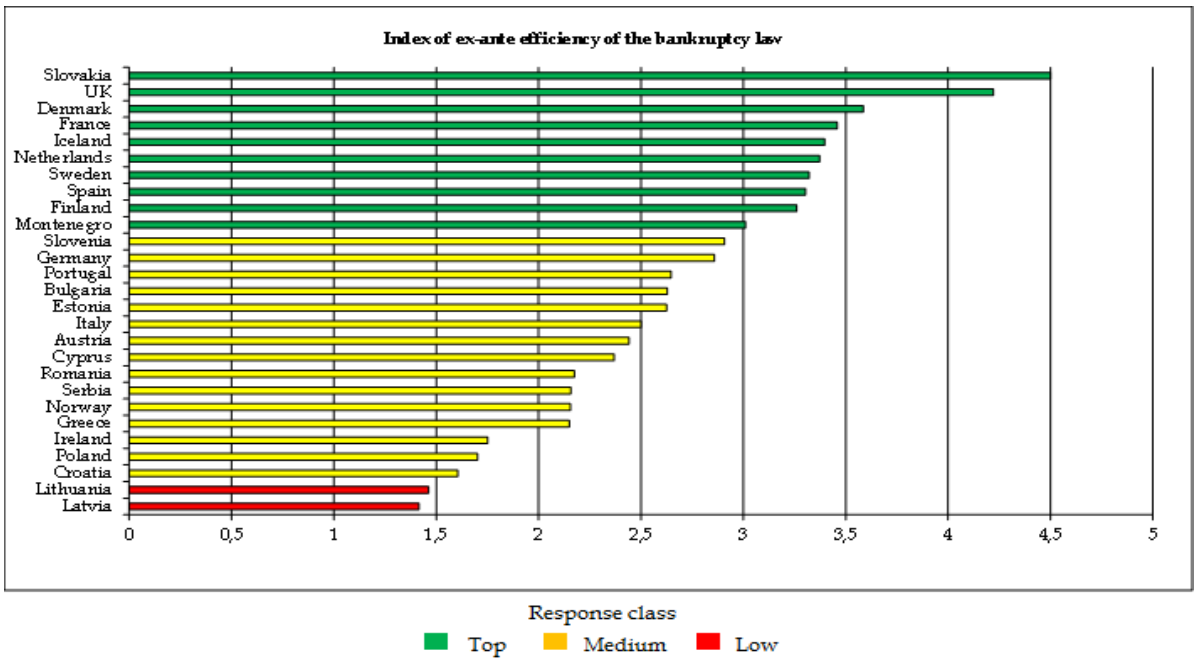
- Rate of success of out-of-court settlement

  Rate of success has been estimated by respondents and the average for each country has been calculated after excluding extreme values among these responses. Eventually, countries have been ranked on scale of 0 to 1, i.e. an average of 60%, is ranked 0.6.

- Existence of fast track procedures for SMEs

  The value of 1 was assigned when respondents mentioned that fast track procedures exist in their country.

Figure 4-62: Composite index of ex-ante efficiency



(Legend: 0: lowest level of efficiency to 1: highest level of efficiency)
Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

4.3.3.2 Composite Index of Efficiency of the Bankruptcy Law Procedures

The index of efficiency of the bankruptcy law procedures has been calculated by summing the values assigned to the factors listed below, when the situation is considered favourable to increase the ex-ante efficiency of the bankruptcy law (based on the composite index of ex-ante efficiency).

- Court neutrality

  The value of 1 was assigned when respondents have considered that, in general, courts are neutral (i.e. not in favour of debtors or creditors).

- Existence of plan for repayment of the debt

  The value of 1 was assigned when respondents mentioned that plan for repayment is available.

- Length of time for debt plan repayment

  The value of 1 was assigned when the length of time for debt plan repayment was mentioned to be less than 12 months and the value of 0.5 was assigned when the length of time is between 12 and 24 months.

- Separation of judicial and administrative roles

  The value of 1 was assigned when respondents mentioned that judicial and administrative roles are dissociated.

- Existence of creditors' committee

  The value of 1 was assigned when respondents mention that creditors' committees exist and are compulsory, while the value of 0.5 was assigned when the creditors' committees are not compulsory.

- Existence of tax legislation increasing the recovery of the creditors

  The value of 1 was assigned when tax legislation increasing the recovery of the creditors exists.

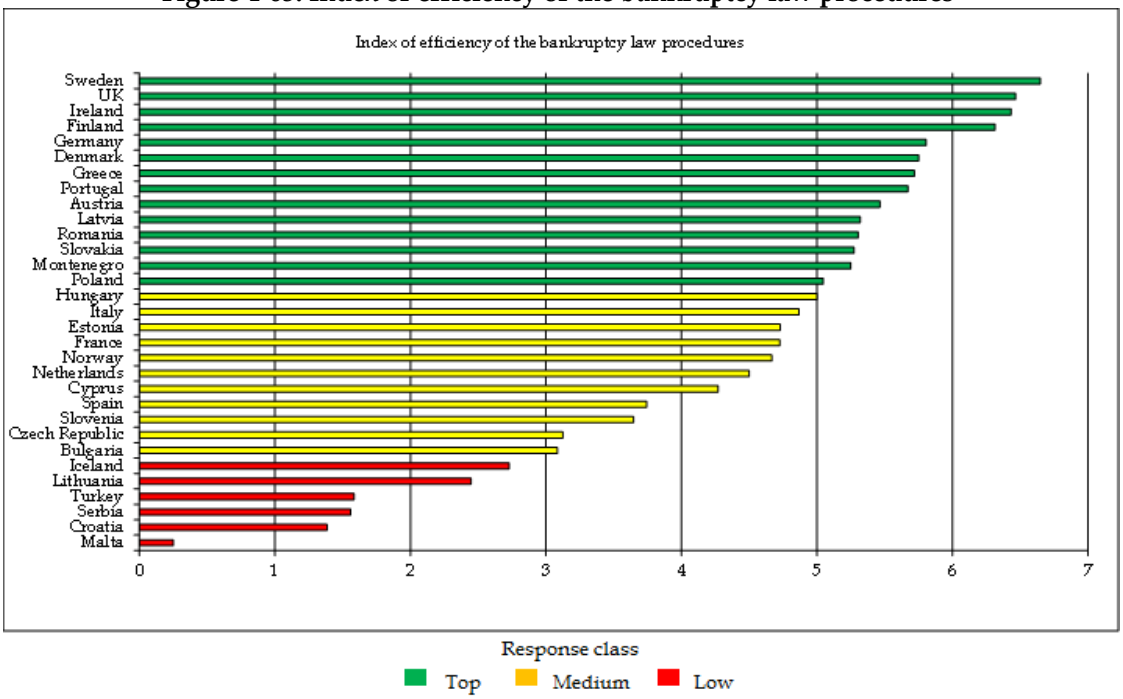
- Expertise, ethics, independence of judges

  The answers to the survey's questions on expertise, ethics and independence of judges have been aggregated. The value of 1 was assigned when experts gave higher evaluations and the value of 0 was assigned when the lowest evaluations were made.

- Average time of bankruptcy procedures

  Average time of bankruptcy procedures has been estimated by each respondent and the average for each country has been calculated after excluding extreme values among those responses. Eventually, countries in the first quartile (top 25%) have ranked as 3, in the second quartile as 2 and in the third quartile as 1.

Figure 4-63: Index of efficiency of the bankruptcy law procedures

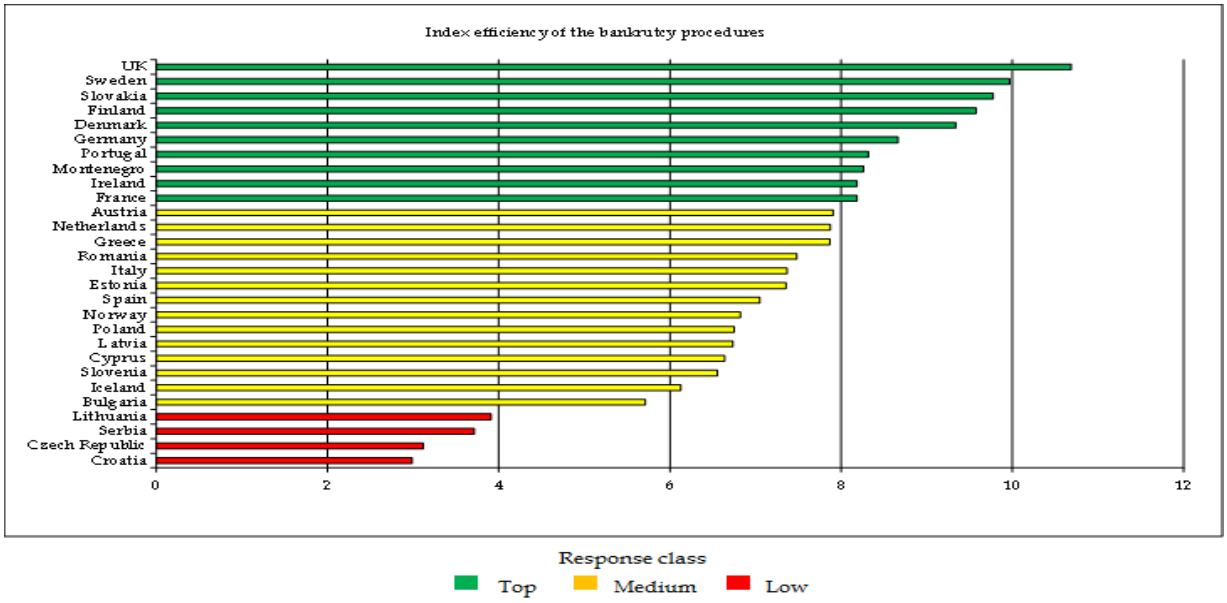


Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

4.3.3.3 Aggregated Index of Efficiency of the Bankruptcy Framework and Procedures

The aggregation of the two indices above yields an overall measure of efficiency of the bankruptcy framework.

Figure 4-64: Index of efficiency of the bankruptcy framework and procedures



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

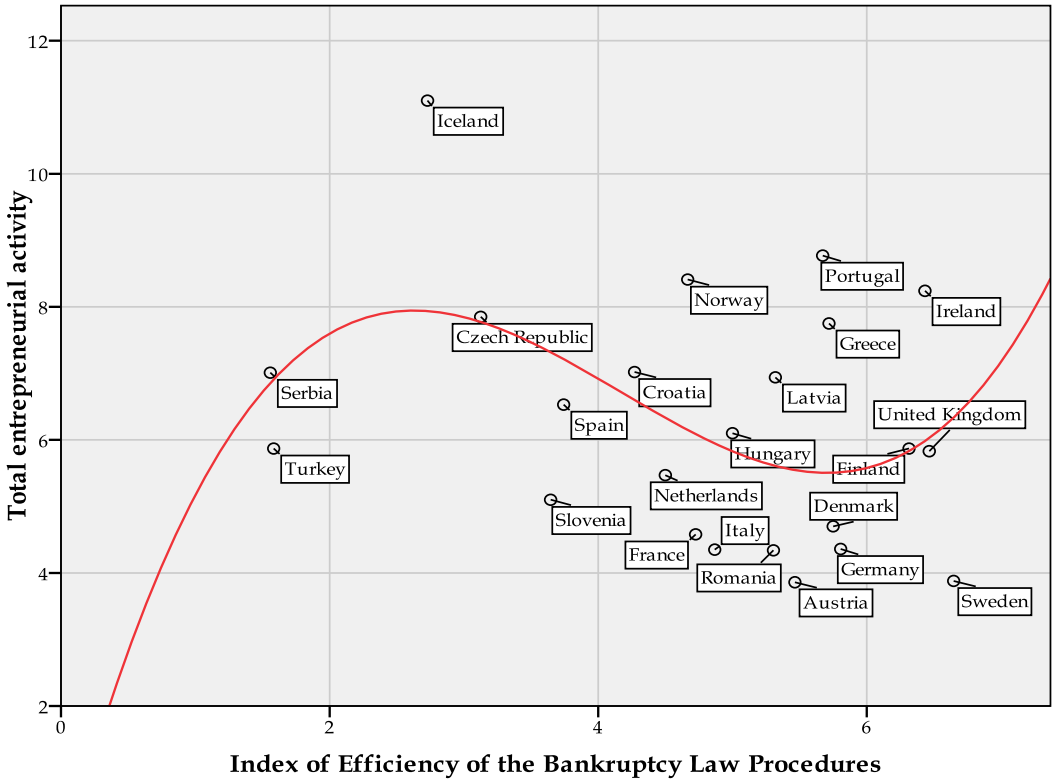
The graph above collects the aggregate opinion of the experts consulted during the survey on the efficiency of the national bankruptcy systems. It indicates on a scale from 0 (non efficient) to 12 (very efficient) the level to which each national system is able to support:

- The fair conclusion of the bankruptcy process in either closure or continuation of a firm's operations, resulting in the optimal allocation of assets involved.
- The timely and productive execution of critical procedures related to the bankruptcy process itself.

In order to investigate the relationship between ''Total entrepreneurial activity'' and ''Index of efficiency of bankruptcy law procedures'' a regression analysis was performed.
As a result of this analysis the following graph presents:

(a) The positioning of each country with respect to these two variables
(b) the best fit curve (Cubic) to measure their correlation

Figure 4-65: Level of entrepreneurship and level of efficiency of the bankruptcy procedures



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

Regression analysis based on a calculated correlation coefficient of Corr(X,Y)=-0.302, suggests that there is no significant correlation between the two variables ''Index of efficiency of bankruptcy law procedures''and ''Total entrepreneurial activity''.

There is no evidence of a significant correlation between the level of entrepreneurship and the level of efficiency of the bankruptcy procedures, taking into consideration the criteria included in the calculation of the bankruptcy efficiency index.

This lack of correlation may actually be related with the profile of the survey's respondents who were predominantly lawyers, judges, consultants, representatives of chambers and professional organisations and only a few SME owners. An important gap exists between the law and its objectives on one hand, and the way it is applied and seen by entrepreneurs on the other. In most countries the legislation has been improved to become more favourable to the economic actors but its efficiency depends heavily on the mode of implementation. For example, in countries with common law the bankruptcy procedures are supposed to be flexible and not time consuming, but in fact they may be very costly. Furthermore, countries favouring swift bankruptcy procedures may enhance a trend to business failures instead of allowing business owners to evaluate different options when facing difficulties.

4.3.3.4 Impact of the Bankruptcy Law and Practices on Business Dynamics

This section analyses the impact of the bankruptcy law and practices on business dynamics, focusing on firm birth rate and firm death rate.

Impact of the type and orientation of legal system on business dynamics

An analysis was performed on the impact of the origin of the bankruptcy law (common law, type of civil law).

As shown in the table below, the type of legal system (common law, type of civil law) does not have a direct impact on the efficiency of bankruptcy procedures.

Nevertheless some observations can be made:

- Countries with the English Common Law system have a high rate of insolvencies compared to the rates of firm deaths.
- Countries with French Civil Law have a lower rate of insolvencies compared to the rate of firm deaths.

Table 4-11: Impact of type and orientation of legal system on business dynamics

Type of legal system	Birth Rate %	Net birth rate Number of enterprise births / number of enterprise deaths %	Survival Rate %	TEA %	Number of insolvencies / 10 000 firms	Percentage of insolvencies on company death
Creditor friendly	10,3	1,5	71,3	6,7	72,8	9%
Neutral	11,4	1,4	71,7	5,8	73,3	10%
Debtor friendly	10,1	1,2	70,8	6,4	**176,2**	**23%**
Scandinavian Law	10,2	1,3	75,3	5,7	105,0	14%
French Civil Law	10,2	1,3	69,5	5,8	71,9	**7%**
English Common Law	12,4	1,3	79,6	**8,4**	82,6	**20%**
German Civil Law	**8,8**	1,0	68,5	5,4	107,4	13%

Source: Business Dynamics Survey 2010; Eurostat

There is no evidence of impact of the type of legal system on the level of entrepreneurship (birth rate, TEA, Survival rate). Hence, no evidence exists regarding the advantage of one legal system towards the other in creating more firms and eventually more jobs.

In relation to the impact of debtor-friendly vs. creditor-friendly bankruptcy framework, debtor-friendly bankruptcy systems have a higher rate of insolvencies than creditor-friendly ones.

Whether the bankruptcy framework is debtor- or creditor friendly - does not seem to have an impact on the efficiency of bankruptcy procedures.

Figure 4-66: Composite index of ex-ante efficiency / Debtor friendly-Creditor friendly bankruptcy legal system

	Debtor Friendly	Neutral	Creditor Friendly
Higher Efficiency	UK, Netherlands, Spain, Montenegro, Slovenia, Portugal	Slovakia, Dennmark, Sweden, Germany, Estonia	France, Iceland, Finland, Bulgaria
Lower Efficiency	Italy, Czech Republic, Serbia, Norway, Greece, Ireland, Poland, Cyprus,Lithuania, Latvia, Croatia		Austria, Romania

Legend	
1	Debtor Friendly
2	Neutral
3	Creditor Friendly

Legend	
Higher Efficiency	0,0 - 2,5
Lower Efficiency	2,6 - 4,5
No Data Available	Belgium, Hungary, Luxembourg, Malta, Turkey

Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

Impact of out-of-court settlement procedures on firm death rate

In order to investigate the relationship between ''Rate of success of out-of-court settlement'' and ''Death rate'' a regression analysis was performed.

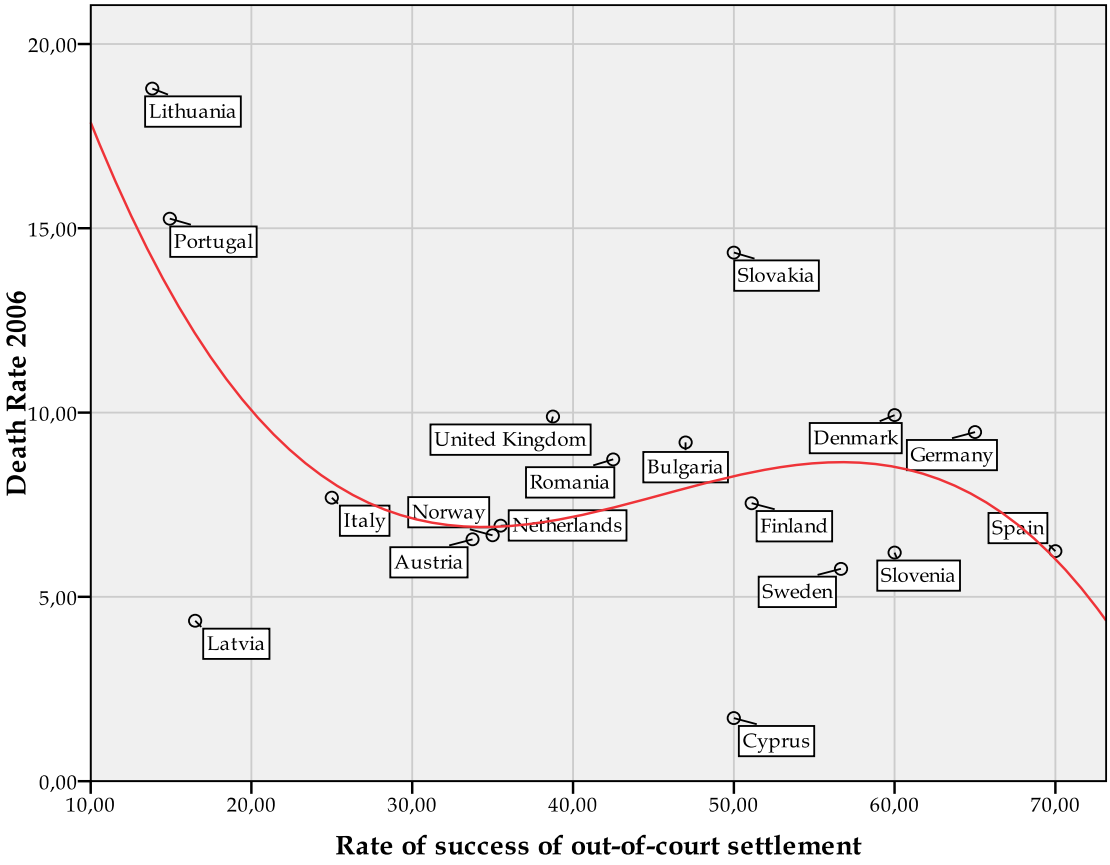
Regression analysis, based on a best-fit cubic curve, yields a calculated correlation coefficient of Corr(X,Y)=-0.359 suggesting that there is a weak negative correlation between the two variables ''Death rate'' and ''Rate of success of out-of-court settlement''.

Furthermore, in countries in which out-of-court settlements are dominant (i.e. Spain and Italy) bankruptcy rate is very low. However, in such countries, an important number of firms facing financial difficulties may still exist but may not be formally traceable since there is a lack of statistics regarding the number of out-of-court settlements.

Successful out-of-court settlements are to a certain extent linked to a lower level of firm deaths.

The above analysis is presented in the following graph.

Figure 4-67: Impact of success rate of out-of-court settlement on firm death rate



Source: Business Dynamics Survey 2010; Eurostat

Moreover, countries with efficient out-of-court settlements have both a lower rate of insolvencies and a higher survival rate of firms when compared to the other studied countries.

The above finding is supported by data in the following table.

Table 4-12: Impact of efficiency of out-of-court settlement procedure on business dynamics

Countries with	Birth Rate %	Net birth rate Number of enter-prise births / number of enter-prise deaths %	Survival Rate %	TEA %	Number of insol-vencies /10 000 firms	Percentage of insolvencies on company death
Efficiency of out-of-court settlement (low or very low)	10,9	1,5	69,6	6,7	102,3	12%
Efficiency of out-of-court settlement (high or very high)	11,1	1,3	**76,5**	6,1	**72,4**	11%

Source: Business Dynamics Survey 2010, Eurostat

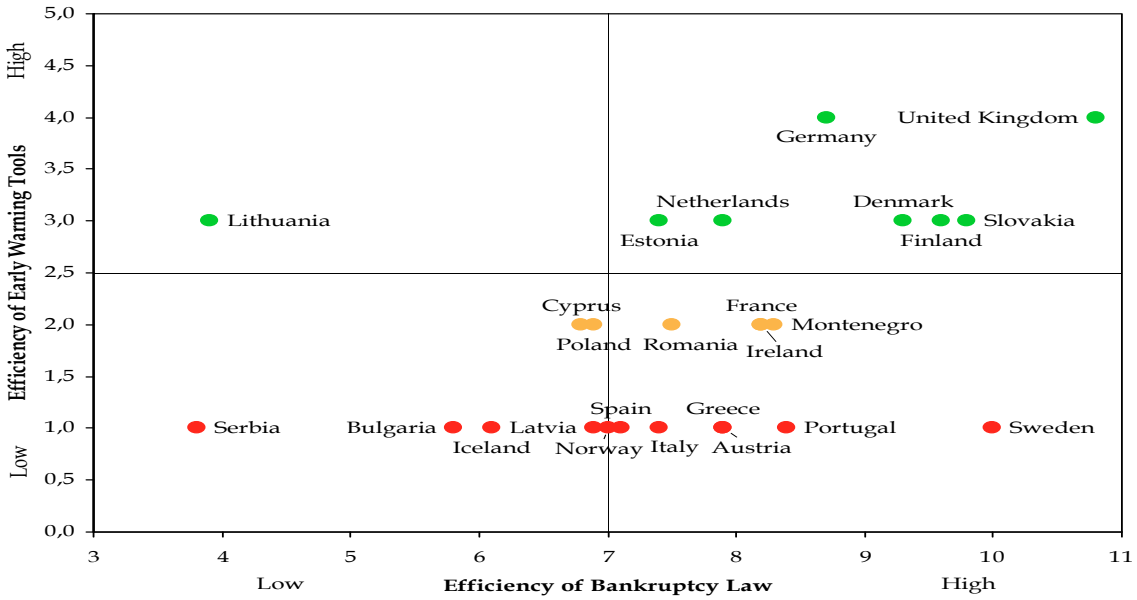
Impact of early warning tools

Based on the data in the table presented in Appendix III it can be observed that countries with an efficient bankruptcy law are also countries with efficient early warning tools (i.e. the United Kingdom, Slovakia, Finland, Denmark and Germany).

However, not all countries with an efficient bankruptcy law have early warning systems in place. For example, Portugal and Sweden are considered to have efficient procedures but they are lacking efficient early warning tools.

On the other hand, no correlation can be observed between the existence of early warning tools and the number of insolvencies.

Figure 4-68: Index of efficiency of bankruptcy law and efficiency of early warning tools



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents
Note: Green colours indicate high efficiency of early warning tools, orange indicates medium efficiency and red low efficiency

Best practice countries typically combine efficient bankruptcy law and early warning tools.

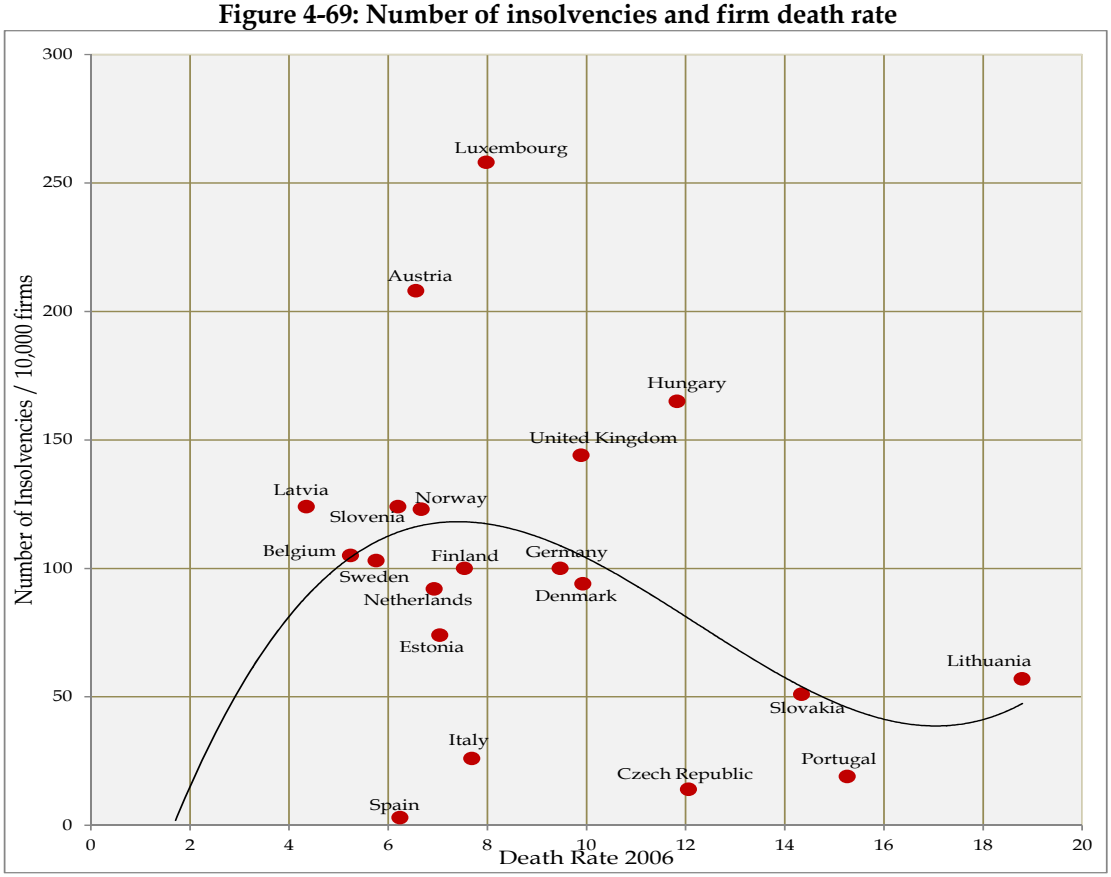
Number of insolvencies and firm death rate

Finally, an index of firm death rate *vis a vis* the number of insolvencies has been calculated based on available statistics from Eurostat and Creditreform.

In order to investigate the relationship between ''Number of insolvencies/10.000 firms'' and ''Death rate'' a regression analysis was performed. As a result of this analysis the following graph presents:

(a) the positioning of each country with respect to these two variables
(b) the best fit curve (cubic) to measure their correlation

Figure 4-69: Number of insolvencies and firm death rate



Source : Eurostat for death rate and Creditreform for number of insolvencies. Reference year is 2007. Firms' deaths include: voluntary closures, non-transfers and bankruptcy.

Regression analysis based on a calculated correlation coefficient of Corr(X,Y)=-0.324, suggests that there is a weak negative correlation between the two variables ''Death rate'' and ''Number of insolvencies/10.000 firms''.

The comparison of insolvencies with the death rate may not be conclusive especially in countries where insolvent firms are less likely to initiate bankruptcy procedures and may choose a voluntary closure instead (as in Spain or Germany).

The European insolvency ratio calculated by Creditreform[79] (insolvencies per 10.000 existing firms) was 85 in 2009. Creditreform also estimated the insolvencies-related job losses in Europe at 1.7 million in 2009 (the respective data are not restricted to SMEs but include all types of enterprises).

[79] Creditreform (2010) "Insolvencies in Europe". Data on insolvencies come from national registers of companies. Insolvency-related job losses are an estimation.

4.3.4 Conclusions

Differences in legal systems (common law / civil law) are not correlated to the level of efficiency in bankruptcy procedures.

According to Finance and Law Theory[80] the legal system should protect investors ensuring sustainable financial development leading to economic growth. This theory distinguishes countries based on the following criteria:

- The type of regulatory framework applied, that is civil law or common law;
- Whether bankruptcy regulations are favourable to debtors and creditors.

European countries are characterised by different legal systems (common law, civil law and its variations) dealing with bankruptcy. The purpose of the study in this particular area was not to measure the advantages of one system compared to the other, but rather to assess the potential impact of these systems on bankruptcy efficiency.

The analysis revealed no evidence of impact of the type of legal system (common law / civil law) on the level of entrepreneurship (firm birth rate, TEA, firm survival rate). No evidence has been found regarding the advantage of one legal system over the other in creating more firms and eventually more jobs.

Moreover, recent analysis[81] in Finance and Law Theory suggests that it is not possible to determine which bankruptcy model either pro-debtor or pro-creditor is economically more efficient. The data collected in this study seems to support this thesis.

As such, efficient bankruptcy procedures are not determined by the type or orientation of legal system, but by concrete provisions like the existence of out-of-court settlements, the existence of fast track procedures for SMEs, the different treatment of honest and dishonest bankrupts, the existence of an early warning system and other that may significantly affect the efficiency of the system.

[80] LaPorta, Lopez-de Silanes, Shleifer and Vishny (LA PORTA ET AL. 1997, 1998)
[81] Blazy R, Choppard B, Fimayer A. (2007) Bankruptcy Law: A Mechanism of Governance for Financially Distressed Firms

Best performing countries complement an efficient legal framework for bankruptcy with early warning systems.

The survey shows that almost all countries considered to have a very efficient bankruptcy legal system are also considered to have highly efficient early warning tools based on the respondents' views.

A way to interpret this is to assume that countries implementing regulations improving the efficiency of the bankruptcy system also put in place early warning tools to prevent bankruptcies.

Early warning systems have a positive effect on firms' birth rate.

Countries with an efficient early warning system also have a relatively higher level of firms' birth rate (12.2 % as compared to 10.7% for the other countries).

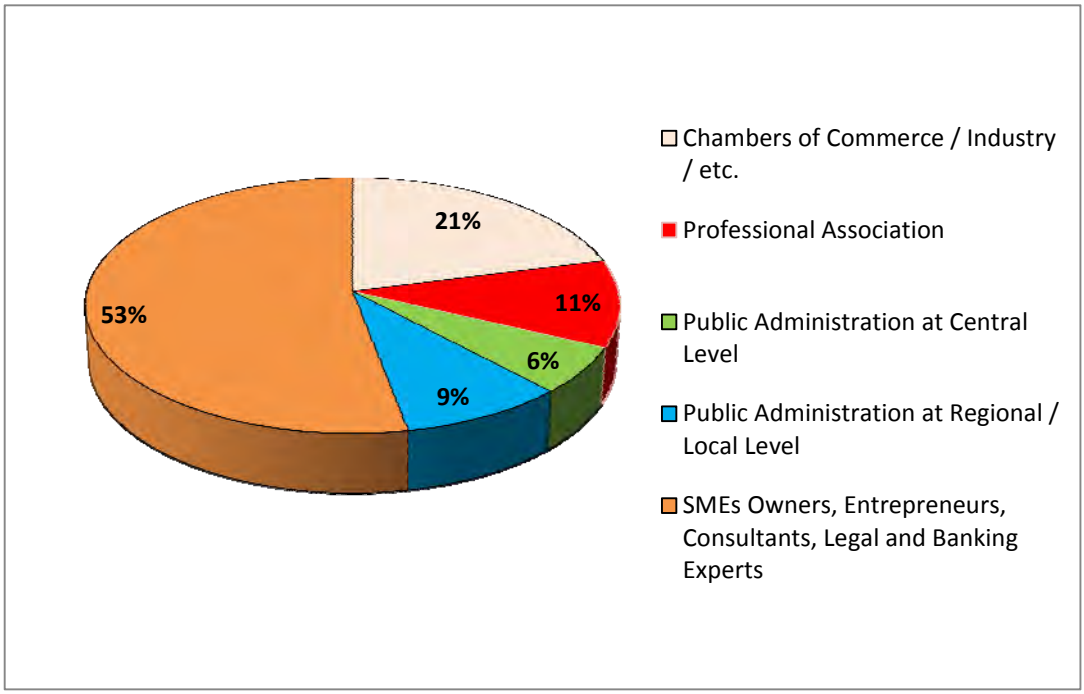
4.4 Second Chance

The study of the Second Chance thematic area has been based on desk research, survey results and economic analysis.

The desk research covered relevant studies initiated by the European Commission, and respective national studies.

The survey was implemented in the 33 targeted European countries via a semi-structured questionnaire. A total of 333 replies were collected and processed. The profile of respondents is as follows: 21% represent Chambers of Commerce and Industry, 11% represent Professional Associations while 53% represent SMEs, entrepreneurs, consultants, legal and banking experts.

The survey was implemented in the targeted 33 targeted European countries via a semi-structured questionnaire. A total of 333 replies were collected and processed. The profile of the respondents is shown in the following pie chart:



In many European countries there is a policy commitment to address the issue of business failure and promote Second Chance. Plans have been put forward by the Member States to reform their national insolvency legislation in order to support among others the entrepreneurs searching for a Second Chance.

This section presents mainly the findings of the survey, the corresponding economic analysis and relevant conclusions. It should be noted that as a result of desk research there is limited data available with regards to the particular subject.

4.4.1 Desk Research

4.4.1.1 Key References

Second Chance refers to the business re-start of a formerly bankrupt / failed entrepreneur. An important limitation to an effective Second Chance are lengthy and costly bankruptcy procedures as well as the fact that honest bankrupt entrepreneurs are usually subject to the same limitations as fraudulent entrepreneurs. This not only presents a risk that failed honest entrepreneurs face the social stigma attached to bankruptcy, but also the legal and administrative impediments to re-start a business.

The area of 'Second Chance' is a relatively new area of study/ research in Europe.

The key references at a pan-European level are summarised as follows:

- Overcoming the stigma of business failure - implementing the EU's growth and jobs strategy[82]

Furthermore a key reference site[83] on Second Chance has been developed by the European Commission.

Key references on Second Chance from the countries addressed in this study are presented in **Annex III**.

4.4.1.2 Statistics on Second Chance

Across Europe there is a lack of data on entrepreneurs who have undergone bankruptcy and re-started a business.

4.4.2 Survey Findings

This section presents the main findings of the survey on Second Chance. The aim of this survey was to identify the key barriers and enablers for failed / bankrupt entrepreneurs to re-start.

[82] COM(2007) 584 final Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on Overcoming the stigma of business failure – for a Second Chance policy

[83] http://ec.europa.eu/enterprise/policies/sme/business-environment/failure-new-beginning/

4.4.2.1 Honest and Dishonest Bankruptcy

Based on the views of the survey's respondents, dishonest or fraudulent bankrupt entrepreneurs undergo a separate liquidation procedure in one third of the countries (11 out of 33 countries).

However, it should be stressed that the concept of honest[84] and dishonest bankruptcy is not uniformly perceived in the surveyed countries. Different countries have different definitions of the two concepts, both in terms of 'legal' and commonly used definitions.

On the other hand, according to the respondents' views, fast-track[85] liquidation proceedings for honest bankrupted entrepreneurs exist in 9 out of the 33 countries (i.e. in the United Kingdom, Belgium, Luxembourg, France, Spain, Romania, Turkey, Finland, and Lithuania).

Approximately half of the countries surveyed (16) do not have special discharge proceedings for honest bankrupt entrepreneurs based on the respondents' views. In 13 countries special discharge proceedings exist, out of which in France, Italy, Belgium, Germany, Hungary and Romania full discharge (of all debts) is possible.

[84] During bankruptcy proceedings, management decisions are generally investigated during a certain period of time before the date of insolvency declaration to make sure that no fraudulent action has been made with the business assets. If no fraudulent action has been made, the bankruptcy is considered to be honest. Otherwise, penal action may be taken against fraudulent owners or directors. Moreover, lighter offences can be committed in case of negligent and reckless behaviour, for example up-to-date financial books and accounts may also not be available. These minor offences do not necessarily lead to criminal proceedings, but will prevent the bankruptees from being considered as honest.

[85] Fast track liquidation procedure is a faster and less costly procedure to liquidate the bankrupt business assets usually in case of a reduced number of debtors and undisputed debts. It may also provide for creditors to recover their debts more quickly (before other creditors), or the possibility for the debtors to quickly dispose of some assets so that immediate debts can be repaid and insolvency or bankruptcy may be avoided.

Figure 4-70: Honest and dishonest bankruptcy

ISSUES RELATED TO HONEST AND DISHONEST BANKRUPTCY			
COUNTRIES	**Separate liquidation proceedings exist for liquidation firms when frauds have been committed**	**Special "fast track" liquidation proceedings exist in the case of an honest bankruptcy**	**Special discharge proceedings exist for honest bankrupt entrepreneurs***
Austria	2	2	3
Belgium	1	1	1
Bulgaria	2	2	3
Croatia	2	2	2
Cyprus	3	2	3
Czech Republic	2	2	2
Denmark	2	2	4
Estonia	1	3	3
Finland	2	1	2
France	1	1	1
Germany	2	2	1
Greece	2	2	3
Hungary	1	2	1
Iceland	2	2	3
Ireland	2	2	3
Italy	2	2	1
Latvia	2	2	3
Lithuania	1	1	3
Luxembourg	2	1	1
Malta	2	2	1
Montenegro	2	2	3
Netherlands	1	3	4
Norway	1	2	4
Poland	2	2	3
Portugal	2	2	2
Romania	2	1	1
Serbia	2	2	4
Slovakia	2	2	3
Slovenia	1	2	3
Spain	1	1	3
Sweden	2	2	3
Turkey	2	1	2
United Kingdom	1	2	3

Legend	
1	Yes
2	No
3	Uncertain / Not Available

Legend*	
1	Yes. Full discharge (all debts)
2	Yes. Partial discharge
3	No
4	Uncertain / Not Available

Source: Business Dynamics Survey 2010

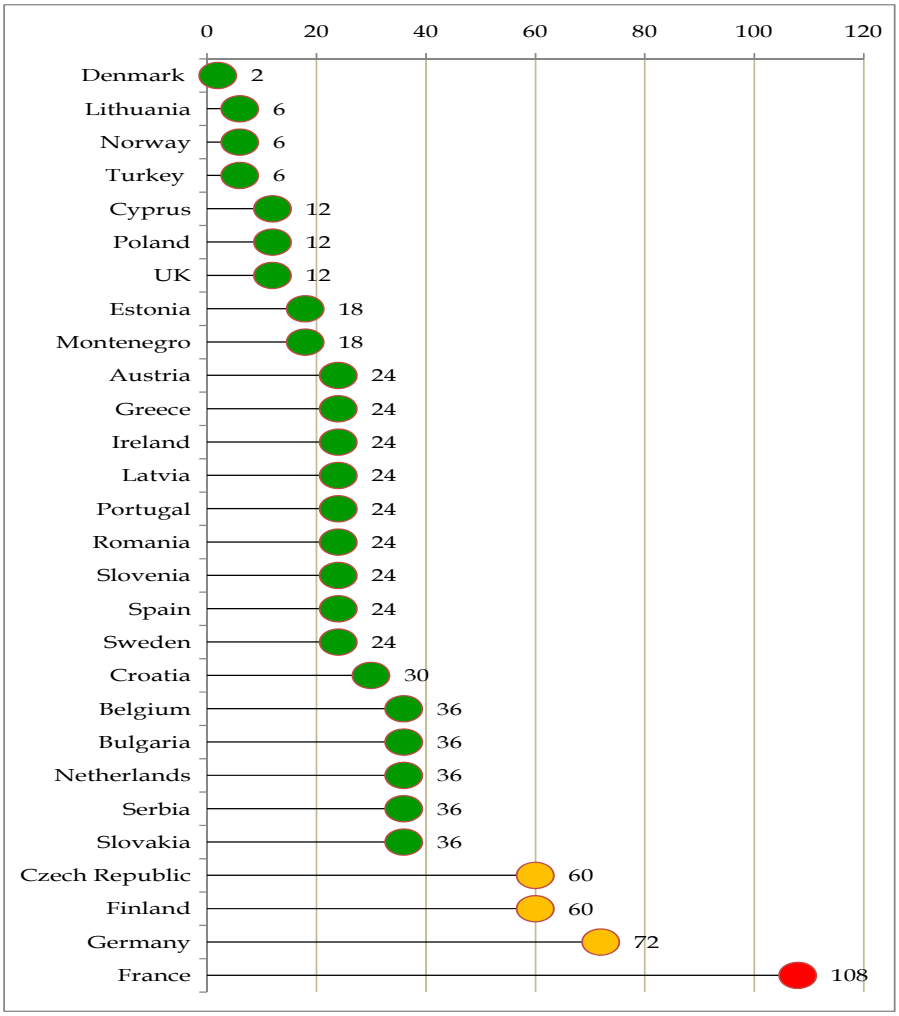
Note: Data is based solely on the views and perceptions of the survey's respondents

4.4.2.2 Discharge

Bankruptees need to fulfil a number of conditions in order to be discharged following bankruptcy. The majority of countries indicate proof of good behaviour / honest bankruptcy (i.e. no fraudulent action undertaken with the business assets) as the key condition.

The length of time to discharge bankrupt entrepreneurs is regulated by law (the maximum time length is over 12 months in 24 countries[86]).

Figure 4-71: Maximum time typically elapsed from the finalization of the liquidation proceedings to a discharge of the bankruptee (in months)



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents. No data available for Hungary, Iceland, Italy, Luxembourg and Malta.

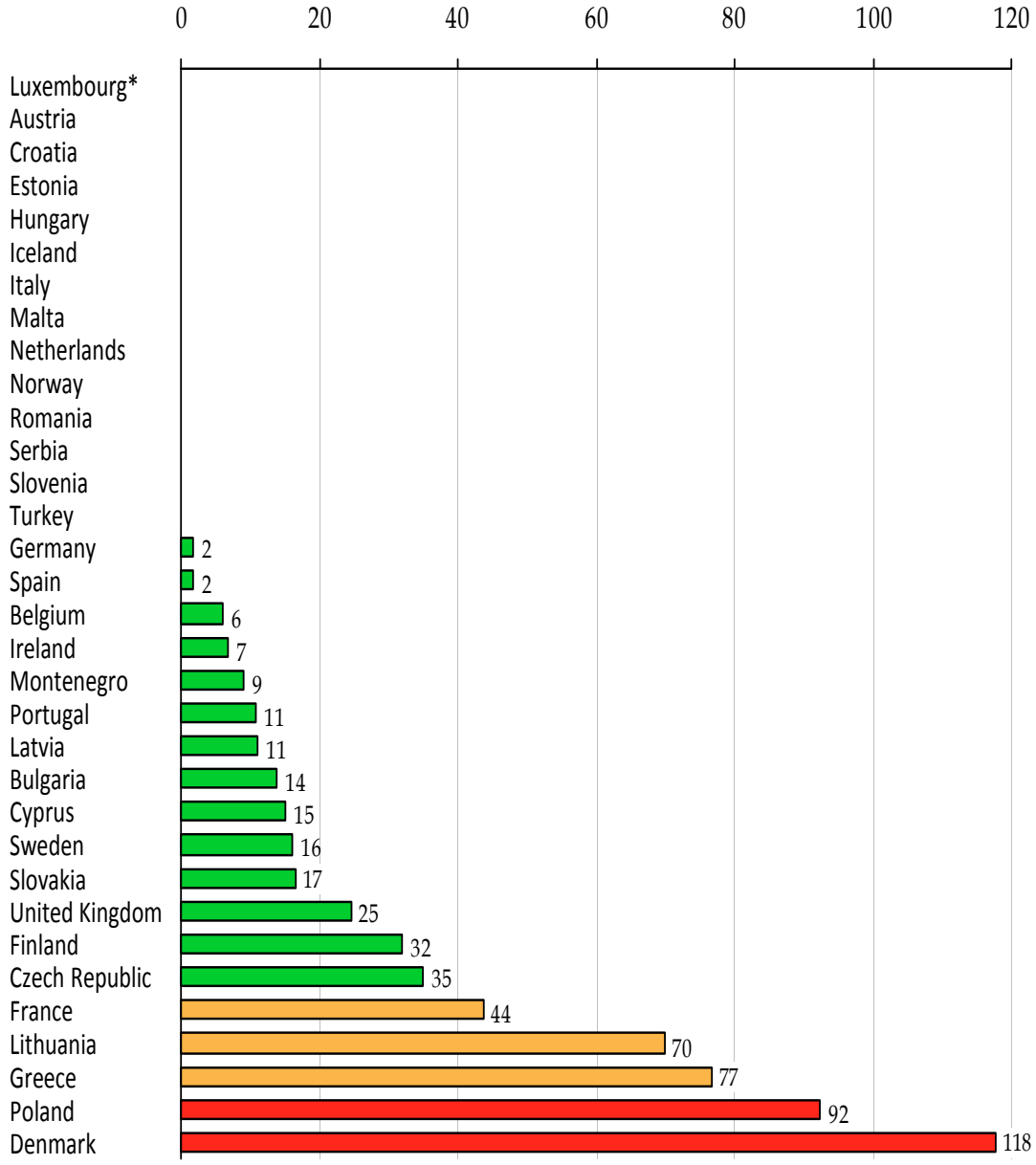
[86] France, Germany, the Czech Republic, Finland, Belgium, Bulgaria, the Netherlands, Serbia, Slovakia, Croatia, Austria, Greece, Ireland, Latvia, Portugal, Romania, Slovenia, Spain, Sweden, Estonia, Montenegro, Cyprus, Poland, the United Kingdom.

4.4.2.3 **Financing**

A national credit rating/insolvency register exists in all countries except Austria and Turkey according to the opinion of the respondents.

The figure below shows the length of stay of a bankruptee's name in the national credit rating / insolvency register.

Figure 4-72: Length of stay in national credit rating/insolvency register (in months)



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents
No data available for Luxembourg.

4.4.2.4 Discrimination by Public Programmes

The participation of failed entrepreneurs in public tenders or public programmes financing new ventures is in most countries not prohibited by law or by common practices according to the views of the respondents.

Some exceptions are Belgium, Croatia, the Czech Republic, Cyprus, Romania, Serbia and Slovakia where according to the majority of respondents bankrupts are not legally entitled to participate in public tenders. In some countries, there were highly diverse responses revealing lack of awareness on the provisions of the public procurement law (i.e. in Greece, Latvia, Slovenia and Spain).

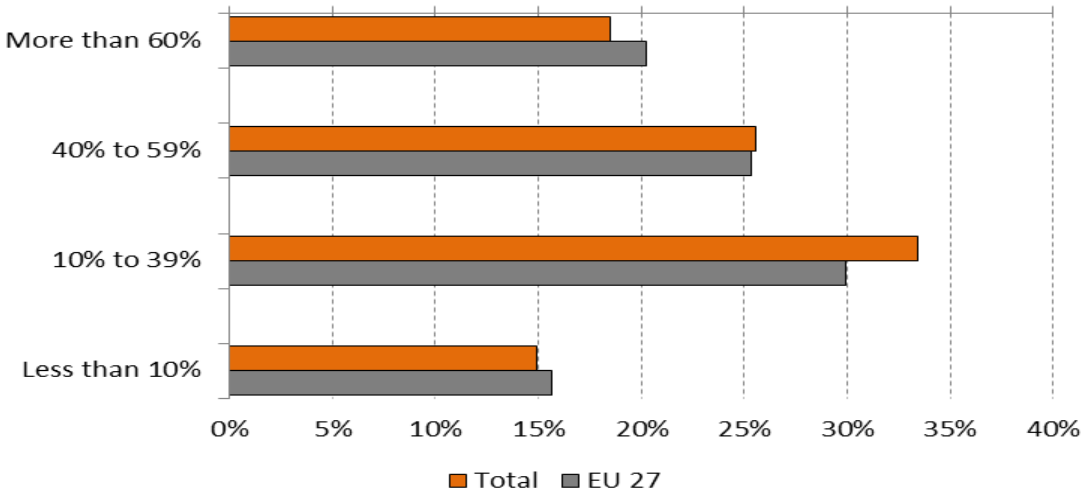
With respect to the participation in public programmes offering financial support for a new venture, bankrupts are legally entitled to participate in all countries according to the respondents' views, with the exception of Croatia, Cyprus, the Czech Republic, Finland, Lithuania, Romania, Serbia, and Slovakia.

4.4.2.5 Opportunities for a New Start

The graph below shows that half of the respondents consider that more than 40% of failed entrepreneurs are discouraged to re-start.

The vast majority of respondents (in two thirds of countries surveyed) consider difficulties to find means of financing a new venture as the main problem for re-starters. The reputation / stigmatization issue has also been highlighted in approximately half of the countries. To a lesser extent legal barriers have been mentioned in the Czech Republic, Portugal and Spain.

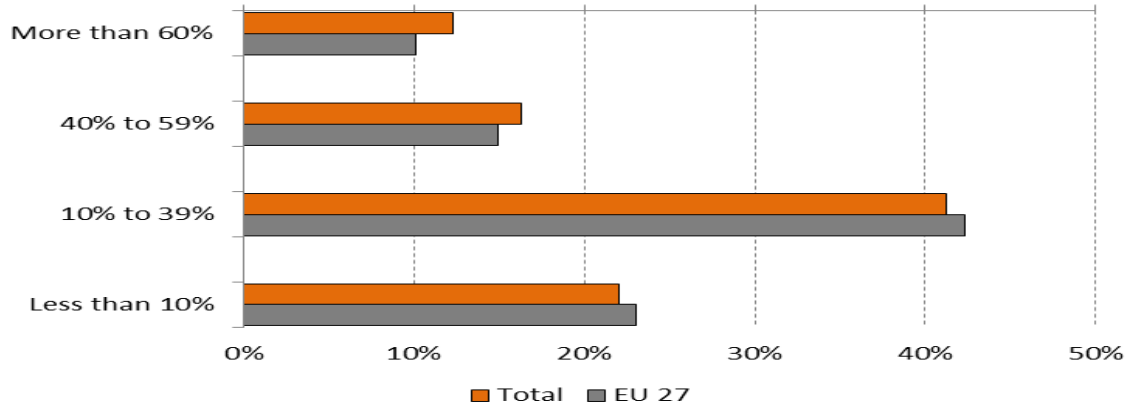
Figure 4-73: Estimate of % of failed entrepreneurs that are discouraged to re-start



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

With respect to the effect of fear of failure and stigma, this does not appear as a major barrier for re-starters according to the respondents' views.

Figure 4-74: Estimate the % of new entrepreneurs that do not start for fear of failure and stigma



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

4.4.2.6 Support Provided to Re-starter/Bankrupt Entrepreneurs

Respondents in France referred to the association "Recréer", a non-profit organisation created by entrepreneurs who had previously faced bankruptcy and have re-started a new business successfully. The aim of the association is to help failed entrepreneurs to re-start a new business; its operation is based on mentoring.

Respondents in Germany mentioned the 1999 provision "Insolvenzrechtsreform mit Restschuldbefreiung" (Reform of Insolvency Law, which shortened the period of debt repayment from 7 to 6 years) and the Protection of pension schemes (Rürup and Riester Rente) which led to the introduction of exemptions from adjustment of future wages and of compulsory coverage of the health insurance. Respondents considered it as successful but with insufficient coverage.

In Greece, the Chambers of Commerce and Industry provide support and training, but the outreach is not satisfactory according to the respondents. The main reasons are the lack of sufficient publicity of services and that training programmes do not effectively address SME needs.

In Portugal, APOIARE - Portuguese Association for the Research, Observation and Support for Debt Re-education focuses on training and tutorial actions for families and individuals. It does not focus on companies *per se*, but on individuals.

4.4.3 Economic Analysis

Business entry and business exit are inherent to economies. In fact, approximately 50% of enterprises do not survive the first five years of their life. Of all business closures, insolvencies account for 7.5 % in Europe[87]. The ratio varies significantly among European countries, from 0.4% in Spain to 22.7% in France and 31.7% in Austria (insolvencies as a % of closures). Still, today's failure can hold the seed of tomorrow's success. Those that attempt a re-start learn from their mistakes and usually experience faster growth than newly established companies.

Despite this reality, business closure is not yet generally perceived as an opportunity for business renewal. Although only 4-6% of bankruptcies are fraudulent[88], there is a tendency among European societies to make a strong link between business failure and fraud.

"Stigma of failure" is also present in the business environment and the legal framework having as a consequence a small number of re-starters despite the fact that failed entrepreneurs show a strong preference for new entrepreneurial activities.

4.4.3.1 Index of Fresh Start

The developed index of "fresh start" measures the degree that a system favours re-starters.

The composite index to measure the possibility of fresh start (Second Chance) has been calculated by summing the values assigned to the factors listed below, when the situation is considered favourable to increase the number of fresh starts.

- Fast track liquidation

  The value of 1 was assigned when respondents mentioned that fast track liquidation exists in case of honest bankruptcy.

- Separate liquidation proceedings for firms when frauds have been committed

  The value of 1 was assigned when respondents mentioned that separate liquidation proceedings exist when frauds have been committed.

- Length of time of discharge

---

[87] Ratio : number of insolvencies (source Euler Hermes & Creditreform) / number of deaths (source Eurostat) for the following countries for which data are available in 2007, Austria, the Czech republic, Denmark, Estonia, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Norway, Portugal, Slovakia, Spain, Sweden, the United Kingdom.

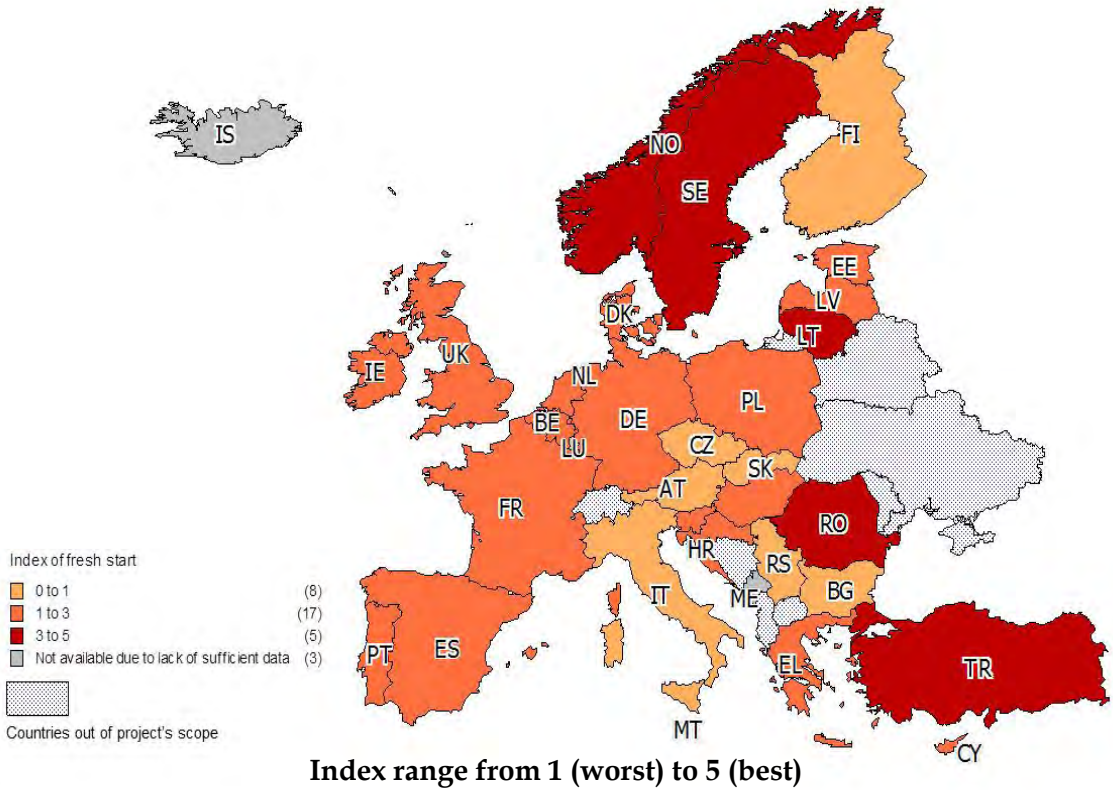
[88] COM(2007) 584 final – Overcoming the stigma of business failure – for a Second Chance policy

Average time for discharge has been estimated by each respondent and the average for each country has been calculated after excluding extreme values among these responses. Eventually, countries in the first quartile (top 25%) have ranked 3, in the second quartile 2 and in the third quartile 1.

- Existence of special discharge proceedings for honest bankrupts

The value of 1 was assigned when respondents mentioned that special discharge proceedings exist and are compulsory, while 0.5 was assigned in case discharge proceedings are not compulsory.

Figure 4-75: Index of fresh start



Index range from 1 (worst) to 5 (best)

Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents
(Note: Montenegro and Iceland do not appear due to lack of sufficient data)

4.4.3.2 Index of the Severity of the Bankruptcy Law

The index of severity of the bankruptcy law measures the extent to which bankrupts are 'punished' via various limitations to re-start business activity. The composite index on the severity of the bankruptcy law was calculated by summing the values assigned to the factors listed below, each of which was awarded points on a scale of 0 to 1, in accordance with the extent of severity of the bankruptcy law.

- Deprivation of right to start a business

The value of 1 was assigned when an honest business bankrupt serving as director of the bankrupt company has been prohibited or inhibited to start a new business after the finalization of the liquidation proceedings by the court.

- Interdiction to public tender

  The value of 1 was assigned when respondents mentioned that there is interdiction by law, and 0.5 was assigned when interdiction derives from practices.

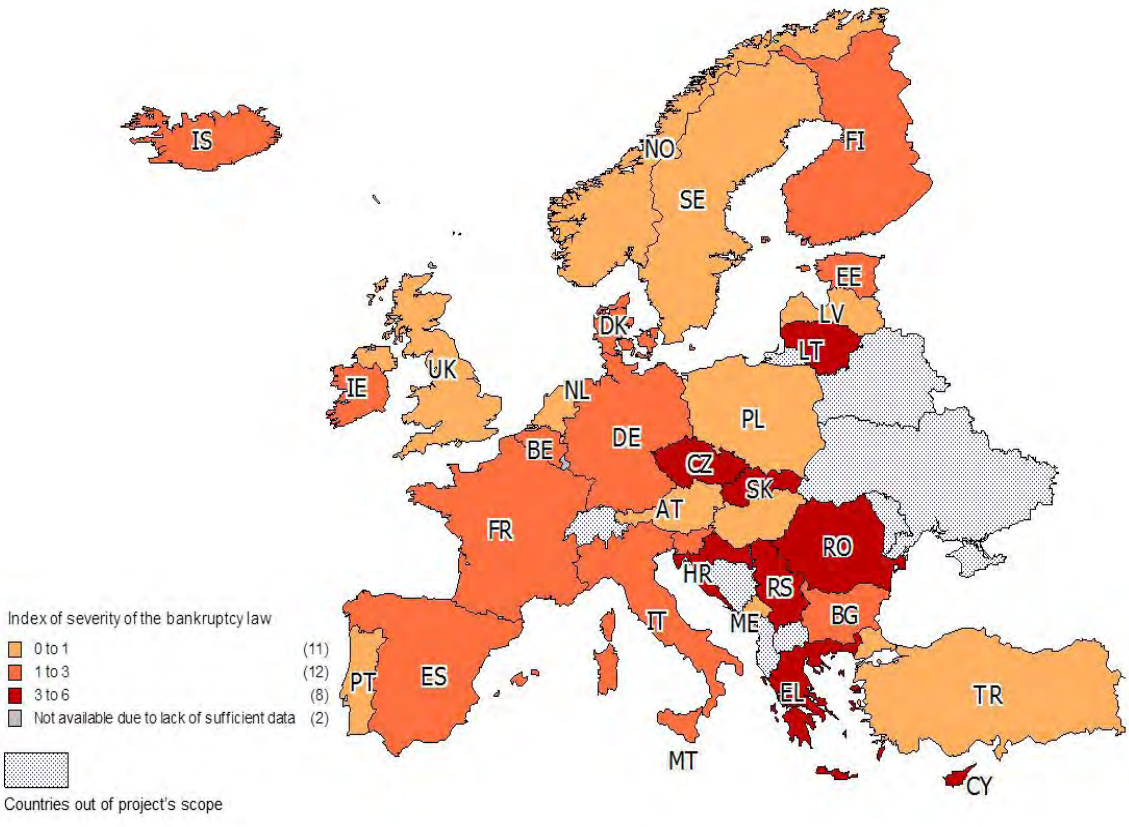
- Interdiction to participate in public programmes offering financial support

  The value of 1 was assigned when respondents mentioned that there is interdiction by law, and 0.5 was assigned when interdiction derives from practices.

- Percentage of entrepreneurs discouraged from re-starting

  The value of 0.1 was assigned when the number of discouraged entrepreneurs has been estimated at 10% by the respondents and 0.9 when they have been estimated at 90% with proportional allocation of intermediate values.

Figure 4-76: Index of severity of the bankruptcy law



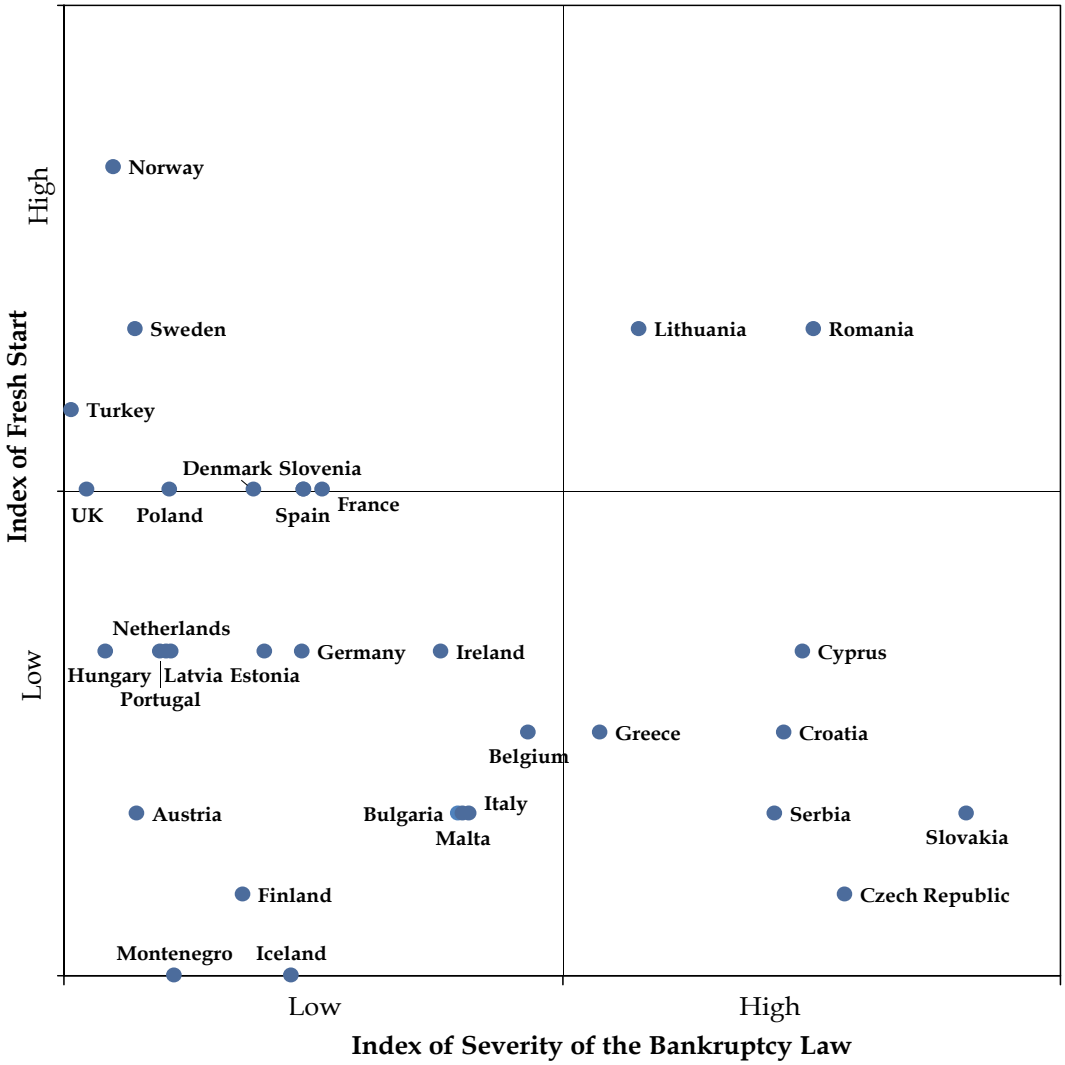
Index range from 1 (lowest) to 5 (highest) severity

Source: Business Dynamics Survey 2010

Note: Data is based solely on the views and perceptions of the survey's respondents

The following diagram classifies countries in two dimensions, one for each of the two indices: Fresh Start and Severity of the Bankruptcy Law.

Figure 4-77: Country positioning with respect to indices of Fresh Start and Severity of Bankruptcy Law



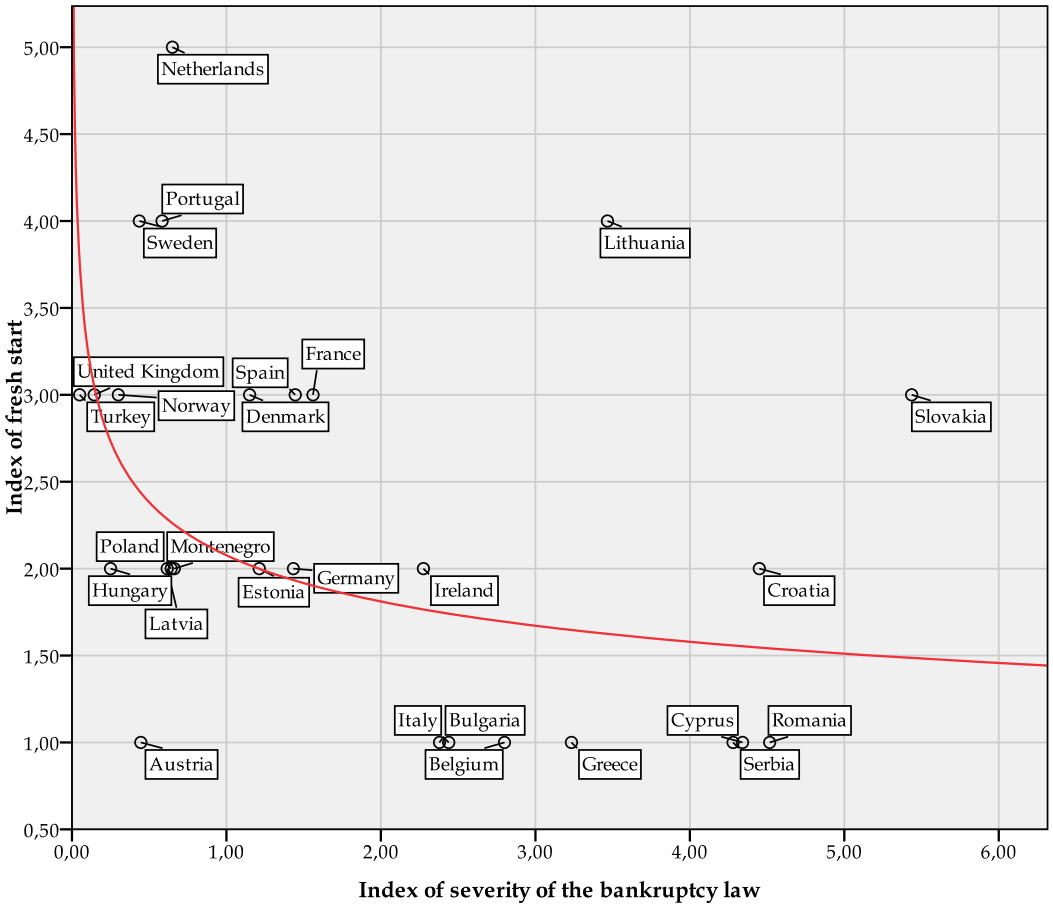
In order to investigate the relationship between ''Index of fresh start'' and ''Index of severity of the bankruptcy law'' a regression analysis was performed.

As a result of this analysis the following graph presents:

(a) The positioning of each country with respect to these two variables

(b) the best fit curve (Power) to measure their correlation

Figure 4-78: Level of entrepreneurship and level of efficiency of the bankruptcy procedures



Source: Business Dynamics Survey 2010
Note: Data is based solely on the views and perceptions of the survey's respondents

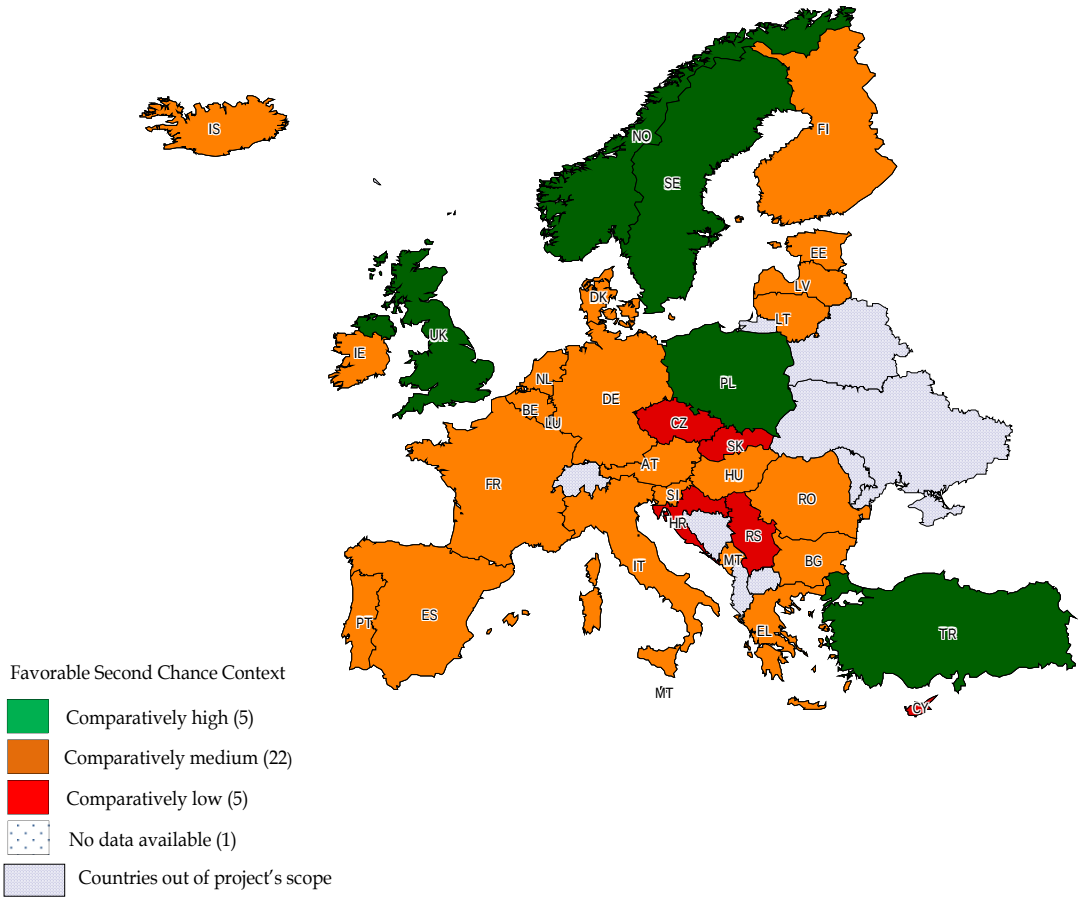
Regression analysis based on a calculated correlation coefficient of Corr(X,Y)=-0.386, suggests that there is no significant correlation between the two variables ''Index of fresh start''and ''Index of efficiency of the bankruptcy law''.

Measuring Second Chance is particularly difficult. Using both indices of fresh start and of severity of bankruptcy law as proxies, a single composite index has been eventually developed[89] in order to identify countries with relatively more favourable Second Chance context.

The classification of countries in accordance with this composite index is shown in the next map. In the map 3 groups of countries are identified according to the perceived degree of fresh start facilitation and severity of the bankruptcy law, based on survey responses.

[89] The composite index is calculated by:
(a) converting both indices of fresh start and severity of bankruptcy law into the same scale
(b) joining the converted values taking into account that the severity of bankruptcy law (the lower the severity the better it is for Second Chance) is measured on an opposite scale than support of fresh start (the higher the support the better it is for Second Chance).

Figure 4-79: Composite Index of Second Chance Context



Five countries (Norway, Poland, Sweden, Turkey and the United Kingdom) have comparatively a highly favourable Second Chance context, while on the opposite side five countries (Croatia, Cyprus, the Czech Republic, Serbia and Slovakia) are considered by the survey respondents to provide quite an unfavourable Second Chance context.

4.4.4 Conclusions

Second Chance is not adequately recognized by national legislations.

According to the results of the survey and the economic analysis, most national legislations and the absence of pro-active governmental policies do not facilitate Second Chance for re-starters. This leads to a reduced number of re-starters despite the fact that failed entrepreneurs show a strong preference for entrepreneurial activities[90].

[90] Renascent Entrepreneurship, ERIM 2006, E. Stam, D.B. Audretsch and J. Meijaard

A systematic recognition of honest entrepreneurs is needed to improve the impact of Second Chance by bringing them back into the system. The development of common understanding and definition of the concepts of honest and dishonest entrepreneurs has to be achieved across Europe in order to better exchange reliable information and best practices on Second Chance policies.

According to replies received from the respondents of the survey, the following measures were mentioned as the most significant to be taken in order to reinforce Second Chance:

- Reinforcement of separate liquidation proceedings for honest and dishonest entrepreneurs.
- Elaboration and application of "fast track" liquidation proceedings for honest bankruptcy.
- Review and reinforcement of the legal and institutional framework to allow participation of honest bankrupt entrepreneurs in public tenders.

Increased networking among entrepreneurs / re-starters is important to foster Second Chance.

According to representatives of entrepreneurs' associations, initiatives to assist the re-starters through networking are important to foster a Second Chance. Having the possibility to analyse the re-starters' problems and to monitor the market conditions, these networks could provide mentoring and further assistance to re-starters. The French association "Re-creer" active on mentoring for re-starters, is a good example of this proposed practice.

Suitable financing instruments for re-starters need to be put in place.

According to the results of the survey, half of the respondents consider that more than 40% of failed entrepreneurs are discouraged to re-start. When asked to identify the main problems for re-starters, 37% of the respondents indicate the difficulties in finding means to finance the re-starter. Since almost all countries surveyed face this problem, the need for the elaboration and implementation of specific financial instruments for re-starters becomes more pressing.

5 OVERALL CONCLUSIONS

Three key conclusions emerge after synthesis of the study results, namely:

1. Reduction of regulatory framework complexity is important, as it has a considerable impact on entrepreneurial activity.
2. An integrated approach in improving the regulatory framework is needed to ensure all aspects of enterprise life cycle are addressed.
3. Regulatory framework should be more supportive of the active population of entrepreneurs

These conclusions are further analysed below.

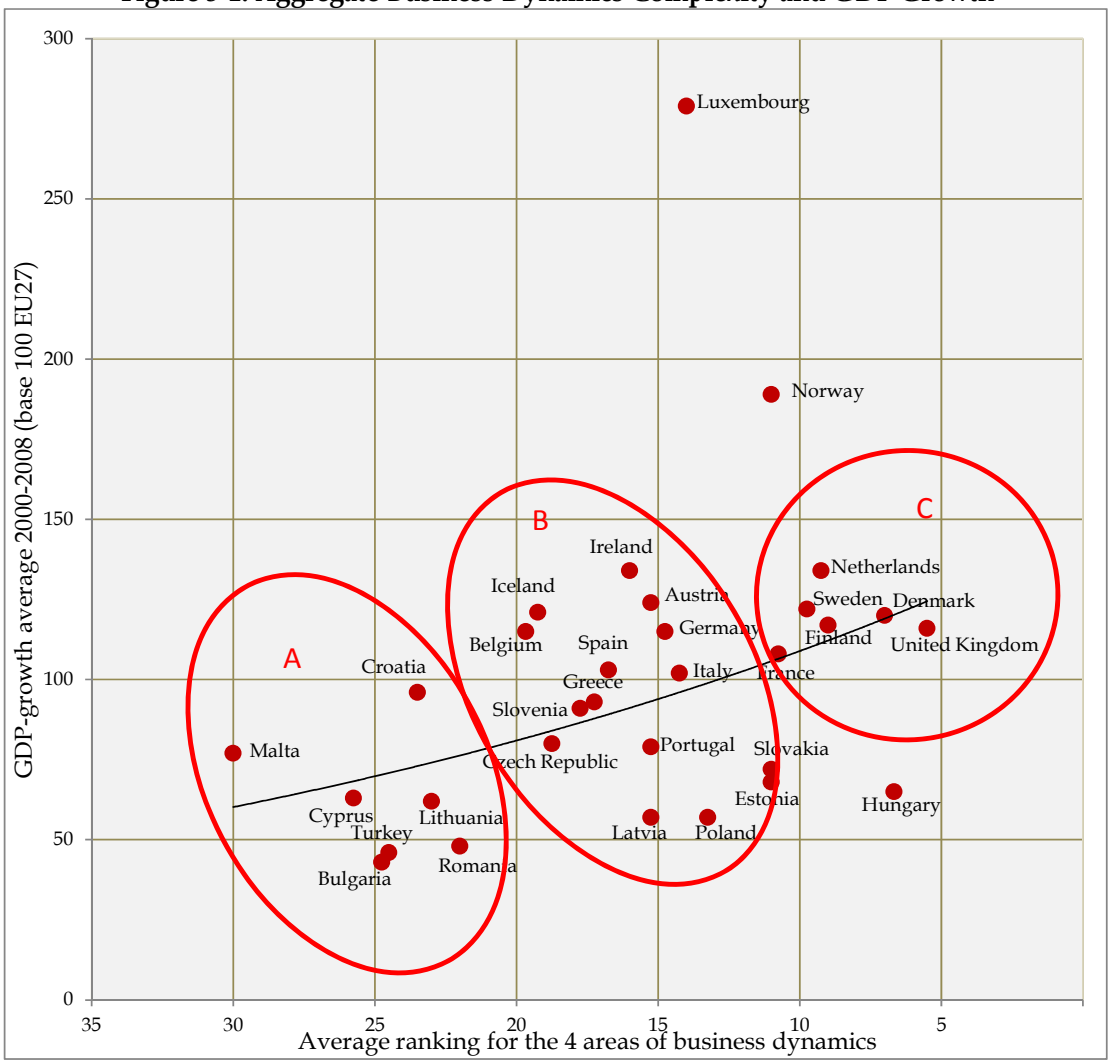
Improving regulatory framework complexity has a positive impact on GDP and employment.

Comparing the average ranking for all four thematic areas of business dynamics with GDP growth[91] in the diagram below, it is observed that three typologies of countries could be identified:

- A complex regulatory framework relates to comparatively lower GDP growth (typology A).
- Improvement of the regulatory framework ranking results in less complexity and better GDP growth (typology B).
- However, after a certain level of improvement, GDP growth seems to be no longer affected by reduction of complexity, hence countries with significantly lower complexity (typology C) are still in the same GDP growth range as other countries with medium complexity ranking.

[91] Fitting an exponential regression equation with a correlation coefficient Corr(X,Y)=-0.324, suggests that there is a weak negative correlation between the two variables

Figure 5-1: Aggregate Business Dynamics Complexity and GDP Growth



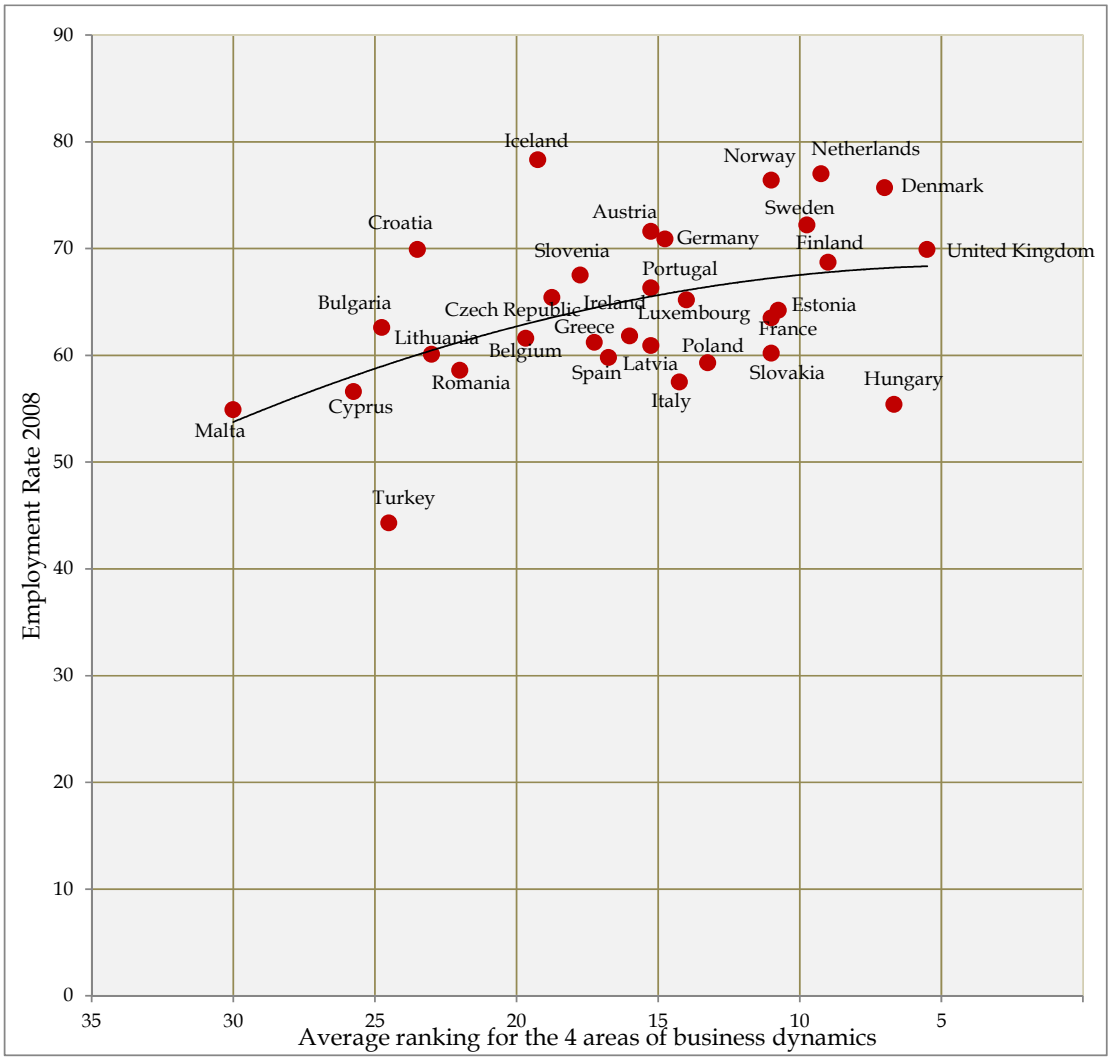
Source: Business Dynamics Survey 2010, Eurostat

Fitting a quadratic regression equation with a correlation coefficient, Corr(X,Y)=-0.459, suggests that there is a moderate negative correlation between the two variables

Comparing the average ranking for all four thematic areas of business dynamics with the rate of employment in the diagram below, it is observed that:

- Reduced complexity of the regulatory framework relates to a comparatively better rate of employment.
- The positive impact on the employment rate is consistently evident as complexity reduces from high to low ranking.

Figure 5-2: Aggregate Business Dynamics Complexity and Rate of Employment



Source: Business Dynamics Survey 2010, Eurostat

Regression analysis based on a calculated quadratic equation correlation coefficient of Corr(X,Y)=0.872 suggests that there is a high positive correlation.

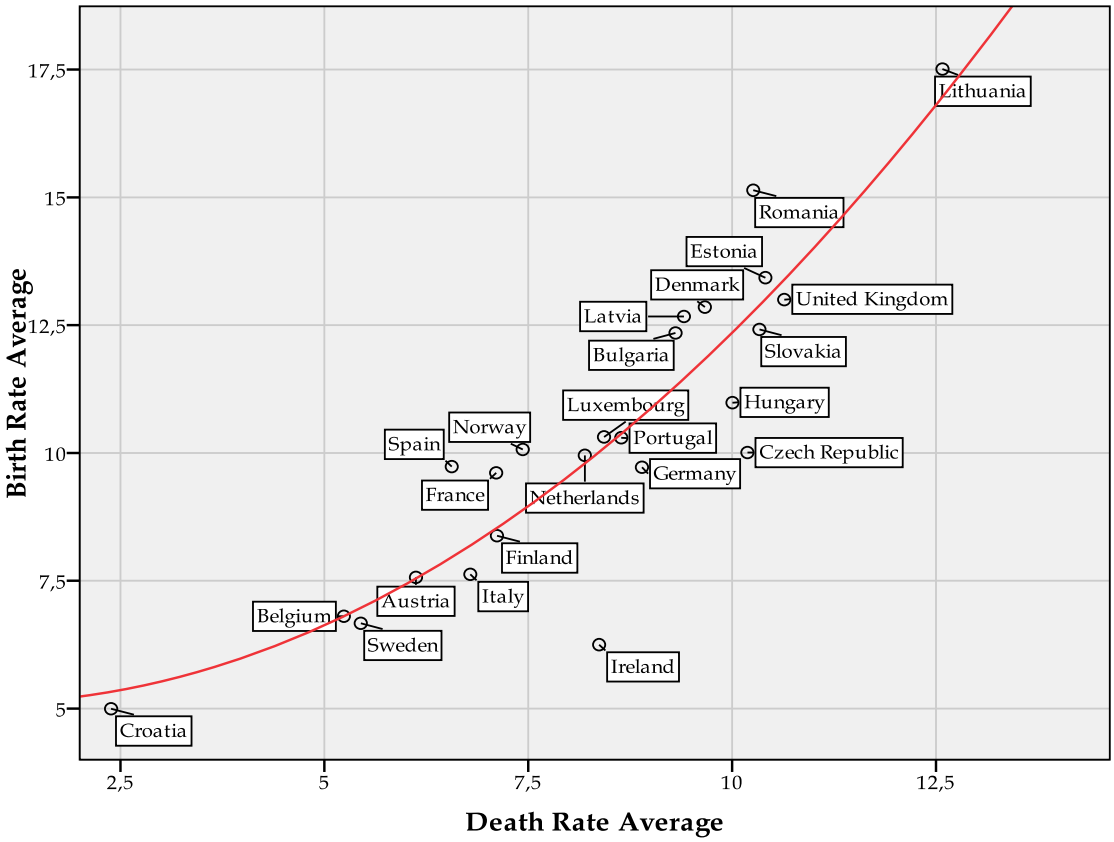
Furthermore, the ability of first start is linked to birth of firms:

- Countries with a high fresh start index have a birth rate of 10.7% (18% better than countries with a low fresh start index).

Public authorities should adopt an integrated approach in improving the regulatory framework to ensure all aspects of enterprise life cycle are addressed.

The entry and exit points in the enterprise life cycle (births and deaths of enterprises) are strongly linked, as shown in the graph below:

Figure 5-3: Enterprise Lifecycle (Births & Deaths)



Source: Eurostat (average data 2000 – 2007)

Interpreting the graph above, economies have a varying degree of dynamism reflected by the numbers of birth and death rates of firms which are strongly interrelated. Countries with high dynamism in these terms are also countries with low level of complexity in licensing, business transfers, bankruptcy and Second Chance.

This relationship is affected by all four areas of the study considering that:

- Birth rate is affected by licensing procedures and Second Chance;
- Death rate is affected by business transfers and bankruptcies.

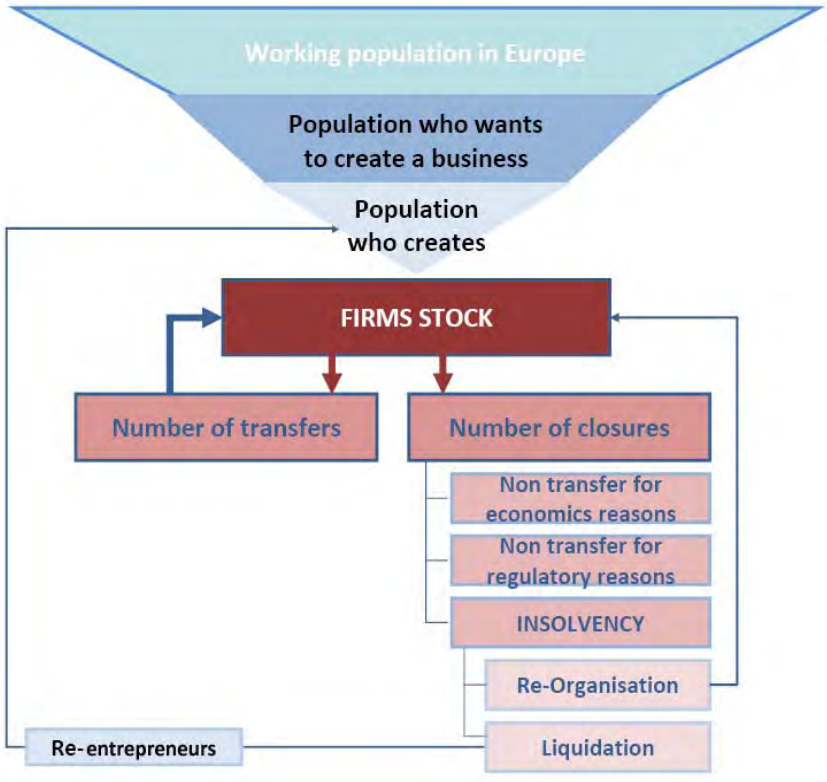
In addition, the results of the study indicate that all aspects of business dynamics are linked, creating advantages and disadvantages for the efficient operation of enterprises during their entire life cycle and consequently to economic and job growth. These linkages should be taken into consideration in an integrated approach where the following are recommended:

- The EU and Member States should continue to be responsive to small and medium sized entrepreneurs by making their life as simple as possible throughout the whole enterprise life cycle.

- In the recent past, the EU has already successfully set in place working groups dealing with each one of the four thematic areas (licensing, business transfers, bankruptcy and Second Chance). An integrated perspective on the results of these working groups will facilitate the discussion of the issues that interfere and affect each one of the four thematic areas.
- A detailed analysis of the regulatory framework, covering all thematic areas at national level, will identify areas where contradictions or overlaps exist and will promote the simplification of the entire framework (i.e. the codification of laws and regulations is already initiated by certain Member States, e.g. Greece).
- The legal impact assessment of forthcoming legislative and administrative initiatives in each thematic area should be elaborated taking into consideration the consequences on all four areas. The relevant results should be taken into account when proposing new policies and measures in the area.
- Organisation of regular European seminars and conferences on specific issues, as e.g. tax and legal matters and financing, in which the four thematic areas (licensing, business transfers, bankruptcy and Second Chance) are commonly addressed. The exchange of best practices and ideas might be of use in other Member States for facilitating decisions to be taken in the respective fields.

Keeping the pool of active/existing entrepreneurs in the system is essential.

Figure 5-4: The Process of "creative destruction"



At European level, the figures and estimations related to this context are as follows:

Table 5-1: Figures and estimations on the process of creative destruction at European level

Working population in Europe	240 million
Population willing to create a business in Europe	Ca. 10% of the working population
Population of entrepreneurs (estimate)	13% of which: *4% embryonic entrepreneurship* *3% with less than 3 years of activity* *6% established entrepreneurs*
Potential entrepreneurs to take over a business	25%
Number of firms in EU	20.8 million
Closure of firms	1.7 million approx. of which: 470,000 failures approx. 150,000 non transfers for other than economic reasons
Firms transferred every year	2% of firms
New firms every year in EU	1.8 million

Source: Eurostat, National Sources

According to the table above and surveys related to entrepreneurship, the number of "would be" entrepreneurs in Europe is low, despite the fact that 9 to 10 European citizens consider entrepreneurs as job creators and therefore of benefit to society in general[92]. Consequently, it is essential to keep existing entrepreneurs active. Many policies have focused on the necessity to increase the number of entrepreneurs and not so much on the necessity to keep the stock of entrepreneurs. Survey's results showed that business transfers is an area where measures at European and national level should be taken, as it is estimated that more than 150.000 companies are not transferred for other than economic reasons and 600.000 jobs are at risk every year. With these trends and challenges, the following actions are recommended:

[92] Flash EB 283, May 2010 - The total entrepreneurial activity (embryonic entrepreneurship + new business less than 3 years + established business) is 12 % in Europe compared to 21% in the US.

- The recommendations set in the 2006 Communication[93] on business transfers and continuity are key drivers at both European and national level and effort is required to:
  - Provide for adequate financial conditions
  - Ensure that tax systems are transfer-friendly
  - Organise transparent markets for business transfers
- The same attention should be given to new entrepreneurs, re-starters and business transfers in a co-ordinated way.
- Improvement in entrepreneurial skills through lifelong learning:
  - Develop alternative or additional tailor-made training and management tools for both existing and future small family-owned businesses;
  - Develop support networks where coaching and mentoring in entrepreneurial skills are developed;
- Schemes for matching transferable businesses with potential new owners should be developed, such as the creation and/or further development of national and European sellers and buyers databases
- Distinguish between firms as legal entities and entrepreneurs as individuals:
  - Initiate research focusing on the legal aspects of distinguishing enterprises as legal entities and entrepreneurs as physical persons. The former should focus on the impact of such a distinction on the entrepreneurial life of physical persons (i.e. support to re-start, reduce the stigma from bankruptcy, access to finance, etc.).
  - Organise working groups at European level in order to exchange best practices among the Member States.
  - Put in place a system that does not place pressure upon creditors to declare an entrepreneur as dishonest.

[93] COM(2006) 117 final – Implementing the Lisbon Community Programme for Growth and Jobs, Transfers of Business – Continuity through a new beginning

APPENDIX I – OVERVIEW OF APPLICABLE LICENSES FOR 5-MODEL COMPANIES

The tables below present per model company the number of total licenses required to operate the company (I.i.1)[94] and the average time and costs required to obtain all licenses for operating the company (I.i.2):

[94] Where I = 1 to 5 model companies

I.1 Hotel with Restaurant

Table I. 1.1: Overview of applicable licenses for Hotel with Restaurant across Europe

		INDUSTRY LICENSES			LICENSES RELATED TO PRODUCTS / SERVICES										LICENSES RELATED TO PREMISES					LICENSES RELATED TO EMPLOYEES							
Countries	Total Number of licences required	License to operate hotel with restaurant	registration in sector-specific register	Other	Hotel category	Restaurant category	Food safety / hygiene	Specific food items handling	Sell of alcohol	Compliance with smoking / non-smoking regulations	Data Protection (of clients)	TV license	Intellectual Property Rights	Other	External publicity / signs	Environmental compliance	Safety (of premises)	Hygiene / sanitary compliance	Other	Appointment of hotel manager	Clean criminal records of hotel manager	Required qualifications of hotel manager	Safety (of employees)	Health certificates of employees	Extended working hours	Data protection (of employees)	Other
Austria	2	•																									
Belgium	10																										
Bulgaria	17	•	•		•	•	•		•		•				•	•	•	•		•	•	•	•	•	•		
Cyprus	14	•			•	•	•	•	•						•			•		•	•	•	•	•			
Czech Republic	2	•										±	±														
Croatia	7	•			•		•																				
Denmark	5						•		•			•															
Estonia	7		•		•		•		•	•													•				
Finland	6	±					•		•			•	•		±												
France	5		±		•	•	•		•				•		±			±									
Germany	2	•			•				±																		
Greece	15	•	•			•	•			•	±		•			•		•		•	•	•	•	•	•		
Hungary	12	•			•	•	•		•			•	•					•									
Iceland	11	•	•	±	•	•	•		•						•			•									
Ireland	11	•			•	•	•	±	•				•		•			•									
Italy	10		±		±		•		•	±	•	±	•			±					±		•	±		•	
Latvia	1			•						±	±	±						±		±					±	±	
Lithuania	9				•				•	•			•		•			•									
Luxembourg	7	•			•	•	•		•				•					•									
Malta	3	•										•	•														
Montenegro	7				•		•																				
Netherlands	8		•					±	•		±					•	±		±						±		±
Norway	8								•			•	•										•		•	•	
Poland	5				±		•		•			•	•			±	±	±			±		±	•	±		
Portugal	8	•			•						•		•		•												
Romania	13				•	•	•		•						•			•									
Serbia	7	•	•		•		•		•														•				
Slovakia	4	•					•										•							•			
Slovenia	11	•			•		•		•	•	•	•	•					•									
Spain	11	•			•	±	•	•	±	•	•	±	±		•	±		±		±	±	±		±			
Sweden	6						•		•			•			•		±										
Turkey	12				•	•	•		•		•		•					±			•			•	±	•	
United Kingdom	5						±		•			•	•				±										

Legend
• = licence applicable
= no licence applicable
± = uncertain

Table I.1.2: Average time and costs to obtain all licenses (Hotel with Restaurant)

		Time required to obtain all licenses (in calendar days)							Cost - taxes, duties, fees to public authorities (for all licenses) - in euro							Cost for third parties / private sector (for all licenses) - in euro							Internal company effort in person days (for all licenses)					
Countries	Total Number of licences required	0 to 7	8 to 15	16 to 22	23 to 30	31 to 45	46 to 60	Over 60	0-50	51-100	101-200	201-300	301-400	401-500	Over 501	0-50	51-100	101-200	201-300	301-400	401-500	Over 501	0 to 10	11 to 20	21 to 40	41 to 60	61 to 80	Over 81
Austria	2						?								?							?		?				
Belgium	10						?								?							?			?			
Bulgaria	17							?							?							?					?	
Cyprus	14							?							?	?								?				
Croatia	2					?									?							?			?			
Czech Republic	7	?							?							?							?					
Denmark	5					?			?							?							?					
Estonia	7					?				?							?											
Finland	6					?									?		?								?			
France	5						?						?					?						?				
Germany	2						?								?	?							?					
Greece	15							?							?							?						?
Hungary	12							?							?	?							?					
Iceland	11							?							?						?					?		
Ireland	11						?								?							?	?					
Italy	10						?								?							?		?				
Latvia	1				?						?						?							?				
Lithuania	9					?					?											?			?			
Luxembourg	7							?							?							?				?		
Malta	3							?														?						?
Montenegro	7						?								?							?				?		
Netherlands	8					?									?		?							?				
Norway	8						?		?							?							?					
Poland	5					?									?	?									?			
Portugal	8							?							?							?				?		
Romania	13							?						?											?			
Serbia	7							?							?							?					?	
Slovakia	4					?								?		?									?			
Slovenia	11					?									?							?		?				
Spain	11							?							?					?					?			
Sweden	6							?					?								?					?		
Turkey	12							?							?				?						?			
United Kingdom	5	?													?				?				?					

Legend

• = applicable (based on average of all responses)

? = no answer provided

I.2 Wholesale / Retail Food Distributor

Table I.2.1: Overview of applicable licenses for Wholesale / Retail Food Distributor across Europe

		INDUSTRY LICENSES			LICENSES RELATED TO PRODUCTS / SERVICES						LICENSES RELATED TO PREMISES					LICENSES RELATED TO EMPLOYEES				
Countries	Number of licences required	License to distribute food items	registration in sector-specific register	Other	Food Safety / Hygiene	Specific Food items handling	Distance sales (by posts / online)	Sell of alcohol	Data protection (of clients)	Other	External publicity / signs	Environmental compliance	Safety	Hygiene / sanitary compliance	Other	Safety of employees	Health certificates of employees	Extended working hours	Data protection (of employees)	Other
Austria	2	●													●					
Belgium	8	●			●	●		●			●			●		●	●			
Bulgaria	12	?	●		●	●	±	●	●		●	●	●	●		●	●			
Cyprus	8	?			●	●	±	●			●	±	●	●		●	±			
Croatia	6	?			●			●					●			●	●			
Czech Republic	1	?																		
Denmark	11	?	●		●	●		●			●	●	●	●		●	●			
Estonia	7	?			●	●	●					●	●	●						
Finland	6	?	±		●			●		●			●	●			±			
France	6	?	?					●	●	●	●									
Germany	5	?			?									?	?					?
Greece	10	?	?		●	?		?					●	●		●	●			?
Hungary	7	?			●			●					●	●		●	●			
Iceland	5	?			?		±				●	±	●			●				
Ireland	1							?												
Italy	11	?	?		●		●	●			●	●	●	●		●			?	
Latvia	2	±	±	?	±		●		±		±	±				±	±	±		
Lithuania	3	?			●									●						
Luxembourg	9	?			?	?		?	?				?	?		?	?			
Malta	1	?					±													
Montenegro	9	●			●	●		●				●	●	●		●	●			
Netherlands	6	?	?		±		±	?	?	?	?		±				±			
Norway	3							●	●					●						
Poland	6		?		●	±	±	●	±		±	±	±	?		?	?	±	±	
Portugal	6	?							●		●					?	?		?	
Romania	8	?			●			●			●		●	●		?	?			
Serbia	6	?			●			●					●	●		?				
Slovakia	6	?			●			●					●	●			?			
Slovenia	7	?			●	●						●	●	●			?			
Spain	13	?	?		●	●	●	●	●		●	●	●	●		●			?	
Sweden	5	?			●	●					●		●							
Turkey	12	?	?	?	?	?		?			●	●	●	●		●	●			
United Kingdom	2							●			●									

Legend		
	●	= licence applicable
		= no licence applicable
	±	= uncertain

Table I.2.2: Average time and costs to obtain all licenses (Wholesale / Retail Food Distributor)

Countries	Number of licences required	Time required to obtain all licenses (in calendar days)							Cost - taxes, duties, fees to public authorities (for all licenses) - in euro							Cost for third parties / private sector (for all licenses) - in euro							Internal company effort in person days (for all licenses)					
		0 to 7	8 to 15	16 to 22	23 to 30	31 to 45	46 to 60	Over 60	0-50	51-100	101-200	201-300	301-400	401-500	Over 501	0-50	51-100	101-200	201-300	301-400	401-500	Over 501	0 to 10	11 to 20	21 to 40	41 to 60	61 to 80	Over 81
Austria	2						•								•							•		•				
Belgium	8						•					•							•					•				
Bulgaria	12						•						•						•						•			
Cyprus	8							•						•					•				•					
Croatia	6				•										•							•		•				
Czech Republic	1	•							•							•							•					
Denmark	11			•					•													•	•					
Estonia	7					•				•						•												
Finland	6					•									•	•									•			
France	6	•										•					•						•					
Germany	5							•							•							•		•				
Greece	10							•						•								•	•					
Hungary	7						•								•	•							•					
Iceland	5				•									•								•			•			
Ireland	1																											
Italy	11				•										•							•	•					
Latvia	2			•								•						•							•			
Lithuania	3							•					•					•						•				
Luxembourg	9						•						•					•						•				
Malta	1						•															•		•				
Montenegro	9				•									•								•			•			
Netherlands	6					•								•		•							•					
Norway	3	•							•							•							•					
Poland	6				•										•	•									•			
Portugal	6							•							•							•	•					
Romania	8					•						•								•					•			
Serbia	6							•							•							•						•
Slovakia	6				•				•							•							•					
Slovenia	7						•								•							•		•				
Spain	13							•							•							•		•				
Sweden	5			•											•							•			•			
Turkey	12							•							•					•				•				
United Kingdom	2							•							•								•					

Legend	
•	= applicable (based on average of all responses)
	= no answer provided
	= not applicable

I.3 Plumbing Company

Table I.3.1: Overview of applicable licenses for plumbing companies across Europe

		INDUSTRY LICENSES			LICENSES RELATED TO PRODUCTS / SERVICES			LICENSES RELATED TO PREMISES					LICENSES RELATED TO EMPLOYEES			
Countries	Number of licences required	License to operate plumbing company	registration in sector-specific register	Other	Gas installations	Dangerous substances storage	Other	External publicity / signs	Environmental compliance	Safety (related to premises)	Hygiene / sanitary compliance	Other	Qualifications of employees	Safety of employees	Data protection (employees)	Other
Austria	2	●										●				
Belgium	3	?											?	?		
Bulgaria	11	●		●	●	●		●	●	●	●		●	●	●	
Cyprus	5				●	±	●	●		●				●		
Croatia	6	●			●	●			●	●				●		
Czech Republic	1	●														
Denmark	5	±	●		●		●	±	±	●	±		●		±	
Estonia	3		●		●								●			
Finland	2				●			±		±			●	±		
France	6	●	●		●	●	●	±					●			
Germany	4	●			●								●			?
Greece	5		●		●	±		±	±	●	±		●	●		
Hungary	7	●	●		●					●	●		●	●		
Iceland	7	●				●			●	●	●		●	●		
Ireland	2		●										●	±		
Italy	7	●				●		●	●	●				●	●	
Latvia	2	●			±	±		±		±	±		●	±		
Lithuania	2			●									●			
Luxembourg	4	?			?								?	?		
Malta	1	●														
Montenegro	8	●			●	●			●	●	●		●	●		
Netherlands	5	?	?		±				?		±		?	?		
Norway	3	●											●	●		
Poland	3				●					±	●		●	±	±	
Portugal	7	●	●		●			●	●				●		●	
Romania	7	●	●		●			●		●			●	●		
Serbia	3	●			●					●						
Slovakia	4	●			●				●				●			
Slovenia	7	●		●	●	●			●	●				●		
Spain	10	●	●		●	●		●	●	●	±		●	●	●	
Sweden	6				●	●		●	●	●				●		
Turkey	2							●						●		
United Kingdom	3		●		●			●								

Legend		
	●	= licence applicable
		= no licence applicable
	±	= uncertain

Table I.3.2: Average time and costs to obtain all licenses (plumbing companies)

Countries	Number of licences required	Time required to obtain all licenses (in calendar days)							Cost - taxes, duties, fees to public authorities (for all licenses) - in euro							Cost for third parties / private sector (for all licenses) - in euro							Internal company effort in person days (for all licenses)					
		0 to 7	8 to 15	16 to 22	23 to 30	31 to 45	46 to 60	Over 60	0-50	51-100	101-200	201-300	301-400	401-500	Over 501	0-50	51-100	101-200	201-300	301-400	401-500	Over 501	0 to 10	11 to 20	21 to 40	41 to 60	61 to 80	Over 81
Austria	2						•								•							•		•				
Belgium	3		•								•						•						•					
Bulgaria	11							•							•							•					•	
Cyprus	5							•							•							•			•			
Croatia	6				•										•							•			•			
Czech Republic	1	•							•							•							•					
Denmark	5							•							•							•						•
Estonia	3									•						•												
Finland	2			•											•					•			•					
France	6					•			•											•				•				
Germany	4							•							•							•		•				
Greece	5	•							•														•					
Hungary	7			•							•					•							•					
Iceland	7		•									•				•									•			
Ireland	2	•													•		•											•
Italy	7				•										•							•	•					
Latvia	2			•								•					•							•				
Lithuania	2					•									•							•						•
Luxembourg	4				•						•							•					•					
Malta	1							•														•	•					
Montenegro	8				•										•							•		•				
Netherlands	5						•								•		•						•					
Norway	3	•										•				•							•					
Poland	3	•							•							•							•					
Portugal	7					•						•								•				•				
Romania	7							•							•							•				•		
Serbia	3					•							•							•							•	
Slovakia	4		•								•								•				•					
Slovenia	7						•								•							•		•				
Spain	10														•													
Sweden	6	•							•							•							•					
Turkey	2				•						•						•						•					
United Kingdom	3	•													•	•						•	•					

Legend		
	•	= applicable (based on average of all responses)
		= no answer provided
		= not applicable

I.4 Manufacturer of Small IT Devices

Table I.4.1: Overview of applicable licenses for manufacturer of IT devices across Europe

		INDUSTRY LICENSES			LICENSES RELATED TO PRODUCTS / SERVICES			LICENSES RELATED TO PREMISES						LICENSES RELATED TO EMPLOYEES			
Countries	Number of licences required	License to operate IT hardware company	registration in sector-specific register	Other	Dangerous substance storage	Handling Ozone depleting substances or other toxic substances	Other	External publicity / signs	Safety (related to premises)	Hygiene / sanitary compliance	Environmental compliance	Energy assessor	Other	Qualifications of employees	Safety of employees	Data protection (employees)	Other
Austria	2	●											●				
Belgium	1	●															
Bulgaria	5								●	●	●	●			●		
Cyprus	2							●	●								
Czech Republic	1	●															
Croatia	5				●				●		●			●	●		
Denmark	4	●			●										●	●	
Estonia	1				±	●					±					±	
Finland	1							±			±				●		
France	±	±	±														
Germany	3	●									●						●
Greece	1		●		±	±			±								
Hungary	7	●			●				●	●	●				●		●
Iceland	5				?	?			?	?	±	±			±	?	
Ireland	1							●									
Italy	9	●	●		●	●		●	●	●					●	●	
Latvia	±	±													±		
Lithuania	2								±					●	●		
Luxembourg	1	●															
Malta	1	●															
Montenegro	8	●			●	●			●	●	●			●	●		
Netherlands	1	●	±		±			±	±	±	±			±	±		
Norway	1				●												
Poland	±					±			±	±	±				±		
Portugal	6	●						●	●	●	●					●	
Romania	3							●			●				●		
Serbia	3				●				●						●		
Slovakia	3	●								●		●					
Slovenia	5	●			●				●		●				●		
Spain	5	●			●	±		±	●	±	●			±	●		
Sweden	1			●				±	±								
Turkey	5							●	●					●	●	●	±
United Kingdom	1							●									

Legend		
	●	= licence applicable
		= no licence applicable
	±	= uncertain

Table I.4.2: Average time and costs to obtain all licenses (manufacturer of small IT devices)

Countries	Number of licences required	Time required to obtain all licenses (in calendar days)							Cost - taxes, duties, fees to public authorities (for all licenses) - in euro							Cost for third parties / private sector (for all licenses) - in euro							Internal company effort in person days (for all licenses)					
		0 to 7	8 to 15	16 to 22	23 to 30	31 to 45	46 to 60	Over 60	0-50	51-100	101-200	201-300	301-400	401-500	Over 501	0-50	51-100	101-200	201-300	301-400	401-500	Over 501	0 to 10	11 to 20	21 to 40	41 to 60	61 to 80	Over 81
Austria	2						•								•							•		•				
Belgium	1	•								•							•						•					
Bulgaria	5			•								•							•					•				
Cyprus	2							•				•				•											•	
Croatia	1						•							•								•				•		
Czech Republic	5	•							•							•							•					
Denmark	4		•						•							•							•					
Estonia	1	•								•							•											
Finland	1	•													•	•							•					
France	±	•							•														•					
Germany	3							•							•							•		•				
Greece	1							•				•											•					
Hungary	7			•						•						•							•					
Iceland	5		•							•							•						•					
Ireland	1																											
Italy	9	•										•				•							•					
Latvia	±		•							•						•								•				
Lithuania	2					•			•							•							•					
Luxembourg	1				•						•						•						•					
Malta	1							•														•				•		
Montenegro	8							•							•							•						•
Netherlands	1					•								•		•							•					
Norway	1	•											•			•							•					
Poland	±	•							•							•							•					
Portugal	6					•									•							•			•			
Romania	3					•							•						•				•					
Serbia	3							•							•							•						•
Slovakia	3							•							•					•					•			
Slovenia	5						•								•							•		•				
Spain	5						•								•							•				•		
Sweden	1				•							•								•			•					
Turkey	5					•									•					•						•		
United Kingdom	1	•																										

Legend		
	•	= applicable (based on average of all responses)
		= no answer provided
		= not applicable

I.5 Manufacturer of Steel Products

Table I.5.1: Overview of applicable licenses for manufacturer of Steel Products across Europe

		INDUSTRY LICENSES			LICENSES RELATED TO PRODUCTS / SERVICES		LICENSES RELATED TO PREMISES					LICENSES RELATED TO EMPLOYEES				
Countries	Number of licences required	License to operate steel product manufacturing company	Registration in sector-specific register	Other	Specific licenses according to type of steel products	Other	Environmental compliance	External publicity / signs	Safety (related to premises)	Hygiene / sanitary compliance	Other	Metal handling license	Safety of employees	Appointment of technicians	Data protection	Other
Austria	2	●									?					
Belgium	4	●					●		●				●			
Bulgaria	9	?	?				?		?	?		?	?	?		?
Cyprus																
Croatia	6	?			?		?		?				?	?		
Czech Republic	1	?														
Denmark	6		?		?		?		?			?	?			
Estonia	2				?		?									
Finland	2				?		?	±								
France	2	?	?													
Germany	3	?					?				?					
Greece	7	?	?				?		?	?		±	?	?		
Hungary	5	?					?		?				?	?		
Iceland	7	?	±		?		?	±	?	?			?	?		
Ireland	1							?					±			
Italy	4	?						?	?						?	
Latvia	1	?	±													
Lithuania	1						?									
Luxembourg	6	?					?		?	?			?	?		
Malta	1	?														
Montenegro	6	?					?		?			?	?	?		
Netherlands	5	?	?		±				?		±		?	?		
Norway	0															
Poland	5				?				?	±	?	?	?		±	
Portugal	6	?					?	?	?	?					?	
Romania	4						?	?	?				?			
Serbia	3	?							?				?			
Slovakia	2	?			?											
Slovenia	5	?					?		?			?	?			
Spain	7	?	±		±		?	?	?	±	?		?	±	?	
Sweden	4	?					?	?	?				±			
Turkey	5						?	?	?	?			?			
United Kingdom	3					?		?	?							

Legend	
●	= licence applicable
	= no licence applicable
±	= uncertain
	= no data available due to non existence of steel products manufacturer in country

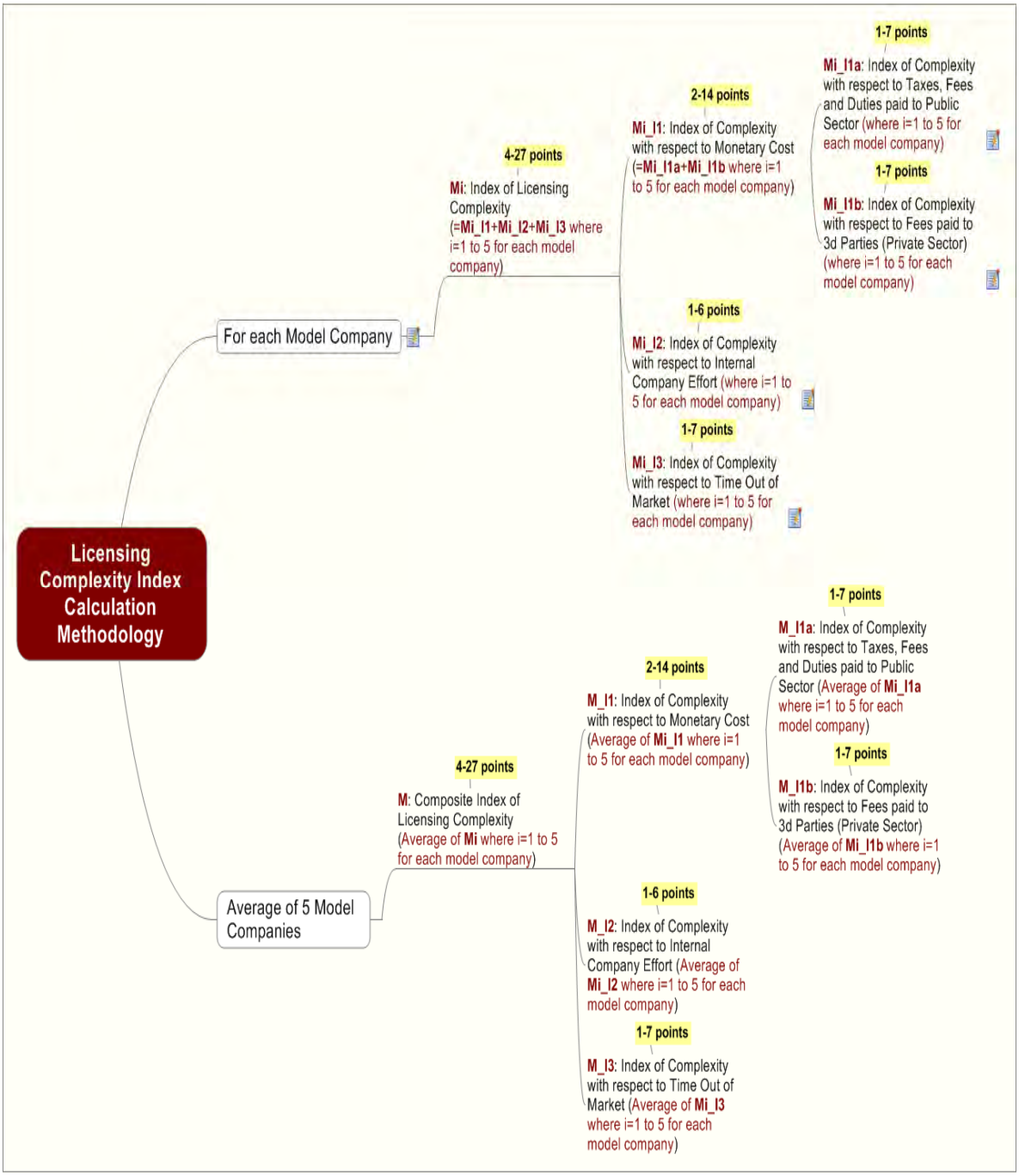
Table I.5.2: Average time and costs to obtain all licenses (manufacturer of Steel Products)

Countries	Number of licences required	Time required to obtain all licenses (in calendar days)							Cost - taxes, duties, fees to public authorities (for all licenses) - in euro							Cost for third parties / private sector (for all licenses) - in euro							Internal company effort in person days (for all licenses)					
		0 to 7	8 to 15	16 to 22	23 to 30	31 to 45	46 to 60	Over 60	0-50	51-100	101-200	201-300	301-400	401-500	Over 501	0-50	51-100	101-200	201-300	301-400	401-500	Over 501	0 to 10	11 to 20	21 to 40	41 to 60	61 to 80	Over 81
Austria	2						[?]								[?]							[?]		[?]				
Belgium	4						[?]							[?]				[?]						[?]				
Bulgaria	9						[?]								[?]			[?]					[?]					
Cyprus																												
Croatia	6					[?]									[?]							[?]				[?]		
Czech Republic	1	[?]							[?]							[?]							[?]					
Denmark	6							[?]	[?]													[?]						[?]
Estonia	2			[?]						[?]							[?]											
Finland	2							[?]							[?]	[?]							[?]					
France	2							[?]							[?]							[?]			[?]			
Germany	3						[?]								[?]							[?]		[?]				
Greece	7							[?]							[?]							[?]				[?]		
Hungary	5							[?]							[?]	[?]							[?]					
Iceland	7					[?]							[?]					[?]							[?]			
Ireland	1																											
Italy	4				[?]						[?]											[?]	[?]					
Latvia	1				[?]						[?]							[?]								[?]		
Lithuania	1							[?]						[?]			[?]							[?]				
Luxembourg	6						[?]						[?]					[?]						[?]				
Malta	1						[?]															[?]				[?]		
Montenegro	6					[?]									[?]							[?]			[?]			
Netherlands	5						[?]								[?]	[?]								[?]				
Norway	0																											
Poland	5							[?]							[?]		[?]									[?]		
Portugal	6							[?]							[?]							[?]	[?]					
Romania	4						[?]							[?]					[?]						[?]			
Serbia	3							[?]							[?]							[?]						[?]
Slovakia	2		[?]						[?]												[?]				[?]			
Slovenia	5						[?]							[?]						[?]						[?]		
Spain	7							[?]							[?]						[?]							[?]
Sweden	4							[?]							[?]							[?]					[?]	
Turkey	5							[?]							[?]					[?]							[?]	
United Kingdom	3	[?]								[?]							[?]						[?]					

Legend

- • = applicable (based on average of all responses)
- = no answer provided
- = no data due to no licenses identified as applicable (according to
- = no data due to lack of steel products manufacturer in country
- = not applicable

APPENDIX II – LICENSING COMPLEXITY INDEX CALCULATION METHODOLOGY



A. For each Model Company

Model Companies 1-5:

1. Hotel with Restaurant
2. Wholesale/ Retail Food Distributor
3. Plumbing Company
4. Manufacture of Small IT Devices
5. Manufacture of Steel Products

MI: INDEX OF LICENSING COMPLEXITY (=MI_I1+MI_I2+MI_I3 WHERE I=1 TO 5 FOR EACH MODEL COMPANY)

- 4-27 points

- **MI_I1: INDEX OF COMPLEXITY WITH RESPECT TO MONETARY COST (=MI_I1A+MI_I1B WHERE I=1 TO 5 FOR EACH MODEL COMPANY)**

  - 2-14 points

  - ***MI_I1A: INDEX OF COMPLEXITY WITH RESPECT TO TAXES, FEES AND DUTIES PAID TO PUBLIC SECTOR (WHERE I=1 TO 5 FOR EACH MODEL COMPANY)***

Points	Range (€)
1	€ 0-50
2	€ 51-100
3	€ 101-200
4	€ 201-300
5	€ 301-400
6	€ 401-500
7	over € 500

  - ***MI_I1B: INDEX OF COMPLEXITY WITH RESPECT TO FEES PAID TO 3D PARTIES (PRIVATE SECTOR) (WHERE I=1 TO 5 FOR EACH MODEL COMPANY)***

Points	Range (€)
1	€ 0-50
2	€ 51-100
3	€ 101-200
4	€ 201-300
5	€ 301-400
6	€ 401-500
7	over € 500

- **MI_I2: INDEX OF COMPLEXITY WITH RESPECT TO INTERNAL COMPANY EFFORT (WHERE I=1 TO 5 FOR EACH MODEL COMPANY)**

Points	Range (person days)
1	0-10
2	11-20
3	21-40
4	41-60
5	61-80
6	over 81

- **MI_I3: INDEX OF COMPLEXITY WITH RESPECT TO TIME OUT OF MARKET (WHERE I=1 TO 5 FOR EACH MODEL COMPANY)**

Points	Range (calendar days)
1	0-7
2	8-15
3	16-22
4	23-30
5	31-45
6	46-60
7	over 60

B. Average of 5 Model Companies

M: COMPOSITE INDEX OF LICENSING COMPLEXITY (AVERAGE OF MI WHERE I=1 TO 5 FOR EACH MODEL COMPANY)

- 4-27 points

- **M_I1: INDEX OF COMPLEXITY WITH RESPECT TO MONETARY COST (AVERAGE OF MI_I1 WHERE I=1 TO 5 FOR EACH MODEL COMPANY)**

  - 2-14 points

  - ***M_I1A: INDEX OF COMPLEXITY WITH RESPECT TO TAXES, FEES AND DUTIES PAID TO PUBLIC SECTOR (AVERAGE OF MI_I1A WHERE I=1 TO 5 FOR EACH MODEL COMPANY)***

    - 1-7 points

  - ***M_I1B: INDEX OF COMPLEXITY WITH RESPECT TO FEES PAID TO 3D PARTIES (PRIVATE SECTOR) (AVERAGE OF MI_I1B WHERE I=1 TO 5 FOR EACH MODEL COMPANY)***

    - 1-7 points

- **M_I2: INDEX OF COMPLEXITY WITH RESPECT TO INTERNAL COMPANY EFFORT (AVERAGE OF MI_I2 WHERE I=1 TO 5 FOR EACH MODEL COMPANY)**

  - 1-6 points

- **M_I3: INDEX OF COMPLEXITY WITH RESPECT TO TIME OUT OF MARKET (AVERAGE OF MI_I3 WHERE I=1 TO 5 FOR EACH MODEL COMPANY)**

  - 1-7 points

APPENDIX III - TYPOLOGY OF COUNTRIES' BANKRUPTCY SYSTEMS AND VARIABLE ANALYSIS

The following table presents a typology of countries' bankruptcy system vis a vis key parameters based on the views / perceptions of the survey's respondents.

Table A – Typology of countries based on respondents' perception of the bankruptcy system

	Type of Law	Early Warning system	Efficiency of out-of-court set-tlement	Debtor / Creditor friendly	Pro-reorganization / pro-liquidation
Austria	German Civil Law	Low	Low	Debtor friendly	Pro reorganisa-tion
Belgium	French Civil Law	Low	na		na
Bulgaria	Combined civil law (French and German civil law)	Low	Low	Debtor friendly	na
Croatia	German Civil Law	na	Very low	Creditor friendly	na
Cyprus	Pluralistic law (elements from Common and Civil Law)	Medium	Low	Creditor friendly	na
Czech Republic	German Civil Law	Low	na	Creditor friendly	na
Denmark	Scandinavian Law	High	High	Neutral	na
Estonia	German Civil Law	High	Low	Neutral	na
Finland	Scandinavian Law	High	High	Debtor friendly	Low level of reorganization
France	French Civil Law	Medium	High	Debtor friendly	pro reorganisation
Germany	German Civil Law	Very high	Medium	Neutral	na
Greece	French Civil Law	Low	Low	Creditor friendly	na
Hungary	Combined civil law (French and German civil law)	Low	na		Low level of reorganization
Iceland	Scandinavian Civil Law	Low	High	Debtor friendly	na

	Type of Law	Early Warning system	Efficiency of out-of-court set-tlement	Debtor / Creditor friendly	Pro-reorganization / pro-liquidation
Ireland	English Common Law	Low	Very low	Neutral	Low level of reorganization
Italy	French Civil Law	Low	Low	Creditor friendly	na
Latvia	German Civil Law	Low	Very low	Creditor friendly	na
Lithuania	Combined civil law (French and German civil law)	High	Very low	Creditor friendly	na
Luxembourg	French Civil Law		na		
Malta	Pluralistic law (elements from Common and Civil Law)	Low	na		na
Montenegro	German Civil Law	Medium	Medium	Creditor friendly	na
Netherlands	French Civil Law	High	High	Creditor friendly	Low level of reorganization
Norway	Scandinavian Law	Low	Low	Creditor friendly	Low level of reorganization
Poland	French Civil Law	Medium	Very low	Creditor friendly	Pro reorganisation
Portugal	French Civil Law	Low	Low	Neutral	na
Romania	French Civil Law	Medium	Low		na
Serbia	German Civil Law	Low	Low	Creditor friendly	na
Slovakia	German Civil Law	High	Very high	Neutral	na
Slovenia	German Civil Law	na	Medium	Neutral	na
Spain	French Civil Law	Low	High	Creditor friendly	Pro reorganisation
Sweden	Scandinavian Law	Low	High	Neutral	Low level of reorganization
Turkey	German Civil Law	na	na		
United Kingdom	English Common Law	Very high	Very high	Creditor friendly	Pro reorganisation

Source: Business Dynamics Survey 2010

The following table summarises the impact of insolvency indicators and type of bankruptcy law on business dynamics.

Table B - Impact of indicators and type of law on business dynamics

Countries with	Birth Rate %	Net birth rate Number of enterprise births/ number of enterprise deaths %	Survival Rate %	TEA %	Number of insolvencies /10 000 firms	Percentage of insolvencies on company death
Early warning system (low or very low)	10,74	1,6	69,0	6,6	78,3	13%
Early warning system (high or very high)	12,2	1,3	69,0	5,2	88,6	8%
Efficiency of out-of-court settlement (low or very low)	10,9	1,5	69,6	6,7	102,3	12%
Efficiency of out-of-court settlement (high or very high)	11,1	1,3	**76,5**	6,1	**72,4**	11%
Creditor friendly	10,3	1,5	71,3	6,7	72,8	9%
Neutral	11,4	1,4	71,7	5,8	73,3	10%
Debtor friendly	10,1	1,2	70,8	6,4	**176,2**	**23%**
Scandinavian Law	10,2	1,3	75,3	5,7	105,0	14%
French Civil Law	10,2	1,3	69,5	5,8	71,9	**7%**
English Common Law	12,4	1,3	79,6	**8,4**	82,6	**20%**
German Civil Law	**8,8**	1,0	68,5	5,4	107,4	13%
Pro reorganization	10,2	1,3	78,0	5,2	144,0	17%
Low level of reorganization	10,2	1,2	70,5	6,3	100,6	18%

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