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## Finance, Competitiveness & Innovation Global Practice (FCI)

# Bulgaria Benchmark :

# EWT Report

## Benchmarking Report

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## ABBREVIATIONS

<b>AI</b>	Artificial Intelligence
<b>B2B</b>	Business to Business
<b>CIP</b>	Information Center for Prevention of corporate difficulties ( <i>France</i> )
<b>CNCDEC</b>	National Board of auditors and statutory auditors ( <i>Italy</i> )
<b>COMI</b>	Center of Main Interest
<b>COVID-19</b>	Coronavirus Disease 19
<b>CRM</b>	Customer Relationship Management
<b>DBA</b>	Danish Business Authority
<b>DG REFORM</b>	Directorate General for Structural Reform Support
<b>DINSIC</b>	
<b>DIRECCTE</b>	Regional Department of Enterprise, Competition, Consumer Affairs, Labor and Employment ( <i>France</i> )
<b>DSCR</b>	Debt Service Coverage Ratio
<b>EBA</b>	European Banking Authority
<b>EBIT</b>	Earnings before Interest and Tax
<b>EBITDA</b>	Earnings before Interest, Tax, Depreciation, and Amortization
<b>EC</b>	European Commission
<b>ECB</b>	European Central Bank
<b>EC</b>	European Commission
<b>EIR</b>	European Insolvency Regulation
<b>EIRL</b>	Individual Limited Liability Company ( <i>France</i> )
<b>EU</b>	European Union
<b>EUR</b>	Euro
<b>EWE</b>	Early Warning Europe
<b>FFR</b>	Family Business Foundation ( <i>Poland</i> )
<b>FTE</b>	Full-Time Equivalent
<b>GDPR</b>	General Data Protection Regulation
<b>HR</b>	Human Resources
<b>INPS</b>	National Institute of Social Security ( <i>Italy</i> )
<b>MoE</b>	Ministry of Economic Affairs and Communications
<b>MSME</b>	Micro, Small, and Medium Enterprise
<b>NACE</b>	<i>Nomenclature statistique des Activités économiques dans la Communauté Européenne</i>
<b>NDA</b>	Non-Disclosure Agreement
<b>NGO</b>	Non-Governmental Organization
<b>NPL</b>	Nonperforming Loan
<b>OCC</b>	Crisis Settlement Bodies ( <i>Italy</i> )
<b>OCRI</b>	Crisis Settlement and Resolution Bodies ( <i>Italy</i> )

<b>OKB</b>	
<b>PAED (PARP)</b>	Polish Agency for Enterprise Development ( <i>Poland</i> )
<b>PCB</b>	Private Credit Bureau
<b>PCR</b>	Public Credit Register ( <i>see CCR</i> )
<b>ROA</b>	Return on Assets
<b>ROD</b>	Return on Debt
<b>ROE</b>	Return on Equity
<b>ROI</b>	Return on Investment
<b>SME</b>	Small and Medium Enterprise
<b>SRSS</b>	Structural Reforms Support Service
<b>URSAAF</b>	Administrative body responsible for social security funds ( <i>France</i> )
<b>VAT</b>	Value-Added Tax
<b>WBG</b>	World Bank Group
<b>WHOA</b>	Law on homologation of private agreements ( <i>The Netherlands</i> )
<b>XBRL</b>	Extensible Business Reporting Language

## DEFINITIONS

<b>ADVISORY SERVICES</b>	Range of services to be provided to Debtors being notified about a perspective insolvency by the EWT
<b>DEBTORS</b>	Producer households, sole proprietorships, and non-financial companies (falling under the scope of the EWT)
<b>EWT (ALERT SYSTEMS)</b>	A system aimed at alerting debtors about a perspective insolvency, normally based on trigger events
<b>FALSE NEGATIVE</b>	A debtor in distress (i.e., with high probability of default) not being notified about a perspective insolvency by the EWT
<b>FALSE POSITIVE</b>	A debtor not in distress (i.e., with low probability of default) being notified about a perspective insolvency by the EWT
<b>HARD NOTIFICATION</b>	A notification to the Debtor about the detection of a perspective insolvency based on official communication (official letter from the EWT, communication from a Tribunal, etc.)
<b>INBOUND APPROACH</b>	An approach where debtors access the EWT on a voluntary basis to perform an assessment aimed at verifying whether there is a perspective insolvency
<b>INCENTIVES</b>	Range of benefits the debtors being notified about a perspective insolvency by the EWT can have access to (for example: reduced penalties for past due tax debt)
<b>NEGATIVE INFORMATION</b>	Information negatively affecting debtors' creditworthiness (for example, unpaid checks, delinquent accounts, past due debt, bankruptcies, and foreclosures)
<b>OUTBOUND MODEL</b>	An approach where the EWT elaborates a set of data to identify and notify debtors' perspective insolvency
<b>PREDICTIVITY</b>	The capacity of the EWT to capture perspective insolvencies, minimizing the share of false positives and false negatives
<b>PERSPECTIVE INSOLVENCY</b>	High probability that a debtor will become insolvent (normally under a 12-24-month perspective). The notion of a perspective insolvency differs from a debtor facing "a likelihood of insolvency" as in Article 3 of the Directive. 'Perspective insolvency' is a state in which a debtor may find itself that is not yet close to being in 'imminent insolvency' or facing 'a likelihood of insolvency.' The key distinction between 'perspective' and those terms is the non-immediacy of the state of insolvency.
<b>PROBABILITY OF DEFAULT</b>	Probability that a debtor will face difficulties in meeting financial obligations (normally under a 12-month perspective)
<b>SELF-ASSESSMENT</b>	Assessment activity made by the debtor to identify whether alert triggers exist, identifying a perspective insolvency
<b>SOFT NOTIFICATION</b>	A notification to the Debtor about the detection of a perspective insolvency based on informal communication (for example: a call or an email by the EWT or the Advisory service.)

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The objective of the Report is to assist the Bulgarian authorities in the design of an Early Warning Tool (EWT) to identify and assist debtors in potential financial distress, in line with the recommendations of the EU Directive 2019/1023<sup>1</sup> of the European Parliament and Council “On preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt” (2019) (the Directive<sup>2</sup>).

For the preparation of the Report, the WBG team<sup>3</sup> consulted with representatives of EWT in 5 Benchmark Countries (namely France, Germany, Italy, the Netherlands, and Poland) in a number of video conference meetings between February and March, 2021<sup>4</sup>. The feedback obtained during these meetings was essential for capturing the specificities of each tool.

The WBG Team is extremely grateful to the institutions of Benchmark Countries for the cooperation and inputs shared with the team.

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<sup>1</sup> Article 3

<sup>2</sup> See EU Directive 2019/1023, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L1023>

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<sup>4</sup> All meetings were held virtually, given the current travel restrictions deriving from the COVID-19 pandemic emergency. The institutions the team met with are: The Polish Agency for Enterprise Development (PARP), MKH Doorgan, Foundation Entrepreneurs Soundbord and the Chamber of Commerce (the Netherlands), Team U (Germany), OCRI (Italy), the Commercial Court of Paris (France).

## BACKGROUND: ART. 3 OF THE DIRECTIVE

Before performing a benchmarking exercise, it is important to have a clear understanding of what Article 3 requires, and of the limits of its intended application. Article 3 provides in relevant part as follows:

*“1. Member States shall ensure that debtors have access to one or more clear and transparent early warning tools which **can detect circumstances that could give rise to a likelihood of insolvency** and can signal to them the need to act without delay.*

*2. Early warning tools may include the following:*

*(a) alert mechanisms when the debtor has not made certain types of payments;*

*(b) advisory services provided by public or private organizations;*

*(c) incentives under national law for third parties with relevant information about the debtor, such as accountants, tax and social security authorities, to flag to the debtor a negative development.*

*3. Member States shall ensure that debtors and employees’ representatives have access to relevant and up-to-date information about the availability of early warning tools as well as of the procedures and measures concerning restructuring and discharge of debt.*

*4. Member States shall ensure that information on access to early warning tools is publicly available online and that, in particular for SMEs, it is easily accessible and presented in a user-friendly manner.*

*5. Member States may provide support to employees’ representatives for the assessment of the economic situation of the debtor.”*

The following observations follow from the wording of Article 3:

- The time at which an EWT is to be made available is *before* the debtor faces any “likelihood of insolvency,” which is the standard applicable under Article 4.1 of the Directive. This implies that the debtor should be alerted, at least in theory, before he is under any obligation to open a restructuring procedure.

- It follows that additional duties on directors required under Article 19 of the Directive<sup>11</sup>, which are to apply where there “is a likelihood of insolvency,” should not be triggered *solely* based on any EWT notification or other contact with the debtor under Article 3.
- EWTs are clearly intended to be for the benefit of the debtor and *no one else*. The intention of the Directive is to make it possible to save the “success stories” (and to liquidate promptly the failures) by giving some form of advance indication that financial problems requiring a formal restructuring might occur in the future if early steps are not taken. This is consistent with another principal aim of the Directive: to encourage a spirit of entrepreneurialism within the EU as well as both reasonable risk-taking by honest debtors and a more generous attitude toward forgiveness of failure<sup>12</sup>.
- There may be a risk that employees, whose interests and wishes may not always coincide with those of the debtor, may not stand by to permit the debtor to try to find long-term solutions for the business, and might seek to intervene to force their views on the debtor. In this regard, note that Article 3(5) provides that a Member State “may” provide for support to employees’ representatives for the assessment of the economic situation of the debtor. If a policy decision is made to provide such support, then consideration should be given to the feasibility of covering off any liability risk in legislation. Otherwise, in the absence of their consent, debtors are entitled to assume that they, not the Member State or any agency involved in the operation of the EWT, control the information flow to employees and/or their representatives.

Apart from the examples given in Article 3 itself, the Directive offers little guidance on how Member States should comply with the requirement to give debtors access to “one or more” EWTs. There is, however, plenty of scope in the Directive for each Member State to do as much as it considers appropriate to its needs and institutional capacity.

## 1. EXECUTIVE SUMMARY

### 1.1 High-level findings (benchmarking analysis)

2. **Notwithstanding the recent implementation of the Directive, there seems to be a multitude of approaches applied to implement and manage Early Warning Tools (EWTs) in Member States.** In fact, while in some juridical contexts the flagging of a perspective insolvency solely relies on the debtors' call for help<sup>5</sup>, in others a combination of voluntary disclosure and reporting from external entities (or even a mandatory self-assessment) to flag alert signals is used. In any case, in most Benchmark Countries mechanisms aimed at identifying debtors' emerging difficulties to support early interventions avoiding insolvency were established well before the adoption of the Directive<sup>6</sup>. Under this perspective, the Directive seems to have formalized a set of already established practices, so to ensure that minimum requirements to support a "proactive justice" are defined in the EU space.
3. **Several Benchmark Countries seem to follow the "one or more" guidance in the Directive, with different solutions targeting debtors.** In fact, in most of these countries, two or more mechanisms exist to support debtors<sup>7</sup>. The key reason for this variety of Tools is twofold. On one side, where EWTs are managed by private not-for-profit organizations, there is no control of these tools by the public sector and no limitation to social entrepreneurship (therefore, different entities can propose similar solutions in different areas of the country). On the other side, different mechanisms often serve different segments covered in the scope of the Directive<sup>8</sup>, with some Tools that are mostly addressing sole proprietorships and micro-enterprises, and other mechanisms that are the best fit for larger entities.
4. **The EWT seems directly embedded in the preventive restructuring framework in two of the five Benchmark Countries<sup>9</sup>.** However, where this approach is implemented, the Tools shows some limitations: while in France key criteria to identify debtors facing perspective distress can vary depending on judges' discretionary powers and Courts (therefore not ensuring a level playing field when identifying companies facing distress), both in France and Italy the data-driven approach still relies on a set of indicators that may flag the perspective insolvency when it's already too late, therefore limiting the effectiveness of the EWTs.
5. **Regarding the disclosure of signals of distress made by debtors, the approach based on a mandatory periodic self-assessment seems innovative<sup>10</sup>, as it fosters a prognostic approach to be embedded within the businesses.** However, concerns about the impact of this approach exist - the self-assessment is likely to be applicable only for small and medium sized businesses and not for micro companies or sole proprietorships. It is worth to be noted that in many countries (including Bulgaria), these segments cover a significantly large share of the entities falling under the scope of the EWT. Lastly, another relevant downside of this approach is that in order to have an effective and predictive self-assessment system, forward-looking indicators to identify a perspective insolvency should rely on a very articulated system of thresholds, whose values might change dramatically depending on the segment of economic activity and the phase of the economic cycle<sup>11</sup>. Therefore,

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<sup>5</sup> Germany, Poland, the Netherlands

<sup>6</sup> See Germany and the Netherlands, for example.

<sup>7</sup> In all benchmark countries, except Poland.

<sup>8</sup> See Italy for example, where the over indebtedness procedure based on debtors' will to flag difficulties applies to individual entrepreneurs and micro undertakings, while the alert procedures based on a periodic mandatory self-assessment and the reporting from institutional creditors (Tax Authority, social security) applies to SMEs.

<sup>9</sup> France and Italy.

<sup>10</sup> See the alert procedure in Italy

<sup>11</sup> On this matter, the Bank of Italy expressed in a note its concerns regarding the application of the current threshold defined more than 18 months ago to the current context, as the alert procedure is expected to come into force starting from Sept. 2021.

relevant efforts should be made to manage and maintain the values of the threshold alerts.

6. **Based on the above, the most effective solutions to support an effective EWT framework in each country should rely on a principle of complementarity.** In fact, while systems based on voluntary access by debtors seem the best fit for sole proprietorships, family businesses or micro-undertakings, a more proactive and data-driven approach based on triggering publicly available information should support small, medium and large enterprises, including these companies whose management is either unaware or reluctant to flag the difficulties.
7. **As stressed above, evolution of these tools is ongoing in most, if not all, Benchmark Countries, also in light of the recent pandemic emergency.** Under a short-medium term perspective, the key expected enhancements seem: a) a more consistent data driven perspective is going to be adopted, relying on data collection of either publicly available or privately held information; b) based on that, an increasingly proactive approach is going to be adopted by well-established EWTs, as data collection will help the Tools at profiling companies with perspective insolvencies, making the screening process less prone to discretionarily and more automated; and c) as already happens in some countries<sup>12</sup>, advanced data analytics (AI, machine learning etc..) will increasingly play a crucial role when profiling companies. However, given the vastity of reasons why a debtor might face perspective distress<sup>13</sup>, human intervention will also be needed as a last resort to validate the profiling or perform overrides of the likelihood of insolvency.
8. **The cultural element seems a key aspect playing a fundamental role when adopting key strategic decisions regarding the patterns of the EWTs.** The most relevant variables seem: a) the culture of entrepreneurship, failure and second chance in each jurisdiction, that may affect the EWT's operational arrangements, i.e. where the Tool is based on a voluntary disclosure by debtors; 2) the private sector's trust towards the public sector and the level of service-oriented approach adopted by the public sector towards debtors, that may affect the EWT's institutional arrangements, i.e. where a Tool is managed by a public or private entity; c) the credit risk management culture of financial sector players, that may affect the support of private sector entities to the Tool and implementation arrangements to design a model drawing the inspiration from already existing practices adopted by these operators.
9. **The cost and complexity of implementing, maintaining and managing the EWT operations should not be underestimated by the Bulgarian policymakers.** While an approximate budget annual estimate for EWT operations can range approximatively from EUR 150.000 to 500.000 in already established mechanisms in other countries based on voluntary disclosure by debtors (such as Germany, for example), the process of defining the operational framework and setting up an adequate network with a sufficient skillset to support entrepreneurs in distress might take up to 12 months.
10. **In general, the establishment of fully efficient and effective tools also coping with the current pandemic and post-pandemic emergency seems yet to come in the Benchmark Countries.** In fact, improvements seem needed on both approaches (voluntary approach where entrepreneurs ask for help, and proactive approach where the EWT flags the perspective insolvency). As for voluntary approaches, these might be more effective at detecting difficulties. As for proactive approaches, implementation of a well-structured and comprehensive data collection fueled by data intelligence to support predictive models seems still at its early stages. Under this perspective, the mushrooming of EWTs in several countries to comply with the deadlines established by the Directive will help with sharing the lessons learned and make these platforms more effective.

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<sup>12</sup> See Denmark for example. Estonia is also planning to adopt a similar solution.

<sup>13</sup> Including personal, family, psychological reasons, not always reflected in quantitative indicators.

## 1.2 High-level findings (Benchmark Countries)

11. **The early warning mechanism in France has a long and solid track record and is based on two strictly connected pillars (detection and treatment) supporting a proactive approach towards debtors in distress, and effective measures to resolve the difficulties under a going concern perspective.** The model reflects the specificities of the French judiciary system, where judges at the Commercial Courts are ex entrepreneurs elected by their peers, therefore with sufficient hands-on experience to support the early detection phase. The key downsides deriving from this mechanism are: a) the detection phase still relies of some indicators that are not forward-looking (such as negative net worth) and may flag a perspective insolvency when it's too late; b) there is space for improvement for internal procedures (where auditors and debtor's representatives flag the difficulties); and c) lack of awareness of their availability and the high costs for the treatment procedures are currently a barrier to the access of smaller companies to such procedures.
12. **The main early warning mechanism in Italy has been recently defined and will come into force in September 2021.** It is based on an advanced approach that fosters debtors' awareness of trigger alerts that may be used to detect difficulties before they emerge, supported by a system of early warning indicators to be used by institutional creditors. The Chamber of Commerce is seen as an independent body both by debtors and creditors and will play a crucial role in detecting the situation of distress and supporting debtors. The key concerns for this procedure derive from; a) the system of alert indicators defined to flag a perspective insolvency, based on predictive algorithms defined 2 years ago (that might not be applicable under the current situation; b) the costs of the professionals that will support the debtors in the treatment phase (presumably high, discouraging the flagging of perspective insolvency by small entities); c) the background of these professionals, that is still undefined (the option of appointing insolvency practitioners has been considered. If so, concerns about the capacity of assisting a distressed business under a going concern may arise, along with the risk of conflicts of interest).
13. **The main early warning mechanism in Germany is based on the genuine sense of belonging of entrepreneurs (and retired entrepreneurs) to support their peers.** The initiative started as a self-help group of entrepreneurs experiencing the devastating impact of failure in their own lives, willing to share the lessons learned with colleagues experiencing the same difficulties. A range of services is offered to debtors, including the support to a second chance, and focuses on the personal/psychological factors behind the crisis. Some specificities of the model are: a) it is strictly based on the will of the entrepreneurs to seek help; b) it reflects the cultural background of Germany, where failure is blamed; c) based on that, reflects the need of entrepreneurs to reach a "safe harbor" that they perceive as totally neutral and welcoming, where they can get the help that they need.
14. **Similarly to Germany, mechanisms aimed at supporting entrepreneurs seeking help are well established in the Netherlands, with a tradition of more than 40 years.** However, the mechanisms are not based just on self-help. In fact, different entities such as the Chamber of Commerce, Financial Institutions, Municipalities participate proactively, both referring the entity to debtors in distress and under a cost sharing perspective. Still, the model solely relies on awareness of difficulties and the will of the entrepreneurs to get help.
15. **The mechanism in Poland draws its inspiration from already established systems in other countries (such as Germany), through the assistance of Early Warning Europe.** The system has been established following the key lessons learned in other countries (Germany, Denmark), solely relies on entrepreneurs' call for help and it is based on a network of volunteers ex-entrepreneurs, accessed by debtors after a first level screening. Similarities might exist between Poland and Bulgaria, being the newly established mechanism in Poland a "second generation" EWT and sharing the same cultural heritage from eastern European countries (with a similar perception of the role of the public sector by private sector operators, similar culture of entrepreneurship and voluntarism, similar patterns and difficulties of the SME segment). However, the key

targeted segments of the mechanism are the individual entrepreneurs and micro companies (that currently cover a significantly high share of the SME market).

- 16. The table below synthesizes the key features of the most relevant characteristics of the alerting mechanisms in Benchmark Countries**, including institutional arrangements, operational arrangements (how risk is detected, and how support services are accessed), data usage for risk detection and prospects for future evolution. The key rationale for different settings in Benchmark Countries is also outlined based on interviews with the national counterparts in the Table below.

*Table 1: Key features of EWTs in Benchmark Countries*

Topic	Key features	Key rationale behind the settings
<b>1. Institutional arrangements</b>	Public entity (Italy, France)	EWT embedded in the preventive procedures
	An agency supporting SMEs (Poland)	Economies of means of a structure whose mission is the provision of support services to SMEs
	Private entities (not for profit organizations, Germany, the Nederland)	EWT should be perceived as a totally neutral entity for the exclusive interest of debtors
<b>2. Operational arrangements (detection)</b>	Company self-evaluation and external screening to flag perspective insolvency (France, Italy)	It's important that companies embed forward-looking and preventive approaches into the business processes. Wide impact of SME insolvency on the whole society makes the flagging of difficulties before they occur mandatory, given their social costs.
	Company voluntary disclosure to ask for help (other countries)	Relying of publicly available quantitative information might flag false positives of miss situations of distress based on personal/qualitative drivers (false negatives). Only well motivated and honest entrepreneurs that will ask for help will support company rehabilitation.
<b>3. Operational arrangements (treatment)</b>	Mandatory (i.e., the feedback of debtors is requested when a perspective insolvency is detected) – France, Italy	Debtors have responsibilities towards their staff and institutional creditors, that may be affected by the consequences of future insolvency
	Voluntary (i.e., debtors choose to ask for support and benefit from assistance to address issues) – other countries	Asking for help is the first step to solve the issues. Debtors that are not fully aware of the issues or not fully committed will not achieve recovering their business
<b>4. Data perspective</b>	Detection based on forward-looking data and benchmarking against peers (Italy)	The model should be predictive and detect difficulties when they can be addressed. However, the alert should be confirmed by third party experts
	Detection based on a range of alerts and high- level information on company's activities (France)	Judges with significant expertise should be able to perform a screening of alert indicators to identify those companies who should undergo preventive procedures
	Detection based on qualitative data, integrated by high-level quantitative information (other Benchmark Countries)	Perspective default might not always be captured through quantitative data.
<b>5. Planned evolution</b>	<ol style="list-style-type: none"> <li>1. More data driven and predictive approach (Italy, France, Poland, the Netherlands)</li> <li>2. Minimizing the barriers to entry to access the EWT (Italy, France, the Netherlands)</li> <li>3. Downscaling the EWT to make it more</li> </ol>	Make the mechanism more inclusive, effective, and supportive of the Covid emergency and expected post-Covid economic downturn, likely to affect a great number of SMEs.

	<p>attractive for smaller entities (France)</p> <p>4. Leveraging already collected data to make the screening activity more effective and straight forward (Germany, the Nederland)</p>	
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## 2 INTRODUCTION

### 2.1 Background and rationale

- 16 Under Directive 2019/1023, Early Warning Tools (EWT) should be put in place to warn debtors about the urgent need to act, considering the limited resources of SMEs for hiring experts.** Article 3 of the Directive provides guidance on several tools that can be used as part of the EWT<sup>14</sup>. The debtor can be alerted by public or private organizations providing services to him/her, or by a third party (accountant, tax, or social security authorities) that has acquired information about a missed payment or a general negative business trend.
- 17 The purpose is to identify businesses facing financial difficulties so that they can be given relevant advice in the early stages of their crisis (i.e., under a going concern), possibly reducing the personal, business-related, and socio-economic consequences of the distress.** Interestingly, Article 3 vaguely describes how compliance with it should be established in Member States, voluntary leaving room for debate on most effective and tailored solutions to capture context specificities.
- 18 Based on that, relevant differences exist in Member States where EWTs are already established.** Understanding the key reasons behind such differences is crucial for countries planning to implement an effective EWT, going possibly beyond a mere concept of regulatory compliance. In fact, understanding the patterns of such differences can help at setting-up appropriate institutional, operational and implementation arrangements, minimizing implementation risks and taking advantage from lessons learned in other jurisdictions.
- 19 Therefore, the Report focuses on the description of the institutional, operational, implementation arrangements regarding the EWTs in Benchmark Countries.** Awareness of the different strategic decisions adopted in other countries complements the already developed analysis of the Bulgarian context, that has already been developed by the WBG team<sup>15</sup> in collaboration with the European Commission and the Bulgarian authorities.
- 20 Lastly, the Report’s description of EWTs in some countries might still be partial.** In fact, in countries where flagging a perspective insolvency solely relies on debtors’ will to get assistance and support (see Germany, the Netherlands and Poland), other institutions not interviewed by the Team might provide similar services aimed at supporting companies experiencing early signs of distress.

### 2.2 Methodology

- 21 The WB team has selected a cluster of Member States where EWTs have already been implemented, jointly with the Bulgarian authorities.** The selected countries are France, Germany, Italy, the Netherlands, and Poland. Among the key reasons behind the definition of this sample, the most relevant one is that a variety of different solutions and approaches is adopted when implementing and managing the operation of the Tool. For example, while in Germany the activation of the EWT solely relies on the debtor’s awareness of the ongoing difficulties, the alert

<sup>14</sup> For example: alert mechanisms.

<sup>15</sup> See the Technical Note prepared by WBG on the development of an Early Warning Tool in Bulgaria.

mechanism in France is mostly based on publicly available data, whose negative trend triggers the intervention of public authorities.

- 22 Based on the above, an evaluation methodology has been defined by the WB team, to discuss the most relevant topics regarding the EWT with National Authorities.** The key topics are: a) Institutional arrangements (general information about the institutions that own and run the EWT, their key activities, their legal status, their mission), b) Operational arrangements (how the EWT is managed, how debtors benefit from the EWT, how the appraisal and assistance frameworks are structured) c) Implementation arrangements (key steps of the implementation process, what are the planned next steps to cope with the COVID-19 pandemic and post-pandemic emergency), and d) Other cross-cutting issues (results framework, data sharing environment, economic environment).
- 23 After defining the methodology, a questionnaire<sup>16</sup> covering the above topics was shared with the national authorities prior to organizing the video conference meetings.** Even if not all the institutions were able to fill all the sections in the questionnaire<sup>17</sup>, the availability of a set of standard checklists ensured a level playing field in data collection, allowing comparisons across different institutions and different countries, and facilitating the dialogue with interviewees during the meetings.
- 24 Videoconference meetings with the national authorities helped the Team get a clear understanding of the main facets of the EWTs, as well as the rationale behind the main strategic decisions and the expected evolution of the Tools to cope with the ongoing situation of emergency.** In some cases, additional material was provided, and additional discussions were held in separate session to deep dive on specific topics<sup>18</sup>.

## 2.3 Report structure

- 25 The Report is structured in 4 key Sections (Introduction, Executive Summary, Benchmark Models, Benchmarking Analysis).** This Introduction describes the background and rationale behind the Benchmarking Report, as well as the methodology adopted by the Team. The high-level findings of the benchmark analysis key features of the EWTs in selected countries are described in the Executive Summary, as well as key differences and their rationale. A broad description of benchmark models in each country is then provided in the following Section. The broad description is then complemented by a vertical analysis in the last Section of this Report of how specific topics are tackled in the five jurisdictions.

## 3. BENCHMARK MODELS

- 26 This Section provides a high-level description of the benchmark models.** The description covers a broad outline of the legal, institutional, operational, implementation arrangements surrounding the EWT in each country, and any other salient information that might help to understand the context and key arrangements to cope with its specificities.

### 3.1 The EWT managed by the Commercial Court in France

- 27 The insolvency framework in France is solid and advanced and supports a variety of measures encouraging**

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<sup>16</sup> The questionnaire is structured in the following sections: A) General information about the institution, B) Early Warning Tool (B.1 – Key information, B.2 – Operational arrangements, B.3 – Data used and trigger alerts, B.4 – Implementation arrangements, B.5 – Budget and funding arrangements, B.6 – Results framework), C) Environment (C.1 – Perimeter of the EWT, C.2 – Business environment – C.3 – Data sharing environment)

<sup>17</sup> In fact, some sections were not relevant in some jurisdictions. For example: quantitative information flagging a perspective insolvency in countries where the EWT solely relies on qualitative information provided by the entrepreneurs.

<sup>18</sup> See the case of Italy, where the implementation of the EWT comes along with a broader regulatory reform of the insolvency framework, and one cannot fully understand the evolution of the Tool without having a clear understanding of the regulatory framework. In this case, a discussion with a national insolvency specialist was held by the Team.

**the resolution of situations of distress under a going concern.** In fact, different alerting procedures<sup>19</sup> can be implemented to detect a company's difficulties as early as possible and try to remedy them before the situation worsens.

- 28 A trader or craftsman, an individual limited liability company (EIRL) or a private legal person may join a prevention group approved by the prefect of the region.** This group shall provide its members with a confidential accounting and financial analysis of the information which they undertake to transmit to it. Where the group detects indications of difficulties, it shall inform the member and may propose the intervention of an expert. Administrations shall cooperate with such approved prevention groups. The Banque de France may also be called upon to give opinions on the financial situation of the members. Approved prevention groups shall be entitled to conclude agreements for the benefit of their members, in particular, with banks and insurance companies.
- 29 As soon as he has difficulties in the management of his company, the manager can initiate a preventive and objective approach.** It enables the Commission to detect the origin of difficulties and to be able to remedy them as quickly as possible. A self-assessment tool<sup>20</sup> allows the entrepreneur to objectively assess the seriousness of his difficulties. Without containing numerical elements, the meaning of which depends on the activity of the company and its environment, this pre-detection tool is based on relationships with third parties (bankers, employees, customers, suppliers, administrations).
- 30 For larger companies, alert procedures in France can be initiated internally or externally.** The internal procedures can start from shareholders, workers' councils, statutory auditors. In case one or more of these entities identifies events or risks whose materialization is likely to jeopardize the business of the debtor, an escalation process normally starts, where the management is mandated to provide feedback within a pre-established period, eventually supported by relevant documentation. In case the feedback is not provided, or the information provided is not satisfactory, the next step of the escalation process is that the competent Court will be informed, whose President will summon the companies' representatives for a confidential interview.
- 31 There's still a limited number of alert procedures that are initiated internally.** For example, out of the 9000 convocations in 2019, only 10% were started by a spontaneously flagged perspective insolvency. The key reason behind this low share of procedures initiated internally derives from the fact that only relatively large entities in France have statutory auditors<sup>21</sup> or workers' councils.
- 32 The most relevant approach to the launch of a preventive procedure is the external warning procedure, that is based on the multi-criteria analysis that is undergone by the Judges of the Commercial Court.** In fact, a screening is made on publicly available data to identify patterns of distress that needs to be inspected. Key aspects of this screening can depend on the Courts, as well as evaluation methodologies to apply to the screening phase. However, the key aspects analyzed can cover: a) non-compliance with reporting duties (shareholders' meetings, submission of annual accounts); b) alerts from external sources such as prosecutors, statutory auditors, Banque de France; c) registration of privileges by the Tax Authority and Social Security (URSAAF); d) negative performance (dramatic decrease of turnover); e) capital and funds no longer supportive to business continuity (for example: negative business continuity).
- 33 When a perspective insolvency is detected, the President of the Commercial Court where the company has its head office may contacts his manager to an interview.** This interview allows to consider with the president of the court the own measures to correct the situation of the company. If necessary, he can obtain from the auditors, the administrations, the social agencies, and the Banque de France information that will give him an exact information on the situation of the company.

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<sup>19</sup> Established in 1984

<sup>20</sup> See <https://bpifrance-creation.fr/>

<sup>21</sup> For example, the mandatory appointment of a statutory auditor in France is due when at least two of the following requirements are met: a) > 8 million EUR turnover, b) > 4 million balance sheet, c) > 50 employees

- 34 After the hearing, the president of the Court<sup>22</sup> – upon specific request of the firm’s representative – can appoint either a representative<sup>23</sup> (if the company hasn’t ceased to meet its financial obligations) or a conciliator (if the firm has past due financial obligations from less than 45 days).** These two procedures<sup>24</sup> allow the firm’s management to benefit from the assistance of a skilled professional, whose mission is to find financial arrangements with its main creditors.
- 35 The first procedure (ad—hoc mandate) is a confidential mediation procedure, initiated upon the request of the directors, and involves the appointment of a mediator (*mandataire ad hoc*) who is appointed by the president of the local court to assist the company in solving its difficulties** (e.g., negotiation of a debt restructuring; implementation of a severance plan; closing of a working site, etc.). The *mandataire ad hoc*’s duties are defined by the appointing court. He usually helps the debtor assessing its situation (e.g., whether the opening of insolvency proceedings would be appropriate) and assists the debtor in its negotiation. The *mandataire ad hoc* is generally chosen from the registry of insolvency administrator and does not interfere in the management of the company (the director remains in place and retain their powers).
- 36 The second procedure (conciliation) is normally adopted shortly before the ad-hoc mandate expires.** In fact, when they believe they are about to reach an agreement with their creditors, debtors petition the president of the court to convert the *mandat ad hoc* proceeding into a conciliation proceeding. Once the conciliation proceeding is opened, debtors are able to seek approval or acknowledgement of the conciliation agreement. Ad-hoc mandate and conciliation are quite similar procedures; a key difference is that a conciliator can only be appointed for a limited lapse of time (4 months + 1 in exceptional circumstances<sup>25</sup>)
- 37 Following the prevention procedures, the most common steps are: a) the firm continues to operate under a going concern; b) a safeguard procedure is opened; c) a judiciary liquidation procedure is opened.** A safeguard procedure (regular or accelerated) is a preventive procedure that must allow the insurmountable difficulties of an enterprise to be addressed before it is in a state of default. The aim is to put in place a backup plan to enable the company to continue its activities (if necessary, by reorganizing), to maintain employment and to clear its debts.
- 38 There’s no clearly established connection<sup>26</sup> between companies undergoing a preventive procedure and the support measures to readdress the situation under a going concern.** However, an array of measures exists either offered by the Central Administration, Local administrations and municipalities. The most common measures are deferred tax payments, government guaranteed loans, solidarity funds<sup>27</sup>.
- 39 As described above, the French preventive framework seems solid and comprehensive, as it relies on the two strictly interconnected aspects of detection and treatment.** In order to further improve its performance, a set of enhancements is also planned, also coping with the current COVID-19 pandemic emergency. The planned evolution of the EWT will cover: a) increasing the attractiveness of the procedure for smaller enterprises, lowering the costs of mediators and conciliators, supporting information campaigns to spread awareness, mandating accountants (not just statutory auditors) to initiate the internal procedures; b) implementing a more predictive and data-driven approach to detection, through a collaboration with newly established initiatives of the Ministry of Economy and Finance, based on Artificial Intelligence.

<sup>22</sup> It is worth to be noted that in France Commercial Courts are composed by judges that are ex-entrepreneurs, generally retired from their past activity in commerce and industry, elected by their peers for up to 14 years.

<sup>23</sup> *Mandataire ad-hoc*

<sup>24</sup> *Mandat ad-hoc* and *Conciliation*

<sup>25</sup> Extended to 10 months under the current pandemic emergency, for procedures launched until December 2021.

<sup>26</sup> i.e. where the phases of detection of perspective distress and the assistance delivered to the entrepreneurs are part of the same framework

<sup>27</sup> A fund has been recently established for companies affected by the consequences of the COVID-19 pandemic emergency

- 40 To this effect, at the initiative of the Ministry of Economy and Finance, a project called “*Signaux Faibles*” was launched in 2019 in order to automatically detect potential financial and economic difficulties of enterprises to increase the efficiency of their treatment.** The objective of this project is to make the most of the wealth of administrative data to produce a predictive analysis tool for business difficulties, by crossing statistics from various sources (commercial court registers, tax administration, social security fund, *Banque de France* figures, trade figures, etc.). Hence, the merger of the existing detection tools (in particular the commercial court registers’ internal databases) with the automatic detection under *Signaux Faibles* is one of the envisaged priorities for the future.
- 41 Lastly, apart the official prevention framework, there seem to be several institutions at the central<sup>28</sup> and local level in France to support businesses facing difficulties and encouraging second chance.** One example of the array of available solutions are the Information Centers on the Prevention of business difficulties (CIP<sup>29</sup>). With a network of centers often hosted in the Chambers of Commerce, CIPs provide an array of services to small businesses, including an online diagnostic and the support by a Team of volunteer mentors to provide assistance to businesses in distress. To provide such services, CIPs partner with several public (local administrations, municipalities, trade unions, the central bank, the chambers of commerce) and private institutions (NGOs<sup>30</sup>).

### 3.2 The alert procedure in Italy

- 42 The recently established alert procedure in Italy is part of a wider reform of the whole insolvency regime<sup>31</sup>.** The new regulation introduces a strong focus on prevention and on a prognostic approach to insolvency. In fact, the key goal of the regulation is: a) to encourage quick detection of companies’ distress; b) to provide healthy businesses meeting temporary financial distress with a set of crisis settlement instruments facilitating quick restructuring; c) to preserve (as far as possible) going concern.
- 43 For the purposes described above, the regulation defines a new concept of corporate crisis, as a situation of distress affecting the capacity of a business to operate, that is likely to become an insolvency in the short-term.** Therefore, there’s a strong paradigm shift in the insolvency regulation in Italy, as a data-driven and forward-looking approach is set forth to detect those situations that are likely to become an insolvency in the short-term.
- 44 For the purpose of early detection of situation of corporate crisis, the regulation prescribes that entrepreneurs must set up adequate organizational structures to facilitate the early detection of the corporate crisis and the set-up of prompt and appropriate interventions.** However, compliance with this duty of setting up appropriate

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<sup>28</sup> Among others, a relevant initiative is the support to distressed debtors by the DIRECCTE (*Direction régionale et interdépartementale de l’économie, de l’emploi, du travail et des solidarités*), a public agency working at regional level and reporting to the Ministry of Economy and Finance as an interlocutor of companies, employees and job seekers. For SMEs experiencing emerging difficulties, the DIRECCTE can launch a diagnostic to analyze the key reasons and causes and identify the actions needed (or the structural/strategic changes required) to solve them. The assessment, entirely free of charge for entrepreneurs and covered by the public funding, can last between 5 and 10 days.

<sup>29</sup> *Centres d’Information sur la prévention des difficultés des entreprises*, see <https://www.cip-national.fr/>. The CIP are roughly 60 not for profit organizations in the country. When the first alert signals showing financial difficulties emerge, the CIP can plan a meeting of a board of experts (a lawyer, a former judge of the Commercial Court, and an accountant or a statutory auditor) to inform the companies about the possible workarounds. To cope with the high costs of mediators and conciliators that are a relevant barrier to the access to the alert procedures for micro enterprises, some funding has been made available by CIPs to cover the costs of mediators and conciliators for micro-companies. On this matter, see [https://www.lemonde.fr/economie/article/2021/03/09/dans-la-manche-une-experimentation-pour-aider-les-petits-patrons-a-beneficier-de-procedures-de-sauvetage\\_6072482\\_3234.html](https://www.lemonde.fr/economie/article/2021/03/09/dans-la-manche-une-experimentation-pour-aider-les-petits-patrons-a-beneficier-de-procedures-de-sauvetage_6072482_3234.html)

<sup>30</sup> See for example: the “rebound portal”, a network of NGOs supporting entrepreneurs during and after the situation of personal and financial distress (*60.000 rebonds, SOS Entrepreneur, Re-crée, Secondsouffle, Observatoire Amarok, APESA*)

<sup>31</sup> The new “Insolvency Code” (Decree 14/2019) amends the insolvency law of 1942. After its publication, a number of amendments have been introduced. As such, given the covid-19 pandemic emergency, the new alert procedure will enter into force starting from September 2021.

functions for this purpose is subject to a principle of proportionality<sup>32</sup>.

- 45 The triggering of an alert procedure based on the corporate crisis can be internal or external.** In case of internal triggering, the procedure can be activated by the company itself (through a periodic self-evaluation process based on a range of indicators) or if relevant facts emerge that may affect the capacity of operating under a going concern, for by its Auditors. For the purpose of the early detection of corporate crisis, a set of indicators has been defined by a working group composed by national association of the accountants<sup>33</sup> and the business register<sup>34</sup>.
- 46 The range of indicators used in the periodic self-assessment focus on forward looking analysis of business viability and overall sustainability.** The key topics covered are: a) Debt sustainability (through a forward-looking analysis of perspective cash flow), b) Capital adequacy, c) Liquidity, d) Liquid return on assets and e) Tax and social security debt<sup>35</sup>.
- 47 In case of external triggering, public qualified creditors, namely the Tax Authority<sup>36</sup>, the Social Security Institute<sup>37</sup> and the collection Agency<sup>38</sup> can activate the alert procedure.** In fact, if persistent past due debt exists with a relevant amount, these institutions share an official communication with the debtor asking to face the obligations within 90 days or plan a repayment through instalments. If these obligations are not met within the prescribed period, the institutional creditors must launch the alert procedure<sup>39</sup>.
- 48 A new institution is set up by the Regulation to receive the alert notifications and activate, whenever the debtor agrees to do so, the instruments for the resolution of the corporate crisis.** This is referred to as corporate crisis resolution body (OCRI) and will be hosted by the Chambers of Commerce<sup>40</sup>.
- 49 The OCRI will be structured with a spokesman and a board.** The spokesman will be the contact person that will receive the alert notifications and will send the notification to the debtors. Within 15 days after the notification<sup>41</sup>, the spokesman invites the debtor to a hearing in the OCRI, where a strictly confidential interview with the Board is organized.
- 50 The Board is structured with three highly skilled professionals.** The three experts are appointed respectively by the Court, by the Chamber of Commerce and by the trade association the debtor belongs to.
- 51 After the hearing at the OCRI and based on evidence and documentation provided by the debtor and his/her representatives<sup>42</sup>, several different decisions can be adopted by the OCRI.** In fact, the OCRI may decide that: a) based on evidence provided by the debtor, there are no material elements to activate the alert procedures; b) credits toward public administration or other organisms exist, that compensate the debt exposures (therefore there are no elements to activate the alert procedures), c) corporate crisis is confirmed and the Board will support the debtor in the identification of the most appropriate remediation instruments. In this case a term is defined, within which the debtor

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<sup>32</sup> Based on the size and legal form of the businesses

<sup>33</sup> *Consiglio Nazionale dei Dottori Commercialisti ed Esperti Contabili* (CNCDEC)

<sup>34</sup> CERVED

<sup>35</sup> For the purpose of detection of the corporate crisis an approach based on a decision tree is used: if the company's net worth is positive, then the compliance with the following requirement (perspective cash flow) is checked. If the company passes the perspective cash flow requirement condition (i.e. perspective debt service coverage ratio), then the remaining indicators are checked against a grid of benchmark values based on a sectorial analysis.

<sup>36</sup> *Agenzia delle Entrate*

<sup>37</sup> *Istituto Nazionale della Previdenza Sociale* (INPS)

<sup>38</sup> *Agenzia della Riscossione* (formerly known as *Equitalia*)

<sup>39</sup> It is worth to mention that if the public creditors will not meet the obligation of triggering the procedure, they will lose their priority upon their credits.

<sup>40</sup> Chambers of Commerce are public institutions in Italy, and a network of roughly 40 chambers of commerce currently exists.

<sup>41</sup> Or after receiving the notification from the debtor itself

<sup>42</sup> Including statutory auditors

will inform the Board about the effect of such interventions.

- 52 If a situation of corporate distress is finally detected by the Board, its team of professionals will support the debtor at finding the appropriate arrangements with the creditors.** The Board will manage the negotiations with counterparts and support the debtor in the preparation of the documentation and formalization of settlement agreements. The duration of this phase is 90 days since the official declaration of the state of corporate crisis, renewable with 3 months more.
- 53 During this phase, the debtor can submit an application to the competent Court to benefit from a range of measures aimed at protecting the company.** These protective and precautionary measures are the stay of all enforcement actions and precautionary proceedings, as well as the appointment of a custodian.
- 54 At the end of this 3+3 months period, the Board will take a final decision about the viability of the business and subsequent actions to be undertaken.** In case no agreement is reached with the creditors, the Board will suggest to the debtor to trigger within 30 days one of the procedures included in the new regulation<sup>43</sup>. If the Debtor does not comply with the request of the Board within the established deadline, the Board will duly inform a public prosecutor in order to open a filing for judicial liquidation. If an agreement with the creditors is reached, this will have the same legal force as a certified recovery plan, that will be valid only for the creditors that have submitted it.
- 55 A set of incentivizing measures exists to encourage honest entrepreneurs involved in the alert procedures.** These cover the reduction of interests and sanctions for past due Tax debt, protection from prosecution for bankruptcy offenses, a doubled term for the submission of a proposal for a composition with creditors and restructuring agreements.
- 56 Lastly, the scope of the alert procedure covers all debtors that run business activities<sup>44</sup>.** A similar procedure<sup>45</sup> (not involving the mandatory self-assessment and the tracking of alert indicators) applies for individuals. In this case, the newly established entity is the crisis settlement body (OCC<sup>46</sup>), hosted by the chamber of arbitration within the Chamber of Commerce.

### 3.3 Support to entrepreneurs in distress in Germany

- 57 In the course of implementing EU Directive 2019/1023 of 20 June 2019 on preventive restructuring frameworks, the German legislator intends, among other things, to provide for: (i) a preventive Restructuring Plan as flexible restructuring tool, (ii) further relief in connection with the COVID-19 pandemic, and to make small but important changes to the general provisions of German insolvency code.** The changes came into force and effect as of January 1, 2021.
- 58 The Preventive Restructuring Plan is suitable to have an enormous impact on the German restructuring landscape and would allow restructurings outside formal insolvency proceedings with very high flexibility, especially in financial restructurings.** The new legislation will presumably also change the balance of power between shareholders and creditors.
- 59 The key element of the new legislation is the Preventive Restructuring Plan.** It combines various elements from the insolvency plan proceeding (the German equivalent of U.S. chapter 11 proceedings) in order to provide for a

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<sup>43</sup> Namely composition with creditors, restructuring agreement

<sup>44</sup> Including small undertakings

<sup>45</sup> Over-indebtedness procedure (*Procedura da sovraindebitamento*)

<sup>46</sup> *Organo di Composizione della Crisi* (OCC)

flexible restructuring tool outside (or prior to) formal insolvency proceedings.

- 60 The Preventive Restructuring Plan is generally available to all debtors with their center of main interest (COMI) in Germany.** The relevant debtor must not yet be obliged to file for insolvency due to illiquidity or over-indebtedness. Therefore, the relevant debtor must be in a state of impending illiquidity (cash flow insolvency in the next 24 months) in order to be eligible for the Preventive Restructuring Plan.
- 61 The main goal of the Preventive Restructuring Plan is to enable a flexible financial restructuring (i.e., no operative restructuring) by implementing, amongst other things, the following actions/measures:**
- a waiver of deferment on existing or changes to existing covenants/termination rights;
  - a release or amendment of existing third-party security;
  - a release or amendment of upstream security and
  - debt to equity swaps/transfer of shares/corporate changes.
- 62 The law provides for a modular system of possible restructuring elements to be used in the sole discretion of the debtor ("Measures"), which includes the following:**
- judicial plan coordination;
  - judicial preliminary examination;
  - termination of contracts;
  - stabilization measures (e.g., enforcement protection); and
  - judicial plan confirmation.
- 63 The Preventive Restructuring Plan is prepared by the debtor.** The debtor has a wide discretion of which claims shall form part of the plan. Therefore, the debtor can limit the scope of the Preventive Restructuring Plan to certain creditors/claims (i.e., selective approach possible).
- 64 Moreover, the debtor can compose different creditor groups based on appropriate criteria if such groups are subject to the plan (e.g., secured creditors, unsecured creditors, subordinated creditors, and shareholders).** The acceptance of the plan principally requires (i) 75% of consenting voting rights within the respective group and (ii) the consent of all groups. A Cross-Class Cram-Down is possible under certain prerequisites, which enables an acceptance of the Preventive Restructuring Plan irrespective of a dissenting class of creditors.
- 65 A court involvement is in generally not mandatory.** As a result, the Preventive Restructuring Plan is not officially announced by the restructuring court. However, the Measures (as defined above) require court involvement. The confirmation of voting result/the plan in connection with the Cross-Class Cram Down and the termination of contracts will presumably be in very high demand in future restructuring practice.
- 66 While the application for the Measures is pending, the debtor is not obliged to file for insolvency due to illiquidity or over-indebtedness** (to the extent such reasons to file for insolvency occur after the plan proceeding was started) but must notify the restructuring court accordingly.
- 67 During stabilization measures (e.g., enforcement protection), the creditors' right to file for insolvency is suspended.** This period may last up to eight months.
- 68 Apparently, no clear connection exists between the above-described preventive restructuring procedure and an Early Warning Tool aimed at identifying the alert signals of perspective distress.** For this purpose, several initiatives seem to exist in Germany to support entrepreneurs in distress and provide a range of services, from the

support the readdressing of the situation under a going concern to the assistance needed to enable a second chance.

- 69 For the purpose of analyzing EWTs in Germany, the Team met with a no profit organization called TEAM U, a social business aiming for a high social impact, combining cost free services delivered by volunteers and an expert network for consulting.** It started as a self-help group in 2007 – the focus was on empowering entrepreneurs to overcome insolvency. Now it is the biggest independent organization in Germany to support entrepreneurs with preventing bankruptcy focusing on the individual needs of the entrepreneurs as well as the company. TEAM U offers a cost-free hotline, peer-to-peer support, self-help groups, online services, consulting and has a network of very experienced experts to refer to.
- 70 Most volunteers are entrepreneurs who have personally managed to deal with crisis, they get professionally trained by TEAM U to help others who face difficulties.** This unique combination of emotional competence and business expertise helps entrepreneurs to ask for help and to open-up. Insolvency and failure is still a big taboo in Germany – it is a very emotional issue, so it needs to be addressed in a very personal way to reach entrepreneurs to act early before it is too late. TEAM U is the mentor organization responsible for the trainings and mentoring in WP4 in Early Warning Europe Program.
- 71 The purpose of TEAM U is twofold.** In fact, on one side TEAM-U supports early detection of distress to help entrepreneurs avoid a bankruptcy, while on the other the goal is also helping bankrupt entrepreneurs with their successful restart to rebuild their lives after a bankruptcy, both personally and professionally.
- 72 TEAM U developed an Online-Platform with tools and online support for entrepreneurs.** The Online-Platform is connected to a CRM tool to manage the data that is needed for in-house consultants and mentor volunteers. This data is also used for scientific work on the issue of crisis management.
- 73 The volunteers and experts are selected and trained in a special modular training to enable them to help entrepreneurs who seek support.** Also, the entrepreneurs are selected – TEAM U only supports honest entrepreneurs who are willing to take responsibility for their situation and to undergo the process of – sometime painful – changes.
- 74 Since 2007, TEAM U has helped more than 20.000 entrepreneurs get back on their feet.** At the moment, the seven employees in the TEAM U organization and the 45 volunteers help around 400 companies a month.
- 75 Most entrepreneurs get in contact with TEAM U online and then call the TEAM U Hotline where they get individual support.** TEAM U also is involved in different business networks and gets recommended through banks who seek a solution to settle debt problems with customers who have the potential for a turnaround. TEAM U is convinced that 50% of all bankruptcies can be avoided if entrepreneurs act early enough and get the right support - the long-term goal of TEAM U is to reach up to 12.5% of companies threatened with insolvencies by 2026 and to save 70% of them.
- 76 TEAM U has two main sources of income:** Donations from foundations and some of the companies that TEAM U has helped to save and the income from TEAM U's consulting company, which also provides help and advice to banks and insurance companies dealing with entrepreneurs in distress.
- 77 A key specificity of TEAM U is to not focus on the financial situation alone, but to also on the entrepreneur and his wellbeing.** Often lawyers deal with the entrepreneur's situation as a business problem alone and they do not address the personal and emotional crisis of the entrepreneur. Dealing with the personal and emotional problems is the key to getting the entrepreneur back on his feet and finding a sustainable solution to the problems.

### 3.4 Support to distressed businesses in the Netherlands

**78 On July 5, 2019, the Dutch legislative proposal on the Act on confirmation of private plans (*de Wet homologatie onderhands akkoord*; the "WHOA") was submitted to the Dutch House of Representatives.** The WHOA represents the introduction of an effective restructuring mechanism in the Netherlands for the first time, with concepts similar to UK schemes of arrangement and US chapter 11 procedures. Enactment took place in 2020.

**79 The WHOA aims to improve the reorganization capabilities of companies that have viable businesses but carry too much financial debt.** Before the implementation of this framework, no restructuring mechanism was available in the Netherlands outside of formal insolvency proceedings (suspension of payment proceedings and bankruptcy), which have proven at times to be difficult tools for reorganization.<sup>47</sup>

**80 The procedure provided in the WHOA has a number of key characteristics, for example:**

- it is a debtor-in-possession procedure;
- the procedure is conducted outside of formal bankruptcy proceedings;
- there is limited Court involvement; there is no Court-assessment at the very start of the procedure;
- cram-down and cross class cram-down are possible; and
- intended to being used for all sizes of enterprises, including small and medium sized enterprises (SMEs), to which a number of specific additional provisions apply.
- a debtor can propose a plan to its creditors and shareholders if it can reasonably be assumed that the debtor will not be able to continue paying its debts as they fall due. The debtor however does not enjoy total exclusivity in the plan process. Each creditor, shareholder or statutory works council or workplace representative set up in the debtor's business (these are bodies that represent the companies' workers) may request that the Court appoint a 'restructuring expert', who has the right to propose a plan for the debtor.
- under the WHOA, SMEs will have to approve the proposal of a plan by a 'restructuring expert'; as well as submitting the adopted plan to the Court for confirmation in case the plan will possibly be forced upon a dissenting class of creditors.

**81 A debtor can propose a plan to its creditors and shareholders if it can reasonably be assumed that the debtor will not be able to continue paying its debts as they fall due.** The debtor however does not enjoy total exclusivity in the plan process. Each creditor, shareholder or statutory works council or workplace representative set up in the debtor's business (these are bodies that represent the companies' workers) may request that the Court appoint a 'restructuring expert', who has the right to propose a plan for the debtor.

**82 Under the WHOA, SMEs will have to approve the proposal of a plan by a 'restructuring expert'; as well as submitting the adopted plan to the Court for confirmation in case the plan will possibly be forced upon a dissenting class of creditors.** The WHOA introduces two new players in the field of Dutch insolvency proceedings, the aforementioned 'restructuring expert' and the 'observer'.

**83 The role of a 'restructuring expert' is limited to the preparation of a restructuring plan.** The 'restructuring expert' is not involved in the day-to-day business of the debtor, as the debtor remains in possession while a restructuring plan is being prepared and proposed by the 'restructuring expert'. Upon the appointment of a 'restructuring expert' by the Court, the debtor can no longer propose a plan to its creditors and shareholders, but the debtor can request the 'restructuring expert' to propose the debtor's plan to its creditors and shareholders and put that plan to a vote.

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<sup>47</sup> Currently, an out of Court restructuring plan can only be approved if all creditors consent. The lack of an effective restructuring tool can allow creditors to block a necessary restructuring (perhaps unreasonably at times). In doing so, the creditor can exert leverage and maneuver itself into a position more favorable than it would occupy in the event of a liquidation of the debtor's assets. The WHOA seeks to prevent just that, facilitating the confirmation of a restructuring plan and ensuring that it is binding on dissenting creditors.

- 84 An 'observer' comes into play in the event of a proposed cross class cram-down under a plan or where the Court orders a general stay.** The task of the 'observer' is to monitor the process relating to the preparation of the plan, taking into account the interests of the creditors of the debtor.
- 85 At the request of the debtor or 'restructuring expert', the Court may order a variety of supportive measures.** These measures are intended to facilitate the smooth preparation of the restructuring plan and the continuation of the business of the debtor during the interim period. The measures include a general or tailored stay, the suspension of a pending bankruptcy (liquidation) application, and others.
- 86 Alert mechanisms to support early detection of distress are not strictly related to the WHOA<sup>48</sup>.** For this purpose, various not for profit organization exist to provide assistance to entrepreneurs facing distress, also enabling a second chance.
- 87 The Team had the opportunity to have virtual meetings with two of these organizations, and namely MKB Doorgan and Foundation Entrepreneurs Soundbord<sup>49</sup>.** MKB Doorgan is a nation-wide operating, independent, not-for-profit foundation offering assistance in a very early stage to small businesses and freelancers with financial problems who do have a viable company but who need help to keep their companies healthy. The rationale behind the mission of the foundation is that entrepreneurs often wait too long when experiencing problems. In fact, feelings of denial and shame often lead to very late interventions (often too late). Therefore, signaling these problems at an early stage can be beneficial for the company while creating extra time for a structural solution, thereby preserving entrepreneurship and employment in the Netherlands.
- 88 Therefore, the three cornerstones of MKBDoorgaan.nl are a) Signaling problems in a very early stage working together with a large number of nation-wide operating organizations, b) In-depth-analyses of the question-behind-the question to bring forth the essence of the problem and the best possible solution, and c) 'Warm' transfer to parties specialized in financial (including expansion capital) services, corporal and legal services as well as debt counselling.** In a nutshell, MKB Doorgan works mostly as a "linking pin" to rapidly connect entrepreneurs with the right counterparts they need assistance from. In fact, a wide network of professionals and organizations supports the advisory component.
- 89 In addition, besides well-informed entrepreneurs accessing MKB Doorgaan by their own initiative, a wide range of referrers can suggest debtors to get assistance.** The key entities are banks, accountants, municipalities, branch organizations, the online platform for entrepreneurs ran by the Dutch government<sup>50</sup>. On the other hand, the key providers of support and activities are crowd funders, business angels, start foundation, investment funds, municipalities, debt counselors, lawyers, the online platform managed by entrepreneurs to support other entrepreneurs<sup>51</sup>.
- 90 The key benefits for debtors in distress deriving from the access to MKBDoorgan are the possibility of having a unique "one stop shop" to get assistance from, a fully independent and neutral analysis to detect early signs of distress and the ongoing monitoring of their situation, to offer the right services at the right time.** The access to the platform is totally cost-free for entrepreneurs, as referrers<sup>52</sup> pay the foundation for the interviews and the assistance of MKBDoorgaan.

- 91 After a first registration at the website, the assistance framework can be extensive or direct.** In case of extensive

<sup>48</sup> Instead, access to this procedure by debtors might be a consequence of early detection of distress.

<sup>49</sup> *Stichting Ondernemersklankbord OKB*

<sup>50</sup> *Ondernemerspleinen*

<sup>51</sup> *Ondernemersklankbord*

<sup>52</sup> Especially Banks and Municipalities

assistance there can be five steps, as follows: a) company performs a first admission interview by phone with MKB specialists, b) Then a more in-depth face to face meeting is organized for a more detailed screening of the debtor by an entrepreneurial advisor (MKB), c) Once the key issues (if any) are detected, weekly meetings with the core MKB Team are organized to discuss the most suitable solutions, d) Once the solutions are identified, the debtor is transferred to second line organizations for a more intensive and in-depth assistance. As far as the “direct” framework is concerned, the debtor can be directly addressed to the second line specialists if weaknesses are clearly identified in the early steps of the intensive framework (therefore, after the first admission interview or the quick scan).

- 92 As of February 2021, MKBDoorgaan assisted 1.900 businesses, with roughly 4.200 employees.** Out of these 1.900 businesses, 36% got financing support, while the 64% benefitted from coaching and advice. 94% of the assisted businesses remained alive, while the 6% got assistance to end the business.
- 93 The second organization (Foundation Entrepreneurs Soundbord) mainly works as a second-line service to support entrepreneurs.** In fact, borrowers first access other entities – such as MNB Doorgaan or the Chambers of Commerce - that – among other services – can refer the Foundation as a possible solution to provide support to entrepreneurs.
- 94 Foundation Entrepreneurs Soundboard was founded in 1980 by the Chamber of Commerce, branch organizations and big companies to support small entrepreneurs.** It’s a Dutch non-profit, independent organization covering the Netherlands with 300 volunteers in 17 regional teams (former entrepreneurs and specialists). Supported by a small professional and paid staff (4,5 FTEs).
- 95 Entrepreneurs sign up an agreement with the Foundation when they have an entrepreneurial demand. The entrepreneur is guided for 6 months by a volunteer coach (often a retired ex-entrepreneur).** The coaching process consists of a personal assessment with the coach and entrepreneur to pinpoint the business issues and offer solutions in collaboration with the entrepreneur. The Foundation network disposes of a wide range of skills, to cover all the needs of the distressed entrepreneurs. A first meeting with the Foundation is aimed at identifying the best fit for the debtor. There’s a special focus on the personal dimension of the entrepreneur’s distress, where the difficulties may affect the personal or familiar sphere of the debtor.
- 96 Before the Covid-19 pandemic emergency, a small donation<sup>53</sup> was asked for a six-month period of support.** Now the process is cost-free. Foundation Entrepreneurs Soundboard helped over 100,000 entrepreneurs in the Netherlands in the last 40 years. Every year the Foundation advises and coaches ± 3.000 SME entrepreneurs, attracting them through offline and online marketing like social media campaigns, mouth to mouth and partnerships. The key partners are the Chamber of Commerce, Ministry of Economic affairs, branch organizations, municipalities and financial institutions, like banks. Because of Covid, there were 63% (1.400) more requests handled in 2020.

### **3.4 The Polish Agency for Enterprise Development (PARP) and the Family Foundation in Poland**

- 97 In light of the negative economic effects of the COVID-19 pandemic, Polish legislation already decided to introduce regulations for a new, simplified restructuring procedure in mid-2020.** These should remain in force for the time being until the end of June 2021. If these prove themselves in practice, this procedure will form the framework of preventive restructuring in Poland.
- 98 The new proceedings are characterized by a minimum degree of judicial participation and, at the same time, very extensive protection for the debtor against the enforcement of creditors.** It can be claimed by any company which has been threatened with insolvency or has even become insolvent. The difficult financial situation of the debtor making the application does not have to be attributable to the COVID-19 pandemic.

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<sup>53</sup> 200 EUR.

**99 The initiation of the procedure only requires the conclusion of a contract with a restructuring consultant and an announcement in the official government gazette.** It is not linked to the consent of the restructuring court. From the day of publication of the announcement until the day of suspension or termination of the proceedings, the debtor enjoys a number of advantages:

- He is not obligated to satisfy the claims falling under the restructuring comparison.
- In principle, all enforcement proceedings already initiated or conducted against him, including proceedings with regard to claims secured by a mortgage or a lien, are suspended. New enforcement proceedings may not be initiated.
- The termination of the rental or lease agreement for business premises or real estate in which the debtor operates its company by the landlord or lessor is not permitted.
- The prohibition of termination also applies to credit, leasing, asset insurance, bank account and guarantee contracts, license contracts as well as guarantees or letters of credit.
- The debtor is still entitled to conduct the ongoing business of its company. The consent of the restructuring consultant must only be obtained for decisions that go beyond the scope of normal business operations.

**100 The Court can annul the effects of the announcement at the request of a creditor in the event that these lead to the creditor's disadvantage, but not *ex officio*.** In addition, the task of the court is only to approve the settlement accepted by the creditors. The creditors generally agree in writing on such a settlement, whereby there is also the possibility of convening a virtual creditor meeting.

**101 The entire proceedings should last a maximum of four months until the application for approval of the settlement by the court is filed.** For the company, this means a moratorium of up to four months for the payment of claims, including those that are secured, for example, by a mortgage or a lien, and the protection against enforcement and termination of essential contracts. A timely opening of the restructuring procedure also protects against liability due to delayed insolvency.

**102 To provide support to distressed debtors, an initiative has been jointly launched by a Polish public Agency (PARP, whose mission is promoting entrepreneurship in Poland, with a focus on SMEs) and the Family Business foundation.** The purpose of this mechanism is the support to debtors in distress to overcome difficulties under a going concern through the delivery of mentorship and capacity building. The EWT has been active since 2017 and benefitted from the support of Early Warning Europe (EWE) and other EU funded programs aimed at sharing the capacity and lesson learned in other initiatives<sup>54</sup> aimed at supporting SMEs.

**103 To support operations of the Polish EWT, a cooperation between the PARP and the family business foundation (an NGO) is established, where the PARP provides the operational infrastructure and remunerates the experts (called upon demand), and the family business foundation – an NGO - provides and maintains the network of volunteer mentors.** The detection and support process is based on three main steps: a) a first contact by the debtor (mostly on-line, some institutions – including the family business foundation – also act as referrers of the initiatives to address debtors towards the EWT); b) diagnosis phase by an expert called upon demand<sup>55</sup>; c) if the diagnostic identifies a perspective distress and the debtor agrees to receive assistance, support by a volunteer mentor to tackle the issues.

**104 The platform relies on a solid network of experts and mentors, which undergo low turnover since its onset.** Complementarity between these two types of actors is essential, because of their different personal and professional backgrounds. In fact, a first screening through an online questionnaire helps the EWT at identify the required profile of the expert needed to perform the diagnosis. Similarly, the expert will identify the best fit for the mentorship of the business, based on the weaknesses detected.

**105 While the time to be allotted is limited (normally up to 8 hours per beneficiary) there is no formally defined limitation to mentorship support.** Similarly to Germany, mentors are volunteer retired entrepreneurs with

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<sup>54</sup> In particular, cooperation with Danish and German EWT representatives has been established

<sup>55</sup> The experts are remunerated by the PARP. The service is totally free of charge for debtors

significant expertise to share with debtors, while experts performing the diagnosis phase can have different professional background (typically accounting, business strategy, insolvency, psychology).

**106 The EWT in Poland has been first contact of public administration with firms in financial distress, as the PARP was previously focused on competitiveness, innovation, internationalization etc. Several lessons have been learned since the onset of the project.** Based on lessons learned, several types of evolutions are planned for the future, including a first on-line self-assessment tool to be made available to debtors accessing the PARP's website and enlarging the range of services to be made available to businesses being detected a perspective insolvency. Lastly, an evaluation is also ongoing to plan the enlargement of the scope of the tool to include a set of alerts from public agencies for the automated identification of patterns of distress.

#### **4. BENCHMARKING ANALYSIS**

**107 This Section provides a vertical benchmarking analysis of the key features of the alerting systems.** The key dimensions covered are: a) institutional settings to host the EWT, b) The operational framework (including the detection and treatment), c) the data used for risk detection, and d) The planned evolution of the alert system. For each topic a brief outline is described for every country, with the description of the rationale behind the different settings adopted in every country. The key findings are then summarized at the end of each paragraph.

##### **4.1 The institutional dimension**

**108 This Section explores the different institutional settings applied for EWTs in Benchmark Countries, as well as the rationale (as declared by representatives of the early warning mechanisms) for those settings.** The ownership of the Tool can either be public or private. In both cases, ownership and managing entities can either be in the hands of the same entity or separate. Lastly, in case a public agency manages the EWT, specific agencies/units can be established for the purpose, or a new task can fall among the scope of the activities of an already established entity.

#### **FRANCE**

**109 The main alert system in France is part of the preventive procedures managed by the Commercial Courts.** Therefore, receiving the alerts from the debtors' representatives or performing multicriteria analysis to identify those companies that show patterns of future distress falls among the daily tasks of the Judges and the President of the Commercial Court. Worth to remind the specificity of Commercial Courts in France, that is composed by Judges that are ex-entrepreneurs with relevant background, elected by their peers. The rationale behind the setting of the alert system within the Court seems the strict interconnection between risk detection and support measures in France. If a relevant risk is detected, the Court can rapidly trigger the measures deemed adequate to recover the situation under a going concern. The other rationale behind this decision is that – given the specificity of the alert system, mostly targeting enterprises with 10 or more employees - there should be a role of the public sector to provide oversight of distressed companies and proposing support measures, given the high social costs to be borne by the community if these companies become insolvent.

**110 While potentially all enterprises can fall under the scope of the above-described alert system, other platforms in France are tailored for smaller entities, such as craftsmen, sole proprietorships, family businesses, micro entrepreneurs, startups.** Again, they are managed by private non-for-profit organization (such as the information center on prevention of corporate distress - CIP) and other initiatives financed by the Ministry of Economy and Finance (*signaux faibles*, a publicly funded and local startups that have scaled up to national initiatives). Also, the setting of these entities is based on the rationale above. Lastly, a sort of public-private and national-local partnership is defined for these entities, as debtors in distress are often suggested to address not for profit entities or local funding or capacity building programs provided by municipalities.

## ITALY

**111 The newly established alert system in Italy is managed by specific entities within the Chambers of Commerce, which are public entities.** These are the OCRI<sup>56</sup>, organisms composed by one or more representative of the Chamber of Commerce that will receive the alert notifications, reach up to companies and coordinate with the experts for the support of the companies. The institutional setting reflects the fact that the Chambers of Commerce are trusted entities already providing a relevant set of services to the public and to companies, including mediation and dispute resolution. Therefore, the key considerations made by the Regulator when defining this setting were: a) the economies of means deriving from the already existing entity already dealing with companies in distress (mediation, dispute resolution), b) the trust by the private sector; and c) the capillary network of the Chambers of Commerce, covering the whole country.

**112 Similarly to the above configuration, a specific entity (OCC<sup>57</sup>) is implemented within the Chambers of Arbitration, hosted by the Chambers of Commerce.** Being the over indebtedness procedure slightly similar to the alert procedure, the body within the Chambers of Commerce receives the applications from debtors, performs an in-depth assessment of their financial situation, and, if the debtors agree, manage negotiations with the creditors, coordinating with the Tribunal. The considerations made when defining this setting were similar to the above-described key factors for the identification of the institutional arrangements for the alert procedure. Some concerns were raised in Italy regarding the management of the over indebtedness procedure by lawyers and insolvency practitioners<sup>58</sup>. In fact, one may argue that lawyers might have little or no interest in a prompt resolution of debtors' controversies or might not have sufficient financial background to evaluate the feasibility of these procedures (i.e., when there are consistent opportunities to avoid insolvency).

## GERMANY

**113 The early warning mechanism of debtors facing perspective distress in Germany relies on the principle of mutual help of entrepreneurs and retired entrepreneurs.** It is therefore based on social entrepreneurship. The WBG Team interviewed one non-profit and non-governmental organization (Team-U) that seems the most relevant alert mechanism in the country, but – similarly to France – there might many other smaller institutions in the country sharing the same mission. There are several reasons why this approach is adopted: first of all, debtors in distress often tend to hide their difficulties (to avoid a sense of failure that is impacting their own personal lives); therefore, being contacted by a public agency in charge of an early warning system might be seen as a threat by debtors, as they might fear that their situation will be disclosed for debt recovery purposes (the EWT might be perceived as “not neutral”).

**114 Another reason explaining why this setting is adopted is that the difficulties of debtors are well-known by entrepreneurs that have already experienced the impact of failure into their own lives.** In fact, there is a multitude of reasons that explain why a debtor is facing a perspective distress, that cannot be merely captured by figures collected by a public agency. Rather, debtors should feel the EWT as a “safe harbor” with no other interest than helping them, where they can ask for help and get the support they need. Lastly, this institutional arrangement allows the full integration of the two phases of detection and treatment, as the front-end of the institution that performs the first screening is strictly interconnected with the network of volunteer mentors that provide support to debtors.

## THE NETHERLANDS

**115 The Dutch institutional model is quite similar to the above German one.** The institutions interviewed are private not for profit organizations, that work on two steps of the debtor's assistance value chain. The first – MKBDoorgaan – is a local foundation which provide a first support to debtors to identify their difficulties and address them to the right counterpart, depending on their needs. The second one, entrepreneurs Soundboard, provides hands on support to distressed debtors, and is based on the principle of mutual help between entrepreneurs.

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<sup>56</sup> Organi di Composizione e Risoluzione della Crisi di Impresa

<sup>57</sup> Organi di Composizione della Crisi da sovraindebitamento

<sup>58</sup> In fact, a list of crisis settlement experts is made available by competent local Bar Associations and the register of insolvency practitioners.

**116 Compared to Germany, two slight differences involve the network element of the mechanism.** In fact, for the first institution (MKBDDoorgaan), there's a strict inbound connection, where different public and private institutions – such as the Chambers of Commerce and banks – can refer the alert mechanism to the debtor to seek for help, and even pay for the costs for the interviews aimed at identifying the difficulties and the best way to approach them, as well as an outbound connection where a matchmaking is made by this institution with valid partners (either crowdfunding initiatives, micro finance and SME financing<sup>59</sup>, mentoring and support to distressed entrepreneurs). This approach reflects a solid culture of social responsibility of public and private institutions and a well-developed environment of social entrepreneurship in the country, where both the private and public sectors are fully aware of the detrimental effects on the community the insolvency of SMEs might have., and of the importance of prevention.

## **POLAND**

**117 The institutional setting implemented in Poland is based on a partnership between public and private sector organizations.** In fact, while a decision has been made to host the early detection mechanism in an already established institution – the PARP, an agency of the Ministry of Economy and Finance – the support to mentorship – i.e., the “treatment” phase of debtors being notified about a perspective insolvency – is made by Family Business Foundation, a not-for-profit organization.

**118 The Polish Agency for Enterprise Development (PARP) is involved in the implementation of national and international programs financed from the EU structural funds, state budget and multiannual programs of the European Commission.** As a key authority responsible for creating a business-friendly environment in Poland, PARP contributes to the creation and effective implementation of the state policy related to enterprise, innovation and staff adaptability. Pursuant to the principle “Think Small First”, in all its activities the Agency puts a particular emphasis on the needs of the SME sector.

**119 The Family Business Foundation<sup>60</sup>(FFR) is a not-for-profit private organization, founded in 2011.** The foundation is based on a principle of mutual support and cooperation among family businesses. Its activities are directed towards family businesses members who want to have influence on the reality they live in. Other priorities of the foundations are taking care of families and their family businesses security, opening Polish businesses to global experiences, and supporting the next generation. The Team's findings about the Institutional dimension are summarized in the table below.

*Table 2: Key Team's findings from the benchmarking assessment of the EWT's institutional dimension*

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| <ul style="list-style-type: none"> <li>• Different approaches are applied in Benchmark Countries regarding the institutional settings of the early warning mechanisms.</li> <li>• In three out of the five Benchmark Countries (France, Italy, Poland) the alert mechanisms are managed by public entities. Public agencies are respectively the Chambers of Commerce and Chamber of Arbitration (Italy), the Commercial Court (France) and an agency reporting to the Ministry of Economy (the PARP, Poland)</li> <li>• The key reasons behind the implementation of alert mechanisms managed by public agencies are the following: a) the role of the alert mechanism is strictly interconnected with the prevention procedures (France, also based on the specificities of the Commercial Courts, where judges are ex entrepreneurs elected by their peers, with sufficient capacity to identify the signals of distress; b) the agencies are well trusted partners of companies (Italy and Poland); and c) the role of the public to support the preventive framework, minimizing the costs for the community deriving from debtors' insolvency, is perceived as very important.</li> <li>• Apparently, there is a range of advantages and disadvantages deriving from the management of the EWTs by public agencies. A key advantage of the EWT is its sustainability. Its operations are entirely funded by the public entities, therefore they do not need to rely on receiving debtors' fees, nor on other types of funding.</li> </ul> |
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<sup>59</sup> Through Qredits

<sup>60</sup> Fundacja Dirmy Rodzinne (FFR)

Following the discussions with the country representatives, the key downside seems that the availability of these mechanisms is often neglected by smaller debtors (sole proprietors, micro entrepreneurs, etc.), and therefore the EWTs tend to target larger entities that cover a small share of the SME segment in some countries like Bulgaria. Under this perspective, the partnership between the PARP and the Family Business Foundation seems a good solution to ensure that the mechanism stays focused on small debtors, which normally benefit the most from the technical assistance offered by these institutions.

- Lastly, the topic of trust seems a key element in countries where the EWTs are hosted by Public Agencies. If this solution is selected, debtors should perceive these institutions as totally neutral and mostly interested in the recovery of debtors' distressed situations under a going concern.
- Hosting of the EWTs by private, not for profit and non-governmental bodies is adopted in Germany, the Netherlands and France. The key reasons for this setting are also multiple: a) Most often, these mechanisms were established well before the definition of preventive restructurings in the EU, and are based on the principle of mutual help, b) Failure is particularly stigmatized in northern European countries, therefore a "coming out" by debtors in distress can be made easier in neutral contexts perceived as safe and welcoming, rather than in a public agency that might have other interests than the support of the debtor (for ex.: debt recovery), c) Social responsibility of public and private entities is widespread in Germany and the Netherlands, as well as social entrepreneurship and voluntarism.
- Among the key advantages deriving from this approach, a key topic is that several private and totally independent social entrepreneurs can ideally "compete" in this market, eventually targeting different segments of entrepreneurs with an array of different services. Instead, a key downside is that these initiatives might struggle in achieving self-sustainability while scaling-up to cover wider shares of the market, especially during periods of downturn such as the current pandemic and post-pandemic emergency.

## 4.2 The operational dimension

**120 This Section explores the different operational frameworks applied to support the EWTs operations (for risk detection and debtors' support) in Benchmark Countries, as well as the rationale (as declared by representatives of the early warning mechanisms) for those settings.** Operations can be managed by the staff of the EWT with or without the support of other external entities (for example: when the activities of risk detection and treatment are managed). The operational model can rely on an inbound approach - i.e., where the debtor accesses the EWT by its own initiative or after a self-assessment, - or on an outbound approach, - where the EWT proactively identifies companies facing perspective distress. Based on these two approaches, different stages of the activities of screening and support exist in Benchmark Countries, implying different levels of complexity and budget to manage operations.

### FRANCE

**121 The main alert tool in France is managed by the network of Commercial Courts (*Tribunaux Commerciales*) covering all the territory.** As a reference for the operational structure, the Commercial Court of Paris, 2 chief judges and 2 court clerks are dedicated to EWT operations + 20 judges (in addition to their judicial functions) are at the disposal of the entrepreneurs to conduct confidential interviews. The network of Commercial Courts in France consists in roughly 130 entities within the domestic territory. However, the Court of Paris holds a significant share of preventive procedures in the country. Estimation of budget costs for the development and maintenance of alert procedures is complex and not covered in this Report, as the operations are embedded in the competences of Commercial Courts. Therefore, the funding of the operations of the main EWT in France is totally public, while debtors must remunerate mediators and conciliators for their activities.

- 122 Regarding the interaction between the debtor and the alerting mechanism, the debtor can either access the tool on a voluntary basis by applying to the court on his own initiative or is detected as being in financial difficulties by internal alert procedures or the multicriteria data analysis of the commercial court.** However, in practice, one can note that it is rare that debtors come to court on their own initiative. Also, the workers' council appreciates itself if the viability of the business is compromised (e.g., loss of a main customer or shareholder). Same for the statutory auditors, who are specialists in figures. Otherwise, the risk of insolvency is assessed rather objectively by the commercial court through the multicriteria data analysis.
- 123 Based on the above (i.e., internal procedure or external procedure through multicriteria analysis), the president of the commercial court can summon the management to a confidential interview in order to discuss the financial situation of the company and measures to be taken.** The convocation of the debtor to the confidential interview is in the form of a notification of a registered letter with acknowledgement of receipt, both to the personal addresses of the managers and to the company's head office. The procedure remains strictly confidential.
- 124 The expertise of commercial judges is fundamental, as during the interview they provide orientations towards measures to be implemented (request a moratorium from the main creditors, apply to the service of mediation of the Banque de France, opening of preventive or insolvency proceedings).** If preventive or insolvency proceedings are opened, the debtor will thus benefit from the expertise of a special mediator (*mandataire ad hoc*), or conciliator, or judicial administrator (in case of safeguard or *redressement judiciaire*).
- 125 The management of the first confidential interview with the competent commercial judges is totally free of charge for debtors.** Since commercial judges are past entrepreneurs, they have a longstanding experience in commerce, industry and finance which helps them to better understand the issues that the debtor is facing and to suggest the best practical remedies, while building a trustworthy relationship with the entrepreneurs. The remuneration of mediators and conciliators is normally paid by debtors and is often significantly high (for example: the hourly fee of a mediator can be as high as 280 EUR).
- 126 As described in previous sections, preventive restructuring procedures were established since many years and have supported a large number of businesses in France.** During the year 2019, within the French EWT system, 431.719 files have been detected, out of which 10.343 cases have been effectively studied. 9.328 convocations have been issued for an interview with the commercial courts in accordance with Article L. 611-2, I. of the French commercial code. 928 persons spontaneously addressed themselves to the court. During the same year of 2019, these files gave rise to the opening of 2.796 insolvency proceedings, to be compared with the overall number of opening of preventive proceedings, i.e., respectively 1.615 *mandat ad hoc* and 1.229 conciliation proceedings.
- 127 Thanks to the Covid support measures by the French government avoiding cash-flow insolvencies, the number of insolvency proceedings and files that have been analyzed within the French EWT system during the year 2020 decreased sharply.** Indeed, in 2020, 5.629 convocations have been issued for an interview with the commercial judges. 563 persons spontaneously addressed themselves to the court. These files gave rise to the opening of 1.802 insolvency proceedings, to be compared with the overall number of opening of preventive proceedings, i.e., respectively 1.115 *mandat ad hoc* and 1.366 conciliation proceedings.
- 128 Few data exist at national level regarding the target segments addressed by the EWT. Therefore, the following figures are referred to the Court of Paris (the larger in France), from Jan. until October 2020.** Among the overall 209 prevention procedures launched, no procedure was launched by individual entrepreneurs/sole proprietorships<sup>61</sup> or micro companies<sup>62</sup>, 82 were launched by small enterprises<sup>63</sup> (corresponding to the 39% of

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<sup>61</sup> In France, the sole proprietor is a physical person who manages a business on his own behalf and for his own account (without legal entity).

<sup>62</sup> A microenterprise is an enterprise (without legal entity) with an annual turnover not exceeding EUR 176,200.00 for activities of sale of goods and provisions of accommodation, or EUR 72,500.00 for services deliveries and liberal activities.

<sup>63</sup> With less than 20 employees

procedures launched), 14 by small holding enterprises (7% of total), 78 by medium enterprises<sup>64</sup> (37 %), 31 by intermediate size enterprises<sup>65</sup>(15%), 4 by large corporates<sup>66</sup> (2%).

**129 The preventive procedures in France show a relevantly high performance. In fact, it has been reported a success rate ranging between 60 to 70%, meaning that a large share of preventive procedures (*mandat ad hoc* and conciliation procedures) ends up with restructured businesses under a going concern.** However, if the figures provided by the Commercial Court of Paris are significant for the whole country, concerns raise regarding the fact that roughly the 96%<sup>67</sup> or more of active enterprises in France (micro enterprises) makes little or no use of the Early Warning Tool currently managed by the Commercial Courts. These figures are particularly relevant, keeping in mind that smaller debtors are normally the ones that benefit the most from early detection of risks.

## **ITALY**

**130 The main alert mechanism in Italy has been defined in 2019, as part of a wider reform of the insolvency regime, and it is expected to come into force starting from Sept. 2021**<sup>68</sup> To support alert detection and treatment, a special body is being established within the Italian Chambers of Commerce<sup>69</sup> (the Crisis settlement and resolution bodies – OCRI<sup>70</sup>). One or two employees of the Chamber of Commerce will play the role of focal points of the OCRI, managing external and internal notifications, contacting the debtors to plan interviews, participating to the meetings and overseeing the treatment process. A board of three experts also integrate the Team, appointed by the Chamber of Commerce, the Tribunal and the debtor respectively. Estimation of budget costs for the development and maintenance of alert procedures is not possible and not covered in this Report, as the several aspects are not yet defined (such as remuneration of OCRI’s experts) and daily operations are embedded in the competences of the Chambers of Commerce. Therefore, the funding of the operations of the main EWT in Italy is totally public, while debtors will remunerate the experts of the Board for their activities.

**131 The alert systems apply to individual and collective entrepreneurs which are subject to judiciary liquidation, compulsory winding up and the other insolvency procedures.** Therefore, consumers, professionals, small enterprises, agricultural enterprises and startups are excluded from the perimeter of the alert procedure and fall under the scope of the over indebtedness procedure (described below).

**132 Regarding the interaction between the debtor and the alerting mechanism, notifications of a perspective insolvency can be an output of internal or external procedures.** In fact, alerts for past due debts for relevant amounts can be shared with the OCRI by institutional creditors (tax authority, social security, collection agency<sup>71</sup>), or by the company itself, either if some relevant facts emerge that can potentially jeopardize the debtor’s businesses, or if the monthly self-assessment performed by the company shows the patterns of distress.

**133 Based on the above (i.e., after receiving the alerts coming from external procedure or internal procedure through self-assessment), the contact person of the OCRI summons within 15 working days the management of the confidential interview in order to discuss the financial situation of the company and measures to be taken.** The convocation of the debtor to the confidential interview is in the form of a notification of a registered letter with acknowledgement of receipt, both to the personal addresses of the managers and to the company’s head office.

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<sup>64</sup> With more than 20 and less than 249 employees

<sup>65</sup> With more than 250 and less than 4.999 employees

<sup>66</sup> With more than 5.000 employees

<sup>67</sup> On this matter, see EUROSTAT: among 5.815.900 active businesses, 96% are micro and small businesses, 4% are medium enterprises, 0.15% are intermediate and large companies.

<sup>68</sup> In fact, postponing the entering into force of the alert system was included in the Decree aimed at facing liquidity risks of companies during the COVID-19 pandemic (DL 23/2020).

<sup>69</sup> The Chambers of Commerce are public entities, and they cover all the 20 Regions and 100 provinces in the country

<sup>70</sup> *Organi di Composizione e Risoluzione della Crisi di Impresa* (OCRI)

<sup>71</sup> In case of relevant debt (for example: tax debt should exceed 30% of sales declared) that, after more than 90 days since notification, hasn’t been repaid or if no debt rescheduling plan has been defined. For a further detail of the alert triggers, see Art.21-bis of the Decree of May 31, 2010 n°.78.

The procedure remains strictly confidential<sup>72</sup>. During the interview, relevant facts can emerge<sup>73</sup> that can annul the alert procedure, showing that the debtor can continue its business under a going concern. If it's not the case the preventive insolvency is declared by the OCRI, and remedial measures are proposed the debtor.

**134 At this point, the Board works closely with the entrepreneur to identify all the possible remedial measures and workarounds to face the crisis.** Also, a term is fixed for the debtor to report the effects of such measure on the company's business (the procedure has a maximum duration of 3 months, renewable for other 3 months). When the settlement phase is launched, the Board of experts appointed by the OCRI will contact the main creditors to seek an agreement and will support the debtor in the preparation of all the documentation needed for the agreement definition and finalization. Such documentation will then be use in all the settlement or insolvency procedures the debtor might decide to have access to. During this period (3+3 months to reach the agreement), the entrepreneurs might apply to the Tribunal to benefit from all protection measures established by the law.

**135 At the end of this phase, an agreement with creditors should be reached. If so, the agreement will have the same force as any rehabilitation plan and will be used by the debtor and valid only for the creditors included in the settlement.** In case no agreement is reached, the Board will propose the activation of one of the insolvency procedures established by the Code within 30 days. If not, the Board will promptly inform the prosecutor, that will evaluate the opportunity to open a judicial liquidation procedure.

**136 For virtuous entrepreneurs that comply with all the regulatory prescriptions about the reporting of the patterns of distress and full disclosure of relevant information, a set of incentivizing measures is available in the procedure.** These cover the exemptions from interest expenses for past due tax debt, exemption from bankruptcy offenses, a doubled term for the definition of creditors arrangements or rehabilitation plans.

**137 As described above, this procedure is expected to come into force in September 2021, therefore no results framework is available.** However, while the prognostic forward-looking approach based on a mandatory self-assessment and a set of external alerts from creditors seem a relevant innovation to strengthen the proactivity of the alerting mechanism, relevant concerns are already raised in Italy about the effectivity of the procedure being established. Under an operational perspective, these mainly involve: a) the still unclear background of experts taking part in the Board (a proposition has been recently launched to include insolvency practitioners in the registry of experts, raising a concern that experts with such background might not have the right qualification to support companies that are still working under a going concern); b) the insufficient array of support measures made currently available to debtors to encourage their participation. In fact, while interest on past due tax debt is already very low, no other support measure to provide capacity building or mentorship is being considered until now.

**138 The second alert system supporting debtors in distress is the newly established over indebtedness procedure, managed by the new Crisis Settlement Bodies (OCC<sup>74</sup>), hosted by the Arbitration Chambers within the Chambers of Commerce.** The operational structure of each OCC is composed by one contact person (with the same functions of the contact person of the OCRI<sup>75</sup>), a secretary,<sup>76</sup> and a crisis manager appointed by the contact person which is included in a specific register<sup>77</sup> which includes lawyers, statutory auditors, and insolvency practitioners. Similarly to the main alert procedure, the estimation of annual operational costs of the OCC is not possible as the activity falls under the scope of activities of the Chamber of Commerce, which are entirely covered by public funding.

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<sup>72</sup> All parties sign a Non-Disclosure Agreement (NDA)

<sup>73</sup> For example, claims or other credits with the Public Administration, than compensate the existing debt.

<sup>74</sup> *Organi di composizione della crisi* (OCC)

<sup>75</sup> The contact person of the OCC (*Referente*) a) Appoints the crisis manager, b) Certifies the absence of any conflict of interest of the OCC with the over indebtedness procedure, c) Approves the quotation of the remuneration of the expert, d) Can remove the crisis manager upon request of the debtor and e) Upon confirmation of the Tribunal, can appoint the crisis manager as a liquidator

<sup>76</sup> The secretary of the OCC receives, stores and manages all the documentation of the procedures (applications and launched procedures) and manages all the notifications (to debtors, creditors, tribunal, third parties) involved in the procedure.

<sup>77</sup> *Albo dei gestori della crisi*, managed by the Ministry of Justice

The access to this procedure by debtors is free of charge<sup>78</sup>, but both the launch of the procedure after the validation by the OCC<sup>79</sup> and the support of a crisis settlement expert are remunerated by the debtor.

**139 The over indebtedness procedure applies to those subjects that are not classified as entrepreneurs, and therefore not subject to judiciary liquidation, compulsory winding up and other insolvency procedures.** According to the Italian regulation<sup>80</sup>, these are basically consumers, professionals and individuals with unlimited liability for the activities of small businesses<sup>81</sup>, agricultural enterprises and start-ups.

**140 The over indebtedness procedure consists in various steps.** The first one in the application, to be filled manually and shared via email with the OCC along with the proof of payment. The second one is the preliminary evaluation of the application made by the Secretariat within 48 hours after receiving the application. If the application is approved, the secretariat will send a confirmation and a rate of the estimated costs of the procedure. If the rate is approved by the debtor, a crisis manager is appointed by the Secretariat, that proceeds to the evaluation of the debt exposure and all relevant documentation, to identify the viable solutions. A meeting with the crisis manager is then planned, where the debtor can describe the reasons behind the debt exposure and ask for the help he needs.

**141 Following this risk detection phase, the expert assists the debtor in the preparation of a recovery plan, aimed at identifying the debts the debtor is able to repay and the other exposures<sup>82</sup> that should be written off.** After the plan is prepared, it is finally validated by the expert and the OCC and submitted to the Tribunal (Bankruptcy Court) for its homologation. After the validation by the Tribunal, the debtor can proceed to pay its debt following the schedule established in the plan.

**142 It is worth highlighting that, similarly to the alert mechanism managed by the OCRI, the procedure is strictly confidential, except for the official communications of the Tribunal.** All counterparts involved are subject to the obligation of signing a Non-Disclosure Agreement (NDA) to protect the confidentiality of the information referred to the debtor. The maximum duration of this procedure is 6 months. The three key outputs of the procedure are: a) A settlement agreement (approved if the creditor that agree with the plan cover the 60% or more of the outstanding debt), or b) A consumer plan, which is similar to the settlement agreement but requires no opinion from creditors, that only covers outstanding debt for consumption and family expenses, and all debts deriving from an entrepreneurial activity are excluded, c) Liquidation procedure<sup>83</sup>, where the debtor and the crisis manager identify the goods to be liquidated to cover all or a part of the debts.

**143 Even if the above described over indebtedness procedures entered into force starting from 2019, no official figures exist on the exact number of procedures launched and their rate of success.** According to the Chamber of Arbitration of Milan, Monza and Brianza (one of the largest in Italy), only a few thousand procedures were

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<sup>78</sup> Just a tax stamp of 16 EUR is needed

<sup>79</sup> An advance of 200 EUR is paid by the debtor through a wire transfer when the procedure is approved and launched, the remaining amount is paid at the end of the procedure, according to the value of the outstanding exposure of the debtor, the quantity and complexity of issues analyzed. If the counterparty is a consumer, a minimum level of fares is applied, with a deduction of 30%. The overall remuneration is divided between the crisis manager (65%) and the OCC (35%). As a broad indication on the costs of the procedure, for amounts of debt settlement below 16.000 EUR the overall cost of the procedure ranges from 12% to 14%. The rates decrease gradually for larger amounts. For further details, see the regulation of the management of the over indebtedness crisis, Annex A, <https://www.camera-arbitrale.it/it/occ-sovraindebitamento/costi-e-regolamento.php?id=562>

<sup>80</sup> *Codice della crisi di impresa e dell'insolvenza* (Decree 14/2019)

<sup>81</sup> *Imprese minori*, (See Art. 2 of the Decree 14/2019) are those undertakings with an amount of assets below 300.000 EUR over the last 3 reporting dates, profits amounting less than 200.000 EUR over the same period, and debts (including all outstanding debt) not exceeding 500.000 EUR.

<sup>82</sup> All debts including mortgages, unsecured claims and tax debt fall under the scope of this procedure

<sup>83</sup> Worth to mention that – upon liquidation procedures – under the certain conditions the OCC can apply to the Tribunal for a full debt relief. The key conditions are that the debtors have showed full transparency and collaboration with the creditors to meet his obligations, that objective events occurred that prevented the debtor from repaying its debts, that no previous judgement or criminal, or insolvency, or debt relief proceeding exist. In case of approval by the Tribunal, the OCC controls that no substantial change happens in the financial capacity of the debtor withing 4 years after the debt relief. If so, the debtor is asked to proceed to the repayment of his debts.

launched since its onset. The reason for this improvable performance seem multiple, ranging from: a) the high costs of the procedure<sup>84</sup>; b) the complexity of the application, with a significant quantity of documentation<sup>85</sup> to be shared by debtors, making them feeling uncomfortable and scrutinized; c) the lack of a well-structured information campaign, resulting in a large number of debtors accessing the OCC with the mere purpose of seeking new financing; and d) the potential conflict of interest of crisis managers (which are mostly lawyers and insolvency practitioners), which might have little interest in a fast resolution of controversies.

## **GERMANY**

**144 Besides the preventive restructuring procedure, the mechanism supporting early warnings for distressed debtors in Germany is based on private and not-for profit initiatives.** As stressed in the previous Section on the institutional dimension, the Team interviewed the most known initiative, called Team U, a social business born in 2008 as a self-help group of entrepreneurs experiencing the impact of failure in their own lives and willing to share the lessons they learned with other debtors.

**145 The organizational structure of Team-U consists in a bulk of 7 Full-Time staff and roughly 45 volunteer mentors (mostly retired ex entrepreneurs) across the whole country.** The full-time staff covers the management, administrative, front and back-office and marketing/fundraising tasks, while the network of mentors supports the mentoring component, which is normally free of charge for debtors. In fact, the organization's business model relies on both donations from the foundations and from entrepreneurs that benefitted from the support services, and the income from the consulting activities, mostly addressing banks and insurances on how to deal with insolvent clients. The total annual budget (2019) for TEAM U is 450 000 EUR.

**146 Empowering entrepreneurs to prevent insolvency is not the only mission of Team U. In fact, the organization also provides capacity buildings, advisory, and an array of services to enable a second chance for insolvent entrepreneurs.** For these purposes, the key tools offered by Team-U are on-line diagnostic tools, cost-free hotline, peer-to-peer support, self-help groups, consulting, and a network of experienced experts. In fact, most volunteers are entrepreneurs who have personally managed to deal with crisis, they get professionally trained by TEAM U to help others who face difficulties. This combination of emotional competence and business expertise helps entrepreneurs to ask for help and to open-up<sup>86</sup>. TEAM U is the mentor organization responsible for the trainings and mentoring for the EU funded Early Warning Europe Program.

**147 TEAM U has developed an Online-Platform with tools and online support for entrepreneurs.** The Online-Platform is connected to a CRM tool to manage the data that is needed for in-house consultants and mentor volunteers. This data is also used for scientific work on the issue of crisis management. The volunteers and experts are selected and trained in a special modular training to enable them to help entrepreneurs who seek support. Also, the entrepreneurs are selected – TEAM U only supports honest entrepreneurs who are willing to take responsibility for their situation and to undergo the process of – sometime painful – changes.

**148 Regarding the operational management of the early warning, the model is not proactive, and therefore totally relies on the debtors' willing to seek for help.** Generally, the whole framework is structured as follows: 1) most<sup>87</sup> entrepreneurs access the Team U's website and fill the online questionnaire about their personal and financial situation; 2) a first interview is scheduled, where the entrepreneur explains its situation and expectation; 3) if the debtor agrees so (and a NDA is signed to ensure confidentiality) a second interview is scheduled to perform an in-depth evaluation of the situation of the debtor. The assessment has two key objectives: First of all, it helps at understanding the key difficulties, and the key solutions (i.e. whether the business is viable or not, and if so, what

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<sup>84</sup> Some initiatives by local municipalities are still ongoing to issue some vouchers to subsidize the costs of the procedure

<sup>85</sup> On this matter, see Art. 2 of the Regulation, <https://www.camera-arbitrale.it/it/occ-sovraindebitamento/costi-e-regolamento.php?id=562>

<sup>86</sup> Apparently, insolvency and failure is still a taboo in Germany – it is an emotional issue, so it needs to be addressed in a very personal way to reach entrepreneurs to act early before it is too late.

<sup>87</sup> Being TEAM U also is involved in different business networks, it can get recommended through banks who seek a solution to settle debt problems with customers who have the potential for a turnaround.

should be the possible solutions), secondly it enables the identification of the right “match-making” of debtors with volunteer mentors, depending on the difficulties identified and with the various backgrounds of the mentors.

**149 After the matchmaking is made, the free of charge mentoring support begins. Normally, there is no pre-fixed duration of this support phase, even if it should not take more than 3-6 months.** Since 2007, TEAM U has helped more than 14.000 entrepreneurs get back on their feet, most of them (80%) are individual entrepreneurs or micro companies, with the reminder is mostly small enterprises with less than 20 employees. At the moment, the seven employees in the TEAM U organizations and the 45 volunteers help around 400 companies a month. TEAM U is convinced that 50% of all bankruptcies can be avoided if entrepreneurs act early enough and get the right support - the long-term goal of TEAM U is to reach up to 12.5% of companies threatened with insolvencies by 2026 and to save 70% of them.

**150 A key success factor for TEAM U is to not focus on the financial situation alone, but to also focus on the entrepreneur and his wellbeing.** Often lawyers deal with the entrepreneur’s situation as a business problem alone and they do not address the personal and emotional crisis of the entrepreneur. Dealing with the personal and emotional problems is the key to getting the entrepreneur back on his feet and finding a sustainable solution to the problems. Furthermore, TEAM U’s presence at SME/start-up conferences and a professional website is an important factor for success. It is important that the entrepreneurs in distress are aware of TEAM U and receive the help and guidance needed in order to move on from the current situation and state of mind.

**151 The main challenge for TEAM U is to keep up with the pace of its organizational growth and the often very high degree of pressure that is in a situation like a threatening insolvency in order to meet the entrepreneur’s individual needs.** Another challenge is that many entrepreneurs get in contact with TEAM U when it is too late to help them. Therefore, TEAM U is focusing increasingly on interacting with the entrepreneurs at an earlier stage by addressing issues that are related to crisis-prevention and dealing with changing market environments like digitalization. TEAM U also advocates a culture of 2nd chance for honest entrepreneurs through media work and consulting of the federal and state government.

## **THE NETHERLANDS**

**152 Similarly to Germany, the mechanism supporting early warnings for distressed debtors in the Netherlands is based on a well-established network of private and not for profit initiatives.** One key point of entry to this network seems the Chambers of Commerce, which often play the role of front office to receive the demands for support of companies<sup>88</sup>, referring them to the social entrepreneurs deemed appropriate. Other referrers are the financial institutions. The Team interviewed two foundations playing different roles across the early warning value-chain, called MKBDoorgan.nl and Foundation Entrepreneurs Soundbord, two national operating social business with a quite long tradition<sup>89</sup> of support of entrepreneurs in distress.

**153 As described in the Institutional Dimension Section, MKBDoorgaan.nl wants to reach and help those companies that have come or are in (financial) problems, but that have a viable future perspective, or that experience obstacles in growth: financially viable within their market and branch and have access to retain and expand the right entrepreneurial skills and thus (vulnerable) employment.** The organizational structure of the foundation is structured with 2 managers, 3 full -time employees and 22 volunteer consultants across the whole territory<sup>90</sup>. The organization is supported by a Board, composed by 6 members with different background (public sector, financial sector, coaching, judge in bankruptcy and restructuring, social entrepreneurship), and a Board of

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<sup>88</sup> Under this perspective, a meeting was planned with representatives of the Ministry of Economy and the Chambers of Commerce. As digitalized and comprehensive information is collected about companies, the Chamber of Commerce is considering the possibility to elaborate alert triggers about registered entities that would be (under consideration) either transferred to debtors (along with a suggestion to seek support from referred institutions) or to second-line institutions such as MKB Doorgaan or Foundation Entrepreneurs Soundbord.

<sup>89</sup> With more than 10 and 40 years of activity, respectively.

<sup>90</sup> Even if the most relevant territorial focus of the organization is on a specific region of Holland.

inspiration, which supports the Board and the Team with solicited and unsolicited advice on the objectives to achieve and on the various activities of the Foundation. The Council is composed by seven volunteer members, mostly with a background from the academic world and social entrepreneurship.

- 154 The institution works as the front-line to meet entrepreneurs' needs, providing a first-level screening aimed at identifying the right partner organizations that will actively support them.** For doing so, the key steps are: a) Debtor's registration on the website<sup>91</sup>, b) An admission interview (with an extensive intake by phone by one of the advisors), c) A quick scan meeting (face to face meeting with an entrepreneurial advisor), d) A weekly meeting of core team to discuss the most suitable solutions, and e) The transfer to the debtor to second-line organizations. The service is totally free of charge for debtors, as the quick scan interviews are paid by referrals (most often banks, but also municipalities). In case during the above-described workflow the debtor clearly identifies its needs, a warm transfer to the second line organization can happen right after the admission interview or the quick scan.
- 155 The second way for debtors to seek the help they need is fully automated and online.** In fact, help is made available through the website, where the debtors provide their personal information (including the address and specify what is the type of support they need (financing, advisory, coaching, other types of support to be specified), and the website displays the relevant matches that are close to the location of the applicant. The debtor can then contact the suitable party via the website.
- 156 MKB Doorgaan has helped roughly 2.000 entrepreneurs, with roughly 4.500 employees. 65% of the entrepreneurs benefitted from coaching and advice, while the 36% was helped through financing.** The key targeted segments by the EWT are sole entrepreneurs and micro businesses with less than 10 employees. The 94% of businesses that benefitted from assistance continued the business, while the 6% got assistance to cease its activity. Among the key strengths of the organization, the most relevant is that the institution is perceived as totally neutral by debtors, in a country where – similarly to Germany - a strong feeling of shame pervades debtors facing difficulties, along with the quick and effective support to rapidly identify the valid counterparts for distressed entrepreneurs. The key constraint seems to reside in the late flagging of difficulties by the debtors, making the interventions more challenging and less successful.
- 157 The second mechanism interviewed by the Team is the entrepreneurs' soundboard<sup>92</sup>, a not-for-profit private foundation established in 1980 by the Chamber of Commerce, branch organizations and other entities to support entrepreneurs in distress.** The organization provides mentorship and support to entrepreneurs in distress, and therefore can be referred by other organizations (such as the Chambers of Commerce and MKBDoorgaan) to provide coaching and mentorship in order to help debtors overcoming their difficulties. The organizational structure is based on a Team of 5 employees (Management, HR, service desk, control and marketing tasks) and roughly 300 volunteer mentors<sup>93</sup> across the whole country<sup>94</sup>, backed by a Board of 4 persons, and 4 ambassadors (mostly social entrepreneurs and academics).
- 158 The access to the alert system is fully inbound, as entrepreneurs contact the organization to seek help. The support provided by the organization to debtors is free of charge, except for a small donation of 200 EUR<sup>95</sup> if the debtor agrees to benefit from a 6-month period of support from a mentor.** The process of support consists in three simple steps, as follows: a) The entrepreneurs contact the organization (most often through the website, sometimes by phone), b) A first meeting is planned, where a coach evaluates the debtor's demand for help and his/her needs, c) If the debtors agree, a non-disclosure agreement is signed and the 6 months support period starts. A first step of this process is a preliminary and more in-depth evaluation by the coach to have a more in-depth vision of the business, key resources and constraints, then a coaching activity aimed at solving the detected issues is implemented.
- 159 Worth to mention that most information collected by the coaches (except for personal data) is digitally shared by the coaches, so to support data elaboration by the foundation's ICT system, to enable periodic reporting to**

<sup>91</sup> <https://www.mkbdoorgaan.nl/en>

<sup>92</sup> *Stichting Ondernemersklankbord OKB*

<sup>93</sup> Mentors are mostly retired ex entrepreneurs

<sup>94</sup> Organized in 17 regional teams.

<sup>95</sup> Now suspended, given the current pandemic emergency.

**the management, the board and the donors (results framework) and help coaches at improving their activities on an ongoing basis.** The most typical activities managed by the coaches are the support to the elaboration of strategic and operational plans, the definition of the businesses' financial needs and the support to the preparation of all relevant documentation to support loan applications, the support at ending up the business.

**160 While the key criterium for the matchmaking of an entrepreneur with a coach is based on his/her location, the relevant coach expertise needed is also very relevant.** In fact, each of the 17 regional teams is characterized by a mix of skills (mainly managerial, psychological, marketing and accounting skills). A relevant project has also been recently implemented to encourage a mutual collaboration between “wisdom” and innovation, with coaches (mainly retired ex entrepreneurs) being supported in their activities by volunteer students at the University of Rotterdam. The partnership is proving successful, especially in new and increasingly relevant areas of digitalization, online marketing and social media management. Lastly, the organization provides periodical capacity building activities to mentors, so to ensure that adequate quality standards are applied when targeting entrepreneurs.

**161 With more than 40 years of activity, the Foundation has helped more than 100.000 entrepreneurs in the Netherlands<sup>96</sup>.** Every year roughly 3.000 entities are advised by the Team, attracted by referrers (mostly the Chamber of Commerce, that contacts the organization upon request of the debtors), offline and online marketing, mouth to mouth and partnerships. Its key partners are the Chamber of Commerce, the Ministry of Economic Affairs, branch organizations, municipalities and financial institutions. The key targeted segment of the organization is the self-employed (75% of supported entities), then micro companies<sup>97</sup> (15%), small enterprises<sup>98</sup> (9%) and medium enterprises<sup>99</sup>.

**162 The organizational model of the Foundation seems solid and helpful to support debtors effectively. The organization is well integrated in a modern environment characterized by a high level of social responsibility of private and public entities.** Nevertheless, the foundation doesn't work proactively to support companies experiencing difficulties they are not fully aware of, and this potentially limits the effectivity of its support.

## **POLAND**

**163 As described in previous sections, the PARP (Polish Agency for Enterprise Development) is a public agency that reports to the Ministry of Economy.** Therefore, provision of early warnings and assistance to distressed debtors is just one of the several activities aimed at supporting entrepreneurship<sup>100</sup> managed by the Agency. The alerting mechanism has been implemented in 2017 and active until the 2019. The mechanism has stopped its operations during the current COVID-19 pandemic emergency (a re-start of the EWT operations is currently under preparation).

**164 The alert mechanism's operations are based on a collaboration between the PARP (managing the administrative activities and the front-end operations) and a private NGO (the Family business foundation), which supports the provision of mentoring activities.** The operational model of the alert mechanism has been defined through the capacity building provided by Early Warning Europe, drawing its inspiration from already established platforms, such as the early warning mechanism provided by Team-U in Germany and the Danish Early Warning Tool. Until the program was stopped, the organizational structure consisted in 2 full-time employees at PARP, a network of 10 Consultants hired by the PARP, and a network of 40-50 volunteer mentors managed by the Family Foundation. The 10 Consultants are hired upon request by the PARP through single appointments, based on hourly fees<sup>101</sup>.

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<sup>96</sup> Last year, the Foundation an increase of +63% of entrepreneurs helped was recorded by the Foundation, most likely as a consequence of the COVID-19 emergency. Because of the lockdown, all screening and support activities were managed via hotline or video conferences.

<sup>97</sup> With less than 10 employees

<sup>98</sup> With less than 50 employees

<sup>99</sup> With less than 250 employees

<sup>100</sup> Mostly focused competitiveness, innovation, digitalization, internationalization.

<sup>101</sup> Though, turnover among consultants has been relatively low. However, most consultants have been employed at the same time in other places - provision of consultancy in the EWT has been a side job for them.

**165 Like in Germany, the Tool is based on voluntary access by debtors.** Potential beneficiaries reach the PARP through its network and the Family Business Foundation, supported by promotional campaigns. The operational framework basically consists in 4 main steps, as follows: a) a first intake interview through hotline (managed by PARP); b) after the first contact the debtor agrees, an agreement is signed, and a first advisory activity is performed by the Consultants (managed by PARP) through interviews. The advisory aims at detecting the key difficulties and appropriate strategies. In some cases, this first phase of detection might help at clearly identifying the deficiencies the solutions moving forward, and the debtor might decide that he/she will not need any further support; c) the next steps and the matchmaking (debtors and mentors) are then defined through meetings of debtors with consultant and mentor; d) the support to the resolution of the issues is provided by the mentor. Worth to be noted that: a) the support provided by the Tool is free of charge for debtors; b) there can be different professional backgrounds for mentors – that are mostly retired entrepreneurs with years of expertise in different types of business - and Consultants, with experience in business management, insolvency framework, psychology, marketing and accounting<sup>102</sup>; c) in general, there is no pre-defined limit to the duration of the mentorship phase, while a limit exists for the first screening activity managed by the Consultants, which should not exceed 8 hours for each debtor.

**166 The implementation process was based on a conceptual/design phase, and a roll-out phase. The design phase started with an agreement between the consortium of PARP and FFR (Family Business Foundation) and EWE.** After the project preparation support provided by EWE, an agreement was reached between PARP and FFR on joint implementation. While the elapsed time for project design was approximately 12 months, the pilot implementation phase took almost 35 months, with 4 FTE from the PARP involved. During its operations, the Tool has supported approximately 880 debtors<sup>103</sup>, the vast majority of them are family businesses<sup>104</sup> and micro businesses with less than 10 employees<sup>105</sup>. Out of these entrepreneurs, 300 benefitted from the whole array of services (support by consultants and mentorship), 372 just benefitted from the first diagnostic phase managed by consultants, and 208 completed their participation in the project at the stage of preliminary consultation. While the operations of the Tool have been suspended, planning of some changes of the operational model are being defined, as follows: in the short term, an online questionnaire on PARP’s website will be made available to debtors, so to support an even more timely detection of risks, in the middle long term, the adoption of a proactive outbound model<sup>106</sup> to foster the support of the EWT to debtors that are not fully aware of their difficulties. The estimation of budget expenditure to support the EWTs operations for the whole period from 2017 to 2019 is roughly 280.000 EUR.

*Table 3: Key Team’s findings from the benchmarking assessment of the EWT’s operational dimension*

- Out of the 5 countries analyzed, 3 of them (Poland, Germany, the Netherlands) have chosen to adopt an inbound model, totally based on the will of debtors to ask for help. However, in order to support an earlier detection of risks two out of these 3 countries (Poland, the Netherlands) were considering an evolution of the operational framework supporting the Tool, to foster a self-assessment and a proactive approach of the Tools.
- Similarly to the definition of the institutional settings, also the different approaches to the operational framework seem strictly interconnected to the cultural background in the countries: where insolvency is more blamed, the operational approach seems more focused on the debtor’s request for help, as a notification from public agencies might have detrimental and counter-intuitive effects for the debtors.

<sup>102</sup> In addition, both PARP and Foundation are very much focused on team building, to create a well-integrated team and mutual support between consultants and mentors. For the well-functioning of the mechanism, mutual knowledge of consultants with mentors is key, as, once the difficulties are identified, they should get a clear understanding of whom the debtor might be referred to in the next phase.

<sup>103</sup> Out of which, approximately 20 debtors decided to undergo insolvency procedures

<sup>104</sup> Given the recent implementation of the Tool, a well-designed results framework hasn’t been implemented yet.

<sup>105</sup> Covering a share of above 96% of all assisted companies. The remaining part is composed by small companies (2.5%) and medium-sized companies (0.7%)

<sup>106</sup> I.e., where the Tool elaborates a set of data to flag perspective insolvencies and the Agency will contact the entrepreneurs to propose support.

- The two remaining countries (France and Italy) have adopted proactive approaches, where public Authorities reach out distressed debtors to inform them about the company distress. The most comprehensive model seems the Italian one (yet to be fully established), as it covers different approaches for different types of debtors: inbound approach for smaller debtors and mandatory self-assessment and outbound model (mandatory notification from public agencies based on alert triggers) for larger SMEs.
- However, the operational models in these two countries raise some concerns, covering the judgmental analysis to flag the insolvency, the lack of awareness of debtors and the high costs (France), the high costs of the procedure for smaller debtors, the lack of incentivizing measures and the role of insolvency practitioners, that might not be in the best position to support debtors to resolve the crisis under a going concern (Italy).
- Regarding the detection and treatment activities, a common feature of all analyzed mechanism is the separation between subjects/entities supporting the detection and subjects/entities performing the treatment. This supports a four-eyes verification of the debtors' difficulties as well as the minimization of any potential conflict of interest or ineffective detection of issues. Under this perspective and similarly to Poland, "last-generation" and newly established Tools might take advantage from the lessons learned from already existing platforms, customizing the reference models to capture the morphological/cultural specificities of the country's environment.
- Regarding the business model applied, it is naturally related to the institutional framework: in case of management by a public agency (Italy, France, Poland), operational costs are fully covered by the authorities, while in other countries the funding comes from donations (the Netherlands, Germany).
- Regarding the remuneration of experts providing advice, in most cases (all countries, except for Germany) risk detection is remunerated, while in 3 (Germany, Poland, the Netherlands<sup>107</sup>) out of the 5 countries, treatment is based on pro-bono activities, provided by ex-entrepreneurs. In all cases, the background required to provide support ranges from business management, accounting, insolvency, marketing, psychology. Both train the training activities to ensure a homogeneous approach to debtor support and adequate skills and coordination between experts detecting risks and advisors seem fundamental pre-conditions to ensure the well-functioning of all mechanisms.
- Separate conceptual design, implementation, pilot and roll-out phases seem needed for a proper implementation of the Tools, with the first phase lasting up to 12 months.
- A key lesson regarding the operational perspective seems that the process of implementation/adaptation should be ongoing, as relevant drivers to change exist (data availability, IT, evolution of culture, social and economic environment), making the adaptation of the operational framework a compelling need. Under this perspective, the cooperation by different entities supporting risk detection and advisory might ensure a better adaptability of the Tools to the changed contexts.

### 4.3 The data dimension

**167 This Section explores the data collection process to support the EWTs operations (for risk detection and debtors' support) in Benchmark Countries, as well as the data environment in each jurisdiction.** Typically, data gathering to detect risk can be based on soft (qualitative data about the entrepreneur and its business) or hard information (quantitative data either collected from the entrepreneurs, from other sources, or from both). The data environment should be supportive of data collection of relevant publicly available information about businesses.

#### FRANCE

<sup>107</sup> In Holland, a donation of 200 EUR was asked to entrepreneurs to benefit from the 6 months support from volunteer mentors.

**168 The French outbound model relies on data collection of the Commercial Courts of information from different sources on a monthly/quarterly basis.** The main data providers are the commercial register managed by the Commercial Court, the Central Bank (Banque de France), the social security (URSAAF), the tax administration, other sources (public prosecutors, tribunals, statutory auditors, retirement funds). The data collection happens still through mostly manual procedures managed by the Courts, supporting the upload of the information on a database from which the data are exported in Excel file format, to undergo scrutiny by Courts' Judges. There is no one size fits all methodology across Commercial Courts, and that the identification of companies to summon is subject to Judges' decisions. Following the discussions with the Commercial Court of Paris – the larger in France – a broad description of the key indicators used has been provided.

**169 There are 8 key alert indicators used by the Commercial Court of Paris, provided by the above-described sources.** The key indicators are: a) *Postponement of the shareholders' general assembly approving the financial statements*: this indicator can be useful only when it is combined with other indicators, b) *Alert from the Public prosecutor or the statutory auditor on criminal acts that would have been committed*: this is a very powerful tool but occurs very rarely in practice. c) *Alert from the statutory auditor on the financial situation in the framework of the alert procedure*: as explained in previous Sections, the statutory auditors are required, as a matter of law, to inform the president of the commercial court of the existence of facts which might compromise the continuity of the debtor's activity<sup>108</sup>. d) *Alert from the Banque de France*: the Banque de France may become aware of financial difficulties of companies and has the possibility to refer the file to the president of the commercial court<sup>109</sup>. e) *Absence of submission of the company's annual accounts at the register of the commercial court*: this indicator can be useful only when it is combined with other indicators since it does not necessarily imply that the company is in financial difficulties<sup>110</sup>. f) *Registration of privileges for the benefit of state institutions*: the tax administration, the social security fund (URSSAF) and retirement funds, if not paid in due course, have the possibility to request the registration of privileges, a tool that is largely used<sup>111</sup>. g) *Payment orders (« injonctions de payer »)*: in summary proceedings, to request the payment of unpaid receivables, payment orders can prove to be a good indicator of financial difficulties where the overall amount of such claims exceeds 100.000 euros. h) *Analysis of the annual accounts of companies*: the annual accounts of a company can reveal financial difficulties. This is particularly the case if a company loses more than half of its social capital or has even a negative net asset value. A significant drop of the turnover may also be a compelling indicator.

**170 While the whole procedure shows a good success rate, the Commercial Court is aware of the potential margins for improvement of the data collection and elaboration procedure.** In fact, instead of a “flat” data export to undergo scrutiny by judges, the Court plans the elaboration of more sophisticated algorithms to make the identification of distressed businesses less prone to Judges' interpretation. For this purpose, integration with the recently implemented early warning platform (a project financed by the Ministry of Economy and Finance) based on more advanced data analytics to automatically identify how a distressed business looks like are being considered. This collaboration might allow a more automatized data collection and early identification of debtors facing perspective distress (as the current indicators – showing relevant disfunctions that have already damaged, supporting the downsizing of the procedure to easily access smaller operators.

**171 The platform, conceived as a startup born from a social incubator<sup>112</sup> and financed by a local<sup>113</sup> project, has become national under the support of Banque de France<sup>114</sup> in 2019.** Data collection and elaboration supports the access to the data provided by the Banque de France<sup>115</sup>, URSAAF and tax authority. Artificial Intelligence (machine

<sup>108</sup> In practice, this procedure concerns less than 10% of the alert proceedings but may consider rather important companies.

<sup>109</sup> However, this refer is very rarely used in practice.

<sup>110</sup> More than 50% of registered companies, including healthy ones, do not submit their annual accounts in due course.

<sup>111</sup> This is one of the most efficient indicators of the existence of financial difficulties of companies

<sup>112</sup> DINSIC, a state start-up incubator

<sup>113</sup> France Bourgogne

<sup>114</sup> That has also played the role of Scientific Committee

<sup>115</sup> About company structure and key financial indicators

learning, decision trees) is based to support the elaboration of a likelihood of insolvency, based on an ongoing testing and training phase through multiple identification patterns that are updated and fine-tuned on an ongoing basis.

**172** Lastly, the data sharing environment in France seems quite supportive to data collection and sharing for alerting purposes. Existing platforms already collect the relevant information to enable early detection of risk deterioration patterns, based on difficulties with key creditors (tax authority, social security, retirement funds), low performance and liquidity risk (captured through financial indicators, already available). Worth to be noted that key additional and significantly predictive indicators (currently not being captured by the EWT) refer to credit information (i.e., evolution of direct and indirect debtors' credit exposures towards the financial sector), whose availability seems still limited in France, as no private credit information sharing operator exist and the BdF only collects negative information about businesses (payment defaults), which is significant but not highly predictive power<sup>116</sup>.

## GERMANY

**173** As described, the German data collection model only relies on information provided by debtors that voluntarily choose to access the Tool to seek help. The information is submitted through the website (online contact information), to advisors and mentors. In all cases, all the information collected (except for personal data) is digitally stored and managed by a CRM platform to support the periodical reporting (results framework, as information are periodically provided to donors) and the continuous improvement of the effectiveness of advisory and mentoring activities.

**174** As described before, the Tool puts particular emphasis on the information about the personal dimension of the debtor, that complements business data. In fact, the key collected information in the different phases is: a) Contact phase=contact information (name, surname, contacts, address), b) First interview=short interview where the debtor describes why he is accessing the services, key information about the activity, what are the services he is looking for, c) Advisory phase= analyzing 1) Debtors' psychological characteristics, 2) Strategic management capacity, 3) Operational management of the business, 4) Financing aspects, 5) Resilience and innovation, d) Mentoring phase, more in depth information on the above topics is collected by the mentors.

**175** Lastly, the data sharing environment in Germany seems fully supportive to data collection and sharing for alerting purposes. Existing platforms already collect the relevant information to enable early detection of risk deterioration patterns, based on difficulties with key creditors (tax authority, social security, financial institutions), low performance and liquidity risk (captured through financial indicators, already available).

**176** No further evolution of the data collection is envisaged by the current mechanism managed by Team U, except for an enhanced use of CRM<sup>117</sup> techniques to improve the relationship with the debtors and rapidly perform the first screening. However, the data sharing seems very supportive of data collection and distribution purposes, as the key information (financial information, tax payments and credit information) could be potentially available for the purpose of the implementation of an outbound model.

## THE NETHERLANDS

**177** The data collection model adopted by social businesses in the Netherlands relies on information provided by debtors that voluntarily choose to access the Tool to seek help. In the case of MKBDoorgaan, the data collection focuses on entrepreneurs' needs, and on key information about themselves and their business (such as the type of business, the years in activity, the mission, the business model, the financing aspects) to punctually understand their needs and refer the right partners to address the difficulties.

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<sup>116</sup> In fact, no properly said Public Credit Registry collecting business information exist in France.

<sup>117</sup> Customer relationship management.

**178**For the second institution providing hands-on support through mentoring, a more in-depth quali-quantitative analysis is performed to punctually understand difficulties, define the next steps and support the entrepreneurs. In fact, the areas of concern seem similar to the above described topics analyzed by Team U in Germany, and cover the debtor's personal dimension, along with key financial information (key data to understand the business viability) and strategic, business management, finance management, accounting capacity. All information is digitized and automatically stored by advisors and mentors, so to continuously improve the effectiveness of the tool.

**179**Similarly to Germany, the data environment in the Netherlands seems fully supportive to data collection and sharing for alerting purposes. Existing platforms already collect the relevant information to enable early detection of risk deterioration patterns, based on difficulties with key creditors (tax authority, social security, retirement funds), low performance and liquidity risk (captured through financial indicators, already available through the Chamber of Commerce and CBS Statline). On the data collection side, a further evolution is being considered by the Chambers of Commerce to perform a first company screening based on data intelligence using available company data and financial data. The data collection might foster early detection of difficulties of all companies (including the businesses<sup>118</sup> that are not fully aware of their difficulties), facilitating the work of organizations providing support.

## ITALY

**180**The Italian early warning mechanism is quite complex, as it relies on different types of data collection, depending on the size of debtors. In fact, consumers, professionals, micro entrepreneurs and agricultural entrepreneurs share detailed information about the income and their financial exposure, while small, medium and large companies share the alerts with the OCRI if a risk emerges from the quarterly mandatory self-assessment, as well as auditors and institutional creditors (tax authority, social security collection agency).

**181**The mandatory self-assessment methodology has been defined through the joint effort of the statutory auditors' Association<sup>119</sup> and the Business Register<sup>120</sup>. The key indicators to be calculated on a quarterly basis by debtors are as follows: 1) Net worth (Capital), 2) Perspective (+6 months) Debts Service Coverage ratio (DSCR)<sup>121</sup>, 3) *Financial debt sustainability* (to be measured as the percentage of financial debts on sales<sup>122</sup>), 4) *Capital adequacy*: to be measured as net worth on total debts<sup>123</sup>, 5) *Liquid return on assets*: to be measured as cash flow on assets<sup>124</sup>. 6)

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<sup>118</sup> A similar approach is implemented by the Danish Business Authority (DBA), part of the EWE Consortium

<sup>119</sup>CNCDEC = *Consiglio Nazionale dei Commercialisti ed Esperti Contabili*

<sup>120</sup>CERVED

<sup>121</sup>Following the prescribed methodology, this indicator should be used only in case forward-looking data are available and sufficiently consistent.

<sup>122</sup>This indicator aims at monitoring business sustainability. An increase or decrease in sales should not be considered in isolation, but only as relative to the levels of corporate debt. If sales increase less than financial debt, then the business risk increases. This indicator is often referred to as return on debt (ROD) and it's a key variable for calculating return on investment (ROI). A similar indicator that is widely used to track debt sustainability is debt to EBITDA.

<sup>123</sup> As a company receives the funds it needs from stakeholders (net worth), voluntary funding (financial institutions), and non-voluntary funding (for example, the tax authority), a decrease of capital adequacy indicates a shift of company control from stockholders to stakeholders. In other words, the company depends more on third-party resources than on its own resources. This indicator is strictly correlated with the leverage ratio (total assets/net worth), which in turn is a component of the Dupont triangle ( $ROE=ROA \times \text{Leverage}$ ) and Altman's Z-score.

<sup>124</sup> Although other indicators track asset profitability (see, for example, ROI and asset turnover), cash flow becomes paramount for SMEs as they try (typically with difficulty) to rapidly obtain from the market the liquidity necessary to meet financial obligations or to resolve emergencies. Therefore, a decreased share of cash flow on assets indicates an increased business risk for the company.

*Liquidity*: to be measured as short-term assets on short-term liabilities<sup>125</sup> (commonly referred to as current ratio). 7)  
*Tax and social security debt*: to be measured as a percentage of the debt on assets.<sup>126</sup>

**182 According to the analysis of the working group, the self-evaluation methodology to identify a likelihood of insolvency is based on a decision tree.** In fact, in case of negative network, the business should promptly send an alert to the OCRI, if not, the perspective DSCR (Debt service coverage ratio) is calculated. If the perspective (+6 months) value of projected cash flows is less than the value of projected debt service, tax and social security payments, personnel remuneration expenses (DSCR<1), the alert must be shared with the OCRI. If not, a benchmarking analysis is made on the above remaining indicators, and the values compared with the relevant sectorial benchmarks<sup>127</sup>. If the values of all calculated indicators fall above<sup>128</sup> (or below<sup>129</sup>) the benchmark indicators, the alert to the OCRI must be sent.

**183 Other events can trigger alerts to the OCRI.** In fact, any other relevant information about events that can potentially jeopardize the business (such as loss of employees with relevant roles, role of critical clients, suppliers, increasing exposure and risk indicated by the Public Credit Registry<sup>130</sup>, markets, criminal proceedings, court notifications), must be readily reported by the statutory auditors, the board of auditors (if any) or the management, that will – in turn – readily inform the OCRI. Lastly, external alerts must be reported by the institutional creditors if relevant past due debt emerges, it has been notified to the business without any settlement arrangement being established within 45 days after the notification<sup>131</sup>.

**184 The data collection system applied in Italy seems quite advanced with different relevant indicators calculated from various sources. Moreover, the delegation approach puts a strong emphasis on the importance of business management awareness, that should always measure the balance between profit and risks.** However, the go-live phase hasn't started yet, and relevant perplexities have been already raised in Italy on several aspects of this data collection model. First of all, the statistical methodology applied (based on granular data and consistent samples) only allows a static<sup>132</sup> definition of benchmarks, defined almost 2 years ago. In a recent note, Bank of Italy has raised serious concerns that the thresholds applied since then - also because of the current emergency - might not be significant, either highlighting a significantly high number of entities as perspective insolvencies or already defaulted companies. The second concern involves the high cost of compliance to be borne by companies willing to comply with the self-assessment methodology. In fact, calculation of forward-looking indicators such as the perspective DSCR involves the availability of analytical accounting platforms, that are generally only available to medium/large

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<sup>125</sup> Although the indicator helps monitor how well the company is managed (for example, when short-term liabilities grow less than assets), some components of the liquid assets (for example, credits, inventory) also should be monitored to ensure that they move in harmony with the increase (or decrease) of sales.

<sup>126</sup> In some jurisdictions, getting funding from the Tax Authority can be cheaper and less burdensome than applying for a new loan or a loan extension. Nevertheless, an increase of tax debt without proper planning can be disastrous for a business. As described earlier, the Tax Authority can become an unaware funder, and delaying tax or social security payments is usually considered one of the earliest signs of a company's distress.

<sup>127</sup> For this purpose, the values referred to the first and third quartile of the mentioned indicators were calculated for 10 peer groups based on the NACE classification (A, B+C+D, E, F41, F42+F43, G45+G46, G47+I56, H+I55, J+M+N, P+Q+R+S)

<sup>128</sup> In case of cost or efficiency indicators

<sup>129</sup> In case of profit, capital adequacy, liquidity indicators

<sup>130</sup> For this purpose, Bank of Italy has made available an online platform (ARTE Web) where debtors can retrieve free-of-charge online information about their credit exposures towards the financial sector.

<sup>131</sup> In fact, the regulation establishes that in case of outstanding debt for VAT payments to the Tax Authority, the amount of the exposure should exceed the 30% of turnover, and not less than 25.000 EUR for turnover of up to 2.000.000 EUR. For the social security (INPS), the alert is sent in case of a delay of at least 6 months in the payment of social security expenses, for an amount of 50% or above of the expenses due in the previous year and in any case above 50.000 EUR. For the collection agency, the alert is shared in the past due amounts of more than 90 days exceed 500.000 EUR for individual undertakings and 1.000.000 for collective enterprises.

<sup>132</sup> In fact, the multivariate analysis allows for the calculation of a set of benchmark values based on a snapshot at a given reporting date. More advanced techniques (such as machine learning) encompassing ongoing training and testing of the calculation algorithm might support an automatic fine-tuning of thresholds, following the changed context.

businesses<sup>133</sup>, whose implementation may involve a one-off budget expense ranging from 30.000 to 50.000 EUR<sup>134</sup>. Several operators in the market are already offering technological solutions to calculate the benchmark indicators. The last concerns involve the scope of used indicators, that currently doesn't cover the insolvency risks that derive from the credit exposure towards financial sector operators. Under this perspective, the Bank of Italy has recently an online service called ARTE Web. That provides monthly online and free-of-charge updates from the Public Credit Registry<sup>135</sup>, that are shared automatically with properly authenticated individuals or legal entities with direct or indirect credit exposures in the Registry. The enlargement of the scope of the self-assessment methodology to include such information is currently under consideration.

**185** Lastly, the data sharing environment in Italy seems fully supportive to data collection and sharing for alerting purposes. In fact, as described, several different platforms already share and disseminate all the information needed to support early detection of insolvency risks, including the online and real-time alerting service provided by the Chambers of Commerce on company information<sup>136</sup>, already intensively used both by the private and the public sector.

## **POLAND**

**186** As described, also the Polish data collection model only relies on information provided by debtors that voluntarily choose to access the Tool to seek help. The information can be submitted through the website (online contact information), to consultants and mentors. After the tool's operations were stopped at the beginning of the pandemic emergency, the Agency is preparing a self-assessment tool to be accessed by debtors to make the first screening phase more effective.

**187** As described before, the Tool focuses more on qualitative information about the entrepreneurs' personality and its business, rather than quantitative data. Even if a) Trainings are periodically planned to provide Consultants and mentors with a solid background, b) a list of key topics to cover in the diagnosis phase is provided by the PARP (that should cover at list topics such as years and sector of operation, strategic and business planning, management of financing and HR aspects), PARP seems still to rely on the selected Consultants' background and own methodology to analyze the situation of the debtors and draw the conclusions on if a company deserves assistance or not. Consultants are selected and remunerated based on their background (mostly psychology, management, insolvency framework, accountancy) and use common methodologies to perform the diagnostic (such as the business model canvas).

**188** Lastly, the data sharing environment in Poland doesn't seem fully supportive to data collection and sharing for alerting purposes. In fact, even if e-gov portal has been recently established, no financial information about companies is being made available in digital format to support early detection<sup>137</sup>. Moreover, information about Tax debt and debt towards social security doesn't seem available, while credit information can be distributed both by the public credit registry<sup>138</sup> and private credit reporting operators.

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<sup>133</sup> With more than 50 employees

<sup>134</sup> Source: Assoimprese.

<sup>135</sup> The PCR in Italy collects information about borrowers' (legal persons, individuals, joint liabilities) with performing outstanding exposure amounts above 30.000 EUR or defaulted loans above 50 EUR.

<sup>136</sup> See <https://www.infocamere.it/en/home>. The service works behalf of the Chambers of Commerce in managing the official data of Italian companies, turning the data into services available to the market, professionals and the Public Administration, creating value for the country. The access to the Chamber of Commerce System databases is possible both for a quick consultation of surveys, balance sheets and files, and for bulk access and via web service (B2B).

<sup>137</sup> The e-gov portal only gives access to some company information through a search functionality, not allowing the export of large numbers of records at once.

<sup>138</sup> Managed by a private entity controlled by the Association of Polish Banks

**189**As described further evolution of the data collection is envisaged by the current mechanism managed by the PARP<sup>139</sup>. These include a self-assessment tool to support the first screening phase and rapidly identify Consultants with the appropriate background to perform the diagnosis phase. The launch of the project is planned for mid-2021. The project will be implemented until 2023, and its budget is approximately EUR 10 million. As part of the project, PARP will support 2,000 enterprises in periodic difficulties, out of which 1,800 firms would implement solutions to counteract their difficult situation (5 000 EUR per beneficiary). Evolution towards an outbound model where information from external sources will be managed to make the Tool more proactive and effective is also being considered under a medium/long term perspective. However, the current situation of the data sharing environment doesn't seem fully supportive of this vision. In such situation either relevant functionalities should be developed, and agreement should be reached with some institutions (such as the Tax Authority for example) to enable the data sharing, or a pivotal role might be given to some operators (such as the PCB) that might already centralize the relevant information to be used by the Tool for their activities.

*Table 4: Key Team's findings from the benchmarking assessment of the EWT's data perspective*

- Out of the 5 countries analyzed, 3 of them (Poland, Germany, the Netherlands) fully rely on qualitative data about the businesses and the entrepreneurs, provided by the debtors. The key rationale for applying such approach is substantially that not all the reasons for distress can be captured through quantitative information. However, in two (Poland, the Netherlands) out of these three countries the evolution of the data approach is under consideration, as it is acknowledged that – also in light of the recent global emergency – a more proactive model (i.e. quantitative data captured through external data sources) might be more effective at capturing the early signals of emergency as they emerge, for the benefit of all debtors (including these that are not fully aware of their difficulties).
- Two Benchmark Countries (France and Italy) adopt a more proactive approach to data collection, with relevant information about debtor's exposures being shared by several institutional creditors (such as the tax authority and social security for example) and a mandatory self-assessment to be performed by debtors. In each of the two jurisdictions, however, the data collection and elaboration methodologies show relevant margins for improvement that the national authorities are already fully aware of.
- In France, the assessment methodology is mostly judgmental, and depends on judges' expertise in detecting relevant trigger alerts among relevant data, in order to identify the companies that should be summoned for an interview at the court. Moreover, some of the indicators used (like the negative net worth) might flag risks when they are already materialized, and it is already too late to perform appropriate interventions. To fill these gaps, authorities are planning an evolution of the alert calculation methodologies, to make the model more predictive and less prone to Judges' interpretation.
- In Italy, the approach to data collection delegates to debtors the task of self-assessment, integrated by a set of alerts from public creditors (tax authority, social security, debt collection authority) that reflects high levels of debt exposure, that might flag already unrecoverable situations. Conversely, the self-assessment implies significant costs of compliance for smaller debtors and may result in high risk of highlighting false positives and false negatives if alert thresholds are not systematically updated by competent authorities to reflect the evolution of the market context.
- Neither in France nor Italy (where proactive models are used) credit information is used to flag perspective insolvency. This appears as a relevant downside of this model, as increased risk of credit exposure is normally one of the key alert indicators in an Early Warning Systems<sup>140</sup> based on quantitative data. In Italy, the use of the automated alert system of the credit registry to support the EWT is under consideration.

<sup>139</sup> Customer relationship management.

<sup>140</sup> On this matter, see the EBA guidance on credit risk management and monitoring.

- A key finding of the Team is that where a proactive approach to data collection and alert elaboration by the model is used, the intervention of the Tool is mandatory (i.e. an alert must be shared with debtors, and these are obliged to follow up). Based on that, possible evolutions of the EWTs in EU Member States implementing the restructuring Directive might be a) Debtors being informed about public data highlighting a relevant risk that might choose to access support systems on a voluntary basis<sup>141</sup>, or b) Different approaches to be adopted to support early warnings, where quali-quantitative data are used to inform small debtors and support their voluntary access to the EWT, and a mandatory and outbound approach is used for medium and large enterprises.
- Naturally, privacy regulation in each jurisdiction might play a prominent role when defining the perimeter of data collection, as a key condition to ensure that data sharing (positive and negative information from public and private entities) is possible. This topic falls out of the scope of this Report and should be carefully analyzed by National Authorities when defining the settings of the data sharing framework to support the EWT, with a key focus on sole proprietors. However, the purpose and the use of such data sharing – that should be entirely for the benefit of the debtor and subject to a formal commitment of non-disclosure to third parties – should ideally fall under the scope of “permissible purposes” as established by the General Data Protection Regulation (GDPR).

#### 4.4 The planned evolution of EWTs

**190 This Section shortly synthesizes the planned implementations of the early warning mechanisms in Benchmark Countries.** This aspect of the benchmarking analysis is relevant for jurisdictions where alert systems haven’t been established yet, as it shows what are the key lessons learned in these countries on how to improve the effectivity of such alert systems, also in light of the current pandemic emergency, and the expected high inflow of distressed debtors asking for assistance during the post-pandemic phase.

**191 In France, the performance of the alert mechanisms is evaluated on an ongoing basis.** For this purpose, the former president of the Judges’ conference, Mr Richelme, published a Report in February 2021 describing, among others, the key improvable aspects and the possible enhancements of this platform. One of the key purposes to be considered in the short run should be making the platform more attractive for smaller operators. The key described solutions to adopt for this purpose should be a) To make the support to the alert procedures mandatory for auditors, and not just statutory auditors, b) To start sensibilization campaigns to inform these operators about the opportunities deriving from the access to this platform, c) To make the access to the procedures (ad-hoc mandates and conciliation) less expensive for such operators. The second concern involves the judgmental analysis that is currently made by judges to interpret the dataset and select the companies that should undergo the interviews. The suggestion is to apply more prescriptive and automated methodologies and achieve the integration with the platform “*Signaux Faibles*” that has been recently implemented with the support of the Ministry of Economy and Finance and the Banque de France, which is based on more sophisticate data intelligence techniques.

**192 In Germany, the current service provided by a social entrepreneur (Team U) doesn’t plan significant innovations to cope with the expected increase of incoming distressed entrepreneurs.** The organizational infrastructure is already quite solid and well-established. The key innovation expected is the increasing use of Customer Relationship Management (CRM) platforms to track the performance of the whole value chain and provide an ongoing screening of the incoming debtors and of the results framework, so to foster an even faster detection of issues and a more effective and client-oriented support activity. Given that the provision of such alert service is based

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<sup>141</sup> On this matter, see the EWT implemented in Denmark by the Danish Business Authority (DBA), already known by Bulgarian Authorities and therefore not described in this Report.

on social entrepreneurship, new initiatives providing an array of services targeting different debtor segments may emerge in the future.

**193 In the Netherlands, some innovations are planned by one of the two interviewed initiatives<sup>142</sup>.** In fact, as a key lesson learned from the recent restrictions deriving from the pandemic emergency, implementing a more sophisticated online tool to make the first information gathering more effective and time-efficient is planned. The second innovation, already in a pilot phase and expected to scale-up at national level, is the mutual support between the mentor (usually a retired ex-entrepreneur) and students of the university, as this can enable a “win-win” situation, where the students gets introduced to key concepts of business management through the hands-on experience of the mentor and working on real-life situations, the mentor enriches its background with new key concepts that the young generations are more familiar with (such as digitalization, online marketing, social medias), and entrepreneurs benefit from a wider array of skills provided by the student and the mentor. Worth to remind that several other operators might exist in the Netherlands, providing similar services. Lastly, as the first point of entry of companies asking for support, the Chamber of Commerce is considering the opportunity to leverage the information collected on companies and their financial, economic and liquidity situation to elaborate a range of alerts to be shared with debtors, that might be encouraged to ask for support if any difficulty emerges.

**194 In Italy, the main alert mechanism is expected to enter into force starting from September 2021, therefore no innovations are planned.** However, a strong debate exists on how to make the whole process more effective, along with some concerns raised by several operators (included the Bank of Italy). The key points involve the high cost of the procedure for small operators (to perform the self-assessment based on forward-looking analysis), the governance of the supporting process (where – at least since the go-live of the platform – insolvency practitioners will be appointed as expert to manage the crisis of the debtors still in a going concern), the high level of amounts triggering external alerts (that might flag a perspective insolvency when it’s too late), the low relevance of threshold indicators to flag a perspective insolvency based on the self-assessment (as they were defined more than 2 years ago in a total macro-economic context) and finally the low incentivizing measures for virtuous debtors undergoing the alert process and benefitting from rehabilitation procedures.

**195 In Poland, the EWT managed by the PARP suspended its operations since the beginning of the pandemic outbreak.** In the meanwhile, the agency has worked to plan an EWT re-start, integrating its scope of services with a self-assessment methodology to be made available online, to support a more effective and automated screening of the debtors. An evolution towards a more proactive approach based on the elaboration of publicly available company data is also being considered in the middle-long term.

*Table 5: Key Team’s findings from the benchmarking assessment of the EWT’s planned evolution*

- Innovations of early warning platforms are planned for all the 5 Jurisdictions analyzed.
- Quite unsurprisingly, where the models support an inbound and voluntary approach, the segments that seem to benefit the most from such platforms are smaller operators. In most of these jurisdictions (the Netherlands, Poland), innovations are planned to make the outreach of such tools stronger through outbound approaches based on publicly available data, to support an earlier risk detection.
- Where the Tools rely on external data to flag a risk of perspective insolvency, the models seem to target larger debtors in the SME segment. Therefore, some perplexities exist on the effectivity of such models and several innovations are planned to downscale the model, making it more attractive for smaller debtors.
- Most platforms plan a more intensive use of online tools to support early detection and a more streamlined (and efficient) interaction between debtors and early-warning mechanisms. This is probably a lesson learned from the current COVID-19 emergency.

<sup>142</sup> Entrepreneurs Soundboard

**ANNEX 1 (Detailed benchmark analysis)**

COUNTRIES	DIMENSIONS														Data used by the Tool (for screening purposes)	Key developments expected in the short-medium run
	Institutional		Operational						Implementation							
	Management of the EWT	Public/Private Entity?	Staffing	Operational framework (key steps)	Key targeted debtors	Technical assistance embedded in the Tool?	Network to support screening and advice	Lifecycle of screening and advice (duration)	Do debtors pay for the service?	Business model adopted by the EWT	Year established	Annual budget	Results framework			
France	- Embedded in the Commercial Court	Public agency	Judges of Commercial Court	1a) Judges perform manual screening of available data to detect alert signals or 1b) Three different internal procedures (initiated from shareholders, workers' councils, statutory auditors respectively) can be launched to flag difficulties to the president of the Commercial Court 2) Companies are summoned for an interview at the Court 3) Judge decides to propose to the company a preventive restructuring procedure	All private legal entities. More focused on bigger companies, as smaller may lack awareness (and most small and medium companies do not appoint a statutory auditor)	Partially (the appointed experts support the companies in the negotiation with creditors and company management during the procedure)	Country wide (Commercial Courts)	6 months roughly (extended to up to 10 months during COVID-19 pandemic emergency)	Yes (costs can be included in the procedure)	Part of the normal activities of the Court	1984	Not relevant (embedded in Court's activity)	In 2019, 431,719 files detected, 10,343 cases studies, 9,328 convocations to Courts, out of which 10% on debtor's initiatives (internal procedures), 2,843 preventive insolvency proceedings and 2,796 insolvency proceedings. Success rate normally between 60 and 70%	Multicriteria analysis based on several indicators: - Postponed general assembly - Alert from public prosecutors - Alerts from statutory auditors - Alerts from Central Bank (very rare) - Annual Accounts not submitted - Registration of privileges from state institutions (tax, social security, pension funds) for past due debt - indicators from FS (such as negative net worth, decreased turnover)	The key enhancements is the downscaling of the procedure, to become more attractive for smaller entities. Among the key options considered are: - to extend the duty to report to the accountants (not just statutory auditors) - information campaigns - to reduce the costs for smaller entities - to use artificial intelligence to make the algorithm more automated and predictive	
	- Social businesses (GIP, signaux faibles)	Public agency (MEF)	Small organizations (3/4 FTE)	1) Data collection and data integration is made from public available sources 2) The platform elaborates results with a list of potential companies in distress 3) Fine-tuning made by staff 4) The entity contacts the debtors and proposes to address relevant counterparties (municipalities, other associations) to solve the issues	All debtors (with a focus on SMEs with less than 10 FTE)	No (the agency contacts the debtors and proposes the right counterparts to provide support)	Country wide	Depends on the associations referred by the alert system to provide support	Normally free of charge	Donations from municipalities, private sector, public entities	2016	Unknown (there are still local projects)	Unknown	Algorithm based on Artificial intelligence, and the following data: - All available information from Banque de France (company information) - Data on past due payments from social security (URSAAF) - Data on number of staff from social security	The key targets are: - support the scale-up of the project (it's a local project that is becoming national) - fine tuning of the algorithm, now focused on small companies of less than 10 staff working in the manufacture segment, so to enlarge its scope	
Germany	- Social business (no-profit organization)	Private entity	5 Full-time FTE + 45volunteer mentors	1) Debtors to fill an online questionnaire to identify weaknesses 2) Preliminary screening made for punctual identification of issues (hotline/meeting) 3) Right mentors identified to provide support and find relevant solutions	All debtors (with a focus on SMEs with less than 10 FTE)	Yes	Country wide (network of mentors)	6 months roughly	Free of charge (but debtors can make donations)	Donations from foundations, private sector, public entities, debtors benefitting from assistance	2007 (started as a self-help group)	400.000 EUR per year	Since its beginning, Team-U helped more than 40.000 entrepreneurs. Mentors currently support 400 entrepreneurs a month	A set of quali-quantitative indicators is used to identify the basic characteristics, strategic management and development, operational management, financing aspects). However, the focus is also on the personal dimension of the debtor (stress/burnout, etc) behind his/her call for help	The key target is leveraging already stored information for a better profiling of new incoming distressed debtors, leveraging the CRM tools	
Italy	- Embedded in the Chamber of Commerce (alert system)	Public agency	1 Full time + 3 Experts (in each Chamber of commerce)	<b>ALERT PROCEDURE</b> 1) Debtors to perform a mandatory self-assessment (quarterly basis), or institutional creditors to flag trigger alerts (monthly basis) 2) Preliminary screening made by the Board (OCRI) 3) Company summoned for interview 4) If crisis is confirmed and company agrees, experts support the company	All individual sand collective entrepreneurs that are subject to insolvency proceedings (excluding consumers, professionals, small undertakings, agricultural companies and start-ups)	Partially (the appointed experts support the companies in the negotiation with creditors and company management during the procedure)	Country wide (Chambers of commerce)	12 months roughly (3+3 months for detection and protection measures), 6 months for rehabilitation activities	Yes (costs can be included in the procedure)	Part of the normal activities of the Chamber of Commerce	Planned in 2021	Not relevant (embedded in chamber of commerce activities)	Activities not yet started	Quantitative indicators cover: a) Outstanding past due tax, social security debt and debt to the collection agency b) A set of indicators as follows: a) Net worth, b) Perspective Debt service coverage ratio (DSCR), c) Financial debt sustainability, d) Liquid return on assets, e) Short-term Liquidity, tax and social security debt	Ongoing debate on whether to redefine the threshold of the indicators used (most likely not fully consistent to the current context). Also, ongoing debate to add monthly alerts from the Public Credit Registry (ARTE procedures, providing monthly indicators to the debtors, free of charge), to be used in the self-assessment	
	- Embedded in the Chamber of arbitration (over indebtedness for small entities)	Public agency	1 contact person, 1 secretary, 1 expert	<b>OVERINDEBTEDNESS PROCEDURE</b> 1) Debtors to flag the distress to the OCC 2) Debtors is summoned for an interview and In depth analysis by the Board is made 3) If debtors agrees, the board starts a negotiation with creditors	All consumers and individuals that are not subject to insolvency proceedings (consumers, professionals, small undertakings, agricultural companies and start-ups)	No (the experts just support the negotiation with the creditors)	Country wide (Chambers of Commerce)	3 months roughly	Yes	Part of the activities of the Chamber of Commerce	2020	Not relevant (embedded in the Bar association activities)	Unknown	Debt exposure patterns and classification	Ongoing work to enlarge the scope of data collection to support the automated early detection of patterns of distress through artificial intelligence (machine learning, decision trees)	
Poland	- Embedded in a Public Agency (PARP) supporting entrepreneurship and reporting to the MEF	Public agency	2 FTE, 10 Consultants Experts called upon request (not full-time)+ 40-50 mentors (volunteers)	1) Debtors to undergo a first screening through hotline to identify the needs 2) Preliminary screening (8 hours max) made by Consultants for punctual identification of issues 3) Joint meeting debtors, consultants, mentors organized to plan activities 4) Mentorship to provide support and find relevant solutions	All debtors (with a focus on SMEs with less than 10 FTE)	Yes	Country wide (network of mentors)	Unlimited, even if tentatively not more than 6 months	Free of charge	Fully subsidized model (costs of experts called upon demand are covered by the PARP and Family business foundations)	2017	279.000 EUR (management of EWT from 2017 till 2019)	880 entrepreneurs helped, mostly micro entrepreneurs. 300 of them benefitted from the whole array of services, including mentorship.	A set of quali-quantitative indicators is used to identify the basic characteristics, strategic management and development, operational management, financing aspects). Consultants use an array of common tools such as the Business Canvas Model	Planning a re-start with the activities. On-line questionnaire to be made available for debtors to support a first quickscan. In the medium/long term, adoption of a proactive model, to elaborate data from public sources	
the Netherlands	- Social business (not for profit organization)	Private entity	2 managers, 3 Full-time FTE + 22 experts	1) On-line form to be filled by debtors 2) First-level interview (hot-line) to identify weaknesses 3) Second level interview (physical) to identify the right counterpart to provide assistance 4) The debtor is addressed to the relevant counterpart to get assistance	All debtors (with on individual entrepreneurs and SMEs with less than 10 FTE)	No (the entity proposes the right counterparts to provide support)	The network is country wide (with a key focus on one Region)	3 months roughly	Free of charge (interviews with Consultants are often paid by referrers - mostly financial institutions)	Donations from municipalities, private sector (including financial sector operators), public entities, debtors benefitting from assistance	2009	Undisclosed	2000 entrepreneurs helped, most of these are self-employed and micro companies. 94% survived and 6% got assistance to cease the activities	Debtors' needs (advisory, funding, coaching, other needs)	The Chamber of Commerce is considering the possibility to perform data elaboration of its own data to flag difficulties, inform debtors and suggest them to seek help	
	- Social business (not for profit organization)	Private entity	5 Full-time FTE + 300 volunteer mentors	1) On-line form to be filled by debtors 2) First-level interview to identify weaknesses and matchmaking with the right mentor 3) In-depth screening by the mentor 4) Assistance in delivered by mentors to solve the identified issues	All debtors (with on individual entrepreneurs and SMEs with less than 10 FTE)	Yes	Country wide	6 months roughly	Debtors are asked to make a donation of 200 EUR (suspended during COVID-19 pandemic emergency)	Donations from debtors, municipalities, chamber of commerce, private sector (including financial sector operators), public entities, debtors benefitting from assistance	1984	Undisclosed	100.000 entrepreneurs helped in 40 years (4.000 a year), +63% during last year (COVID). 75% are self-employed, 15% micro companies, 9% small, 1% medium enterprises	Basic financial data, entrepreneurs personality, business management, planning, finance, accounting capacities of the debtors	Plans to upscale the current local partnership between mentors and university students to mutually provide support to debtors	

## ANNEX 2 (List of participants)

Country	Institution	Name of key reference person	Role within the institution	Contact
<b>France</b>	Tribunal de Commerce de Paris	Dominique-Paul Vallée	Judge	dominiquepaulvallee@gmail.com
<b>Germany</b>	Team-U	Attila Von Unruh	CEO	avunruh@team-u.de
<b>Italy</b>	Camera di Commercio di Milano	Carlo Giordano	Lawyer, mediator	carlo.giordano@mi.camcom.it
<b>The Netherlands</b>	MKB Doorgaan	Jacqueline Zuidweg	Managing Director	jzuidweg@mkbdoorgaan.nl
	OKB	Frank Van Santen	Managing Director	frank.vansanten@ondernemersklankbord.nl
<b>Poland</b>	PARP	Malgorzata Kus	Manager	malgorzata_kus@parp.gov.pl