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Beneficiar: **Academia Română**
Numărul de identificare al contractului: POSDRU/159/1.5/S/136077

Raport ştiinţific de cercetare doctorală

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Bucureşti, 2015

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The effects of the implementation of the Recommendation of the European Commission (EC) No. 135/2014 on a new approach for the failure in business and insolvency

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This paper is supported by the Sectorial Operational Programme Human Resources Development (SOP HRD), financed from the European Social Fund and by the Romanian Government under the contract number SOP HRD/1599/1.5/S/136077.

Bucharest, 2015

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ABSTRACT

The objective of the Recommendation (CE) 2014/135/EU on new approach to business failure and insolvency is to ensure that viable enterprises in financial difficulties, wherever they are located in the Union, have access to national insolvency frameworks which enable them to restructure at an early stage with a view to preventing their insolvency, and therefore maximize the total value to creditors, employees, owners and the economy as a whole. The Recommendation also aims at giving honest bankrupt entrepreneurs a second chance across the Union.

Following consultation in July 2013, the European Commission adopted on 12 March 2014 Recommendation No. 135 "on a new approach for the failure in business and insolvency"[1] which is aimed at encouraging Member States to set up a framework, a number of common principles for insolvency proceedings and pre-insolvency, to enable restructuring effective viable enterprises which are facing financial difficulties and providing for honest entrepreneurs of a second chance. Thus, it is desirable to promote entrepreneurship[2], investment and employment, helping to reduce obstacles to the proper functioning of the internal market.

Through the Recommendation No. 135 one tries to restructure the debtor's effort to avoid insolvency and bankruptcy, and when insolvency cannot be avoided, to be able to adopt a plan of judicial reorganization that would lead to the rescue of activity.

Thus, at European Union level, approximately one-half of firms have a life expectancy of less than five years, and about 200,000 companies shall enter into insolvency in each year, that is about 600 enterprises every day, and almost 1.7 million people are likely to lose their jobs each year as a result of this situation. A quarter of these bankruptcies have a cross-border basis, and their number is on the rise - has doubled from the beginning of crisis and this trend seems to be maintained in 2014.[3] Result of the above findings, it becomes clear that, at the European Union level viable measures must be taken to prevent and stop the process insolvency and to be able to

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[1] European Commission Recommendation No 135/2014 concerning a new approach for the failure in the business and the insolvency of 12 March 2014, published in the Official Journal of the European Union no. 74 of 14.03.2014 14 March 2014

[2] On January 9 2013, the Commission adopted an action plan "entrepreneurship 2020 ", by which the Member States are invited, among other things, to reduce, where possible, the period required to discharge the obligations and recovery of debts in the case of a honest contractor which went bankrupt to a maximum of three years, until 2013, and to provide support services for the restructuring firms early, counselling to avoid bankruptcy and support for restructuring and the re-launching of small and medium-sized enterprises.

[3] http://ec.europa.eu/romania/news/12032014_comisia_europeană_proceduri_de_insolvență_ro.htm

provide viable business opportunity to benefit from restructuring and to maintain on the market, the latter being declared purpose of European Commission Recommendation No. 135 of 2014.

In the light of the experience of Member States of the European Union[4], the companies in difficulty have the opportunity to be restructured earlier with both their chances to save are larger. But restructuring early (before the official launch of the insolvency proceedings) is not possible in many countries (for example, in Bulgaria, Hungary, the Czech Republic, Lithuania, Slovakia, Denmark), and if it is possible, the procedures may be ineffective or costly, reducing incentives offered to enterprises to keep afloat. Finally, in some countries can pass many years until honest entrepreneurs which went bankrupt may be download old debts and can test a new business idea (Austria, Belgium, Estonia, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Croatia, Poland, Portugal and Romania). When a self-honest to go bankrupt, by shortening of the length of the discharge debts would ensure that any bankruptcy does not become a "conviction for life".

By implementing Recommendation No. 135 of 2014 of the European Commission is trying to be a uniformity of the rules in the different Member States of the European Union, in the field insolvency, thereby giving chances for recovery and cross-border groups of companies.

[4] Business dynamics: start-ups, business transfers and bankruptcy" (Dynamic of enterprises: new businesses set-up, the transfer of undertakings and bankruptcy), European Commission, DG Enterprise and Industry, January 2011Business dynamics: start-ups, business transfers and bankruptcy" (Dynamic firms: new businesses set-up, the transfer of undertakings and bankruptcy), European Commission, DG Enterprise and Industry, January 2011.