

Policy of the Second Chance in Business

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Abstract The principles of the business activities include taking financial risks, being confident and independent in decision making and implementing the tasks effectively. They include also readiness to take the personal risk. Starting a business, running it successfully or unsuccessfully is the reality of the market economy. From this point of view, the training of people engaged in business activities should be focused on crisis management, it means ability to handle critical and stressful situations so that the negative result of the faltering business will not have negative impact on the businessmen and they will be able to make correct decisions even under the stress caused by lack of both time or resources. Nowadays the overall general population usually does not accept and understand the principles of business activities. Problems and difficulties that can arise in business or its failure are understood as a negative rather than general lifecycle phenomenon. They are not considered to be a common situation which offers a businessman another opportunity to try again; it means to have a second chance in business. It is obvious that business climate which is more friendly, would decrease significantly the occurrence of bankruptcy. At the same time discussing and analysing business failure and its negative impact could ensure that the real talents are utilized effectively and business activities are promoted by implementing innovations and creating new jobs. This trend could contribute to forming a positive business environment in our country and in the unifying Europe. The positive environment should promote and support a healthy business environment and only criminal business activities of some so called businesspersons should be assessed negatively and should be punished. Creating the enterprise culture would result in changing the European Union into a progressive area where businesses start-up and businesspersons have a second chance to set up their business again.

Key words - Business activity. Risk. Crisis Management. Bankruptcy. Insolvency. Legislation. Cultural Background. Market. Customer, client.

1/ Failure in Business Activities

According to the statistics, fifty percent of businesses in the Slovak Republic, on global scale, close down during the first five years of their existence. According to the data from EU, in the countries of EU on average only seven percent of businesses close down. 1/ According to the experts and available literature the end of business activities is a process that is entirely dependent on the economic development of the global economy. 2/

This fact is also discussed in the European Charta on small size businesses.

The low percentage of surviving businesses should not represent a threat to new companies that start to operate and form the business environment. The process of entering the market means that businessmen and their companies make an attempt to meet the needs of a real market.

The results of the OECD study indicate that the percentage of the US companies surviving the first four years is lower than the percentage in the EU countries. This fact demonstrates the situation where a failure of the company is caused by dynamic economic fluctuations. It is obvious that the global competitiveness has been growing and stimulating the businessmen to react faster and in a more flexible way which may lead to the failure of the original company and the starting of a new one. All information on companies in EU and USA available to the public confirm a close correlation between the process of starting a new company and its failure. This fact confirms that the process of a creative destruction causes that companies with a low labour productivity leave the market and are replaced by new prospective companies.

2/ Restarting business activities forms a part of the market mechanism

Economic failure of companies can become, besides the common threat, also a challenge for the future. Analysis of the companies that have finished their activities show that 15 percent of companies claimed bankruptcy. 3/ It can be concluded that approximately 11-18 per cent of all entrepreneurs who were engaged in a set-up business activity, had experience with company failures. 4/ Considering the fact that there has been a natural link between the economic cycle and the level of insolvency, it can be concluded that a company can also go bankrupt in a period when the country's GDP is very high. Based on the hypothesis that a bankruptcy is a positive stimulus for new start-ups and considering the fact that only 4 to 6 percent of bankruptcies are due to criminal activities 5/, it has to be understood that in post-socialist cultures the percentage given above is significantly higher.

In our culture a company failure is considered to be a negative fact. According to the public opinion the business failure is usually considered to be caused by human incapability or a crime. In original fifteen European countries this stigma has been attached to the business environment, to the culture, and the community's policies as well. Such a situation is a sort of hindrance for potential businesspersons who are interested in restarting their business activities. Although customers, clients and financial institutions are aware of businesspersons' potential for new start-ups, they hesitate to offer their services and funds to these

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businesspersons. According to a survey there are 79 percent of EU residents who have a tolerant and encouraging attitude towards new set-ups initiated by those who previously failed in their business activities, but on the other hand in real life there are only 47 per cent of European Union residents who are willing to offer their services to the companies that bankrupted once. Up to 51 per cent of residents of the EU would never fund a company with financial difficulties or a company that claimed bankruptcy.

According to G. Hetzger's analysis 8/ only a small part of businesspersons, who failed in their initial efforts, are interested in re-starting their business activities. Nevertheless most businesspersons prefer continuing the same activities to doing different jobs or work. Depression caused by unsuccessful activity and business failure has an impact on financial liquidity/stability of the company and also on the businessperson's private life, property and their existence as well as on the existence and survival of their families. Excluding unsuccessful businesspersons from the business world would be a mistake since the experience and knowledge of these unsuccessful persons can have positive impact on the new start-ups.

Businesspersons, who gained their experience, although negative, are usually faster with implementing new start-ups compared to the companies which are just entering the market. After their first five years from the initial set-up they have very good perspective of survival. According to the "Global Benchmark Report 2006 – Ready for Globalisation?" "Confederation Danish Industries, 2006" successful businesspersons had experience with managing at least one company (18% and 6% of them managed two or more companies.)

3/ Policy of a Second Chance

In the European Union the European Commission has been dealing with the issue of the "New Policy" that is aimed to analyse the situation of threatened companies and the negative impact of the failure of business activities since 2001. The Commission implemented this new policy in 2004 when the Action Plan for business activities was accepted and in the year 2005 when the "Modern Policy SMEs" was published. The Commission has revealed some negative points in tenders. Long-lasting and exhausting process of realisation of tenders is a serious problem which effects the selection of the business environment in the Slovak Republic; at the same time it slows down the process of restarting business activities of business persons who failed previously. Finding a unified process designed by a nation or based on methodology which would meet the needs of the EU countries and could be applied in different European cultures seems to be a difficult process. These initiatives are usually implemented as a "political decision" designed to solve the problem of company failure in European countries.

The renewed Lisbon strategy has led approximately one third of EU countries to the point of submitting national programmes on reforms concerning the legislation on insolvency. Almost one half of the European countries have accepted the measures to shorten the period of clearing debts, the measures to limit the tenders or make them more effective. Great Britain achieved some progress in dealing with these issues and similarly Spain and Italy accepted and approved certain measures in their national legislations in 2002. It is

paradoxical that no European country accepted the "Complex strategy" on the policy of the second chance. Only Austria has announced its new goals set up in this area for the year 2008. Finally, we can conclude that the European Union has a capacity to develop and promote the positive attitude towards entrepreneurship, and towards the attempts to lower the impact of possible business failure and depression.

4/ Good Name for a Company and its Relation to the Public

Dealing with the negative impact of the business failure can have a preventative effect on potential businesspersons. They can use the results of the failure analysis. A positive attitude towards business activities can improve the businessperson's awareness and their attitudes towards potential advantages of restarting business activities. Analysis of the results shows that cultural support is positively linked to the level of business activities in the EU.10/

Although it is known that not everybody has a gift for business activities, it is necessary to develop skills of entrepreneurship especially in young people. Developing skills of entrepreneurship and teaching young people to be good businesspersons form a good basis for materialization of their creative and entrepreneurial spirit and awareness which, in case of a business failure, can become a fresh starting point for a new business idea. Business activities might be a chance for everybody to make the plans and ambitions real, but on the other hand sometimes this idea; this effort can be shaded by a fear of going bankrupt. At this point it is necessary to emphasize that "National strategies for life-long learning" can play an important role in the development of real entrepreneurial and business skills. Slovak universities and other higher education institutions can accomplish their tasks in this field within the network of life-long learning.

In the countries of the EU the public's perception of a bankruptcy is a crime without any regard to what the bankruptcy has been caused by. Therefore, a task of media which is expected to give explanations and carry out objectives is to contribute positively to making the causes of a bankruptcy clear and understandable. At the same time the media should inform the public about the positive experience of businesspersons that had failed; the information should comprise these points:

- Advantages and chances of a new setting up and running the business should be emphasized and discussed in training programmes; Several start-ups made by one single businessperson is a common process of learning, observing and revealing important facts in this process.
- Media play an important role in discussing and distinguishing a bankruptcy from a crime and in the process of spreading information on advantages of restarting a business. In this way the good name of businesspersons, who have started their business activities again, should become known to public and their activities and experience should be assessed in positive way.
- Other discussions on these issues can help identify the causes of depression that usually accompany the business failure.

5/ Legislation and its role in entrepreneurship

From the legislative point of view a new start after a bankruptcy can be difficult. In most countries, after the company claimed bankruptcy, the same principle in tender legislation is applied, regardless the fact whether the company bankruptcy is caused by a crime or the businesspersons ignorance or irresponsibility or the bankruptcy was caused by a manager's wrongdoing. Only on the basis of a tender declared officially, there are various bans, limits for the company with no account of any risks that can be taken in business activities. The above mentioned fact may result in an impression that the businessperson, who went bankrupt, does not deserve the public appreciation. In line with the European Commission assessment of the basic legislation on company insolvency, these principles must be changed in a significant way.

An actual research, carried out in fifteen countries, has the goal to find out about the possible link: whether the reduction of the tender process and legislation restrictions shall increase the quantity of entrepreneurship. The survey has been carried out in thirteen European countries and in the USA and Canada. In the USA the federal law on tender enables to clear the company of debt immediately. The study results that the clearing of debt together with a limitation for self employment and publication of the data for a period of thirteen years has been applied. The survey offers conclusions that the tender process legislation has a strong impact on the start of entrepreneurship and at the same time its economic importance is greater than the GDP growth and stock-exchange yields.

Businesspersons often find it difficult to get out of great obligations, duties and debts and to create new conditions of starting and running a business. It is usual that after the tender has finished, remaining debts still exist. Shall the debtor be a sole proprietor he or she is liable for the debts.

If a personal liability is concerned, the creditors can ask a bailiff to collect the debt on behalf of the creditors. In case the value of personal property is lower than the debt, the bankrupted entity (bankruptcy as a crime is excluded), in some countries like Portugal, Hungary or Finland, has a chance to refund the debt on instalments in line with the instalment payments agreement. In Belgium, Great Britain or Ireland these businesspersons are offered to clear debt immediately. Greece has introduced a new law on tender defining the situation of a common bankruptcy and a criminal bankruptcy. The debtors – bankrupted businesspersons who went bankrupt in no criminal way shall not be banned the entrepreneurship. In Great Britain all persons who went bankrupt are imposed some limitations during the time the tender period lasts. Those businesspersons who went bankrupt in a common way are cleared of their debt within 12 months. On the other hand people, whose bankruptcy was proved as a dishonest, irresponsible or criminal act, can be limited by legislation to business activities for 15 years. Latvia has passed a law on insolvency that came into force on 1st January 2008. The main goals of this law are to reduce the length of tender, insolvency proceedings time while changing the goals and rules of the tender significantly. We can assume that there is a link between a relative quality of national legislation on the state of insolvency and the relative effectiveness of the insolvency regime. At the same time rules of law respecting as the base of the national culture are

observed. Time-consuming insolvency proceedings that are not costs-effective may result in capital assets decrease and prevent the enterprise, business from its new start.

Assessing the average length of insolvency proceedings time (till the time when they are closed) in Europe shows following results: the proceedings last from four months (Ireland) till 9.2 years (Czechs) and the costs amount from one per cent of the bankruptcy assets (Holland) till twenty-two per cent (Poland) 11/. Making the insolvency proceedings simpler may result in the fact that unsuccessful an unprofitable companies and businesses would leave the business environment in a more simple way and faster than they do now, the bankrupted business resources would be divided in an effective and right way and the remaining assets could go to the creditors according to fair rules.

Based on the assessment of business failure, bankruptcy, insolvency proceedings it can be concluded that:

- There is a must of creating conditions and a framework of business failure, new set-ups while protecting the interest of creditors. The bankruptcy law should give a detailed outlines who are businesspersons who went bankrupt in an honest way and who are the entrepreneurs who bankrupted in a criminal way.
- Businesspersons who did not go bankrupt by their own fault shall claim for an official statement issued by a court of law declaring them honest and excused, pardoned. Such a statement shall be easily accessed by the public.
- The bankruptcy legislation shall give conditions for a soon recovery of the business and a soon clearing of debts.
- The legislation limitation imposed on businesspersons who did not go bankrupt in a criminal way shall be abolished.
- Trials in a court of law shall be made simple and fast.

When dividing the resources, the value of bankruptcy assets shall be utilized in an optimum way. The duration of insolvency proceedings should not exceed the period of one year.

6/ Policy of an Active Support for Businesses Threatened

The depression of business failure is the main cause why a lot of SMEs with financial worries try to hide their problems until the time when it is usually too late to solve them in a successful way. To prevent a business from bankruptcy deserves an immediate action. Saving a business from bankruptcy is more advantageous than to let it be insolvent or let it go bankrupt. In the European Union in the countries like France, Estonia, Malta, Italy the process of restructuring the company and keeping on business are preferred. Denmark has started to introduce a pilot system of an early warning in line with the Dutch example of Ondernemersklankbord. This system has four-year funding and shall assist progressive companies that have joined their insolvency to overcome temporary difficulties by means of a real know-how and consultancy.

Tools of an early warning may vary from on-line resources to publications related to this situation engaging well equipped companies to monitor the financial situation in businesses. A sort of assistance can be supplementary funding to overcome some unstable period. On the Internet there are European Commission Guidelines accessible to asses

company's financial situation with the intention to assist the businesspersons to judge their own financial situation.

There are still many businesspersons who miss some resources and experience to overcome possible financial crisis. If some more mistakes are made at this stage and no other advice or methodology is offered, bankruptcy cannot be prevented.

7/ Policy of an Active Support in Restarting Set-up

Businesspersons who have decided to restart their set-ups are usually limited by insufficient resources, inappropriate skills, lack of mental support and insufficient public support.

Among the most common difficulties, that restarting businesspersons have faced, are:

- contacts with customers,
- administration
- funding and
- loneliness.

The process of starting a business is usually accompanied by a lack of resources, especially by a lack of funds that are needed to start and run a business. Businesspersons who restart their activities usually plan to start with a low value of capital assets, small number of employees in contrary to the businesspersons who have started their enterprises. They also select a similar type of their company and it usually is a company with limited liability. A syndrome of being careful can be observed in the businesspersons' behaviour. The first period of entrepreneurship is connected with difficulties in finding customers, clients, liquidity and getting public funds.

The businesspersons who failed are advised to analyse their experience they have gained and to prepare their restart carefully and in a good way. Finalizing and creating entrepreneurship samples, examples, businesspersons' mobilities or in-service training or courses offered within higher education system can improve the chance of restarting set-ups and be successful.

Since 2004 Luxemburg has offered courses to about forty businesspersons, who went bankrupt in an honest way. The courses have been tailored to the needs of entrepreneurs in the field of management and their goals are to prepare the businesspersons for their new start of the business activities.

It often happens that businesspersons who went bankrupt loose the confidence in their own abilities and they loose their self-esteem what can do some harm upon their mental and spiritual health. In such cases psychologist's consultancy on overcoming the bankruptcy is advisable and inevitable. Re-entering the business environment and the market could be easier if the businesspersons' initiatives were coordinated according to the free places at the market and in line with possible customers' and investors' needs. The psychological consultancy, that has been common in EU cultures, has not been applied in the Slovak Republic yet. Based on the above mentioned facts some clues can be defined that can be utilized in re-starting set-ups.

Conclusions

It can be concluded that in European Union countries it is necessary to define a business activities network with good conditions. The conditions would form a good business

environment where business potential could be utilized and dynamic companies would be formed. Public appreciation shown for successful businesspersons is very important and must be a part of the policy of supporting and promoting a second chance of businesspersons who failed or are threatened in their business activities. The European Commission has tried to support the business activities to support the strategy for growth and employment. This policy forms a part of the complex business policy and its objectives are to make the business failure depression lax.

References

- [1] J. Armour and D.J. Cumming, "Bankruptcy Law and Entrepreneurship". University of Cambridge, Centre for Business Research, Working Paper No 300, 2005.
- [2] Baran, Dušan: Aplikácia controllingu v podnikovej praxi. Bratislava Vyd. STU. 2008.
- [3] Baran, D a kol.: Finančno-ekonomická analýza podniku v praxi, Bratislava IRIS, 2008.
- [4] G. Metzger, After life – who takes heart for restart? ZEW Discussion Paper No 06-038, 2006.
- [5] E. Stam, D. B. Audretsch and J. Meijaard, Renascent Entrepreneurship, ERIM, 2006. V prieskume názorov mládeže v roku 2005, ktorý uskutočnila spoločnosť Junior Achievement-Young
- [6] R. Blom, Faillissement - oorzaak en gevolg, Graydon, 2004.
- [7] P. Matsakos et al., Vie et Survie des PME, PMI, TPE dans leur environnement quotidien aujourd'hui et demain, Rapport Saratoga/Datar, 2004.
- [8] Európska komisia, KOM(2005) 551, Moderná politika MSP pre rast a zamestnanosť, v konečnom znení, 10.11.2005.
- [9] Európske podniky. Fakty a čísla. Údaje 1995 – 2004, Eurostat, 2006.
- [10] A.C.P. de Koning, Business failure and entrepreneurship in international perspective, EIM Small Business Research and Consultancy, 1999.
- [11] Bleskový Eurobarometer č. 192 (2007).
- [12] Bleskový Eurobarometer č. 146 (2004).
- [13] Prijat' výzvy – Lisabonská stratégia rastu a zamestnanosti, Správa pracovnej skupiny na vysokej úrovni pod predsedníctvom Wima Koka, 2004; alebo I. Ekanem and P. Wyer, A fresh start and the learning experience of ethnic minority entrepreneurs, International Journal of Consumer Studies 31 (2), 144–151, 2007.
- [14] Global Benchmark Report 2006 – Ready for globalisation?, Confederation of Danish Industries, 2006.
- [15] The profile of the successful entrepreneur. Výsledky štúdie „Factors of Business Success“, Eurostat, Štatistika v kocke 29/2006.
- [16] Insolvencies in Europe 2005/6, Creditreform Economic Research Unit.
- [17] Európska agenda pre podnikanie, Európska komisia, KOM(2004) 70, v konečnom znení, 11.2.2004.
- [18] Činnosti uskutočnené v rámci viacročného programu pre podniky a súkromné podnikanie 2001 – 2006 („Najlepší postup“, „Európska charta pre malé podniky“).

- [19] Final report of the expert group of the Best project on Restructuring, Bankruptcy and a Fresh Start, Európska komisia, 2003.
- [20] Príloha k oznámeniu Komisie jarnému zasadaniu Európskej rady: Implementácia obnoveném Lisabonskej stratégie pre rast a zamestnanosť „Rok konkrétnych výsledkov“. Európska komisia, KOM(2006) 816, v konečnom znení, 12.12.2006.
- [21] Globálny monitor súkromného podnikania 2004.
- [22] Entrepreneurship Policy Indicators: Bankruptcy legislation in OECD Member and Non-Member Economies, OECD CFE Working Paper Series No 1, 2006.
- [23] 2004 EBRD Legal Indicator Survey for transition economies, in The European Restructuring and Insolvency Guide 2005/2006.
- [24] <http://ec.europa.eu/sme2chance>.
- [25] <http://www.entrepreneurprevention.com/>
- [26] http://www.interreg3c.net/web/fic_en Program Európskeho fondu regionálneho rozvoja INTERREG IVC je silným nástrojom na podporu výmeny osvedčených postupov v oblasti podpory obchodu,
- [27] http://ec.europa.eu/enterprise/enterprise_policy/charter/index_en.htm. The sources of economic growth in OECD countries, OECD, 2003; a Business Demography: growth in the population of enterprises, Eurostat, Štatistika v kocke č. 48/2007.
- [28] <http://www.ifmbonn.org/presse/mimo-2007.pdf>. Kreditanstalt für Wiederaufbau Bank Group 2007, Mittelstandsmonitor 2007
- [28] <http://www.minez.nl/> Tweede kans – failliet gaan betekent niet mislukken/lessen in vallen en opstaan,.