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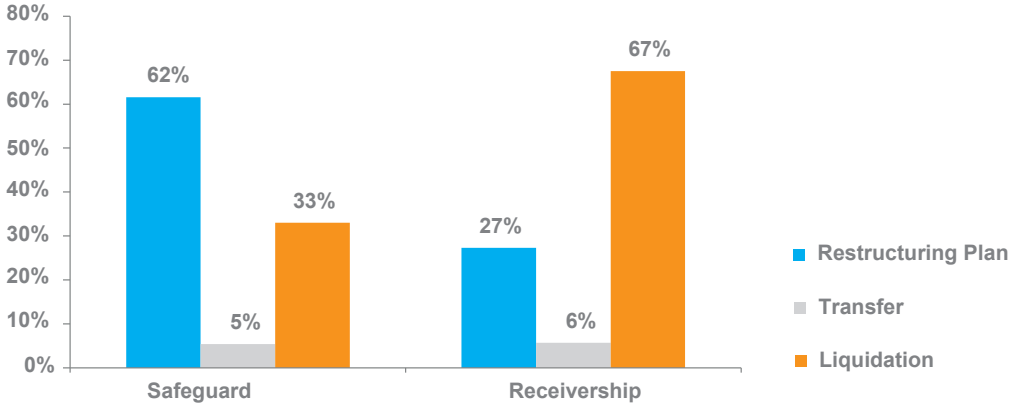
Distressed firms: how effective are preventive procedures?

What conclusions can be drawn from the safeguard procedure ("*sauvegarde*" in French) some fifteen years after its introduction into French law? This preventive procedure enables a firm in financial distress to enter into discussions with its creditors to restructure its debt before insolvency. To answer this question, this report relies on an original database built from public information about the safeguard and receivership ("*redressement judiciaire*") procedures.

The numbers speak for themselves: firms that choose the safeguard procedure are better off than those that go into receivership. More than 62% of them obtain a debt restructuring agreement compared with only 27% of firms in receivership. There are several possible explanations for this 35% difference. It may reflect differences in the *observable* characteristics of firms such as debt ratio, size, sector or geographical area and/or differences in the *unobservable* characteristics such as the personality of the manager. But it may also be the result of a better reputation of the safeguard procedure. Since firms under safeguard have a greater chance of survival, the opening of this procedure does not drive away stakeholders – customers, creditors, employees, suppliers – which in turn increases the firm's chances of survival. This report concludes that this reputation effect predominates. The effect of the *observable* characteristics is small (five points), and the one of the *unobservable* characteristics undetectable[1].

However, despite its success, few companies file for the safeguard procedure. This procedure represents on average only 6% of the restructuring procedures over the period 2008 and 2018. It is understandable that firms prefer confidential procedures more protective of their reputation such as the *ad hoc* mandate or conciliation. Yet it is regrettable that some firms that could use the safeguard procedure do not do so and end up in receivership. Better information and a clearer distinction between the safeguard and receivership procedures could help increase the use of this procedure. The forthcoming transposition of the European Directive on preventive procedures provides an opportunity for progress in this respect.

Outcome of safeguard and receivership procedures for firms that filed for bankruptcy between 2010 and 2016



Reading: 62% of firms filing for safeguard obtain a debt restructuring deal with their creditors, 33% are liquidated for lack of a plan.

Source: Bodacc, authors' calculations

1. This note is accompanied by a detailed *Document de travail*, also available on France Stratégie's website: Epaulard A. and Zapha C. (2020), "Sauvegarde et redressement judiciaire : quelles leçons pour l'amélioration des procédures préventives ?", France Stratégie, *Document de travail*, No. 2020-02.

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INTRODUCTION

Increasingly, bankruptcy laws around the world aim at the recovery of the firms – at least of its healthiest units – over liquidation to limit financial losses and the fall in asset value. This trend is reflected in the recent Directive on insolvency regimes in the European Union[2]. Adopted in June 2019, this Directive requires Member States to implement procedures allowing preventive debt restructuration of distressed firms. The aim is to "enable them to address their financial difficulties at an early stage, when it appears likely that their insolvency can be prevented and the viability of the business can be ensured"[3]. With the safeguard procedure, introduced into French law in 2006, France was a pioneer in this field. Indeed, the ambition of the 2005 law was to give firms the opportunity to restructure their debt before insolvency, that is, before reaching a much deteriorated financial situation[4].

What lessons can be learned from the French experience? Using a new database tracing the history of all firms that filed for bankruptcy between 2010 and 2016, this report proposes a concrete measure of the relative effectiveness of the safeguard procedure over receivership[5].

The analysis demonstrates that the better initial financial health of the firms filing for safeguard is not enough to explain the difference in restructuring rates between safeguard and receivership. Part of the difference may well stem from the "bad" reputation of the receivership procedure. In addition, the report draws lessons for the transposition into French commercial law of the European Directive on preventive restructuring procedures.

WHAT IS THE PURPOSE OF THE SAFEGUARD PROCEDURE?

An efficient French insolvency regime in international comparison

Comparing the efficiency of insolvency regime from one country to another is not easy. Many factors relating to law, custom and firm characteristics come into play. The World Bank, a pioneer in this field, has for a number of years calculated an indicator of the efficiency of insolvency regimes[6] that is primarily creditor-focused. Half of the indicator is based on the expected recovery rate of preferred creditors in a fictitious insolvency case; the other half is based on certain characteristics of the process, including the role of creditors in the procedure. According to this method, the French insolvency regime is not rated as extremely high: the recovery rate of creditors in the fictitious case under consideration is estimated at 74.8%, whereas it is well above 85% in other European countries such as Denmark, Finland, Ireland, the Netherlands, Norway, Slovenia or the United Kingdom. Above all, in the dimension "strength of insolvency framework", France's rating is much lower than that of other European countries like Germany, Finland and Portugal in particular, because of the small role left to creditors in the course of the procedure.

This emphasis on creditors in the assessment of insolvency regimes is justified on the grounds that strong creditor protection facilitates firm's access to finance and *ultimately* promotes growth. However, the slowdown in labour productivity growth in advanced economies since the crisis has renewed an interest in the ability of insolvency regimes to screen firms. Ideally, the weakest firms – those with insufficient productivity – should be liquidated, while those likely to survive should be allowed to restructure. From this point of view, the test of a good insolvency regime should not only be the creditor recovery rate, or the role of creditors in bankruptcy procedure, but also the ability to identify fragile firms early, and to quickly restructure those with a genuine chance of survival.

In this perspective, the OECD recently proposed an indicator comparing bankruptcy regimes[7]. France's insolvency system ranks extremely high with this indicator. One reason is that the OECD, unlike the World Bank, takes into account the existence of a preventive framework for dealing with difficulties. More specifically, France's good position is chiefly due to the existence of (i) a preventive procedure, (ii) a warning system aimed at identifying fragile firms[8] and (iii) specific procedures for small businesses. This OECD work obtains a strong negative correlation between the efficiency of bankruptcy regimes – as measured by this

2. Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 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.
3. See recital (2) of Directive (EU) 2019/1023.
4. Among the most well-known cases for the general public were Thomson's holding company in 2010, Monceau Fleurs in 2011, Planet Sushi in 2015, the Mutuelle des étudiants in 2016 and Rallye, the parent company of Casino, in 2019.
5. This work is part of a recent trend towards assessing the effectiveness and efficiency of legal frameworks for resolving business difficulties on the basis of firm data, a trend that complements the qualitative approach that has long dominated in this area. See, for example, Garrido J. *et al* (2019), « The use of data in assessing and designing insolvency systems », *FMI Working Papers*, n° 19/27, february.
6. See the Doing Business pages on the World Bank website.
7. McGowan M.A. et Andrews D. (2018), « Design of insolvency regime across countries », *OECD Economic Department Working Paper*, n° 1504.
8. See Article L.611-2 I of the Commercial Code, which gives an active role to the presidents of the Commercial Courts in detecting firms difficulties as early as possible in order to help them overcome them.

indicator – and the percentage of so-called "zombie" firms[9] that represent a strain to the economy. The French bankruptcy regime appears effective in international comparisons[10].

Confidential and public procedures

The French restructuring framework consists of two confidential restructuring procedures – conciliation and *ad hoc* mandate – and two public procedures – the safeguard and the receivership. The first two are out-of-court settlements that allow for confidential negotiation with the firm's creditors. A conciliator (or an *ad hoc* representative) is chosen by the firm's manager, and approved by the Commercial Court to negotiate with the creditors. The *ad hoc* mandate is available to firms that are not yet insolvent. It is initiated for a period of three months, renewable without legal limit. Conciliation is available to firms that have been insolvent for less than forty-five days. Its duration is more limited: it is open for a period of four months, and can only be extended by one month.

In 2017, these confidential procedures accounted for about 16% of all debt restructuring procedures (see Table 1). They have the advantage that only the main stakeholders – the creditors, at least the largest of them, and the management of the firm – are aware of the firm's situation. Confidentiality prevents customers or suppliers, learning of financial difficulties, from ending their business relations with the firm, thereby further contributing to the deterioration of its situation. The main disadvantage of public proceedings is that an agreement must be unanimously approved by the creditors participating in the negotiation, and cannot be imposed on the creditors who were not part of the negotiation.

The confidentiality of these procedures makes their statistical evaluation difficult and their success rate is not well known. A recent article[11] mentions that it is close to 70%.

These confidential procedures coexist with "public" procedures – those that are publicized. Here, all creditors participate in the negotiation of a debt restructuring plan. The unanimity rule does not apply; the plans are approved with majority rules within groups of creditors - credit institutions, main suppliers. The two procedures available are the safeguard and receivership (see Box 1 next page). They are strikingly similar. The principal differences between them is that within safeguard procedure, the firm is not insolvent yet and its manager retains a greater power of decision-making.

Over the period 2008-2018, the number of receiverships reached its peak in 2009, with more than 20,000 openings, compared with fewer than 14,000 in 2018. This year 2009 also saw the number of safeguards double compared with 2008. This number then stabilized at over 1,200 filings a year until 2015, and has remained below 1,000 since 2016. In 2013, there were approximately as many safeguard procedures as there were *ad hoc* mandates; in 2018, the former were half as many as the latter.

Safeguards, thus, constitute a marginal device in the treatment of firm difficulties – 7% of total procedures in 2013, 4.8% in 2018. However, because it is public, it allows the gathering of statistics and the evaluation of its capacity to lead to successful restructurations, and efficiency in preserving viable firms.

Safeguard: a much higher probability of survival

In safeguard as well as in receivership, the aim of the firm is to reach an agreement with its creditors in the form of a debt restructuring plan. Without an agreement, the firm goes into receivership, or is liquidated. If liquidation occurs, it can take two forms. In the most abrupt form, the firm's assets are sold on the market, with the proceeds going to the firm's stakeholders according to priority rules (with employees having the highest priority for unpaid wages).

Table 1 – Filing for restructuration procedures in the Commercial Courts and chambers of commerce of the High Courts, 2008-2018

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Confidential procedures	1 439	2 477	2 137	1 962	2 212	2 551	2 437	2 605	2 753	2 769	2 863
Mandates *ad hoc*	939	1 568	1 422	1 238	1 465	1 575	1 505	1 519	1 475	1 516	1 601
Conciliations	500	909	715	724	747	976	932	1 086	1 278	1 253	1 262
Public Proceedings	17 100	21 541	18 721	17 349	17 777	17 695	16 985	17 509	15 840	14 821	14 501
Safeguards	648	1 308	1 191	1 216	1 347	1 421	1 291	1 314	999	931	834
Receiverships	16 452	20 233	17 530	16 133	16 430	16 274	15 694	16 195	14 841	13 890	13 667

Source: Department of Justice/SG/SDSE - Civilian General Inventory Statistical Operations, 2008 to 2018.

9. Zombie firms are mature firms whose financial obligations were greater than their operational income for over three consecutive years. See McGowan M.A., Andrews D. and Millot V. (2017), "Insolvency regimes, zombie firms and capital reallocation", OECD Economic Department Working Paper No. 1399.
10. See Ben Hassine H., Le Grand C. and Mathieu C. (2019), "Les procédures de défaillance à l'épreuve des entreprises zombies", France Stratégie, *La Note d'analyse*, No. 82, October; and Aït-Yahia K., de Moura Fernandes B. and Weil P. (2018), "Entreprises en France : moins de défaillances mais toujours autant de zombies", Coface.
11. Borga N., Niogret A. and Vuillermet M. (2018), "Mandat *ad hoc* et conciliation: trouver le point d'équilibre", *Revue Lamy droit des Affaires*, No. 135, March 2018.

Box 1 – Receivership and Safeguard

Receivership

Unless a confidential restructuring procedure is initiated, an insolvent firm must enter into receivership within forty-five days to begin a debt restructuring process with its creditors. Contrary to confidential procedures, from the opening of the procedure, interest and principal repayment charges are frozen, and the firm is protected from its creditors. A six-month observation period opens, twice renewable, during which the firm's financial situation is assessed, and an agreement is negotiated with the creditors. The Commercial Court appoints a receiver charged with establishing the firm's debt, and in addition an administrator who monitors the firm's day-to-day activities, including all its financial operations and certain major restructuring decisions (employee layoffs, sale of assets, etc.). The court-appointed administrator may also prevent the firm's management from taking actions that would reduce the value of the firm's assets.

During the observation period, the Commercial Court can accept – or reject – a restructuring deal that mixes debt cancellation with debt rescheduling. If the situation deteriorates during the observation period, or if there is no hope of reaching an agreement with the creditors, the Commercial Court may decide to liquidate the firm, or to proceed with its sale by auction.

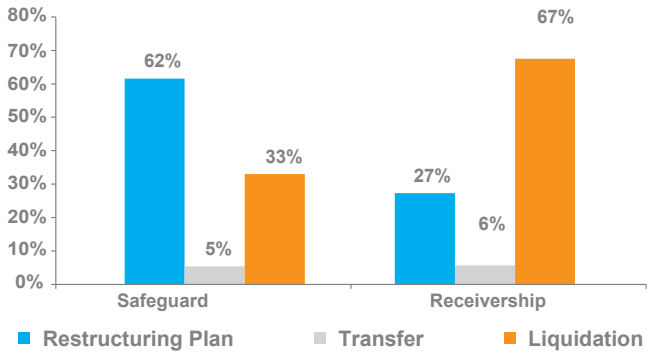
Safeguard

In 2006, to allow a faster debt restructuration, a new bankruptcy procedure was created in France: the safeguard procedure. A firm may apply for this procedure providing it is not as yet insolvent, even though it may be facing financial difficulties considered insurmountable without debt restructuration. The Commercial Court can reject this application if the firm already appears insolvent (in which case a receivership is opened), or if it considers that its financial situation does not require debt restructuring.

Once the safeguard procedure has been opened, the steps are similar to those of the receivership. The procedure is public, the six-month observation period is renewable twice, and the Commercial Court appoints a receiver. The Court may also appoint an administrator, which is mandatory for the largest companies. The role of the administrator is less important in safeguard than in receivership: he assists the manager, and cannot make decisions without the manager's consent. Another important difference is that in safeguard procedures, the firm does not have access to the wage guarantee scheme to pay wage arrears.

A smoother form of liquidation consists in the opening of a bidding process for all or part of the firm's assets and some or all of its employees, with the view to keeping at least part of the firm as a going concern. In either case, the recovery rates from creditors are extremely low, up to three times lower than in continuation (see Table 2, page 7).

Graph 1 – Outcome of safeguard and receivership for firms that filed for bankruptcy between 2010 and 2016



Reading: 62% of firms filing for safeguard obtain a debt restructuring deal with their creditors, 33% are liquidated for lack of an agreement.

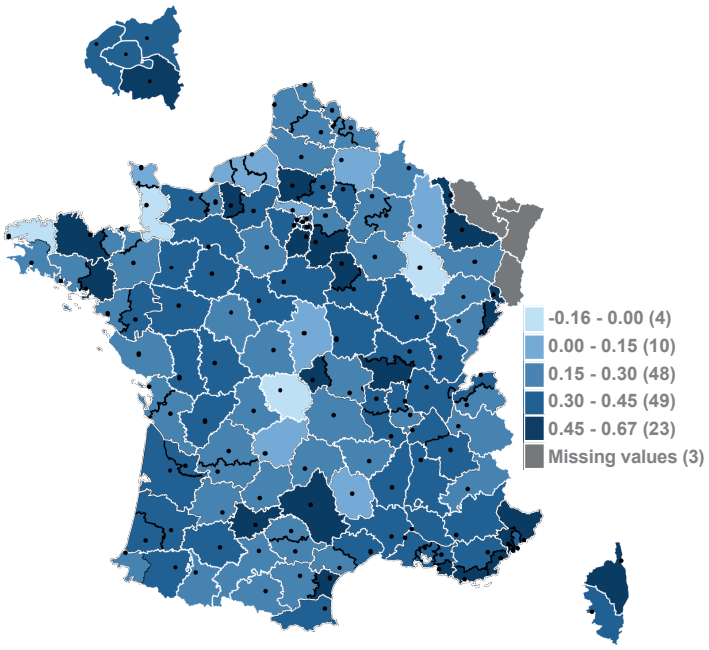
Note: the 5% of safeguarded firms that have been sold are firms whose safeguard have been converted into receivership.

Source: Bodacc, author's calculations.

For creditors, debt restructuring is clearly preferable to liquidation. The safeguard procedure usually leads to a debt restructuring agreement: 62% of firms manage to restructure under safeguard compared with only 27% under receivership (see graph 1). There exists an average difference of 35 percentage points between the restructuring rates of the two procedures.

Does this difference between the restructuring rates in safeguard and receivership vary between commercial courts? The difference appears substantial for the whole country, but does not seem to follow a predetermined pattern (see map on the next page). There are significant differences between large cities. At the Marseille Commercial Court, over the period 2010-2016, the safeguard procedure resulted in 69% of restructuration deals compared with 21% in receivership – a difference of 48 points; in Toulouse, there were much smaller differences – only 19 points. The same holds true for rural areas, even neighbouring ones: the Commercial Court of Briey in Meurthe-et-Moselle exhibits a difference of 67 points compared with only 7 points at the Court of Bar-le-Duc in Meuse. Only in four courts did firms in receivership obtain a restructuring deal more frequently, on average, than firm in safeguard.

Map – Restructuring rate gap for safeguard and receivership procedures, 2010-2018



Reading: the greater the difference between the restructuring rates, the darker the jurisdiction of the Commercial Court. In Paris, for example, there is a 34 point difference between the restructuring rate in safeguard (73%) and in receivership (39%).

Note: departments are delimited by white lines; commercial courts are represented by black dots. Some departments have two or more commercial courts: their jurisdictions within the departments are delimited by black lines. The departments of Haut-Rhin, Bas-Rhin and Moselle were excluded from the analysis because of their functioning. The same applies to the overseas departments.

Source: Bodacc, author's calculations.

WHAT LESSONS CAN BE DRAWN AFTER FIFTEEN YEARS?

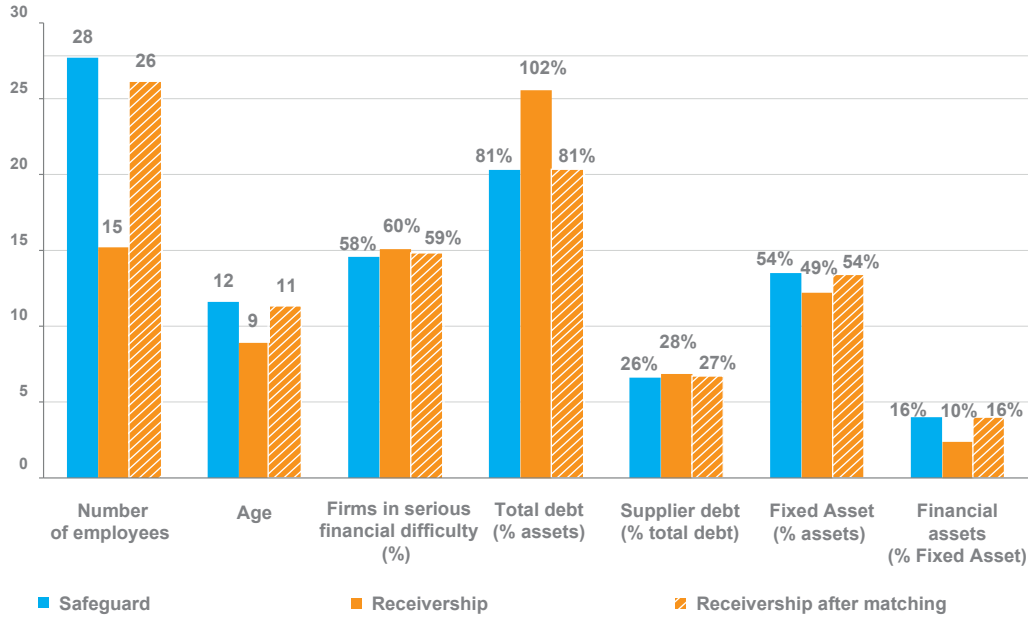
Better performance beyond the selection effect

Firms that file for safeguard are in better financial health than those that file for receivership. By design, they are not insolvent yet. Graph 2 compares the characteristics of the two populations of firms. In safeguard, the firms are larger, older, have lower debt ratios; fixed assets represent a larger proportion of their assets, and they have more financial assets. This better health at the onset of the procedure[12] is likely to increase the chances of the firm of reaching a debt restructuring deal with its creditors.

To measure the effect of this better financial health on the outcome of the procedure, the restructuring chances of the two procedures can be compared by using the procedure outcomes of similar firms. Using the propensity score matching method, we constructed a sample of firms that have filed for receivership with financial characteristics closer to those firms filing for safeguard. After comparison, the sample of firms in receivership does not differ significantly from the sample of firms in safeguard (see Graph 2).

For those firms displaying similar characteristics, it becomes possible to compare their chances of reaching an agreement for restructuring their debt according to the procedure initially adopted. For similar observable characteristics, the firm filing for safeguard has 30 points more

Graph 2 – Average characteristics of firms that went into safeguard and receivership between 2010 and 2016, before and after matching



Reading: the average size of firms in receivership increases from 15 to 26 employees after matching, which is close to the average size of firms in safeguard.

Note: this graph shows the average characteristics of 6,334 firms that filed for safeguard between 2010 and 2016, and of the 66,927 firms that filed for receivership over the same period. Using the matching method, we draw a sample of 6,334 firms that filed for receivership and whose characteristics, hatched, are similar to the 6,334 firms in bankruptcy.

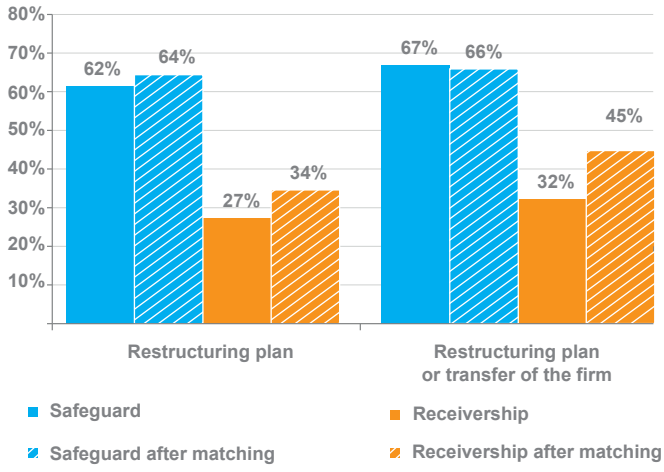
Source: Bodacc and INSEE, authors' calculations.

12. See Despierre D., Epaulard A., Zapha C. (2018), "Les procédures collectives de traitement des difficultés financières des entreprises en France", France Stratégie, *Document de travail*, No. 2008-04, April.

chance (64% versus 34%) of reaching an agreement with its creditors than the firm that has filed for receivership (see graph 3). Without taking into account the observable differences, the firm in safeguard procedure had 35 points more chance of reaching a debt restructuring agreement (62% compared with 27%). It appears that once the better initial financial situation of firm filing for safeguard is considered, the difference in the chances of restructuring between the two procedures decreases by 5 points, though it remains significant. In short, only a seventh of the best results of the safeguard procedure can be explained by the better financial health of the firms opting for this procedure.

Finally, once a debt restructuring agreement has been reached with the creditors, the firm still needs to carry on its business to meet its new commitments. Survival after restructuring is a decisive factor in the success of the procedure, but again it is influenced by the initial health of the firm. The same reasoning is repeated in an attempt to explain the survival of firms after the conclusion of a debt restructuration deal. The results[13] indicate better survival when the firm file for safeguard compared with receivership, even after controlling for observable characteristics: 80% of firms that filed for safeguard and obtained a restructuration deal are still in business after two years, compared with 70% for those that initially filed for receivership. The better financial situation observed at the onset of the procedure does not explain these increased chances of survival of the firm in safeguard after obtaining a debt restructuring agreement.

Graph 3 – Results of the propensity score matching between safeguard and receivership



Reading: by the propensity score matching method, firms in receivership go from 27% to 34% chances of obtaining a debt restructuring plan, compared with a 64% chance for firms in safeguard.

Note: this graph shows on the left the probability of obtaining a debt restructuring deal and, on the right the probability of continuation (obtaining a restructuring deal or being sold). 95,029 firms in receivership were matched with 8,080 firms in safeguard. We are losing 1,747 safeguarded firms for which complete financial information is missing. The result is a sample of 6,334 firms in safeguard and 6,334 firms in receivership, whose respective probabilities are hatched.

Source: Bodacc and INSEE, authors' calculations.

A success linked to a better image?

The better financial situation of the firms only partly explains the high restructuring rate achieved by the safeguard procedure. This success may also reflect the quality of the management: managers who choose the safeguard procedure are probably more proactive, ready to anticipate difficulties rather than risk insolvency. Moreover, this better rate could arise from the firm's creditors, suppliers and customers considering the safeguard procedure in a more positive light than receivership.

Indeed, compared to safeguard, the receivership suffers from a "bad" reputation due to its high rate of liquidation. Stakeholders of firms in receivership anticipate little chance of renegotiation success. This anticipation could be self-fulfilling. To test this hypothesis, it is possible to use the fact that a significant share of safeguard procedures are subsequently converted into receivership by commercial courts[14]. This allows us to use data only on bankruptcy cases that started as safeguard, thus avoiding the selection bias associated with safeguard filing relative to receivership (and in particular the characteristics related to the quality of managers).

Since firms have neither the choice of their Commercial Court – their assignment depends on the location of their headquarters – nor the timing of entry into bankruptcy, the assignment of a firm to a court in a given year is close to a random assignment. This allows us to use the annual conversion rates of the Commercial Court as an instrumental variable, a source of exogenous variation in the probability that a given safeguard will be converted into a receivership[15].

The econometric results show that converting safeguard into receivership greatly reduces the likelihood of restructuring. Depending on the specification, conversion reduces the chances of achieving debt restructuration by 55 to 76 points. Since the safeguard and receivership procedures are almost identical, the negative effect of conversion to receivership can be interpreted as resulting from the self-fulfilling effect of receivership.

13. The results are detailed in the associated *Document de travail*.
14. The Court can convert a safeguard into a receivership if the assessment of the firm's financial situation reveals that it is already insolvent or on the verge of insolvency, or if the anticipated outcome is a sale. On average, 13% of safeguards are converted into a receivership each year.
15. See the *Document de travail* for details and discussion on the identification strategy and the results.

This reduction in the chances of obtaining a debt restructuration can be converted into a cost for the firm's shareholders and creditors. We evaluate this cost in the range of 20 to 30% of the firm's book value (see Box 2). This result is in the high range of measures of indirect costs of bankruptcy found in the literature[16].

WHAT ARE THE LESSONS FOR THE TRANSPOSITION OF THE EUROPEAN DIRECTIVE?

The statistical study does not allow lessons to be drawn for the transposition of the thirty-four articles of the European Directive on preventive procedures. Above all, it does not shed any light on the choices to be made about the involvement of creditors and employees in the initiation of the preventive procedure or the treatment of creditors in the discussion of the restructuration[17]. In other dimensions of the Directive, on the other hand, the following lessons can be drawn.

The virtues of distinct procedures

In 2005, when it was decided to grant access to a preventive procedure to distressed firms though not yet insolvent, the choice was made to create a specific procedure – the safeguard procedure – rather than to extend receivership to these firms. The empirical results show that this choice was judicious. Indeed, some of the failures in receivership seem to be linked to its poor reputation, which most often leads to the liquidation of the firm. This is not the case in safeguard. From this perspective, the choice of the European Directive that aims to introduce preventive procedures – public or confidential – separate from insolvency procedures seems advisable.

How can preventive procedures be made more attractive?

Given the excellent results of the safeguard procedure in successful restructuration, one might wonder why French firms do not make wider use of it. One reason may be that they prefer – probably rightly so – to enter into confidential procedures which, even more than the safeguard, avoid self-fulfilling behavior. But even though recourse to conciliation has increased slightly over time (see Table 1 page 3), the recourse to preventive procedures (*ad hoc* mandate, conciliation and safeguard) remains low in France, only 21% of all restructuring procedures.

Faster procedures

The implementation of certain provisions of the European Directive would make the safeguard more appealing for distressed firms as well as for their creditors. The directive in particular provides for an initial observation period of four months, renewable twice – for a maximum of twelve months – compared with the current eighteen months firms in safeguard and receivership procedures. Shorter periods, technically feasible with the systematic adoption of electronic tools for all formalities, would reduce the loss of value of the firm's assets.

From this standpoint, two possibilities exist. The first consists in reserving these shorter deadlines for firms in safeguard and thus differentiating further between safeguard and receivership to increase the use of this procedure. The second would be to take the opportunity to shorten the observation period in receivership as well. A middle way would be to experiment the shortened observation period for safeguard, before later extending it to receivership.

Table 2 – Who recovers how much? Average recovery rates in bankruptcy

Seniority of creditors and shareholders	Estimated share in the assets of the firm (1)	Recovery rate	
		Continuation (2)	Liquidation (3)
1 Debt of secured creditors (banks, government, employees)	60 %	76 %	35 %
2 Debt of unsecured creditors (suppliers)	20 %	73 %	5 %
3 Shareholders' equity	20 %	73 %	0 %
Total	**100 %**	**75 %**	**22 %**

Note: recovery rates on transfer are assumed to be the same as on liquidation[18].

Source: Blazy et al (2018), KPMG (2019), authors' calculations

16. Indirect costs associated with bankruptcy are often estimated, based on U.S. data, to be in the range of 10% to 20% of the market value of the firm at the onset of the procedure. See, for example, Hotchkiss E.S. et al. (2008), "Bankruptcy and the resolution of financial distress", *SSRN Electronic Journal*, January; Bris A. *et al*. (2006), "The costs of bankruptcy: Chapter 7 Liquidation versus Chapter 11 Reorganization", *The Journal of Finance*, vol. 61(3), June.
17. On this point, see Plantin G., Thesmar D. and Tirole J. (2013), "Les enjeux économiques du droit des faillites", La Note du Conseil d'analyse économique, No. 7, June.
18. See KPMG (2019), "Les reprises à la barre du tribunal. Analyse statistique des pratiques en plan de cession 2017-2018", Study, June.

Better business information and alert mechanisms

Another way to improve the use of more effective preventive procedures is to provide firms with better information on how these procedures are carried out and their success rates. In France, a state-owned start-up (Signaux Faibles) has developed an algorithm based on machine learning to detect firms likely to experience financial difficulties at a very early stage. From this point of view, Article 29 of the European Directive on insolvency requires Member States to develop statistical systems to ensure regular monitoring of proceedings. The European Commission proposes to undertake the publication of aggregated data broken down by procedure and by type of firms. In addition, Article 3 of the Directive requires Member States to create early warning tools to detect circumstances that could lead to insolvency, in order to encourage firms to take action as soon as possible.

CONCLUSION

After fifteen years of practice, it is clear that the introduction of the safeguard procedure in France was a good idea. It allows stakeholders to distinguish between relatively healthy firms, and by contrast, those fragile firms filing for receivership – better preserving the chances of survival of the former. The transposition of the European Directive into French law could be an occasion to highlight the positive results of the safeguard by differentiating it even more from receivership.

Keywords: corporate bankruptcy, costs of bankruptcy, preventive restructuring

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