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Keywords: business enabling environment; topics; insolvency; workers' claims; workers' protection; central & eastern europe.

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Yury Y. Karaleu

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I. Introduction

One of the most famous international projects in the world, the Doing Business (hereinafter – DB) project by the World Bank Group (hereinafter – WBG), is enjoying a second lease of life thanks to the new Business Enabling Environment project (hereinafter – BEE) which is formulating a new approach to assessing the business and investment climate (WBG, 2022). The new approach would improve on its predecessor launched in 2002 and aimed to provide objective measures of business regulations and their enforcement. It looked at domestic small and medium-sized companies and measured the regulations applying to them through their life cycle across 191 economies.

BEE has been informed by extensive project evaluations and process of consultations with key professionals and experts in the WBG, as well as references from qualified academics, representatives of multinational corporations, and practitioners outside the institution. Public consultations on the BEE project were completed and feedback from a wide spectrum of governmental authorities, bodies of experts, scientists, and civil society stakeholders is already available. Today, we can draw preliminary results from the activities of experts and contributors.

BEE will first aim to be a knowledge platform to share views, best practices, and policies to achieve sustainable development for governments, civil society, the WBG, and other development institutions. Second, BEE will through its focus on private sector development and create new possibilities which will benefit countries and their peoples and are in line with the strategic objectives of WBG. Therefore, it supports two key objectives: to achieve sustainable development through economic and social reforms and to provide grounded detailed information that can be used for future scientific research, international comparisons, and specific policy advice (WBG, 2022).

The specific topics of analysis covered by BEE are currently under development, but as before, in the case of DB project, they are organized on the concept of the life cycle of the firm and its participation in the market. Following this cycle and private sector development, BEE's main sets of indicators under consideration are grouped into ten categories of thematic areas or topics: *Business entry*, *Business location*, *Utility connections*, *Labor*, *Financial services*, *International trade*, *Taxation*, *Dispute resolution*, *Market competition,* and *Business insolvency*. Within each topic collected and arranged according to the stages of opening, operating, and closing a business, BEE will analyze three sets of indicators which, in turn, are presented by a number of specific components. Every set of indicators serves to evaluate the effect of the regulatory framework (de jure component, e.g., statutory regulations, laws, and jurisprudence), public service provision (de facto component reflecting practical implementation), and one more group of integral efficiency indications for screening and consolidating the two groups mentioned above.

According to the Pre-Concept Note for Business Enabling Environment (BEE) (hereinafter – Pre-Concept Note), the system of preliminary BEE topics and indicators is summarized in Table 1.

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In this system, only *Taxation* topic has specific fiches: both regulatory framework and public service provision are de factor components and efficiency indications for this topic are, by its essence a combination of de jure and de facto components.

As shown in the table below, the concept of the *Labor* topic is based on three sets of indicators:

(a) Quality of labor regulations;
(b) Adequacy of public services for the labor market; and
(c) Ease of employing labor.

Table 1: The system of preliminary BEE topics and indicators

Stage	Set of indicators		
Opening a business	Business entry	Quality of regulations for business entry	Efficiency of business entry
		Digital public services and transparency of information for business start-ups	
	Business location	Quality of regulations for immovable property lease, property ownership and urban planning	Efficiency of key services in getting a business location
		Quality of public services and transparency of information	
Operating a business	Utility connections	Quality of utility regulations	Efficiency of implementation of utility regulations and services
		Utility performance and transparency of utility services	
	Labor	Quality of labor regulations	Ease of employing labor
		Adequacy of public services for the labor market	
	Financial services	Quality of regulations for secured transactions, e-payments, and green financing	Ease of receiving financial services
		Quality of credit reporting framework	
	International trade	Quality of regulations for international trade in goods and e-commerce	Efficiency of importing goods, exporting goods, and engaging in e-commerce
		Quality of public services for the promotion of international trade in goods	
	Taxation	Quality of tax regulations	Tax burden and efficiency of tax systems
		Services provided by the tax administration	
	Dispute resolution	Quality of regulations for commercial dispute resolution	Ease of resolving a commercial dispute
		Adequacy of public services in commercial litigation	
	Market competition	Quality of regulations that promote market competition	Efficiency in the implementation of key services promoting market competition
		Adequacy of public services that promote market competition	
Closing a business	Business insolvency	Quality of regulations for insolvency proceedings	Ease to resolve an insolvency judicial proceeding
		Quality of institutional and operational infrastructure for insolvency processes	

Source: www.worldbank.org

It is encouraging to note that in contrast to the former DB project *Labor* topic became a full-fledged, more balanced element of the rating and includes indicators on workers' protection (unemployment insurance, healthcare, pension). Another relevant issue was establishing the efficiency component, which will evaluate the outcomes of efforts to make those markets more comprehensive and robust.

So, the indicators of a group (a) of *Labor* topic are the set of de jure indicators that will measure labor regulations and public services as they apply to different types of workers in different contractual arrangements.

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De facto measures of workers' social protection, employment services, and individual labor dispute resolution indicators are provided by the next set of indicators of a group (b). Turning lastly to a group (c) of indicators, they assess the contribution of two previous issues to the efficient functioning of labor markets. This is a set of de facto indicators.

If, for example, we will go into more detail on the *Workers' social protection* aspect of the quality of labor regulations evaluated by BEE, we discover that this indicator will "assess aspects of social protections available to workers, with a focus on unemployment insurance, healthcare, and pension" (WBG, 2022). Right now, it is not clear what kind of unemployment insurance the designers of BEE are going to evaluate and how "the availability, type and level (e.g., duration and amount) of unemployment insurance, regardless of the type of contract" (WBG, 2022) will be evaluated. Still, we can only suppose that insolvency insurance will be covered by the methodology.

The concept of the *Business insolvency* topic of BEE project is very similar by nature to the *Labor* topic and is based on three sets of indicators:

(a) Quality of regulations for insolvency proceedings;
(b) Quality of institutional and operational infrastructure for insolvency processes; and
(c) Ease to resolve an insolvency judicial proceeding.

The first set of indicators (a) will measure the quality of insolvency regulations applicable to judicial liquidation and reorganization procedures in each economy in comparison with internationally recognized good practices. The second set of indicators (b) includes only three indicators critical for the quality of insolvency resolution mechanisms and the infrastructure required for successful implementation of the legal conditions to ensure equality of insolvency. The last set will measure the efficiency of insolvency regulations that will be considered through an assessment of the time and cost to resolve an in-court liquidation and reorganization proceeding. It is the set of de facto indicators.

II. Research Methods and Aims of the Study

In this paper, we have addressed the issues mentioned above and, consequently, have a strong interest in discussing *Labor* and *Business* insolvency topics which we have studied from the point of view of the protection of workers' claims in the event of an employer's insolvency. We consider that issues of protection of workers' claims focused on the intersection between those two topics and could not be discussed in isolation.

Based on the previous research on the protection of workers' claims and benefited from the findings of E. Yemin and A. Bronstein (Yemin & Bronstein, 1991), J. Botero et al. (Botero et. al., 2004), W. Huaiyu (Huaiyu, 2007), J. Sarra (Sarra, 2008), P. Secunda (Secunda, 2014), etc., we didn't discuss in this paper the relationship between employers, employees, and other creditors (secured creditors) rights or different support instruments for the protection of the employees' outstanding claims arising from contracts of employment or employment relationships. Our task was to assess whether the developers of BEE have implemented any indicators or components for the workers' protection "to provide a more nuanced and potentially positive perspective on the role of governments in creating a conducive business environment" (WBG, 2022). If this is not the case, should the developers extend the number of indicators for the *Business insolvency* topic as a step in the direction of changing the concept of BEE?

To answer this question and establish robust conclusions and valuable recommendations, statistical data comparison combined with analysis of legal regulations have been used. To make relevant assumptions and to formulate our proposals, a literature review and comparative studies of local legislation and the applicable European insolvency regulations associated with the protection of workers' benefits were analyzed. More specifically, the inductive method, revealing cause-effect relationships, generalization, etc. were applied to elucidate the conceptual and operational relations between the higher level of inflation, financing costs, and the deteriorated sentiment and global challenges affecting both the international economic system and domestic economies for which the proper functioning of the insolvency regime is vitally important.

III. The Relationship between Indicators of Different Topics

In both cases – *Labor* and *Business insolvency* topics– we can note two pillars (regulatory and public services pillars) that have the primary objective to assess outcomes and efficiency of labor markets and insolvency frameworks. But in the case of the *Labor* topic, the efficiency will be assessed "from the perspective of both the firm and the employee" (WBG, 2022). A similar approach can and should be envisaged for the insolvency topic of BEE to ensure the fullest exercise of employees' right to equality in case of insolvency. Like that provided by the *Workers' protection* component for *Ease of employing labor* set of indicators, the same component for *Ease to resolve an insolvency judicial proceeding* set of indicators should be implemented (while changing the name of the latter set of indicators), and there are multiple reasons for this recommendation.

Firstly, this has to be done of the view that a certain proposed range of topics should "complement

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each other," as was declared in the Pre-Concept Note (WBG, 2022). We are of the view that such a proposed component of BEE as a *Protection of workers' claims in case of insolvency* would help to form the link between *Labor* and *Business insolvency* topics.

The following set of indicators can be calculated to provide a quantitative assessment of the efficiency of *Protection of workers' claims in case of insolvency* issue for *Business insolvency* topic of BEE project.

The average percentage of satisfaction of the creditors' claims (acceptance rate of creditors' claims of different groups, e.g., the first priority claims, the second priority claims, etc.), *AR*:

$$AR = \frac{\sum_{t=1}^{n} SC}{TA} \quad (1)$$

Where *SC* is the amount of the satisfied creditors' claims of a particular group during a period of time *t* and *TA* is the total amount of claims recognized by the insolvent debtor for the same period.

Similarly, the share of satisfied employees (*SE*) will be calculated using formula (2) below:

$$SE = \frac{\sum_{t=1}^{n} NC}{TN} \quad (2)$$

Where *NC* is the number of creditors with satisfied claims of a particular group during a period of time *t* and *TN* is the total number of creditors with claims recognized by the insolvent debtor for the same period.

In the context of the theme under consideration, employees' wages and severance pay claims such as work remuneration, reimbursement for annual paid leave, reimbursement for other types of paid leave, severance pay connected with the termination of an employment relationship, reimbursement for injury connected with an accident at work or an occupational disease, etc. will be chosen in formula (1) as the satisfied creditors' claims of a particular group. In formula (2), employees with wages and severance pay claims will be chosen as the nominator.

Moreover, together with the preliminary topics listed in the Pre-Concept Note, BEE will look at two cross-cutting themes relevant across topics: the adoption of digital technologies and environmental sustainability. Most components in the Pre-Concept Note are already denoted as those covered by the two mentioned themes. It is, however, unclear why digitalization or environmentalism tended to prevail over the welfare and assurance of workers' rights and outweigh the interests of society at large. On which grounds will BEE evaluate the business environment "from the perspective of an individual firm's ease of doing business" and "the standpoint of private sector development as a whole" but, in fact, ignore the social perspectives of these processes? We consider that the creation of a well-designed system of social protection of employees, including those in the event of bankruptcy (insolvency) or restructuring, is a matter for serious reflection by all concerned. It is a challenge for a business to adapt to economic shocks and provide its employees with not only job security in a safe workplace with decent remuneration but assistance and guarantees in critical situations. The outcome has been inclusive and resilient labor markets (ILO, 2022).

Again, we share and encourage the conclusion of L. Norman that labor markets, along with the policies and institutions that shape them, provide a solid basis for national private sector development and economic growth (Norman et al., 2012). As the world progresses forward and many countries face a growing workforce and changes in the composition of labor, it is important to place the *Workers' protection* component (together with the issue of *Protection of workers' claims in case of insolvency*) as the principal interface between all topics in BEE and elevate it to the status of the cross-cutting theme. We should understand that the human and social aspects of sustainable development meant that workers' rights protection was as crucial as scientific approaches to environmental protection and digitalization, particularly from the public policy responsibility angle (Karaleu, 2018).

IV. New Challenges that Enhance the Importance of the Issue

One should also try to make an effort to look at the issue from the perspective of a given national Government and concerning Central & Eastern Europe (CEE) countries in particular. "In 2021, the region saw increased growth (5.5%), but this momentum is expected to dissipate this year with a forecast growth rate of 3.2%,", Mr. Grzegorz Sielewicz, Coface economist for Central & Eastern Europe, said (Coface, 2022). Indeed, the COVID-19 pandemic and officially implemented lockdowns were a devastating blow to macroeconomic activity. Even though there is a subsequent decrease in rates of transmission and infection, making the actual ongoing pandemic a secondary issue, there is another challenge that affected economies and businesses. The Russia-Ukraine conflict affects an alarming rise in rates of inflation and economic instability in CEE because of the soaring prices of oil, natural gas, and other raw materials imports from Russia, on which European consumption depends economically.

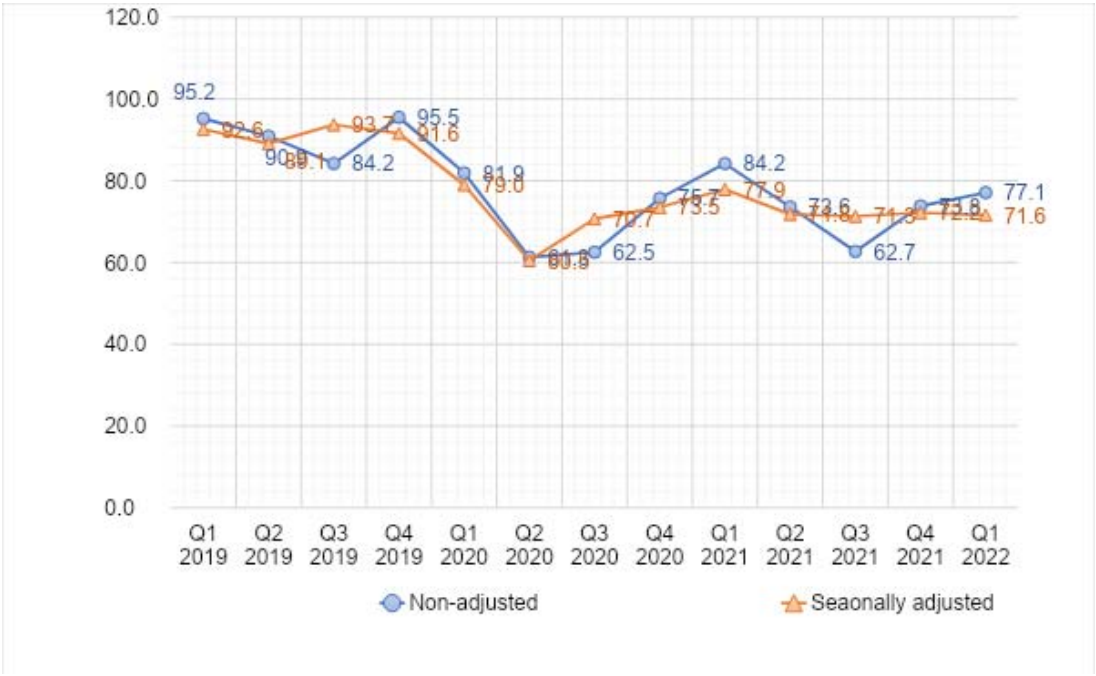
At the same time, both countries, being the largest producers and exporters of agricultural commodities, contribute significantly to the European food market, and assure, albeit indirectly, a decrement in the economic situation. So, CEE economies have experienced accelerated inflation mostly due to increased energy prices, at a time of growing food prices. This is compounded by sanctions imposed

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against the export of fertilizers from Belarus, embroiled in the military conflict.

All this, in aggregate, triggered the economic downturn and brought concerns not only for macroeconomic stability but also for the companies' payment liquidity and the latest insolvency trends in CEE. The companies' adaptation of their business operations and activities with lockdowns and post-COVID-19 situation combined with unprecedented measures of national Governments (such as tax exemptions and deferrals, loans, subsidies and other financial assistance, employees' salary supplementary payments, simplifying various administrative procedures, etc.) were among the few grounds, which have allowed to avoid a number of fresh bankruptcies. In terms of the latter measures, they also included moratoria on insolvency applications as well as various measures reducing the consequences of the pandemic's impact on companies' liquidity. Even, a paradoxical situation emerged whereby business insolvencies in CEE countries dropped in 2020 thanks to the massive scale of support measures during such a significant crisis.

We can note this situation based on the data presented in Quarterly registrations of new businesses and declarations of bankruptcies statistics by Eurostat released on May 17, 2022 (Eurostat, 2022) (Fig. 1).



Source: Eurostat, 2002

Fig.1: Declarations of bankruptcies of businesses in EU, Q1 2019 to Q1 2022 (2015 = 100)

There has been an upward trend in the number of bankruptcy declarations until almost the end of 2019. Then we can note considerable decreases in the first and second quarters of 2020. That can be explained by the supporting measures, described above. After that, the number of bankruptcy declarations increased for three consecutive quarters until the first quarter of 2021. Then the bankruptcy declarations decreased in the second quarter of 2021 but were considerably below the levels of the pre-COVID pandemic period for the whole of 2021.

The number of bankruptcies declarations was stable between the third quarter of 2021 and the first quarter of 2022. In the first quarter of 2022, compared to the previous quarter, the bankruptcies slightly decreased. At the same time for some economies, bankruptcies reached back levels close to ones recorded in the prepandemic year of 2019. So, unwinding support measures already triggered an increase in business insolvencies in the CEE region, and the Russia-Ukraine conflict would only serve to compound the problem.

How do in such a situation, the national guarantee institutions (funds) that provide recourses for workers who have lost their job due to insolvency of their employer and have not received the full wage or salary owed to them react? We suggest that Latvia is a very good example for our conclusions.

In Latvia, since January 1, 2003, Employee Claims Guarantee Fund (Darbinieku aizsardzība darba devēja maksātnespējas gadījumā) (hereafter – Fund), operated by the Insolvency Control Service (state agency), advises employees who have lost their jobs as a result of the insolvency (bankruptcy) of their companies and have not received the full wage or salary owed to them. All employees are eligible for the

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satisfaction of claims and may claim work remuneration, reimbursement for annual paid leave, etc., that is owed to them by their employer (European Monitoring Centre on Change, 2022).

The Fund is financed by contributions from employers – the state entrepreneurial risk fee (which has remained unchanged since 2006 and is equal to EUR0.36 per employee) – gifts and donations, and resources recovered by insolvency administrators in the insolvency procedure (Karaleu, 2021). Fig. 2 below shows how the payments from the Fund have evolved over the last three years.

It is clearly visible, that the total amount of payments, as well as the number of satisfied employees, decreased within 2021. The above is due to the fact that from March 22, 2020, to September 1, 2020, and from December 23, 2020, to September 1, 2021, moratoria on insolvency applications were introduced in response to the destructive consequences of the COVID-19 pandemic. Thus, only those employees whose position has been declared in an insolvency proceeding before the moratoria were entitled to benefit from the Fund.



Source: https://www.mkd.gov.lv/lv

Fig. 2: The Latvian Employee Claims Guarantee Fund's payments for 2019-2022.

In the first quarter of 2022, 119 employees' claims of 16 insolvent companies to the Fund were satisfied, for a total amount of EUR 113,980. The average payment per capita was EUR943. For comparison, for the same period of 2021, 59 employees' claims of 16 companies were satisfied, for the amount of EUR84, 502. The average payment per capita was EUR1, 193.

V. The Risk of Further Escalation of the Situation

In the situation of the ongoing global liquidity crisis, the international community, together with national Governments, should do all in its power in order to avoid further escalation of the situation, which may entail dire consequences of insolvency. The UK Government, for example, has already set out new proposals to reform and simplify the regulation of the insolvency sector. Business Minister Lord Callanan said: "The proper functioning of the insolvency regime is vitally important to support business investment and growth and to provide a safety net for individuals in severe financial difficulty." (Insolvency Service & Lord Callanan, 2021).

If we return to the example of Latvia and compare its results with the situation in other Baltic states, it can be reported that other countries of the region have lost this potential that was provided by the insolvency restriction measures. Now they are demonstrating the highest increases in bankruptcy declarations in the first quarter of 2022 in comparison with the fourth quarter of 2021: Estonia +50.6 %, Lithuania +38.5 %. And it is not surprising as the Baltic states suffer from direct and indirect consequences of the Russia-Ukraine military conflict because of their close economic relationships with Russia. Both mentioned economies have one of the highest shares of

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exports of goods and services in GDP in the Central & Eastern European region: Estonia – with 81%, Lithuania – with 80%. Most likely, Latvia, in the nearest future, will be the next will suffer from the highest increases in bankruptcy declarations.

And again, all Baltic states will face severe challenges in protecting workers' claims in case of insolvency, though, along with some other post-Soviet states, the Russian Federation and Belarus will be the most affected. The reason for such a depressing assessment of the outlook for the rise in insolvencies is not only because the first two are directly responsible for or involved in the military conflict in Ukraine. In contrast to the well-established body of the EU system of administrative authorities and guarantee institutions established and launched in accordance with Directive 2002/74/EC of the European Parliament and of the Council of September 23, 2002, on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, most post-Soviet states relay on the priority creditor status for employees (preferential treatment) in the event of insolvency (bankruptcy). It is the only form of protection conferred upon employees in the case of corporate insolvency.

Preferential treatment assumes that employees (former employees) with wage and other compensation claims are given a statutory priority over other classes of creditors. The highest level of such priority is absolute or so-called super-priority – a specific mechanism to ensure that employees' claims are first in line (including over-secured creditors) to be satisfied on any liquidity difficulties of the company. The most significant disadvantage of this system is the lack of legal satisfaction of workers' claims in the situation of the absence of own funds in the insolvent company available to cover debts (Karaleu, 2022).

We think it necessary to note related problems showing the vast increase in the volume of employees' claims as claims of priority creditors in the Russian Federation, where preferential treatment is the only tool for the employees' wage claims satisfaction in the case of insolvency. This trend is reflected in Table 2 below, compiled for 2019-2021 by JSC Interfax in Fedresurs (fedresurs.ru) based on the information from the published reports of arbitration managers (administrators in the insolvency procedure).

As can be seen from the table, the total amount of priority claims included in the Register of creditors' claims showed a clear negative growth trend in their volumes, and in 2021 the percentage of satisfaction of claims fell to an extremely low level. Thus, the acceptance rate for the second priority creditors' claims (in the Russian Federation, wages and severance pay claims have the second priority) in the period under consideration (see formula (1)) was only about 11% (calculated based on a grand total for three years). It could be assumed that this trend has emerged only in recent years and is associated with the economic consequences of the impact of the COVID-19 pandemic. However, our earlier studies showed that from 2016 to 2018, about 30% of the requirements were satisfied (Karaleu, 2020). It was much higher than the level formed in the last three calendar years but, at the same time, was far from full payment of priority creditors' claims for wages, severance pay, and other similar payments due to them.

The percentage of satisfaction of the priority creditors' claims in the second half of the year reached 21% after the introduction by the Government of the Russian Federation (from April 1, 2022) of a six-month moratorium on bankruptcies initiated by creditors against citizens, individual entrepreneurs and legal entities (with some exceptions) (Fedresurs, 2022). This problem will become more apparent and further aggravated for the Russian Federation if we remember that many foreign companies have curtailed operations in the country after the beginning of the Russia-Ukraine military conflict. Under pressure from investors and consumers, many foreign companies have started to unwind their investments, close production lines, and pause sales in the Russian Federation. Worsening the general economic situation or increasing instability and military conflicts would curb investments of large businesses in any country and increase the risk of new bankruptcies.

VI. Conclusion

Improved social protection, including protecting workers' claims in case of insolvency, could enhance the quality of life, and deepen interactions with businesses and citizens, such as facilitating more transparent processes, reducing the harmful social and societal consequences, and responding to the evolving global financial and economic crisis.

In this article, we have shown that including of *Protection of workers' claims in case of insolvency* issue in BEE would help to form the link between *Labor* and *Business insolvency* topics and helps for making more informed and well-argued conclusions as we believe that workers' rights protection (including in the case of insolvency) to be the cornerstone of global sustainable development efforts.

At the same time, *Workers' social protection* component of the *Labor* topic should become a principal interface between all topics in BEE and would be elevated to the status of the cross-cutting theme, especially in the situation of increasing economic instability and military conflicts. The impact of new challenges on CEE is devastating and will severely undermine the unwinding support efforts of the European governments.

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Table 2: Amount of the second priority creditors' claims in completed bankruptcy cases for 2019-2021 in the Russian Federation

		2019			2020			2021		
		Amount of claims included in the Register of creditors, RUB thousand	Amount of satisfied claims	Acceptance rate, %	Amount of claims included in the Register of creditors, RUB thousand	Amount of satisfied claims	Acceptance rate, %	Amount of claims included in the Register of creditors, RUB thousand	Amount of satisfied claims	Acceptance rate, %
Principal amount	Total	8,796,083.06	1,811,622.18	20.6	17,152,370.59	2,550,699.51	14.9	26,893,878.94	2,892,921.03	10.8
	Incl. wages and severance pay claims	2,679,028.48	745,069.48	27.8	2,318,899.82	804,063.21	34.7	2,835,425.40	770,882.53	27.2
Penalties	Total	701,623.00	65,249.70	9.3	556,382.30	40,805.96	7.3	13,099,294.29	53,016.31	0.4
	Incl. wages and severance pay claims	105,241.18	26,985.49	25.6	61,309.71	18,938.16	30.9	49,245.61	16,343.75	33.2
Grand total		9,497,706.06	1,876,871.88	19.8	17,708,752.89	2,591,505.48	14.6	39,993,173.23	2,945,937.34	7.4
Number of employees, former employees with wage and severance pay claims included in the Register of creditors in completed bankruptcy cases		2,517,014*			74,413			43,424		

** Presumably, the incorrect number of employees. The unadjusted amount is presented (Source: https://fedresurs.ru/news/d9263eb1-10a9-43db-8755-3dc0add94bd3)*
Source: fedresurs.ru

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