

Bankruptcy Proceedings Statistics (BPS)

Methodology



INSTITUTO NACIONAL DE ESTADÍSTICA

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1 Background

1.1. Statistics of Suspensions of Payments and Declarations of Bankruptcy

The main precedent of the *Bankruptcy Proceedings Statistics* is the *Statistics of Suspension of Payments and Declarations of Bankruptcy* compiled by the National Statistics Institute until August 2004, and created by Royal Order of August 29 1923. This statistical operation that is of interest to monitor the corporate and economic situation, provided information on the number of companies in suspensions of payments or that had declared bankruptcy and the amounts of their assets and liabilities, in accordance with the main activity and type of company (natural person, PLC, Limited Liability, etc.).

This survey also provided additional information on the economic causes of the suspension of payments and the proposal for payment to creditors; in the case of bankruptcies, it presented the procedure for the declaration of bankruptcy and the type of bankruptcy.

As of 2002, the survey started to be published on a **quarterly** basis, although the information was collected **monthly**. The informant units were the over one thousand **Courts of First Instance and Courts of First Instance and Trial**, that dealt with the suspensions and bankruptcies files, presented to them each month.

The collection mechanisms consisted in the direct dispatch of the questionnaires, completed appropriately, from the courts to the INE (one for each file presented at the court each month). If no files were presented during the reference month, the courts were under the obligation of notifying the INE by registered post.

1.2. The new Insolvency Act

With the entry into force on **September 1 2004 of Organic Law 8/2003, for the Reform of Bankruptcy Proceedings, and the Insolvency Act 22/2003**, it is necessary to replace the INE's *Suspensions of Payments and Bankruptcy Declarations Statistic* with this new statistic since the legal concepts of the suspension of payments and bankruptcy declarations have been replaced with the terms **bankruptcy proceedings**, designating the entities subjected to this process, **bankrupt debtors**. The name of the law, **the Insolvency Act**, is due to the concurrence of the creditors on the assets of the common debtor.

The questionnaire of the new statistic designed by the INE, *Bankruptcy Proceedings Statistics*, adapted to the new Act, gathers information both on the number of bankruptcies admitted and the number of bankruptcy orders issued by the judge during the reference month, as well as the type of bankruptcy process (voluntary or necessary), and the type of procedure (ordinary or abbreviated), the existence of anticipated proposals of agreement and the contents (acquittance, wait, arrangement with creditors, or another proposition).

The survey also garners information on the total of the stock of assets and liabilities corresponding to each procedure, once said stock has been established by the so-called Bankruptcy Administration.

1.3 SECOND-CHANCE LAW

On **1 March 2015** enters into force **the Royal Decree-Law 1/2015, a mechanism for second chance, reduction of financial burden and other social measures.**

The aim of the so called second-chance legislation is to allow what is so expressively described by its name: that a natural person, despite an economic, business or personal failure, has the possibility to put his life back on track and even to risk new initiatives, without having to drag indefinitely a slab of debt that they will never be able to pay.

As a fundamental novelty, a debt relief scheme is introduced for natural person debtors in the framework of bankruptcy proceedings.

In order to give coverage to this law, in article 85 of Organic Law 6/1985, of 1 July, of the Judiciary, section 6 is added, which enables the **Courts of First Instance** to process bankruptcy proceedings of natural persons who are not businessmen, entering into force on 1 October 2015.

2 Objectives

The main objective of the statistic is to provide quarterly information on the number of bankrupt debtors and some of their main characteristics.

This statistic has a short-term nature and aims to act as an indicator of the corporate situation and of the economic situation, and alongside other indicators, to contribute to the analysis of the periods of growth, crisis or cooling of the Spanish economy.

The *questionnaire* collects information on the following variables:

- Number of bankruptcy proceedings presented at the Court**
- Number of bankruptcy orders (Number of bankruptcies notified)**
- Tax Identification Number (NIF) of the bankrupt debtor**
- Type of bankruptcy (Voluntary/Necessary)**
- Type of procedure (Ordinary/Abbreviated)**
- Existence of anticipated proposals of agreement (YES/NO)**
- Content of the proposal (acquittance, wait, arrangement with creditors, or another proposition)**
- Stock of assets of the bankrupt debtor**
- Stock of liabilities of the bankrupt debtor**

Additionally, and in cases of bankrupt debtors that carry out a corporate activity, be they natural or legal persons, this statistic provides information on other variables obtained by crossing the bankrupt company's Tax Identification Number (NIF) included in the questionnaire, with data from the INE's *CCD (Central Company Directory)* and from other INE surveys. In the statistic, these bankrupt debtors are called *bankrupt companies* to establish a difference with bankrupt natural persons who do not perform a corporate activity. These variables are:

- Interval of employees the bankrupt company belongs to
- Main economic activity of the bankrupt company (NACE 2009, two digits)
- Interval of annual turnover of the bankrupt company
- Company belongs to a corporate group (YES/NO); if it does, whether the group is or is not controlled by a foreign group (YES/NO)
- Legal nature of the bankrupt debtor

3 Research scope

The scope of the survey is defined with respect to the population researched, time, and space.

3.1 POPULATION SCOPE

The population scope under study is composed both by the **new Mercantile Courts** and the **Courts of First Instance and the Courts of First Instance and Trial with mercantile competence**, that are the legal organs that receive and manage bankruptcy proceedings.

With a view to collecting the information and coming into effect as of September 2004, in 2005 the INE and the **General Council of the Judiciary Branch** signed an **addendum to the Collaboration Agreement** that already existed between the two institutions for the realisation of **legal statistics**. Said addendum establishes the INE's capacity to use the questionnaire to collect the bankruptcy proceedings notified to the courts included in the statistic's population scope.

The total number of courts surveyed a month amounts to 66. The complete register of legal organs with competence to process and resolve bankruptcy proceedings has been provided by the General Council of the Judiciary Branch.

As a result of the **second-chance law**, the **Courts of First Instance** are empowered to process bankruptcy proceedings for natural persons who are not entrepreneurs.

3.2 GEOGRAPHICAL SCOPE

The whole of the **country**. Bankruptcy proceedings are classified by the provinces where the courts dealing with said procedures are located.

The bankruptcy file will be presented at the court with mercantile competence in the province where the debtor has the centre of his/her main interests, in other words, where the debtor exercises the administration of said interests normally and in a manner that is recognised by third parties.

3.3 TIME SCOPE

The period reference for **collection of the information** is the **natural month**. Therefore, the survey will collect the number of bankruptcies presented at and notified to the courts in the reference month.

As of 2006, the data will be **disseminated, quarterly**.

4 Variables and definitions

The variables that are collected in the questionnaire appear hereunder alongside others that are collected for other statistical sources and are used to classify the bankrupt debtor:

4.1 BANKRUPTCY PROCEEDINGS ADMITTED/PRESENTED IN THE COURT

Proceedings presented by the debtor him/herself or by creditors of said debtor at the courts corresponding to the population scope of the survey, in the case of insolvency of the company or of insufficient assets of the debtor to regularly fulfil the obligations taken on by the debtor.

The judge may or may not dictate a court order for bankruptcy on the proceedings presented, depending on whether said proceedings fulfil all the requirements established in the Insolvency Act.

4.2 BANKRUPTCY COURT ORDER

Court order issued by the judge of a mercantile court notifying of bankruptcy proceedings.

If the request presented by the debtor, in the case of *voluntary bankruptcy*, includes all the necessary documentation, the judge will issue the order declaring bankruptcy. If the request is presented by one of the creditors, in the case of *necessary bankruptcy*, the court order is not issued until the debtor appears before the judge to confirm a status of insolvency.

4.3 Tax Identification Number (NIF)

The Tax Identification Number (NIF) or Company Tax Identification Number (CIF) of the bankrupt debtor that is in a situation of insolvency. This classification considers all bankrupt debtors, regardless of whether they are natural or corporate persons. Nevertheless, given its importance, the statistic distinguishes, on the one hand, bankrupt debtors that perform a corporate activity, which are designated *bankrupt companies*, regardless of them being corporate or natural persons, and on the other, natural persons who do not perform a corporate activity.

4.4. TYPE OF BANKRUPTCY

Bankruptcies are classified by type into:

4.4.1. Voluntary bankruptcy

When *the request is presented by the debtor* within the two months prior to the date when he or she knew or should have known about the insolvency status.

Insolvency may be present or imminent; the latter is produced when the debtor foresees that he or she will not be able to fulfil his or her obligations regularly.

4.4.2. Necessary bankruptcy

When *the request is presented by any of the creditors* of the debtor, specifying the origin of the loan, the nature, sum, date of acquisition and expiration, as well as the loan situation when the bankruptcy is requested.

4.5 TYPE OF PROCEDURE

There may be two different types:

4.5.1. Ordinary procedure.

Normal procedure carried out to file a bankruptcy process.

4.5.2. Abbreviated procedure.

Procedure that is applied when the debtor is a natural or corporate person that is authorised to present an abbreviated balance and the initial estimate of his or her liabilities does not exceed one million euros.

The abbreviated procedure reduces the deadlines envisaged in the Insolvency Act unless the judge determines the opposite.

4.6 . ANTICIPATED PROPOSAL FOR AGREEMENT

The Act allows the possibility of either the debtor or the creditors to present a proposal for agreement alongside the bankruptcy request.

The proposal can include different alternatives to avoid the liquidation of the company and preserve the professional or corporate activity of the bankrupt person.

The possible alternatives appear below:

Aquittance (percentage proposed for the reduction of the loans)

Wait (deadline proposed for the payment of the loans)

Arrangement with creditors (combination of the previous alternatives)

Another proposition (conversion of the loan into shares, holdings or social quota, or into participative loans,...).

4.7 STOCK OF ASSETS

Both the stock of assets and the variable that appears below, the stock of liabilities, are determined by the *Bankruptcy Administration* , which is in charge of carrying out an inventory of the debtor's assets and liabilities and a list of creditors and of auditing the actions performed by the debtor.

The stock of assets is formed by the ensemble of assets and rights that compose the debtor's estate on the date of the declaration of bankruptcy and those that are registered at the same time or are acquired until the conclusion of the procedure. With the exception of goods and rights that are assets by nature but are legally nonseizable.

4.8 STOCK OF LIABILITIES

Formed by the loans against the common debtor which, in accordance with the Insolvency Act, are not considered loans against the stock.

4.9 DATE OF THE DECLARATION OF BANKRUPTCY

Corresponds to the month and year in which the judge pronounces the declaration of bankruptcy. This date is required in section 3 of the questionnaire, *Stock of assets and liabilities determined by the bankruptcy administration*, with the objective of knowing the date when the bankrupt debtors for which the Bankruptcy Administration has determined the stock of assets and liabilities in the reference month were declared as such in the court order of the declaration of bankruptcy.

Since bankruptcy proceedings are time-consuming in their processing and resolution, the bankrupt debtors for which the bankruptcy administration has determined assets and liabilities in the reference month will not coincide with

the debtors who during the reference month have been declared bankrupt in the previous section of the questionnaire.

Consequently, the information on the stock of assets and liabilities of the bankrupt debtors cannot be published at the same time as the rest of the information on said bankrupt debtors in a given quarter. The stock of assets and liabilities collected in that period will obviously correspond mostly to debtors whose bankruptcies were declared in the quarters prior to the reference of the publication.

As well as the variables obtained in the statistics' questionnaire, other published results are obtained by crossing the information on the debtor with other statistical sources like the CCD (Central Company Directory compiled by the INE) and different surveys the INE has sent to companies. Specifically, these variables have only been used for the bankrupt debtors designated as companies

4.10 ECONOMIC ACTIVITY OF THE COMPANY

Determined according to the National Classification of Economic Activities 2009 (NACE-2009), with two digits, in accordance with the information from the CCD:

Agriculture and fishing, which corresponds to the section:

- A Agriculture, livestock, hunting, forestry and fishing

Industry and energy, which corresponds to the sections:

- B Extractive industries
- C Manufacturing Industry
- E Electricity, gas, steam and air conditioning supply
- D Water supply; sewerage, waste management and remediation activities

Construction and real estate development, which corresponds to the section:

- F Construction

Trade, which corresponds to the section:

- G Wholesale and retail trade; repair of motor vehicles and motorcycles

Transportation and storage, which corresponds to the section:

- H Transportation and storage

Accommodation and food service activities, which corresponds to the section:

- I Accommodation and food service activities

Other services, which corresponds to the sections:

- J Information and communication

K	Financial and insurance activities
L	Real estate activities
M	Professional, scientific and technical activities
N	Administrative and support service activities
O	Public administration and defence; compulsory social security
P	Education
Q	Human health and social work activities
R	Arts, entertainment and recreation
S	Other services
T	Activities of households as employers; undifferentiated goods- and services-producing activities of households for own use
U	Extraterritorial Organisations

4.10. INTERVAL OF EMPLOYEES

The interval each bankrupt debtor belongs to is determined by the number of employees that correspond to said debtor in the CCD.

4.11. TURNOVER INTERVAL

The annual turnover interval each bankrupt company belongs to is determined by the information obtained from other INE surveys.

4.12. THE BANKRUPT COMPANY BELONGS TO A CORPORATE GROUP

The number of bankrupt companies that belong to a corporate group is determined by the information obtained from other INE surveys.

4.13. FOREIGN GROUP

Determines the number of bankrupt companies that belong to a corporate group, whether or not it is controlled by a foreign group.

5 Collection method

Until 2009, the collection of information was carried out via questionnaire and sent by ordinary mail or fax.

As of 2010, the collection of information from Commercial Courts or with commercial jurisdiction is carried out via telematic questionnaire, using an Internet application. In addition, the information published in the Official State Gazette (BOE) is included as an additional source.

As a result of the **second-chance law** and given that the **Courts of First Instance** are empowered to process bankruptcy proceedings for natural persons who are not businessmen, this information begins to be collected through the information published in the Official State Gazette (BOE).

5.1. QUESTIONNAIRE

The data requested to perform the statistic are completed in standardised questionnaire Mod. EPC-EM-E-06, compiled by the INE assisted by the General Council of the Judiciary Branch.

6 Tabulation

Once the questionnaires have been recorded, they are processed with computer programmes and undergo filtering methods to correct possible errors. The information is tabulated after completing all the stages. As well as tabulations based on the data obtained directly from the questionnaire, tables based on variables for the classification of bankrupt debtors obtained from crossing companies and other statistical sources are also published.

7 Dissemination of the information

The information started its dissemination every quarter as of 2006 on the date indicated in the **INE's Calendar of availability of short-term statistics**, via the **Press release** of the Statistic which will be accompanied by the **tables of main results** which will be located on the INE website www.ine.es.

Furthermore, with the publication of the first quarter of 2006, all the information corresponding to the last quarter of 2004 (when the Insolvency Act came into force) and all the quarters of 2005 was disseminated with a retroactive nature.