



The expected impact of the proposal for Restructuring and Second Chance Directive on NPLs COM(2016)723

Vienna, 16 May 2018

Main objectives

Reduce the barriers for cross-border investment, increase investment and job opportunities in the internal market (Capital Markets Union Action Plan)

Reduce the costs and increase the opportunities for honest entrepreneurs to be given a fresh start (Single Market Strategy)

Support efforts to reduce future levels of non-performing loans (ECOFIN Council Conclusions of July 2016)

Quick facts

200 000 insolvencies yearly in the EU, at least 25% have a cross-border dimension

1.7 million jobs lost in liquidations

1 in 6 insolvencies is caused by the insolvency of another company in the supply chain

Recovery rates are lower in liquidation than in insolvency by about 25 cents on the dollar (WB)

Impossible to restructure a groups of companies with establishments in more than 2 MS

Discharge periods vary from 1 year to indefinite periods

Different level of efficiency – in 10 MS procedures last over 2 years

Main challenges when drafting the proposal

Great divergence of legal frameworks, not much common ground

Strike the right balance between legal certainty for cross-border investors and flexibility for Member States

Need to ensure a proper balance between the rights of debtors and creditors and avoid negative side effects on NPLs

Need to provide the right incentives to restructure at an early stage

Making restructuring more affordable for SMEs

Fair treatment of workers

Background of the proposal

*Commission Recommendation of 12 March 2014
on a new approach to business failure and
insolvency*

*+ new elements to strengthen the restructuring
framework*

*+ new elements to strengthen the second chance
framework*

*+ new elements to improve the efficiency of
procedures (horizontal concerns)*

A. Preventive restructuring procedures

Enterprises do not have the same opportunities to deal with their financial difficulties everywhere in the Union

- all Member States should have in place preventive restructuring procedures*
- these procedures must be **efficient, fast and low cost** → 7 main elements to ensure that these requirements are met*



B. Second chance for over-indebted entrepreneurs

*Full discharge after a maximum of **3 years** for honest entrepreneurs*

Consolidation of procedures when entrepreneurs have both professional and non-professional debts

Limitation of the duration of disqualification orders for honest entrepreneurs

C. Enhancing the efficiency of procedures

Training and specialisation of judges

Training and professional standards for insolvency practitioners

Minimum rules on appointment, remuneration and supervision of insolvency practitioners

Digitalisation of procedures

Data collection

The proposal puts in place data collection obligations for the Member States, covering data on number of procedures, their outcome, length and costs .

Such data will allow a better assessment of how Member States are implementing the directive, how well it is performing and how it would need to be improved in the future.

Topics which create difficulties

Treatment of 'privileged' creditors (workers, secured creditors, public authorities)

Stay of individual enforcement actions (duration, scope)

Classes of creditors (if, when and how)

The cross-class cram-down (APR, valuation)

Treatment of equity holders

Relationship with other NPL-reduction initiatives

Next steps

Bulgarian Presidency – partial general approach on Title III (second chance)

Austrian Presidency – general approach???

Romanian Presidency – trilogues and first reading agreement???

European Parliament – vote in JURI on report expected in June 2018