



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

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## 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*