



ANALYSIS OF INDIVIDUAL AND COLLECTIVE LOAN ENFORCEMENT LAWS IN THE EU MEMBER STATES

Anonymised Version

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Executive Summary

Overview

This study analyses individual and collective enforcement laws in the 28 EU Member States. It does so taking the perspective of a bank as lender enforcing a loan contract against a company, a sole trader, a partnership or a consumer as borrower. Recovery rate and time to recovery are the guiding yardsticks. The study identifies common features and differences in the legal frameworks. In addition, clusters of shared legal approaches, relevant characteristics and best practices are explored. On this basis, suggestions for reform are made.

The analysis has a strong foundation in a questionnaire of 105 questions answered by all Member States. Qualitative and quantitative methods, among them an innovative cluster network analysis, are the basis of the analytical and evaluative claims made in this study.

While the study finds best practices and shared approaches to formal enforcement, it also reveals a strong case for reform. Enforcement law matters. Good enforcement frameworks increase access to debt finance, strengthen bank stability and provide a level playing field for lenders and borrowers.

Case for reform

The first case for reform arises due to suboptimal structures in a large number of **Member States' laws**. In particular, the enforcement of secured loans and private enforcement are at a disadvantage compared to the enforcement of unsecured loans and recovery attempts by way of insolvency proceeding. The private enforcement of an unsecured loan receives the least support. These disadvantages are present at the level of the European Union as a group and at the level of individual Member States. Such ineffective and inconsistent enforcement frameworks hinder investment and consumption. In addition, they lead to loss of finance and a reduction of bank stability in Member States with suboptimal frameworks.

The second case for reform arises with a view to differences both between Member States and within **Member States**. **The support banks find in the Member States' legal frameworks** for the enforcement of loans differs significantly across the European Union. Relevant differences concern the enforcement of secured loans, the enforcement against consumers and individual enforcement. Such differences distort economic choices and reduce welfare. Those forms of investment and activity disadvantaged by enforcement frameworks will see a rise of finance costs and ultimately contribute to bank instability. In the cross-border relationship, those Member States with weaker frameworks will suffer migration of activities and finance to Member States with stronger frameworks. This is of particular relevance as there is a smaller, but substantial group of Member States with weaker enforcement frameworks.

Relevant features and best practices

On the basis of the questionnaire underpinning this study, the following most relevant features for high recovery rates and quick recovery results are identified:

- Freedom of contract for the bank and the borrower to design an optimal loan relationship;
- **Possibility to grant security for the loan and the protection of the bank's security in the insolvency of the borrower;**

- Reliability of contracts in the financial distress of the debtor, i.e. no re-ordering of pre-insolvency rights in insolvency proceedings;
- Creditor control in collective enforcement proceedings;
- Efficient enforcement institutions such as courts and other authorities involved in the administration of formal enforcement action by the bank.

In the European Union, there is significant variation as regards the implementation of these features. On a scale of 0 (no enforcement support) to 1 (optimal enforcement support), the 28 Member States achieve averages ranging from 0.42 to 1.

The Member States converge towards best practices for a significant number of features concerning the enforcement of bank loans. These issues predominantly concern the bank as unsecured creditor in the insolvency proceedings of all types of debtors. The common best practices Member States share widely relate to:

- The ease with which the bank can open insolvency proceedings to enforce its claims;
- The ability of the insolvency administrator to recover assets the debtor has transferred to other persons (avoidance actions);
- The preservation of the contractually agreed priority order in the insolvency proceeding as regards security;
- Some governance aspects of the insolvency proceeding (passing of management powers from existing management to the insolvency practitioner; time limits to file claims in order to speed up the proceeding);
- Court clearance rates for corporate insolvency proceedings.

Common themes and differences

Member States' legal frameworks are more similar as regards the enforcement against companies, sole traders and partnerships and less similar concerning the enforcement against consumers. Further, the legal frameworks are clearly more aligned as regards the enforcement of unsecured claims and insolvency proceedings than as regards secured claims and individual enforcement.

The only common theme that can be identified among the absent features in the **Member States' laws is the lack of private powers of the banks to enforce loan contracts.** There are major differences between Member States in this area and most Member States require the bank to apply to state institutions for relevant enforcement steps. In addition, there are no widely shared features concerning the individual enforcement of loans by banks. More specifically, there is strong variation as regards:

- The obligation to file for the opening of an insolvency proceeding within a short time period;
- The maximum retrospective periods for avoidance actions;
- The number of corporate insolvency court cases per capita.

Approaches to reform

Against this background, four approaches that go beyond cross-border issues of bank loan enforcement can be envisaged at the level of the European Union:

- Wide-ranging horizontal reform instruments;
- More narrow targeted vertical reform;

- A framework directive offering modules and options;
- An additional and genuinely European enforcement regime that debtors can opt into.

Context

Currently, there is a knowledge gap concerning recovery rates of loan contracts and the relevant legal enforcement frameworks in the European Union. The European Commission and the Member States are highly commended for conceptualising this research project, for contributing the questionnaire and for providing the qualitative and quantitative answers to the 105 questions raised in the questionnaire. This study attempts to close the existing knowledge gap by some degree through the analysis of the dataset provided. The available data is used as far as possible **with a 'can do' approach**. Therefore, some parts of the report are rather a proof of concept than a final and definitive evaluation. Some qualitative theses will require further empirical testing.

Anonymised version

This version of the study is fully anonymised. Country names and country codes have **been replaced by randomised placeholders in the form of 'MS' plus a figure ranging from 1 to 28**. Hence, Member States' names and country codes are now shown as **'MS1, MS2, MS3, ..., MS28'** in all texts, tables, charts and annexes. To prevent the identification of patterns, the same Member State was assigned different codes in different paragraphs, tables, charts and annexes.

Where this approach would still leave a chance of pattern recognition, the relevant information was removed from this version of the study. To flag the removal for the reader, **deleted text is designated as follows: 'This content has been removed to anonymise the study'**. This applies in particular to the qualitative and quantitative data provided by the Member States (see Annexe 2).

In short, the study is anonymised twofold in its entirety and any doubtful content has been removed.

Chapter 1: Introduction

Aims

This report analyses the individual and collective enforcement of bank loans in the 28 EU Member States. It identifies common features and differences in the legal frameworks. On the basis of such commonalities, clusters of shared legal approaches are identified. Finally, those characteristics most relevant for enforcement outcomes and best practices are identified.

Focus

The focus of this study is on the enforcement of loans by banks. The emphasis is on banks as creditors (or lenders), not on banks as debtors. As regards the debtors (or borrowers) under the loan contracts a comprehensive perspective is offered. Three groups of debtors are considered and distinguished:

- (1) Corporations (legal entities),
- (2) Entrepreneurs in the forms of sole traders and partnerships and
- (3) Consumers.

As regards the type of loans granted by the bank, a distinction is made between secured and unsecured loans. Furthermore, in terms of the form of enforcement, this report analyses whether a loan is enforced individually or collectively, i.e. whether the bank engages in individual enforcement or whether recovery is sought within an insolvency proceeding.

The legal frameworks of the Member States governing the enforcement of bank loans are at the centre of this study. Depending on the question at hand, statutes, regulations, case law or contractual stipulations may be relevant. Given the significance of both private and collective enforcement, the laws of civil procedure and insolvency are considered. They are analysed against the background of recovery rates and speed as quantitative yardsticks. In other words, the legal frameworks are examined as regards their impact on the outcome and duration of enforcement action.

A bank may have two reasons to revert to formal enforcement: the debtor is either unable or unwilling to perform its obligations under the loan contract. Rational borrowers will usually perform justified payment requests by the bank. Hence, the borrower in this study will be unable rather than unwilling to pay. In other words, the debtor will often be in financial distress.

Policy background

The policy background of this report is provided by the Capital Markets Union Action plan.¹ Namely, the **Plan's** goals to reduce the cost of capital and systemic risks are relevant in this context. First, better frameworks for the enforcement of bank loans reduce the cost of debt finance. Higher recovery rates and quicker payments increase the expected income from bank loans. Consequently, banks will be in a position to offer loans at lower cost to the borrowers. Thus, better enforcement outcomes in the financial distress of the debtor (ex post) allow the bank to offer finance at a cheaper price (ex ante). Consequently, better enforcement frameworks reduce the cost of capital and support growth.

¹ Action Plan on Building a Capital Markets Union, COM(2015) 468 final of 30 September 2015.

Second, sound enforcement frameworks strengthen the financial stability of banks and reduce systemic risk. Better and quicker enforcement in individual and collective proceedings reduces the risk associated with the lending business of banks. As a result, the risk that failed enforcement contributes to the financial distress of a bank as lender is reduced. Hence, better enforcement laws positively contribute to bank stability. Put negatively, ineffective enforcement of bank loans creates financial risks for banks and can contribute to financial instability.

This study keeps those cases in mind where financial restructuring (rescue) is not an option. Among such cases are those where enforcement is not attempted in any form. Rational banks will not engage in individual or collective enforcement if the expected cost of enforcement is higher than the expected income. Such lack of access to enforcement may occur where the debtors (borrowers) have no or very few assets. However, it may also be the result of costly or ineffective enforcement frameworks. The existence of such lack of access to viable enforcement raises particular concerns. It raises the cost of debt and increases risks for banks.

Against this policy background, the more legal frameworks contribute to higher loan recovery rates and quicker payment by way of enforcement the better. This normative principle should, however, be distinguished from claims concerning the overall efficiency of enforcement and insolvency laws. More comprehensive claims would require a consideration of the overall welfare effects on all stakeholders. By concentrating on banks only, this study does not endeavour to make such wider statements.

Context

This report is based on a questionnaire developed by the Capital Markets Union Unit of the European Commission in cooperation with the Member States. All 28 EU Member States have answered the questionnaire. This study analyses the answers applying both qualitative and quantitative methods.

In parallel, the European Banking Authority (EBA) has started research on recovery rates and speed as regards the enforcement of non-performing bank loans.² A preliminary report by EBA is expected by December 2019 and the final report is planned for July 2020.

To coordinate both studies, methodological questions have been discussed by EBA and the author.³ In particular, EBA research might benefit from the coding results, the identification of relevant features and further analysis provided in this report.

Limitation of scope

The scope of this study is limited in three ways. First, restructuring proceedings and **the issue of 'second chance' are generally excluded. These topics are covered by the recent Directive on Restructuring and Insolvency.**⁴ Member States are currently in the process of implementing the Directive and an in-depth study makes better sense once implementation is concluded. However, in order to provide a consistent picture of loan enforcement, restructuring and second chance topics will be dealt with as far as necessary. Second, this report does not consider the cross-border law of loan enforcement. Hence, frameworks such as the European Enforcement Order⁵ or the Regulation

² For details see <https://eba.europa.eu/about-us/missions-and-tasks/calls-for-advice>.

³ By email and phone calls on 18 July, 14 August and 6 September 2019.

⁴ Directive (EU) 2019/1023 of 20 June 2019, OJ L 172/18.

⁵ Regulation (EC) 805/2004 of 21 April 2003, OJ L 143/15.

on Insolvency Proceedings⁶ are not covered. Third, the cost of enforcement is not at the centre of this study. Hence, issues such as the impact of enforcement fee rules on the sums recovered are not considered.

Legal environment

Other legal factors beyond formal enforcement frameworks may affect recovery rates and speed of bank loan enforcement.⁷ Fundamental principles of contract law matter, for example. While some jurisdictions limit the amount of security a bank can require relative to the amount of the loan, others do not impose legal limits on the extent of security. **In the event of the borrower's default, such differences in the relative amount of security will likely lead to different recovery rates.**

Similarly, statistical data can be distorted by the specifics of regulation. One example regarding the recovery rate in company liquidations shall suffice. If the legal framework of Member State A guides companies with relatively low debt-to-asset ratios into liquidation, while Member State B guides them into restructuring proceedings, then in liquidation higher recovery rates are to be expected in Member State A than in Member State B. Such differences alone, however, would not support the conclusion that the liquidation law in Member State B is suboptimal.

⁶ Regulation (EU) 2015/848 of 20 May 2015, OJ L 141/19.

⁷ For other, non-legal factors see Chapter 7 on relevant characteristics and best practices.

Chapter 2: Data set

Commission questionnaire

The data set analysed in this report has been collected using a questionnaire developed by the Capital Markets Union Unit of the European Commission. The European Commission cooperated with the Member States in the development of the questionnaire. This resulted in three versions. The third and final version of the questionnaire forms the basis of this study. It is reproduced in Annexe 1.

The questionnaire is directed at the Member States. It aims to gather information on formal enforcement proceedings available to banks for the enforcement of loan contracts. The questionnaire requires qualitative and quantitative answers. The respective qualitative and quantitative questions are contained in two separate sheets. Some qualitative questions are divided into a main and two sub-questions. Overall, there are 105 questions.

The qualitative questions ask for either a Yes/No answer or provide the opportunity for a free text answer. **The questionnaire is designed such that a 'Yes' answer is desirable from the perspective of the bank and corresponds to enforcement support, while a 'No' answer signals no support for enforcement.** The quantitative questions require the entry of a numerical value. The questionnaire gives instructions in a separate column on the type of answer expected (Yes/No, free text or numerical). The large majority of questions are qualitative questions requiring a Yes/No answer (96 out of 105).

The questionnaire is characterised by a three-level structure. The first level distinguishes three types of debtors (borrowers):

- (1) Corporate (legal entity),
- (2) Entrepreneurs (sole/partnership) and
- (3) Consumers.

The second level distinguishes whether security is present:

- (1) Secured (specific rules) or
- (2) Unsecured (general rules).

The third level differentiates whether the enforcement is individual or collective:

- (1) Individual enforcement or
- (2) Insolvency proceedings.

The distinctions at the second and third levels are in each case applied to the higher levels with the result that level one is divided into 3 groups of questions, level two into 6 groups and level three into 12 groups.

The questions asked for corporate (legal entity), entrepreneurs (sole trader/partnership), and consumers are identical to a large degree. Variations occur where required by the different nature of the debtor. As a result, the questions as regards corporate and entrepreneurial debtors are more similar, while the questions asked for consumers differ the most. 37 questions concern corporate debtors and the same number focusses on sole traders and partnerships. 31 questions concentrate on consumers.

The questionnaire asks for answers based on the law in force. Law is understood widely to cover statutes, regulations, case law and – where relevant – contractual stipulations. The focus of the questionnaire is on the legal situation at a given point in time ('snapshot'). **The questionnaire does not ask for the development of the law over time ('timeline').**

Member States' answers

The questionnaire was sent to the EU Member States and all 28 Member States provided answers. In the Member States, the ministries of finance were the point of contact for the European Commission. In some Member States, the questionnaire was sent on to other institutions for guidance such as ministries of justice, supreme courts and state agencies. The content of the majority of answers was ultimately provided by technical experts in the ministries of the Member States. Sometimes multiple institutions within a Member State contributed parts of the answers. The consolidated answers of the Member States are reproduced in Annexe 2.

The first set of responses was provided by the Member States in the period starting on 7 September 2018 and ending on 7 June 2019. Within this period, the Member States sent between one to three answer messages. The second and third messages were usually used to fill gaps, update or clarify. Some of these further messages added the information directly to the questionnaire, while others embedded the information in the text of an email.

A second set of updated and revised responses was provided by the Member States in the period starting on 25 September 2019 and ending on 15 October 2019. These updates and revisions followed a conference in Brussels on 24 September 2019 where a first version of this report based on the first set of responses was presented to the Member States. The second set of responses provided an opportunity to update and **correct Member States' answers on the basis of the insights gained at the conference**. At the conference the decision was made that answers in the second set of responses would only be accepted if they were explained and plausible.

Some Member States did not answer all questions and gaps remain. For an overview of the remaining gaps, see Annexe 5.

The answers generally follow the instructions of the questionnaire (Yes/No, free text or numerical). When Yes/No or numerical answers were required, some Member States added text explanations of various length. Some answers contain references to legal sources.

Anonymisation

This version of the study has been entirely anonymised. The names and codes of countries have been replaced by randomised placeholders in the form of 'MS' plus a number from 1 to 28. As a result, Member States' names and country codes are now displayed as 'MS1, MS2, MS3, ..., MS28' in the entire study. This includes all chapters and annexes and in particular to all tables and charts. To prevent identification by way of patterns, all Member States are assigned different codes in different parts of the chapters and annexes. Again, this includes all tables and charts.

Information that could still be attributed to a specific Member State has additionally been removed from this study. This applies in particular to the qualitative and quantitative data provided by the Member States answering the Questionnaire.⁸ To be transparent, such removals are flagged for the reader as follows: '*This content has been removed to anonymise the study*'.

Where the names of Member States were only used to illustrate an issue without referring to any Member State specific content, no measures of anonymisation were taken. For an example see the explanation of the methodology of the cluster network

⁸ See Annexe 2.

analysis in **Chapter 3 under 'Quantitative methods: Cluster network analysis'**. The same applies where pre-existing research is referred to.

To summarise, the entire study is anonymised twofold and any doubtful content has been removed.

Chapter 3: Method

Overview

This study employs a wide range of qualitative and quantitative methods. The qualitative methods are doctrinal analysis of law, comparative law and economic analysis of law. The doctrinal analysis contributes to the understanding and systematisation of the legal frameworks of the Member States. The comparative approach introduces an external yardstick (*tertium comparationis*) to facilitate a meaningful comparison of the 28 legal frameworks. The economic analysis provides such an external yardstick, in particular in the form of recovery rates and speed. Beyond supporting the comparison of laws, the economic analysis allows evaluations of the real-world effects of the various enforcement frameworks.

These interdisciplinary qualitative methods create the foundation for the following study results:

- (1) Analysis of individual and collective enforcement in the Member States;
- (2) Commonalities and differences between legal frameworks;
- (3) Clusters of common approaches in the Member States;
- (4) Identification of legal characteristics relevant for enforcement outcomes;
- (5) Best practices contributing to high recovery rates and speedy enforcement;
- (6) Discovery of areas for potential reform.

The quantitative approaches used are coding, statistical analysis and cluster network analysis. The coding assigns values between 0 and 1 to each answer, thereby creating the basis for the application of quantitative methods. The statistical analysis determines further information such as average values for certain questions or groups of questions. The cluster network analysis identifies and visualises the proximity and distance between legal frameworks.

These quantitative methods add insights to the qualitative methods as regards the following issues:

- (1) Analysis of individual and collective enforcement in the Member States;
- (2) Commonalities and differences between legal frameworks;
- (3) Clusters of common approaches in the Member States.

Generally, this study applies a 'can do' approach. Rather than resigning at the sight of data complexity and inconsistency, this study attempts to work as productively as possible with the available data. As a result, some parts of this report are rather a proof of concept than a final and definitive evaluation of the Member States' legal frameworks.

Scientific context and contribution

The Capital Markets Union Unit of the European Commission and the Member States are to be commended for initiating this project. Currently, little is known about the enforcement of bank loans in the EU Member States. This holds true both for the comparative characteristics of the relevant legal frameworks and the empirical aspects of recovery rates and times. This project and the parallel empirical research by the European Banking Authority attempt to fill these gaps.

The World Bank project on Resolving Insolvency⁹ has a different focus compared to this project and, hence, does not provide answers to the questions raised here. The **World Bank's Resolving Insolvency research is based on a** hypothetical, typified case study, i.e. the financial distress of a limited liability company running a hotel.¹⁰ **On this basis, the World Bank project's results are limited to** a particular type of hypothetical debtor and do not claim to be representative for all types of debtors or proceedings. As regards the empirical part, the World Bank study does not collect data, but asks practitioners to estimate recovery rates.¹¹

Other academic studies have a different focus or are more limited in scope. Particularly noteworthy is the empirical research by Davydenko and Franks on a sample of small firms in France, Germany and the United Kingdom defaulting on their bank debts.¹² The Centre for Business Research of the University of Cambridge has published a study coding creditor protection laws in 25 countries around the world.¹³ Deakin et al have researched the relationship between creditor protection and credit expansion in France, Germany, the United Kingdom and the United States.¹⁴ This latter study and the coding exercise by the Centre for Business Research do not, however, focus on banks as creditors.

Commission questionnaire and Member States' answers

The questionnaire sent to the Member States was developed by the Capital Markets Union Unit of the European Commission in cooperation with the ministries of finance of the Member States. The relevant performance indicators were agreed in the Commission Expert Group on Non-performing Loans on 14 December 2017. The author of this study was not involved in developing the questionnaire.

The involvement of the Member States in the design of the questionnaire is of utmost importance. The choice of questions has a strong impact on the results of this study. Hence, it is important that the questionnaire is not biased for or against certain legal frameworks or approaches. It is important to note that adding or deleting questions from the questionnaire might have a significant impact on the results.

The questionnaire was sent to the ministries of finance of the Member States. The Member States were not provided with a separate guidance sheet on how to answer the questions. As the ministries were involved in the development of the questionnaire, the European Commission expected that the ministries were aware of the context when completing the questionnaire. Furthermore, a first version of this report was discussed at a meeting of the Member States on 24 September 2019. Thereafter, Member States had the opportunity to provide updates and revisions of their answers based on the insights gained at the meeting.

⁹ See <https://www.doingbusiness.org/en/data/exploretopics/resolving-insolvency>.

¹⁰ See <https://www.doingbusiness.org/en/methodology/resolving-insolvency>.

¹¹ Ibid.

¹² S A Davydenko and J R Franks, Do Bankruptcy Codes Matter? A Study of Defaults in France, Germany and the U.K., *Journal of Finance*, Volume 63, 2008, 565.

¹³ See https://www.cbr.cam.ac.uk/fileadmin/user_upload/centre-for-business-research/downloads/research-projects-output/creditor-protection-index-references-25-countries.pdf.

¹⁴ S Deakin et al, Varieties of Creditor Protection: Insolvency Law Reform and Credit Expansion in Developed Market Economies, *Socio-Economic Review*, Volume 15, 2017, 359.

The questionnaire contains one column with instructions on how to complete the questionnaire. The three possible instructions read as follows:

- Yes/No answer,
- Free text,
- **Numerical value to be provided if answer is 'Yes'.**

In the process of answering the questionnaire, some Member States contacted the European Commission for specific guidance on certain questions. The questions that raised the most need for clarification were **Questions 1.3 and 2.3, asking whether 'Seizure of collateral on own book permitted?'**. The author has been provided access to the most relevant questions raised by the Member States and to the answers provided. However, given the comparative focus of this study, such individual communication between Commission and Member States does not form part of the data used in this report. Including such individual communication would risk distorting the **comparability of the Member States' answers as not all Member States had access to the bilateral exchanges.**

For the purpose of this report, the first set of responses of the Member States are taken at face value.¹⁵ The author did not adjust any answers provided as part of the first set of responses. As regards the second set of responses, which contained updates and corrections to the first set of responses, only those amendments were accepted that were explained and plausible. These two requirements for the acceptance of changes were set **at the Member States' meeting** on 24 September 2019. The requirements were established to prevent unfounded amendments with a tendency to improve individual scores of Member States. Remaining potentially inaccurate answers have been collected. These answers, potentially in need of further clarification, are listed in Annexe 7.

The author generally did not fill gaps in the answers submitted by the Member States. Very rare exceptions were made, where the content of a sub-question allowed conclusions certain beyond doubt as to the content of a missing answer to the main question (and vice versa). Of course, the qualitative and quantitative analysis is sensitive to missing answers. For example, where not all 105 questions are completed and averages are calculated, a lower relevant number of completed questions is employed to determine the averages. The data gaps are listed in Annexe 5.

Qualitative methods

The qualitative methods employed have been summarised in the introductory overview to this chapter. As these methods are generally accepted, it shall suffice to point out only the most relevant further issues.

The comparison of legal frameworks is based on the functional comparative method.¹⁶ This method is ultimately factual. It is less concerned with legal rules and more focussed on their effects on the behaviour of those affected. The functional method does

¹⁵ For details on the first and second sets of responses see Chapter 2: Member States' answers.

¹⁶ On the functional method in comparative law see R Michaels, *The Functional Method of Comparative Law*, in M Reimann and R Zimmermann (editors), *The Oxford Handbook of Comparative Law*, 2nd edition, Oxford, 2019, chapter 13; K Zweigert and H Kötz (translation by T Weir), *An Introduction to Comparative Law*, 3rd edition, Oxford, 1998, pp. 32 and following.

not aim at statements on doctrinal principles and rather concentrates on real-world events influenced by law.

As mentioned in the introductory chapter, the normative yardstick of this report is entirely focussed on banks as creditors and the outcomes they achieve in enforcing bank loans. Consequently, those legal principles and rules are evaluated as beneficial, which maximise recovery rates and minimise the time to recovery. The impact of bank loan enforcement on other stakeholders is not relevant from this perspective. Therefore, this study can legitimately make claims on the effectiveness of bank loan enforcement. **As explained in Chapter 1 under 'Policy background'**, this report does not, however, make claims relating to the overall efficiency of enforcement or insolvency law. This is particularly relevant for the statements made on best practices.

The author has tested the most relevant claims made in this report in short interviews with experts in the field.

Quantitative methods

General

Quantitative methods are employed in this study with the aim of making the large amount of data and the high complexity of the issues dealt with manageable. The main methods, i.e. coding of answers, statistical analysis and network cluster analysis, have been briefly introduced in the introductory overview to this chapter.

As with the initial choice of questions in the questionnaire, what ultimately matters as regards the quantitative methods is the adequate representation of the Member States' legal frameworks of enforcement. **As long as the values chosen sufficiently represent the underlying data, data limitations and further restrictions are acceptable.** The quantitative values used in this study are necessarily proxies for complex legal rules and realities. Such proxies are useful insofar as they provide insights into matters that would otherwise be too complex to analyse.

In a way, these approaches mirror the decision-making processes of banks. Banks also need to find ways of managing the complexities of loan enforcement. Hence, approaches such as identifying the most relevant factors amongst the 105 questions asked in this study are legitimate.

Coding

This study codes the Member States' answers to the European Commission's questionnaire. The coding supports the identification of commonalities, differences and clusters. In addition, it facilitates further statistical and network analysis. Finally, the numerical values assigned to the answers can be employed by the European Banking Authority to further analyse the empirical information on recovery rates and speed. In order to facilitate such use of the coding data, this study has been coordinated with the research efforts of the European Banking Authority.

The design of the coding framework benefited from other studies applying a coding methodology. This strand of research is sometimes referred to as '**leximetrics**' as it attempts to quantify law. The foundational work in this area by La Porta et al already focussed on law and finance.¹⁷ The coding principles applied in this study are based on more recent work such as the Extended Creditor Protection Index of the Centre for

¹⁷ R La Porta et al, Law and Finance, Journal of Political Economy, Volume 106, 1998, 1113.

Business Research of the University of Cambridge¹⁸ and the OECD Employment Protection Legislation (EPL) Indicators.¹⁹

The answers of the Member States have been coded on the basis of coding principles reflecting the aims and scopes of this project. Where certain questions required individual guidance, specific coding principles were provided. This was necessary for some qualitative questions and for all quantitative questions. The general and question-specific coding principles are available in Annexe 3.

The focus of the coding exercise is the amount and the speed of loan enforcement from the perspective of a bank as creditor. The answers are coded applying values between 1 (maximum) and 0 (minimum). 1 means maximum support of high and/or quick satisfaction of the bank. 0 means no support of high and/or quick satisfaction of the bank. Values between 1 and 0 are used to represent relative support of bank recovery. The higher (lower) the value, the more (less) support is provided for a high and quick satisfaction of the bank. Numerical values provided as answers to the quantitative questions are normalised across {0,1} and rounded to one decimal place.

Reforms, which are already law but not yet in force, are treated as law. Reform proposals, for which legislative acts are still missing, are ignored. If the law allows the bank to contract for a stronger position, then this stronger position is also considered in the values assigned. This is based on the understanding that contractual freedom is beneficial for banks as banks are sophisticated market participants adjusting loan contracts to their preferences.²⁰

The coding principles attempt to reflect a reasonable understanding of the questionnaire and the answers provided. A particular challenge is the application of consistent coding principles **in a way that Member States' answers are truly reflected in the values**, while at the same time ensuring the comparability of the answers and their coding. To give one example, where the questionnaire asks for a Yes/No answer, additional information given is ignored independent from whether it does or does not qualify the Yes/No answer. This decision was taken as, first, the **questionnaire's instruction** only asked for a Yes/No answer and a reasonable understanding of the question would be that additional information given is not relevant. Second, since most Member States did not qualify their answer, the comparability of answers would be compromised if additional information modifying the Yes/No answer was selectively considered. This would invalidate the simple Yes/No answers, which otherwise might also have been qualified by additional information.

Where the data has gaps, they are only filled in cases of main and sub-questions. Where a conclusion from the answer to the main question could be drawn without a doubt to close a gap in the answer to the sub-question (or vice versa), the answer is assumed and coded. Otherwise, gaps in the answers were left open.²¹ Some answer sets to numerical questions could not be coded, as there was not enough consistent and clear numerical data in the answers. An example is Question 2.28 as regards the

¹⁸ See https://www.cbr.cam.ac.uk/fileadmin/user_upload/centre-for-business-research/downloads/research-projects-output/creditor-protection-index-references-25-countries.pdf.

¹⁹ For the methodology see <https://www.oecd.org/els/emp/EPL-Methodology.pdf>.

²⁰ L A Bebchuck and J M Fried, *The Uneasy Case for the Priority of Secured Claims in Bankruptcy*, 105 *Yale Law Journal* 857, 864 et seq., 881 et seqq. (1996); E Warren and J L Westbrook, *Contracting out of Bankruptcy: An Empirical Intervention*, 118 *Harvard Law Review* 1197, 1213 et seqq. (2005).

²¹ For the gaps identified see Annexe 5.

court capacity (clearance rates) of insolvency proceedings concerning sole traders and partnerships.

As regards their content, all responses in the first set of responses are assumed correct.²² The answers in this set of responses are taken at face value even if they seem doubtful. However, such answers are flagged and listed in this report.²³ Of course, best efforts were made to interpret the answers against the background of the questionnaire, the framework of the project and against the other answers provided by the relevant Member State. It cannot be excluded, however, that ambiguities may have led to coding mistakes. Where answers were not comprehensible, no value is assigned.

The answers in the second set of responses updating or correcting the first set of responses after **the Member States' meeting on 24 September 2019 were only accepted** if they were explained and plausible. These two conditions were set at the conference and aim at avoiding a distortion of the data by amendments only aiming to improve the individual score of a certain Member State.

The answers of the Member States were independently coded by two persons. Both coders were equipped with the general and question-specific coding principles reproduced in Annexe 3. The two coders worked blindly and were not in contact before and during the coding. Both persons coded all answers such that two complete sets of numerical values were produced. The values assigned were then compared. Differences in the values assigned were solved by the author who then assigned a final number. In addition, the author made random checks of the values assigned for each qualitative and quantitative answer. In the specific case of the second set of responses updating or correcting the first set of responses, the amended answers were again coded by two persons. In this case, however, the author was one of the two coders.

The results of the coding are shown in Annexe 4.

Statistical analysis

On the basis of the coding exercise, statistical analyses are conducted. Such analyses focus on the European Union as a group, the Member States, groups of questions and specific questions. For example, averages of the values between 1 (maximum) and 0 (minimum) are calculated for types of debtors, secured and unsecured loans as well as individual and collective enforcement proceedings.

In the course of the statistical analysis, averages, medians and standard deviations were determined. For the purpose of this study, average values seem most informative. Median values are less useful given that the large majority of answers is coded with a value of either 1 or 0.

Cluster network analysis

This study also employs an innovative quantitative approach to identify clusters of Member States applying common legal approaches to enforcing bank loans.²⁴ The UCINET software is used to identify how close Member States are in their legal ap-

²² For details on the first and second sets of responses see Chapter 2: Member States' answers.

²³ See Annexe 7.

²⁴ This approach was first used by M Siems in another context of comparative law, see M Siems, Varieties of Legal Systems: Towards a New Global Taxonomy, *Journal of Institutional Economics*, Volume 12, 2016, 579.

proaches.²⁵ The UCINET programme is a software for the analysis of social network data. The results are visualised using the NetDraw visualisation tool.

In essence, this cluster analysis is based on the idea that the closer the numerical values representing the answers by the Member States to the 105 questions, the more similar their legal approaches. In other words, the cluster network analysis shows the similarity or distance of legal approaches. This cluster analysis is implemented for all questions and with a focus on certain areas of law.

Network analysis requires not only attribute data, but it is built on the analysis of relational data. The relations are regarded as linkages between agents (nodes). In this study, the Member States are the lawmaking agents. The data displayed in Annexe 4 **represents attributes of the Member States' legal systems**. This data is not suitable for performing a network analysis in its raw format. Nevertheless, it can be transformed into a relational dataset by calculating differences between each pair of Member States. For example, the differences between each pair of Member States regarding each of the answers to the 105 questions contained in the questionnaire can be calculated. In this case each answer is understood as an attribute.

Using the coding values available in Annexe 4, it was calculated how different (in absolute terms) each variable in the legal system of a Member State is to the same variable in the legal system of each of the other 27 Member States. This procedure yielded 105 absolute differences for each country pair (378 country pairs in total). In a second step, the absolute differences have been averaged out for each pair of countries,²⁶ resulting in an overall average difference. The smaller the average difference between two Member States the closer, i.e. more similar, their legal frameworks.

The results are then visualised based on 'spring-embedding' algorithms. In a spring-embedding procedure, the most connected nodes²⁷ (in this particular case represented by the Member States) are gathered into the core of the network, while the peripheral nodes (i.e. the least connected ones) are placed in areas where they have some connections. In addition, those connections between Member States under a certain threshold of average differences (e.g. 0.2 or 0.3) can be visualised by a line connecting the relevant Member States. This creates a network where lines between Member States signal (very) similar legal frameworks.

²⁵ See <https://sites.google.com/site/ucinetsoftware/home>.

²⁶ The ordering of countries in a country pair is irrelevant, as the absolute difference has been calculated for each variable. As such, the difference between Member State A and Member State B is equal to the difference between Member State B and Member State A.

²⁷ In the network analysis terminology, a 'node' refers to an agent (i.e. person, group of persons, geographical unit, etc.), while the connections denote relationships or flows between the nodes.

The steps of the procedure described above are illustrated hereafter:

Step 1: Calculation of the absolute differences by question and pair of Member States. For illustrative purposes, Austria (AT) is used as a reference in the following description. The procedure is repeated for the remaining 27 Member States.

Question	BE	BG	...	UK
Q1.1	Absolute difference between the codes assigned on Q1.1 for AT and BE, denoted as $ \Delta_{AT_BE_1.1} $	Absolute difference between the codes assigned on Q1.1 for AT and BG, denoted as $ \Delta_{AT_BG_1.1} $...	Absolute difference between the codes assigned on Q1.1 for AT and UK, denoted as $ \Delta_{AT_UK_1.1} $
Q1.1.1	Absolute difference between the codes assigned on Q1.1.1 for AT and BE, denoted as $ \Delta_{AT_BE_1.1.1} $	Absolute difference between the codes assigned on Q1.1.1 for AT and BG, denoted as $ \Delta_{AT_BG_1.1.1} $...	Absolute difference between the codes assigned on Q1.1.1 for AT and UK, denoted as $ \Delta_{AT_UK_1.1.1} $
...
Q3.23	Absolute difference between the codes assigned on Q3.23 for AT and BE, denoted as $ \Delta_{AT_BE_3.23} $	Absolute difference between the codes assigned on Q3.23 for AT and BG, denoted as $ \Delta_{AT_BG_3.23} $...	Absolute difference between the codes assigned on Q3.23 for AT and UK, denoted as $ \Delta_{AT_UK_3.23} $

Step 2: Calculation of the average difference by pair of Member States. For illustrative purposes, Austria (AT) is used as a reference in the following description. The procedure is repeated for the remaining 27 Member States. The average difference between a pair of Member States shows the degree of similarity between the legal systems of the two Member States, whereby lower differences denote higher similarity and vice versa.

Member State	Average difference
BE	$Avg_{diff_{ATBE}} = \frac{ \Delta_{AT_BE_1.1} + \Delta_{AT_BE_1.1.1} + \dots + \Delta_{AT_BE_3.23} }{105}$
BG	$Avg_{diff_{ATBG}} = \frac{ \Delta_{AT_BG_1.1} + \Delta_{AT_BG_1.1.1} + \dots + \Delta_{AT_BG_3.23} }{105}$
...	...
UK	$Avg_{diff_{ATUK}} = \frac{ \Delta_{AT_UK_1.1} + \Delta_{AT_UK_1.1.1} + \dots + \Delta_{AT_UK_3.23} }{105}$

Step 3: Construction of a matrix of differences, using as input the average differences calculated at Step 2. The matrix of differences is a square matrix, with the average differences displayed below the main diagonal²⁸.

	AT	BE	BG	...	UK
AT	-				
BE	<i>Avgdiff_{ATBE}</i>	-			
BG	<i>Avgdiff_{ATBG}</i>	<i>Avgdiff_{BEBG}</i>	-		
...
UK	<i>Avgdiff_{ATUK}</i>	<i>Avgdiff_{BEUK}</i>	<i>Avgdiff_{BGUK}</i>

Step 4: The matrix of differences is then analysed and visualised using the UCINET and NetDraw software as described above.

Relationship between qualitative and quantitative methods

Given the large amount of information this study digests,²⁹ the question arises as to the relationship between the qualitative and quantitative methods employed. As 96 out of the 105 questions in the questionnaire aim for Yes/No answers instead of a free text description of the Member State's legal frameworks, there is a tendency for the quantitative analysis to take the lead. To give an example, the quantitative analysis can be more precise in the calculation of overall levels of enforcement support in specific areas of the law. While the quantitative analysis can provide an average score of individual Member States' support of bank enforcement in insolvency proceedings, the qualitative analysis could only provide more vague categories as results.

Nevertheless, there is room for qualitative considerations. A good example is the identification of themes bringing an order to the 105 questions. In Chapter 7, the theme of private power of the bank to enforce loan contracts without the need to apply to state authorities is identified. This is an insight that quantitative methods could not achieve.

²⁸ As explained above, the ordering of the Member States in a country pair has no relevance for the results. For this reason, the elements above the main diagonal are identical to the elements below the main diagonal and the former will therefore not be included in the matrix of differences.

²⁹ Cf the information in Annexe 2.

Chapter 4: Loan enforcement in the EU Member States

Introduction

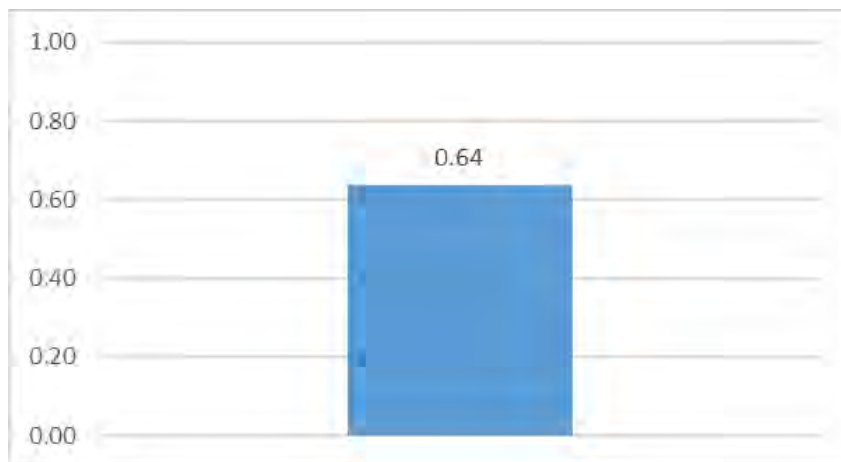
This chapter presents an analysis of the answers to the questionnaire. The results are presented following the structure of the questionnaire. First, an overview is provided from an EU perspective. Hence, overviews are given for the EU-wide support of enforcement as well as the treatment of different types of debtors, loans and procedures. Then the data is analysed focusing on the individual Member States and their treatment of different types of debtors, loans and proceedings. The answers analysed in the sections on the EU and Member State perspectives are exclusively those to Yes/No questions in the questionnaire. Thereafter, the numerical answers to the questionnaire are analysed in the section on numerical data.

EU perspective

Overall

Overall, taking the perspective of a bank as loan contract creditor, the enforcement frameworks of the Member States are satisfactory. The average value of all answers requiring a Yes/No answer coded is 0.64 on a scale from 0 (lowest) to 1 (highest). This value represents the overall support banks receive when enforcing loan contracts in the European Union as a region. Later, the support level will be further differentiated considering individual values for each Member State. The common score of 0.64 for the European Union as a region allows a first evaluation of the competitiveness of the European Union compared with other regions and countries worldwide.

Average value of all answers coded in the 'Yes/No' section of the questionnaire:

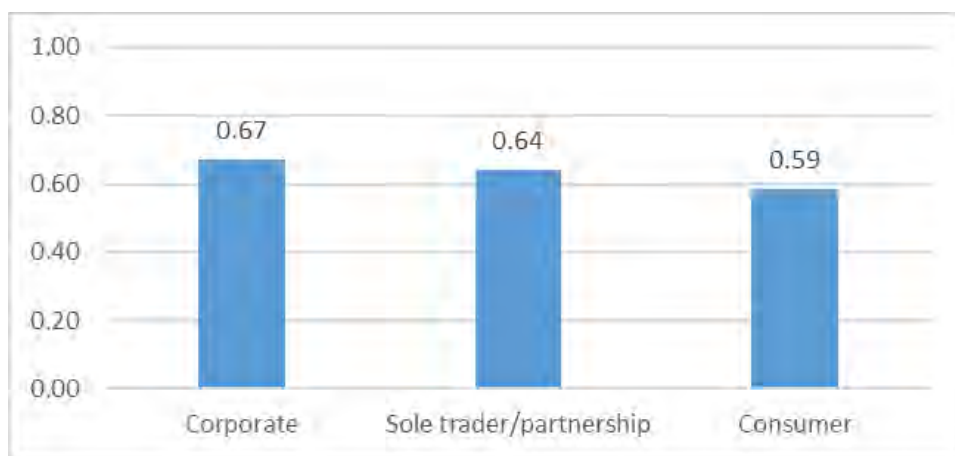


Type of debtor

The legal frameworks of the Member States facilitate enforcement of bank loans most against corporate debtors, somewhat less against entrepreneurs in the form of sole traders and partnerships and least against consumers. On average, the differences in the ease of enforcement against different groups of debtors are rather minor. The averages of all Member States vary between 0.67 for corporate debtors, 0.64 for sole traders and partnerships and 0.59 for consumers.

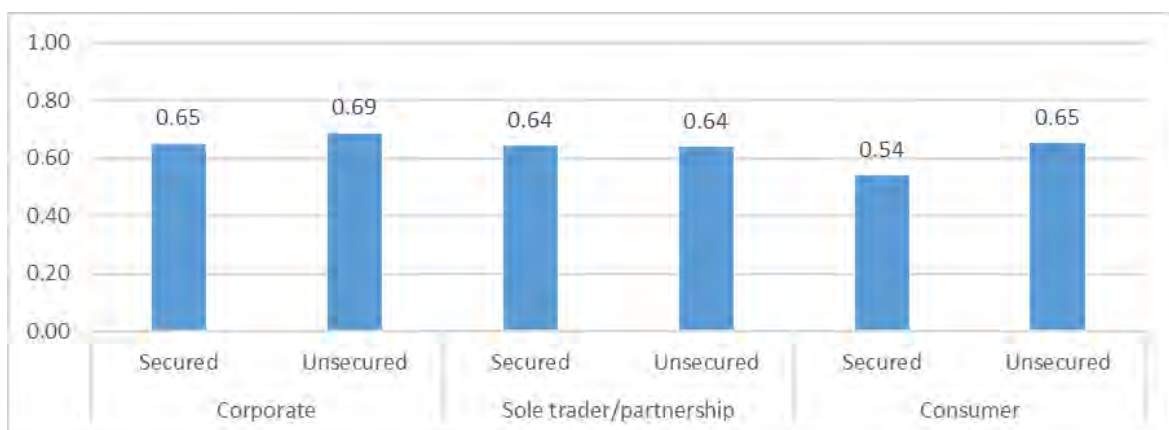
Comparing the ease of enforcement against different types of debtors is potentially relevant for the pricing of credit. The more legal systems support enforcement, the more attractive credit conditions a bank can offer. If a legal system prefers enforcement against one type of debtor A over another type of debtor B, then type of debtor A may expect more favourable borrowing conditions. As a starting point, all debtors should be treated equally in terms of enforcement in order to avoid distortions of the credit market. However, specific features relevant for enforcement, for example limited liability, which is present in companies, but not in sole traders and consumers, may justify different enforcement rules. In addition, arguments can be made for distinguishing enforcement against traders (companies, partnerships, sole traders) on the one hand, from enforcement against consumers on the other hand. Such arguments point to the difference in negotiation power and commercial capabilities between traders and consumers.

Average value of answers coded by type of debtor:



Distinguishing enforcement against different types of debtors according to type of loan (secured or unsecured) reveals that the enforcement of unsecured loans is generally more supported by the Member States than the enforcement of secured loans. This result is particularly prevalent for the enforcement against consumers, while the results are identical for sole traders and partnerships.

Average value of answers coded by type of debtor and type of loan:



As with types of debtors, the starting point for the enforcement of secured and unsecured loans should be equality of enforcement. Secured and unsecured loans are in-

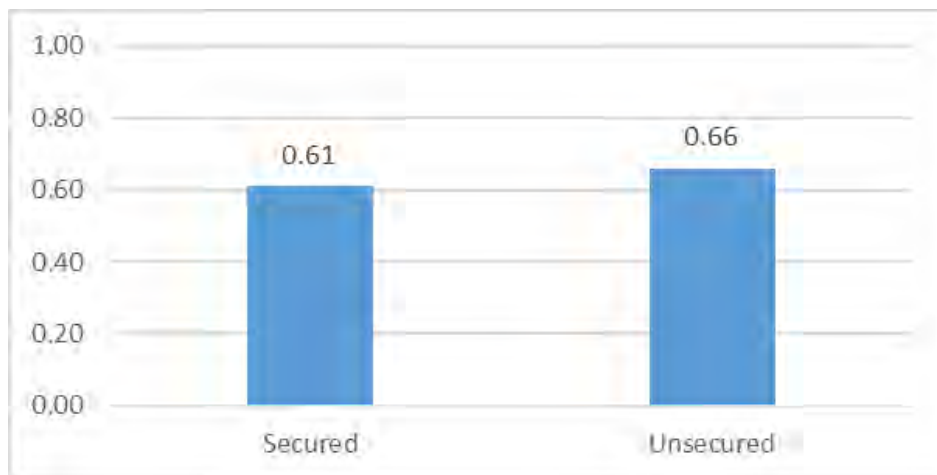
trinsically different, of course. The distinguishing feature is the availability of security to support the satisfaction of (only) the secured lender. However, accepting this different nature of secured and unsecured loans, both types of loans should find equal support in terms of enforcement by banks. Otherwise, there is a risk that the legal enforcement frameworks distort the legal bargain between bank and borrower. Such distortion will ultimately lead to banks preferring those types of loans that are preferred in enforcement. In other words, if enforcement of unsecured loans is more attractive than enforcement of secured loans then unsecured loans will get cheaper for the borrowers and secured loans will be available only at higher cost. This is undesirable, as it should be the negotiation and the pricing of the parties that should inform the cost of debt finance and not the differences in enforcement frameworks.

Type of loan

On average in all Member States and in line with the above results, the legal frameworks in the EU as a region prefer the enforcement of unsecured loans to the enforcement of secured loans. As indicated already, secured loans are usually more beneficial for a bank in terms of recovery rate compared to unsecured loans. This intrinsic advantage of secured over unsecured loans is not reflected in this analysis. Instead, the analysis assumes equality for unsecured and secured loans and then asks which type of loan finds a more advantageous enforcement framework accepting its intrinsic characteristics as a starting point. As explained above, legal frameworks should provide for equality as regards the enforcement of secured and unsecured loans in order to avoid distortions of the credit market.

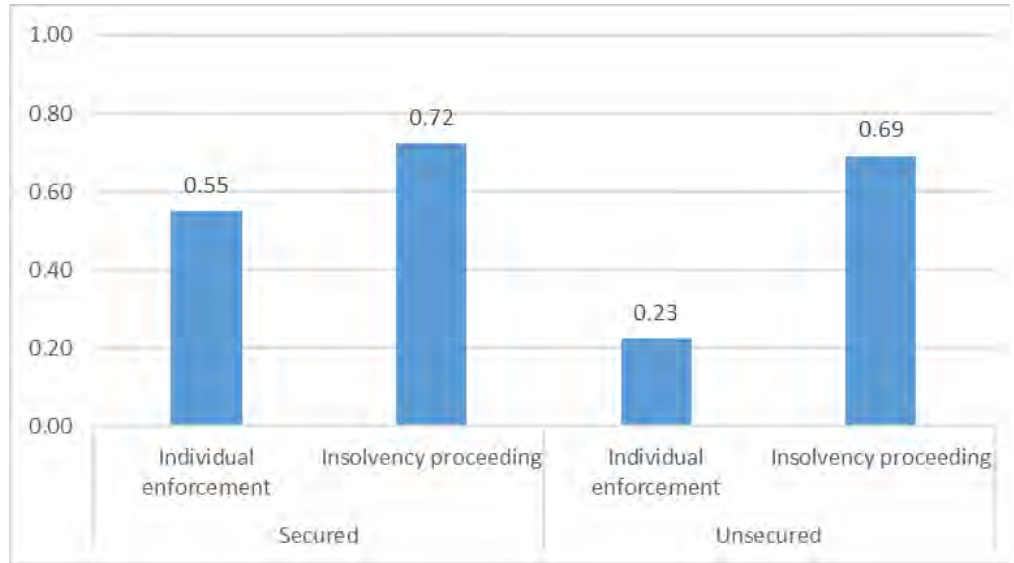
The following chart shows that the legal frameworks of all Member States collectively are more supportive of the enforcement of unsecured loans if the type of enforcement (individual or collective) is not differentiated.

Average value of answers coded by type of loan:



How do these results change, if the enforcement of secured and unsecured loans is further distinguished by type of proceeding? The following chart evidences that the **legal frameworks of the Member States on average support the bank's enforcement much more in insolvency proceedings than in individual enforcement proceedings**. This is true for both secured and unsecured loans. The difference, however, is much more pronounced for unsecured loans than for secured loans.

Average value of answers coded by type of loan and type of procedure:

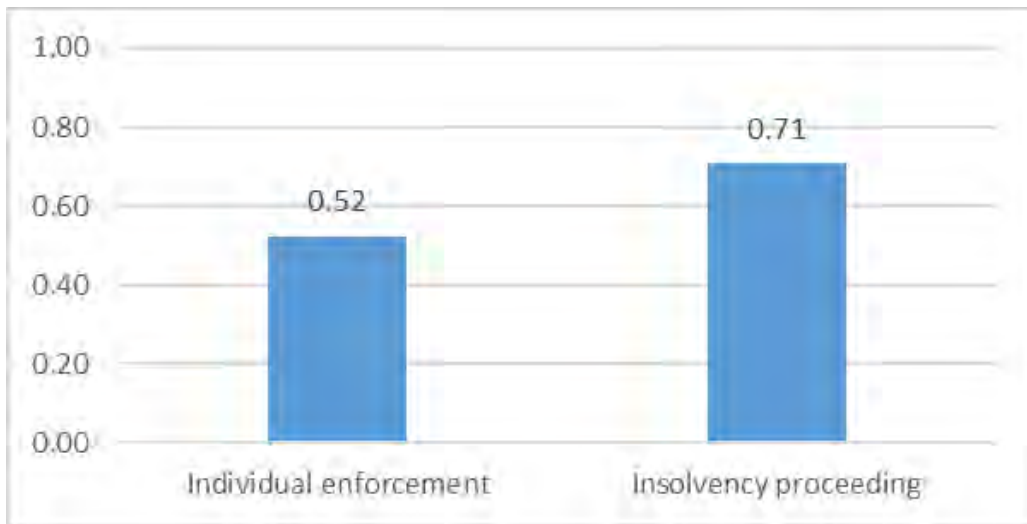


In line with the above principles, legal frameworks should support banks equally in individual enforcement and insolvency proceedings. As a starting point, there are no good reasons why collective enforcement should be preferred over individual enforcement (and vice versa). As explained above, the preference of one type of procedure would negatively affect the loan bargain of the parties. If the bank expects less support of enforcement in either individual or collective proceedings, it will rationally impose a risk premium to account for the lower expected recovery in the disadvantaged type of proceeding. This, however, means that the borrowers have to pay such premiums even if enforcement in the weaker type of proceeding never materialises. Consequently, the price of debt finance rises and hinders investment.

Type of proceeding

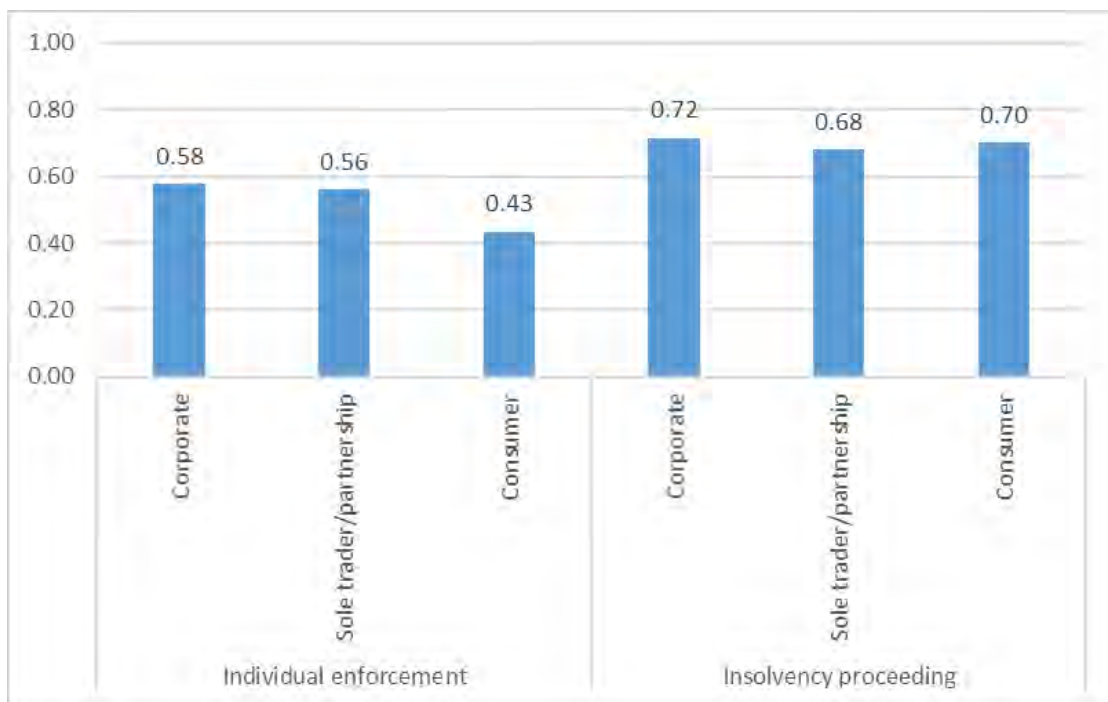
Differentiating by type of proceeding is clearly in line with the above results. Assuming equality between individual enforcement and insolvency proceedings, on average in the EU banks find a much more advantageous legal enforcement framework in an insolvency proceeding than in individual enforcement. The EU-wide average of all Yes/No answers for individual enforcement is 0.52, whereas the EU-wide average for insolvency proceedings is 0.71. As explained above, such marked differences in the enforcement of different types of proceedings are undesirable. They increase the cost of credit and contribute to financial instability.

Average value of answers coded by type of procedure:



The advantage of insolvency proceedings over individual proceedings from a bank creditor perspective also holds if types of debtors are distinguished. Again, the spread for type of procedure is most pronounced for consumers.

Average value of answers coded by type of procedure and type of debtor:

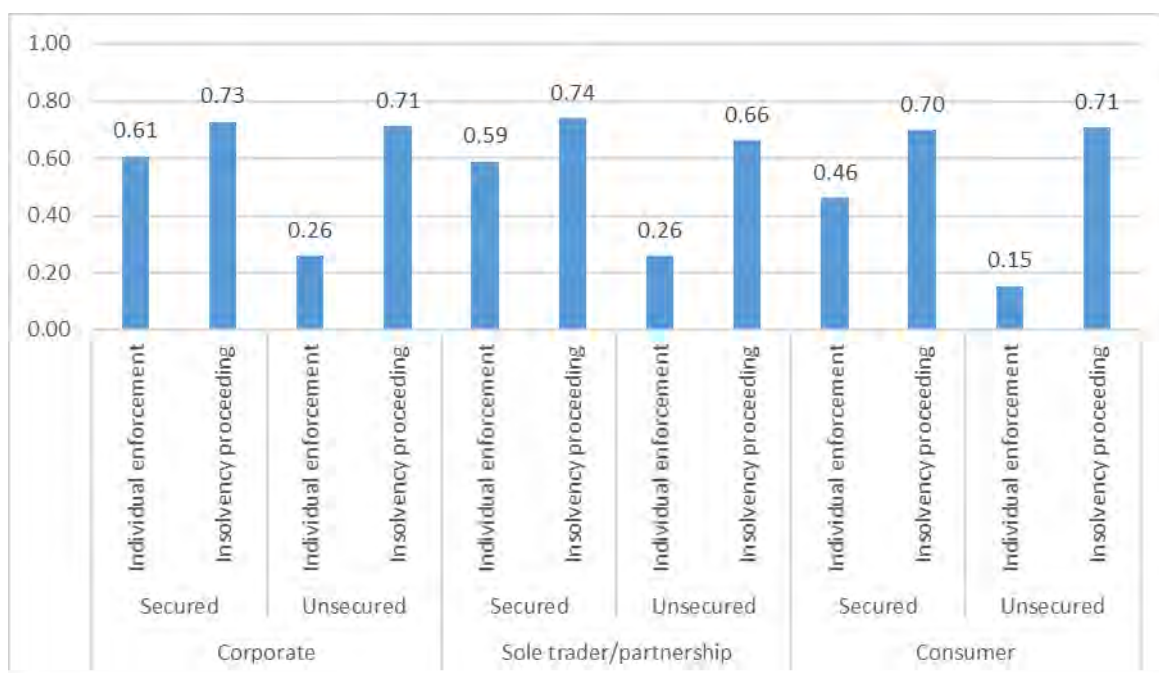


Type of debtor, loan and proceeding

Differentiating all types of debtors and all types of loans, do banks find a better legal environment in individual **than in collective enforcement? The Member States' answers** show a remarkable pattern. Banks find the best enforcement environments for secured and unsecured claims in insolvency proceedings. There is little variation in terms

of type of debt. What rather matters is that enforcement takes place in an insolvency proceeding. The worst situation for all types of debtors is, by far, the individual enforcement of an unsecured loan. Average values, finally, are achieved for the individual enforcement of a secured claim. Here a moderate enforcement environment is available in the EU, however, with a drop below 0.5 for enforcement against consumers.

Average value of answers coded by type of debtor, type of loan and type of procedure:



Applying the principles introduced above, such spreads in the support of loan enforcement by banks are undesirable as they contribute to higher costs of debt and bank instability. The results in this section of the report refer to the overall situation in the European Union as a region. The stronger the differences as regards types of enforcement, the higher the risk that the European Union is less attractive for debt finance than other regions and states offering higher and more equal support of enforcement. Rational borrowers would tend to migrate towards those legal frameworks where banks offer debt finance at the lowest cost to the borrowers. As effective enforcement frameworks contribute to lower cost of debt finance, this means that borrowers would look to those regions and countries with attractive enforcement frameworks for banks.

Conclusion

In the EU as a region and on average, banks find a satisfactory legal framework to enforce loan contracts. At such EU-wide level and on average, the differences between enforcing loan contracts against corporate debtors, sole traders and consumers are minor. Taking a closer look at details, however, does reveal major differences. Also, it should be noted that at this level of analysis differences between Member States are not yet considered.

Hence, still looking at the EU as a whole, the legal frameworks are more advantageous for the enforcement of unsecured and less advantageous for the enforcement of secured loans. A further strong difference concerns the type of enforcement proceeding.

In the EU as a region, banks are much more supported to enforce in insolvency proceedings than in private enforcement actions. This applies regardless of whether the loan is secured or not. In fact, in the EU as a whole, banks find the best enforcement environments for secured and unsecured claims in insolvency proceedings. From a bank perspective, the worst enforcement environment exists for the individual enforcement of an unsecured loan.

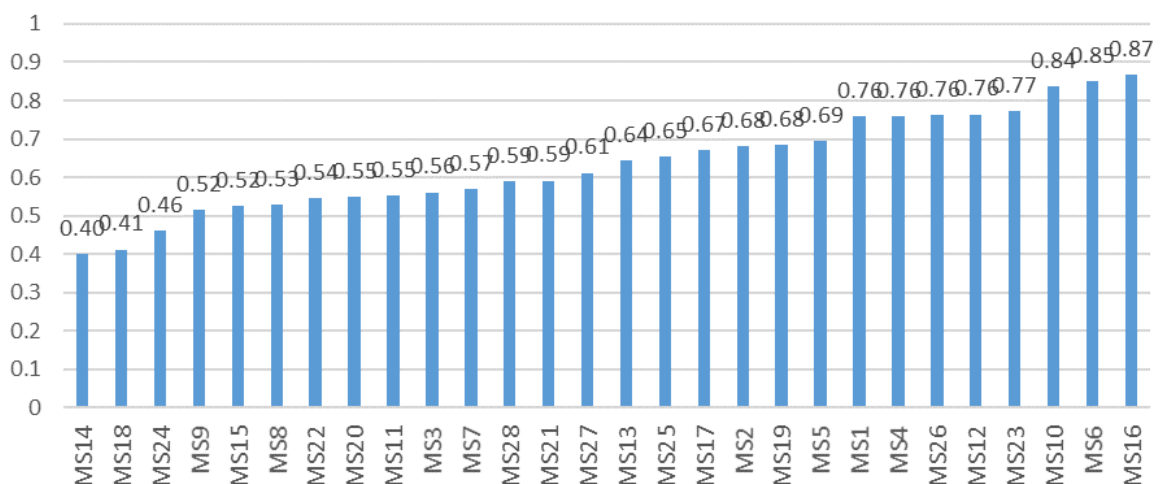
These differences in the relative support of enforcement of bank loans are cause for concern. Such differences distort the loan bargain of the parties. Rational banks will react by imposing risk premiums to account for recovery risks in those cases where enforcement is less supported. Consequently, costs of debt finance will increase, and the stability of banks will be negatively affected. As far as the European Union competes for debt finance, it risks lower investment levels and higher bank risks in particular if other regions and states offer higher and more equal levels of loan enforcement. Similarly, traders and consumers based in the European Union might look to other regions and countries in the search for more attractive debt finance conditions.

Member State perspective

Overall

The approach to individual and collective enforcement of bank loans in the Member States shows significant variation between the Member States. This is reflected by the variation in averages of the coded Member States' answers to Yes/No questions. The average of all Member States answers is 0.64. The highest averages are 0.87 (MS16), 0.85 (MS6), 0.84 (MS10), 0.77 (MS23) and 0.76 (MS1, MS4, MS12 and MS26). The lowest averages are 0.40 (MS14), 0.41 (MS18) and 0.46 (MS24). All other Member States achieve averages above 0.5 and are in a group with averages between 0.52 and 0.69. **As a result, the support banks find in the Member States' legal frameworks for the enforcement of bank loans differs significantly across the EU.** The following chart shows the variation between Member States.

Average value of answers coded by Member State in ascending order:



Those Member States with lower averages offer generally less support for banks in the enforcement of bank loans resulting in lower recovery rates and longer time periods to recovery. As explained, banks can be expected to react to such less attractive legal frameworks by increasing the cost of debt finance for traders and consumers. This

raises three concerns for the Member States affected. First, such Member States will tend to see lower levels of investment and consumer spending as traders and consumers can only borrow at higher costs. Second, bank stability may be negatively affected as banks encounter more obstacles in dealing with non-performing loans. Third, Member States with less attractive enforcement frameworks will experience that traders and consumers will look to other, more attractive Member States in search of finance.

Type of debtor

Does the ease of enforcement for banks in the Member States differ according to the type of debtor? The chart below shows that the averages for enforcement against corporate debtors and against sole traders and partnerships are quite similar to the overall enforcement averages presented above.

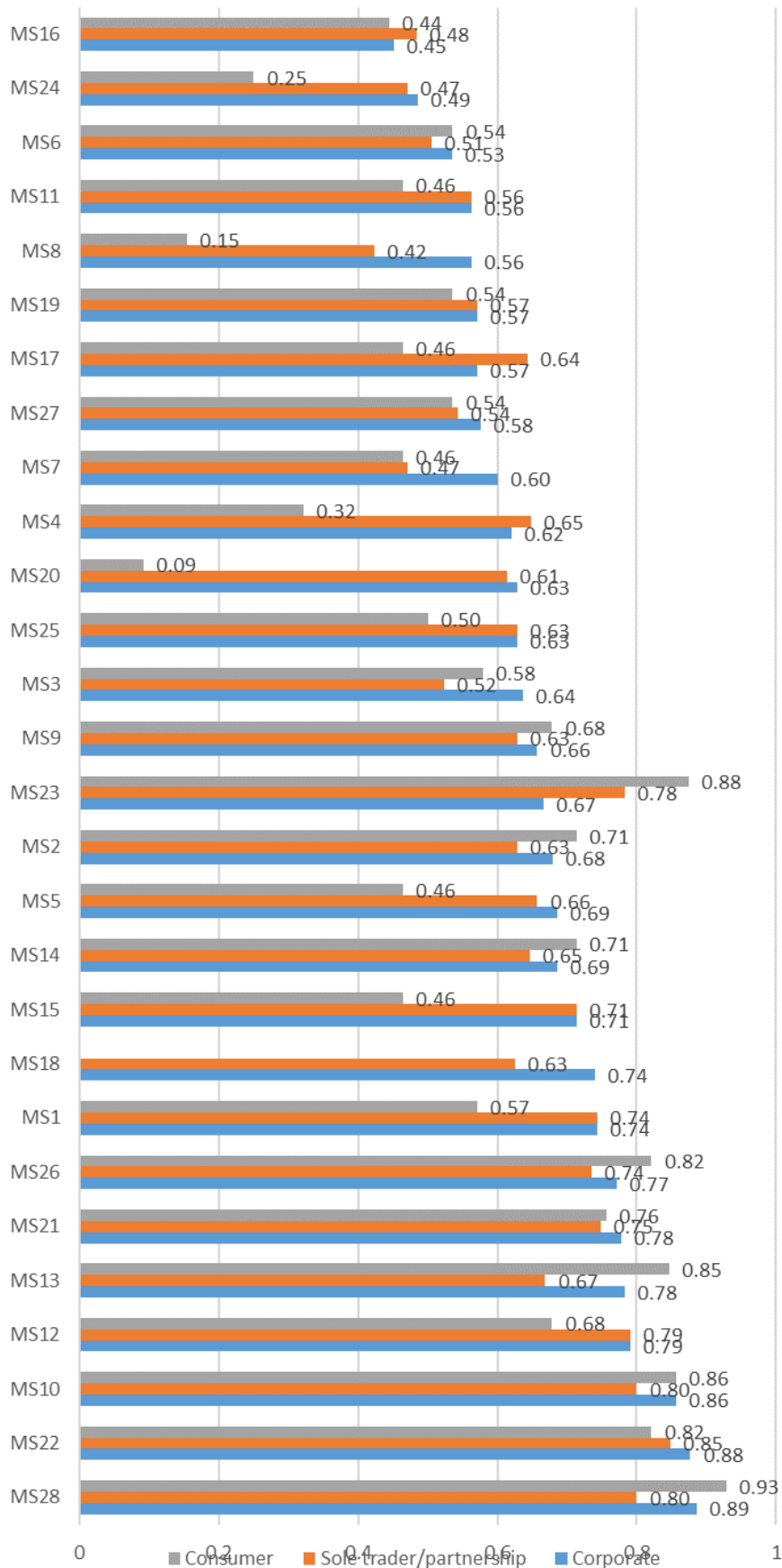
A comparison of the average values for each type of debtor in each Member State reveals three typical patterns. A first group of Member States treats all debtors similarly, i.e. the average values are in the same range for all types of debtors. A second group of Member States treats corporate, sole trader and partnership debtors similarly, but provides markedly different rules for consumers. Usually in this group, enforcement is less supported against consumers. A third group show significant differences in average values for all types of creditors.

The most common differences in Member States concerns deviations between the overall enforcement average and the average for enforcement against consumers. Hence, the legal frameworks of Member States seem to deviate more from their general approach when banks enforce loans against consumers. More precisely, the support by legal frameworks for banks enforcing loans is lower in some Member States compared to enforcement against companies, sole traders and partnerships. Therefore, banks expect lower recovery rates and/or longer recovery times for consumers than for other types of debtors.

The averages given here and which show more difficult enforcement environments in some Member States as regards consumers, can be traced back to individual questions. Questions 1.18, 2.18 and 3.18 exploring whether creditors are entitled to request insolvency proceedings to be commenced is a clear-cut example. For corporate **debtors all Member States answered 'Yes', for sole traders and partnerships 23 Member States answered 'Yes' and for consumers only 14 Member States gave a positive answer.**

The following chart shows the average values for all Member States differentiating for different types of borrowers.

Average value of answers coded by type of debtor and Member State (ascending by results for corporate debtors)



Type of loan

As regards the type of loan, the following tendency is revealed in a comparison of **Member States' approaches** to enforcement of bank loans. First, the differences between Member States' **treatment of unsecured and secured claims** increase from corporate debtors over sole traders/partnerships to consumers. Differences between Member States are particularly strong as regards the enforcement of secured and unsecured claims against consumers.

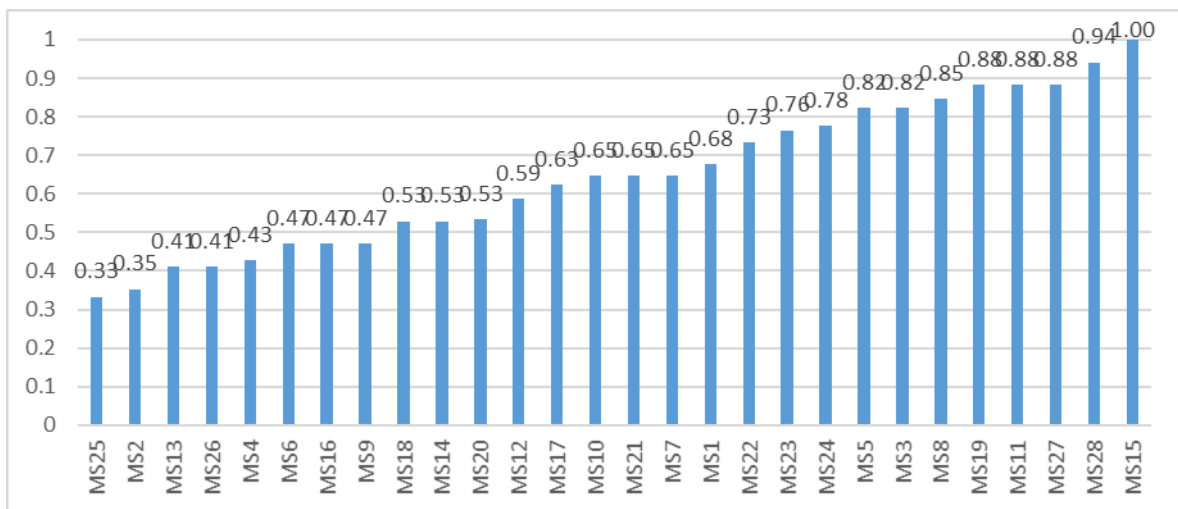
Second, the differences between Member States are more pronounced for secured loans than for unsecured loans. This means that banks in the EU have to deal with larger deviations in enforcement support when enforcing secured claims.

What is the relevance of such different treatment of secured and unsecured loans? As **explained above in the 'EU perspective' section, different** support for different types of loans means that the legal frameworks risk distorting the bargain between the parties. If a legal system prefers unsecured loans over secured loans in enforcement, then banks will decrease the price for unsecured loans and increase the price of secured loans (and vice versa).

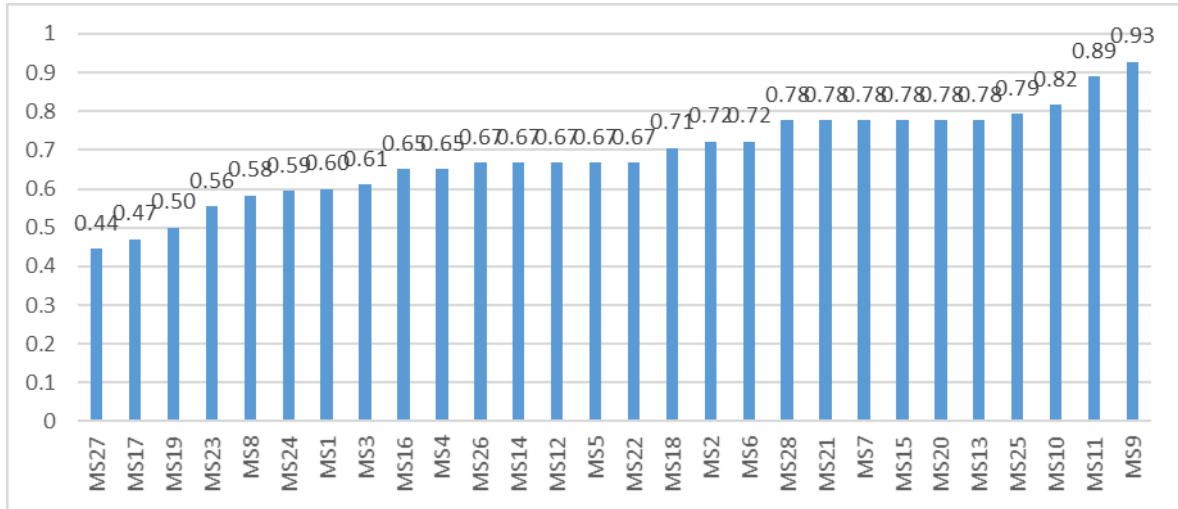
It would be wrong, however, to conclude that this is ultimately a zero-sum-game. This becomes clear if one considers that different types of traders and consumers have different access to assets they can offer as security and different liquidity as a basis for unsecured borrowing. For example, if a legal system prefers unsecured loans over secured loans in enforcement, then businesses which can offer strong liquidity outlooks will benefit by way of cheaper debt finance. However, those businesses that cannot offer strong liquidity but could offer assets as security will expect higher costs of debt finance. Such impulses by the legal system would be suboptimal. Investment decisions and the cost of finance should be driven by the products and services that businesses create rather than the fact whether they can offer liquidity or assets.

The tendencies in the Member States to feature more pronounced differences for secured than for unsecured loans and to show an increase in variations from corporate debtors over sole traders/partnerships to consumers are shown in the following six charts.

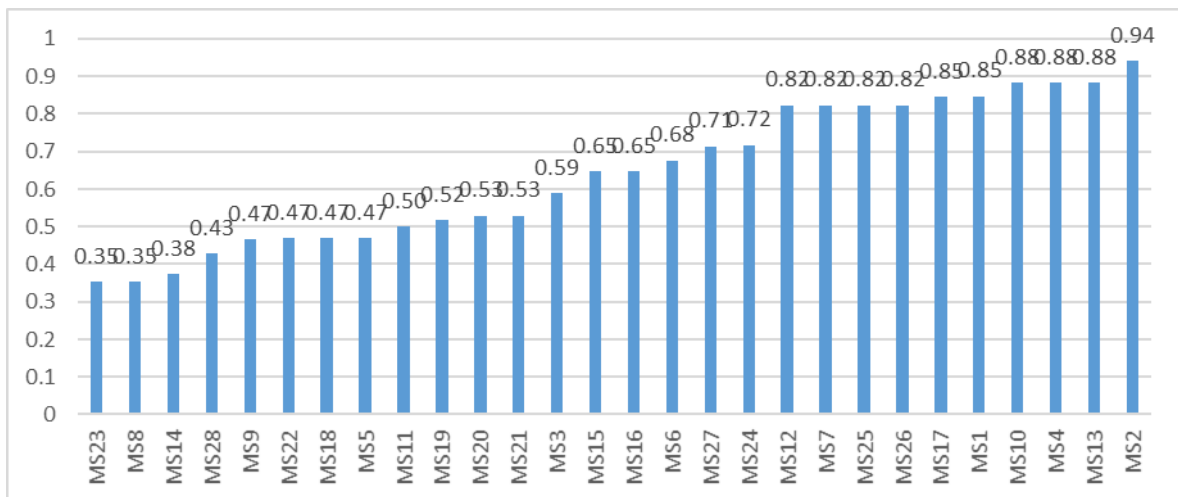
Average value of answers coded by Member State – corporate, secured:



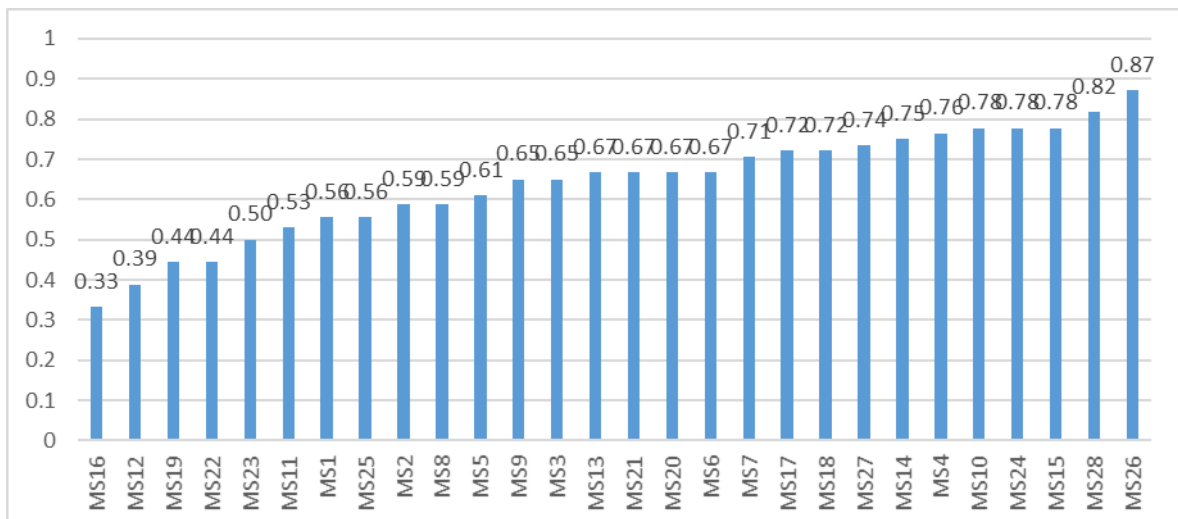
Average value of answers coded by Member State – corporate, unsecured:



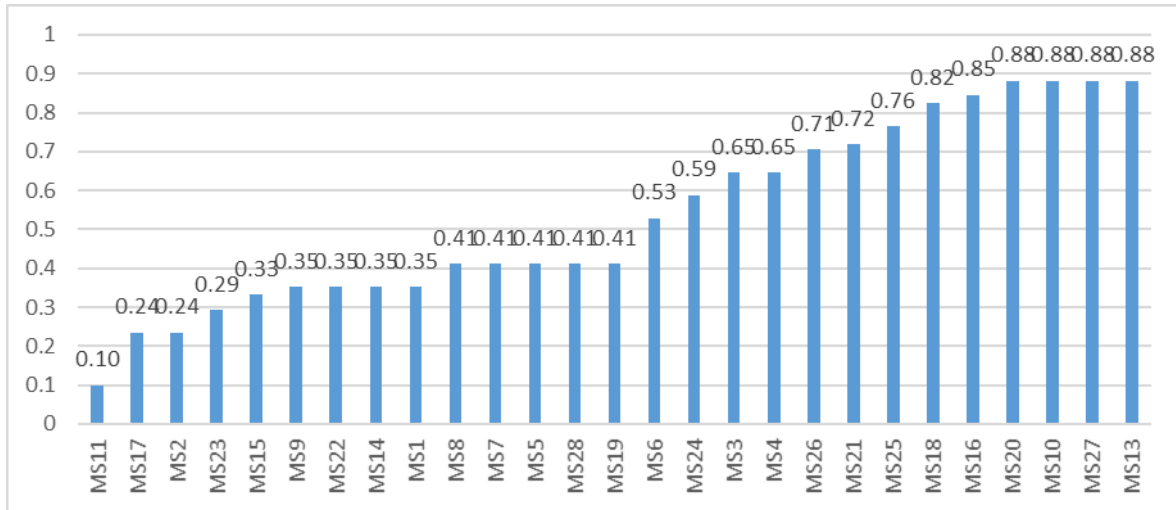
Average value of answers coded by Member State – sole traders/partnerships, secured:



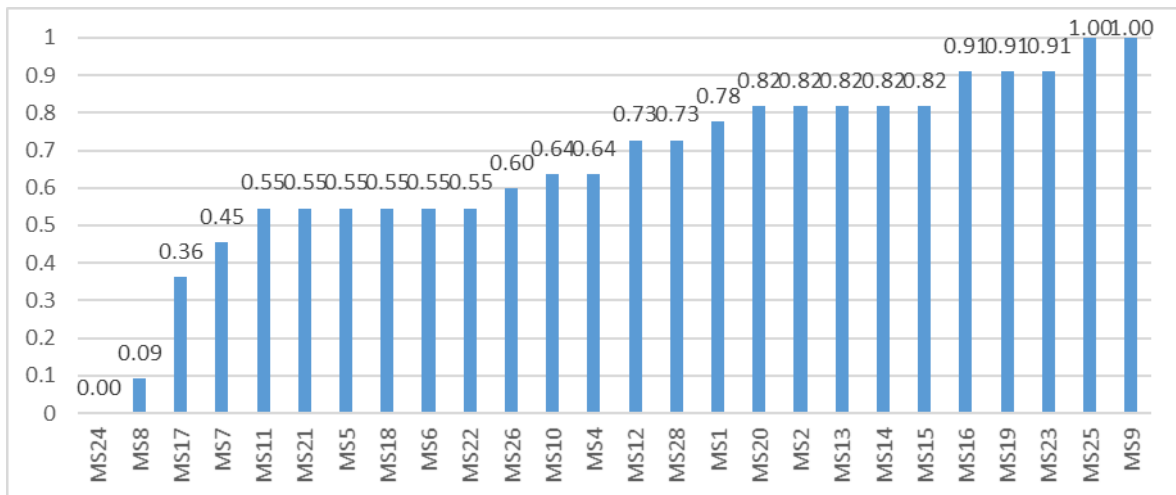
Average value of answers coded by Member State – sole traders/partnerships, unsecured:



Average value of answers coded by Member State – consumers, secured:



Average value of answers coded by Member State – consumers, unsecured:



Type of proceeding

The analysis of the European Union as a group has revealed that the enforcement in insolvency proceedings is more supported by the legal frameworks than individual enforcement. This analysis treats both types of proceedings equally as a starting point. In reality of course, individual enforcement at a time in which the debtor is not in financial distress, will usually lead to higher recovery rates compared to insolvency proceedings, in which the debtor will usually suffer from financial distress. However, the position in individual enforcement and insolvency proceedings is not always that clear-cut. A bank may, for example, be in a position where it might try individual enforcement or attempt the opening of an insolvency proceeding. Such situations may arise when the debtor is close to financial distress or when a lighter form of financial distress is already present, but no insolvency proceeding has been opened yet. In this situation, it will matter for the bank's **choice** whether the relevant legal framework promises higher recovery rates and shorter recovery times in individual or collective enforcement.

As a matter of principle, legal frameworks should not prefer one type of enforcement to the other without good reason. Otherwise, lenders such as banks will impose a harmful risk premium at the time of lending. The reason for this is the fact that the lender cannot foresee with certainty at the time of lending whether individual or collective enforcement will become relevant. If the lender, however, knows that one of these procedures is less attractive than the other, then the lender will plan for this and demand a higher price for the credit provided. The type of procedure is not under the **lender's exclusive control, since other creditors can open insolvency proceedings**, which will then bind all creditors and keep them from enforcing individually. The risk premium a lender will demand to reflect the potential later case of an unattractive enforcement proceeding is undesirable, as it will be a burden on the debtors even if this unattractive type of enforcement proceeding never materialises. As a result, all borrowers have to pay the cost for suboptimal enforcement frameworks.

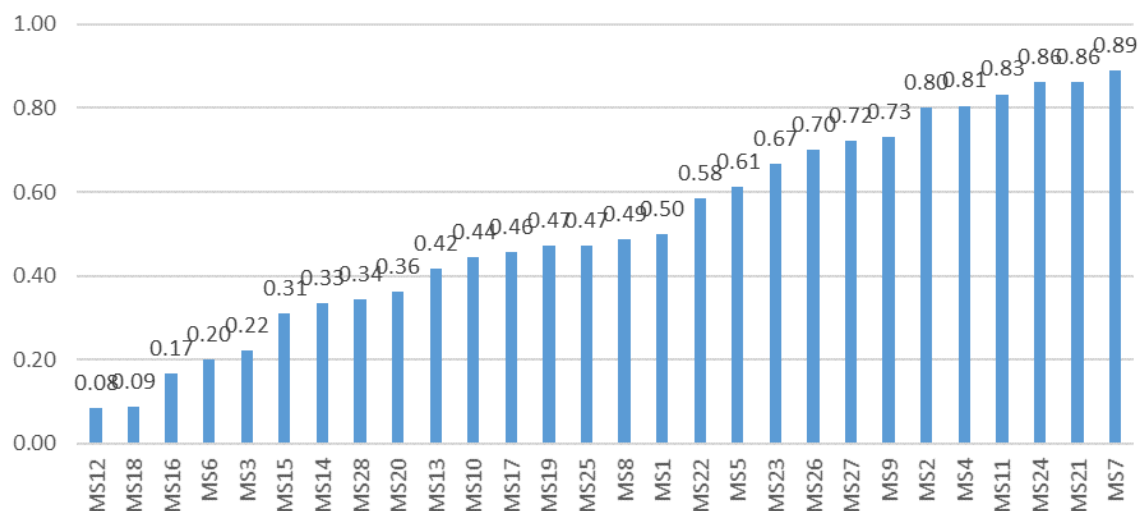
The following charts show the averages for each Member State distinguishing between types of proceedings, i.e. whether the bank enforces the loan by way of individual enforcement or by way of insolvency proceeding. These results do not distinguish the type of debtor. Instead, the results for all types of debtors are bundled in the following analysis. In particular, three results stand out.

First, as regards individual enforcement there are some very low and some high values. The lowest values for individual enforcement are 0.08 (MS12), 0.09 (MS18), 0.17 (MS16), 0.20 (MS6) and 0.22 (MS3). The highest values are 0.89 (MS7), 0.86 (MS21), 0.83 (MS11), 0.81 (MS4) and 0.80 (MS24).

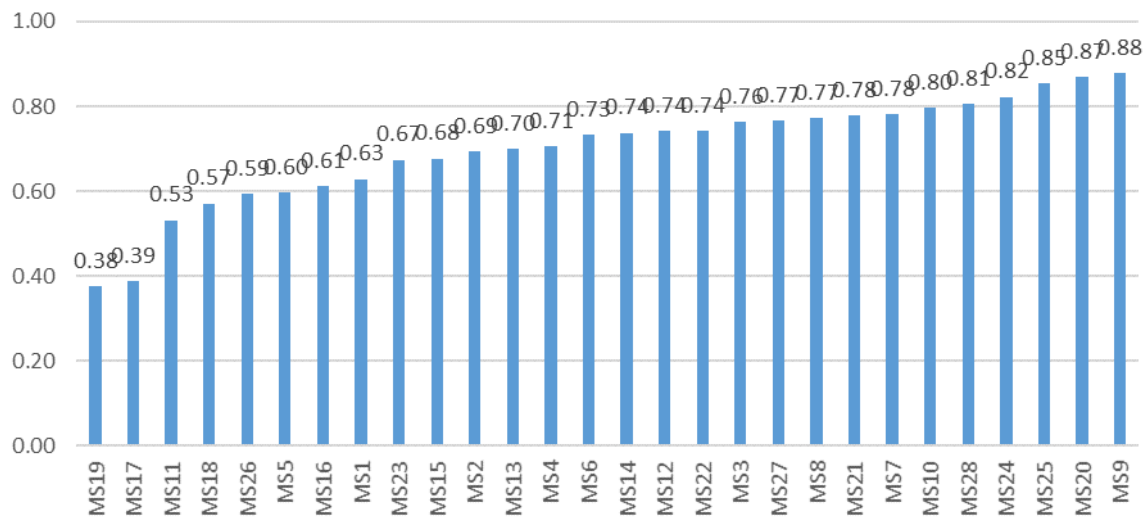
Second, as already noted for the European Union as a group, the Member States' values for insolvency proceedings are on average much higher than the values for individual enforcement. This means that in comparison, banks fare better in insolvency proceedings than in individual enforcement. The lowest values for insolvency proceedings are 0.38 (MS19) and 0.39 (MS17) compared to 0.08 (MS12) and 0.09 (MS18) for individual enforcement.

Third, the spread of values is much higher for individual enforcement than for insolvency proceedings. This is revealed by a simple visual comparison of the two charts below. For banks, this means that they are facing strongly differing levels of support and obstacles when individually enforcing loans in specific Member States. In contrast, enforcement is generally better in insolvency and there is less variation in the support level between Member States. As explained, differences between levels of support of the various types of proceedings within one Member State are undesirable.

Average value of answers coded for individual enforcement:



Average value of answers coded for insolvency proceeding



Type of debtor, loan and proceeding

Differentiating between types of debtors, loans and proceedings exposes the most pronounced differences between the Member States. These differences concern the individual enforcement of secured claims in insolvency proceedings.³⁰ Whereas there is less deviation between the Member States as regards enforcement of secured and unsecured claims in insolvency proceedings, there are clearly bigger differences comparing individual enforcement of secured loans on the one side, and enforcement of unsecured and secured loans in insolvency proceedings on the other side. This is in line with the above results showing that banks face the biggest difference between Member States when enforcing secured loans individually.

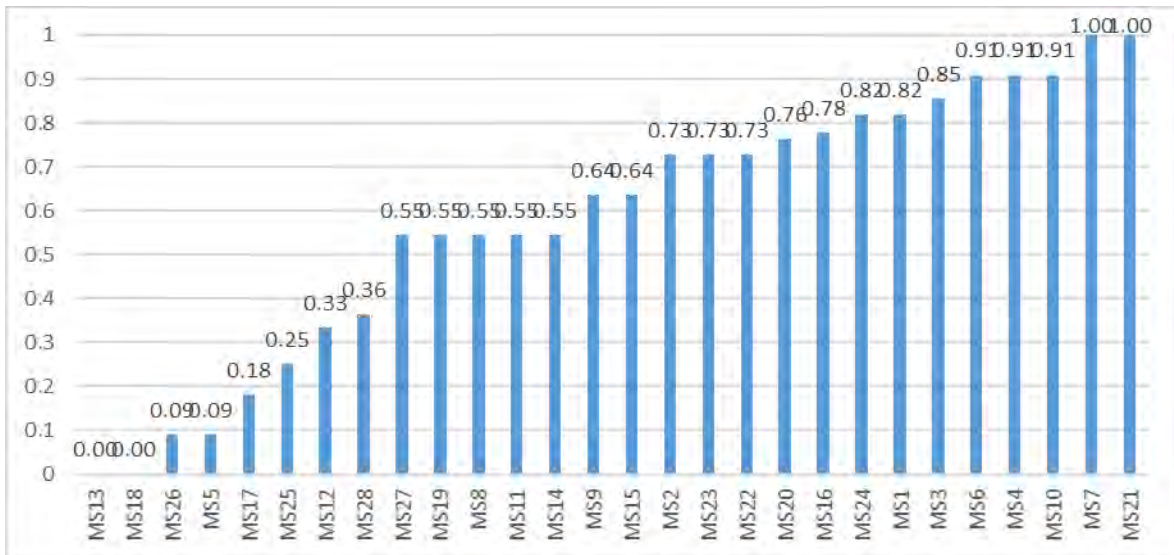
Comparing the enforcement of secured and unsecured claims within insolvency proceedings, the differences between Member States are stronger as regards secured claims.

As explained, such differences between Member States carry the risk for Member States with low scores to hinder local business activities through the negative impact of such rules on the price of debt finance. Furthermore, bank stability may suffer. Finally, local traders and consumers might prefer to test finance markets abroad.

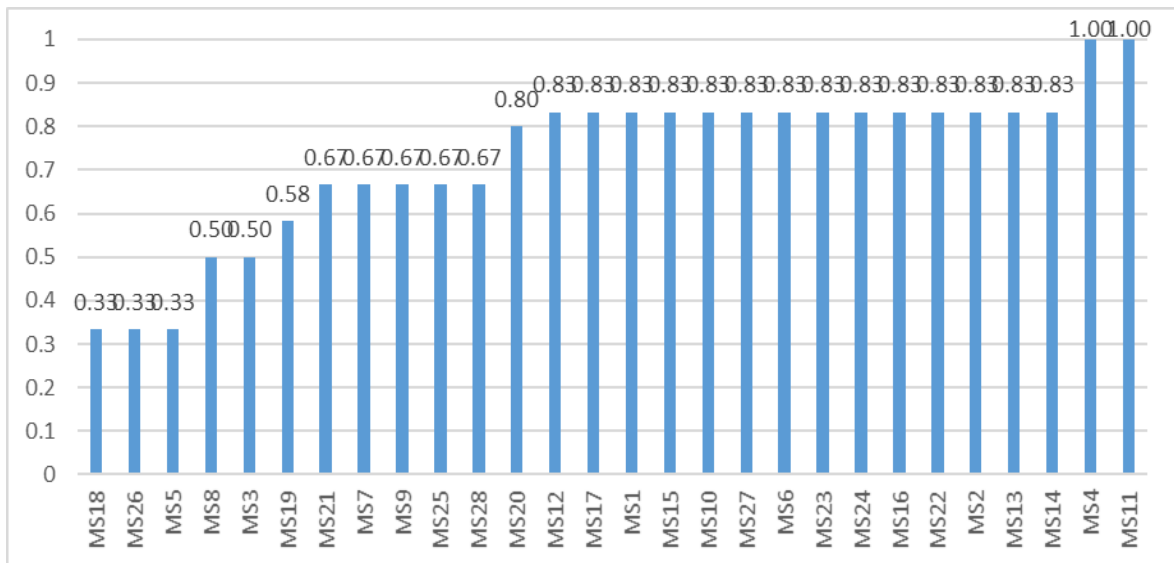
The following charts illustrate the differences mentioned. At this point it shall suffice to consider corporate debtors only.

³⁰ Individual enforcement of unsecured loans is not mentioned here, as this group had only one question in the questionnaire.

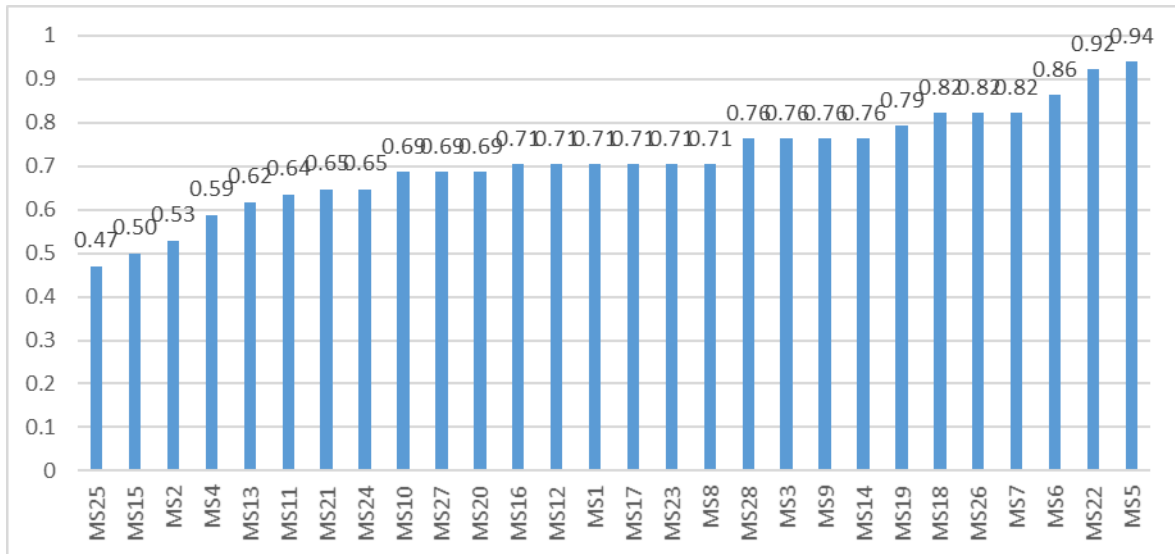
Average value of answers coded by Member State – corporate, secured, individual enforcement:



Average value of answers coded by Member State – corporate, secured, insolvency proceeding:



Average value of answers coded by Member State – corporate, unsecured, insolvency proceeding:



Conclusion

Turning the focus to differences between Member States' frameworks, banks are dealing with significant divergences in the levels of support they find for enforcement in the legal frameworks. Differences between Member States are more pronounced as regards consumers, secured loans and individual enforcement. The biggest differences between Member States exist in the legal frameworks governing the individual enforcement of secured loans.

Member States with lower scores risk stifling local activities of traders and consumers and may lead their citizens to look for finance options abroad. What is more, low values may signal higher stability risks for banks as they will find it more difficult to liquidate and reduce non-performing loans.

Numerical data

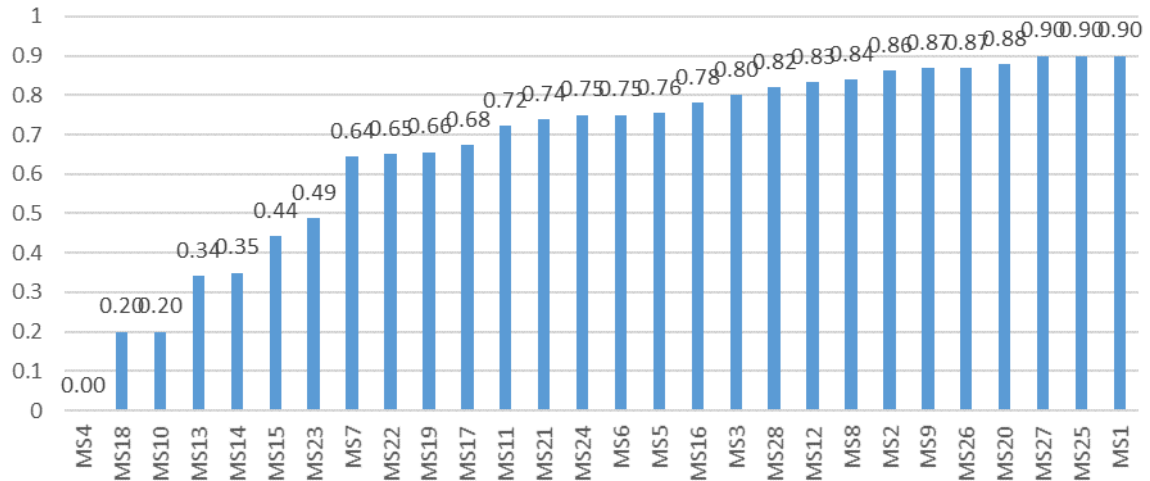
Introduction

In addition to answering the large majority of Yes/No questions, the Member States also provided numerical data on selected issues. All issues, except one, concern the enforcement of unsecured claims in insolvency proceedings. This means that the focus of the following analysis of numerical data is on the position of the bank as one among many unsecured creditors in collective enforcement. As such, the bank receives a **pro rata share of the debtor's assets after the secured and higher-ranking creditors have been satisfied**. Often, there is little left for the unsecured creditors, and their recovery rates are in the region of single-figure % of the nominal value of their claim.

To allow for easy comparison with the Yes/No answers, the numerical data is also coded and normalised across $\{0,1\}$, with 0 signalling no support for the enforcing bank and 1 signalling optimal support for the enforcing bank. The coding and calculation are described in detail in Annexe 3. The following text does not repeat all details from Annexe 3. Instead, in the interest of readability, only essential information for understanding the data is provided.

The following chart shows the overall average values of numerical answers coded for each Member State. There is significant variation between Member States.

Average values of numerical answers coded:



Taking all numerical data and differentiating between types of debtors reveals two insights. First, the differences between the treatment of different types of debtors are minor. This repeats an insight already gained from the answers to the Yes/No questions. Taken together, this solidifies the result that in the EU as a region the differences between types of debtors are not too pronounced. As with the Yes/No questions, however, there is a notable drop in enforcement support for consumers. On average, the European legal frameworks seem to protect consumers more against enforcement by banks than traders in the form of companies, sole traders and partnership. This reveals a policy according to which consumer protection extends into the area of enforcement.

Second, taking the EU-wide average, the level of enforcement support is satisfactory. As with the above analysis, this does not, however, indicate that there is no need for improvement. Instead, the following analysis of the individual issues will show that there are areas that call for action.

Average value of numerical answers coded per type of debtor:



Time limits for filing of claims

The Member States contributed specific information on time limits for the filing of claims in insolvency proceedings. Such time limits can contribute to quicker proceedings leading to earlier payouts. Hence, for a bank creditor enforcing an unsecured claim in insolvency, the shorter the time limits for filing claims the better.

The time limits are generally counted from the opening of the insolvency proceedings.³¹ The maximum limit mentioned by Member States for corporate debtors is 180 days. The maximum submitted by a Member State for sole traders/partnerships and consumers is 365 days. The minimum in the European Union for all types of debtors is 14 days. The data provided by Member States was normalised on a scale from 0 to 1, with 0 representing the maximum limit per debtor (which was set at 180 days for corporate debtors and at 360 days or more for all other debtors) and 1 representing the minimum limit (for which 30 days was set). In other words, the higher the number the shorter the time limit and, consequently, the better for the bank.

On average, the Member States require the filing of claims within short time periods, thereby offering an attractive enforcement environment for banks. This is evidenced in the following chart showing the average values for all types of debtors.

'Time limit for filing of claims?' – average value of answers coded by type of debtor:



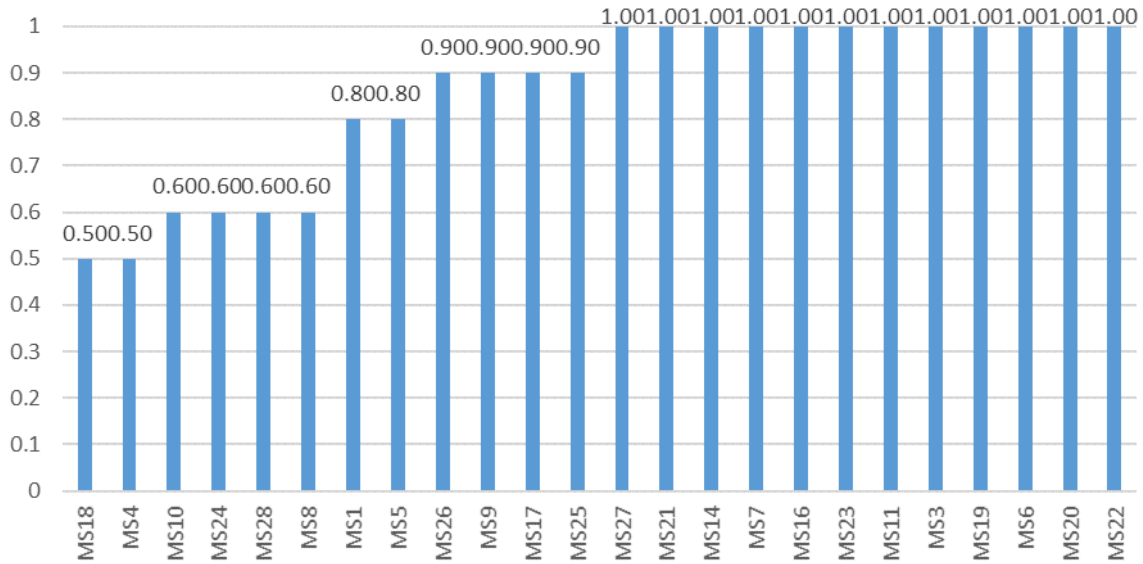
The average value for all debtors is 0.88. There is little variation between sole traders/partnerships and consumers. Keeping in mind that the maximum time for corporate debtors was only half the time limit for all other debtors, time limits are much more attractive for the bank in the insolvency of a corporate debtor. Here the question would be whether there are good reasons to treat the insolvencies of traders (i.e. corporate, sole trader and partnership debtors) differently.

If one translates these normalised values into time periods, then the following emerges. On average, and counted from the opening of proceedings, Member States require the filing of claims after 51 days in the insolvency of a corporate debtor, after 60 days in the insolvency of a sole trader or partnership and after 70 days in the insolvency of a consumer. The following charts show the results for the individual Member States.

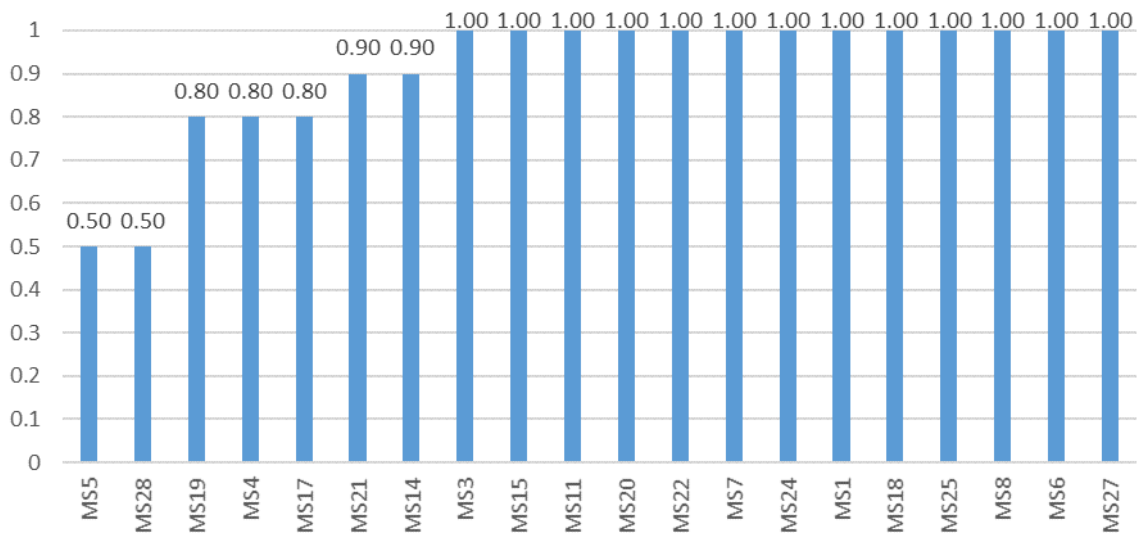
³¹ For details see the specific coding guidance in Annexe 3.

For those Member States with longer time limits, in particular those with scores of 0.5 and lower, the question arises whether time limits could be shortened in order to improve the speed of recovery.

'Time limit for filing of claims?' – corporate: average value of answers coded by Member State; normalised across {0,1}, with 0 = 180 days and 1 = 30 days; counted from opening of proceedings:



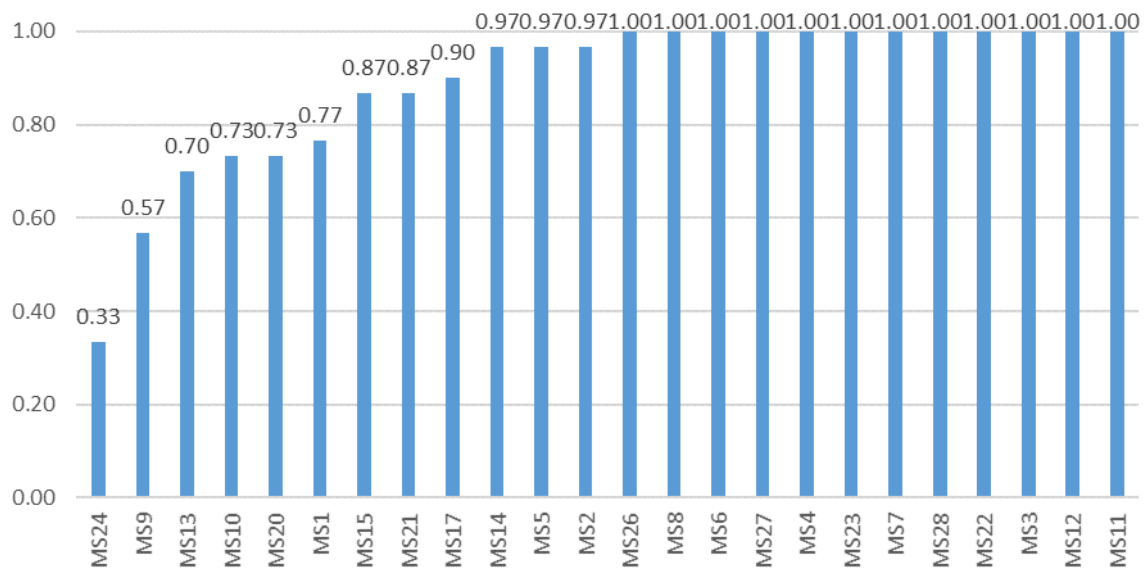
'Time limit for filing of claims?' – sole trader/partnership: average value of answers coded by Member State; normalised across {0,1}, with 0 = 360 days and 1 = 30 days; counted from opening of proceedings:



'Time limit for filing of claims?' – consumer: average value of answers coded by Member State; normalised across {0,1}, with 0 = 360 days and 1 = 30 days; counted from opening of proceedings:



The following chart integrates the above charts into one for all debtors:



Obligation to file for insolvency

Member States were also asked to provide information on the time limits for corporate debtors and sole traders/partnerships to file for insolvency. Such time limits require the managers in charge to apply for the opening of an insolvency proceeding at a maximum time after the onset of financial distress. Typical examples for the definition of financial distress are states in which the debtor cannot pay the debts as they fall due or a state in which the value of the assets is smaller than the amount of outstanding debts. The background of this question is the argument that recovery rates for banks might benefit from such an obligation to file for insolvency. This argument continues that the shorter the time limit, the better the financial state of the debtor when

entering into the insolvency proceeding and, consequently, the higher the recovery rate of the bank.

For corporate debtors, the minimum time provided is 3 weeks or without undue delay, while the maximum is 3 months or no obligation at all. For sole traders and partnerships the minimum time provided is 2 weeks or without undue delay, while the maximum is 180 days or no obligation at all.

The following chart shows that, on average, more Member States believe that an obligation to file within a short time period is beneficial.

*'Debtor obliged to file for insolvency within short time limit?' – average value of answers coded by type of debtor:*³²

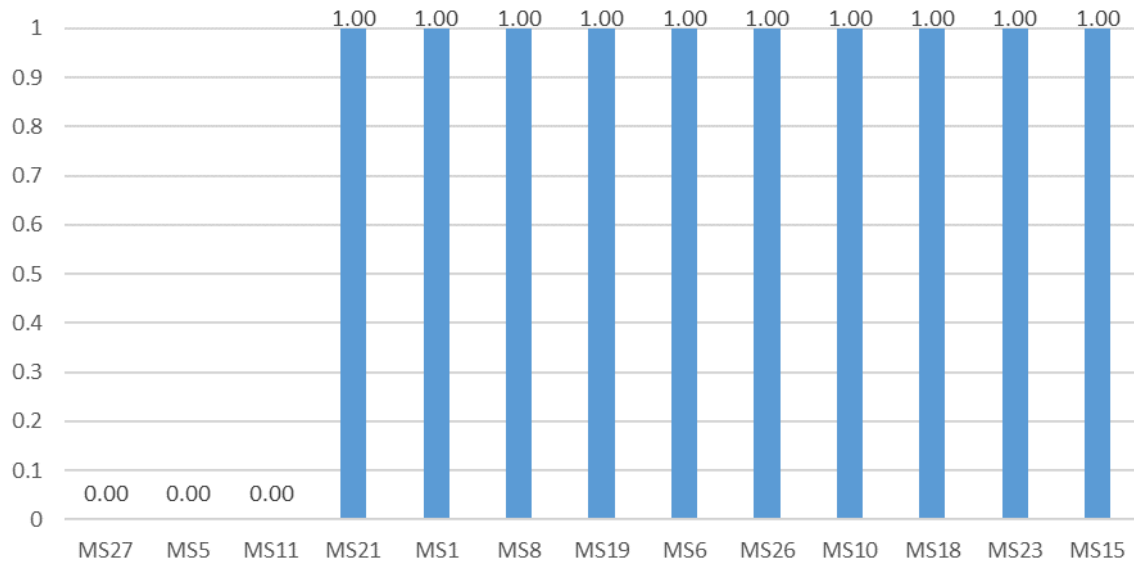


The average time in the European Union is 38 days for corporate debtors and 63 days for sole traders and partnerships.

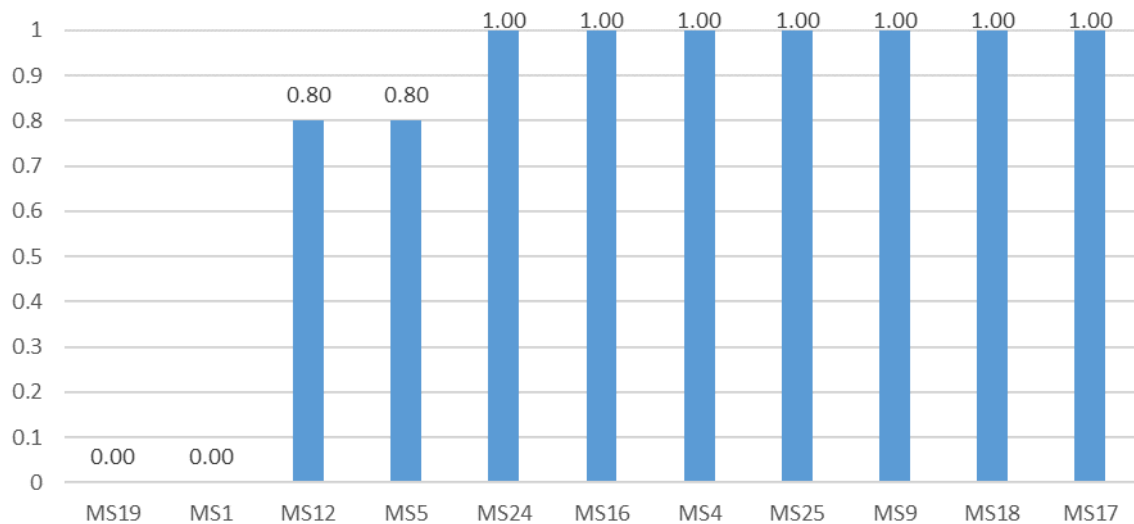
Interestingly, however, looking at the approaches of the individual Member States reveals divergence. The following charts indicate that Member States either firmly believe in obligations to file for insolvency within a short time limit or generally reject this idea.

³² For details on the coding see the specific coding guidance in Annexe 3.

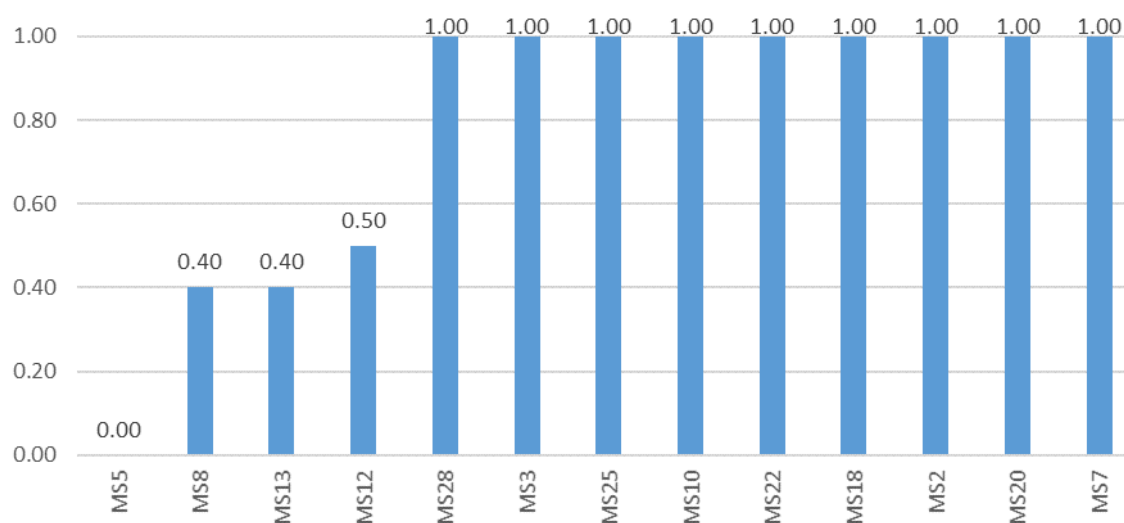
'Debtor obliged to file for insolvency within short time limit?' – corporate: average value of answers coded by Member State; normalised across {0,1}, with 0 = 60 days and 1 = 30 days; counted from insolvency ground:



'Debtor obliged to file for insolvency within short time limit?' – sole trader partnership: average value of answers coded by Member State; normalised across {0,1}, with 0 = 180 days and 1 = 30 days; counted from insolvency ground:



The following chart integrates the above charts into one for all debtors:



The available research shows that the duty to file for insolvency within a short time period does not necessarily influence the average recovery rates of unsecured claims in insolvency. Namely, recovery rates of unsecured creditors in the insolvency of private companies with limited liability are similarly in single-digit figures in Germany and the United Kingdom.³³ While Germany applies a duty to file within a short time period (without undue delay and not longer than three weeks), the United Kingdom does not impose such a duty.

Retrospective time period for avoidance actions

Avoidance actions undoing vulnerable transactions in insolvency are widely available in the European Union for all types of debtors. Avoidance actions allow to recover assets for the insolvent estate thereby increasing recovery rates of creditors. The reasons for avoiding transactions are various. Common reasons are undervalue transactions leaving the debtor with less and transactions preferring certain creditors by putting them in a better position than they would have been in without this transaction.

Member States were asked to provide information on the sensitive retrospective period. **In other words, the Commission's questionnaire aims at identifying how far back into the past transactions might be affected.**

From the perspective of a bank creditor, long retrospective time periods can be either advantageous or disadvantageous. Long periods are advantageous if other creditors are concerned, but disadvantageous if the bank itself is affected. This study takes the view that banks are more likely than other creditors to be at risk as targets of avoidance actions, not least due to their deep pockets and engagement in bridge and rescue finance. Hence, longer retrospective time periods for avoidance actions are considered a disadvantage.

In the European Union, retrospective time periods for corporate debtors, sole traders and partnerships are in the range from 6 months to 10 years. For consumers, the periods generally range from 1 year to 10 years. The periods are usually counted from

³³ See Steffek, *Gläubigerschutz in der Kapitalgesellschaft*, 2011, p. 930.

the application to open proceedings, the opening of proceedings or the presence of an insolvency ground.

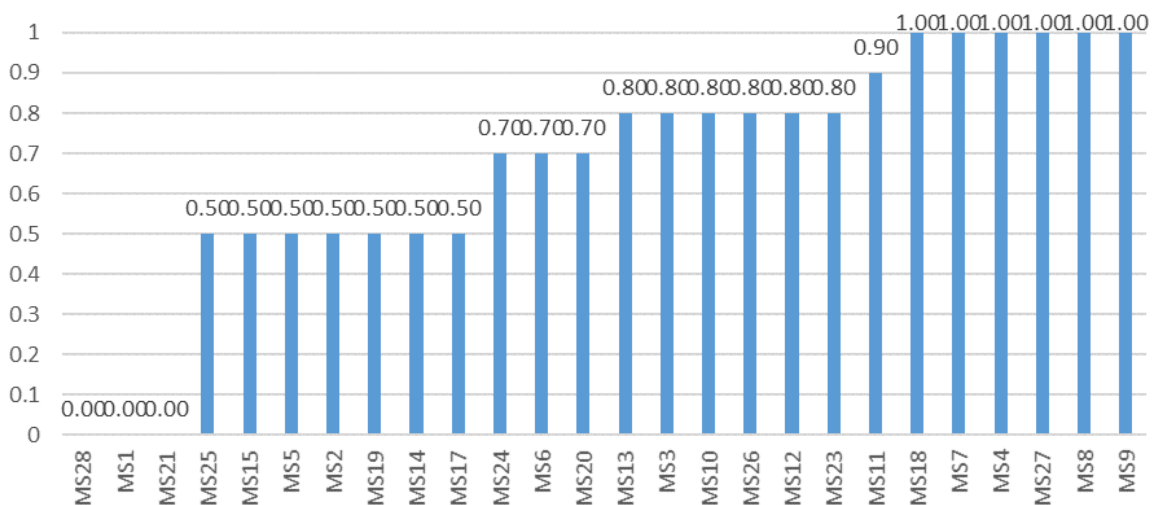
The following chart, showing averages across the European Union for all types of debtors, reveals that the retrospective periods are rather on the longer side. This study focusses on the maximum period possible for the relevant debtor. The average EU-wide maximum period for corporate debtors is 3.6 years, for sole traders/partnerships 4.2 years and for consumers 4.6 years.

'Availability of avoidance actions? – maximum timeframe/sensitive retrospective period for voidable transactions': average value of answers coded by type of debtor:³⁴



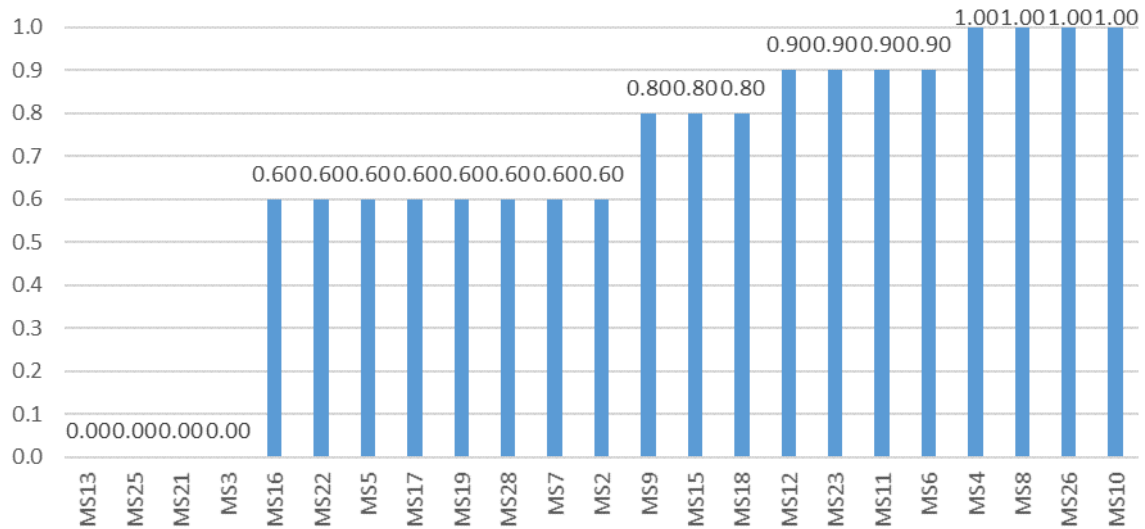
The following charts, differentiating types of debtors and Member States, show that the maximum retrospective periods vary strongly for all types of debtors.

'Availability of avoidance actions? – maximum timeframe/sensitive retrospective period for voidable transactions' – corporate: average value of answers coded by Member State; normalised across {0,1}, with 0 = 10 years and 1 = 6 months; counted from application to open proceeding, opening of proceedings or insolvency ground:

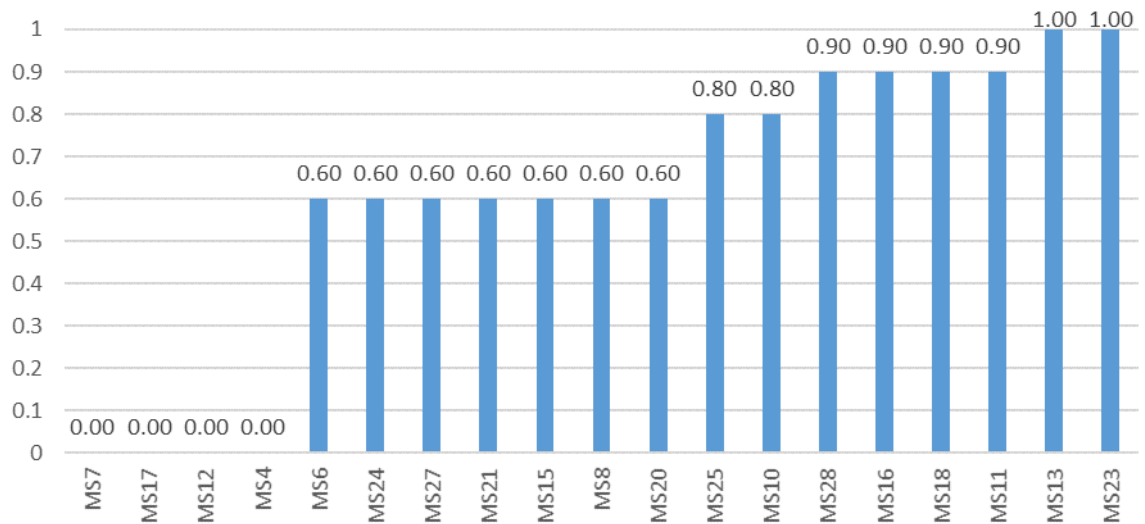


³⁴ For details on the coding see the specific coding guidance in Annexe 3.

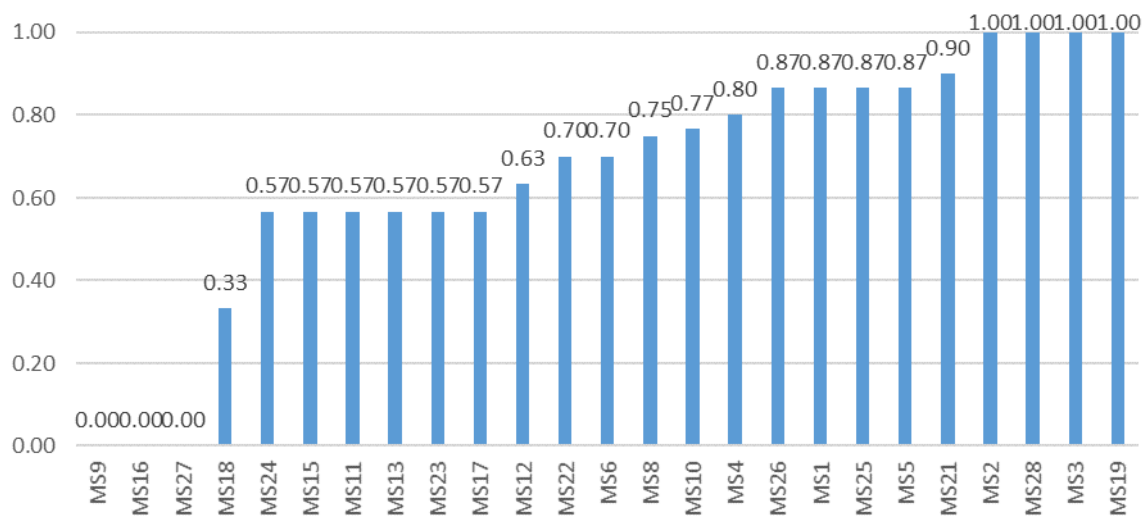
'Availability of avoidance actions? – maximum timeframe/sensitive retrospective period for voidable transactions' – sole trader/partnership: average value of answers coded by Member State; normalised across {0,1}, with 0 = 10 years and 1 = 1 year; counted from application to open proceeding, opening of proceedings or insolvency ground:



'Availability of avoidance actions? – maximum timeframe/sensitive retrospective period for voidable transactions' – consumer: average value of answers coded by Member State; normalised across {0,1}, with 0 = 10 years and 1 = 1 year; counted from application to open proceeding, opening of proceedings or insolvency ground:



The following chart integrates the above charts into one for all debtors:



The strong variations provoke the question whether there are clear and consistent reasons for the determination of the retrospective periods. Often it seems that avoidance law has grown organically and that the relevant periods do not follow a consistent pattern that is firmly grounded in empirically tested policies.

Consumer debt discharge period

Specifically concerning consumers, Member States report the length of the period before consumers enjoy the discharge of their debt. Usually, such debt discharge is the result of a bankruptcy proceeding. The questionnaire classifies the question as an element concerning the individual enforcement of an unsecured loan obligation of the consumer. From this perspective, the debt discharge period is the time available to the bank for enforcement. Once the debt discharge sets in, the loan becomes unenforceable. Hence, the longer the debt discharge period, the better for the bank.³⁵

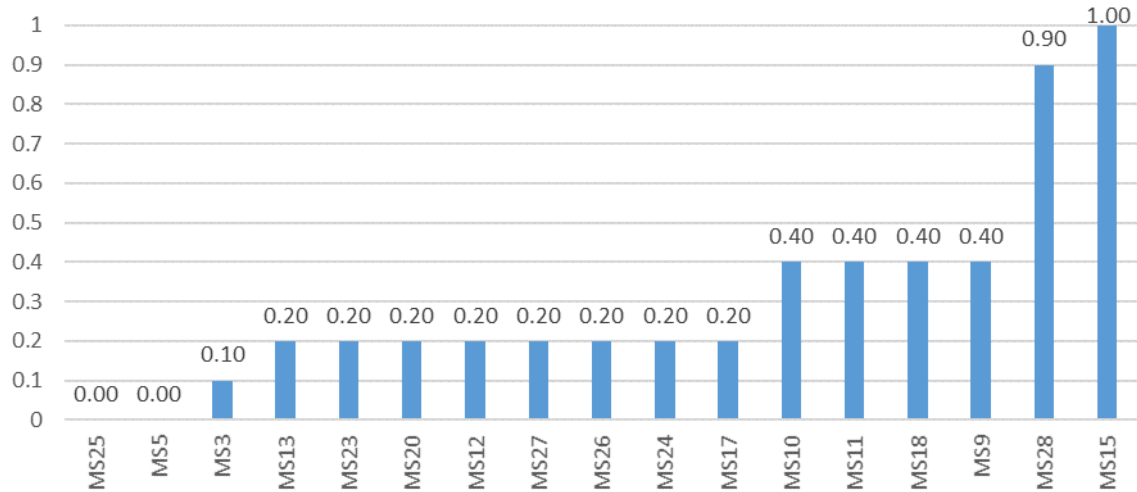
In practice, however, the amount the bank can recover during a pending bankruptcy proceeding with a running debt discharge period is usually low. During this period, the consumer is in financial distress and cannot service all debts. In addition, enforcement is usually collectivised with the effect that creditors only receive a certain quota of the available liquidity (if at all).

In the European Union, debt discharge periods applying to consumers last between 0.5 years and debt discharge not being available at all. If a jurisdiction provides for multiple periods, then the shortest period possible is taken as the relevant period in this study.

The following chart reveals a tendency towards shorter debt discharge periods in the European Union. The average of coded values is 0.31, which translates into an average minimum period of 3.79 years.

³⁵ Outside of formal enforcement, a longer debt discharge period as a disciplinary mechanism might be understood as being beneficial to the bank.

'Length of period before discharge of debt?' – consumer: average value of answers coded by Member State; normalised across {0,1}, with 1 = 10 years or discharge not available and 0 = 1 year (or shorter):



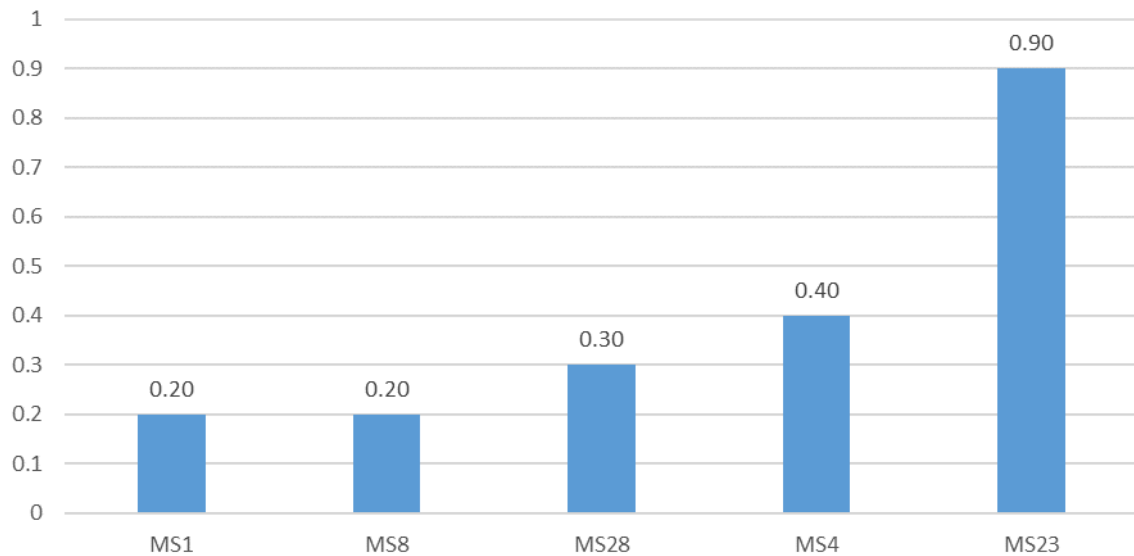
Court cases per capita

Further numerical data concerns the number of court cases per capita as regards insolvency proceedings and corporate debtors.³⁶ This figure shall test whether insolvency is generally a usual part of business and court life and, hence, easily available as a standard way of enforcement. Consequently, the more insolvency proceedings concerning corporate debtors, the better for the enforcement environment of bank loans.

The highest value reported is 94.6 cases per 100,000 inhabitants, the lowest 19.4 per 100,000 inhabitants. The following chart reflects this wide spread for those Member States where data is available. It shows that for those Member States reporting the relevant data, there is a considerable difference in terms of insolvency proceedings being a usual way of loan enforcement.

³⁶ The questionnaire also asked for this data concerning sole traders/partnerships and consumers. However, the data currently available does not provide a sufficient basis for analysis.

'Number of court cases per capita' – corporate: average value of answers coded by Member State; normalised across $\{0,1\}$, with $1 = 0.001$:



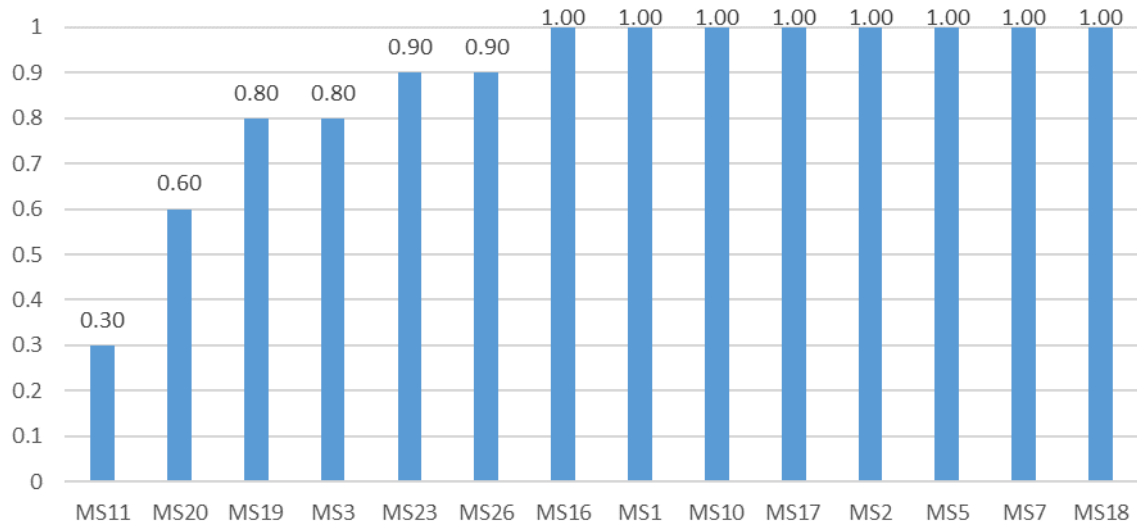
Court capacity

Finally, numerical data on court capacity concerning corporate insolvencies is available. Court capacity is understood as clearance rate calculated as resolved/incoming cases per year.³⁷ The higher the clearance rate, the shorter the time to recovery and, hence, the better for the enforcing bank.

Many Member States have clearance rates of 100% or better; i.e. the number of cleared cases equals or exceeds the number of incoming cases within one year. One reason for more cleared than incoming cases per year is the successful solution of an existing backlog. In those Member States with clearance rates significantly lower than 100% (or 1), banks may struggle to achieve speedy enforcement in the insolvency proceedings of corporate debtors. This applies in particular to MS11 and MS20.

³⁷ The questionnaire defines clearance rates as incoming/resolved cases. Consequently, where Member States only gave a figure, this was understood as incoming/resolved cases and recalculated into the resolved/incoming format. Where Member States provided detailed information, the clearance rate was directly calculated as resolved/incoming cases. For more details on the calculation see the specific coding guidance for question 1.28 in Annexe 3.

'Court capacity (measured in clearance rates resolved/incoming cases)' – corporate: average value of answers coded by Member State; normalised across $\{0,1\}$, with 1 = 1 (or 100%) and higher numbers; applied the following priority available data: (1) corporate debtor/legal person insolvency proceedings clearance rate, (2) entrepreneurs insolvency proceedings clearance rate, (3) general insolvency proceedings clearance rate, (4) general court clearance rate; most recent year:



Conclusion

The numerical data available concerns the enforcement of unsecured claims in an insolvency proceeding exclusively, with one exception as regards debt discharge of consumers. Overall, there is significant variation as regards the support of enforcement of bank loans in the Member States. This variation is present regarding the obligation to file for the opening of an insolvency proceeding concerning corporate debtors, sole traders and partnerships within a short time, the maximum retrospective periods for avoidance actions and the number of court cases per capita. Compared to these features, there is more consistency and overall a higher level of enforcement support as regards the filing of claims in short time periods (all types of debtors) and court clearance rates for corporate insolvency proceedings. While there is a tendency in the European Union to converge towards shorter debt discharge periods for consumers, such shorter periods reduce the time available to the banks to enforce loans.

In particular for the retrospective time periods applying to avoidance actions, the question arises whether they are founded on clear and empirically tested policies or, rather, whether they are the result of less coordinated piece-meal legislation over time. For those Member States with court clearance rates longer than 1 year, the question arises whether time to recovery can be improved by quicker case turnovers.

Chapter 5: Common features and differences

Introduction

This chapter first explores common features of enforcement in the Member States. The common characteristics are distinguished in term of whether they are present or absent. Then, differences between Member States are identified.

The identification of common features and differences is not an evaluation. The purpose of this chapter is only to identify and describe similarities and divergences. Arguments can be made for and against differences between legal systems. On the one hand, differences can be perceived as obstacles to cross-border enforcement and transnational enforcement management. On the other hand, non-conformity might be interpreted as a symptom of healthy competition between legal systems and consequences of other differences in the legal orders (e.g. different contract laws and legal institutions such as courts).

Common features

Present features

First, a look shall be taken at the common features where a strong convergence between Member States can be observed. Such common features impress with widely shared characteristics. They concern the enforcement

- Of unsecured claims
- Against corporate debtors
- In insolvency proceedings.

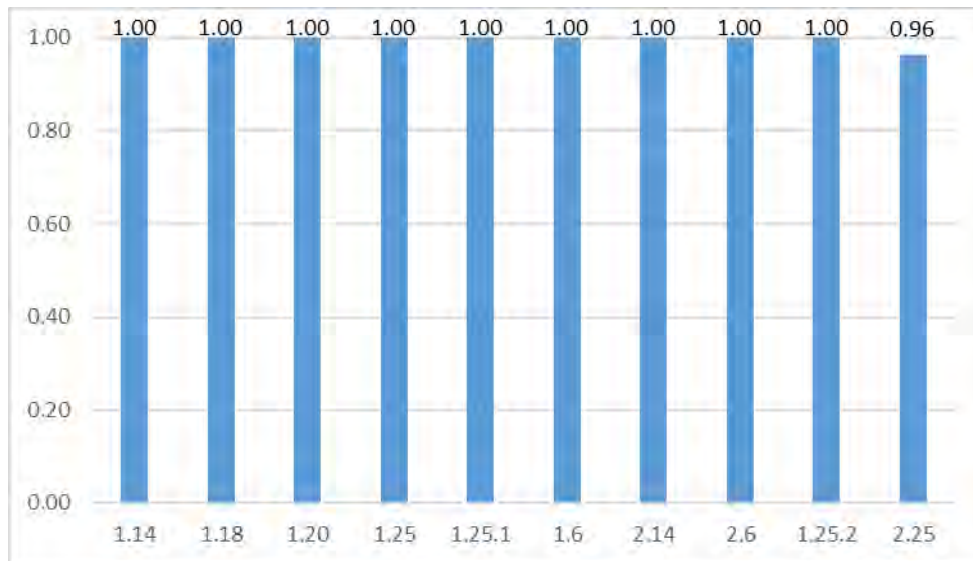
Consequently, corporate insolvency law topics dealing with the position of the bank as an unsecured creditor competing for insufficient assets with other creditors dominate. They stem from a variety of corporate insolvency law areas. Examples are the opening of the proceeding, avoidance actions, ranking of claims and publicity of the proceeding.

Looking at the top 10 questions where most Member States gave a positive answer, the following features are present:

- All 10 questions concern insolvency proceedings.
- Individual enforcement is not present at all.
- The top 7 questions all concern corporate debtors.
- Consumer questions are not present.
- 8 out of the 10 top shared features concern unsecured claims.

As regards the top 10 questions, the similarity between Member States is particularly striking. In 9 out of 10 cases the averages of the coded answers are 1 (i.e. all Member States share this feature). Only one question out of the top 10 questions produced an average of 0.96 (i.e. almost all Member States have decided to implement this rule).

Top 10 questions by average value of answers coded:



In the following, these top 10 questions are transformed into positive statements following the very high approval rates by Member States (percentage of Member States sharing this approach in brackets):

- *Q.1.14 Corporate, unsecured, insolvency proceeding:* The opening of insolvency proceedings is public to enable filing of claims (100%).
- *Q1.18 Corporate, unsecured, insolvency proceeding:* Creditors are entitled to request insolvency proceeding to be commenced (100%).
- *Q1.20 Corporate, unsecured, insolvency proceeding:* Management of the estate passes to an outsider (as opposed to current management remaining in possession) (100%).
- *Q1.25 Corporate, unsecured, insolvency proceeding:* Avoidance actions are available (100%).
- *Q1.25.1 Corporate, unsecured, insolvency proceeding:* There are maximum timeframes/sensitive retrospective periods for voidable transactions (100%).
- *Q1.6 Corporate, secured, insolvency proceeding:* Proceeds from the collateral are earmarked for the secured creditor ("no need to share") (100%).
- *Q2.14 Sole trader/partnership, unsecured, insolvency proceeding:* The opening of insolvency proceedings is public to enable the filing of claims (100%).
- *Q2.6 Sole trader/partnership, secured, insolvency proceeding:* Proceeds from the collateral are earmarked **for the secured creditor ("no need to share") (100%)**.
- *Q1.25.2 Corporate, unsecured, insolvency proceeding:* There is a broad range of reasons and recipients for avoidance actions (100%).
- *Q2.25 Sole trader/partnership, unsecured, insolvency proceeding:* Avoidance actions are available (96%).

Looking further beyond the top 10 shared features, topics relating to unsecured claims in insolvency proceedings clearly continue to dominate. What does change beyond the top 10 shared features is that now other debtors, namely sole traders/partnerships

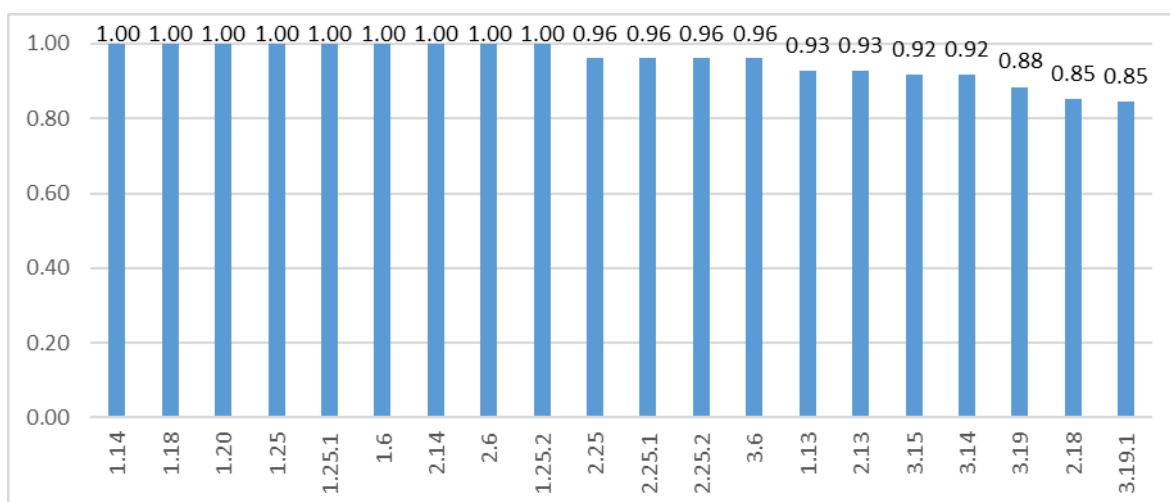
and consumers, enter the scene. In terms of topics concerning unsecured claims in insolvency proceedings, a wide range is present. Examples of themes occurring across different types of debtors are avoidance actions, administration of the proceeding (request to commence proceeding, filing of claims, publicity, administration by outsider) and ranking (collateral earmarked).

For the top 20 shared features, the following characteristics are noteworthy:

- All top 20 questions concern insolvency proceedings.
- Individual enforcement is not present at all.
- 17 of the top 20 shared characteristics determine the legal position of unsecured claims.
- All types of debtors can be found in the shared legal features; 8 questions relate to corporate, 7 to sole trader/partnership and 5 to consumer debtors.

The intensity of the similarity continues largely throughout the further questions in the top 20, i.e. throughout questions 11 to 20. Here the averages of the answers coded for all Member States range from 0.96 to 0.85. The top 17 question still has an average of 0.92. In other words, the Member States share the same legal approaches in the top 17 questions with an intensity between 92% and 100%.

Top 20 questions by average value of answers coded:



In the following these top 11 to top 20 questions are again transformed into positive statements following the very high approval rates by Member States (percentage of Member States sharing this approach in brackets):

- *Q2.25.1 Sole trader/partnership, unsecured, insolvency proceeding:* There are maximum timeframes/sensitive retrospective periods for voidable transactions (96%).
- *Q2.25.2 Sole trader/partnership, unsecured, insolvency proceeding:* There is a broad range of reasons and recipients for avoidance actions (96%).
- *Q3.6 Consumer, secured, insolvency proceeding:* Proceeds from the collateral are earmarked for the secured creditor ("no need to share") (96%).
- *Q1.13 Corporate, unsecured, insolvency proceeding:* There are time limits for filing of claims (to speed up proceedings generally) (93%).
- *Q2.13 Sole trader/partnership, unsecured, insolvency proceedings:* There are time limits for filing of claims (to speed up proceedings generally) (93%).

- *Q3.15 Consumer, unsecured, insolvency proceeding*: The opening of insolvency proceedings is public to enable filing of claims (92%).
- *Q3.14 Consumer, unsecured, insolvency proceeding*: There are time limits for filing of claims (to speed up proceedings generally) (92%).
- *Q3.19 Consumer, unsecured, insolvency proceeding*: Avoidance actions are available (0.88%).
- *Q2.18 Sole trader/partnership, unsecured, insolvency proceeding*: Creditors are entitled to request insolvency proceeding to be commenced (85%).
- *Q3.19.1 Consumer, unsecured, insolvency proceeding*: There are maximum timeframes/sensitive retrospective periods for voidable transactions (85%).

For completeness, one further widely shared feature needs to be mentioned. The Member States generally require creditors to file their claims within short time limits in insolvency proceedings.³⁸ While the above features were identified based on Yes/No questions, this feature results from a question asking for numerical answers. On average and for all types of debtors, the Member States achieved a normalised score of 0.88 for this question, showing that short time limits are a common feature in the European Union. In line with the above characteristics, this feature also concerns the enforcement of unsecured claims in insolvency proceedings.

Summarising the common features, they concern:

- The ease with which the bank can open insolvency proceedings to enforce its claims (right to open insolvency proceeding, publicity of proceedings);
- The ability of the insolvency administrator to recover assets the debtor has transferred to other persons (avoidance actions);
- The preservation of the contractually agreed priority order in the insolvency proceeding focussing on security (no need to share security);
- The governance of the insolvency proceeding (passing of management powers from existing management to the insolvency practitioner; time limits to file claims in order to speed up proceedings).

These issues predominantly concern the bank as unsecured creditor of all types of debtors.

Absent features

Turning from the common present to the common absent features, a less clear picture emerges. First of all, the convergence between Member States is much less pronounced as with the present features. Where the absence of features is – relatively – common, the only dominant characteristics are unsecured claims and the lack of private powers of the bank to enforce loan contracts. Lack of private powers means that the bank needs the consent of a state authority to recover.

The bottom 10 questions with the lowest averages of the answers coded have the following characteristics:

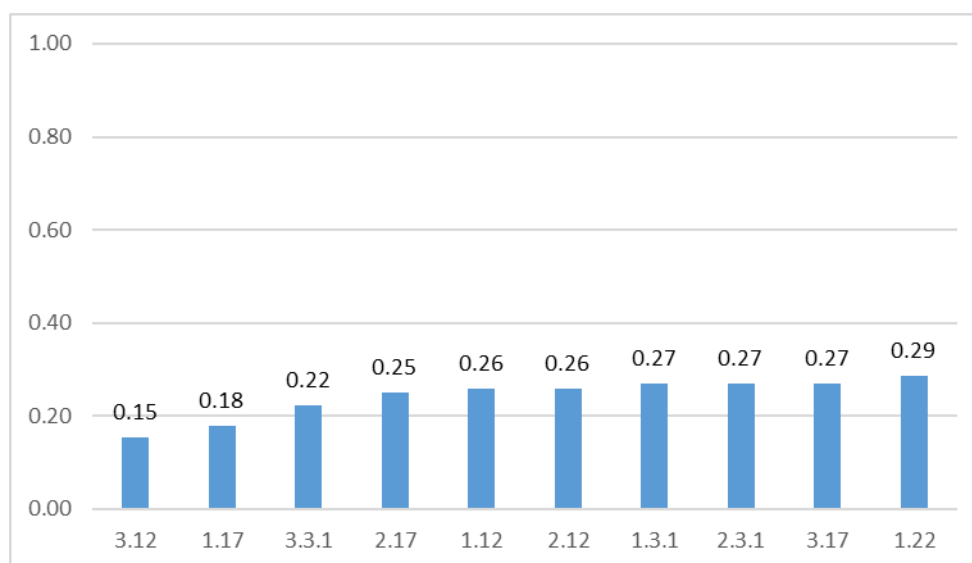
- 7 of 10 concern unsecured claims.
- All sorts of debtors are targeted: 4 corporate, 3 sole trader/partnership and 3 consumer questions are part of the mix.

³⁸ For details see above in Chapter 4 under 'Numerical data'.

- There is also a mix of individual enforcement (6 questions) and insolvency proceeding (4 questions).

An example of the common theme of lack of private powers to enforce is the absence of out-of-court foreclosure proceedings such as asset seizure without preceding court order/judgement for corporate, sole trader/partnership and consumer debtors. This means that the bank needs the cooperation of a court or other authority when trying to sell assets of the debtor to satisfy open demands against the debtor.

Bottom 10 questions by average value of answers coded:



In the following these bottom 10 questions with the lowest rate of positive answers are transformed into negative statements reflecting the low approval rates by Member States (percentage of Member States not sharing this approach in brackets):

- *Q3.12 Consumer, unsecured, individual enforcement:* No out-of-court foreclosure proceedings such as asset seizure without preceding court order/judgement (85%).
- *Q1.17 Corporate, unsecured, insolvency proceeding:* Insolvency proceedings not triggered by official intervention upon administrative scrutiny (82%).
- *Q3.3.1 Consumer, secured, individual enforcement:* Seizure of collateral on own book not permitted for real estate collateral (78%).
- *Q2.17 Sole trader/partnership, unsecured, insolvency proceeding:* Insolvency proceedings not triggered by official intervention upon administrative scrutiny (75%).
- *Q1.12 Corporate, unsecured, individual enforcement:* No out-of-court foreclosure proceedings such as asset seizure without preceding court order/judgement (74%).
- *Q2.12 Sole trader/partnership, unsecured, individual enforcement:* No out-of-court foreclosure proceedings such as asset seizure without preceding court order/judgement (74%).
- *Q1.3.1 Corporate, secured, individual enforcement:* Seizure of collateral on own book not permitted for real estate collateral (73%).
- *Q2.3.1 Sole trader/partnership, secured, individual enforcement:* Seizure of collateral on own book not permitted for real estate collateral (73%).

- *Q3.17 Consumer, unsecured, insolvency proceeding:* Debtor not obliged to file for insolvency within short time limit (73%).
- *Q1.22 Corporate, unsecured, insolvency proceeding:* No absence of privileges (prior rank) for wages, pension schemes etc. (71%).

The picture does not get clearer, rather even more obscure, if one widens the perspective beyond the 10 most absent characteristics. Now, even the dominance of unsecured claims falls. A mix of types of debtors and individual and collective enforcement proceedings remains present. The only remaining common theme is the lack of private enforcement powers of the bank. Additionally, the issue of lack of absence of privileges in insolvency emerges.

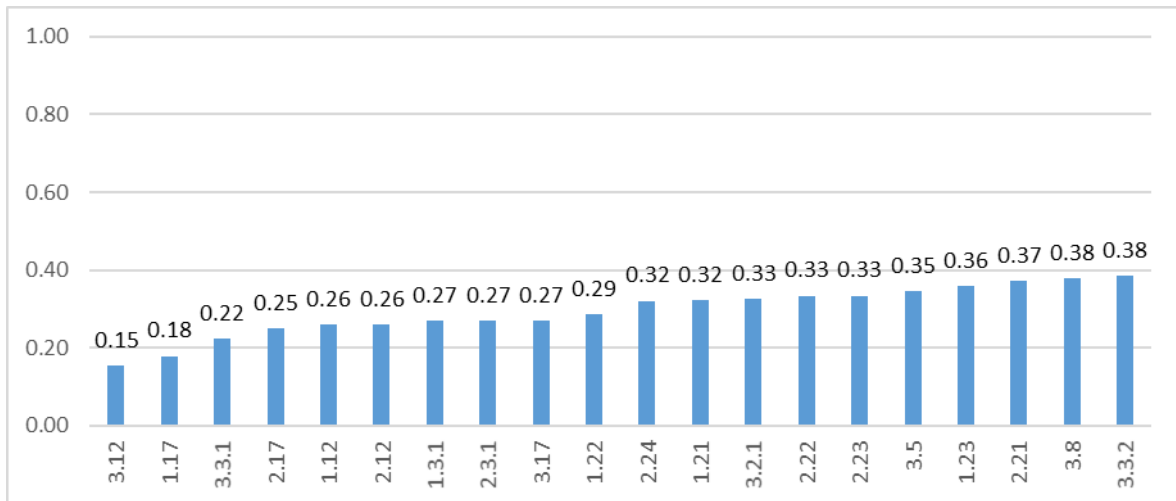
The bottom 20 questions with the lowest averages of the answers coded have the following characteristics:

- Mix of debtors: 7 corporate, 6 sole trader/partnership, 7 consumer.
- Mix of security: 13 unsecured, 7 secured.
- Mix of type of enforcement: 9 individual enforcement, 11 insolvency proceeding.

Interestingly, the theme of lack of private enforcement powers of the bank remains. Absent features are no out-of-court foreclosure proceedings and no private sale allowed at creditor's discretion.

It shall be emphasised, however, that the commonalities as regards absent legal rules are much weaker than the shared features. Only the bottom two features are missing in more than 80% of Member States (85% and 82% respectively). The remaining 18 of 20 features are absent only in between 78% to 62% of Member States.

Bottom 20 questions by average value of answers coded:



In the following, the bottom 11 to bottom 20 questions with low rates of positive answers are transformed into negative statements reflecting the low approval rates by Member States (percentage of Member States not sharing this approach in brackets):

- *Q2.24 Sole trader/partnership, unsecured, insolvency proceeding:* 'Pre-pack' insolvency (or restructuring) not available for SMEs (68%).
- *Q1.21 Corporate, unsecured, insolvency proceeding:* No absence of privileges (prior rank) for debt towards government, social security etc. (68%).

- *Q3.2.1 Consumer, secured, individual enforcement*: Private sale not allowed at creditor's discretion (public auction optional) for real estate collateral (67%).
- *Q2.22 Sole trader/partnership, unsecured, insolvency proceeding*: No absence of privileges (prior rank) for wages, pension schemes etc. (67%).
- *Q2.23 Sole trader/partnership, unsecured, insolvency proceeding*: No absence of other general privileges for specific types of creditors/debt (67%).
- *Q3.5 Consumer, secured, individual enforcement*: No entry test for restructuring proceedings to avoid abuse of moratoria (65%).
- *Q1.23 Corporate, unsecured, insolvency proceeding*: No absence of other general privileges for specific types of creditors/debt (64%).
- *Q1.21 Corporate, unsecured, insolvency proceeding*: No absence of privileges (prior rank) for debt towards government, social security etc. (63%).
- *Q3.8 Consumer, secured, insolvency proceeding*: Private sale not allowed at creditor's discretion (public auction optional) (62%).
- *Q3.3.2 Consumer, secured, individual enforcement*: Seizure of collateral on own book not permitted for movable collateral (62%).

Conclusion

The Member States share a significant number of legal features concerning the enforcement of bank loans. The convergence is much more pronounced in the features that are present than in the characteristics that are absent. Altogether, 17 features are present in the legal frameworks of the Member States with a rate between 92% and 100%. Above all, the commonalities concern rules on the position of unsecured bank claims in the insolvency proceeding of all types of debtors. Particular themes are: the ease with which the bank can open insolvency proceedings to enforce its claims; the ability of the insolvency administrator to recover assets the debtor has transferred to other persons; the preservation of the contractually agreed priority order in the insolvency proceeding as regards security and the governance of the insolvency proceeding. There are no positively shared features concerning the individual enforcement of loans by banks. It is noteworthy that there is impressive conformity amongst Member States as regards insolvency proceedings, even though there is hardly any EU (or other) harmonisation in the area of substantive insolvency law.³⁹

Convergence between the Member States' **legal frameworks** is much less pronounced as regards absent features. 18 out of 20 features are absent only in 62% to 78% of all Member States. The absent features represent a mix of the issues considered here. All types of debtors are concerned. Similarly, rules concerning unsecured and secured claims as well as individual and collective enforcement proceedings are amongst the absent features. The only common theme that can be identified among the absent features is the lack of private powers of banks to enforce loan contracts. This means that Member States predominantly require the bank to apply to state institutions for relevant enforcement steps.

³⁹ The Regulation on Insolvency Proceedings, Regulation (EU) 2015/848 of 20 May 2015, OJ L 141/19, mainly concerns cross-border aspects and none of the issues relevant here.

Differences

Pronounced differences

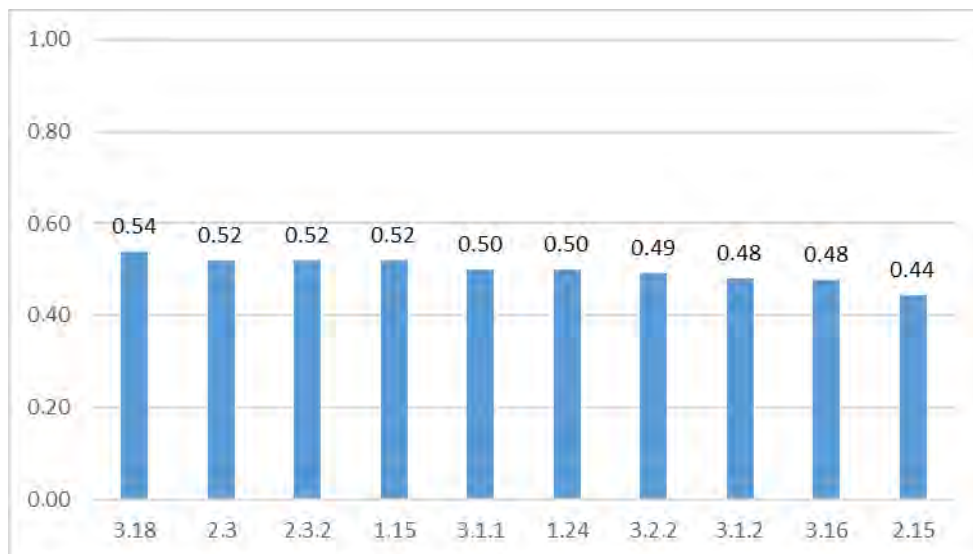
Shifting the focus to the differences in the legal enforcement framework, a clear picture emerges. In short, the main, but very pronounced difference between the Member States concerns the individual enforcement of secured claims. This difference is present for all types of debtors.

A good approach to identify differences between the Member States is to start with **those questions where as many Member States answer 'Yes' as others answer 'No'**. These are the answers where the averages of coded values are closest to 0.5. The 10 answers with averages closest to 0.5 show the following characteristics:

- Type of debtor: 2 corporate, 3 sole trader/partnership, 5 consumer;
- Presence of security: 5 unsecured, 5 secured;
- Type of enforcement: 5 individual enforcement, 5 insolvency proceeding.

The dominating theme is the private enforcement powers of the bank. The issues are whether the bank can privately sell the security, whether the bank can take ownership of the secured asset or whether the bank can enforce security without going to court. A second theme is the opening and governance of insolvency proceedings. However, a second look reveals that, partly, these issues are relevant only insofar as insolvency proceedings are an impediment to the private enforcement powers of the bank.

10 questions with average value of answers coded closest to 0.5:



- *Q3.18 Consumer, unsecured, insolvency proceeding: Creditors entitled to request insolvency proceedings to be commenced?*
- *Q2.3 Sole trader/partnership, secured, individual enforcement: Seizure of collateral on own book permitted?*
- *Q2.3.2 Sole trader/partnership, secured, individual enforcement: Seizure of collateral on own book permitted? – For movable collateral*
- *Q1.15 Corporate, unsecured, insolvency proceeding: Triggers for collective insolvency proceeding taking into consideration debtor's future positive/negative cash flow?*

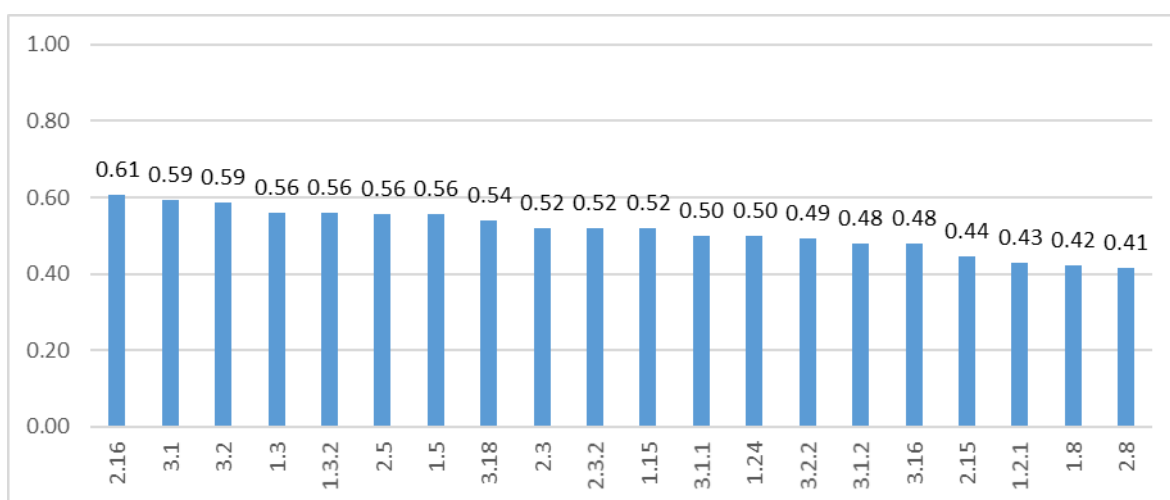
- *Q3.1.1 Consumer, secured, individual enforcement:* Legal techniques to enable out-of-court enforcement of collateral available (no judgement on the underlying claim needed? Not even a court order needed?)? – For real estate collateral
- *Q1.24 Corporate, unsecured, insolvency proceeding:* 'Pre-pack' insolvency (or restructuring) available for SMEs?
- *Q3.2.2 Consumer, secured, individual enforcement:* Private sale allowed at creditor's discretion (public auction optional)? – For movable collateral
- *Q3.1.2 Consumer, secured, individual enforcement:* Legal techniques to enable out-of-court enforcement of collateral available (no judgement on the underlying claim needed? Not even a court order needed?)? – For movable collateral
- *Q3.16 Consumer, unsecured, insolvency proceeding:* Triggers for collective insolvency proceeding taking into consideration debtor's future positive/negative cash flow?
- *Q2.15 Sole trader/partnership, unsecured, insolvency proceeding:* Triggers for collective insolvency proceeding taking into consideration debtor's future positive/negative cash flow?

If one widens the perspective to the 20 questions with averages of coding results closest to 0.5, then the results get even more pronounced. These 20 answers can be described as follows:

- Type of debtor: 7 corporate, 6 sole trader/partnership, 7 consumer;
- Presence of security: 6 unsecured, 14 secured;
- Type of enforcement: 12 individual enforcement, 8 insolvency proceeding.

The themes are now even more focussed on the banks' private powers to individually enforce the loan contract based on security taken.

20 questions with average value of answers coded closest to 0.5:



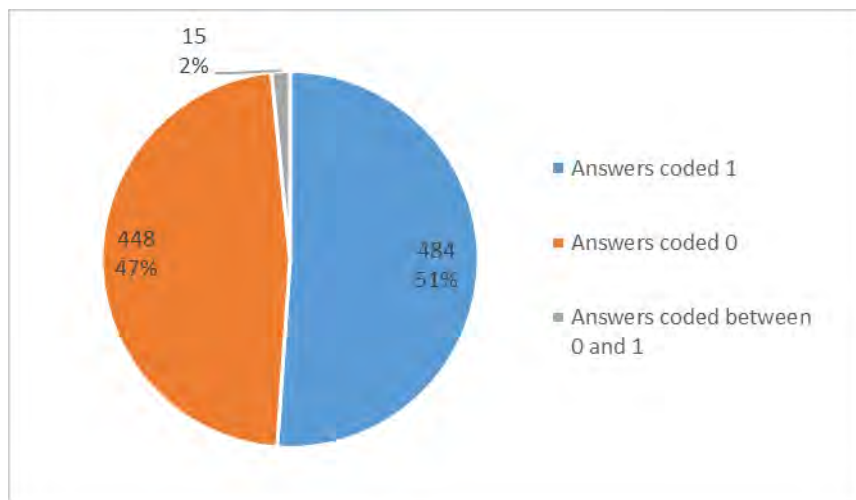
The following 10 questions are now added to those 10 coded on average closest to 0.5:

- *Q2.16 Sole trader/partnership, unsecured, insolvency proceeding:* Debtor obliged to file for insolvency within short time limit?

- *Q3.1 Consumer, secured, individual enforcement:* Legal techniques to enable out-of-court enforcement of collateral available (no judgement on the underlying claim needed? Not even a court order needed?)?
- *Q3.2 Consumer, secured, individual enforcement:* Private sale allowed at creditor's discretion (public auction optional)?
- *Q1.3 Corporate, secured, individual enforcement:* Seizure of collateral on own book permitted?
- *Q1.3.2 Corporate, secured, individual enforcement:* Seizure of collateral on own book permitted? – For movable collateral
- *Q2.5 Sole trader/partnership, secured, individual enforcement:* Entry test for restructuring proceedings to avoid abuse of moratoria?
- *Q1.5 Corporate, secured, individual enforcement:* Entry test for restructuring proceedings to avoid abuse of moratoria?
- *Q1.2.1 Corporate, secured, individual enforcement:* Private sale allowed at creditor's discretion (public auction optional)? – For real estate collateral
- *Q1.8 Corporate, secured, insolvency proceeding:* Private sale allowed at creditor's discretion (public auction optional)?
- *Q2.8 Sole trader/partnership, secured, insolvency proceeding:* Private sale allowed at creditor's discretion (public auction optional)?

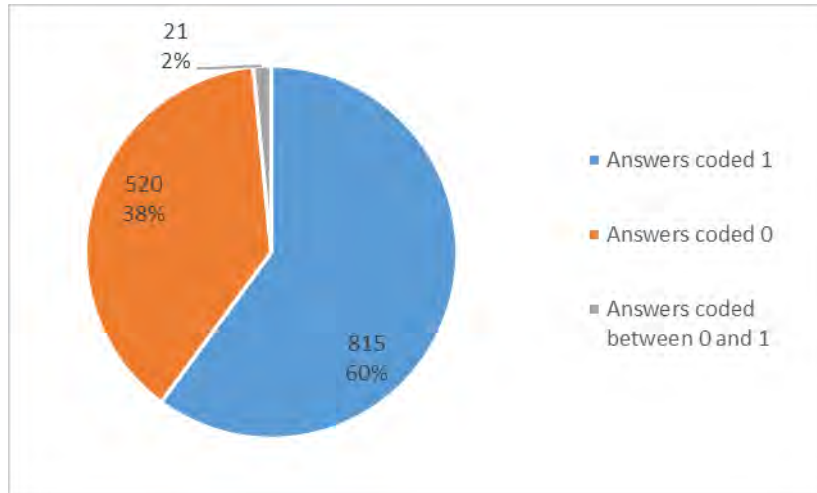
The fact that the differences between Member States particularly concern the individual enforcement of secured claims also becomes visible in the split answers to the questionnaire. Focussing on all answers concerning individual enforcement reveals the following distribution.

Questions concerning individual enforcement:



A similar split pattern emerges for secured claims.

Questions concerning secured claims:



The above charts reveal that as regards individual enforcement and secured claims, close to **half of the Member States' answers were positive while the other half was negative.**

Conclusion

The analysis of differences between the loan enforcement frameworks of the Member States has produced a clear result. The differences almost exclusively concern the individual enforcement of secured claims by the bank. The Member States differ in their willingness to equip the bank with private powers to enforce security (both movable and immovable). This concerns enforcement against all types of debtors (corporate, sole trader/partnership or consumer). The relevant issues are:

- *Whether the bank can privately sell the security;*
- *Whether the bank can take ownership of the secured asset; or*
- *Whether the bank can enforce the security without going to court.*

A second, comparatively less relevant issue, is the opening and governance of insolvency proceedings. This issue, however, is to a large part only relevant insofar as the insolvency proceeding is an impediment to the individual enforcement of the bank. Here the main issues are, whether there is an entry test for restructuring proceedings to avoid abuse of moratoria to the detriment of individual enforcement of security and whether triggers for collective proceedings take into account the future cash flow of the debtor.

Chapter 6: Clusters of legal approaches

Introduction

This chapter identifies clusters of legal approaches that Member States form as regards the enforcement of bank loans. Clusters are first identified at Member State level using a cluster network analysis. Then, a qualitative and quantitative analysis is added to identify where Member States cluster around specific topics and themes.

Member State perspective

Introduction

The following analysis is based on a cluster network analysis and visualisation.⁴⁰ In short, this approach is based on the coded answers of the Member States and first calculates the average differences between Member States as regards the relevant topic. This average difference is expressed as a value between 0 (no difference, identical approach) and 1 (strong difference, dissimilar approach). Then the Member States are visually arranged in a network showing the proximity of their legal approaches: The closer two Member States, the more similar their legal frameworks as regards the relevant topic. If the legal approaches have such a strong similarity that the difference of their average values is smaller than a certain threshold such as 0.2 or 0.3, then a line is drawn between these two Member States. Hence, a line signals that two Member States are close in their legal approaches where a 0.3 threshold is used and very close where a 0.2 threshold is applied.⁴¹

The network analysis differs somewhat in its insights from the above analysis of common features in Chapter 5. These common features were identified on the basis of those questions that received the most Yes or No answers. Many Yes (or No) answers mean that the European Union as a group shares (or rejects) a certain approach. In contrast, the network analysis identifies pairs and clusters of Member States with similar approaches. The more lines are present in the network charts, the more pairs of Member States employ (or reject) certain approaches. In short, while Chapter 5 identifies commonalities at group level (European Union), the network analysis focusses on the number of similar pairs within this group.

Enforcement in general

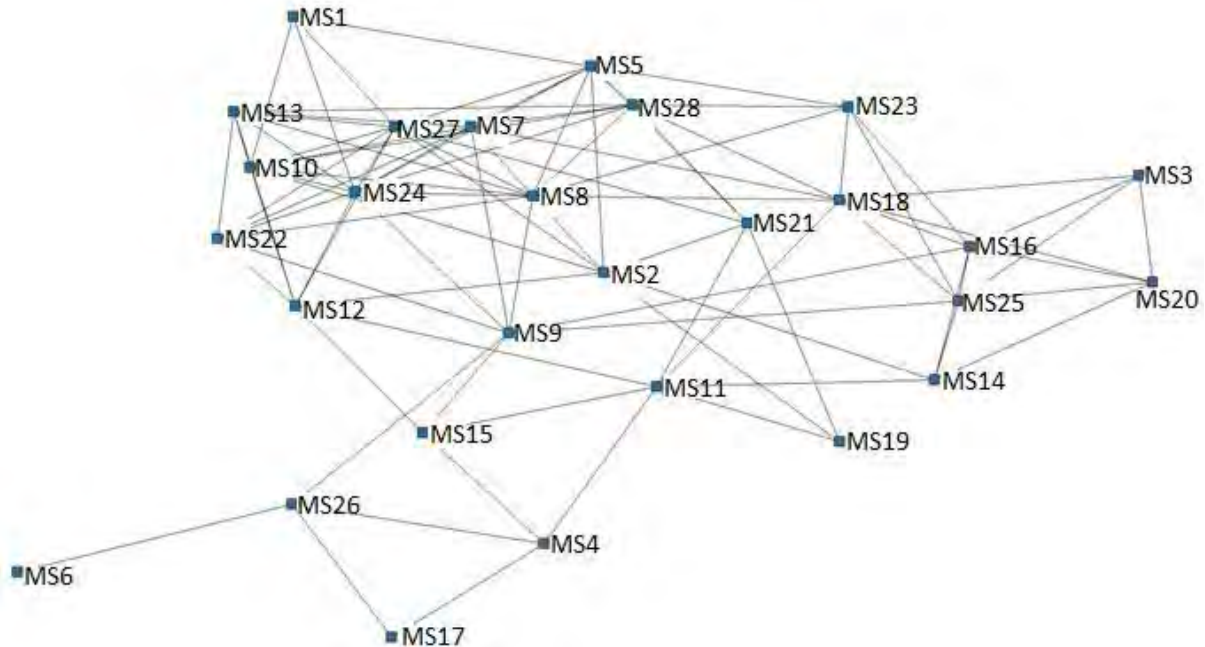
How similar are the Member States in their approaches to enforcement of secured and unsecured bank loans in individual and collective proceedings? Which Member States share similar legal frameworks? These questions are answered by the following network chart. It is based on all questions in the questionnaire⁴² requiring a Yes/No answer. Member States with an average difference of coded answers of 0.3 or smaller are connected by a line. Hence, the closer Member States are, the more similar their legal frameworks and where there is a line, the frameworks are particularly alike.

⁴⁰ For more information on the cluster network analysis method, see the relevant part in Chapter 3.

⁴¹ The following charts use a 0.2 threshold except one chart where a 0.3 threshold is applied.

⁴² Please see Annexe 1 for the complete Questionnaire.

Cluster network analysis based on all Yes/No questions, lines signal an average difference of 0.3 or smaller:



The network shows some 'expected neighbours'. A group of examples are MS 23, MS8, MS24, MS7 and MS10. Further 'expected neighbours' are MS19, MS2 and MS5. However, there are also some 'unexpected neighbours' such as MS4 and MS17, MS12 and MS2 or MS20 and MS3. Compared to the more familiar legal family approaches (e.g. common law versus civil law or Austro-Germanic, Napoleonic, Nordic etc.), the method used here has more of an ability to differentiate by taking account of the particular legal topic in question. This is one reason explaining why some Member States are surprisingly close or distant. A further explanation is the choice of questions asked.

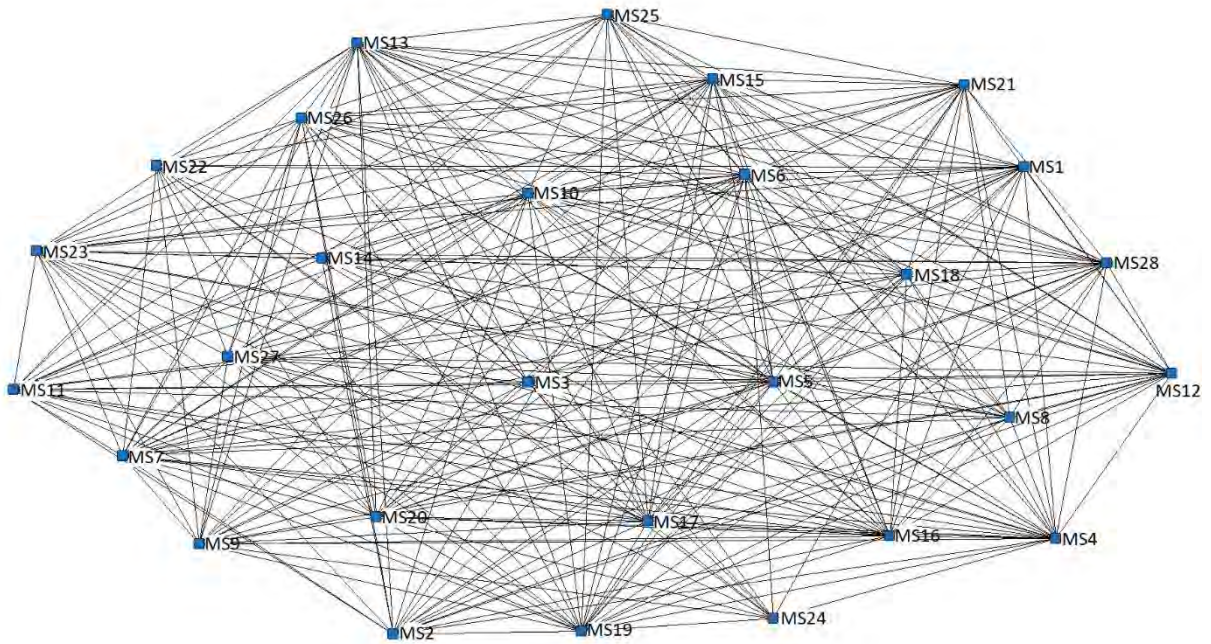
Type of debtor

The following network charts take a more focussed approach and represent the proximity or distance between Member States concentrating on the type of debtor. In this and the following charts, a threshold of 0.2 or smaller is applied for lines between Member States. In other words, lines represent a very similar approach of the two Member States connected.

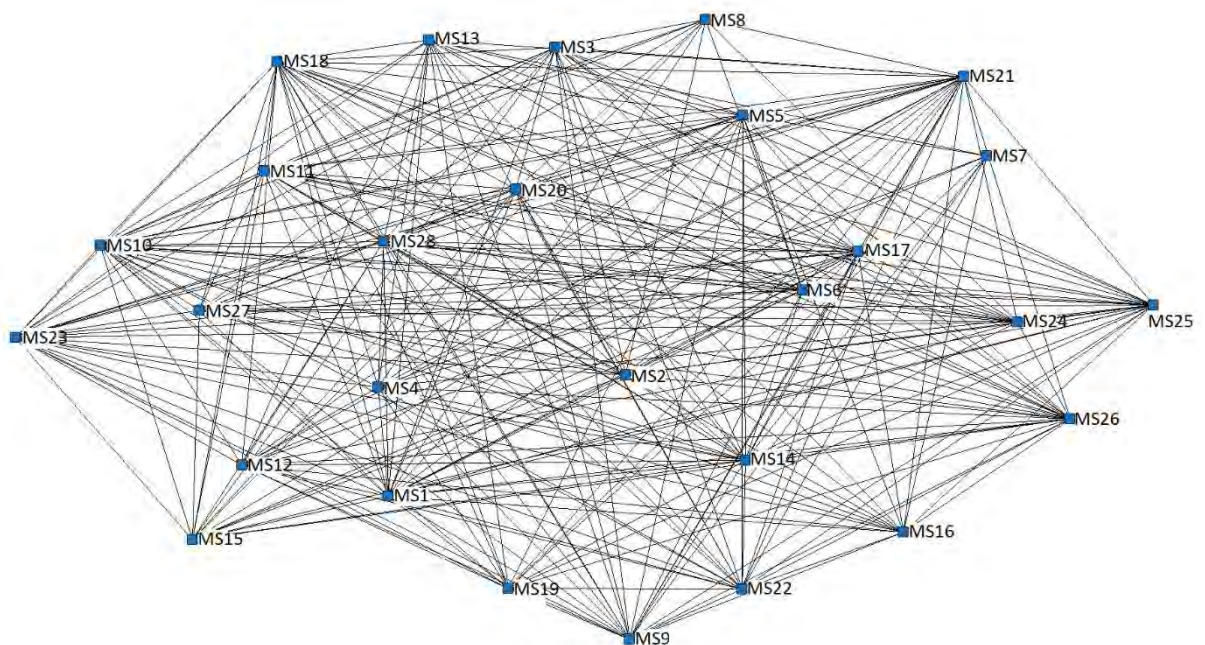
The first point of interest is to explore where Member States are in similar positions and relationships as regards the different types of debtors and where these positions and proximities have been rearranged. Perhaps even more interesting, however, is the comparison of the density of the relationships between Member States. The more connections overall in a chart, the more pairs of Member States with similar legal frameworks exist.

The following network charts show that the network is most dense for corporate debtors as well as sole traders and partnerships while the network is noticeably weaker for consumers. Hence, the most pairs of Member States with similar frameworks exist as regards enforcement against companies, sole traders and partnerships. The least pairs of Member States exist for enforcements against consumers.

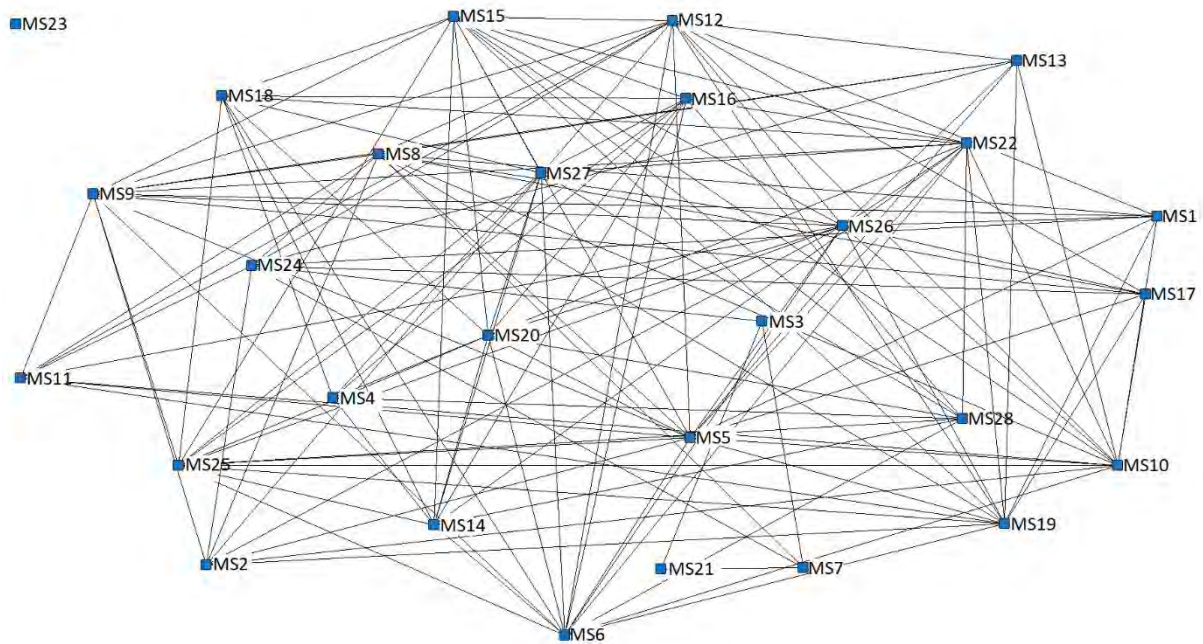
Corporate debtor: cluster network analysis based on all Yes/No questions, lines signal an average difference of 0.2 or smaller:



Sole trader and partnership debtor: cluster network analysis based on all Yes/No questions, lines signal an average difference of 0.2 or smaller:



Consumer debtor: cluster network analysis based on all Yes/No questions, lines signal an average difference of 0.2 or smaller:



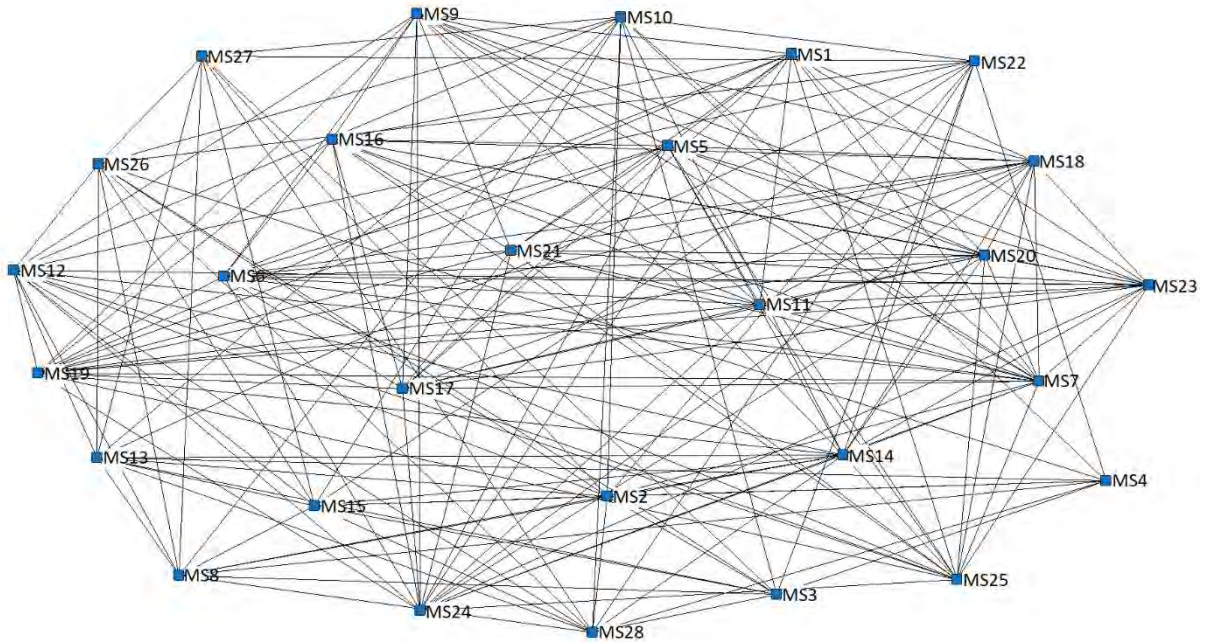
In the network representing enforcement approaches against consumers, MS23 is not connected to any other Member State because MS23 did not answer any consumer related questions.

Comparing the Member State pairs with the 'enforcement in general' network above and among the 'type of creditor' networks, reveals that some clusters are stable while some relationships appear and disappear in certain contexts. This evidences that the orthodox narratives of common law versus civil law or the legal families (Austro-Germanic, Napoleonic, Nordic etc.) have only limited power to explain the modern enforcement frameworks in the European Member States. For initiatives to reform local or cross-border law, this means that methods concentrating on specific features **are to be preferred over approaches that try to classify Member States'** legal frameworks based on traditional theories such as civil versus common law or on the idea of legal families such as Austro-Germanic, Napoleonic, Nordic etc.

Type of loan

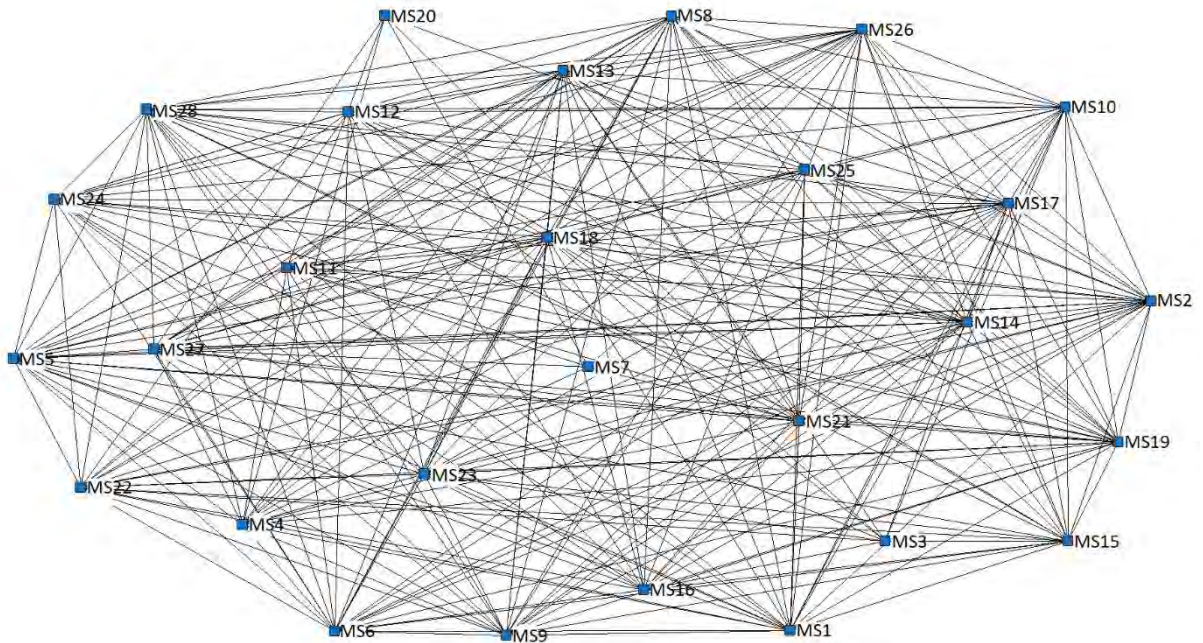
The following network charts concentrate on the proximity or distance between Member States as regards the enforcement of secured and unsecured loans by banks. Similar to the observations for type of debtors, the network representing the treatment of unsecured claims is much denser than the network showing the legal framework for secured claims. This means that there are more pairs of Member States having similar legal frameworks as regards the enforcement of unsecured claims than is the case for the enforcement of secured claims.

Secured claims: cluster network analysis based on all Yes/No questions, lines signal an average difference of 0.2 or smaller:



The following chart shows the same, but for unsecured claims.

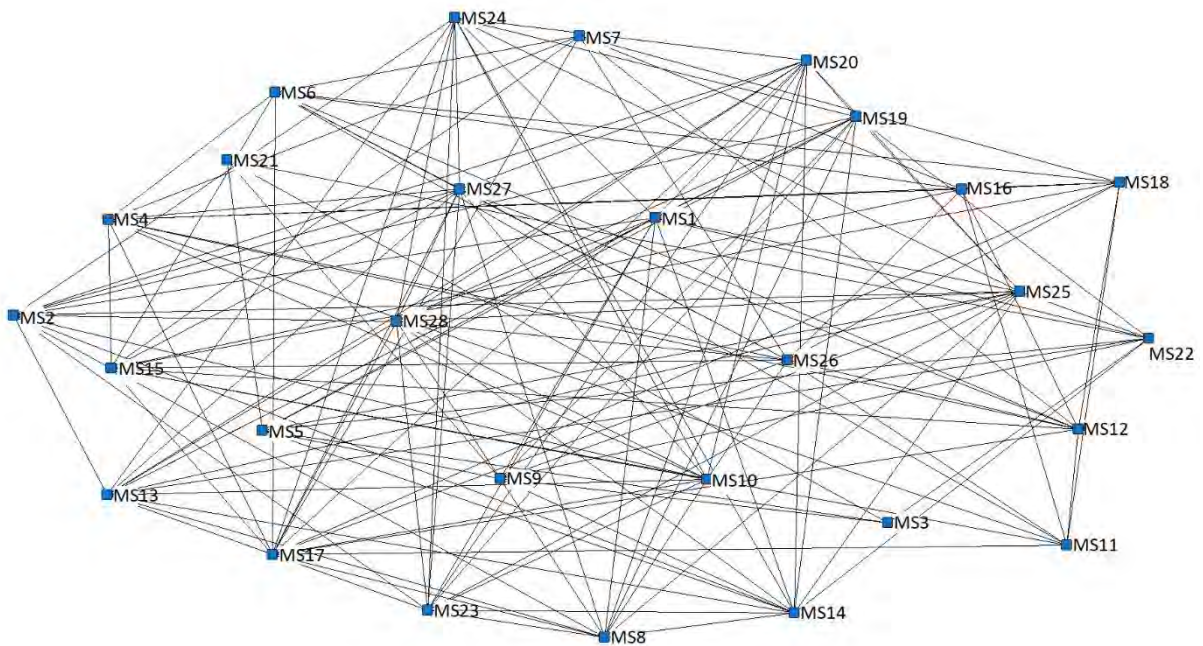
Unsecured claims: cluster network analysis based on all Yes/No questions, lines signal an average difference of 0.2 or smaller:



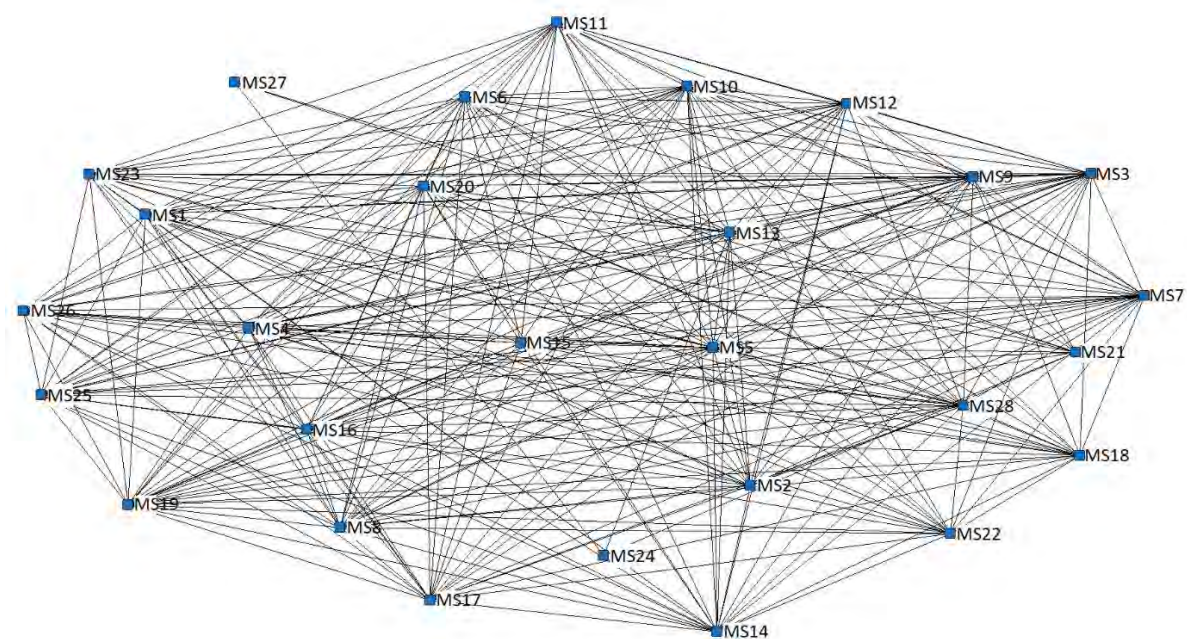
Type of proceeding

The analysis and comparison of the proximity and distance of Member States' legal frameworks as regards type of proceedings leads to a similar result as just seen for type of loan. As evidenced in the network charts below, pairs of Member States have much more similar frameworks as regards insolvency proceedings as is the case as regards individual enforcement. This can be seen below in the fact that there are more lines in the chart representing insolvency proceedings than in the chart showing individual enforcement.

Individual enforcement: cluster network analysis based on all Yes/No questions, lines signal an average difference of 0.2 or smaller:



Insolvency proceeding: cluster network analysis based on all Yes/No questions, lines signal an average difference of 0.2 or smaller:



Conclusion

The cluster network analysis has revealed some expected proximity between pairs of Member States overall and regarding particular legal issues, but also some unexpected proximity and distance. Furthermore, the network analysis shows that pairs of **Member States' legal frameworks** are most similar for the enforcement against companies, sole traders and partnerships and least similar for enforcements against consumers. In addition, the pairs of **Member States' laws** are much more similar as regards the enforcement of unsecured claims and insolvency proceedings than as regards the enforcement of secured claims and the laws of individual enforcement.

The cluster network analysis has also revealed insights for initiatives to reform local or cross-border enforcement law in the European Union. The analysis shows that methods concentrating on specific features are to be preferred over approaches that try to **classify Member States' legal frameworks based on traditional theories**, such as civil versus common law or on the idea of the similarity of legal families.

Topic perspective

Specific issues

A sound way of ascertaining specific issues where the Member States' approaches are very similar and the Member States form clusters is to identify the questions where the large majority of Member States gives the same answers. This list of questions has already been used as a source to identify common approaches of the Member States.⁴³ The answers could be either positive or negative. Interestingly, among the top 20 questions where the Member States' answers are most similar, there are 19 answers with a large majority of positive questions and only 1 answer with a large majority of negative questions.

Here is the list of the top 19 questions with a large majority of positive answers.⁴⁴ The number on the right shows a maximum of 1. For example, a value of 0.96 means that **96% of all Member States answered 'Yes'**. In other words, the following list of questions shows individual topics that the Member States cluster around in terms of shared elements of their enforcement frameworks.

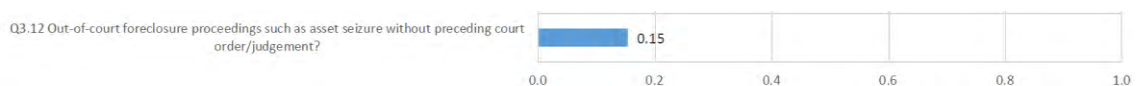
⁴³ See above in Chapter 5.

⁴⁴ For the complete list please see Annexe 8.

Top 19 questions ordered by average of coded answers:



Bottom question ordered by average of coded answers:



It is noteworthy that 92% or more of Member States gave a positive answer to 17 questions.⁴⁵ The top 10 of these questions even received a positive answer of 96% or more. Hence, there is a larger number of very dominant Member State clusters as regards specific legal approaches.

Member States not part of the clusters

Even though there is very wide agreement between Member States in terms of the shared elements of their enforcement frameworks identified above, it is interesting to identify those Member States that do not share these approaches. For this purpose, the following list names those Member States that deviate from the large majority. **Hence, the following list shows those Member States that have given a 'No' answer to the top 20 questions with the largest majorities of 'Yes' answers:**

⁴⁵ These are the questions with an average of 0.92 or higher.

- *Q2.6 Sole trader/partnership, secured, insolvency proceeding:* Proceeds from the collateral earmarked for the secured creditor? ("no need to share") – **'No' answer from no Member State (100% 'Yes' answers).**
- *Q2.14 Sole trader/partnership, unsecured, insolvency proceeding:* Publicity of the opening of insolvency proceedings to enable filing of claims? – **'No' answer from no Member State (100% 'Yes' answers).**
- *Q1.6 Corporate, secured, insolvency proceeding:* Proceeds from the collateral earmarked for the secured creditor? ("no need to share") – **'No' answer from no Member State (100% 'Yes' answers).**
- *Q1.25.1 Corporate, unsecured, insolvency proceeding:* Availability of avoidance actions? - maximum timeframe/sensitive retrospective period for voidable transactions – **'No' answer from no Member State (100% 'Yes' answers).**
- *Q1.25 Corporate, unsecured, insolvency proceeding:* Availability of avoidance actions? – **'No' answer from no Member State (100% 'Yes' answers).**
- *Q1.20 Corporate, unsecured, insolvency proceeding:* Does management of the estate pass to an outsider (as opposed to current management remaining in possession)? – **'No' answer from no Member State (100% 'Yes' answers).**
- *Q1.18 Corporate, unsecured, insolvency proceeding:* Creditors entitled to request insolvency proceeding to be commenced? – **'No' answer from no Member State (100% 'Yes' answers).**
- *Q1.14 Corporate, unsecured, insolvency proceeding:* Publicity of the opening of insolvency proceedings to enable filing of claims? – **'No' answer from no Member State (100% 'Yes' answers).**
- *Q1.25.2 Corporate, unsecured, insolvency proceeding:* Availability of avoidance actions? - Broad range of reasons and recipients for avoidance actions? – **'No' answer from no Member State (100% 'Yes' answers).**
- *Q2.25.1 Sole trader/partnership, unsecured, insolvency proceeding:* Availability of avoidance actions? - maximum timeframe/sensitive retrospective period for voidable transactions – **'No' answer from MS7.**
- *Q2.25 Sole trader/partnership, unsecured, insolvency proceeding:* Availability of avoidance actions? – **'No' answer from MS7.**
- *Q2.25.2 Sole trader/partnership, unsecured, insolvency proceeding:* Availability of avoidance actions? - Broad range of reasons and recipients for avoidance actions? – **'No' answer from MS7.**
- *Q3.6 Consumer, secured, insolvency proceeding:* Proceeds from the collateral earmarked for the secured creditor? ("no need to share") – **'No' answer from MS7.**
- *Q2.13 Sole trader/partnership, unsecured, insolvency proceedings:* Time limit for filing of claims (to speed up proceedings generally) – **'No' answers from MS1 and MS14.**
- *Q1.13 Corporate, unsecured, insolvency proceeding:* Time limit for filing of claims (to speed up proceedings generally)? – **'No' answers from MS1 and MS14.**
- *Q3.15 Consumer, unsecured, insolvency proceeding:* Publicity of the opening of insolvency proceedings to enable filing of claims? – **'No' answers from MS3 and MS12.**
- *Q3.14 Consumer, unsecured, insolvency proceeding:* Time limit for filing of claims (to speed up proceedings generally)? – **'No' answers from MS1 and MS14.**

- *Q3.19 Consumer, unsecured, insolvency proceeding: Availability of avoidance actions? – ‘No’ answers from MS2, MS7 and MS12.*
- *Q2.18 Sole trader/partnership, unsecured, insolvency proceeding: Creditors entitled to request insolvency proceedings to be commenced? ‘No’ answers from MS11, MS19, MS27 and MS28.*
- *Q3.19.1 Consumer, unsecured, insolvency proceeding: Availability of avoidance actions? - maximum timeframe/sensitive retrospective period for voidable transactions – ‘No’ answers from MS2, MS7, MS12 and MS15.*

In summary, ‘No’ answers to the 20 questions where most Member States answer ‘Yes’ were given as follows:

- 6 ‘No’ answers: MS7;
- 3 ‘No’ answers: MS1, M12, MS14;
- 2 ‘No’ answers: MS2;
- 1 ‘No’ answer: MS3, MS11, MS15, MS19, MS27, MS28.

It is noteworthy that these ‘No’ answers to the top 20 questions with most ‘Yes’ answers are not spread out over all Member States, but ultimately come from a smaller group of countries. In addition, most ‘No’ answers come from those Member States with generally the lowest overall scores (please see Chapter 4: Member State perspective: Overall for the aggregated scores).

Themes

A further step in the analysis of these clusters among the Member States is to identify common themes among the questions where Member States agree as to the legal approach to enforcement. The following analysis is based on the top 20 questions with the highest convergence of answers identified above.

The top 20 questions with similar answers feature all of type of debtors. 8 questions concern corporate debtors, 6 questions relate to sole traders and partnerships and 6 questions are interested in consumer debtors.

This diversity, however, gives way once the focus is on the type of debt and the type of proceeding. Out of these 20 questions, 17 concern unsecured claims whereas only 3 relate to secured claims. As regards the type of proceeding, the picture is even more pronounced. Out of the 20 questions, 19 ask about enforcement in insolvency proceeding, whereas only 1 concerns individual enforcement. Strikingly, this 1 question is the question where Member States give negative answers in the large majority.

Digging deeper into the largely common approaches regarding the enforcement of unsecured claims in insolvency proceedings brings the following topics to the fore. The dominant issue is avoidance actions in insolvency (8 questions). This is followed by the issue of the opening and publicity of insolvency proceedings (5 questions). The next most relevant topic (3 questions) concerns the governance of insolvency proceedings (including third party management and filing of claims).

Conclusion

EU Member States cluster around a large number of specific legal approaches to the enforcement of bank loans by the bank as creditor. These shared approaches almost exclusively concern the presence of certain legal features and not their absence. These features, however, concern only some of the categories covered by this study, namely

the enforcement of unsecured claims and insolvency proceedings. The Member States not being part of these widely shared approaches are small in number and mostly provide low overall enforcement support.

There is notably less agreement between the Member States regarding their approaches to secured claims and private enforcement. In terms of themes, Member States cluster around the topics of avoidance actions as well as the opening, publicity and governance of insolvency proceedings.

Chapter 7: Relevant characteristics and best practices

Relevant characteristics

Relevance of enforcement law

Empirical research has proven that enforcement law matters for the recovery rates of banks.⁴⁶ Hence, recovery rates are not just a result of contracts and institutions such as courts enforcing contracts. The research showing the relevance of statutes, regulations and case law supports **the idea at the heart of this study: Member States' legal frameworks matter for recovery rates and speed of recovery.**

However, the same research has also shown that enforcement laws are not all that matters.⁴⁷ First, contracts are relevant. Banks react to legal frameworks and try to improve their chances of recovery. For example, if insolvency laws restrict the enforcement of unsecured loans, banks will react by requiring security in an attempt to **'contract out of' insolvency law. Banks as lenders and companies, sole traders, partnerships or consumers as borrowers can be expected to cooperate in such contracting.** Such cooperation occurs because both sides are interested in minimising the costs of enforcement as neither side benefits from enforcement costs. **The lower the expected enforcement costs, the higher the bank's expected income from a loan** and the lower the interest rate the bank can offer to the borrower.

Second, factors other than laws and contracts matter for recovery rates and speed. Examples include the efficiency of auctions and the management of non-performing loans by banks. **The better the results in auctions and the better the bank's management of distressed loan relationships, the higher the expected recovery rates.** In addition, institutions are relevant. For example, courts and their ability to provide reliable, fair and fast conflict resolution influences recovery rates and speed. The complete network of causes for recovery rates and speed is far from being fully understood.

Identifying relevant characteristics

The starting point for a methodologically sound way of identifying those features of legal frameworks that matter for recovery rates and speed is empirical research of recovery rates and times. Such research would then analyse these recovery rates and times by establishing their relationship with specific features of the relevant legal frameworks. As far as the author is aware, recovery rates and times reflecting the scope of this study are currently not available. In particular, countrywide statistics on recovery rates and time to recovery are scarce. The few studies based on reliable datasets use recovery rates and speed for certain banks or certain loan portfolios only.⁴⁸ It is hoped, however, **that the combination of the European Banking Authority's empirical research⁴⁹ into recovery rates and time and the coding of Member States' legal framework in this study will provide a reliable basis for the identification of relevant legal features.**

⁴⁶ S A Davydenko and J R Franks, Do Bankruptcy Codes Matter? A Study of Defaults in France, Germany and the U.K., *Journal of Finance*, Volume 63, 2008, 565, 601 et seq.

⁴⁷ Ibid.

⁴⁸ This also applies to S A Davydenko and J R Franks, Do Bankruptcy Codes Matter? A Study of Defaults in France, Germany and the U.K., *Journal of Finance*, Volume 63, 2008, 565.

⁴⁹ For details see <https://eba.europa.eu/about-us/missions-and-tasks/calls-for-advice> and above Chapter 1.

Identifying relevant characteristics without this being based on the quantitative analysis just described involves a certain degree of speculation. Such speculation can be useful as a first step towards developing hypotheses, which are then tested against empirical data. One needs to be aware, however, that without such testing lists of relevant legal features remain subject to be empirically proven right (or wrong). With this limitation in mind, the following text presents a list of relevant features developed by the author of this study.

Relevant characteristics

In the opinion of the author, the following 10 questions from the 105 questions in the questionnaire⁵⁰ capture the most relevant issues (in no particular order). This includes pairs of questions that are identical for two or three types of debtors:

- Q1.1, Q2.1, Q3.1 (secured, individual enforcement): Legal techniques to enable out-of-court enforcement of collateral available (no judgement on the underlying claim needed? Not even a court order needed?)?
- Q1.2, Q2.2, Q3.2 (secured, individual enforcement): Private sale allowed at creditor's discretion (public auction optional)?
- Q1.4, Q2.4, Q3.4 (secured, individual enforcement): Absence of long moratoria that suspend enforcement of collateral? ("Long" meaning moratoria designed to give "breathing space" to a debtor to continue operations without paying debt as opposed to short-term moratoria of a few weeks needed to convene meetings for a quick round of negotiations on restructuring or on organisational matters regarding the insolvency.)
- Q1.6, Q2.6, Q3.6 (secured, insolvency proceeding): Proceeds from the collateral earmarked for the secured creditor? ("no need to share")
- Q1.9, Q2.9, Q3.9 (secured, insolvency proceeding): Courts/judges specialised in insolvency cases?
- Q1.12, Q2.12, Q3.12 (unsecured, individual enforcement): Out-of-court foreclosure proceedings such as asset seizure without preceding court order/judgement?
- Q1.18, Q2.18, Q3.18 (unsecured, insolvency proceeding): Creditors entitled to request insolvency proceedings to be commenced?
- Q1.21, Q2.21 (unsecured, insolvency proceeding): Absence of privileges (prior rank) for debt towards government, social security etc.?
- Q1.26, Q2.26, Q3.20 (unsecured, insolvency proceeding): Courts/judges specialised in insolvency cases?
- Q1.28, Q2.28, Q3.22 (unsecured, insolvency proceeding): Court capacity (measured in clearance rates incoming/resolved cases).

In summary, the list is driven by the expectation that the following features matter most for recovery rates and times:

- *Freedom of contract*: using party autonomy allows the bank to adjust contractual rights to the risks associated with the loan contract;
- *Possibility to contract out of collective enforcement by taking security*: this feature refers to the fact that by taking security, the bank creditor may in fact avoid the participation in insolvency proceedings if the bank can enforce into secured assets

⁵⁰ For the questionnaire see Annexe 1.

without the restrictions of an insolvency proceeding. If this private enforcement works, then secured creditors can avoid inefficient insolvency proceedings;

- *Reliability of contracts in the financial distress of the debtor*: this means that the law does not re-order rights agreed between lender and borrower in private or collective enforcement proceedings. This requires, in particular, respecting the ranking of claims and the validity of security not only before such proceedings are opened, but also in private enforcement and insolvency proceedings;
- *Creditor control in collective enforcement proceedings*: as the creditors are the ultimate beneficiaries of insolvency proceedings, such proceedings promise higher recovery rates and faster recovery if the creditors control the proceedings;
- *Effective enforcement institutions (courts, authorities)*: as laws need to be applied and enforced, private actors need effective public enforcement institutions to make progress with enforcement.

EBA study on non-performing loans

The European Banking Authority has published lists of impediments to the reduction of non-performing loans in the loan portfolios of banks.⁵¹ The focus of these lists differs somewhat from the focus of this study. While this study focusses on maximising recovery rates and minimising time to recovery, the EBA lists focus on the reduction of the share of **non-performing loans in bank's loan portfolios**. Nevertheless, the EBA lists are of interest in the context of this study and, hence, are reproduced in the following.

The EBA lists are a collection of issues Member States and Norway (NO) reported and the lists refer to the country reporting the relevant impediments. The EBA study differentiates between impediments as regards the legal system and impediments as regards the judicial system. In addition, impediments of high and medium importance are distinguished from impediments with lower importance.

According to the EBA study, countries reported the following impediments as regards the legal system with high and medium importance (reporting country(s) in brackets):

- Low average recovery (PL, HU): due to long duration and high cost of the legal process;
- Expensive legal proceeding (HU, PL);
- Long duration of the proceeding (PL, HU);
- Complicated legislation, prolonging the process (SI);
- Tax effects on write-off of credits only possible, if the credit was overdue for more than 2 years, fully covered by provisions/impairment, and claimed in a court (PT);⁵²
- Loss realisation under IAS 39: A main barrier to resolving NPLs is the loss realisation under IAS 39 and the resulting capital pressure. Banks with large NPL-portfolios are constrained in the selling process since it would result in a significant accounting loss. Banks are thus reluctant to change their policy. The problem will very likely not improve under the IFRS 9 regime: IFRS 9 requires lower market values as soon as a bank adopts a selling strategy, so banks are disincentivised from adopting such a policy;

⁵¹ EBA Report on the Dynamics and Drivers of Non-Performing Exposures in the EU Banking Sector, 22 July 2016, pp. 32 et seqq.

⁵² There has been a legal change with regards to the fiscal treatment of write-offs in May 2016, for which reason the sentence in this point is no longer totally accurate

- Frequent changes in legal provisions on taxes (RO).

As impediments concerning the legal system with a lower importance the following are mentioned (reporting country(s) in brackets):

- No securitisation law (CY): the right to securitise loan portfolios would increase its marketability;
- Applications by customers to courts for postponement orders which are usually being granted by the court, result in delays in the conclusion of legal measures (CY);
- Duration of the insolvency proceeding (LT);
- Complexity of the insolvency law (LU): consecutive corporate insolvencies cause legal complexities as well as factors like, inter alia, setoff clauses, netting, pledges, securities and property reservation clauses;
- For retail clients: there is a limit of exemption from the execution of salary to secure a minimum wage for the debtor (DE).

As regards the judicial system the following impediments of high and medium importance are referred to (reporting country(s) in brackets):

- Long duration of the insolvency proceeding (PL, PT, CY, HR, IT, SI, GR, BE, CZ) – often due to lack of judges;
- Complexity of the insolvency proceeding (PT);
- Rules allowing for easy postponement delay in enforcement (GR, LT): There are several procedural rules offering relatively easy possibilities for the borrower to dispute actions of the creditor in order to further prolong the process of foreclosure, to impose stand still orders etc

The reported impediment as regards the judicial system of lower importance is (reporting country in brackets):

- No equivalent of US Chapter 11 – debt restructuring (NO).

Best practices

Identifying best practices

The exercise of **identifying best practices starts with a definition of 'best'** – an evaluative and, hence, normative concept. Against the normative background of this study,⁵³ **'best' means contributing most significantly to high recovery rates and quick satisfaction for banks as loan creditors.** This is a different focus compared to those best practices aiming to maximise welfare of all actors affected by laws.

An example for the latter are the **'Good Practices for Resolving Insolvency'** of the World Bank.⁵⁴ At the highest level, these Good Practices mention:

- Streamlining insolvency proceedings;
- Establishing or clarifying rules for commencing insolvency proceedings;
- Establishing effective reorganisation proceedings;
- Promoting creditor participation;

⁵³ For details see Chapter 1.

⁵⁴ See <https://www.doingbusiness.org/en/data/exploretopics/resolving-insolvency/good-practices>.

- Improving provisions applicable to treatment of contracts and voidable transactions;
- Introducing provisions on post-commencement financing;
- Regulating the profession of insolvency administrators.

The World Bank initiative, however, does not only differ from this project in terms of normative aims. It is also different due to its restriction to insolvency proceedings, while this study also considers individual enforcement. In addition, the World Bank uses a single hypothetical test case as reference, while this project tries to capture all types of debtors.

Best practices in the Member States

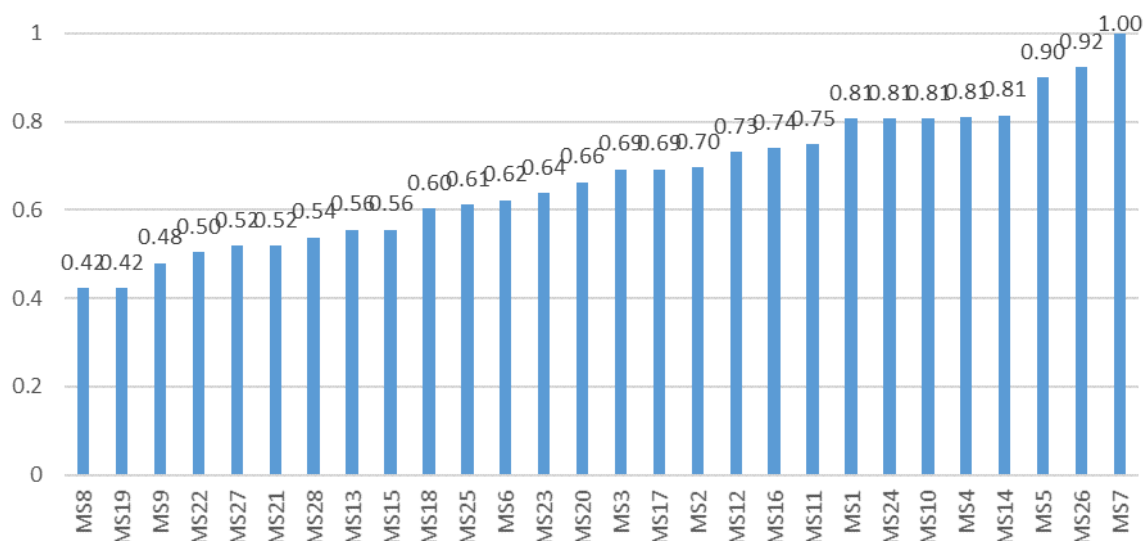
Taking the approach of this project, there are currently three ways to identify best practices. First, in the logic of this project, a best practice is achieved whenever a **Member State's answer to a Yes/No question is 'Yes' or yields an** attractive number to a numerical question, which is coded 1. These results are available for all questions in Annexe 4. A best practice guide based on this approach would require the legal frameworks of each Member State **to implement rules that lead to a 'Yes' answer or a numerical answer coded as 1 to every answer in the questionnaire.**⁵⁵ The questionnaire is designed such that a 'Yes' answer is desirable from the perspective of the bank, while a 'No' answer signals no support for enforcement.

Second, the European Union as a collective applies good practices in those areas where most Member States achieve a result of 1 in the coding of their answers. This **list has already been introduced in Chapter 6 (under 'Topic Perspective')** and is not reproduced here. The full list is available in Annexe 8. In other words, if one is interested to see where good practice currently happens in the European Union, then the list with coded answers close to 1 is the answer. In summary, the current best practice is in the following areas: avoidance actions in insolvency, opening and publicity of insolvency proceedings and governance of insolvency proceedings. If one is concerned in best practices per type of creditor (corporate, sole trader/partnership or consumer), there are additional lists in Annexe 8 showing the Member States' results for each of these types of debtors. Again, the current best practice is where the coded answers are close to 1.

Third, taking the **author's** lists of the most relevant features for bank recovery rates **and quick satisfaction (above under 'Relevant characteristics'), one can ask which** Member States achieve high scores under these specific questions (as opposed to all 105 questions). The result of this analysis is shown in the following chart. It shows the average scores per Member State based on the list of the 10 most relevant legal features identified by the author.

⁵⁵ For the complete questionnaire see Annexe 1.

Composite score on basis of the average of the scores assigned to questions Q1.1, Q2.1, Q3.1, Q1.2, Q2.2, Q3.2, Q1.4, Q2.4, Q3.4, Q1.6, Q2.6, Q3.6, Q1.9, Q2.9, Q3.9, Q1.12, Q2.12, Q3.12, Q1.18, Q2.18, Q3.18, Q1.21, Q2.21, Q1.26, Q2.26, Q3.20, Q1.28, Q2.28, Q3.22:



Interestingly, for many Member States the scores of this list of the 10 most important features and the average results for all 105 Yes/No answers⁵⁶ are quite similar. This means that for many Member States the performance in the list of top 10 features is representative for the scores as regards all 105 features.

The chart above shows significant variation between Member States. The scores range between 0.42 and 1. Scores above 0.8 are achieved by MS7 (1.00), MS26 (0.92), MS5 (0.90), MS1, MS4, MS10, MS14 and MS24 (all 0.81). Scores below 0.5 are scored by MS8 and MS19 (both 0.42) as well as MS9 (0.48). The majority of Member States, 19 in number, achieves averages of 0.6 or higher offering a sound to strong legal framework for the enforcement of bank loans.

As explained in more detail in Chapter 4 under 'Member State perspective', those Member States with lower scores have three reasons for concern. First, such Member States will tend to see lower levels of investment and consumer spending as traders and consumers can only borrow at higher costs caused by ineffective enforcement. Second, bank stability may be negatively affected as banks encounter more obstacles in dealing with non-performing loans. Third, Member States with less attractive enforcement frameworks will experience that traders and consumers will look to other more attractive Member States in search of finance.

Potential for reform

Levels and reasons for action

While this study has identified existing best practices at both the European Union and the Member State levels, causes for reform have also been discovered. The causes for action arise at three levels: (1) in the relationship between the European Union and other regions and countries, (2) in the cross-border relationship between Member

⁵⁶ See above in Chapter 4 under 'Member State Perspective'.

States and (3) within Member States. The reasons for improving the enforcement of bank loans are also threefold: (1) improving access to debt finance, (2) strengthening bank stability and (3) fair treatment of lenders and borrowers.

The relevant levels and reasons for actions have been explained in various parts of this study but shall be summarised at this point looking first at the reasons and then at the levels at which challenges arise. First, improving the enforcement of loan contracts lowers the cost of debt finance and, consequently, increases the access to debt finance. Recovery rates and time to recovery influence the income the bank expects from a loan contract. If recovery rates can be increased and time to recovery can be shortened, then the expected income is higher. In a competitive market, the bank will react by lowering the price charged for loans. Hence, the cost of debt finance will decrease, access to debt finance will improve and investment levels will rise.

Second, higher and quicker recoveries in the enforcement of loan contracts put banks in a better position to manage non-performing loans. Better enforcement frameworks facilitate the reduction of the share of non-performing loans in the loan portfolio including by way of selling such loans on the secondary market. As a result, better enforcement frameworks contribute to bank stability by enabling banks to better manage non-performing loans.

Third, just enforcement frameworks create an equal playing field for lenders and borrowers. Unjustified differences in enforcement lead to unfair advantages and disadvantages between borrowers. If, for example, there is an effective enforcement framework in place for corporate borrowers, but only a mediocre framework available for sole traders, then companies will be in a position to borrow at lower prices than sole traders. If there are no legitimate reasons to prefer companies to sole traders, then such differences in enforcement frameworks would be unjust.

These three reasons – access to debt finance, bank stability and just laws – are all relevant for the three levels identified above, i.e. the European Union level, between Member States and within Member States. At the European Union level, lenders as well as corporate, sole trader, partnership and consumer borrowers operate in markets where they are exposed to actors from other regions and countries, such as the United States of America. If such other regions and countries offer more attractive enforcement frameworks, then both lenders and borrowers are at a competitive disadvantage as regards finance costs and bank stability. Historically, areas of integrated economic activity such as the European common market tend to develop common enforcement laws.⁵⁷

Between Member States, similar considerations apply. Lenders and borrowers in Member States with strong enforcement frameworks have an advantage over those from Member States with weak enforcement frameworks in terms of cost of debt finance, bank stability and fairness. Such competitive (dis)advantages play out even more strongly in the common European market that facilitates cross-border competition and movement. This applies even if enforcement is tied to local assets, such as immovable property. In such cases, weak enforcement frameworks will still have the effect that local actors are at competitive disadvantage and they may react by shifting finance, investments and activities cross-border away from the unattractive framework. In addition, consistent levels of enforcement across Member States facilitate the development of coordinated cross-border strategies to deal with non-performing loans by banks. Indirectly, this should also contribute to a more liquid cross-border finance market.

⁵⁷ F Steffek, *Insolvenzgründe in Europa*, *Zeitschrift für Insolvenzrecht (KTS)* 2009, 317 et seq.

Within Member States, strong enforcement frameworks promise better access to debt finance, increase in bank stability and fairer laws. Attractive laws of business organisation such as company laws and innovative entrepreneurs will have trouble making an impact if the necessary finance is not available. Enforcement frameworks contribute to the availability of finance.

Harmonising against a background of common approaches

An obvious approach for harmonisation relates to those areas of law, where the Member States already widely share common approaches. This would support those few Member States still lagging behind to catch up. In addition, an overall desirable and consistent enforcement level between Member States would be ensured.

This approach applies in particular to those areas of law that were identified in Chapter 5 under '**Common features: present features**'. There, 20 specific features are named where Member States are already strongly aligned as regards their legal frameworks.⁵⁸ In summary, common approaches in the European Union can currently mainly be found as regards the enforcement of unsecured claims in insolvency proceedings. Here relevant topics with largely consistent approaches in the European Union are avoidance actions, the opening and publicity of insolvency proceedings as well as the governance of insolvency proceedings (including third party management and filing of claims). Here, harmonisation would create little intrusion in Member States systems as these features are already shared by most frameworks. A concrete opportunity would, for example, concern the harmonisation of the retrospective time periods for the avoidance of transactions.

Harmonising against a background of different approaches

In substance, the case for harmonising reform is even stronger in those areas where Member States differ widely in their approaches and some Member States do not achieve high scores as regards the effectiveness of their insolvency frameworks. This applies in particular to those Member States with average scores concerning the entire enforcement framework below 0.5, i.e. MS14 (0.40), MS18 (0.41) and MS24 (0.46).⁵⁹ It is also relevant for Member States with overall scores in the range between 0.5 and 0.6, namely MS9 (0.52), MS15 (0.52), MS8 (0.53), MS22 (0.54), MS20 (0.55), MS11 (0.55), MS3 (0.56), MS7 (0.57), MS28 (0.59) and MS21(0.59). Furthermore, this is relevant for other Member States scoring lower numbers in particular areas, for example, as regards average scores for type of debtor, type of loan and type of proceeding.⁶⁰

Differences have been identified in particular as regards the treatment of secured and unsecured claims and between individual and collective enforcement. The Member States differ notably in their approaches to secured claims and private enforcement. In fact, the differences are most prominent as regards the individual enforcement of secured claims by the bank. The Member States differ in their willingness to equip the bank with private powers to enforce security (both movable and immovable). This concerns enforcement against all types of debtors (corporate, sole trader/partnership or consumer).

What are specific areas for harmonisation? First of all, all areas identified in Chapter 5 under '**Differences**' are good candidates. These differences concern many areas of law

⁵⁸ For details, please refer to 'Chapter 5: Common features: present features' above.

⁵⁹ For details see Chapter 5: Member State perspective: Overall.

⁶⁰ For these statistics see Chapter 5: Member State perspective: Type of debtor and following.

and the differences are particularly pronounced as regards the private enforcement powers of banks.

As regards the numerical questions, the following issues stand out. For those Member States with longer time limits for the filing of claims in insolvency, in particular those with scores of 0.5 and lower (MS18 and MS4) the question arises, whether time limits could be shortened in order to improve the speed of recovery. Best practices as regards the time limits for the filing of claims are in the area of 30 days. There is also room for improvement for those Member States with court clearance rates for corporate debtors that are longer than 1 year. These are MS11, MS20, MS19, MS3, MS23 and MS26. Enforcement time would benefit if the turnover of cases could be sped up.

As regards the main theme, i.e. equipping banks with private powers of enforcement, solutions could be developed based on current best practices. An example is the wide freedom of contract banks have under English law, which allows negotiating the point in time in which a security in the form of a floating charge will be enforced.⁶¹ In addition, under English law a bank can open a collective insolvency proceeding in the form of an administration without the involvement of a court. This requires the bank to agree with the borrower that a specific type of security, a qualifying floating charge, is created.⁶² This qualifying floating charge will then be the basis on which the creditor bank appoints an administrator without court involvement.

Reform at Member State level

This study has identified various low scores and inconsistencies within Member States' laws. Scores below 0.6 and larger variations between scores are a very strong signal for a potential case for reform. Looking at the results in 'Chapter 4: Member State perspective' reveals that the large majority of Member States are concerned in at least some of the areas analysed, i.e. enforcement level in general, type of debtor, type of loan or type of proceeding. Such a diagnosis alone, without a cross-border element present, is reason enough for reform. As explained, improving enforcement and consistency within Member States will lead to better access to finance, higher bank stability and an increase in the fairness of the law.

General principles for reform

The cluster network analysis has revealed insights for initiatives to reform local or cross-border enforcement law in the European Union. The analysis shows that methods concentrating on specific features are to be preferred over approaches that try to **classify Member States' legal frameworks** based on traditional theories such as civil versus common law or on the idea of the similarity of legal families such as Austro-Germanic, Napoleonic, Nordic etc.

Modern approaches to regulation take an ex ante perspective rather than an ex post perspective. The ex ante perspective emphasises that the bank should be in a position to foresee with certainty the future effects of its legal and economic choices as regards loan contracts. This is more important for the cost of debt finance and bank stability than ex post approaches that focus on achieving good results after the actors have made their decisions. It should be mentioned that the ex ante approach is not necessarily at odds with the ex post approach. Foreseeability ex ante often leads to good results ex post.

⁶¹ See *Re Brightlife Ltd* [1986] Chancery 200.

⁶² See p. 14(1) Schedule B1 Insolvency Act 1986.

Approaches to reform

Depending on the appetite for change, at least the following four approaches to reform are possible at the level of the European Union in addition to mere cross-border initiatives:

- *Horizontal reform covering larger areas of law:* examples in this context are a harmonisation of insolvency law, a harmonisation of credit security law and/or a harmonisation of private enforcement law.
- *Vertical instruments with a more reduced focus:* such instruments could target areas where there is particular convergence or divergence between Member States. Examples are reforms directed at avoidance actions or at private liquidation of secured assets without the involvement of state authorities.
- *Framework directive offering modules and options to choose from:* the complexities of contract, security as well as individual and collective enforcement laws might be arguments against full harmonisation (whether horizontal or vertical). However, this study shows that there are areas where the Member States widely share similar approaches. In addition, this study identifies areas where divergence calls for action. A framework directive could harmonise options and provide modules to choose from. This would improve consistency in the European Union while at the same time leaving Member States options to choose from. To give just one example, a framework directive could harmonise the elements of avoidance actions, such as grounds for avoiding transactions and the relevant retrospective time periods. This would help Member States cluster around best practices while at the same time allowing for local adaptations.
- *European rules to opt-in (29th regime):* **if reform of Member State's rules were thought to be too difficult, a genuinely European regime could be created and offered in addition to Member State's regimes. For example, borrowers such as companies and other traders could voluntarily opt into a European insolvency law if they wished. The applicable insolvency law would be identifiable for bank creditors through an open register (in the case of companies the enterprise register). Debtors would have an incentive to opt into a European regime if this was attractive for both debtors and creditors.**

Conclusion

Enforcement law matters. In addition, contracts and institutions matter. Determining reliably, which of the 105 features in the questionnaire are most relevant for recovery rates and times in reality, requires a combination of the results of this study with empirically researched enforcement outcomes. In the meantime, the qualitative hypothesis is that the following elements matter: freedom of contract; the possibility to contract out of collective enforcement by taking security; the reliability of contracts in the financial distress of the debtor; creditor control in collective enforcement proceedings and efficient enforcement institutions.

Considering a list of the 10 most relevant features derived from these principles reveals the following results: the large majority of Member States' scores averages of 0.6 or higher. However, there is significant variation between Member States ranging from averages of 0.42 to 1. Averages below 0.6 are scored by 9 Member States. This causes concerns in terms of cost of debt finance, bank stability and international competition.

There are good reasons to optimise enforcement laws and to create consistent levels of enforcement at European Union level, between Member States and within Member States. Better enforcement laws improve access to debt finance, increase bank stabil-

ity and contribute to just laws. Harmonisation can improve legal frameworks where there are already strong commonalities between Member States and also in cases **where Member States' approaches differ strongly. In addition, the statistical analysis** has revealed that there is a strong case for local reform in a number of Member States.

From the perspective of the European Union, four ways forward can be envisaged in addition to mere cross-border initiatives: wide horizontal reform instruments, more narrow targeted vertical reform, a framework directive offering modules and options and, finally, a genuine European regime debtors can opt into.

Chapter 8: Further research potential

Introduction

The following notes indicate further research potential as regards the enforcement of bank loans in the EU. The following notes cover data content and structure, data collection and the normative concept of possible future research.

Data content and structure

Currently the project takes a 'snapshot' of the Member States' legal frameworks at a certain point in time. In addition, it might be interesting to map the development of the legal frameworks over time to see whether and, if so, which changes in the law impact recovery rates and times. This could be operationalised starting with the existing database. Member States could update the existing data in an agreed rhythm, for example every 2 years.

Further, a cross-border analysis might be added as such a cross-border perspective might yield new insights into the desirability of harmonisation.

Some topics could be added to the questionnaire even if restructuring and 'second chance' **continue to be** excluded from the scope of the project. Just to name some examples:

- **Power of creditors' assembly in insolvency proceedings (as opposed to creditors' meeting, which is covered);**
- Power of single creditors holding large claims or special rights in insolvency proceedings;
- Distinguishing even more between large debtors and SME debtors (there is already some distinction in the questionnaire);
- Power of one creditor to open insolvency proceedings autonomously, i.e. without the need to apply to a public authority (e.g. a court);
- Interim payments in insolvency proceedings;
- **The question 'Set time requirements for all or most of the steps of insolvency proceedings?' currently only addresses secured claims, but it might even be more relevant for unsecured claims;**
- Legal rules on the costs of enforcement.

Further, it might be helpful to consider whether certain elements of the Member States' legal frameworks are interdependent. One way to do this is to construct a flowchart of the enforcement processes.⁶³

As regards the empirical study of the reality of recovery rates and times, the cost of enforcement could be determined. In addition, where multiple steps are necessary to achieve the final recovery rate (e.g. in cases of staggered payouts in enforcement and insolvency proceedings), recovery rates over time could be explored.

To ensure that there is no bias in the choice of question, each Member State could expressly be asked to either suggest further questions or to confirm that the questions represent its legal framework.

⁶³ Siems and De Cesari, *Journal of Corporate Law Studies*, Vol. 12, pp. 33-57, 2012, Figure 1.

Data collection

In the process of data collection, Member States could be provided with a guidance document clarifying the understanding of questions. Some questions could be further clarified. For example, quantitative questions focussing on periods of time could give guidance on the relevant starting point for the time period and the measurement of the period. Another example is to clarify further the relationship between main and sub-questions (e.g., whether the main question needs to be answered). Annexe 6 contains further details on questions possibly in need of clarification.

Based on the data already collected, remaining data gaps (see Annexe 5) could be closed and answers in need of clarification could be revisited (see Annexe 7). Finally, the collection of qualitative and quantitative data could be coordinated in order to achieve a dataset where qualitative (e.g. laws) and quantitative data (e.g. recovery rates) refer to the same points in time.

Normative concept

Finally, thought could be given whether to widen the normative concept of the project from considering the welfare of one actor to considering the welfare of all affected actors. This, however, would make the study considerably more challenging. It would also require including personal and corporate insolvency and restructuring issues. Again, this might be difficult to achieve.

Annexe 1: Questionnaire

Qualitative questions

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	[Country code]	Instructions on how to fill in the questionnaire
Corporate (legal entity)	Secured (specific rules)	Individual enforcement	1.1	Legal techniques to enable out-of-court enforcement of collateral available (no judgement on the underlying claim needed? Not even a court order needed?)? (excluding financial collateral as per the Financial Collateral Directive 2002/47 (as amended))		
			1.1.1	<ul style="list-style-type: none"> For real estate collateral 		Yes/No answer
			1.1.2	<ul style="list-style-type: none"> For movable collateral [to mean tangible moveable assets posed as collateral] 		Yes/No answer
			1.2	Private sale allowed at creditor's discretion (public auction optional)?		
			1.2.1	<ul style="list-style-type: none"> For real estate collateral 		Yes/No answer
			1.2.2	<ul style="list-style-type: none"> For movable collateral 		Yes/No answer
			1.3	Seizure of collateral on own book permitted?		
			1.3.1	<ul style="list-style-type: none"> For real estate collateral 		Yes/No answer
			1.3.2	<ul style="list-style-type: none"> For movable collateral 		Yes/No answer
			1.4	Absence of long moratoria that suspend enforcement of collateral? ("Long" meaning moratoria designed to give "breathing space" to a debtor to continue operations without paying debt as opposed to short-term moratoria of a few weeks needed to convene meetings for a quick round of negotiations on restructuring or on organisational matters regarding the insolvency.)		Yes/No answer
		1.5	Entry test for restructuring proceedings to avoid abuse of moratoria?		Yes/No answer	
		Insolvency proceedings	1.6	Proceeds from the collateral earmarked for the secured creditor? ("no need to share")		Yes/No answer
			1.7	Proceeds from the collateral accessible before the collective proceedings for unsecured creditors are taking their course? ("not need to wait")		Yes/No answer
			1.8	Private sale allowed at creditor's discretion (public auction optional)?		Yes/No answer
			1.9	Courts/judges specialised in insolvency cases?		Yes/No answer
1.10	Set time requirements for all or most of the steps of insolvency proceedings?			Yes/No answer		
1.11	Electronic communication with courts and insolvency administrators?			Yes/No answer		

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	[Country code]	Instructions on how to fill in the questionnaire
	Unsecured (and general rules)	Individual enforcement	1.12	Out-of-court foreclosure proceedings such as asset seizure without preceding court order/judgement?		Yes/No answer
		Insolvency proceedings	1.13	Time limit for filing of claims (to speed up proceedings generally)?		Yes/No answer
			1.14	Publicity of the opening of insolvency proceedings to enable filing of claims?		Yes/No answer
			1.15	Triggers for collective insolvency proceeding taking into consideration debtor's future positive/negative cash flow?		Yes/No answer
			1.16	Debtor obliged to file for insolvency within short time limit?		Yes/No answer
			1.17	Insolvency proceedings triggered by official intervention upon administrative scrutiny? (We understand some MS have a system in place which monitors distressed companies.)		Yes/No answer
			1.18	Creditors entitled to request insolvency proceedings to be commenced?		Yes/No answer
			1.19	Creditors' chances to impact on the proceedings through creditor committees (existence, voting rights, right to ask to switch to out-of-court proceedings)		Free text
			1.20	Does management of the estate pass to an outsider (as opposed to current management remaining in possession)?		Yes/No answer
			1.21	Absence of privileges (prior rank) for debt towards government, social security etc.? [SSM: "clearance of arrears to public sector"]		Yes/No answer
			1.22	Absence of privileges (prior rank) for wages, pension schemes etc.?		Yes/No answer
			1.23	Absence of other general privileges for specific types of creditors/debt?		Yes/No answer
			1.24	'Pre-pack' insolvency (or restructuring) available for SMEs?		Yes/No answer
			1.25	Availability of avoidance actions?		Yes/No answer
			1.25.1	- maximum timeframe/sensitive retrospective period for voidable transactions		
			1.25.2	- broad range of reasons and recipients for avoidance actions?		Yes/No answer
			1.26	Courts specialised in insolvency cases?		Yes/No answer
			1.27	Number of court cases per capita [and number of judges per capita]		
			1.28	Court capacity (measured in clearance rates incoming/resolved cases)		
			1.29	Electronic communication with courts and insolvency administrators?		Yes/No answer
Entrepreneurs (sole/partnership)	Secured (specific rules)	Individual enforcement	2.1	Legal techniques to enable out-of-court enforcement of collateral available (no judgement on the underlying claim needed? Not even a court order needed)?		Yes/No answer
			2.1.1	<ul style="list-style-type: none"> For real estate collateral 		

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	[Country code]	Instructions on how to fill in the questionnaire	
			2.1.2	<ul style="list-style-type: none"> For movable collateral 		Yes/No answer	
			2.2	Private sale allowed at creditor's discretion (public auction optional)?			
			2.2.1	<ul style="list-style-type: none"> For real estate collateral 		Yes/No answer	
			2.2.2	<ul style="list-style-type: none"> For movable collateral 		Yes/No answer	
			2.3	Seizure of collateral on own book permitted?			
			2.3.1	<ul style="list-style-type: none"> For real estate collateral 		Yes/No answer	
			2.3.2	<ul style="list-style-type: none"> For movable collateral 		Yes/No answer	
			2.4	Absence of long moratoria that suspend enforcement of collateral? ("Long" meaning moratoria designed to give "breathing space" to a debtor to continue operations without paying debt as opposed to short-term moratoria of a few weeks needed to convene meetings for a quick round of negotiations on restructuring or on organisational matters regarding the insolvency.)		Yes/No answer	
			2.5	Entry test for restructuring proceedings to avoid abuse of moratoria?		Yes/No answer	
			Insolvency proceedings	2.6	Proceeds from the collateral earmarked for the secured creditor? ("no need to share")		Yes/No answer
		2.7		Proceeds from the collateral accessible before the collective proceedings for unsecured creditors are taking their course? ("not need to wait")		Yes/No answer	
		2.8		Private sale allowed at creditor's discretion (public auction optional)?		Yes/No answer	
		2.9		Courts/judges specialised in insolvency cases?		Yes/No answer	
		2.10		Set time requirements for all or most of the steps of insolvency proceedings?		Yes/No answer	
		2.11		Electronic communication with courts and insolvency administrators?		Yes/No answer	
		Unsecured (general rules)		Individual enforcement	2.12	Out-of-court foreclosure proceedings such as asset seizure without preceding court order/judgement?	
			2.13		Time limit for filing of claims (to speed up proceedings generally)?		Yes/No answer
			Insolvency proceedings	2.14	Publicity of the opening of insolvency proceedings to enable filing of claims?		Yes/No answer
				2.15	Triggers for collective insolvency proceeding taking into consideration debtor's future positive/negative cash flow?		Yes/No answer
				2.16	Debtor obliged to file for insolvency within short time limit?		Yes/No answer
2.17	Insolvency proceedings triggered by official intervention upon administrative scrutiny?				Yes/No answer		
2.18	Creditors entitled to request insolvency proceedings to be commenced?				Yes/No answer		

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	[Country code]	Instructions on how to fill in the questionnaire
			2.19	Creditors' chances to impact on the proceedings through creditor committees (existence, voting rights, right to ask to abandon in-court in favour of out-of-court proceedings)		Free text
			2.20	Does management of the estate pass to an outsider (as opposed to current management remaining in possession)?		Yes/No answer
			2.21	Absence of privileges (prior rank) for debt towards government, social security etc.? [SSM: "clearance of arrears to public sector"]		Yes/No answer
			2.22	Absence of privileges (prior rank) for wages, pension schemes etc.?		Yes/No answer
			2.23	Absence of other general privileges for specific types of creditors/debt?		Yes/No answer
			2.24	'Pre-pack' insolvency (or restructuring) available for SMEs?		Yes/No answer
			2.25	Availability of avoidance actions?		
			2.25.1	- maximum timeframe/sensitive retrospective period for voidable transactions		Yes/No answer
			2.25.2	- broad range of reasons and recipients for avoidance actions?		Yes/No answer
			2.26	Courts specialised in insolvency cases?		Yes/No answer
			2.27	Number of court cases per capita [and number of judges per capita]		
			2.28	Court capacity (measured in clearance rates incoming/resolved cases)		
			2.29	Electronic communication with courts and insolvency administrators?		Yes/No answer
Consumers	Secured (specific rules)	Individual enforcement	3.1	Legal techniques to enable out-of-court enforcement of collateral available (no judgement on the underlying claim needed? Not even a court order needed?)?		
			3.1.1	• For real estate collateral		Yes/No answer
			3.1.2	• For movable collateral		Yes/No answer
			3.2	Private sale allowed at creditor's discretion (public auction optional)?		
			3.2.1	• For real estate collateral		Yes/No answer
			3.2.2	• For movable collateral		Yes/No answer
			3.3	Seizure of collateral on own book permitted?		
			3.3.1	• For real estate collateral		Yes/No answer
			3.3.2	• For movable collateral		Yes/No answer
			3.4	Absence of long moratoria that suspend enforcement of collateral? ("Long" meaning moratoria designed to give "breathing space" to a debtor to continue operations without paying debt as opposed to short-term moratoria of a few weeks needed to convene meetings for a quick round of		Yes/No answer

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	[Country code]	Instructions on how to fill in the questionnaire
				negotiations on restructuring or on organisational matters regarding the insolvency.)		
			3.5	Entry test for restructuring proceedings to avoid abuse of moratoria?		Yes/No answer
		Insolvency proceedings	3.6	Proceeds from the collateral earmarked for the secured creditor? ("no need to share")		Yes/No answer
			3.7	Proceeds from the collateral accessible before the collective proceedings for unsecured creditors are taking their course? ("not need to wait")		Yes/No answer
			3.8	Private sale allowed at creditor's discretion (public auction optional)?		Yes/No answer
			3.9	Courts/judges specialised in insolvency cases?		Yes/No answer
			3.10	Set time requirements for all or most of the steps of insolvency proceedings?		Yes/No answer
			3.11	Electronic communication with courts and insolvency administrators?		Yes/No answer
			Individual enforcement	3.12	Out-of-court foreclosure proceedings such as asset seizure without preceding court order/judgement?	
		3.13		Length of period before discharge of debt?		
		Unsecured (general rules)	Insolvency proceedings	3.14	Time limit for filing of claims (to speed up proceedings generally)?	
	3.15			Publicity of the opening of insolvency proceedings to enable filing of claims?		Yes/No answer
	3.16			Triggers for collective insolvency proceeding taking into consideration debtor's future positive/negative cash flow?		Yes/No answer
	3.17			Debtor obliged to file for insolvency within short time limit?		Yes/No answer
	3.18			Creditors entitled to request insolvency proceedings to be commenced?		Yes/No answer
	3.19			Availability of avoidance actions?		
	3.19.1			- maximum timeframe/sensitive retrospective period for voidable transactions		Yes/No answer
	3.19.2			- broad range of reasons and recipients for avoidance actions?		Yes/No answer
	3.20			Courts specialised in insolvency cases?		Yes/No answer
	3.21			Number of court cases per capita [and number of judges per capita]		
	3.22	Court capacity (measured in clearance rates incoming/resolved cases)				
	3.23	Electronic communication with courts and insolvency administrators?		Yes/No answer		

Quantitative questions

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	[Country code]	Instructions on how to fill in the questionnaire
Corporate (legal entity)	Secured (specific rules)	Individual enforcement	1.1	Legal techniques to enable out-of-court enforcement of collateral available (no judgement on the underlying claim needed? Not even a court order needed?)? (excluding financial collateral as per the Financial Collateral Directive 2002/47 (as amended))		
			1.1.1	<ul style="list-style-type: none"> For real estate collateral 		
			1.1.2	<ul style="list-style-type: none"> For movable collateral [to mean tangible moveable assets posed as collateral] 		
			1.2	Private sale allowed at creditor's discretion (public auction optional)?		
			1.2.1	<ul style="list-style-type: none"> For real estate collateral 		
			1.2.2	<ul style="list-style-type: none"> For movable collateral 		
			1.3	Seizure of collateral on own book permitted?		
			1.3.1	<ul style="list-style-type: none"> For real estate collateral 		
			1.3.2	<ul style="list-style-type: none"> For movable collateral 		
			1.4	Absence of long moratoria that suspend enforcement of collateral? ("Long" meaning moratoria designed to give "breathing space" to a debtor to continue operations without paying debt as opposed to short-term moratoria of a few weeks needed to convene meetings for a quick round of negotiations on restructuring or on organisational matters regarding the insolvency.)		
		1.5	Entry test for restructuring proceedings to avoid abuse of moratoria?			
		Insolvency proceedings	1.6	Proceeds from the collateral earmarked for the secured creditor? ("no need to share")		
			1.7	Proceeds from the collateral accessible before the collective proceedings for unsecured creditors are taking their course? ("not need to wait")		
			1.8	Private sale allowed at creditor's discretion (public auction optional)?		
			1.9	Courts/judges specialised in insolvency cases?		
1.10	Set time requirements for all or most of the steps of insolvency proceedings?			Numerical value to be provided if answer is 'Yes'		
1.11	Electronic communication with courts and insolvency administrators?					

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	[Country code]	Instructions on how to fill in the questionnaire
Unsecured (and general rules)		Individual enforcement	1.12	Out-of-court foreclosure proceedings such as asset seizure without preceding court order/judgement?		
		Insolvency proceedings	1.13	Time limit for filing of claims (to speed up proceedings generally)?		Numerical value to be provided if answer is 'Yes'
			1.14	Publicity of the opening of insolvency proceedings to enable filing of claims?		
			1.15	Triggers for collective insolvency proceeding taking into consideration debtor's future positive/negative cash flow?		
			1.16	Debtor obliged to file for insolvency within short time limit?		
			1.17	Insolvency proceedings triggered by official intervention upon administrative scrutiny? (We understand some MS have a system in place which monitors distressed companies.)		
			1.18	Creditors entitled to request insolvency proceedings to be commenced?		
			1.19	Creditors' chances to impact on the proceedings through creditor committees (existence, voting rights, right to ask to switch to out-of-court proceedings)		
			1.20	Does management of the estate pass to an outsider (as opposed to current management remaining in possession)?		
			1.21	Absence of privileges (prior rank) for debt towards government, social security etc.? [SSM: "clearance of arrears to public sector"]		
			1.22	Absence of privileges (prior rank) for wages, pension schemes etc.?		
			1.23	Absence of other general privileges for specific types of creditors/debt?		
			1.24	'Pre-pack' insolvency (or restructuring) available for SMEs?		
			1.25	Availability of avoidance actions?		
			1.25.1	- maximum timeframe/sensitive retrospective period for voidable transactions		Numerical value to be provided if answer is 'Yes'
			1.25.2	- broad range of reasons and recipients for avoidance actions?		
			1.26	Courts specialised in insolvency cases?		
			1.27	Number of court cases per capita [and number of judges per capita]		Numerical value to be provided
			1.28	Court capacity (measured in clearance rates incoming/resolved cases)		Numerical value to be provided
			1.29	Electronic communication with courts and insolvency administrators?		

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	[Country code]	Instructions on how to fill in the questionnaire
Entrepreneurs (sole/partnership)	Secured (specific rules)	Individual enforcement	2.1	Legal techniques to enable out-of-court enforcement of collateral available (no judgement on the underlying claim needed? Not even a court order needed?)?		
			2.1.1	<ul style="list-style-type: none"> For real estate collateral 		
			2.1.2	<ul style="list-style-type: none"> For movable collateral 		
			2.2	Private sale allowed at creditor's discretion (public auction optional)?		
			2.2.1	<ul style="list-style-type: none"> For real estate collateral 		
			2.2.2	<ul style="list-style-type: none"> For movable collateral 		
			2.3	Seizure of collateral on own book permitted?		
			2.3.1	<ul style="list-style-type: none"> For real estate collateral 		
			2.3.2	<ul style="list-style-type: none"> For movable collateral 		
			2.4	Absence of long moratoria that suspend enforcement of collateral? ("Long" meaning moratoria designed to give "breathing space" to a debtor to continue operations without paying debt as opposed to short-term moratoria of a few weeks needed to convene meetings for a quick round of negotiations on restructuring or on organisational matters regarding the insolvency.)		
			2.5	Entry test for restructuring proceedings to avoid abuse of moratoria?		
	Insolvency proceedings	2.6	Proceeds from the collateral earmarked for the secured creditor? ("no need to share")			
		2.7	Proceeds from the collateral accessible before the collective proceedings for unsecured creditors are taking their course? ("not need to wait")			
		2.8	Private sale allowed at creditor's discretion (public auction optional)?			
		2.9	Courts/judges specialised in insolvency cases?			
2.10		Set time requirements for all or most of the steps of insolvency proceedings?		Numerical value to be provided if answer is 'Yes'		
2.11		Electronic communication with courts and insolvency administrators?				
Unsecured (general rules)	Individual enforcement	2.12	Out-of-court foreclosure proceedings such as asset seizure without preceding court order/judgement?			
		2.13	Time limit for filing of claims (to speed up proceedings generally)?		Numerical value to be provided if answer is 'Yes'	
	Insolvency proceedings	2.14	Publicity of the opening of insolvency proceedings to enable filing of claims?			
		2.15	Triggers for collective insolvency proceed-			

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	[Country code]	Instructions on how to fill in the questionnaire
				ing taking into consideration debtor's future positive/negative cash flow?		
			2.16	Debtor obliged to file for insolvency within short time limit?		
			2.17	Insolvency proceedings triggered by official intervention upon administrative scrutiny?		
			2.18	Creditors entitled to request insolvency proceedings to be commenced?		
			2.19	Creditors' chances to impact on the proceedings through creditor committees (existence, voting rights, right to ask to abandon in-court in favour of out-of-court proceedings)		
			2.20	Does management of the estate pass to an outsider (as opposed to current management remaining in possession)?		
			2.21	Absence of privileges (prior rank) for debt towards government, social security etc.? [SSM: "clearance of arrears to public sector"]		
			2.22	Absence of privileges (prior rank) for wages, pension schemes etc.?		
			2.23	Absence of other general privileges for specific types of creditors/debt?		
			2.24	'Pre-pack' insolvency (or restructuring) available for SMEs?		
			2.25	Availability of avoidance actions?		
			2.25.1	- maximum timeframe/sensitive retrospective period for voidable transactions		Numerical value to be provided if answer is 'Yes'
			2.25.2	- broad range of reasons and recipients for avoidance actions?		
			2.26	Courts specialised in insolvency cases?		
			2.27	Number of court cases per capita [and number of judges per capita]		Numerical value to be provided
			2.28	Court capacity (measured in clearance rates incoming/resolved cases)		Numerical value to be provided
			2.29	Electronic communication with courts and insolvency administrators?		
Consumers	Secured (specific rules)	Individual enforcement	3.1	Legal techniques to enable out-of-court enforcement of collateral available (no judgement on the underlying claim needed? Not even a court order needed)?		
			3.1.1	• For real estate collateral		
			3.1.2	• For movable collateral		
			3.2	Private sale allowed at creditor's discretion (public auction optional)?		
			3.2.1	• For real estate collateral		

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	[Country code]	Instructions on how to fill in the questionnaire
			3.2.2	<ul style="list-style-type: none"> For movable collateral 		
			3.3	Seizure of collateral on own book permitted?		
			3.3.1	<ul style="list-style-type: none"> For real estate collateral 		
			3.3.2	<ul style="list-style-type: none"> For movable collateral 		
			3.4	Absence of long moratoria that suspend enforcement of collateral? ("Long" meaning moratoria designed to give "breathing space" to a debtor to continue operations without paying debt as opposed to short-term moratoria of a few weeks needed to convene meetings for a quick round of negotiations on restructuring or on organisational matters regarding the insolvency.)		
		3.5	Entry test for restructuring proceedings to avoid abuse of moratoria?			
		Insolvency proceedings	3.6	Proceeds from the collateral earmarked for the secured creditor? ("no need to share")		
			3.7	Proceeds from the collateral accessible before the collective proceedings for unsecured creditors are taking their course? ("not need to wait")		
			3.8	Private sale allowed at creditor's discretion (public auction optional)?		
			3.9	Courts/judges specialised in insolvency cases?		
			3.10	Set time requirements for all or most of the steps of insolvency proceedings?		Numerical value to be provided if answer is 'Yes'
	3.11		Electronic communication with courts and insolvency administrators?			
	Unsecured (general rules)	Individual enforcement	3.12	Out-of-court foreclosure proceedings such as asset seizure without preceding court order/judgement?		
			3.13	Length of period before discharge of debt?		Numerical value to be provided
		Insolvency proceedings	3.14	Time limit for filing of claims (to speed up proceedings generally)?		Numerical value to be provided
			3.15	Publicity of the opening of insolvency proceedings to enable filing of claims?		
			3.16	Triggers for collective insolvency proceeding taking into consideration debtor's future positive/negative cash flow? [tbd / ambiguous]		
			3.17	Debtor obliged to file for insolvency within short time limit?		
			3.18	Creditors entitled to request insolvency proceedings to be commenced?		
3.19			Availability of avoidance actions?			

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	[Country code]	Instructions on how to fill in the questionnaire
			3.19.1	- maximum timeframe/sensitive retrospective period for voidable transactions		Numerical value to be provided if answer is 'Yes'
			3.19.2	- broad range of reasons and recipients for avoidance actions?		
			3.20	Courts specialised in insolvency cases?		
			3.21	Number of court cases per capita [and number of judges per capita]		Numerical value to be provided
			3.22	Court capacity (measured in clearance rates incoming/resolved cases)		Numerical value to be provided
			3.23	Electronic communication with courts and insolvency administrators?		

Annexe 2: Member States' answers

Qualitative questions

[This content has been removed to anonymise the study.]

Quantitative questions

[This content has been removed to anonymise the study.]

Annexe 3: Coding principles

General coding principles

1. Overview

- This document provides general coding guidance. Specific coding guidance for particular questions is provided in the last column of the Excel spreadsheet document ('Specific coding guidance').
- This project concentrates on bank loan enforcement against companies, unincorporated entrepreneurs (sole traders, partnerships) and consumers by way of individual enforcement and insolvency proceeding (without restructuring and second chance) distinguishing between secured and unsecured loans.
- The focus of this coding exercise is the amount and the speed of loan enforcement from the perspective of a bank. The higher the recovery rate and the quicker the bank receives payment, the better. This coding ignores how other stakeholders fare.
- Specific coding guidance for the second set of responses providing updates and corrections in the period from 25 September 2019 to 15 October 2019 is given below under 5.

2. Coding principles

- Please assign values between 1 (maximum) and 0 (minimum). 1 means maximum support of high and/or quick satisfaction of a bank. 0 means no support of high and/or quick satisfaction of a bank.
- Values between 1 and 0 are used to represent relative support of bank recovery. The higher (lower) the value, the more (less) support is provided for a high and quick satisfaction of the bank.
- Numerical values are normalised across {0,1} and rounded to one decimal place.
- Reforms, which are already law, but not yet in force, are treated as law. Reform proposals, for which legislative acts are still missing, are ignored.
- If you are unsure and would like the project lead to double-check the value you assigned, please mark the cell yellow.

3. Assigning values

- If the answer is only 'Yes' or 'No' the following values are assigned
 - Yes = 1;
 - No = 0.
- Where additional information does not affect the generality of the 'yes' or 'no' statement, the addition is always ignored.
 - Examples: 'yes, especially...', 'no, for example...'
- Where the question does not differentiate, but additional information provided impacts the generality of the 'yes' or 'no' statement, the addition is still always ignored. Otherwise the coding would be skewed as other answers do not differentiate.
 - Example question: 'Proceeds from the collateral earmarked for the secured creditor? ("no need to share")'; example answer: 'Yes, but a part

of the proceeds is **first applied to pay for administrative costs**; value to be assigned: 1 (and not a fraction such as 0.8).

- However, in the specific situation where the additional information is **'yes in this case, but no in this case'**, an overall evaluation is made from the perspective of the bank and a 1 or 0 score awarded.
- Where the question differentiates and additional information does affect the generality of a **'yes' or 'no' answer, the addition is evaluated and is taken into account** by assigning a value between 1 and 0. In such cases, specific coding guidance is provided in the **'Specific coding guidance' document**.
 - **Example question: 'Electronic communication with courts and insolvency administrators?'; example answer: 'No. Electronic communication with insolvency administrator is possible'; code as 0.5 as electronic communication possible with 1 out of 2 actors.**
- If a right or other legal position requires a contractual stipulation, assign value assuming that the contractual requirement has been complied with.
 - **Example question: 'Seizure of collateral on own book permitted?'; example answer: 'Yes, if there is a contractual agreement'; code as 1 (i.e. assume that such a contract is in place).**

4. Deficiencies in the available data

- If there is no answer or no relevant answer to the question, the answer is not coded and the cell is left empty and marked green.
 - An exception to the above rule applies for questions divided in a main question and sub-question(s) such as questions 1.1, 1.2. If there is no answer to the main question, but there is an answer to one or more sub-questions allowing a clear conclusion as regards the main question, then the main question is coded.
 - An exception to the above rule also applies if the main question is answered in the negative. In this case unanswered sub-questions are coded as 0.
- All responses are assumed to be correct. The answers are taken at face value even if they seem wrong or dubious.
- However, in cases of wrong or dubious answers, the cell in the spreadsheet is flagged red.
- Guidance given to specific Member States by email is not considered for coding. This would risk distortion as such advice was not given to all Member States.

5. Specific coding principles for the second set of responses

- These specific principles only apply to the second set of responses provided by Member States between 25 September 2019 and 15 October 2019.
- Amendments of existing answers are only accepted if they are explained and if the explanation makes the answer plausible. The requirement of an explanation is fulfilled if the Member State generally refers to a better understanding of the question following the conference on 24 September 2019.
- Answers filling gaps are accepted whether or not there is an explanation. If there is an explanation the answer is only accepted if the explanation makes the answer plausible.

6. Colour overview

- No colour: answer is coded;
- Green: answer is not coded;
- Yellow: project lead shall check;
- Red: data seems doubtful/wrong.

Question-specific coding principles

Specific coding principles for qualitative answers

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	Instructions on how to fill in the questionnaire	Specific coding guidance
Corporate (legal entity)	Secured (specific rules)	Individual enforcement	1.1	Legal techniques to enable out-of-court enforcement of collateral available (no judgement on the underlying claim needed? Not even a court order needed?)? (excluding financial collateral as per the Financial Collateral Directive 2002/47 (as amended))		
			1.1.1	<ul style="list-style-type: none"> For real estate collateral 	Yes/No answer	
			1.1.2	<ul style="list-style-type: none"> For movable collateral [to mean tangible moveable assets posed as collateral] 	Yes/No answer	
			1.2	Private sale allowed at creditor's discretion (public auction optional)?		Assign 0.8 if private sale allowed at creditor's discretion, but public auction not at creditor's discretion; assign 0.8 if sale allowed at creditors' discretion, but it needs to be a public auction (creditor has no choice).
			1.2.1	<ul style="list-style-type: none"> For real estate collateral 	Yes/No answer	
			1.2.2	<ul style="list-style-type: none"> For movable collateral 	Yes/No answer	
			1.3	Seizure of collateral on own book permitted?		Whether creditor may bid in the auction not relevant for coding.
			1.3.1	<ul style="list-style-type: none"> For real estate collateral 	Yes/No answer	
			1.3.2	<ul style="list-style-type: none"> For movable collateral 	Yes/No answer	
			1.4	Absence of long moratoria that suspend enforcement of collateral? ("Long" meaning moratoria designed to give "breathing space" to a debtor to continue operations without paying debt as opposed to short-term moratoria of a few weeks needed to convene meetings for a quick round of negotiations on restructuring or on organisational matters regarding the insolvency.)	Yes/No answer	
1.5	Entry test for restructuring proceedings to avoid abuse of moratoria?	Yes/No answer				

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	Instructions on how to fill in the questionnaire	Specific coding guidance
		Insolvency proceedings	1.6	Proceeds from the collateral earmarked for the secured creditor? ("no need to share")	<i>Yes/No answer</i>	
			1.7	Proceeds from the collateral accessible before the collective proceedings for unsecured creditors are taking their course? ("not need to wait")	<i>Yes/No answer</i>	
			1.8	Private sale allowed at creditor's discretion (public auction optional)?	<i>Yes/No answer</i>	Assign 0.8 if private sale allowed at creditor's discretion, but public auction not at creditor's discretion; assign 0.8 if only public auction (but no private sale) can be triggered at creditor's discretion.
			1.9	Courts/judges specialised in insolvency cases?	<i>Yes/No answer</i>	Assign 1 if either courts or judges are specialised; internal rules of court are sufficient for specialisation.
			1.10	Set time requirements for all or most of the steps of insolvency proceedings?	<i>Yes/No answer</i>	Assign 1 if time requirements for all or most steps; otherwise, for example if only for some steps, assign 0.
			1.11	Electronic communication with courts and insolvency administrators?	<i>Yes/No answer</i>	Assign 0.5 if electronic communication only with either courts or insolvency administrators.
			1.12	Out-of-court foreclosure proceedings such as asset seizure without preceding court order/judgement?	<i>Yes/No answer</i>	Assign 0 if court order/judgement is needed for either claim or enforcement; ignore retention of title clauses.
	Unsecured (and general rules)	Insolvency proceedings	1.13	Time limit for filing of claims (to speed up proceedings generally)?	<i>Yes/No answer</i>	
			1.14	Publicity of the opening of insolvency proceedings to enable filing of claims?	<i>Yes/No answer</i>	
			1.15	Triggers for collective insolvency proceeding taking into con-	<i>Yes/No answer</i>	

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	Instructions on how to fill in the questionnaire	Specific coding guidance
				sideration debtor's future positive/negative cash flow?		
			1.16	Debtor obliged to file for insolvency within short time limit?	<i>Yes/No answer</i>	If debtor can file, but is not under an obligation to file, assign 0; ignore whether directors may be liable for insolvent trading; ignore whether creditors can file.
			1.17	Insolvency proceedings triggered by official intervention upon administrative scrutiny? (We understand some MS have a system in place which monitors distressed companies.)	<i>Yes/No answer</i>	Ignore special regimes for financial institutions and similar; i.e. assign 0 if administrative intervention only for financial institutions and similar.
			1.18	Creditors entitled to request insolvency proceedings to be commenced?	<i>Yes/No answer</i>	Assign 1 if creditors entitled to request one type of insolvency proceeding (but not another).
			1.19	Creditors' chances to impact on the proceedings through creditor committees (existence, voting rights, right to ask to switch to out-of-court proceedings)	<i>Free text</i>	If a list of legal tools is provided that deviates from the one given in the question, then assume that the list in the question represents a value of 1 and assign value between 0 and 1 depending on creditor influence.
			1.20	Does management of the estate pass to an outsider (as opposed to current management remaining in possession)?	<i>Yes/No answer</i>	If management does not pass to an outsider, ignore whether there is a supervisor.
			1.21	Absence of privileges (prior rank) for debt towards government, social security etc.? [SSM: "clearance of arrears to public sector"]	<i>Yes/No answer</i>	Assign either 1 (no privileges) or 0 (such privileges exist), i.e. no values between 0 and 1.
			1.22	Absence of privileges (prior rank) for wages, pension schemes etc.?	<i>Yes/No answer</i>	Assign either 1 (no privileges) or 0 (such privileges exist), i.e. no val-

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	Instructions on how to fill in the questionnaire	Specific coding guidance
						ues between 0 and 1.
			1.23	Absence of other general privileges for specific types of creditors/debt?	<i>Yes/No answer</i>	Assign either 1 (no privileges) or 0 (such privileges exist), i.e. no values between 0 and 1.
			1.24	'Pre-pack' insolvency (or restructuring) available for SMEs?	<i>Yes/No answer</i>	
			1.25	Availability of avoidance actions?		
			1.25.1	- maximum timeframe/sensitive retrospective period for voidable transactions	<i>Yes/No answer</i>	
			1.25.2	- broad range of reasons and recipients for avoidance actions?	<i>Yes/No answer</i>	
			1.26	Courts specialised in insolvency cases?	<i>Yes/No answer</i>	Assign 1 if either courts or judges are specialised; internal rules of court are sufficient.
			1.27	Number of court cases per capita [and number of judges per capita]		
			1.28	Court capacity (measured in clearance rates incoming/resolved cases)		
			1.29	Electronic communication with courts and insolvency administrators?	<i>Yes/No answer</i>	Assign 0.5 if electronic communication only with either courts or insolvency administrators.
Entrepreneurs (sole/partnership)	Secured (specific rules)	Individual enforcement	2.1	Legal techniques to enable out-of-court enforcement of collateral available (no judgement on the underlying claim needed? Not even a court order needed?)?		
			2.1.1	• For real estate collateral	<i>Yes/No answer</i>	
			2.1.2	• For movable collateral	<i>Yes/No answer</i>	
			2.2	Private sale allowed at creditor's discretion (public auction optional)?		Assign 0.8 if private sale allowed at creditor's discretion, but public
			2.2.1	• For real estate collateral	<i>Yes/No answer</i>	

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	Instructions on how to fill in the questionnaire	Specific coding guidance
			2.2.2	<ul style="list-style-type: none"> For movable collateral 	<i>Yes/No answer</i>	auction not at creditor's discretion; assign 0.8 if sale allowed at creditors' discretion, but it needs to be a public auction (creditor has no choice).
			2.3	Seizure of collateral on own book permitted?		Whether creditor may bid in the auction not relevant for coding.
			2.3.1	<ul style="list-style-type: none"> For real estate collateral 	<i>Yes/No answer</i>	
			2.3.2	<ul style="list-style-type: none"> For movable collateral 	<i>Yes/No answer</i>	
			2.4	Absence of long moratoria that suspend enforcement of collateral? ("Long" meaning moratoria designed to give "breathing space" to a debtor to continue operations without paying debt as opposed to short-term moratoria of a few weeks needed to convene meetings for a quick round of negotiations on restructuring or on organisational matters regarding the insolvency.)	<i>Yes/No answer</i>	
		Insolvency proceedings	2.5	Entry test for restructuring proceedings to avoid abuse of moratoria?	<i>Yes/No answer</i>	
			2.6	Proceeds from the collateral earmarked for the secured creditor? ("no need to share")	<i>Yes/No answer</i>	
			2.7	Proceeds from the collateral accessible before the collective proceedings for unsecured creditors are taking their course? ("not need to wait")	<i>Yes/No answer</i>	
			2.8	Private sale allowed at creditor's discretion (public auction optional)?	<i>Yes/No answer</i>	Assign 0.8 if private sale allowed at creditor's discretion, but public auction not at creditor's discretion; assign 0.8 if only public auction (but no private sale) can be triggered at creditor's discretion.
			2.9	Courts/judges specialised in insolvency cases?	<i>Yes/No answer</i>	Assign 1 if either courts or judges are specialised; internal rules of court are sufficient for specialisation.

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	Instructions on how to fill in the questionnaire	Specific coding guidance
			2.10	Set time requirements for all or most of the steps of insolvency proceedings?	<i>Yes/No answer</i>	Assign 1 if time requirements for all or most steps; otherwise, for example if only for some steps, assign 0.
			2.11	Electronic communication with courts and insolvency administrators?	<i>Yes/No answer</i>	Assign 0.5 if electronic communication only with either courts or insolvency administrators; assign 0.5 if electronic communication possible only in case of either sole trader or partnership insolvency proceeding.
	Unsecured (general rules)	Individual enforcement	2.12	Out-of-court foreclosure proceedings such as asset seizure without preceding court order/judgement?	<i>Yes/No answer</i>	Assign 0 if court order/judgement is needed for either claim or enforcement; ignore retention of title clauses.
			2.13	Time limit for filing of claims (to speed up proceedings generally)?	<i>Yes/No answer</i>	
		2.14	Publicity of the opening of insolvency proceedings to enable filing of claims?	<i>Yes/No answer</i>		
		2.15	Triggers for collective insolvency proceeding taking into consideration debtor's future positive/negative cash flow?	<i>Yes/No answer</i>		
		Insolvency proceedings	2.16	Debtor obliged to file for insolvency within short time limit?	<i>Yes/No answer</i>	If debtor can file, but is not under an obligation to file, assign 0; ignore whether managing partners may be liable for insolvent trading; ignore whether creditors can file.
			2.17	Insolvency proceedings triggered by official intervention upon administrative scrutiny?	<i>Yes/No answer</i>	Ignore special regimes for financial institutions and similar; i.e. assign 0 if administrative intervention only for financial institutions

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	Instructions on how to fill in the questionnaire	Specific coding guidance
						and similar.
			2.18	Creditors entitled to request insolvency proceedings to be commenced?	<i>Yes/No answer</i>	Assign 1 if creditors entitled to request one type of insolvency proceeding (but not another); assign 0.5 if creditor can only trigger the insolvency proceeding concerning either a sole trader or a partnership.
			2.19	Creditors' chances to impact on the proceedings through creditor committees (existence, voting rights, right to ask to abandon in-court in favour of out-of-court proceedings)	<i>Free text</i>	If a list of legal tools is provided that deviates from the one given in the question, then assume that the list in the question represents a value of 1 and assign value between 0 and 1 depending on creditor influence; if different for sole trader and partnership, then assign a value between 0 and 0.5 for each (and aggregate).
			2.20	Does management of the estate pass to an outsider (as opposed to current management remaining in possession)?	<i>Yes/No answer</i>	If management does not pass to an outsider, ignore whether there is a supervisor; if different for sole trader and partnership, then assign a value of 0 or 0.5 for each (and aggregate).
			2.21	Absence of privileges (prior rank) for debt towards government, social security etc.? [SSM: "clearance of arrears to public sector"]	<i>Yes/No answer</i>	Assign either 1 (no privileges) or 0 (such privileges exist), i.e. no values between 0 and 1.
			2.22	Absence of privileges (prior rank) for wages, pension schemes etc.?	<i>Yes/No answer</i>	Assign either 1 (no privileges) or 0 (such privileges exist), i.e. no values between 0 and 1.

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	Instructions on how to fill in the questionnaire	Specific coding guidance
			2.23	Absence of other general privileges for specific types of creditors/debt?	Yes/No answer	Assign either 1 (no privileges) or 0 (such privileges exist), i.e. no values between 0 and 1.
			2.24	'Pre-pack' insolvency (or restructuring) available for SMEs?	Yes/No answer	
			2.25	Availability of avoidance actions?	Yes/No answer	Assign 1 if either courts or judges are specialised; internal rules of court are sufficient.
			2.25.1	- maximum timeframe/sensitive retrospective period for voidable transactions		
			2.25.2	- broad range of reasons and recipients for avoidance actions?	Yes/No answer	
			2.26	Courts specialised in insolvency cases?	Yes/No answer	
			2.27	Number of court cases per capita [and number of judges per capita]		
			2.28	Court capacity (measured in clearance rates incoming/resolved cases)		
2.29	Electronic communication with courts and insolvency administrators?	Yes/No answer	Assign 0.5 if electronic communication only with either courts or insolvency administrators.			
Consumers	Secured (specific rules)	Individual enforcement	3.1	Legal techniques to enable out-of-court enforcement of collateral available (no judgement on the underlying claim needed? Not even a court order needed?)?	Yes/No answer	
			3.1.1	• For real estate collateral		
			3.1.2	• For movable collateral	Yes/No answer	
			3.2	Private sale allowed at creditor's discretion (public auction optional)?	Yes/No answer	Assign 0.8 if private sale allowed at creditor's discretion, but public auction not at creditor's discretion; assign 0.8 if sale allowed at creditors' discretion, but it needs to be a public auction (creditor
			3.2.1	• For real estate collateral		
			3.2.2	• For movable collateral	Yes/No answer	

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	Instructions on how to fill in the questionnaire	Specific coding guidance
						has no choice).
			3.3	Seizure of collateral on own book permitted?		Whether creditor may bid in the auction not relevant for coding.
			3.3.1	<ul style="list-style-type: none"> For real estate collateral 	<i>Yes/No answer</i>	
			3.3.2	<ul style="list-style-type: none"> For movable collateral 	<i>Yes/No answer</i>	
			3.4	Absence of long moratoria that suspend enforcement of collateral? ("Long" meaning moratoria designed to give "breathing space" to a debtor to continue operations without paying debt as opposed to short-term moratoria of a few weeks needed to convene meetings for a quick round of negotiations on restructuring or on organisational matters regarding the insolvency.)	<i>Yes/No answer</i>	
			3.5	Entry test for restructuring proceedings to avoid abuse of moratoria?	<i>Yes/No answer</i>	
		Insolvency proceedings	3.6	Proceeds from the collateral earmarked for the secured creditor? ("no need to share")	<i>Yes/No answer</i>	
			3.7	Proceeds from the collateral accessible before the collective proceedings for unsecured creditors are taking their course? ("not need to wait")	<i>Yes/No answer</i>	
			3.8	Private sale allowed at creditor's discretion (public auction optional)?	<i>Yes/No answer</i>	Assign 0.8 if private sale allowed at creditor's discretion, but public auction not at creditor's discretion; assign 0.8 if only public auction (but no private sale) can be triggered at creditor's discretion.
			3.9	Courts/judges specialised in insolvency cases?	<i>Yes/No answer</i>	Assign 1 if either courts or judges are specialised; internal rules of court are sufficient for specialisation.
			3.10	Set time requirements for all or most of the steps of insolvency proceedings?	<i>Yes/No answer</i>	Assign 1 if time requirements for all or most steps; otherwise, for example if only for some steps, as-

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	Instructions on how to fill in the questionnaire	Specific coding guidance
						sign 0.
			3.11	Electronic communication with courts and insolvency administrators?	<i>Yes/No answer</i>	Assign 0.5 if electronic communication only with either courts or insolvency administrators.
		Individual enforcement	3.12	Out-of-court foreclosure proceedings such as asset seizure without preceding court order/judgement?	<i>Yes/No answer</i>	Assign 0 if court order/judgement is needed for either claim or enforcement; ignore retention of title clauses.
			3.13	Length of period before discharge of debt?		
	Unsecured (general rules)	Insolvency proceedings	3.14	Time limit for filing of claims (to speed up proceedings generally)?	<i>Yes/No answer</i>	
			3.15	Publicity of the opening of insolvency proceedings to enable filing of claims?	<i>Yes/No answer</i>	
			3.16	Triggers for collective insolvency proceeding taking into consideration debtor's future positive/negative cash flow?	<i>Yes/No answer</i>	
			3.17	Debtor obliged to file for insolvency within short time limit?	<i>Yes/No answer</i>	If debtor can file, but is not under an obligation to file, assign 0; ignore whether creditors can file.
			3.18	Creditors entitled to request insolvency proceedings to be commenced?	<i>Yes/No answer</i>	Assign 1 if creditors entitled to request one type of insolvency proceeding (but not another).
			3.19	Availability of avoidance actions?		
			3.19.1	- maximum timeframe/sensitive retrospective period for voidable transactions	<i>Yes/No answer</i>	
			3.19.2	- broad range of reasons and recipients for avoidance actions?	<i>Yes/No answer</i>	
			3.20	Courts specialised in insolvency cases?	<i>Yes/No answer</i>	Assign 1 if either courts or judges are specialised; internal rules of court are sufficient.
			3.21	Number of court cases per capita [and number of judges per		

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	Instructions on how to fill in the questionnaire	Specific coding guidance
				capita]		
			3.22	Court capacity (measured in clearance rates incoming/resolved cases)		
			3.23	Electronic communication with courts and insolvency administrators?	Yes/No answer	Assign 0.5 if electronic communication only with either courts or insolvency administrators.

Specific coding principles for numerical answers

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	Specific coding principle
Corporate (legal entity)	Secured (specific rules)	Individual enforcement	1.1	Legal techniques to enable out-of-court enforcement of collateral available (no judgement on the underlying claim needed? Not even a court order needed?)? (excluding financial collateral as per the Financial Collateral Directive 2002/47 (as amended))	
			1.1.1	<ul style="list-style-type: none"> For real estate collateral 	
			1.1.2	<ul style="list-style-type: none"> For movable collateral [to mean tangible moveable assets posed as collateral] 	
			1.2	Private sale allowed at creditor's discretion (public auction optional)?	
			1.2.1	<ul style="list-style-type: none"> For real estate collateral 	
			1.2.2	<ul style="list-style-type: none"> For movable collateral 	
			1.3	Seizure of collateral on own book permitted?	
			1.3.1	<ul style="list-style-type: none"> For real estate collateral 	
			1.3.2	<ul style="list-style-type: none"> For movable collateral 	
			1.4	Absence of long moratoria that suspend enforcement of collateral? ("Long" meaning moratoria designed to give "breathing space" to a debtor to continue operations without paying debt as opposed to short-term moratoria of a few weeks needed to convene meetings for a quick round of negotiations on restructuring or on organisational matters regarding the insolvency.)	
		1.5	Entry test for restructuring proceedings to avoid abuse of moratoria?		
		Insolvency proceedings	1.6	Proceeds from the collateral earmarked for the secured creditor? ("no need to share")	
			1.7	Proceeds from the collateral accessible before the collective proceedings for unsecured creditors are taking their course? ("not need to wait")	
			1.8	Private sale allowed at creditor's discretion (public auction optional)?	
			1.9	Courts/judges specialised in insolvency cases?	
1.10	Set time requirements for all or most of the steps of insolvency proceedings?		Do not code (data too diverse).		
1.11	Electronic communication with courts and insolvency administrators?				

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	Specific coding principle	
Unsecured (and general rules)		Individual enforcement	1.12	Out-of-court foreclosure proceedings such as asset seizure without preceding court order/judgement?		
		Insolvency proceedings	1.13	Time limit for filing of claims (to speed up proceedings generally)?	Normalise across {0,1}, with 0 = 180 days and 1 = 30 days; count from opening of proceedings (where only time given assume this is from opening of proceedings); where time given from other date than opening of proceedings do not code; if period not given in days apply 1 month = 4 weeks = 30 days; if range given apply maximum period; if liquidator can fix time limit assume that fixed at shortest possible time; if different time limits provided for different procedures or actors use average; if period < 30 days code as 1	
			1.14	Publicity of the opening of insolvency proceedings to enable filing of claims?		
			1.15	Triggers for collective insolvency proceeding taking into consideration debtor's future positive/negative cash flow?		
			1.16	Debtor obliged to file for insolvency within short time limit?	Normalise across {0,1}, with 0 = 60 days and 1 = 30 days; count from insolvency ground (where only time given assume this is from insolvency ground); if period not given in days apply 1 month = 4 weeks = 30 days; if period < 30 days or expressed as duty to file without undue delay code as 1; if no time limit code as 0.	
			1.17	Insolvency proceedings triggered by official intervention upon administrative scrutiny? (We understand some MS have a system in place which monitors distressed companies.)		
			1.18	Creditors entitled to request insolvency proceedings to be commenced?		
			1.19	Creditors' chances to impact on the proceedings through creditor committees (existence, voting rights, right to ask to switch to out-of-court proceedings)		
			1.20	Does management of the estate pass to an outsider (as opposed to current management remaining in possession)?		

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	Specific coding principle
			1.21	Absence of privileges (prior rank) for debt towards government, social security etc.? [SSM: "clearance of arrears to public sector"]	
			1.22	Absence of privileges (prior rank) for wages, pension schemes etc.?	
			1.23	Absence of other general privileges for specific types of creditors/debt?	
			1.24	'Pre-pack' insolvency (or restructuring) available for SMEs?	Do not code (data too diverse).
			1.25	Availability of avoidance actions?	
			1.25.1	- maximum timeframe/sensitive retrospective period for voidable transactions	Normalise across {0,1}, with 0 = 10 years and 1 = 6 months; relevant points in time: application to open proceeding, opening of proceedings or insolvency ground (if no relevant point in time given, assume it is one of these); if multiple periods given code only for maximum period; if period can be set, assume shortest possible period; if period longer than 10 years or indeterminate code as 0.
			1.25.2	- broad range of reasons and recipients for avoidance actions?	
			1.26	Courts specialised in insolvency cases?	
			1.27	Number of court cases per capita [and number of judges per capita]	Normalise across {0,1}, with 1 = 0.001; only code court cases per capita (not judges per capita) for the following Member States: MS17, MS21, MS3, MS11, MS1 (here data is relevant and seems plausible); only code where information on insolvency cases concerning corporate debtors/legal persons is given (do not code data on commercial or even wider area of cases given); where no reference given as regards insolvency nature and/or nature of debtor assume data refers to insolvency cases concerning corporate debtors/legal persons.

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	Specific coding principle
			1.28	Court capacity (measured in clearance rates incoming/resolved cases)	Normalise across {0,1}, with 1 = 1 (or 100%) and higher numbers, leading to fractions of 1. Base on definition of clearance rate = resolved/incoming cases per year. Where answer only gives a number, interpret as incoming/resolved cases (as defined by question) and recalculate as resolved/incoming cases. Apply the following priority of clearance rates: (1) corporate debtor/legal person insolvency proceedings clearance rate, (2) entrepreneurs insolvency proceedings clearance rate, (3) general insolvency proceedings clearance rate, (4) general court clearance rate; if data for different types of proceedings and/or different instances given take respective averages; if data for multiple years given take only most recent year with sufficient data.
			1.29	Electronic communication with courts and insolvency administrators?	
Entrepreneurs (sole/partnership)	Secured (specific rules)	Individual enforcement	2.1	Legal techniques to enable out-of-court enforcement of collateral available (no judgement on the underlying claim needed? Not even a court order needed?)?	
			2.1.1	<ul style="list-style-type: none"> For real estate collateral 	
			2.1.2	<ul style="list-style-type: none"> For movable collateral 	
			2.2	Private sale allowed at creditor's discretion (public auction optional)?	
			2.2.1	<ul style="list-style-type: none"> For real estate collateral 	
			2.2.2	<ul style="list-style-type: none"> For movable collateral 	
			2.3	Seizure of collateral on own book permitted?	
			2.3.1	<ul style="list-style-type: none"> For real estate collateral 	
			2.3.2	<ul style="list-style-type: none"> For movable collateral 	
			2.4	Absence of long moratoria that suspend enforcement of collateral? ("Long" meaning moratoria designed to give "breathing space" to a debtor to continue operations without paying debt as opposed to short-term moratoria of a few weeks needed to con-	

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	Specific coding principle	
				vene meetings for a quick round of negotiations on restructuring or on organisational matters regarding the insolvency.)		
			2.5	Entry test for restructuring proceedings to avoid abuse of moratoria?		
			2.6	Proceeds from the collateral earmarked for the secured creditor? ("no need to share")		
		Insolvency proceedings	2.7	Proceeds from the collateral accessible before the collective proceedings for unsecured creditors are taking their course? ("not need to wait")		
			2.8	Private sale allowed at creditor's discretion (public auction optional)?		
			2.9	Courts/judges specialised in insolvency cases?		
			2.10	Set time requirements for all or most of the steps of insolvency proceedings?	Do not code (data too diverse).	
			2.11	Electronic communication with courts and insolvency administrators?		
		Unsecured (general rules)	Individual enforcement	2.12	Out-of-court foreclosure proceedings such as asset seizure without preceding court order/judgement?	
			Insolvency proceedings	2.13	Time limit for filing of claims (to speed up proceedings generally)?	Normalise across {0,1}, with 0 = 360 days and 1 = 30 days; count from opening of proceedings (where only time given assume this is from opening of proceedings); where time given from other date than opening of proceedings do not code; if period not given in days apply 1 month = 4 weeks = 30 days; where period 1 year or 365 days count 360 days; where period < 30 days code as 1; if range given apply maximum period; if different time limits provided for different procedures or actors use average.
				2.14	Publicity of the opening of insolvency proceedings to enable filing of claims?	
	2.15			Triggers for collective insolvency proceeding taking into consideration debtor's future positive/negative cash flow?		
	2.16			Debtor obliged to file for insolvency within short time limit?	Normalise across {0,1}, with 0 = 180 days and 1 = 30 days; count from insolvency ground (where only time given assume this is from insolvency ground); if period	

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	Specific coding principle
					not given in days apply 1 month = 4 weeks = 30 days; if period < 30 days or expressed as duty to file without undue delay code as 1; if period > 180 days code as 0.
			2.17	Insolvency proceedings triggered by official intervention upon administrative scrutiny?	
			2.18	Creditors entitled to request insolvency proceedings to be commenced?	
			2.19	Creditors' chances to impact on the proceedings through creditor committees (existence, voting rights, right to ask to abandon in-court in favour of out-of-court proceedings)	
			2.20	Does management of the estate pass to an outsider (as opposed to current management remaining in possession)?	
			2.21	Absence of privileges (prior rank) for debt towards government, social security etc.? [SSM: "clearance of arrears to public sector"]	
			2.22	Absence of privileges (prior rank) for wages, pension schemes etc.?	
			2.23	Absence of other general privileges for specific types of creditors/debt?	
			2.24	'Pre-pack' insolvency (or restructuring) available for SMEs?	Do not code (data too diverse).
			2.25	Availability of avoidance actions?	
			2.25.1	- maximum timeframe/sensitive retrospective period for voidable transactions	Normalise across {0,1}, with 0 = 10 years and 1 = 1 year (or shorter); relevant points in time: application to open proceeding, opening of proceedings or insolvency ground (if no relevant point in time given, assume it is one of these); if multiple periods given code only for maximum period; if period can be set, assume shortest possible period; if period longer than 10 years or indeterminate code as 0.
			2.25.2	- broad range of reasons and recipients for avoidance actions?	
			2.26	Courts specialised in insolvency cases?	
			2.27	Number of court cases per capita [and number of judges per capita]	Do not code (data too diverse).
			2.28	Court capacity (measured in clearance rates incoming/resolved cases)	Do not code (data too diverse).
			2.29	Electronic communication with courts and insolvency administrators?	

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	Specific coding principle
Consumers	Secured (specific rules)	Individual enforcement	3.1	Legal techniques to enable out-of-court enforcement of collateral available (no judgement on the underlying claim needed? Not even a court order needed?)?	
			3.1.1	<ul style="list-style-type: none"> For real estate collateral 	
			3.1.2	<ul style="list-style-type: none"> For movable collateral 	
			3.2	Private sale allowed at creditor's discretion (public auction optional)?	
			3.2.1	<ul style="list-style-type: none"> For real estate collateral 	
			3.2.2	<ul style="list-style-type: none"> For movable collateral 	
			3.3	Seizure of collateral on own book permitted?	
			3.3.1	<ul style="list-style-type: none"> For real estate collateral 	
			3.3.2	<ul style="list-style-type: none"> For movable collateral 	
			3.4	Absence of long moratoria that suspend enforcement of collateral? ("Long" meaning moratoria designed to give "breathing space" to a debtor to continue operations without paying debt as opposed to short-term moratoria of a few weeks needed to convene meetings for a quick round of negotiations on restructuring or on organisational matters regarding the insolvency.)	
	3.5	Entry test for restructuring proceedings to avoid abuse of moratoria?			
	Insolvency proceedings	3.6	Proceeds from the collateral earmarked for the secured creditor? ("no need to share")		
		3.7	Proceeds from the collateral accessible before the collective proceedings for unsecured creditors are taking their course? ("not need to wait")		
3.8		Private sale allowed at creditor's discretion (public auction optional)?			
3.9		Courts/judges specialised in insolvency cases?			
3.10		Set time requirements for all or most of the steps of insolvency proceedings?	Do not code (data too diverse).		
3.11		Electronic communication with courts and insolvency administrators?			
Unsecured (general rules)	Individual enforcement	3.12	Out-of-court foreclosure proceedings such as asset seizure without preceding court order/judgement?		
		3.13	Length of period before discharge of debt?	Normalise across {0,1}, with 1 = 10 years or discharge not available and 0 = 1 year; if multiple periods given apply shortest period; if shorter	

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	Pertinent performance indicators	Specific coding principle
					than 1 year code as 0.
		Insolvency proceedings	3.14	Time limit for filing of claims (to speed up proceedings generally)?	Normalise across {0,1}, with 0 = 360 days and 1 = 30 days; count from opening of proceedings (where only time given assume this is from opening of proceedings); where time given from other date than opening of proceedings do not code; if period not given in days apply 1 month = 4 weeks = 30 days; where period 1 year or 365 days count 360 days; where period < 30 days code as 1; if range given apply maximum period; if different time limits provided for different procedures or actors use average.
			3.15	Publicity of the opening of insolvency proceedings to enable filing of claims?	
			3.16	Triggers for collective insolvency proceeding taking into consideration debtor's future positive/negative cash flow? [<i>tbd / ambiguous</i>]	
			3.17	Debtor obliged to file for insolvency within short time limit?	
			3.18	Creditors entitled to request insolvency proceedings to be commenced?	
			3.19	Availability of avoidance actions?	
			3.19.1	- maximum timeframe/sensitive retrospective period for voidable transactions	Normalise across {0,1}, with 0 = 10 years and 1 = 1 year; relevant points in time: application to open proceeding, opening of proceedings or insolvency ground (if no relevant point in time given, assume it is one of these); if multiple periods given code only for maximum period; if period longer than 10 years or indeterminate code as 0.
			3.19.2	- broad range of reasons and recipients for avoidance actions?	
			3.20	Courts specialised in insolvency cases?	
			3.21	Number of court cases per capita [and number of judges per capita]	Do not code (data too diverse).
			3.22	Court capacity (measured in clearance rates incoming/resolved cases)	Do not code (data too diverse).
			3.23	Electronic communication with courts and insolvency administrators?	

Annexe 4: Coding results

Qualitative answers

Note: green shading indicates that there was no answer or that an answer could not be coded.

Type of debt secured or ?	Loan secured or within	Out-side or within	Question ID	Pertinent performance indicators	MS 11	MS 4	MS 15	MS 5	MS 10	MS 20	MS 2	MS 21	MS 13	MS 19	MS 22	MS 1	MS 23	MS 27	MS 8	MS 28	MS 14	MS 26	MS 9	MS 17	MS 25	MS 12	MS 18	MS 3	MS 24	MS 7	MS 16	MS 6			
Corporate (legal entity)	Secured (specific rules)	Individual enforcement	1.1	Legal techniques to enable out-of-court enforcement of collateral available (no judgement on the underlying claim needed? Not even a court order needed?)? (excluding financial collateral as per the Financial Collateral Directive 2002/47 (as amended))	1	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0	1	1	1		0	0	0	1	1	1		
			1.1.1	• For real estate collateral	1	0	1	1	1	1	0	1			1	1	1	1	0	1	1	1	1	0	1	1	0		0	0	0	0	1	0	
			1.1.2	• For movable collateral [to mean tangible moveable assets posed as collateral]	1	0	1	1	1	1	1	1			1	1	1	1	1	1	1	1	1	1	0	1	1	1		0	0	0	1	1	1
			1.2	Private sale allowed at creditor's discretion (public auction optional)?	0	0	1	1	0.8	1	1	1	0	1	1	1	0	1	1	0	1	1	0	1	0	1	0.8	1		0	0	1	1	1	0
			1.2.1	• For real estate collateral	0	0	0	1	0.8	1	0	1	0	1	1	1	0	1	1	0	0	0	0	1	0.8	0			0	0	0	0	1	0	
			1.2.2	• For movable collateral	0	0	1	1	0.8	1	1	1	0	1	1	1	0	1	1	0	1	0	1	0	1	0.8	1		0	0	1	1	1	0	
			1.3	Seizure of collateral on own book permitted?	0	0	1	1	1	0	1	1	0	1	1				1	0	1	0	0	0	1	1	0		0		0	1	0	1	
			1.3.1	• For real estate collateral	0	0	0	1	0	0	0	1	0	1	1	1	0	0	0	1	0	0	0	0	0	1	0		0		0	0	0	0	
			1.3.2	• For movable collateral	0	0	1	1	1	0	1	1	0	1	1				1	0	1	0	0	0	1	1	0		0		0	1	0	1	
			1.4	Absence of long moratoria that suspend enforcement of collateral? ("Long" meaning moratoria designed to give "breathing space" to a debtor to continue operations without paying debt as opposed to short-term moratoria of a few weeks needed to convene meetings for a quick round of negotiations on restructuring or on organisational matters regarding the insolvency.)	1						1	1	1	1	1	1	1	0	0	1	1	1	1	1	0	0	1	0	0	0	1	0	1	0	1
			1.5	Entry test for restructuring proceedings to avoid abuse of moratoria?	0			1	1	1	1	0	0	1	1	0	0	1	1	0	0	0	0	0	0	0	1	1	0	1	1	0	1	1	1
			1.6	Proceeds from the collateral earmarked for the secured creditor? ("no need to share")	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
			1.7	Proceeds from the collateral accessible before the collective proceedings for unsecured creditors are taking their course? ("not need to wait")	0	1	1	1	0	1	0	1	1	1	1	1	1	0	1	0	0	0	0	1	1	1	0	1	1	1	1	0	1	0	
			1.8	Private sale allowed at creditor's discretion (public auction optional)?	1	0	0	1	0.8	0	0	0	0	0	1	0	1	0	1	1	1	1	1	0	0	1	0	1	1	1	0	0	0	1	0
			1.9	Courts/judges specialised in insolvency cases?	1	1	1	1	1	0	0	1	1	1	1	1	1	1	0	1	1	1	0	1	1	1	1	1	1	1	0	1	1	0	1
1.10	Set time requirements for all or most of the steps of insolvency proceedings?	0	1	1	0	1	1	1	1	1	1	1	1	0	0	1	1	0	1	1	0	1	1	1	0	1	0	1	1	1	0	1	0		
1.11	Electronic communication with courts and insolvency administrators?	1	1	1	1	1	0.5	0	1	1	1	1	1	0	0	1	1	1	1	1	1	1	1	1	0	1	1	1	1	1	0	0			
Unsecured (and general rules)	Individual enforcement	Individual enforcement	1.12	Out-of-court foreclosure proceedings such as asset seizure without preceding court order/judgement?	0	1	1	0	1	0	0	0	1	1	0	0	1	0	1	0	0	0	0	0	0										

Type of debt cured or ?	Loan se- or within	Out- side or within	Question ID	Pertinent performance indicators	MS 11	MS 14	MS 15	MS 5	MS 10	MS 20	MS 2	MS 21	MS 13	MS 19	MS 22	MS 1	MS 23	MS 27	MS 8	MS 28	MS 14	MS 26	MS 9	MS 17	MS 25	MS 12	MS 18	MS 3	MS 24	MS 7	MS 16	MS 6						
		Insolvency proceedings	1.13	Time limit for filing of claims (to speed up proceedings generally)?	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0	1	1	1	1	1	0	1	1	1	1					
			1.14	Publicity of the opening of insolvency proceedings to enable filing of claims?	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1				
			1.15	Triggers for collective insolvency proceeding taking into consideration debtor's future positive/negative cash flow?	1	1	1	1	0	0	0	0	0	0	1	0	0	1	0	1	1	0	0	0	0	1	1	1	1	1	1	1	1	1				
			1.16	Debtor obliged to file for insolvency within short time limit?	1	0	1	1	1	1	1	1	1	1	1	0	0	1	0	1	1	1	1	1	1	0	1	0	1	0	1	1	0	1				
			1.17	Insolvency proceedings triggered by official intervention upon administrative scrutiny? (We understand some MS have a system in place which monitors distressed companies.)	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	1	0	0			
			1.18	Creditors entitled to request insolvency proceedings to be commenced?	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			
			1.19	Creditors' chances to impact on the proceedings through creditor committees (existence, voting rights, right to ask to switch to out-of-court proceedings)	1	1	0.7	1	1	1	0	1	1	1	1	1	1	1	1	0.7	1	1	1	1	0.8	1	0.7	0.5	0.7	0	0.7	1	1	0.7	1			
			1.20	Does management of the estate pass to an outsider (as opposed to current management remaining in possession)?	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			
			1.21	Absence of privileges (prior rank) for debt towards government, social security etc.? [SSM: "clearance of arrears to public sector"]	1	0	1	1	1	0	0	0	0	0	0	0	0	1	0	1	0	1	0	1	0	0	0	1	0	1	1	0	0	0	0			
			1.22	Absence of privileges (prior rank) for wages, pension schemes etc.?	1	0	1	1	1	0	0	0	0	0	0	0	0	0	1	0	1	0	1	0	1	0	1	0	0	0	0	1	0	0	0	0		
			1.23	Absence of other general privileges for specific types of creditors/debt?	1	0	1	0	0	1	0	0	0	0	0	1	0	0	0	0	1	1	1	1	1	1	0	1	0	0	1	0	0	0	0	0		
			1.24	Pre-pack' insolvency (or restructuring) available for SMEs?	1	1	1	0	0	0	0	1	1	1	0	1	0	1	0	1	0	1	1	1	0	0	0	0	1	0	0	0	1	1	1	1		
			1.25	Availability of avoidance actions?	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		
			1.25.1	- maximum timeframe/sensitive retrospective period for voidable transactions	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		
			1.25.2	- broad range of reasons and recipients for avoidance actions?	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		
			1.26	Courts specialised in insolvency cases?	1	1	1	1	1	0	0	1	1	1	0	1	1	0	1	1	1	0	1	1	0	1	1	1	1	1	0	1	1	0	1	1		
			1.27	Number of court cases per capita [and number of judges per capita]																																		
			1.28	Court capacity (measured in clearance rates incoming/resolved cases)																																		
			1.29	Electronic communication with courts and insolvency administrators?	1	1	1	1	1	0.5	0	1	1	1	1	1	0	0	1	1	1	1	1	1	1	1	1	0	1	1	1	1	1	0	0	0		
Entrepreneurs (sole/partnership)	Secured (specific rules)	Individual enforcement	2.1	Legal techniques to enable out-of-court enforcement of collateral available (no judgement on the underlying claim needed? Not even a court order needed)?	1	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0	1	1	1	1	1	0	0	0	1	1	1				
			2.1.1	• For real estate collateral	1	0	1	1	1	1	0	1	1	1	1	1	1	1	0	1	1	1	1	1	0	1	1	0	0	0	0	0	0	1	0	0		
			2.1.2	• For movable collateral	1	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0	1	1	1	1	0	0	0	1	0	1	1	
			2.2	Private sale allowed at creditor's discretion (public auction optional)?	0	0	1	1	0.8	1	1	1	0	1	1	1	1	0	1	1	0	1	1	0	1	1	0.8	1	1	1	0	0	1	1	0	0	0	
			2.2.1	• For real estate collateral	0	0	0	1	0.8	1	0	1	0	0	1	1	1	0	1	1	0	0	1	0	0	1	1	0.8	0	0	0	0	0	0	0	0	0	
			2.2.2	• For movable collateral	0	0	1	1	0.8	1	1	1	0	0	1	1	1	1	1	0	1	1	0	1	1	1	0.8	1	1	1	0	0	1	1	0	0	0	
			2.3	Seizure of collateral on own book permitted?	0	0	1	1	0	0	1	1	0	1	1	1	1	1	0	1	0	1	0	0	0	1	1	0	1	0	0	1	0	1	0	1	1	
			2.3.1	• For real estate collateral	0	0	0	1	0	0	0	1	0	1	1	1	1	0	0	0	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
			2.3.2	• For movable collateral	0	0	1	1	0	0	1	1	0	1	1	1	1	1	1	0	1	0	0	0	0	0	1	1	0	0	0	0	0	1	0	1	0	1
			2.4	Absence of long moratoria that suspend enforcement of collateral?	0	1	1	1	1	1	1	1	1	1	1	1	1	1	0	0	0	1	0	1	1	1	0	0	1	1	1	1	1	0	1	0	1	

Type of debt cured or ?	Loan side or within	Out-side or within	Question ID	Pertinent performance indicators	MS 11	MS 14	MS 15	MS 5	MS 10	MS 20	MS 2	MS 21	MS 13	MS 19	MS 22	MS 1	MS 23	MS 27	MS 8	MS 28	MS 14	MS 26	MS 9	MS 17	MS 25	MS 12	MS 18	MS 3	MS 24	MS 7	MS 16	MS 6			
				("Long" meaning moratoria designed to give "breathing space" to a debtor to continue operations without paying debt as opposed to short-term moratoria of a few weeks needed to convene meetings for a quick round of negotiations on restructuring or on organisational matters regarding the insolvency.)																															
			2.5	Entry test for restructuring proceedings to avoid abuse of moratoria?	1	0	1	0	1	1	0	0	0	1	0	1	1	1	0	1	0	0	0	1	1	0	1	0	1	1	1	1			
		Insolvency proceedings	2.6	Proceeds from the collateral earmarked for the secured creditor? ("no need to share")	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1				
			2.7	Proceeds from the collateral accessible before the collective proceedings for unsecured creditors are taking their course? ("not need to wait")	1	1	1	1	0	1	0	1	1	1	1	1	0	1	0	1	0	1	0	1	1	0	1	1	1	1	0	1	0		
			2.8	Private sale allowed at creditor's discretion (public auction optional)?	0	0	0	1	0.8	0	0	0	0	0	1	1	0	1	1	0	1	1	0	1	1	0.8	1	0	0	0	0	1	0		
			2.9	Courts/judges specialised in insolvency cases?	1	1	1	1	1	0	0	1	1	1	1	1	1	0	1	1	1	0	1	1	1	1	0	1	0	1	1	0	1		
			2.10	Set time requirements for all or most of the steps of insolvency proceedings?	1	1	1	0	1	1	1	1	1	1	1	1	0	1	1	1	1	1	1	1	1	1	0	0	1	1	1	0	1	0	
			2.11	Electronic communication with courts and insolvency administrators?	1	1	1	1	1	0.5	0	1	1	1	1	1	1	0	1	1	1	1	1	1	1	0	0	1	1	1	1	1	0	0	
	Unsecured (general rules)		Individual enforcement	2.12	Out-of-court foreclosure proceedings such as asset seizure without preceding court order/judgement?	0	0	1	0	1	0	0	0	1	1	0	1	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0		
				2.13	Time limit for filing of claims (to speed up proceedings generally)?	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0	1	1	1	1	1	0	1	1	1	
			2.14	Publicity of the opening of insolvency proceedings to enable filing of claims?	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		
			2.15	Triggers for collective insolvency proceeding taking into consideration debtor's future positive/negative cash flow?	0	1	1	1	0	0	0	0	0	0	1	0	0	1	0	1	0	0	0	0	0	0	1	0	1	1	1	1	1		
			Insolvency proceedings	2.16	Debtor obliged to file for insolvency within short time limit?	1	0	0	1	1	1	1	1	1	1	0	1	1	0	1	1	1	1	1	0	0	0	0	1	0	1	1	0	1	
				2.17	Insolvency proceedings triggered by official intervention upon administrative scrutiny?	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	0	1	0	0	0	0	0	1	0	0
				2.18	Creditors entitled to request insolvency proceedings to be commenced?	1	1	1	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0	0	1	1	1	1	1	1	1	
				2.19	Creditors' chances to impact on the proceedings through creditor committees (existence, voting rights, right to ask to abandon in-court in favour of out-of-court proceedings)	1	1	0.7	1	1	1	0	1	1	1	1	0.5	0	1	1	0.7	1	1	0.5	0	0	0	0.5	0.7	0	0.7	1	1	1	0.7
			2.20	Does management of the estate pass to an outsider (as opposed to current management remaining in possession)?	1	1	1	1	1	1	1	0	1	1	0.5	0.5	1	1	1	1	1	1	1	0	1	1	1	1	1	1	1	1	1		

Type of debt cured or ?	Loan se- or within	Out- side or within	Question ID	Pertinent performance indicators	MS 11	MS 14	MS 15	MS 5	MS 10	MS 20	MS 2	MS 21	MS 13	MS 19	MS 22	MS 1	MS 23	MS 27	MS 8	MS 28	MS 14	MS 26	MS 9	MS 17	MS 25	MS 12	MS 18	MS 3	MS 24	MS 7	MS 16	MS 6					
			2.21	Absence of privileges (prior rank) for debt towards government, social security etc.? [SSM: "clearance of arrears to public sector"]	1	0	1	1	1	0	0	0																									
			2.22	Absence of privileges (prior rank) for wages, pension schemes etc.?	1	0	1	1	1	0	0	0																									
			2.23	Absence of other general privileges for specific types of creditors/debt?	0	0	1	0	0	1	0	0																									
			2.24	'Pre-pack' insolvency (or restructuring) available for SMEs?	0	1	1	0	0	0	0																										
			2.25	Availability of avoidance actions?	1	1	1	1	1	1	1	1																									
			2.25.1	- maximum timeframe/sensitive retrospective period for voidable transactions	1	1	1	1	1	1	1	1																									
			2.25.2	- broad range of reasons and recipients for avoidance actions?	1	1	1	1	1	1	1	1																									
			2.26	Courts specialised in insolvency cases?	1	1	1	1	1	0	0	1																									
			2.27	Number of court cases per capita [and number of judges per capita]																																	
			2.28	Court capacity (measured in clearance rates incoming/resolved cases)																																	
			2.29	Electronic communication with courts and insolvency administrators?	1	1	1	1	1	0	0	1																									
Consumers	Secured (specific rules)	Individual enforcement	3.1	Legal techniques to enable out-of-court enforcement of collateral available (no judgement on the underlying claim needed? Not even a court order needed?)	1	0	1	1	1	0	0	1																									
			3.1.1	• For real estate collateral	1	0	1	1	1	0	0	1																									
			3.1.2	• For movable collateral	1	0	1	1	1	0	0	1																									
			3.2	Private sale allowed at creditor's discretion (public auction optional)?	0	0	1	1	0.8	0	1	1	0	1																							
			3.2.1	• For real estate collateral	0	0	0	1	0.8	0	0	1	0	0																							
			3.2.2	• For movable collateral	0	0	1	1	0.8	0	1	1	0	0																							
			3.3	Seizure of collateral on own book permitted?	0	0	1	1	0	0	0	1	0	1																							
			3.3.1	• For real estate collateral	0	0	0	1	0	0	0	1	0	1																							
			3.3.2	• For movable collateral	0	0	1	1	0	0	0	1	0	1																							
			3.4	Absence of long moratoria that suspend enforcement of collateral? ("Long" meaning moratoria designed to give "breathing space" to a debtor to continue operations without paying debt as opposed to short-term moratoria of a few weeks needed to convene meetings for a quick round of negotiations on restructuring or on organisational matters regarding the insolvency.)	1	1	1	1	1	1	1	1	1	1																							
			3.5	Entry test for restructuring proceedings to avoid abuse of moratoria?	1	0	0	0	1																												
			3.6	Proceeds from the collateral earmarked for the secured creditor? ("no need to share")	1	1	1	1	1																												
			3.7	Proceeds from the collateral accessible before the collective proceedings for unsecured creditors are taking their course? ("not need to wait")	1	1	1	1	0																												
			3.8	Private sale allowed at creditor's discretion (public auction optional)?	0	0	0	1	0.8																												
			3.9	Courts/judges specialised in insolvency cases?	1	1	1	1	1																												

Type of debt cured or ?	Loan se- or within	Out- side or within	Ques- tion ID	Pertinent performance indicators	MS 11	MS 14	MS 15	MS 5	MS 10	MS 20	MS 2	MS 21	MS 13	MS 19	MS 22	MS 1	MS 23	MS 27	MS 8	MS 28	MS 14	MS 26	MS 9	MS 17	MS 25	MS 12	MS 18	MS 3	MS 24	MS 7	MS 16	MS 6		
			3.10	Set time requirements for all or most of the steps of insolvency proceedings?	1	1	1	0	1	1	1	1	1	1	1	0	1	1	1	1	1	1	0	1	0	0	1	1	1	0	1	0		
			3.11	Electronic communication with courts and insolvency administrators?	1	1	1	1	1	0	1	1	1	1	1	0	1	1	1	1	1	1	1	1	1	0	1	1	0	1	0	0		
	Unsecured (general rules)	Individual enforcement	3.12	Out-of-court foreclosure proceedings such as asset seizure without preceding court order/judgement?	0	0	1	0	0	0	0	0	1	0	1	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
3.13			Length of period before discharge of debt?																															
3.14		Time limit for filing of claims (to speed up proceedings generally)?	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0	1	1	1	1	0	1	1	1	1	
3.15		Publicity of the opening of insolvency proceedings to enable filing of claims?	1	1	1	1	1	1	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	
3.16		Triggers for collective insolvency proceeding taking into consideration debtor's future positive/negative cash flow?	1	1	1	1	0	0	0	0	1	1	0	0	1	0	0	1	0	0	1	1	0	0	0	0	0	1	1	1	1	1	0	
3.17		Debtor obliged to file for insolvency within short time limit?	1	0	0	1	1	0	0	1	1	0	1	0	1	0	1	1	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	
3.18		Creditors entitled to request insolvency proceedings to be commenced?	1	1	1	0	1	0	1	1	1	1	0	1	0	1	0	1	1	1	1	0	0	0	0	1	0	1	1	0	1	1	0	
3.19		Availability of avoidance actions?	1	1	1	1	1	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0	1	1	0	1	1	1	1	
3.19.1		- maximum timeframe/sensitive retrospective period for voidable transactions	1	1	1	1	1	0	1	1	1	1	1	1	1	0	1	1	1	1	1	1	1	1	1	0	1	1	0	1	1	1	1	
3.19.2		- broad range of reasons and recipients for avoidance actions?	1	1	1	1	1	0	1	1	1	1	1	1	1	0	1	1	1	1	1	1	1	1	1	0	1	1	0	1	0	1	1	
3.20		Courts specialised in insolvency cases?	1	1	1	1	1	0	1	1	1	0	1	1	0	1	1	0	1	1	0	1	0	1	0	1	0	1	0	1	1	0	1	
3.21		Number of court cases per capita [and number of judges per capita]																																
3.22		Court capacity (measured in clearance rates incoming/resolved cases)																																
3.23		Electronic communication with courts and insolvency administrators?	1	1	1	1	1	0	1	1	1	1	1	1	1	0	1	1	1	1	1	1	1	1	1	0	1	1	0	1	0	0	0	

Quantitative answers

Note: blue shading indicates that the question did not ask for a quantitative answer; green shading indicates that there was no answer or that an answer could not be coded.

Type of debtor	Loan secured?	Out-side or within	Question ID	Pertinent performance indicators	MS 3	MS 8	MS 11	MS 14	MS 4	MS 23	MS 13	MS 22	MS 6	MS 17	MS 21	MS 1	MS 27	MS 9	MS 16	MS 12	MS 28	MS 20	MS 24	MS 2	MS 25	MS 18	MS 26	MS 19	MS 5	MS 15	MS 7	MS 10						
Corporate (legal entity)	Secured (specific rules)	Individual enforcement	1.1	Legal techniques to enable out-of-court enforcement of collateral available (no judgement on the underlying claim needed? Not even a court order needed?)? (excluding financial collateral as per the Financial Collateral Directive 2002/47 (as amended))																																		
			1.1.1	• For real estate collateral																																		
			1.1.2	• For movable collateral [to mean tangible moveable assets posed as collateral]																																		
			1.2	Private sale allowed at creditor's discretion (public auction optional)?																																		
			1.2.1	• For real estate collateral																																		
			1.2.2	• For movable collateral																																		
			1.3	Seizure of collateral on own book permitted?																																		
			1.3.1	• For real estate collateral																																		
			1.3.2	• For movable collateral																																		
			1.4	Absence of long moratoria that suspend enforcement of collateral? ("Long" meaning moratoria designed to give "breathing space" to a debtor to continue operations without paying debt as opposed to short-term moratoria of a few weeks needed to convene meetings for a quick round of negotiations on restructuring or on organisational matters regarding the insolvency.)																																		
		1.5	Entry test for restructuring proceedings to avoid abuse of moratoria?																																			
		Insolvency proceedings	1.6	Proceeds from the collateral earmarked for the secured creditor? ("no need to share")																																		
			1.7	Proceeds from the collateral accessible before the collective proceedings for unsecured creditors are taking their course? ("not need to wait")																																		
			1.8	Private sale allowed at creditor's discretion (public auction optional)?																																		
			1.9	Courts/judges specialised in insolvency cases?																																		
1.10	Set time requirements for all or most of the steps of insolvency proceedings?																																					

Type of debtor	Loan secured?	Out-side or within	Question ID	Pertinent performance indicators	MS 3	MS 8	MS 11	MS 14	MS 4	MS 23	MS 13	MS 22	MS 6	MS 17	MS 21	MS 1	MS 27	MS 9	MS 16	MS 12	MS 28	MS 20	MS 24	MS 2	MS 25	MS 18	MS 26	MS 19	MS 5	MS 15	MS 7	MS 10		
			1.11	Electronic communication with courts and insolvency administrators?																														
		Individual enforcement	1.12	Out-of-court foreclosure proceedings such as asset seizure without preceding court order/judgement?																														
		Unsecured (and general rules)	1.13	Time limit for filing of claims (to speed up proceedings generally)?	0.6	1	1	1	0.8	0.6	1	1	1	0.8	0.6	0.5	1	0.8	0.6	1	1	1	0.5	1	0.8	0.6	0.6	1	1	1	1	1		
			1.14	Publicity of the opening of insolvency proceedings to enable filing of claims?																														
			1.15	Triggers for collective insolvency proceeding taking into consideration debtor's future positive/negative cash flow?																														
			1.16	Debtor obliged to file for insolvency within short time limit?	1	1	1	1	1	1	1	1	1	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	
			1.17	Insolvency proceedings triggered by official intervention upon administrative scrutiny? (We understand some MS have a system in place which monitors distressed companies.)																														
			1.18	Creditors entitled to request insolvency proceedings to be commenced?																														
			1.19	Creditors' chances to impact on the proceedings through creditor committees (existence, voting rights, right to ask to switch to out-of-court proceedings)																														
			1.20	Does management of the estate pass to an outsider (as opposed to current management remaining in possession)?																														
			1.21	Absence of privileges (prior rank) for debt towards government, social security etc.? [SSM: "clearance of arrears to public sector"]																														
			1.22	Absence of privileges (prior rank) for wages, pension schemes etc.?																														
			1.23	Absence of other general privileges for specific types of creditors/debt?																														
			1.24	'Pre-pack' insolvency (or restructuring) available for SMEs?	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	
			1.25	Availability of avoidance actions?																														
			1.25.1	- maximum timeframe/sensitive retrospective period for voidable transactions	0	1	0.7	1	0.5	0	0.8	0.5	0.8	0.5	0.9	0	0.5	1	0.5	0	0.8	0.5	0	0.5	0.8	0.5	0.9	0	1	0.7				
			1.25.2	- broad range of reasons and recipients for avoidance actions?																														
			1.26	Courts specialised in insolvency cases?																														
			1.27	Number of court cases per capita [and number of judges per capita]	1	1	1	1	0.2	1	1	1	1	0.4	0.9	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	
			1.28	Court capacity (measured in clearance rates incoming/resolved cases)		0.6	1	1	1	0.9	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	
			1.29	Electronic communication with courts and insolvency administrators?																														

Annexe 5: Data gaps

Qualitative questions

Note: As regards the qualitative questions a data gap may exist because (1) no answer was provided, or (2) an answer was provided that could not be coded.

Member States MS5 – MS12

Type of debtor	Loan se-cured?	Outside or within insolvency?	Question ID	MS5	MS10	MS4	MS15	MS20	MS9	MS22	MS1	MS26	MS11	MS21	MS16	MS23	MS12			
Corporate (legal entity)	Secured (specific rules)	Individual enforcement	1.1		Gap	Gap	Gap				Gap		Gap	Gap	Gap	Gap	Gap			
			1.1.1	Gap																
			1.1.2	Gap																
			1.2		Gap	Gap	Gap	Gap	Gap	Gap		Gap		Gap	Gap	Gap	Gap	Gap	Gap	
			1.2.1	Gap																
			1.2.2	Gap																
			1.3		Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap		Gap	Gap	Gap	Gap	Gap	Gap	
			1.3.1	Gap																
			1.3.2	Gap																
			1.4																	
			1.5																	
	Insolvency proceedings	1.6																		
		1.7																		
		1.8																		
		1.9																		
		1.10																		
		1.11																		
	Unsecured (and general rules)	Individual enforcement	1.12																	
		Insolvency proceedings	1.13																	
			1.14																	
1.15																				
1.16																				
1.17																				
1.18																				

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	MS5	MS10	MS4	MS15	MS20	MS9	MS22	MS1	MS26	MS11	MS21	MS16	MS23	MS12		
			1.19																
			1.20																
			1.21																
			1.22																
			1.23																
			1.24																
			1.25				Gap					Gap					Gap	Gap	Gap
			1.25.1																
			1.25.2																
			1.26																
			1.27																
			1.28																
			1.29																
Entrepreneurs (sole/partnership)	Secured (specific rules)	Individual enforcement	2.1		Gap	Gap	Gap				Gap		Gap	Gap	Gap	Gap	Gap		
			2.1.1	Gap															
			2.1.2	Gap															
			2.2		Gap	Gap	Gap	Gap	Gap			Gap		Gap	Gap	Gap	Gap	Gap	
			2.2.1	Gap															
			2.2.2	Gap															
			2.3		Gap	Gap	Gap	Gap	Gap	Gap	Gap			Gap	Gap	Gap	Gap	Gap	
			2.3.1	Gap															
			2.3.2	Gap															
			2.4																
			2.5																
			2.6																
			2.7																
	2.8																		
2.9																			
2.10																			
2.11																			
Unsecured (general rules)		Individual enforcement	2.12																

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	MS5	MS10	MS4	MS15	MS20	MS9	MS22	MS1	MS26	MS11	MS21	MS16	MS23	MS12		
		Insolvency proceedings	2.13																
			2.14																
			2.15																
			2.16																
			2.17																
			2.18	Gap															
			2.19	Gap															
			2.20	Gap															
			2.21	Gap															
			2.22	Gap															
			2.23	Gap															
			2.24	Gap															
			2.25	Gap				Gap					Gap				Gap	Gap	Gap
			2.25.1	Gap															
			2.25.2	Gap															
			2.26	Gap															
			2.27																
			2.28																
			2.29	Gap															
			Consumers	Secured (specific rules)	Individual enforcement	3.1	Gap	Gap		Gap		Gap		Gap		Gap	Gap	Gap	Gap
3.1.1	Gap																		
3.1.2	Gap																		
3.2	Gap	Gap					Gap	Gap	Gap		Gap		Gap	Gap	Gap	Gap	Gap	Gap	
3.2.1	Gap																		
3.2.2	Gap																		
3.3	Gap	Gap				Gap	Gap	Gap	Gap	Gap	Gap		Gap	Gap	Gap	Gap	Gap	Gap	
3.3.1																			
3.3.2																			
3.4																			

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	MS5	MS10	MS4	MS15	MS20	MS9	MS22	MS1	MS26	MS11	MS21	MS16	MS23	MS12			
		Insolvency proceedings	3.5																	
			3.6																	
			3.7																	
			3.8																	
			3.9	Gap																
			3.10	Gap																
			3.11	Gap																
	Unsecured (general rules)	Individual enforcement		3.12	Gap															
				3.13																
		Insolvency proceedings		3.14	Gap															
				3.15	Gap															
				3.16	Gap															
				3.17																
				3.18																
				3.19				Gap					Gap					Gap	Gap	Gap
				3.19.1																
				3.19.2																
				3.20																
				3.21																
				3.22																
				3.23																

Member States MS14 – MS8

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	MS14	MS28	MS13	MS19	MS7	MS17	MS2	MS24	MS27	MS6	MS25	MS18	MS3	MS8			
Corporate (legal entity)	Secured (specific rules)	Individual enforcement	1.1	Gap		Gap	Gap	Gap			Gap	Gap	Gap		Gap	Gap				
			1.1.1				Gap													
			1.1.2					Gap												
			1.2	Gap	Gap	Gap	Gap	Gap				Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	
			1.2.1					Gap												
			1.2.2					Gap												
			1.3	Gap	Gap	Gap	Gap	Gap	Gap			Gap	Gap	Gap	Gap	Gap	Gap	Gap		
			1.3.1					Gap							Gap					
			1.3.2					Gap							Gap					
			1.4																	
			1.5																	
	Insolvency proceedings	1.6																		
		1.7																		
		1.8																		
		1.9																		
		1.10																		
		1.11																		
	Unsecured (and general rules)	Individual enforcement	1.12						Gap											
		Insolvency proceedings	1.13																	
			1.14																	
			1.15																	
			1.16																	
1.17																				
1.18																				
1.19																				
1.20																				
1.21																				
1.22																				

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	MS14	MS28	MS13	MS19	MS7	MS17	MS2	MS24	MS27	MS6	MS25	MS18	MS3	MS8		
			1.23																
			1.24																
			1.25	Gap		Gap						Gap		Gap		Gap			
			1.25.1																
			1.25.2																
			1.26																
			1.27																
			1.28																
			1.29																
Entrepreneurs (sole/partnership)	Secured (specific rules)	Individual enforcement	2.1	Gap		Gap	Gap	Gap			Gap		Gap		Gap	Gap			
			2.1.1					Gap											
			2.1.2					Gap											
			2.2	Gap	Gap	Gap	Gap	Gap		Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	
			2.2.1					Gap							Gap				
			2.2.2					Gap							Gap				
			2.3	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	
			2.3.1					Gap							Gap				
			2.3.2					Gap							Gap				
			2.4																
			2.5																
			2.6																
			2.7																
	2.8																		
	2.9																		
	2.10																		
	2.11																		
	Unsecured (general rules)	Individual enforcement	2.12					Gap											
			2.13																
		Insolvency proceedings	2.14																

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	MS14	MS28	MS13	MS19	MS7	MS17	MS2	MS24	MS27	MS6	MS25	MS18	MS3	MS8		
			2.15																
			2.16																
			2.17																
			2.18																
			2.19																
			2.20																
			2.21																
			2.22																
			2.23																
			2.24																
			2.25	Gap		Gap				Gap		Gap					Gap		
			2.25.1																
			2.25.2																
			2.26																
			2.27																
2.28																			
2.29																			
Consumers	Secured (specific rules)	Individual enforcement	3.1	Gap	Gap	Gap	Gap	Gap			Gap			Gap	Gap	Gap			
			3.1.1					Gap											
			3.1.2					Gap											
			3.2	Gap	Gap	Gap	Gap	Gap			Gap	Gap		Gap	Gap	Gap	Gap	Gap	
			3.2.1					Gap											
			3.2.2					Gap											
			3.3	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap			Gap	Gap	Gap		
			3.3.1					Gap											
			3.3.2					Gap											
		3.4					Gap												
		3.5					Gap												
		Insolvency proceedings	3.6					Gap											
			3.7					Gap											
3.8						Gap													
3.9						Gap													

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	MS14	MS28	MS13	MS19	MS7	MS17	MS2	MS24	MS27	MS6	MS25	MS18	MS3	MS8		
			3.10					Gap											
			3.11					Gap											
	Unsecured (general rules)	Individual enforcement		3.12					Gap										
				3.13															
		Insolvency proceedings		3.14						Gap									
				3.15						Gap									
				3.16						Gap		Gap							
				3.17						Gap									
				3.18						Gap									
				3.19	Gap		Gap		Gap				Gap				Gap		
				3.19.1						Gap									
				3.19.2						Gap									
				3.20						Gap									
				3.21															
				3.22															
				3.23							Gap		Gap						

Quantitative questions

Note: As regards the quantitative questions a data gap may exist because (1) no answer was provided, or (2) an answer was provided that could not be coded. In those cases where a whole question is marked as 'Gap' a few individual answers might have been viable for coding, but (3) overall there were not enough viable answers to justify coding the question.

Member States MS7 – MS12

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	MS7	MS11	MS16	MS21	MS5	MS17	MS25	MS1	MS10	MS6	MS22	MS18	MS26	MS12	
Corporate (legal entity)	Secured (specific rules)	Individual enforcement	1.1															
			1.1.1															
			1.1.2															
			1.2															
			1.2.1															
			1.2.2															
			1.3															
			1.3.1															
			1.3.2															
			1.4															
			1.5															
	Insolvency proceedings	1.6																
		1.7																
		1.8																
		1.9																
		1.10	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	
		1.11																
	Unsecured (and general rules)	Individual enforcement	1.12															
			1.13								Gap							
		Insolvency proceedings	1.14															
1.15																		
1.16											Gap	Gap				Gap		
1.17																		
1.18																		

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	MS7	MS11	MS16	MS21	MS5	MS17	MS25	MS1	MS10	MS6	MS22	MS18	MS26	MS12	
			1.19															
			1.20															
			1.21															
			1.22															
			1.23															
			1.24	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap
			1.25															
			1.25.1									Gap						
			1.25.2															
			1.26															
			1.27	Gap	Gap	Gap	Gap							Gap				
			1.28	Gap	Gap		Gap	Gap						Gap	Gap			
1.29																		
Entrepreneurs (sole/partnership)	Secured (specific rules)	Individual enforcement	2.1															
			2.1.1															
			2.1.2															
			2.2															
			2.2.1															
			2.2.2															
			2.3															
			2.3.1															
			2.3.2															
			2.4															
	2.5																	
	Insolvency proceedings	2.6																
		2.7																
2.8																		
2.9																		
2.10		Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap				
2.11																		
Unsecured (general rules)	Individual enforcement	2.12																
	Insolvency proceedings	2.13								Gap				Gap				

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	MS7	MS11	MS16	MS21	MS5	MS17	MS25	MS1	MS10	MS6	MS22	MS18	MS26	MS12			
			2.14																	
			2.15																	
			2.16	Gap									Gap	Gap				Gap		
			2.17																	
			2.18																	
			2.19																	
			2.20																	
			2.21																	
			2.22																	
			2.23																	
			2.24	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap
			2.25																	
			2.25.1										Gap				Gap			
			2.25.2																	
			2.26																	
			2.27	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap
			2.28	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap
			2.29																	
			Consumers	Secured (specific rules)	Individual enforcement	3.1														
						3.1.1														
3.1.2																				
3.2																				
3.2.1																				
3.2.2																				
3.3																				
3.3.1																				
3.3.2																				
3.4																				
3.5																				
Insolvency proceedings																				
3.6																				

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	MS7	MS11	MS16	MS21	MS5	MS17	MS25	MS1	MS10	MS6	MS22	MS18	MS26	MS12			
			3.7																	
			3.8																	
			3.9																	
			3.10	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap		
			3.11																	
	Unsecured (general rules)	Individual enforcement		3.12																
				3.13				Gap	Gap				Gap							
		Insolvency proceedings		3.14				Gap				Gap					Gap	Gap		
				3.15																
				3.16										Gap						
				3.17																
				3.18																
				3.19																
				3.19.1		Gap		Gap					Gap					Gap		
				3.19.2																
				3.20																
				3.21	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap
		3.22	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap		
		3.23																		

Member States MS9 – MS13

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	MS9	MS2	MS19	MS24	MS28	MS4	MS14	MS20	MS27	MS15	MS3	MS8	MS23	MS13	
Corporate (legal entity)	Secured (specific rules)	Individual enforcement	1.1															
			1.1.1															
			1.1.2															
			1.2															
			1.2.1															
			1.2.2															
			1.3															
			1.3.1															
			1.3.2															
		1.4																
		1.5																
	Insolvency proceedings	1.6																
		1.7																
		1.8																
		1.9																
		1.10	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	
		1.11																
	Unsecured (and general rules)	Individual enforcement	1.12															
		Insolvency proceedings	1.13												Gap			
			1.14															
			1.15															
			1.16	Gap		Gap	Gap		Gap						Gap			Gap
			1.17															
			1.18															
1.19																		
1.20																		
1.21																		
1.22																		
1.23																		
1.24			Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	MS9	MS2	MS19	MS24	MS28	MS4	MS14	MS20	MS27	MS15	MS3	MS8	MS23	MS13	
			1.25															
			1.25.1												Gap			
			1.25.2															
			1.26															
			1.27													Gap		
			1.28													Gap		
			1.29															
Entrepreneurs (sole/partnership)	Secured (specific rules)	Individual enforcement	2.1															
			2.1.1															
			2.1.2															
			2.2															
			2.2.1															
			2.2.2															
			2.3															
			2.3.1															
			2.3.2															
			2.4															
	2.5																	
	Insolvency proceedings	2.6																
		2.7																
		2.8																
		2.9																
		2.10	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	
		2.11																
2.12																		
Unsecured (general rules)	Insolvency proceedings	2.13												Gap				
		2.14																
		2.15																
		2.16	Gap		Gap	Gap		Gap						Gap			Gap	

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	MS9	MS2	MS19	MS24	MS28	MS4	MS14	MS20	MS27	MS15	MS3	MS8	MS23	MS13		
			2.17																
			2.18																
			2.19																
			2.20																
			2.21																
			2.22																
			2.23																
			2.24	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap
			2.25																
			2.25.1													Gap			
			2.25.2																
			2.26																
			2.27	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap
			2.28	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap
			2.29																
Consumers	Secured (specific rules)	Individual enforcement	3.1																
			3.1.1																
			3.1.2																
			3.2																
			3.2.1																
			3.2.2																
			3.3																
			3.3.1																
			3.3.2																
			3.4																
			3.5																
		Insolvency proceedings	3.6																
			3.7																
			3.8																
			3.9																
3.10	Gap		Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap			
3.11																			

Type of debtor	Loan secured?	Outside or within insolvency?	Question ID	MS9	MS2	MS19	MS24	MS28	MS4	MS14	MS20	MS27	MS15	MS3	MS8	MS23	MS13		
	Unsecured (general rules)	Individual enforcement	3.12																
			3.13							Gap				Gap					
		Insolvency proceedings	3.14													Gap			
			3.15																
			3.16																
			3.17																
			3.18																
			3.19																
			3.19.1														Gap		
			3.19.2																
			3.20																
			3.21	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap
			3.22	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap	Gap
			3.23																

Annexe 6: Questions possibly in need of clarification

Note: The following list is not comprehensive. It rather gives examples and mentions particular issues encountered in the data analysis.

General

- **Clarify the meaning of 'insolvency proceeding'.** In particular, clarify whether the term always refers to both liquidation and restructuring proceedings or whether its meaning is specific to the context of the relevant question. Guidance might be helpful as the questionnaire generally does not aim at restructuring proceedings, while some questions still include restructuring.
- **It might be helpful to clarify whether 'Corporate (legal entity)' only refers to non-financial entities.**
- When there is a main question and differentiating sub-questions (for example Q1.1), give guidance whether an answer is also required for the main question.

Qualitative questions

- Where the questions (e.g. Q1.1) differentiate between real estate and movable collateral, clarify the position of intellectual property as collateral.

Quantitative questions

- Q1.28, Q2.28, Q3.22: the questions indicate to measure clearance rate as incoming/resolved cases. Usually, however, clearance rates are measured as resolved/incoming cases.
- Q2.13: Specify how time period calculated to generate comparable numerical results; in particular specify starting point taking into account that starting points differ comparing the Member **States'** laws.

Annexe 7: Answers possibly in need of clarification

General

If there was a future iteration of this study, thought might be given as to whether the Member States would agree to those analysing the answers to have the competence to correct answers in cases of misunderstandings.

The following lists under the headings 'Qualitative answers' and 'Quantitative answers' refer to answers that may be in need of clarification. They have been identified as potentially inaccurate.

Qualitative answers

- MS5 Q1.24: answer seems contradictory.

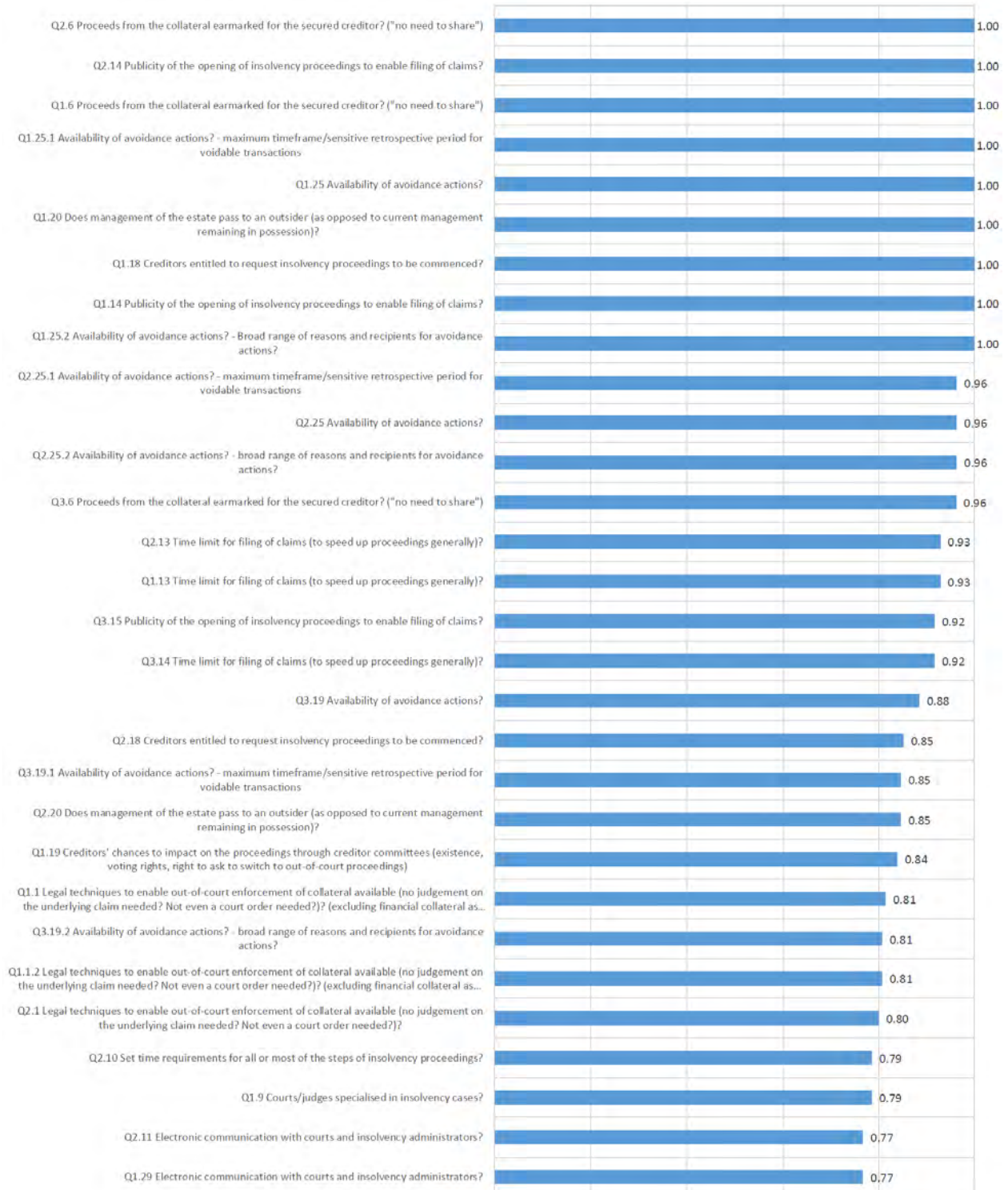
Quantitative answers

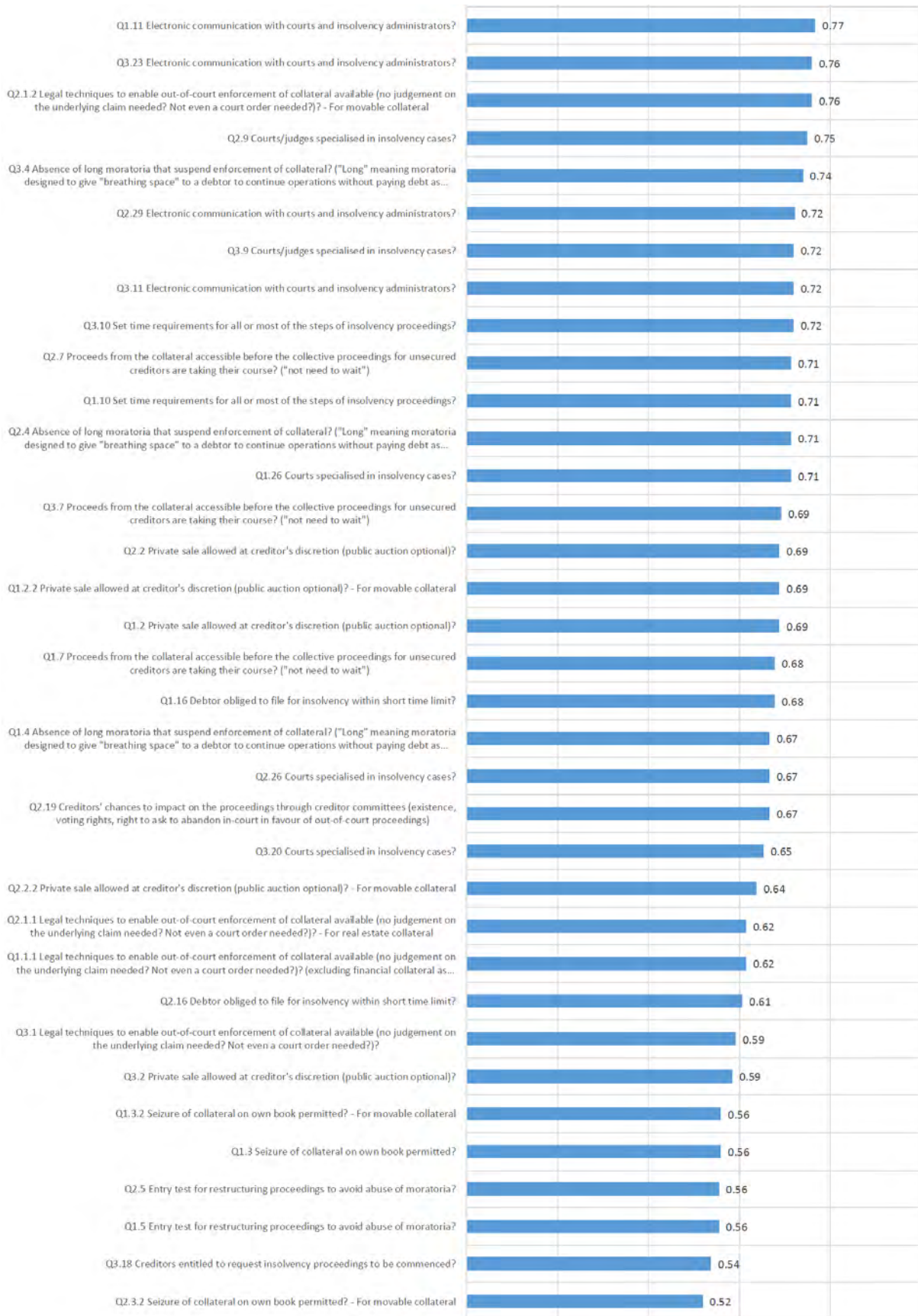
- MS18 Q1.13: answer seems to refer to statutory limitation period rather than time limitation to file claim in insolvency;
- All answers to Q1.28: usually (e.g. EU Justice Scoreboard) clearance rate is defined as resolved/incoming cases; however, the questionnaire defines clearance rate as incoming/resolved cases; this may have lead to misunderstandings; please see specific coding guidance on how this was dealt with;
- MS7 Q2.13: seems to give time periods for avoidance actions rather than time limit for filing of claims.

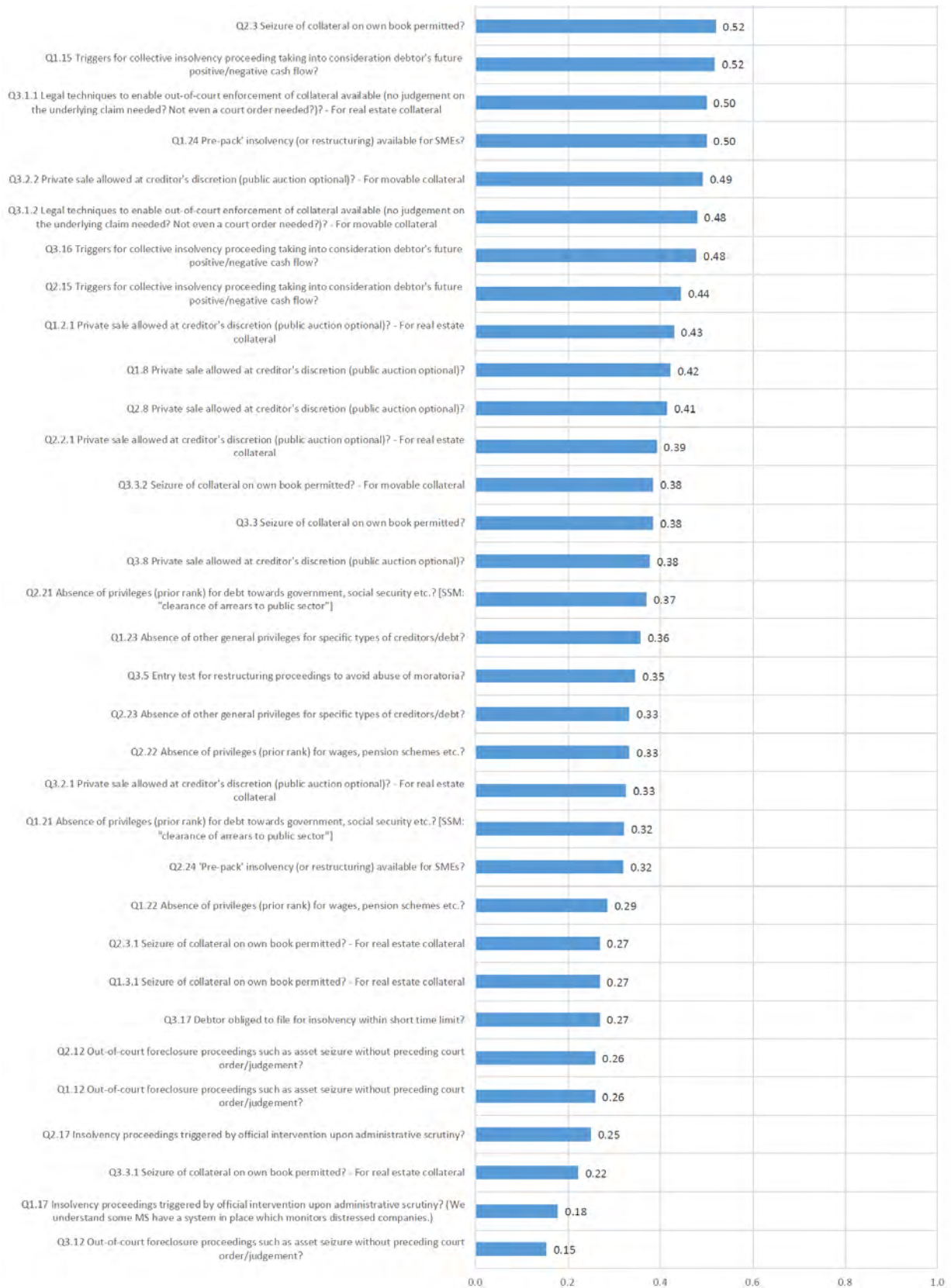
Annexe 8: Questions ordered by average of coded answers

All qualitative questions

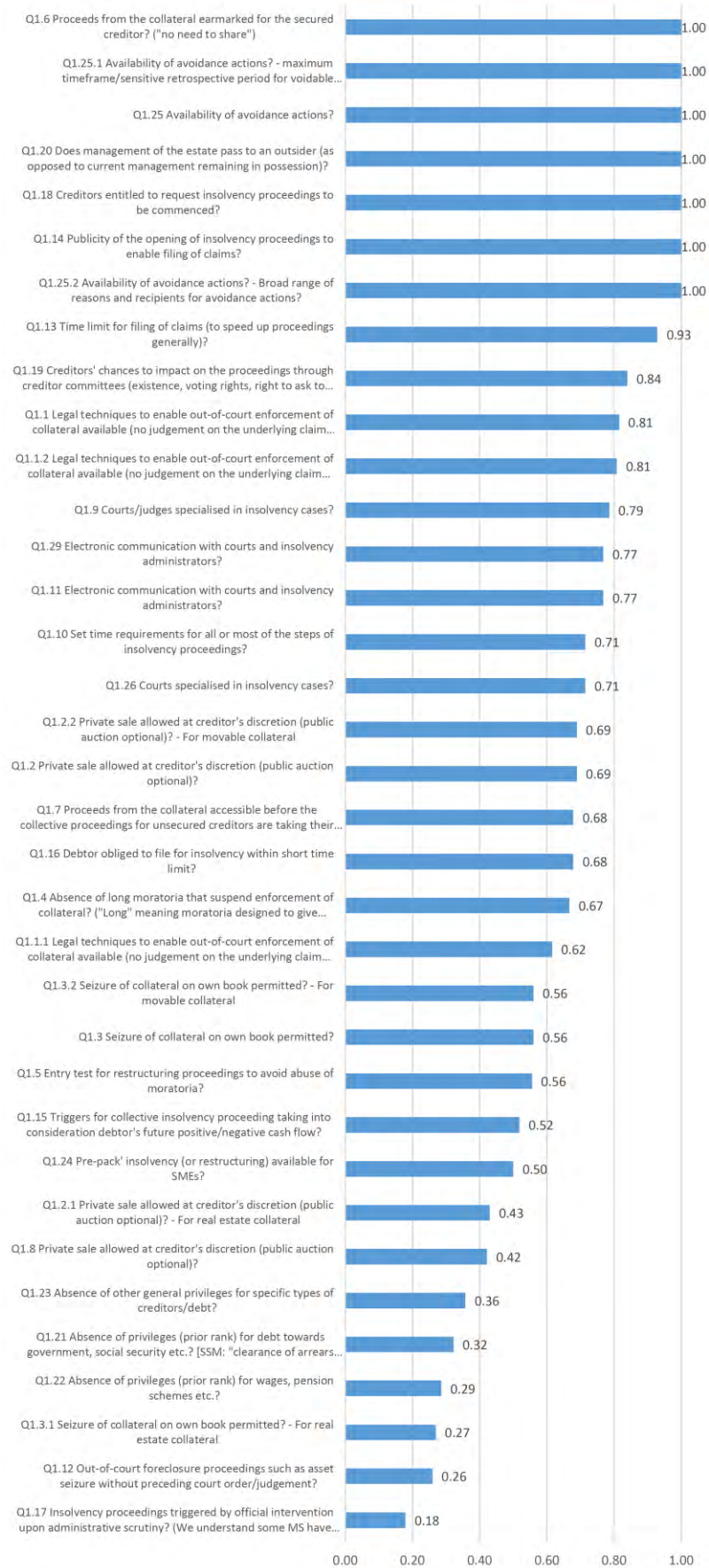
Note: The first number of a question indicates whether the debtor is a corporate (1), a sole trader or partnership (2) or a consumer (3). For all other classification of questions, please see the complete questionnaire in Annexe 3.



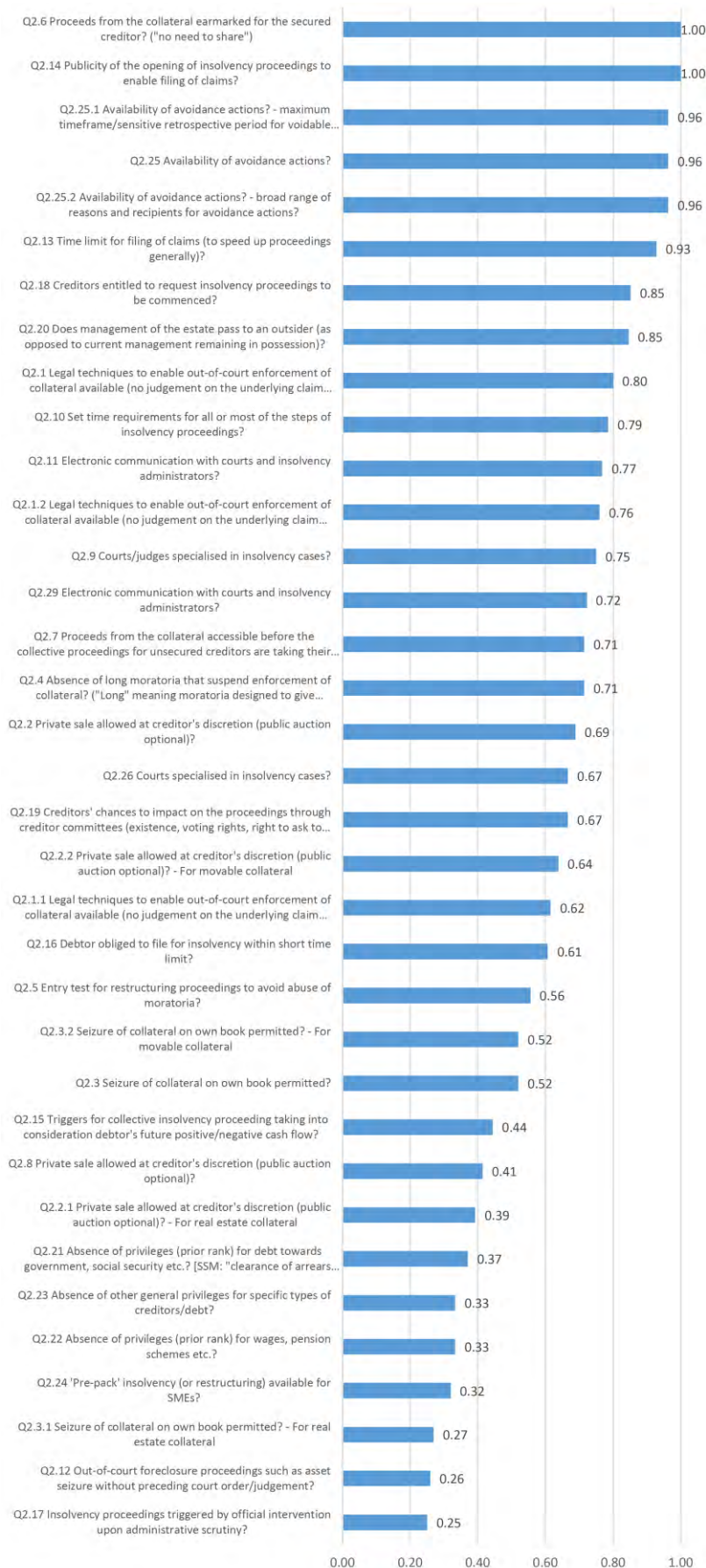




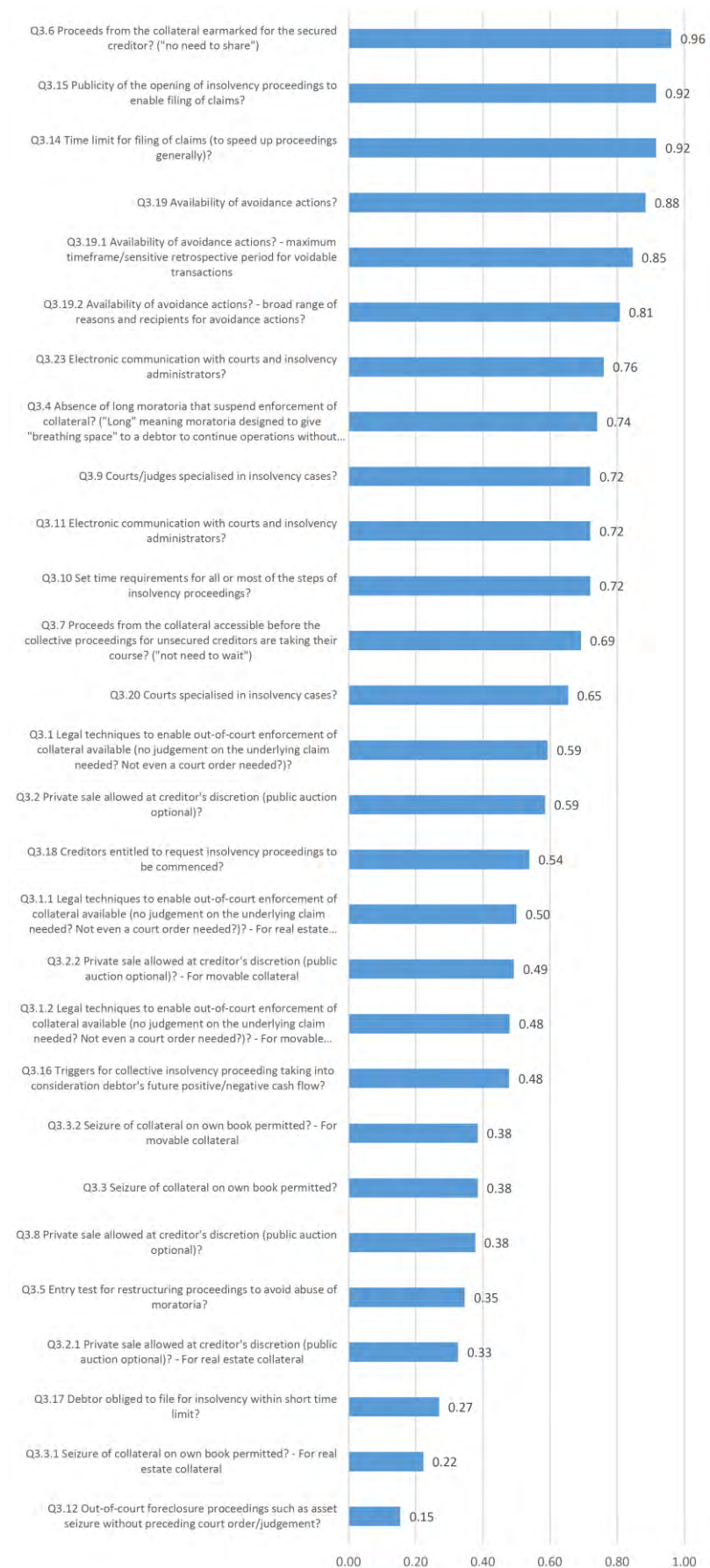
All qualitative questions: corporate



All qualitative questions: sole trader partnership



All qualitative questions: consumer



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