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DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL
MARKETS UNION

Horizontal policies
Capital Markets Union

Feasibility Assessment

**to enhance data reporting in order to allow
for a regular assessment of the effectiveness of
national loan enforcement regimes**

02/08/2021

Disclaimer: This document is for information purposes. It does not represent an official position of the Commission on this issue, nor does it anticipate such a position.

1. INTRODUCTION

This document reports on the feasibility assessment carried out by DG FISMA to explore possibilities to **enhance data reporting in order to allow for a regular assessment of the effectiveness of national loan enforcement regimes**, as announced in the CMU Action Plan adopted on 24 September 2020¹. Such assessment will help to identify inefficiencies within and divergences across these national regimes, which can act as an impediment to the development of the EU capital market.

Notwithstanding the need to boost equity investment in EU companies (more so post-Covid 19), debt financing continues to be an important pillar of funding for businesses in the European Union. Large and small businesses, corporations and self-employed entrepreneurs also need access to financing that allows them not to dilute their equity, i.e. without sharing the ownership in the business beyond the current owner(s). Debt funding may also be needed to bridge the time until a business turns profitable or in order to expand its activities.

In the European Union, a large share of debt financing is provided by banks in the form of loans. A bank loan is a bilateral contract between the bank, as creditor, and the company or entrepreneur, as borrower. The loan contract stipulates, as its essential ingredients, that the bank shall lend the borrower a certain amount of money and that the borrower shall pay back the money to the bank at maturity, either in a lump sum or in instalments and usually with interest. The borrower therefore owes the bank money; he or she is also called a debtor. Once the borrower has paid back the principal and the interest due under the loan, the debt is settled. The bank can then again dispose of the recovered funds and may use them for lending to other companies or entrepreneurs to help their businesses to survive or expand. Efficient value recovery thus frees up funds for lending to other, often to more innovative businesses and is a key feature of a competitive economy. How well insolvency regimes work affects the speed at which funds can be reallocated to more productive uses.² Where a borrower cannot pay back a loan due, for example because the business is not going well, borrower protection mechanisms may apply under the applicable law, or the bank may grant forbearance of all or part of the loan or otherwise agree to a restructuring. This is likely to happen where the bank expects the financial distress to be temporary. However, not all businesses manage to recover from a distressed situation.

Loan enforcement regimes exist to address situations in which the borrower does not or cannot pay back the amounts due under a loan. They enable the bank (or any other party that has lent funds or has an outstanding claim against the company), as creditor, to apply a formal procedure for recovering the funds, and contain measures designed to protect the borrower and make sure the validity of the bank's (or another creditor's) claim and the defences available to borrowers to ensure their rights are protected are thoroughly assessed. Loan enforcement is in principle governed by national law, as it is the law governing the initial bilateral loan contract

¹ See Action 11B: "Together with the EBA, the Commission will explore possibilities to enhance data reporting in order to allow for a regular assessment of the effectiveness of national loan enforcement regimes", in: A Capital Markets Union for people and businesses – new action plan, COM/2020/590 final, <https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=COM:2020:590:FIN>

² Cf. Müge Adalet McGowan and Dan Andrews, OECD Economics Department Working Paper No. 1504, 2018, para. 1.

(i.e. contract law). There are two basic scenarios for when a creditor wishes to enforce a loan.

- (i) The first and common scenario is enforcement by an individual creditor. It consists of an action brought by a creditor against a debtor, mostly before a court, which assesses the rightfulness of the claim and other requirements and, depending on the outcome, may order the debtor to pay. National law may also provide for specific out-of-court proceedings which can be brought by individual creditors, with court involvement only in the case of problems.
- (ii) The second basic type of procedure to recover value from a defaulted loan consists of what is known as collective proceedings or insolvency proceedings.³ Insolvency proceedings concern the scenario where the debtor does not have enough assets to cover all debts incurred, and enforcement by individual action, looking only at the rightfulness of the individual creditor's claim, would mean a concurrence of creditors, with the first to move more likely to have their claims satisfied than others. In this case, what is known as collective enforcement proceedings will be applied. These proceedings, for which insolvency proceedings is the commonly used shorthand, make sure that all creditors are satisfied equally (*par conditio creditorum*) or that priorities are granted only in accordance with predefined rules, rather than on a first come, first served basis. Insolvency proceedings also have other objectives, including to grant an orderly proceeding and to ensure that the debtor's assets are liquidated at the best available price.

The benchmarking of loan enforcement seeks to understand the difference between Member States' national regimes as regards enforcement following either proceeding described above, individual or collective.

In the 2020 Capital Markets Union Action Plan⁴, the Commission committed to two measures aiming at monitoring efficiency and possibly targeted harmonisation of core non-bank⁵ insolvency frameworks:

³ There are also collective proceedings designed to ensure that liquidation is avoided altogether where possible, either by a restructuring within the insolvency proceedings or through a preventive restructuring. Preventive restructuring is the subject of the Directive on Restructuring and Insolvency (Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132). Once transposed in national law, preventive restructuring frameworks will be in place in all Member States following the harmonised rules in the Directive. The benchmarking will therefore not address cases where borrowers undergo preventive restructuring.

⁴ A Capital Markets Union for people and businesses - new action plan, COM(2020) 590 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:590:FIN>

⁵ Banks as debtors are not in the scope of this benchmarking, because the mechanisms for their resolution follow a harmonised regime pursuant to the Bank Recovery and Resolution Directive (Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council), which in turn impacts which banks go into (national) insolvency proceedings, and the choices of creditor banks.

- (i) To make the outcomes of insolvency proceedings more predictable, the Commission will take a legislative or non-legislative initiative for minimum harmonisation or increased convergence in targeted areas of non-bank insolvency law.
- (ii) In addition, together with the European Banking Authority (EBA), the Commission will explore possibilities to enhance data reporting and analysis in order to allow for a regular assessment of the effectiveness of national loan enforcement regimes.

The Commission reiterated both commitments in the 2020 Action Plan on tackling non-performing loans in the aftermath of the Covid-19 pandemic.⁶

This feasibility assessment relates to the possibilities of a regular assessment of the effectiveness of national loan enforcement regimes.

2. THE RATIONALE FOR REGULAR ASSESSMENT OF THE EFFECTIVENESS OF NATIONAL LOAN ENFORCEMENT REGIMES

National loan enforcement and insolvency frameworks in the European Union diverge. Data about the outcomes of loan enforcement and insolvency proceedings can help to understand how they differ and what features have particular impact on the outcomes. Quantitative data about the functioning of loan enforcement and insolvency frameworks are important to analyse these differences in terms of their economic impact and significance. In this context, the chances of recovering value in case of default is a key factor which banks need to consider when deciding whether, and at what interest rate, to lend to a borrower. Such considerations become even more acute when the bank is lending outside of its domestic jurisdiction. Besides the creditworthiness of the individual borrower, the performance of the applicable national loan enforcement and insolvency framework in terms of outcomes experienced by banks can determine how attractive it is for a bank to engage in business with borrowers across borders.

It is important to understand how the national frameworks operate in practice. Besides the law on the books, court capacity and the working methods of insolvency practitioners play an important role in the outcome of the proceedings. The objective of any data analysis would be therefore to understand how the national frameworks operate in practice. The data analysis could usefully focus on the value-recovery experience of banks in particular, as banks are the most important category of creditors and real-case data would seem to be available.⁷ The data gathered from banks could shed light indirectly on how a wider range of creditors fare in dealing with distressed business partners in the various jurisdictions, including investors in mezzanine instruments or other bonds or market-based financing more generally.

To assess the operation of enforcement and insolvency frameworks, it is necessary to understand how much is typically recovered in enforcement actions

⁶ Communication from the Commission to the European Parliament, the Council and the ECB of 16 December 2020: Tackling non-performing loans in the aftermath of the COVID-19 pandemic, COM(2020) 822 final, pp. 13 s.

⁷ <https://www.doingbusiness.org/en/reports/global-reports/doing-business-2020>. For the insolvency section, this report is based on a hypothetical case so not using real case data.

or insolvency proceedings. This information can tell us about the losses sustained by banks as creditors and the destruction of value in the proceedings. Moreover, recovered funds are worth more the earlier they can be recovered. Long proceedings not only mean that the recovered funds have to be discounted over time, but also that all parties involved spend more on the administration of the proceedings. Unfortunately, the specific perspective of bank creditors is not reflected in a quantitative manner in the existing general analyses of insolvency regimes (e.g. the World Bank Doing Business Report). Banks may choose not to enforce a loan themselves, but rather sell it, possibly as a portfolio of non-performing loans, on the secondary market. However, it is important for banks – and other financial and trade creditors – to have a good understanding of what the expected losses in case they resort to enforcing a loan through formal judicial proceedings, even where venturing into jurisdictions on which they do not have experience of their own. Trade creditors as well could make better informed decisions about how to structure the business relationship. That knowledge could provide a useful backdrop to encourage banks and debtors to negotiate restructurings. It could also enable banks to better price their loans, factoring in more accurately the risk of unrecovered funds due to features of individual insolvency regimes.

The Council Conclusions on the Action Plan to tackle non-performing loans of 11 July 2017⁸ asked the Commission to publish the results of the benchmarking exercise on the efficiency of national loan enforcement (including insolvency) regimes from a bank creditor perspective. This exercise should provide comparable metrics, as precise as possible, for recovery rates, recovery times and recovery costs across the Member States. This followed from the report of 31 May 2017⁹ of the Financial Services Committee sub-group on non-performing loans.¹⁰ The

⁸ Council Conclusions of 11 July 2017 on action plan to tackle non-performing loans, para. 8.

⁹ Financial Services Committee sub-group on non-performing loans, Report of 31 May 2017 (Council document 9854/17), Chapter 7.

¹⁰ Paragraphs 159 ss of the FSC report:

[159] Publicly available data on the outcome of insolvency systems are scarce and comparability is generally limited. National official sources (e.g. justice ministries or national statistical institutes) generally provide information on the number of insolvency cases filed. However, the potential for cross-country comparison is limited due, in particular, to discrepancies between the existing insolvency procedures across the EU and structural differences in the composition of insolvency cases.

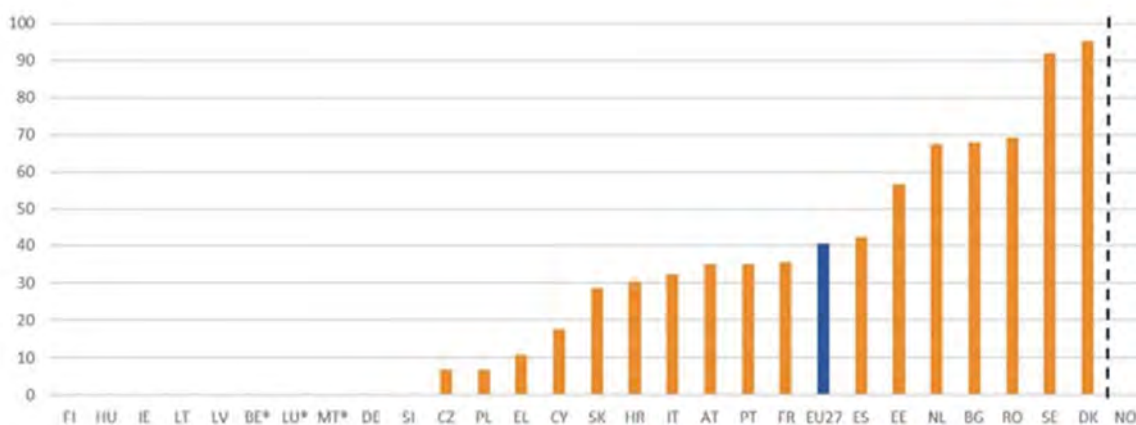
[160] The World Bank Doing Business survey on corporate insolvency provides regularly-updated set of indicators but has some limitations. These indicators, which focus on corporate insolvency, are based on a common methodology which is applied consistently in various countries. However, the indicators only capture insolvency frameworks applying to a specific hypothetical business when measuring the potential outcome of insolvency

[161] This is the reason why the Commission has initiated a benchmarking exercise on the efficiency of national loan enforcement (including insolvency) regimes from a bank creditor perspective, as discussed in the Eurogroup in April 2016 and in ECOFIN in June 2016, in order to improve data availability on the recovery rates, cost and delay associated with loan enforcement before or in insolvency by banks throughout the European Union. This benchmarking will notably seek to gather additional data on the actual outcome of loan enforcement procedures (including insolvency) across Member States. To the extent that primary data is available and sufficiently disaggregated, the benchmarking will notably assess the recovery rate under various procedures, their length and the costs associated. The results of the first round of benchmarking are expected in autumn 2017, with an interim

Conclusions also asked Member States to consider dedicated peer reviews on insolvency.¹¹ A better understanding of the outcomes of proceedings brought under the various national loan enforcement frameworks is also important for future country specific recommendations or technical support to the Member States under the Technical Support Instrument in this area. Moreover, quantitative data about how value recovery works in the Member States and how the efficiency develops over time based on national reforms is a valuable backdrop for future policy-making. The results of the benchmarking should be one of the sources contributing to the empirical basis for future decisions about possible legislative initiatives in the area of insolvency law.

In 2020, the EBA, responding to a Call for Advice from DG FISMA, published a report on benchmarking of national loan enforcement and insolvency proceedings.¹² The report showed strong differences in outcomes between the Member States. For loans to corporates, the following figures from the aforementioned report show differences in recovery rates and time to recovery, respectively¹³:

EU benchmark, gross recovery rate (%), simple average for each EU Member State – corporate



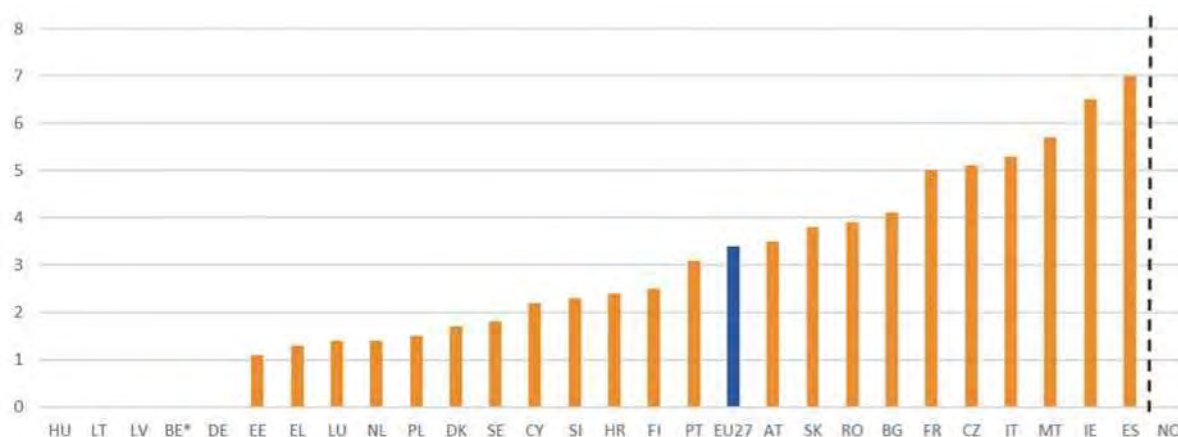
Note: * Not shown when the number of observations is below five. The EU27 figures include not shown observations.

report in the spring providing more clarity on the appropriate methodology for benchmarking insolvency frameworks.

¹¹ Fn 6.

¹² <https://www.eba.europa.eu/eba-publishes-report-benchmarking-national-insolvency-frameworks-across-eu>

¹³ The figures correspond to Figure 2 and Figure 14, respectively, in the EBA report (Fn 12).



Note: * Not shown when the number of observations is below five. The EU27 figures include not shown observations

The EBA’s report presents the results of a one-off exercise but enforcement and insolvency frameworks are evolving. These frameworks are subject to legal reforms at national level, and the judicial infrastructure such as court capacity and training of insolvency practitioners keeps evolving as well. Some reforms are also considered in response to the Commission’s country specific recommendations: several Member States facing challenges with their stock of non-performing loans received country specific recommendations in the past to enhance the efficiency of their insolvency and recovery proceedings in the context of the European semester. The EBA’s report, inter alia, formed the basis of a thematic discussion at the Eurogroup on 16 April 2021¹⁴ and will be referenced in the upcoming impact assessment of the Commission on insolvency convergence¹⁵.

Recurrent assessments of the effectiveness of national loan enforcement and insolvency frameworks will be needed to gauge progress over time. Such assessments would include the impact of national reforms, both as regards the law on the books and the capacity of the judicial system. At the same time, insolvency regimes do not change rapidly, because the changes tend to be profound. It should therefore be sufficient for the assessment to recur every two to three years or at different reasonable intervals, set with the flexibility needed to ensure the updates can support future legislative initiatives or reviews.

Any assessment of enforcement and insolvency frameworks must build on sound data coverage and data quality, including comparability but must not overburden banks. This assessment is therefore not just about how to obtain the data from banks outright, but rather explores ways to reuse and deduct the outcomes of enforcement proceedings, to the extent possible and with due regard to data protection, from data which is already being recorded by banks and based on parameters which banks may already be applying. The idea in keeping as close as possible to existing practices is also to limit the time to implementation.

¹⁴ <https://www.consilium.europa.eu/media/49192/20210416-eg-com-note-on-insolvency-frameworks.pdf>

¹⁵ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12592-Insolvency-laws-increasing-convergence-of-national-laws-to-encourage-cross-border-investment/public-consultation_en

3. THE BANKS' PERSPECTIVE

The objective of a benchmarking exercise is to analyse the outcome of loan enforcement and insolvency frameworks from the perspective of banks as creditors. More specifically, the purpose of the benchmarking exercise is to learn about the recovery rates (amount recovered as a percentage of the amount outstanding at the beginning of the legal proceedings) and time to recovery when a bank enforces a loan through the judicial system in the 27 Member States. For this purpose, statistics on court proceedings as currently available at the European Union level can only play a supporting role. However, data gathering from banks also has inherent limitations.

3.1. Court statistics

Data on insolvency currently collected from court statistics for the European Commission's Justice Scoreboard show the overall length of court proceedings across all civil and commercial litigation, but not specifically for loan enforcement and insolvency proceedings and not as regards the outcomes in terms of value recovered.¹⁶ There is currently no obligation for Member States to report on the value recovery rates in enforcement and insolvency proceedings (nor on the costs), and for certain procedures where the creditor seizes collateral and sells the collateral on the market without court involvement, Member States would not know the recovery rate.

Once the Restructuring and Insolvency Directive¹⁷ has been transposed into national law by all Member States and the data reporting rules start to apply, Member States will have to report to the Commission data regarding the number and average length of collective insolvency procedures.¹⁸ For collective proceedings, therefore, it could be worthwhile to compare the data reported by the Member States on the duration, which will concern all insolvency procedures rather than just corporate insolvencies, against the data on length of procedures resulting from the bank data analysis following any possible option of the ones outlined below.

Court statistics as they are being submitted at a European level for the time being will not in themselves be sufficient to understand the outcomes which creditors experience in terms of recovery rates and costs. Court statistics are too limited and not detailed enough to play more than a supporting role for plausibility checks. Even after reporting based on the rules implementing the Restructuring and Insolvency Statistic starts, they will not provide data on the recovery outcomes. Besides, they do not include loan enforcement actions brought by individual creditors, but only collective proceedings, and are thus not a sufficient basis for recurrent benchmarking. However, DG FISMA will continue to monitor the development of court statistics and reporting to the Commission by the Member States following the implementation of the Restructuring and Insolvency Directive of 2019 for their potential use to bolster results of future iterations of the benchmarking exercise.

¹⁶ https://ec.europa.eu/info/sites/default/files/justice_scoreboard_2020_en.pdf, table 7.

¹⁷ Cf. footnote 3 above.

¹⁸ Article 29 para. 1 litt. (a) and (b) of the Restructuring Directive.

3.2. Bank data – inherent limitations

Any analysis of the outcome of loan enforcement and insolvency proceedings from a bank creditor perspective in terms of recovery rates and speed will face certain challenges linked to data gathering. One challenge is posed by data protection considerations; loan-by-loan data must be carefully anonymised and aggregated when disclosed by the authorities for any externally conducted exercise. Another challenge is the fact that banks may exercise a certain bias when choosing which defaulted loans to enforce through the courts in individual or collective proceedings and which non-performing loans to manage otherwise, such as by sale on the secondary markets, can affect the statistics on formal enforcement. This issue arises when data are gathered only from banks, irrespective of the method of data collection, and could only be alleviated, but not entirely removed, if the Member States were prepared to provide court insolvency statistics including enforcement proceedings brought by creditors other than banks. The statistics would only improve, though, to the degree businesses did have a significant share of non-bank funding, which may not be a given in all Member States.

Another difficulty of a general nature across all options is that banks do not necessarily keep the gathered data segregated from other data concerning their non-performing loan portfolios. While the chances for recovery from formal enforcement proceedings are of the utmost importance for assessing risk and pricing credit, banks do not rely exclusively on judicial or formal out of court enforcement to recover value. Rather, banks have adopted other mechanisms for managing non-performing loans, such as selling them on the secondary markets. Banks therefore do not necessarily keep track of the attributes characterising the judicial proceedings when using them to enforce non-performing loans, as opposed to, or separately from, those loans which they dispose of through other means. The latter, however, would not have been relevant for the purpose of assessing the efficiency of enforcement frameworks in courts.

Furthermore, where banks keep track separately of what happens in enforcement proceedings, they are not presently doing so in a standardized way based on any legal obligation that would be binding in all 27 Member States. Any individual bank's records would therefore not necessarily be comparable with other banks' records, be it because they choose different points in time to denote beginning and end of a proceeding, because they look at gross or at net (after costs) outcomes in terms of recovery rates, or because they apply different distinctions as per asset classes, type of debtor, or other loan characteristics based on their respective individual needs.

4. OPTIONS

There are three basic scenarios for establishing the benchmarking as a recurrent exercise in order to gauge progress over time, such as every two to three years. The first basic scenario would be for the EBA to repeat its ad hoc benchmarking undertaken during 2019/2020. The second basic scenario would be the introduction of supervisory reporting requirements for data on the outcomes of loan enforcement and insolvency regimes in EU legislation. The third basic scenario would consist of reusing data reported to the European Central Bank's (ECB) Analytical Credit Dataset ("AnaCredit"). These three basic scenarios were analysed in the context of recurrent benchmarking.

4.1. Benchmarking by the EBA

The first option would be to repeat the data gathering undertaken by the EBA in 2019/20. This data gathering was based on a Call for Advice from DG FISMA, where the EBA undertook a benchmarking of national loan enforcement and insolvency frameworks from a bank creditor perspective. This exercise used data from banks that were willing to submit data voluntarily to their respective National Competent Authority. The EBA published its report on 18 November 2020.¹⁹ This exercise was the first analysis of the outcomes of national loan enforcement and insolvency frameworks from a bank creditor's perspective across all 27 Member States, which based itself on real case data. Going forward, one option to get a regular up-to-date view of national insolvency regimes could thus be to repeat the exercise by the EBA at given (even or adjusted) intervals in the future. Amongst its benefits are the EBA's vast experience with cleaning and analysing bank data, its specific experience gained in the 2019/20 exercise and its close links with the National Competent Authorities and the banking industry across the 27 Member States.

For this EBA exercise, banks would contribute data on a voluntary basis. This means that the repeat exercises could start relatively soon, since there would be no extra time needed to put in place a reporting requirement in relevant legislation (option 2). The definitions used in the first run of the exercise could be used again or, where deemed necessary, could be adjusted by the EBA together in a collaborative process with the industry. The adjustments can be also developed more easily and rapidly taking into account specific needs across different benchmarking exercises (in comparison to both supervisory reporting requirements or data collection tools based on specific regulation such as AnaCredit). Banks which contributed last time are already familiar with this exercise, which should facilitate a repeated exercise. It would also allow for the comparability of results and identification of developments relative to the first *ad hoc* exercise.

The intervals could be fine-tuned to fit policy-making needs and real life developments. It could be avoided to do an exercise in an extraordinary situation, such as too shortly following the Covid-19 situation, which could trigger a surge in insolvencies, clog the court system and therefore impact also older, ongoing insolvency proceedings in terms of length.²⁰ Also, while a regular stock-taking on progress is in principle preferable, when timing the exercise, consideration could also be given to the next steps in the policy making process, for example to bolster impending impact assessments for legislative proposals.

This option is not without shortcomings, largely related to the non-mandatory nature of data collection – although certain shortcomings can be attributed to the fact that this was the first time for this specific exercise to be conducted. The EBA in its report notes, for example, that the bank sample in certain cases²¹ lacked representativeness since the exercise relied on voluntary contributions. The report mentions further data quality issues, some of which were due to the fact that the banks

¹⁹ Cf. footnote 10 above.

²⁰ European Systemic Risk Board, Report: Prevention and management of a large number of corporate insolvencies, April 2021, https://www.esrb.europa.eu/pub/pdf/reports/esrb.report210428_PreventionAndManagementOfALargeNumberOfCorporateInsolvencies~cf33e0285f.en.pdf?351f85b1f1648308508846cc8c4dd0bf .

²¹ Cf. Annex A for an example.

did not have the required data points stored and readily available, but had to retrieve them manually or from a third-party data provider. Another data quality problem identified by the EBA consisted in divergent interpretations by banks of the instructions underlying the various data points. It should be noted, however, that the data collection and analysis in the first *ad hoc* benchmarking exercise had not yet been fully completed when the Covid-19 crisis started to put banks under additional strain, which may have led some banks and authorities to de-prioritise this voluntary exercise. Moreover, based on similar benchmarking exercises conducted by the EBA on an on-going basis, most of the data collection difficulties tend to diminish significantly after the first *ad hoc* exercise and efficiency gains on an experience curve. A drawback connected with a repetition, however, may be a possible increase of the regulatory burden to the extent it would mean double-reporting of some variables or data points which are meanwhile being collected on a regular basis and hence available from other reporting requirements, such as, e.g., AnaCredit.

4.2. Supervisory reporting obligations regarding insolvency

The second option would consist in the introduction of supervisory reporting requirements for data on the outcomes of loan enforcement and insolvency regimes in EU legislation. All banks have to report certain data to their supervisors on a regular basis. While emanating from primary legislative acts, supervisory reporting requirements are then elaborated in considerable detail in relevant technical standards, based on careful consultation of the industry. Data reported for supervisory purposes undergoes careful scrutiny to ensure high data quality. Supervisory reporting therefore results in high quality, comparable data from across all reporting credit institutions.

However, there would be shortcomings with this option also. Existing supervisory reporting on loss-given-default in Capital Requirements Regulation (Article 430) only allows for deduction of *expected* recovery rates based on *unspecified* past experience (i.e. not real case recovery rate data based on actual court outcomes) and only from banks using advanced internal ratings based *models* (and, for example, not from those using standardised estimates in their models, or which do not have internal models at all). These data would therefore lack comparability since it would largely depend upon the used valuation models. Furthermore, for the existing supervisory reporting, banks do not have to distinguish between different enforcement procedures. In those circumstances, even where banks happen to choose to record data on the outcome of value recovery from non-performing loans, they often do not distinguish how the value was recovered. For example, sale, agreement to restructure the loan, restructuring, insolvency, individual enforcement in or out of court, or just partial payments on an NPL - all are recorded indiscriminately.

As the data necessary for an insolvency benchmarking exercise are not currently part of any supervisory reporting requirement in the Capital Requirements Regulation, a change of the Regulation (and relevant secondary legislation) would be required. This legislative change would introduce a mandate for (National) Competent Authorities (and ultimately the EBA) to be able to collect this data from banks. Introducing such a mandate in the primary legislation plus the necessary follow-up on secondary legislation would probably take several years before such reporting could even begin. Furthermore, a new legislative reporting mandate imposing on banks to report data on the actual outcomes of loan enforcement and insolvency would not tie in well with the main purpose of supervisory reporting by

banks, which is to allow for the identification by supervisors of risks to individual banks (and by extension – to financial stability). The data necessary for the benchmarking exercise would thus be more akin to data collected by national statistical offices, rather than supervisors.²² Furthermore, additional reporting requirements would come on top of the existing reporting requirements that banks already have to comply with and represent an additional burden for banks, notably in the difficult context of post Covid-19 recovery.

Supervisory reporting is designed to monitor risks which are specific to the individual bank. Including risks which affect banks trying to enforce loans in a given jurisdiction across the board would to a certain extent mean to stretch this concept. Not only would new supervisory reporting obligations anchored in the Capital Requirements Regulation²³ be required, taking time for the legislative process, but it would also require a rethink of the approach to supervisory reporting. Furthermore, it would be a rather rigid form of reporting: should the Commission consider other parameters of insolvency benchmarking necessary for a more precise picture, this would require a legal amendment (either of the primary legal act or its secondary legislation) – and consequently time for those amendments to be introduced in the relevant legal act(s) and consecutively for their implementation. Moreover, potential new supervisory reporting requirements would likely significantly overlap with the AnaCredit data requirements of the ECB (see the following section), implying that at least as far as the euro area Member States are concerned, their banks would become subject to similar, but not exactly the same, data collection and reporting, which would result in a substantial additional administrative burden for banks.

The Commission Staff Working Document of 7 November 2019 presented the outcome of the fitness check following a comprehensive assessment of supervisory reporting obligations in the EU financial services acquis.²⁴ One of the conclusions of this assessment was that data already reported to one authority should, in principle, not have to be reported a second time to the same or to another authority. Avoiding duplication in reporting and expanding the sharing and re-use of data is among the objectives of the Commission's ongoing work to improve supervisory data collection²⁵ as well as the EBA's feasibility study on establishing an integrated reporting system²⁶. Rather than narrowly focussing on the individual

²² The Restructuring and Insolvency Directive imposes data reporting requirements on the Member States. However, as compared to the Commission proposal, these requirements were considerably reduced because the Member States considered that neither did they have the data available, nor could statistical offices produce them. Once these obligations enter into force (2024), however, they could be integrated in the benchmarking exercise, for example as a plausibility check. Similarly for the data reporting pursuant to the Commission proposal for rules on accelerated extrajudicial collateral enforcement, if and when that proposal is adopted by the co-legislators.

²³ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

²⁴ https://ec.europa.eu/info/publications/191107-fitness-check-supervisory-reporting_en

²⁵ https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/supervisory-data-collection_en

²⁶ <https://www.eba.europa.eu/regulation-and-policy/supervisory-reporting/integrated-and-consistent-reporting-system>

sectorial data needs, a solution should be found to reuse, as much as possible, data which banks are already submitting.

4.3. AnaCredit

The idea of reusing data reported elsewhere led to a preliminary analysis of the Analytical Credit Dataset (“AnaCredit”). AnaCredit is a statistical data collection framework established by the ECB for the euro area, based on a ECB Regulation.²⁷ The relevant EU legislation which provides a framework for the ECB’s statistical work is Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the ECB. AnaCredit is described by the ECB as a dataset containing detailed information on individual bank loans in the euro area, harmonised across all reporting Member States. The project was initiated in 2011 and data collection started in 2018 with data referring to end-September 2018.²⁸ It is a reporting system for granular loan-by-loan data designed to serve several key tasks of the European System of Central Banks for a better analysis of credit distribution to the economy, e.g. for monetary policy analysis and operations (risk and collateral management), financial stability, economic research and statistics as well as micro and macro supervisory tasks. It covers loans granted to non-financial corporates and other legal entities.²⁹

AnaCredit provides consecutive monthly snapshots of individual loans. Amongst the attributes to be reported into AnaCredit for each loan, there are several ones which, taken together, allow for a deduction of the efficiency of enforcement systems. AnaCredit makes it possible to follow a loan over time to see how long it takes until recovery: loans reported into AnaCredit can be analysed for the time to recovery, at least broadly based on the commencement of legal proceedings and for when (most of) the value has been recovered from a loan which is subject to legal proceedings. The value recovered could be gauged, with certain limitations, from a comparison between the outstanding amounts at these different points in time in conjunction with the write-off information. This would result in net recovery rates. AnaCredit distinguishes between secured and unsecured loans and certain types of debtors (including the size of the company, and allowing for a specific look at loans to SMEs). Its scope is limited to corporate entities (and other legal entities) as debtors, which would broadly correspond to the scope of the intended benchmarking exercise. Save for derogations, all banks in the euro area contribute loan level data on loans with data from all their branches anywhere in the world in the scope of the collection. However, banks established outside the euro area do not report to AnaCredit, even though non-euro area Member States can apply to become reporting Member States.³⁰

AnaCredit uses sophisticated definitions, which seek to translate banks’ practice into legal terms of how a loan is managed, e.g. for the starting point and end

²⁷ Regulation (EU) 2016/867 of the ECB 18 May 2016 on the collection of granular credit and credit risk data (ECB/2016/13).

²⁸ https://www.ecb.europa.eu/stats/money_credit_banking/anacredit/html/index.en.html .

²⁹ <https://www.ecb.europa.eu/stats/money/aggregates/anacredit/shared/pdf/explanatorynoteanacreditregulation.en.pdf> .

³⁰ Decision (EU) 2019/1348 of the ECB of 18 July 2019 on the procedure for recognising non-euro area Member States as reporting Member States under Regulation (EU) 2016/867 on the collection of granular credit and credit risk data (ECB/2019/20).

point of an enforcement procedure or for what is the actual outcome of value recovery. Given that these definitions have been elaborated with the involvement of the industry over several years, and continue to be scrutinised to optimise data quality, the definitions are well accepted and understood by the banking industry. Given this head-start, it can safely be assumed that for the time being, AnaCredit definitions would render better quality data than any possible new supervisory reporting for which definitions would still have to be elaborated (possibly in secondary legislation or supervisory guidance – well after primary legislation has been agreed by the co-legislators).

In addition to the benefit of relying on AnaCredit definitions, a re-use of AnaCredit data for the purpose of future insolvency benchmarking exercises would carry significant benefits in that it would considerably limit and contain the additional administrative burden on banks (notably on banks in euro area). Banks could rely on well-elaborated definitions and detailed instructions. AnaCredit data were not yet available when the Council tasked the Commission to produce a benchmarking of loan enforcement and insolvency frameworks in 2017. Meanwhile, however, AnaCredit is nearing a stage where data collected over time could allow for a temporal analysis and warrant closer exploration for the benchmarking exercise.

This option is not without shortcomings as well, largely related to the fact that AnaCredit was not conceived to cover specific data needs relating to the assessment of the effectiveness of national loan enforcement and insolvency regimes in the EU. First, AnaCredit only covers monthly data from September 2018 onwards and it will still take a few years before the time series matches the length of typical insolvency proceedings and even more before proceedings of longer duration are fully captured. Second, AnaCredit is still in its early stages, requiring significant efforts for ensuring the minimum data quality standards in general; at the same time, activities aimed at improving data quality of specific information identified as relevant for the benchmarking exercise have not been the priority yet. Third, as mentioned earlier, only euro area Member States are within the scope of AnaCredit. Fourth, information on the outcome of value recovery from non-performing loans and on how the value was recovered is not directly provided for in AnaCredit (but can potentially, at least in part, be deduced from other reported data).

Furthermore, this approach, including its investigation, would require considerable further work, together with the ECB, in order to understand which attributes of the data gathered in AnaCredit could provide useful insights into the time to recovery and recovery rate. For the euro area banks, it will further have to be analysed if, and under what conditions, reliable anonymous results based on detailed and very specific queries could be produced and made available to the EBA so as to make sure that confidential loan-by-loan data is carefully anonymised and aggregated when disclosed for any externally conducted exercise. This way, euro area banks would have to report these data only once. Having said that, obtaining from these banks data which is identified as important for the benchmarking exercise and which is not available in AnaCredit is likely to be still relevant and would need to be assessed. This is even more so for EU banks outside the euro area, for as long as they do not voluntarily report data into AnaCredit, as they would have to be subject to a comprehensive stand-alone data request to ensure the same coverage of banks across all Member States.

5. EVALUATION OF THE OPTIONS

The main considerations when choosing the appropriate path forward are (i) data coverage, (ii) data quality and comparability, (iii) burden on banks and supervisors; and (iv) time to implementation.

An evaluation of the three independent options presented above shows the following advantages and disadvantages:

5.1. Data coverage

Data coverage is the greatest in **supervisory reporting**, because it applies throughout the EU and all banks would be subject to these obligations.

Geographical coverage for **AnaCredit** is limited to the euro area, which means that AnaCredit is not an option to be pursued on its own for an exercise which seeks to understand the efficiency of loan enforcement in all Member States. It would thus not avoid the need of collecting data on a voluntary basis from banks in all non-euro area Member States (unless they choose to voluntarily report to AnaCredit at a later point).

The **EBA data collection** by the EBA can be geographically broad, since directed at banks in all EU Member States. However, as the exercise would be voluntary and would rely on support from National Competent Authorities and banks, response density could vary considerably. For example, in the first *ad hoc* exercise, for ten Member States no bank reported data in the corporate loans category. For those Member States where banks did report data, the sample was not always representative. Still, , as mentioned above, most of the data collection difficulties experienced in the first round of recurrent data collections tend to diminish over time.

5.2. Data quality

Data quality in **supervisory reporting** would likely be the highest or at any rate at par with future data quality in AnaCredit (once all issues are resolved), given the safeguards both in establishing the reporting obligations and the competent authorities' scrutiny of incoming data. New supervisory reporting obligations would – over time – produce complete and high-quality data, given the careful scrutiny applied to supervisory reporting and the vast experience of the EBA in analysing data from all Member States' banks.

Data quality in **AnaCredit** still requires significant efforts for reaching an appropriate level in particular with regard to those attributes which could support assessing the effectiveness of national loan enforcement systems. So far, data quality work largely concentrates on more basic attributes to ensure that loan volumes overall are captured well.

Data quality may be an issue in the **EBA data collection**, which likely largely had to do both with different interpretations of definitions and manual retrieval. The definitions, however, may be improved by using supervisory reporting and AnaCredit definitions as close as possible. Furthermore, as noted earlier, data issues should diminish significantly after the first exercise.

5.3. Burden on banks

New **supervisory reporting** requirements would constitute an additional reporting obligation on banks leading to possibly significant additional reporting costs.

The **EBA data collection** may be burdensome and was at the time of the first *ad hoc* exercise perceived as onerous on those banks which chose to contribute voluntarily. It increases administrative burden for contributing banks and to some extent might be seen as duplicating reporting obligations. However, given built-in flexibility of an *ad hoc* exercise (for example, regarding the choice of its periodicity or requested data points), it may still be considered as less onerous than a rigid regular supervisory reporting requirement.

AnaCredit requires substantial reporting efforts from banks, however, this reporting is already happening and a potential re-use of existing data would be best in terms of the least administrative burdens. Non-reporting banks outside the euro area would however be requested to submit data to ensure the coverage of all Member States. The latter is not possible under the AnaCredit regulation unless a Member State whose currency is not the euro voluntarily decides to become a reporting Member State to AnaCredit by imposing relevant reporting requirements in accordance with their national law. Any new reporting requirement for non-reporting banks will understandably constitute an additional burden for them.

5.4. Time to implementation

A re-run of the **EBA data collection** would be the quickest option. For the first *ad hoc* exercise, it, however, still took around two years (part of which during the Covid-19 crisis, though) from the Commission's Call for Advice to the publication of the report by the EBA.

New **supervisory reporting** requirements would require several years to be drawn up and implemented at the various levels, while the experience with **AnaCredit** points to the need for future continuous adaptations at least in the early years. AnaCredit has several years' head start over any possible new reporting requirements in terms of elaborating data attributes and necessary procedures for quality checks. Furthermore, AnaCredit benefits from continuous improvements based on the experience from ongoing reporting.

The fact that **AnaCredit**, which had barely commenced operations during the first benchmarking exercise, is now up and running makes it an option which cannot be neglected if serious considerations are given to limiting the reporting burden on banks. Its advantages due to its head start over any new supervisory reporting obligation justify the time required for further analysing of how anonymised data (for euro area banks) could meaningfully be utilised for future iterations of the insolvency benchmarking exercise. Still, such analysis may require substantial effort on the AnaCredit side which yet needs to be accommodated. Being still at an early stage, the current focus of the work on AnaCredit is on increasing granular data quality, performance and access within the ESCB and the SSM. Sufficient granular data quality is a necessary precondition for the later development of aggregates covering the respective data dimensions.

5.5. Interim conclusion

New **supervisory reporting** requirements would render high data quality. However, they are not in line with the objectives of ‘zero duplication’ and would take longer to implement than any of the other options. They are therefore not a likely way forward. The important aim of avoiding additional reporting burdens on banks justifies a search for alternatives, even if these alternatives may at present only be possibilities in need of further analysis.

The **EBA data collection**, by contrast, would be quick to implement but would suffer from certain data quality issues, and in practice may have limitations with respect to its geographical coverage for corporate loans and with representativeness which would need to be addressed for potential repetitions.

Finally, while **AnaCredit** quality may reach an appropriate level in the medium term, with its geographical restriction to the euro area it cannot be pursued as a stand-alone option for an exercise for the 27 Member States.

6. CONCLUSION: HYBRID APPROACH

The feasibility assessment above suggests that a hybrid approach to assessing enforcement and insolvency frameworks may be the best way forward. The evaluation of the various options in line with the criteria for a meaningful and manageable recurrent benchmarking shows the supervisory reporting obligations at a clear comparative disadvantage. Both the use of AnaCredit data and repeat data gatherings by the EBA have advantages over new supervisory reporting obligations, but neither ticks all the boxes by itself. Therefore, during the coming months, FISMA services will explore further, together with the ECB and the EBA, how the flexibility and greater geographical coverage of an EBA data collection could be combined with the potential and the data quality advantages of AnaCredit.

The advanced state of the AnaCredit reporting framework, in addition to the fact that euro area banks are already required to report thereto, militate in favour of exploring how this reporting can be re-used for the purposes of the insolvency benchmarking. Under a hybrid approach, the final data aggregation and subsequent data analysis would be conducted by the EBA, building on its vast expertise in the area and using its experience with the *ad hoc* exercise.

Going forward, future work on the recurrent benchmarking will focus on the assessment of the following approaches:

- (i) **To avoid imposing unnecessary costs on banks, the invitation to submit data on the outcomes of loan enforcement and insolvency regimes in EU legislation could rely, as far as possible, upon existing common definitions used in reporting under the EU regulatory, supervisory and statistical reporting framework, in particular on select data attributes elaborated for AnaCredit.** As a result, the data collection should complement the existing collections in an integrative manner without duplicating requirements.
- (ii) Furthermore, for euro area banks, FISMA services and the EBA will continue to explore, together with the ECB, whether the ECB could make available, in

a strictly anonymised and suitably aggregated form, data or, alternatively, results of queries run directly in AnaCredit, to be complemented by voluntary contributions from non-euro area banks; data confidentiality issues will receive particular attention in the further evaluation of this option.

For the latter option, it will still need to be analysed from a legal perspective, under technical and data safety aspects and with a view to further limiting the reporting burden on banks, if and under which conditions data could be shared in accordance with the practice in other supervisory settings. It could be beneficial to aggregate in one step the data from euro area banks, submitted to AnaCredit, and the data contributed from banks outside the euro area specifically for the benchmarking exercise.

Alternatively, it will be further explored whether queries run by the ECB directly in AnaCredit and then anonymized and aggregated in a suitable manner to account for potential confidentiality restrictions, could also extract the necessary information in a manner sufficient to dispense with additional contributions from these banks. In this context, it should be analysed further how comparability between a query run on the AnaCredit database (for euro area banks) and voluntary submissions, based on AnaCredit definitions, could be ensured, based on careful selection of data attributes and a skilfully modified dataset (template) for non-euro area banks.

For either option, the EBA could be tasked by DG FISMA – via Calls for Advice – with analysing the data. The EBA has both the general experience of dealing with bank data and the specific experience gained through the 2019/20 insolvency benchmarking exercise as well as other on-going benchmarking exercises. The next Call for Advice could be timed about three years following the 2019/20 benchmarking exercise.³¹ By that time, there should be more data in AnaCredit, also reflecting longer enforcement procedures, even though they can be traced back at most to the commencement of data reporting into AnaCredit. In the eventuality that the data in AnaCredit does not contain sufficient time series by the time of the next benchmarking exercise, a decision may be taken to rely at that point exclusively on *ad hoc* data collection by the EBA.

While a number of questions would need to still be clarified and analysed in more depth, the potential upside of such a combined or hybrid solution would be considerable and would justify further work.

³¹ Cf. above (p. 6 s.).

Annex A Example of sample representativeness

The following table shows a comparison between the Member States from which banks contributed voluntarily data in the 2019/2020 exercise run by the EBA and AnaCredit contributing Member States.

From all 27 Member States taken together, 160 banks contributed data during the 2019/2020 *ad hoc* exercise (on average, 5.9 banks per Member State). For certain asset classes, the EBA reported a low number of observations, and “the desired sample sizes were not reached for all Member States³²”. AnaCredit, by contrast, gathers monthly data from around 3,000 AnaCredit observed agents (i.e. banks and branches of banks). According to the EBA’s experience with similar exercises, most of the data collection difficulties are likely to diminish significantly after the first round.

MS	EBA 2019/20 <i>ad hoc</i> data gathering			AnaCredit
	No of banks contributing			
	Corporates ³³	SMEs ³⁴	Commercial real estate ³⁵	
AT	3	6	3	Included
BE	-	5	-	Included
BG	3	3	3	
CY	2	3	3	Included
CZ	2	4	4	
DE	-	7	6	Included
DK	3	6	4	
EE	1	1	-	Included
EL	6	9	7	Included
ES	-	3	-	Included
FI	3	6	6	Included
FR	2	3	2	Included
HR	1	2	2	

³² EBA Report, p. 14.3

³³ EBA Report, table 8 and table 10

³⁴ EBA Report, table 7 and table 9.

³⁵ EBA Report, table 12 and table 14.

HU		-	4	3	
IE		-	2	3	Included
IT		11	14	9	Included
LT		-	3	3	Included
LU		-	3	-	Included
LV		-	2	3	Included
MT		-	2	2	Included
NL		2	6	4	Included
PL		4	10	7	
PT		5	6	5	Included
RO		3	4	3	
SE		3	7	-	
SI		-	-	2	Included
SK		2	2	-	Included
EU27		53	104	83	19