

Call for Advice to the EBA for the purposes of a second benchmarking of national loan enforcement frameworks from a bank creditor perspective

Context and Objectives

The European Banking Authority (EBA) provided advice to the Commission on the performance of national loan enforcement frameworks in November 2020. The EBA report established numerical benchmarks for recovery rates, recovery time and judicial costs for different types of credit by collecting and compiling data from a large set of banks across Member States. The advice fed into the Commission's work on non-performing loans¹ and into an impact assessment for the Commission proposal for a draft Directive aiming to harmonise certain elements of (non-bank) corporate insolvency law². The Commission herewith asks the EBA to perform a second benchmarking exercise. The EBA is asked to replicate the work carried-out in the first benchmarking exercise by applying the same methodology, subject to the necessary adaptations and improvements, to more recent data, in order to update the existing benchmarks.

In the CMU 2020 Action Plan, the Commission committed to conduct a feasibility assessment of regular updating the benchmarks for loan enforcement. The Commission finished this feasibility assessment in August 2021, concluding that the potential upside of the continuous periodic updates of corporate insolvency benchmarks would be considerable, without adding undue reporting burden to private economic actors³. Currently there are no available indicators for insolvency benchmarking produced by other institutions. The World Bank discontinued the compilation of its indicators on insolvency in 2020, with the last observations covering 2019. In any event, the indicators compiled by the World Bank suffered from a number of weaknesses, as they were based on surveys of practitioners regarding a hypothetical insolvency case, unlike the EBA's benchmarks that were based on actual economic data from banks' balance sheets and internal reporting. Another set of insolvency indicators compiled by the OECD and EBRD were based on structural features of insolvency systems across countries (furthermore, the EBRD's indicators focused on provisions on restructuring and covered only few EU Member States)⁴. Unlike the EBA's benchmarks, these indicators by the OECD and EBRD however did not contain information about the actual performance of these features in terms of economic variables that matter for creditors and investors.⁵

The EBA's update of the insolvency benchmarks would be important for a number of policy considerations.

¹ COM(2020) 822 final.

² COM(2022) 702 final.

³ 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, https://finance.ec.europa.eu/system/files/2021-08/210802-national-loan-enforcement-feasibility-assessment_en.pdf

⁴ EBRD Insolvency Assessment of Reorganisation Procedures, European Bank for Reconstruction and Development, April 2021, <https://ebrd-restructuring.com/storage/uploads/documents/94228029cc1b26d88b75222c6a9d0df0.pdf>

⁵ Adalet McGowan, M. and D. Andrews (2018), "Design of insolvency regimes across countries", *OECD Economics Department Working Papers*, No. 1504, OECD Publishing, Paris, <https://doi.org/10.1787/d44dc56f-en>. For a comparison of the EBA results with other metrics of insolvency systems, see Impact assessment and Turrini, A. et al. (2023), *Insolvency Frameworks across the EU: Challenges after COVID-1*, ECFIN Discussion Paper, No 182. [Insolvency Frameworks across the EU: Challenges after COVID-19 \(europa.eu\)](https://ecfin.europa.eu/en/insolvency-frameworks-across-the-eu-challenges-after-covid-19)

First, it will be an important supplement to the information on the trend in the amount of NPLs across EU banks and help assess the impact of measures to create more active secondary markets for NPLs in the EU⁶.

Second, updated benchmarks on recovery value, recovery time and judicial costs would be instrumental in establishing a counterfactual for a future assessment of the impact of EU corporate insolvency law, once agreed by the co-legislators. The Commission will have to review the functioning of the Directive following its transposition and implementation by Member States, including on whether the Directive achieves its objectives. One of the objectives of the Directive is to render the EU insolvency proceedings more efficient whereby they would lead to higher and quicker value recovery for creditors. The insolvency benchmarks established by the EBA under this call for advice would represent a point of reference for such an assessment as well as may also inform any subsequent reviews of the Insolvency Directive. The insolvency benchmarks produced under the first exercise by the EBA are likely to be outdated for that purpose (they are pre-COVID and pre-energy crisis).

Finally, updated benchmarks would allow the Commission services to follow up on the recommendation issued by the Eurogroup in an inclusive format in March 2024 to assess the need for additional measures to facilitate further convergence in specific features of insolvency frameworks that could deter cross-border capital markets/investments⁷.

1. General considerations

The Commission services would like to address to the EBA a Call for Advice to invite the EBA to replicate the work carried-out in the first benchmarking exercise by applying the same methodology, subject to the necessary adaptations and improvements, to more recent data, in order to update the existing insolvency benchmarks.

Complementing the data retrieval with statistics available in the central banking system for the euro area Member States is expected to improve the representativeness of the data and to reduce the reporting burden for private economic actors. For that purpose, EBA is requested to collect the necessary data of high quality, granularity and representative of all Member States either directly from banks and from other available data sources, such as the ECB's Anacredit data base, as well as by fostering close cooperation with the National Central Banks of the European System of Central Banks. Any data collection and adjustments to the methodology shall be done given consideration to the fact that such benchmarking exercise should maintain the integrity of the previous data collection and may be repeated in the future, including for the assessment of the effectiveness of the provisions in the Insolvency Directive.

The purpose of the benchmarking is to understand the efficiency of enforcement procedures in terms of recovery rates, time to recovery and judicial costs. Since banks are the most important category of creditors and real-case data are usually available, the analysis of the value-recovery experience of banks would be the most meaningful benchmark obtainable. The data gathered from banks could also inform about how a wider range of creditors fare in dealing with distressed companies across Member States.

⁶ C(2022) 7277 final.

⁷ <https://www.consilium.europa.eu/en/press/press-releases/2024/03/11/statement-of-the-eurogroup-in-inclusive-format-on-the-future-of-capital-markets-union/>.

While Article 26 of the Restructuring and Insolvency Directive 2019/1023 requests Member States to collect data on the number and length of restructuring and insolvency procedures, the reporting standards are still not agreed and the draft rules foresee a transition period so that first data deliveries cannot be expected before 2025. While the Restructuring and Insolvency Directive also envisages the reporting of recovery rates and judicial costs, the reporting of these elements is voluntary and most Member States informed the Commission that they are not in the position to report them. The use of alternative data from banks under this insolvency benchmarking exercise is therefore justified and proportional to the objectives pursued.

The data compilation done by the EBA in 2019/20 revealed the difficulty to obtain data across some types of loans that would be sufficiently representative for all Member States. For the purpose of this insolvency benchmarking exercise, the EBA is requested to focus exclusively on non-financial companies (NFCs).

2. Specific considerations

2.1 Scope of the requested work

The EBA is requested to provide country-by-country estimates for the variables (as set out below), differentiated by type of loan and, if possible, by type of enforcement, based on loan-by-loan data covering banks' non-performing loans (NPLs) under formal enforcement.

The objective is to quantify recovery outcomes in each Member State, in order to enable the Commission to monitor how legislative changes stemming from EU legislation (and, where applicable, national reforms) impact on recovery outcomes and prepare any possible future reforms in this area.

The EBA is requested to provide benchmarks for the following variables:

- 1) recovery rate;
- 2) time to recovery; and
- 3) judicial costs.

The variables should be quantified separately for individual and collective enforcement mechanisms, and separately for secured and unsecured loans.

2.2 Data collection

The EBA is requested to collect all data and information that it deems necessary to respond to the Call for Advice. The EBA is invited to make use, to the extent possible, of data from the existing data sources but also to collect data in a targeted manner from banks to fill gaps for a sufficiently representative sample, covering all Member States. The EBA is specifically invited to make use of the ECB's AnaCredit database. Euro area banks are required to report to AnaCredit, which would reduce the overall reporting burden on banks. The use of Anacredit data should also allow the EBA to overcome some methodological challenges it experienced in the first exercise.

2.2.1 Types of loans

The data collection should cover a subset of non-financial companies (NFCs):

- o Commercial Real Estate loans to large and medium-sized companies;
- o Commercial Real Estate loans to micro and small enterprises;
- o Secured loans to large and medium-sized companies;

- o Unsecured loans to large and medium-sized companies;
- o Secured loans to micro and small enterprises;
- o Unsecured loans to micro and small enterprises

The EBA is expected to report on the number of observations per asset class and per type of loan used for the calculation of benchmarks. Where, despite the best efforts by the EBA to that effect, the representativeness of data underpinning benchmarks cannot be ensured, the EBA is requested to clearly state so.

For the avoidance of doubt and in consistency with the first benchmarking exercise, financial institutions as debtors, specialised loans, and leasing should be excluded from the exercise, since different mechanisms and specific regimes apply.

For secured loans, all types of collateral would have to be considered. This means that both property collateral and non-property collateral should be considered.

2.2.2 Types of enforcement mechanisms

The data gathered should give insights as regards formal (largely in-court) enforcement procedures, both by creditors individually and in the context of a collective proceeding in insolvency. To the extent possible, a breakdown of results by type of enforcement procedure by individual or collective enforcement, or whether linked to restructuring or bankruptcy procedures, should be ensured. The EBA is requested to clearly specify cases where such a break-down would not be possible and explain why.

Informal procedures leading to a renegotiation of debt through agreements between the creditor and the debtor, however, should be excluded since they do not contribute to the picture of how well the judicial regime works where creditors need to resort to it, in order to recover value. Similarly, preventive restructuring should be excluded from the benchmarking also where it involves the courts, since preventive restructuring implies a certain amount of cooperation between the creditors and the debtor and the benchmarking serves to analyse the creditors' chances at recovery in situations where the chance for agreement are limited.

2.2.3 Time to recovery (length of the enforcement procedures)

The benchmark on the time to recovery should inform about the effectiveness of the enforcement procedures across Member States. The benchmark should estimate the average time in months from the initiation of judicial proceedings to either the ultimate (or the latest available) recovery or to the end of the legal proceedings.

If possible, the EBA is invited to compute a benchmark of the average time from date of default of a corporate to the initiation of judicial proceedings (in months).

2.2.4 Recovery rate (collections from the enforcement procedures and their costs)

The EBA is requested to compute a benchmark of gross recovery rates (in % of the outstanding notional amount). The EBA is also invited to compute a net recovery rate (in % of the outstanding notional amount), that is the recovery rate after the deduction of costs associated with recovery, as well as the resulting costs of recovery (in % of the outstanding notional amount).

2.2.5 Banks and loans sampling

The information should be collected from a representative sample of institutions, covering all EU Member States. This sampling should consider a trade-off between the reporting burden for banks and the representativeness and, consequently, the usability of benchmarks. To the highest extent possible, the data should be sourced from the ECB's AnaCredit database.

The EBA is invited to consider a suitable sample of banks by Member State that hold sufficient historical data on loan enforcement, while ensuring their anonymity. To the extent possible, the sample of banks needs to ensure representativeness in each Member State for important aspects, such as the size of a bank, loan types and types of enforcement proceedings (as described above). The sample should, to the extent possible, be consistent with the previous exercise, allowing for the computation of comparable benchmarks.

Plausibility checks with supervisory reports FINREP/COREP data and with Supervisory Benchmarking data (e.g. Recovery Rates per bank at sub-portfolios level) should be considered.

3. Final considerations

With a view to a better comparison of the benchmarks obtained in this exercise to those obtained in the first benchmarking exercise or any future iterations thereof, the EBA is invited to identify and to the extent possible also to analyse the impact of factors exogenous to the recovery process. Whereas the Covid-19 crisis led to debt moratoria that reduced the number of bankruptcy cases, the energy price shock and ensuring economic adjustment led to a rising number of insolvency cases. Both factors are likely to have an impact on the duration of recovery proceedings and therewith on recovery values. The assessment and comparison of the benchmarks to the previous exercise requires some caution (the main expected differences could be highlighted and explained) due to the switch in data source regarding some parts of the information for some EU Members.

The report produced by the EBA may not prejudice the Commission's future work in the area of corporate non-bank insolvency, where in accordance with the established practice, the Commission services will continue to consult, where appropriate, Member States, independent experts and other stakeholders.

The EBA is invited to deliver its final report on insolvency benchmarking, documenting the methodology used, data limitations, results and their interpretation to the Commission services by 31 October 2025. By July 2025, EBA is invited to present to the Commission services a preliminary analysis of the data gathered, any identified data limitations and suggestions on how to address them, as well as descriptions of any adjustments to the methodology compared to the first benchmarking exercise, if any.