

features put forward for harmonisation. It should also clarify the internal market aspects of 'second chance.'

(3) Stakeholder views should feature throughout the assessment of the various policy options. Clearly present differences in views across the stakeholder groups.

(4) Clarify the overall impacts of the package, notably with regard to fundamental rights and social aspects. Identify potential downside risks, such as moral hazard and limited capacity of the courts to implement new provisions.

The lead DG shall ensure that the report is revised accordingly and resubmitted to the Board, which will issue a new opinion on the revised draft.

(C) Main recommendations for improvements

(1) Policy context. The policy context should better justify the need to act now. Member States have had relatively little time to implement the 2014 Recommendation. What is the evidence that suitable implementation will not take place over time without further EU action?

(2) Internal market/cross-border aspects. The report should provide more detail on the cross-border dimensions of restructuring cases. Notably, it should justify the internal market aspects of the various provisions of the initiative. For instance, it should explain why the proposal covers all potential cases (including purely domestic) rather than only those with a direct debtor/creditor cross-border dimension. The report should also explain how harmonizing specific features would achieve stated objectives. What will be the gains from harmonizing early restructuring, stay, debtors' business continuation, safeguarding of minority interests, possibility of new financing, costs and length of restructuring procedures and discharge? In line with the proportionality principle, the report needs better address the issue raised by stakeholders on 'principle' versus 'detailed' regulation. Clarify what the proposed approach implies for Member States and their degree of flexibility in implementation.

Explain the internal market dimension of the second chance provision.

The 'discharge for consumers' option is presented as a recommendation to Member States - how would this be more effective than the 2014 recommendation in that respect?

(3) Stakeholder views and assessment of options. Stakeholder views should feature more prominently throughout the report. This would strengthen the evidence base and enhance policymaker assessment of options. When doing so, it is important to present differences across stakeholder (sub-) groups.

The report should justify the inclusion of a soft law instrument in the preferred option against the background of the stated ineffectiveness of the 2014 Recommendation.

(4) Overall impacts of the package. The report should strengthen the section on the impacts of the different sub-option beyond the currently descriptive presentation. It should discuss risks involved in the implementation of the proposal. The package of preferred options represents an add-on to national insolvency proceedings. It entails elements that will have to work in close sync with existing national systems. Given this dependence and the diversity of legal systems across the union, harmonization would seem to entail risks as well as benefits. The report ignores administrative costs such as the provisions of the preferred option requiring specialised judges.

The report should also consider risks related to moral hazard problems occurring in the restructuring process. It needs to explain better how this relates to the problem of non-performing loans, and it should estimate the extent to which the proposal will have an

impact on these. Given that restructuring may involve situations with lay-offs, outsourcing, etc., the impact assessment also needs to cover social impacts of the preferred options better. It should spelling out any links to the social dialogue and workers' rights (including on information and consultation). The link with – and impact on - fundamental rights should also be clarified.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated into the final version of the impact assessment report.

(D) Procedure and presentation

The report should clarify concepts and definitions of 'discharge' and 'recovery rates.' The mandatory annex (2) on stakeholder identification should be added.

The executive summary should be revised to take account of the views of the Board.

(E) RSB scrutiny process

Reference number	2016/JUST/016
External expertise used	No
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