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Subject:	Proposal for a Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU - Partial general approach

Delegations will find in the Annex a consolidated revised text of the Articles of Title III (Discharge of debts and disqualifications), Title IV (Measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt) and Title V (Monitoring of procedures concerning restructuring, insolvency and discharge of debt) and related definitions of the above proposal, as well as a number of key recitals, proposed by the Presidency as a compromise with a view to the adoption of a partial general approach by the Council (Justice and Home Affairs) at its meeting on 4 and 5 June 2018.

Changes compared to the text of the Commission proposal are marked in **bold** or by **(…)** for deleted text. For Titles, changes are marked in **bold underlined.**

ANNEX

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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 2012/30/EU
(Directive on restructuring, insolvency and discharge of debt)

TITLE I

General Provisions

Article 2

Definitions

1. For the purposes of this Directive, the following definitions (…) apply:

(13) '(…) entrepreneur' means a natural person exercising a trade, business, craft or profession[1] (…)**;**

(14) 'full discharge of debt' means **cancellation of the possibility to enforce against the entrepreneur the dischargeable debts or the** cancellation of **the** outstanding **dischargeable debts as such, as part of** a procedure **which could include** a realisation of assets (…) or a repayment (…) plan[2] **or both**;

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[1] The accompanying recital to this Article will read along the following lines:
'Entrepreneurs who are natural persons exercising a trade, business, craft or independent, self-employed profession may run the risk of becoming insolvent. *The different second chance possibilities in the Member States may incentivise* ***insolvent or*** *over-indebted entrepreneurs to relocate to Member States in order to benefit from shorter discharge periods or more attractive conditions for discharge, leading to additional legal uncertainty and costs for the creditors when recovering their claims. Furthermore, the effects of* ***insolvency****, in particular the social stigma, legal consequences such as disqualifying entrepreneurs from taking up and pursuing entrepreneurial activity and the on-going inability to pay off debts constitute important disincentives for entrepreneurs seeking to set up a business or have a second chance, even if evidence shows that entrepreneurs who have gone* ***insolvent*** *have more chance to be successful the second time. Steps should therefore be taken to reduce the negative effects of over-indebtedness* ***or insolvency*** *on entrepreneurs, in particular by allowing for a full discharge of debt after a certain period of time and by limiting the length of disqualification orders issued in connection with the debtor's over-indebtedness* ***or insolvency****.* ***The concept of insolvency should be defined by national law and it may take the form of over-indebtedness. The concept of entrepreneur in the sense of this Directive shall not affect the position of managers or directors of a company, which should be treated according to national law.****'*

[2] A new Recital will read along the following lines:
A repayment plan might take the form of a periodic transfer to creditors of a percentage of the disposable income according to national law and may also include other conditions and legal obligations as provided for under national law. There should not be a requirement for a repayment plan to be supported by the majority of the creditors.'

TITLE III

(…) Discharge of debt and disqualifications

Article 19

Access to discharge

1. Member States shall ensure that **insolvent** entrepreneurs **have access[3] to at least one procedure that can lead to a full discharge** of debt in accordance with this Directive.

   Member States may require that the trade, business, craft or profession to which the debts are related has ceased.[4]

2. Member States in which a full discharge of debt is conditional on a partial repayment of debt by the entrepreneur shall ensure that the related repayment obligation is based on the individual situation of the entrepreneur[5] and**, in particular,** is (…) proportionate to **the entrepreneur's seizable or** disposable income **and assets during** the discharge period **and takes into consideration the equitable interest of creditors.**

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3 The recitals will clarify that it is left to national law how the access to discharge operates, including the possibility to introduce a requirement to request the discharge.

4 The recitals will clarify that Member States may provide that entrepreneurs are not prevented from starting a new activity in the same or different field during the implementation of the repayment plan.

5 The recitals will clarify that Member States may provide for the possibility to adjust the repayment obligation when there is a significant change in the financial situation of the debtor, either an improvement or a deterioration.

Article 20

Discharge period

1. **Member States shall ensure that** the period (…) after which **insolvent** entrepreneurs **are able to** be fully discharged **of** debt **is** no longer than three years starting **at the latest** from **the date of either**:

(a) in the case of a procedure which includes a repayment plan, the decision by a judicial or administrative authority to confirm the plan or the start[6] of the implementation of the **(…)** plan (…)[7]; **or**

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6 The recitals will give examples of what is meant by 'the start of the implementation of the repayment plan', which could be, for example, the first instalment under the repayment plan.

7 A new recital will read along the following lines:
'A discharge of debt should be available in procedures which include a repayment plan, a realisation of assets or a combination of these. In implementing these provisions, Member States can choose freely among these alternatives and, if more than one procedure leading to discharge are available under national law, Member States should ensure that at least one such procedure offers insolvent entrepreneurs the possibility of a full discharge of debt within a period no longer than three years. In the case of procedures which combine a realisation of assets and a repayment plan, the discharge period should run at the latest from the moment the repayment plan is confirmed by a court or starts being implemented, but it could also start at an earlier point, such as when a decision is taken to open the procedure.'

(b) **in the case of any other procedure, the decision by** the judicial or administrative authority (…) to open (…) the procedure[8]**, or the moment of the establishment of the insolvency estate.**[9]

2. Member States shall ensure that (…) **insolvent** entrepreneurs **who have complied with their obligations, where such obligations exist under national law, shall be** discharged of their debt **on expiry of the discharge period** without the need to **apply** to a judicial or administrative authority **to open a procedure additional**[10] **to those referred to in paragraph 1**.

Without prejudice to the first subparagraph, Member States may maintain or introduce provisions allowing the judicial or administrative authority to verify, ex officio or upon request of a person having a legitimate interest, whether the entrepreneurs have fulfilled the obligations for obtaining a discharge of debt.[11]

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8 A recital should clarify that for the purpose of calculating the discharge period under this Directive, Member States may provide that the concept of 'opening of procedure' does not include preliminary measures, such as preservation measures or the appointment of a preliminary insolvency practitioner, unless such measures allow for the realisation of assets, including the disposal and the distribution of assets to creditors.

9 A new Recital will read along the following lines:
'In procedures which do not include a repayment plan, the discharge period should start at the latest from the decision by a judicial or administrative authority to open the pocedure, or the moment of the establishment of the insolvency estate. The establishment of the insolvency estate should not necessarily entail a formal decision or confirmation by a judicial or administrative authority, where such decision is not already required under national law, and may consist in the submission of the inventory of assets and liabilities.'

10 A new recital will read along the following lines:
Where the procedural track leading to the discharge entails the realisation of the entrepreneur's assets, Member States shall not be precluded from providing that the request for discharge is treated separately from the realisation of assets, provided that such request constitutes an integral part of the procedural track leading to the discharge under this Directive.

11 The recitals will clarify that this provision does not touch upon the burden of proof, which means that a debtor may be required by law to prove compliance with his obligations.

2a. **Member States may provide that the full discharge of debt shall not impair the continuation of an insolvency procedure entailing the realisation and distribution of the entrepreneur's assets that formed part of the insolvency estate as at the time referred to in the first subparagraph of paragraph 2.**

Article 21

Disqualification period

1. Member States shall ensure that, where an **insolvent** entrepreneur obtains a discharge of debt in accordance with this Directive, any disqualifications[12] from taking up or pursuing a trade, business, craft or profession **on the sole ground that** the entrepreneur **is insolvent,** shall cease to have effect**,** at the latest**,** at the end of the discharge period**.** (…)

1a. **Member States shall ensure that, on expiry of the discharge period, disqualifications referred to in paragraph 1 of this Article cease to have effect without the need to apply to a judicial or administrative authority to open a procedure additional to those referred to in Article 20(1).**

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12 The recitals will clarify that if an entrepreneur's permit to carry on a certain business has been denied or revoked as the result of a disqualification, this Directive does not prevent Member States from requiring a new application for obtaining such a permit/license after the disqualification to exercise such craft/business/trade/profession has expired.

Article 22

Derogations[13]

1. By way of derogation from Articles 19 **to** 21, Member States may maintain or introduce provisions **denying,** restricting **or revoking** access to discharge **of debt** or **providing for** longer periods for obtaining a full discharge **of debt** or longer disqualification periods in certain well-defined circumstances and where such **derogations** are **duly** justified (…), **such as**[14]:

   (a) **where** the **insolvent** entrepreneur acted **towards the creditors or other stakeholders** dishonestly or in bad faith **according to national law** when becoming indebted, **during the insolvency procedure** or during the **payment** of the debt;

   (b) **where** the **insolvent** entrepreneur does not adhere to a repayment plan or to any other legal obligation aimed at safeguarding the interests of creditors, **including an obligation to maximize returns to creditors;**

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13 The accompanying Recital to this Article will read along the following lines:
*'A full discharge **of debt** or the end of disqualification**s** after a (…) period **no longer than three years is** not appropriate in all circumstance**s, and derogations from this rule which are duly justified by reasons laid down in national legislations may be put in place.** For instance, **such derogations may be put in place** in cases where the debtor is dishonest or has acted in bad faith **or where he has not complied with certain legal obligations, including obligations to maximise returns to creditors which may take the form of a general obligation to generate income or assets. A specific derogation may be put in place where it is necessary to guarantee the balance between the rights of the debtor and the rights of one or more creditors, such as where the creditor is a natural person who needs more protection than the debtor. After the granting of the discharge, Member States should be able to provide for the possibility under national law to revoke the benefits of a full discharge where, for example, the financial situation of the debtor improves significantly due to unexpected circumstances, such as winning a lottery, or coming in the possession of an inheritance or a donation. Where there is a duly justified reason as laid down in national law, it may be appropriate to limit the possibility of discharge for certain categories of debt. Secured debts may be excluded from the possibility of discharge only up to the value of the collateral as determined by national law, while the rest of the debt should be treated as unsecured debt.'*

14 The recitals will clarify that Article 22(1) & (3) are non-exhaustive.

(ba) where the insolvent entrepreneur fails to comply with information or cooperation obligations under national law;

(c) in **the** case of abusive **applications** for a discharge;

(d) in **the** case of **a new application** for a discharge (…) within a certain period (…) **after the insolvent entrepreneur has been granted a full discharge of debt or has been denied a full discharge of debt due to a serious violation of information or cooperation obligations**;

(da) where the cost of the procedure leading to the discharge of debt is not covered;[15] **or**

(db) where a derogation is necessary to guarantee the balance between the rights of the debtor and the rights of one or more creditors.

2. **By way of derogation from Article 20,** Member States may provide for longer discharge periods in cases where**:**

(a) protective measures are approved or ordered by a judicial or administrative authority in order to safeguard the main residence of **the insolvent** entrepreneur and, **where applicable,** of **their** family, **or the essential assets for the continuation of the entrepreneur's trade, business, craft or profession; or**

(b) the main residence of the insolvent entrepreneur is not realised.

3. Member States may exclude specific categories of debt, such as**:**

(a) secured debts;

(b) debts arising out of **or in connection with** criminal penalties;

(c) debts arising out of tortious liability;

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15 The recitals will clarify that the cost of the procedure leading to the discharge of debt includes fees of judicial and administrative authorities and insolvency practitioners.

(d) debts regarding maintenance obligations arising from a family relationship, parentage, marriage or affinity;

(e) debts incurred after the application for or opening of the procedure leading to a discharge of debt; and

(f) debts arising out of the obligation to pay the cost of the procedure leading to a discharge of debt,

from discharge **of debt,** or **restrict access to discharge of debt or** lay down a longer discharge period where such exclusions**, restrictions** or longer periods are **duly** justified (…)**.**

4. By way of derogation from Article 21, Member States may provide for longer or indefinite disqualification periods where the **insolvent** entrepreneur is a member of a profession to which specific ethical rules **or specific rules on reputation or expertise** apply or **a profession dealing with the management of the property of others, or where an insolvent entrepreneur intends to gain access to such a profession[16].**

4a. This Directive is without prejudice to national rules regarding disqualifications ordered by a judicial or administrative authority other than those referred to in Article 21.

16 The recitals will clarify that, where a Member State authority adopts a decision concerning a specifically supervised activity, it may also take into account, even when the disqualification period under Article 21 has expired, that the insolvent entrepreneur has obtained a discharge of debt, in accordance with this Directive.

Article 23

*Consolidation of **procedures** regarding (…) **the** debts **of entrepreneurs***

1. Member States shall ensure that, where **insolvent entrepreneurs have** (…) debts incurred in the course of **their** trade, business, craft or profession as well as (…) debts incurred outside those activities, all **dischargeable** debts are treated in a single procedure for the purposes of obtaining a **full** discharge **of debt**.[17]

2. **By way of derogation** from paragraph **1, Member States may provide** that (…) debts **incurred by insolvent entrepreneurs in the course of their trade, business, craft or profession and debts incurred outside those activities** are to be treated in separate procedures, provided that these procedures can be coordinated for the purposes of obtaining a **full** discharge **of debt** in accordance with this Directive.[18]

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17 The recitals will clarify that this provision is without prejudice to the possibility for Member States which allow entrepreneurs to continue their business on their own account during an insolvency proceeding to provide that such entrepreneurs can be made subject to a new insolvency proceeding, where such continued business becomes insolvent.

18 The recitals will clarify by way of an example where such coordination between the different procedures would be needed, for example where an asset is used in the course of the professional activity as well as outside that activity.

TITLE IV

Measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt

Article 24

Judicial and administrative authorities[19]

Without prejudice to judicial independence and to any differences in the organisation of the judiciary across the Union, Member States shall ensure that:

[19] The accompanying recital to this Article will read along the following lines:
'It is necessary to maintain and enhance the transparency and predictability of the procedures in delivering outcomes that are favourable for the preservation of businesses and for giving entrepreneurs a second chance or that permit the efficient liquidation of non-viable enterprises. It is also necessary to reduce the excessive length of insolvency procedures in many Member States, which results in legal uncertainty for creditors and investors and low recovery rates. Finally, given the enhanced cooperation mechanisms between courts and practitioners in cross-border cases set up by Regulation (EU) 2015/848, the professionalism of all actors involved needs to be brought to comparable high levels across the Union. To achieve these objectives, Member States should ensure that members of the judicial and administrative bodies are ***suitably*** *trained and have* ***the necessary expertise for their responsibilities****.* ***Suitable training and expertise may be acquired also during the exercise of the profession of member of a judicial or administrative authority or, prior to appointment to such a profession, during the exercise of another relevant profession.*** *Such (…)* ***training and expertise*** *should allow* ***taking*** *decisions with potentially significant economic and social impacts* ***in an efficient manner*** *and* ***need*** *not mean that members of the judiciary have to deal exclusively with restructuring, insolvency and second chance matters. For example, the creation of specialised courts or chambers,* ***or the appointment of specialised judges*** *in accordance with national law governing the organisation of the judicial system,* ***as well as concentrating jurisdiction in a limited number of judicial or administrative authorities*** *could be efficient ways of achieving the* ***above-mentioned objectives.***'

(a) the members of the **judicial** and administrative authorities dealing with **procedures concerning** restructuring, insolvency and **discharge of debt** receive **suitable** (…) training (…) **and have the necessary expertise for** their responsibilities; **and**

(b) (…) **procedures concerning restructuring, insolvency and discharge of debt** are dealt with in an efficient manner[20] (…)**.**

[20] The word 'expeditiously' was deleted because it was considered that 'in an efficient manner' already includes the notion of 'expeditiously'. The recitals will provide a clarification in this regard. They will however also clarify that Member States are not obliged to introduce provisions according to which judicial and administrative authorities would have to prioritise these types of procedures over other procedures.

Article 25

(…)

Article 26

(…) Practitioners in ***procedures concerning*** *restructuring, insolvency and* ***discharge of debt***[21]

Member States shall ensure that:

[21] The accompanying recital to this Article will read along the following lines:
'Member States should also ensure that practitioners in the field of restructuring, insolvency and ***discharge of debt*** *which are appointed by judicial or administrative authorities are* ***suitably*** *trained and supervised in the carrying out of their tasks, that they are appointed in a transparent manner with due regard to the need to ensure efficient procedures and that they perform their tasks with integrity.* ***This includes cases where practitioners are chosen by the debtor, by creditors or by a committee of creditors from a list or a pool which is pre-approved by a judicial or administrative authority. In choosing the practitioner, the debtor, the creditors or the committee or creditors could be granted a margin of appreciation as to the practitioner's expertise and experience in general and the demands of the particular case, and debtors who are natural persons could be exempted from such a duty altogether. In cases with cross-border elements, the appointment should take into account, among others, the practitioners' ability to comply with the obligations under the Insolvency Regulation (recast) (EU 2015/848) to communicate and cooperate with foreign insolvency practitioners and judicial and administrative authorities as well as their human and administrative resources to deal with potentially high volume cases. (…)***
Practitioners should be subject to *oversight and regulatory mechanisms* ***which should include effective measures for the accountability of practitioners*** *who have failed in their duties****, such as for example a reduction in the practitioner's fee, the exclusion from the list or pool of practitioners who can be appointed in insolvency cases, as well as, where appropriate, disciplinary, administrative or criminal sanctions. Such oversight and regulatory mechanisms should be without prejudice to provisions under national law on civil liability for damages for breach of contractual and non-contactual obligations.*** *Such standards may be attained without the need in principle to create new professions or qualifications* ***in national law. These provisions may, under national law, extend to other practitioners.****'*

(a) **practitioners appointed by a judicial or administrative authority in procedures concerning restructuring, insolvency and discharge of debt ('practitioners')[22] receive suitable (…) training[23] and have the necessary expertise for their responsibilities;**

(b) (…) **the conditions for eligibility, as well as** the process for the appointment, removal and resignation of practitioners**,** (…) **are** clear, **transparent** and fair (…);

(c) (…) in **appointing** a practitioner (…) for a particular case**, including cases with cross-border elements,** due consideration is given to the practitioner's experience and expertise, **taking into account the specific features of the case** (…);[24] **and**

(d) **in order to avoid any conflict of interest**, debtors and creditors[25] **have the possibility to either object to** the selection **or appointment or request the replacement** of the practitioner.

2. (…)

3. (…)

4. (…)

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22 The recitals will clarify that the notion of practitioners in the field of restructuring, insolvency and discharge of debt includes insolvency practitioners as defined by Regulation 848/2015.

23 The recitals will clarify that suitable training and expertise for practitioners may also be acquired during the exercise of the profession. They will also clarify that Member States are not obliged to provide the necessary training themselves, but that this can also be done by e.g. professional associations or other bodies.

24 The recitals will clarify that this obligation does not preclude the selection of a practitioner by any other selection method, such as random selection by software, provided that the person/mechanism selecting the practitioner in a particular case gives due consideration to the practitioner's experience and expertise.

25 The recitals will clarify that Member States are free to decide on the means for objecting to the selection of the practitioner or requesting his or her replacement, for example requiring that creditors object through a creditors' committee.

Article 27[26]

Supervision and remuneration of practitioners (…)

1. Member States shall put in place appropriate oversight and regulatory **mechanisms** to ensure that the work of practitioners (…) is **effectively** supervised, **with a view to ensuring that their services are provided in an effective and competent way, and, in relation to the parties involved, are provided impartially and independently**. **Those mechanisms** shall also include (…) effective **measures for the accountability of** practitioners who have failed in their duties.

1a. Member States may encourage the development of, and adherence to codes of conduct by practitioners.

2. Member States shall ensure that the **remuneration of** practitioners (…) **is** governed by rules which **are consistent with the objective of an** (…) efficient resolution of procedures. **(…)**

Member States shall ensure that appropriate procedures (…) are **in place to resolve** any disputes over remuneration **and that those disputes are resolved in an efficient** manner[27].

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26 The recital accompanying this Article has been included in Recital 40 (See FN 21).

27 The recitals will clarify that Member States are not obliged to introduce provisions according to which judicial and administrative authorities would have to prioritise the resolution of these disputes over other procedures.

Article 28[28]

Use of electronic means of communication[29]

1. Member States shall ensure that**, in procedures concerning restructuring, insolvency and discharge of debt, the parties to the procedure, the practitioner or the judicial or administrative authority are able to perform** electronically, including in cross-border situations**, at least the following actions**:

   (a) filing of claims;

   (b) **submitting** restructuring or repayment plans **(…)**;

   (c) **notifying** creditors[30];

   (d) (…);

   (e) lodging of **contestations and** appeals.

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[28] An implementation period of 5 years will be foreseen for this Article with the exception of point (e) where the implementation period will be 7 years.

[29] The accompanying recital to this Article will read along the following lines:
*'To further reduce the length of procedures, **to facilitate** a better participation of creditors **in procedures concerning** restructuring, insolvency and discharge **of debt** and to ensure similar conditions for creditors irrespective of where they are located in the Union, **Member States should put in place provisions enabling debtors, creditors, practitioners and judicial and administrative authorities to use distance means of electronic communication.** Therefore, it should be possible that procedural steps such as the filing of claims by creditors, the notification **of creditors** or **the** lodging **of contestations and** appeals take place electronically. **Parties should not be obliged to use such electronic means if these are not mandatory under national law, without prejudice to the possibility for the Member States to establish a mandatory system of electronic filing and service of documents in procedures concerning restructuring, insolvency and discharge of debt. Member States may choose the actual means of electronic communications which could be, for example, a purpose-built system for the electronic transmission of such documents or the use of e-mail, without precluding the possibility for Member States to put in place features to ensure the security of electronic transmissions, such as electronic signature.** The cross-border recognition of such communications should comply with Regulation (EU) No 910/2014 of the European Parliament and of the Council.'*

[30] The recitals will clarify that Member States may provide that notifications to a creditor may be performed electronically only if the creditor concerned has previously consented to electronic communication.

TITLE V

Monitoring of procedures concerning restructuring, insolvency and discharge of debt

Article 29

Data collection[31]

1. (…) Member States shall collect and aggregate, **on an annual basis,** at **national** level**,** data on **procedures concerning restructuring, insolvency and discharge of debt, broken down by each type of procedure, at least on the following elements**:

[31] The accompanying recital to this Article will read along the following lines:
*'It is important to gather reliable **and comparable** data on the performance of restructuring, insolvency and discharge procedures in order to monitor the implementation and application of this Directive. Therefore Member States should collect and aggregate data that is sufficiently granular to enable an accurate assessment of how the Directive works in practice **and should communicate that data to the Commission. The communication form for the transmission of such data to the Commission which will be established by the Commission assited by a Committee within the meaning of Regulation (EU) No 182/2011 should provide a shortlist of main outcomes of procedures which are common to all Member States. For example, in the case of a restructuring procedure, main outcomes could be: procedures where a plan was confirmed by a court, plans which were not confirmed by a court, restructuring procedures which were converted to liquidation procedures or closed because of the opening of liquidation procedures before a plan was confirmed by a court. The form should also provide a list of options which could be taken into account by the Member States when determining the size of the debtor, by reference to one or more of the elements of the definition of micro, small, medium and large enterprises common to the laws of all Member States. One of these options should in any case be to determine the size of debtors by the number of employees only. The form developed with the assistance of the Committee should also define the elements of average cost and average recovery rates for which Member States may collect data voluntarily.***

(a) the number of procedures which were **applied for or opened, where such opening is provided for under national law, are** pending **or were closed (…);**

(b) the **average** length of **procedures** from **the submission of the application, or from the opening thereof, where such opening is provided for under national law,** to **closing;**

(c) the **number** of **procedures other than those mentioned in point (ca)**[32]**, broken down by** (…) **types** of outcome**;**

(ca) the number of applications for restructuring procedures which were declared inadmissable, were rejected or were withdrawn before being opened[33]**;**

(d) (…)

(e) (…)

(f) (…)

(g) (…)

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32 The recitals will clarify that the purpose of this wording is to permit the Member States to leave aside procedures which end before any relevant measures are taken.

33 The recitals will clarify that Member States may indicate one common number for point (ca) altogether and do not have to separate the three elements in it.

1a. **Member States shall collect and aggregate, on an annual basis, at national level, data on** the number of debtors **which were** subject to **restructuring** procedures **or insolvency procedures and which,** within **the** three years **prior to the submission of the application or the opening** of such procedures**, where such opening is provided for under national law, had a restructuring plan confirmed under a previous restructuring procedure implementing Title II.**

1b. **Member States may collect and aggregate, on an annual basis, at national level, data on the average cost of each type of procedure as well as on the average recovery rates for secured and unsecured creditors, and where applicable other types of creditors, separately.**

2. Member States shall break down the **data** referred to in **points (a) to (c) of** paragraph 1 **and, where applicable and available, the data referred to in paragraph 1b** by:

(a) the size of the debtors **which are not natural persons** (…);

(b) whether debtors **subject to procedures concerning restructuring or insolvency** are natural or legal persons; **and**

(c) (…) whether the procedures **leading to a discharge of debt** concern only entrepreneurs or all natural persons.

2a. **Member States may collect and aggregate the data referred to in paragraphs 1, 1a, 1b and 2 through a sample technique which ensures that the samples are representative in terms of sample size and diversity.**[34]

34 The recitals will provide further guidance on elements which could be taken into account when Member States make use of a sample technique.

3. Member States shall **collect and** aggregate **the** data referred to in paragraphs 1, **1a**, 2 **and, where applicable, paragraph 1b** for full calendar years ending on 31 December of each year, starting with (…) the first full calendar year following [*the date of (…) the application of implementing* ***acts referred to in paragraph 4***]. **Those data** shall be communicated to the Commission**,** on the basis of a standard data communication form**,** annually, by 31 **December** of the calendar year following the year for which data **are** collected.

4. The Commission shall establish the communication form[35] referred to in paragraph 3 **of this Article** by way of implementing acts. Those implementing acts shall be adopted in accordance with the **examination** procedure referred to in Article 30(2).

Article 30

Committee ***procedure***

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article **5** of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

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35 The recitals will clarify that the communication form as referred to in Article 29(4) will foresee a possibility for Member States to provide additional information if they have such information available, for example on the total amount of assets and liabilities.