



Council of the  
European Union

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#### NOTE

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From:	The German delegation
To:	Delegations
No. prev. doc.:	12536/18
No. Cion doc.:	14875/16
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 - Statement of the 4th of October by the DE Delegation to be added to the minutes of Council

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Germany approves the general approach of the Directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU (COM(2016) 723) in the version of the compromise text of 1 October 2018 (Doc. No. 12536/18).

However – with reference to its earlier protocol declaration at the JHA Council Meeting of 4/5 June 2018 – Germany reiterates its view that within the context of the banking union, the proposal does not make a significant contribution to the measures necessary for the sustainable reduction and future avoidance of non-performing loans. Farther-reaching elements would be required here, such as ensuring that secured creditors have effective access to the value of the collateral security in liquidation procedures.

Furthermore, in Title II (Preventive Restructuring Frameworks), the Directive grants a large number of national voting rights, thereby leaving Member States room for implementations which do not provide adequate safeguards against abuse and against economically inefficient restructuring attempts. This can lead to the delaying of necessary insolvency procedures which in turn can lead to lower rates of return.

In addition, the collection of data on recovery rates envisaged in Article 29 (1b) of Title V (Monitoring) should be obligatory for all Member States in order to allow a comparison of the efficiency of insolvency procedures within the context of the banking union.

As a result, the proposed Directive does not offer the required minimum level of creditor protection and does not therefore represent an important step towards fulfilling the “*Action plan to tackle non-performing loans in Europe*” of 11 July 2017.

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