

Council of the European Union Approves Its Position on NPL Directive

The proposed directive aims to prevent the excessive build-up of NPLs on European banks' balance sheets.

Background

The Council of the European Union (the Council) recently approved its position¹ on the proposal for a directive of the European Parliament and of the Council on credit servicers, credit purchasers, and the recovery of collateral (the Proposed Directive), which is focused on managing the volume of non-performing loans (NPLs). The European Commission initially adopted the Proposed Directive on 14 March 2018 as part of a comprehensive package of measures to target the high stock of NPLs that remain on the balance sheets of European credit institutions.

The Council approved its position on the Proposed Directive on 26 March 2019. Negotiations with the European Parliament can now commence as soon as the European Parliament has also agreed on its stance on the Proposed Directive.

Purpose and scope

The Proposed Directive aims to strengthen the Banking Union by reducing the current stocks of NPLs and preventing any excessive build-up of NPLs in the future. In particular, the Proposed Directive focuses on helping to ensure competition in the banking sector, preserve financial stability, and encourage lending by credit institutions. For these purposes, the Proposed Directive introduces several measures addressed to:

- Simplify and harmonise the authorisation and supervision requirements for credit servicers
- Foster the development of secondary markets for NPLs in the European Union by removing impediments to the transfer of NPLs by credit institutions to non-credit institutions, while at the same time safeguarding consumers' rights

Notwithstanding the above, the Council did not reach an agreement on the section of the Proposed Directive relating to the measures to facilitate the recovery of collateral from borrowers in default, through an out-of-court harmonised "accelerated extrajudicial collateral enforcement" (AECE) procedure. Therefore, the relevant provisions have not been included in the Council's position and will require further discussions in the coming weeks.

Main measures

The Proposed Directive introduces several key measures that will impact credit servicers, credit institutions and credit purchasers, including the following.

Authorisation and supervision of credit servicers

The Proposed Directive introduces a measure targeting the barriers that credit servicers currently face derived from divergent national legislation in the absence of a common regulatory and supervisory regime.

Credit servicing by entities other than credit institutions is currently an unregulated business in most European Union Member States. Upon approval and implementation of the Proposed Directive, credit servicing will become a regulated and harmonised activity in the European Union, as credit servicers will be required to obtain an authorisation in the European Union Member State where they are domiciled in order to carry out their business. Once authorised to operate in a European Union Member State, credit servicers will be able to passport themselves to other Member States for the provision of cross-border services.

Credit servicers will be under the supervision of the competent servicing regulatory authority of their home Member State. The competent servicing regulatory authority will have all supervisory, investigatory, and sanctioning powers to exercise its functions and duties. A specific framework will be implemented for cooperation between home and host competent authorities to ensure an effective and efficient supervision of cross-border credit servicers.

Information to credit purchasers

The Proposed Directive introduces certain measures to ensure that all the necessary information with regards to the creditor's rights under a NPL portfolio and its collateral (if applicable) is provided to prospective purchasers in a standardised format for the assessment of a target NPL portfolio.

Notably, the Proposed Directive gives the European Banking Authority (EBA) a mandate to develop draft technical standards specifying the formats that credit institutions will use to provide credit purchasers with detailed information on their credit exposures for the purposes of screening, due diligence, and valuation of the NPL portfolio. The implementation of these templates aims to reduce information asymmetries between sellers and potential purchasers, contributing to the development of European Union secondary market for NPLs.

The EBA shall approve these technical standards within 12 months from the entry into force of the Proposed Directive and the European Commission shall then adopt them.

Reporting requirements for credit institutions and credit purchasers

The Proposed Directive establishes a number of reporting requirements for credit institutions (banks) and credit purchasers (NPL investors). In particular, the following reporting requirements are introduced for NPL portfolio transfers:

- Credit institutions that transfer NPLs will, on a quarterly basis, have to notify the relevant servicing supervisory authority of the relevant credit purchaser's identity and certain aggregated features of the transferred NPLs (e.g. outstanding balance of the portfolio, number and size of the NPLs, and whether the portfolio includes credit rights *vis-à-vis* consumers).

- Similarly, credit purchasers that in turn transfer NPLs on a secondary basis will, on a quarterly basis, also be required to notify the relevant servicing regulatory authority of the relevant credit purchaser's identity and the abovementioned features of the transferred NPLs.

Credit purchasers will also have to inform the competent supervisory authorities of their home Member State when they engage or replace a credit institution or credit servicer to service their NPLs.

Purchase of NPLs with consumers

Credit purchasers of credit rights *vis-à-vis* consumers will be required to appoint a credit institution or a credit servicer to service such credit rights. The Proposed Directive also provides that Member States may extend this requirement to other credit rights with non-consumers.

Next steps

Having adopted its position, the Council will enter discussions with the European Parliament on the text of the Proposed Directive, with the aim of finalising the approval process before the European Parliament elections on 26 May 2019. However, this will depend on whether the European Parliament has any objections or amendments to the draft of the Proposed Directive at first reading, in which case the approval of the Proposed Directive may be delayed for several months.

Upon approval and entry into force of the Proposed Directive, Member States will have 24 months to transpose it by adopting relevant national implementing provisions. However, most market players are likely to adapt their practices and standards to align with the new measures being introduced.

If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

[Rafael Molina](#)

rafael.molina@lw.com

+34.91.791.5075

Madrid

[Luis Manuel Lozano](#)

luis.lozano@lw.com

+34.91.791.5058

Madrid

[Fernando Ferreiro](#)

fernando.ferreiro@lw.com

+34.91.791.5117

Madrid

You Might Also Be Interested In

[Spanish Lease Act Amendments: What Landlords Need to Know](#)

[The Continued Growth of European Covenant Lite](#)

[Spain's Stamp Duty Saga Settles With New Reform](#)

[Spanish Data Protection and Digital Rights Law Secures Employees' Right to Privacy](#)

Client Alert is published by Latham & Watkins as a news reporting service to clients and other friends. The information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the lawyer with whom you normally consult. The invitation to contact is not a solicitation for legal work under the laws of any jurisdiction in which Latham lawyers are not authorized to practice. A complete list of Latham's *Client Alerts* can be found at www.lw.com. If you wish to update your contact details or customize the information you receive from Latham & Watkins, visit <https://www.sites.lwcommunicate.com/5/178/forms-english/subscribe.asp> to subscribe to the firm's global client mailings program.

Endnotes

¹ Available at <https://data.consilium.europa.eu/doc/document/ST-7344-2019-ADD-1/en/pdf>.