

OPINION OF THE EUROPEAN CENTRAL BANK**of 20 November 2018****on a proposal for a directive on credit servicers, credit purchasers and the recovery of collateral****(CON/2018/54)**

(2018/C 444/06)

Introduction and legal basis

On 14 March 2018, the European Commission adopted a proposal for a directive of the European Parliament and of the Council on credit servicers, credit purchasers and the recovery of collateral (hereinafter the 'proposed directive')⁽¹⁾. The European Central Bank (ECB) considers that the proposed directive falls within its scope of competence, and it has decided to exercise its right, as provided for in the second sentence of Article 127(4) and in Article 282(5) of the Treaty on the Functioning of the European Union (hereinafter the 'Treaty'), to submit its opinion.

The ECB's competence to deliver an opinion is based on Article 25 of the Statute of the European System of Central Banks and of the European Central Bank, pursuant to which the ECB may offer advice to the Council and the Commission on the scope and implementation of Union legislation relating to the stability of the financial system and the tasks conferred upon the ECB pursuant to Article 127(6) of the Treaty concerning policies relating to the prudential supervision of credit institutions. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. General observations

- 1.1. The ECB has been a strong proponent of the development of secondary markets for bank assets, particularly non-performing loans (NPLs), as reflected in the Council of the European Union's action plan to tackle NPLs in Europe⁽²⁾. In the context of the large stocks of NPLs that remain on the balance sheet of some European credit institutions, and as part of a comprehensive solution to NPL resolution⁽³⁾, the development of secondary markets may contribute to reducing NPLs. Looking ahead, well-functioning secondary markets may also prevent stocks of NPLs from building up in the future⁽⁴⁾.
- 1.2. Moreover, a well-functioning secondary market may have a positive effect on financial stability to the extent that it could facilitate the transfer of the risks of NPLs off credit institutions' balance sheets. The presence of significant volumes of NPLs on credit institutions' balance sheets reduces their ability to fulfil their function as providers of credit to the real economy and hampers the operational flexibility and overall profitability that are essential to a well-functioning banking sector. It is essential that the legal framework applicable to secondary markets enables the efficient transfer of NPLs off the balance sheet of credit institutions⁽⁵⁾.

2. Specific observations**2.1. Reporting requirements**

The proposed directive establishes a number of reporting requirements for credit servicers, credit purchasers and credit institutions. For example, a credit purchaser or, where applicable, its representative, is required to communicate to the competent authorities of the Member State where the credit purchaser or, where applicable, its representative is domiciled or established its intention to directly enforce a credit agreement⁽⁶⁾. Further, a credit purchaser or, where applicable, its representative, that transfers a credit agreement to another credit purchaser is required to inform the competent authorities of the transfer, the identity and address of the new credit purchaser and, where applicable, its representative⁽⁷⁾. The Union legislators should carefully consider whether these reporting requirements will impede the efficient functioning of the secondary market for NPLs, since a significant reporting burden could deter new entrants to the market or result in duplication of data for competent authorities.

⁽¹⁾ COM(2018) 135 final.

⁽²⁾ See the Council's press release of 11 July 2017 on the 'Council conclusions on Action plan to tackle non-performing loans in Europe', available on the Council's website at: <http://www.consilium.europa.eu>

⁽³⁾ See, for example, Section B of the ECB's Financial Stability Review of November 2016, available on the ECB's website at: <https://www.ecb.europa.eu>

⁽⁴⁾ See paragraph 2.2.1 of Opinion CON/2018/31. All ECB opinions are published on the ECB's website.

⁽⁵⁾ See paragraph 2.2.2 of Opinion CON/2018/31.

⁽⁶⁾ See Article 18(1) of the proposed directive.

⁽⁷⁾ See Article 19(1) of the proposed directive.

2.2. *Technical standards for NPL data*

The proposed directive gives the European Banking Authority (EBA) a mandate to develop draft implementing technical standards that specify the formats to be used by creditors that are credit institutions for the provision of detailed information on their credit exposures in the banking book to credit purchasers for the screening, financial due diligence and the valuation of the credit agreement ⁽¹⁾.

In this respect, the ECB notes that Regulation (EU) 2016/867 ⁽²⁾ provides for a new dataset, with detailed information on individual bank loans in the euro area. This dataset aims to provide granular data with a high level of detail for all euro area Member States, which are fully comparable because they are based on harmonised concepts and definitions. In the light of these new regulatory developments, it is important that any data templates developed by the EBA should take into account the collection of granular credit and credit risk data or any other relevant initiatives to ensure that there is no duplication of efforts and to minimise reporting requirements for credit institutions.

2.3. *Data collection by competent authorities in the context of an accelerated extrajudicial collateral enforcement mechanism*

The proposed directive requires competent authorities that supervise credit institutions to collect, on an annual basis, information from creditors on the number of secured credit agreements which are enforced through the accelerated extrajudicial collateral enforcement mechanism and the timeframes for such enforcement, including: (a) the number of proceedings initiated, pending and realised, including in respect of movable and immovable assets; (b) the length of the proceedings from notification to settlement, arranged by means of realisation (public sale, private sale, or appropriation); (c) the average costs of each proceeding in EUR; and (d) the settlement rates. Member States would be required to aggregate this data, compile statistics from that aggregate data and communicate these statistics to the Commission ⁽³⁾. In the case of the ECB being the competent authority to supervise credit institutions, the legal basis for the ECB's prudential supervisory tasks is laid down in Article 127(6) of the Treaty, pursuant to which the Council may confer specific tasks upon the ECB concerning policies relating to the prudential supervision of credit institutions. As the collection of this information relates to the efficacy of the accelerated extrajudicial collateral enforcement mechanism rather than the prudential supervision of credit institutions, the Union legislators would need to clarify that the task to collect such information should not be conferred on the ECB.

Where the ECB recommends that the proposed directive is amended, specific drafting proposals are set out in a separate technical working document accompanied by an explanatory text to this effect. The technical working document is available in English on the ECB's website.

Done at Frankfurt am Main, 20 November 2018.

The President of the ECB

Mario DRAGHI

⁽¹⁾ See Article 14(1) of the proposed directive.

⁽²⁾ Regulation (EU) 2016/867 of the European Central Bank of 18 May 2016 on the collection of granular credit and credit risk data (ECB/2016/13) (OJ L 144, 1.6.2016, p. 44).

⁽³⁾ See Article 33 of the proposed directive.

Technical working document
produced in connection with ECB Opinion CON/2018/54¹
Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB ²
Amendment 1 Recital 32	
<p>‘(32) As part of the Council's Action Plan, credit institutions' data infrastructure would be strengthened by having uniform and standardised data for non-performing credit agreements. The European Banking Authority has developed data templates that provide information about credit exposures in the banking book and allow potential buyers to evaluate the value of the credit agreements and carry out their due diligence. Applying such templates to credit agreements would reduce information asymmetries between potential buyers and sellers of credit agreements and, thus, contribute to the development of a functioning secondary market in the Union. The EBA should therefore develop the data templates into implementing technical standards and credit institutions should use those standards in order to facilitate the valuation of credit agreements for sale.’</p>	<p>‘(32) As part of the Council's Action Plan, credit institutions' data infrastructure would be strengthened by having uniform and standardised data for non-performing credit agreements. The European Banking Authority has developed data templates that provide information about credit exposures in the banking book and allow potential buyers to evaluate the value of the credit agreements and carry out their due diligence. Applying such templates to credit agreements would reduce information asymmetries between potential buyers and sellers of credit agreements and, thus, contribute to the development of a functioning secondary market in the Union. The EBA should therefore develop the data templates into implementing technical standards and credit institutions should use those standards in order to facilitate the valuation of credit agreements for sale. Data templates developed by the EBA should take into account the collection of granular credit and credit risk data or any other relevant initiatives in order to minimise reporting requirements for credit institutions.’</p>

¹ This technical working document is produced in English only and communicated to the consulting Union institution(s) after adoption of the opinion. It is also published in the Legal framework section of the ECB's website alongside the opinion itself.

² Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

Text proposed by the Commission	Amendments proposed by the ECB ²
<p style="text-align: center;"><u>Explanation</u></p> <p><i>In order to minimise reporting requirements for credit institutions, data templates developed by the EBA and adopted in the form of implementing technical standards should take into account the collection of granular credit and credit risk data or any other relevant initiatives. See paragraph 2.2 of the ECB Opinion.</i></p>	
<p style="text-align: center;">Amendment 2</p> <p style="text-align: center;">Recital 51</p>	
<p>‘(51) Given the limited availability of data on the number of extrajudicial procedures used by credit institutions to recover value from collateral in case of borrower's default, national competent authorities which supervise credit institutions should be required to collect information on the number of secured credit agreements which are enforced through AECE and the timeframes for such enforcement. In order to gain a better understanding of the effectiveness of the exercise of AECE within the Union, Member States should provide annual statistical data on these matters to the Commission starting from one year after the date of application of this Directive.’</p>	<p>‘(51) Given the limited availability of data on the number of extrajudicial procedures used by credit institutions to recover value from collateral in case of borrower's default, national competent authorities which supervise credit institutions should be required to collect information on the number of secured credit agreements which are enforced through AECE and the timeframes for such enforcement. As the collection of this information relates to the efficacy of the accelerated extrajudicial collateral enforcement mechanism, rather than the prudential supervision of credit institutions, the ECB, in its capacity as a competent authority responsible for the prudential supervision of credit institutions, should not be required to collect this information. In order to gain a better understanding of the effectiveness of the exercise of AECE within the Union, Member States should provide annual statistical data on these matters to the Commission starting from one year after the date of application of this Directive.’</p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>The collection of information on the number of secured credit agreements which are enforced through the accelerated extrajudicial collateral enforcement mechanism and the timeframes for such enforcement relates to the efficacy of the mechanism, rather than the prudential supervision of credit institutions. Accordingly, this task should not be conferred on the ECB. See paragraph 2.3 of the ECB Opinion.</i></p>	

Text proposed by the Commission	Amendments proposed by the ECB ²
<p>Amendment 3</p> <p>Article 33</p>	
<p>'1. Member States and, in the case of credit institutions competent authorities which supervise credit institutions, shall, on an annual basis, collect information from creditors on the number of secured credit agreements which are enforced through this accelerated extrajudicial collateral enforcement and the timeframes for such enforcement.</p> <p>2. Member States and, in the case of credit institutions, competent authorities which supervise credit institutions, shall, on an annual basis, collect the following information from creditors:</p> <p>(a) the number of proceedings pursuant to the national provisions transposing this Directive initiated, pending and realised, including: (i) the number of proceedings in respect of movable assets, (ii) the number of proceedings in respect of immovable assets.</p> <p>(b) the length of the proceedings from notification to settlement, arranged by means of realisation (public sale, private sale, or appropriation);</p> <p>(c) the average costs of each proceedings, in EUR;</p> <p>(d) the settlement rates.'</p>	<p>'1. Member States and, in the case of credit institutions competent authorities which supervise credit institutions, with the exception of the ECB, shall, on an annual basis, collect information from creditors on the number of secured credit agreements which are enforced through this accelerated extrajudicial collateral enforcement and the timeframes for such enforcement.</p> <p>2. Member States and, in the case of credit institutions, competent authorities which supervise credit institutions, with the exception of the ECB, shall, on an annual basis, collect the following information from creditors:</p> <p>(a) the number of proceedings pursuant to the national provisions transposing this Directive initiated, pending and realised, including: (i) the number of proceedings in respect of movable assets, (ii) the number of proceedings in respect of immovable assets.</p> <p>(b) the length of the proceedings from notification to settlement, arranged by means of realisation (public sale, private sale, or appropriation);</p> <p>(c) the average costs of each proceedings, in EUR;</p> <p>(d) the settlement rates.'</p>
<p><u>Explanation</u></p> <p><i>The collection of information on the number of secured credit agreements which are enforced through the accelerated extrajudicial collateral enforcement mechanism, and the timeframes for such enforcement, relate to the efficacy of the mechanism, rather than the prudential supervision of credit institutions. Accordingly, this task should not be conferred on the ECB. See paragraph 2.3 of the ECB Opinion.</i></p>	