Credit servicers and credit purchasers (Non-performing loans Directive)

2018/0063A(COD) - 14/03/2018 - Legislative proposal

PURPOSE: to strengthen the ability of credit institutions to cope with loans that have become non-performing or are at risk of becoming non-performing by establishing a Union-wide framework for servicers of credit agreements issued by credit institutions.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure on an equal footing with the Council.

BACKGROUND: **non-performing loans (NPLs) are one of the main risks** that still threaten the European banking system. Non-performing loans are loans where the borrower is unable to make the scheduled payments to cover interest or capital reimbursements.

The establishment of a comprehensive strategy to address the problem of non-performing loans (NPLs) is a priority for the Union.

The Commission proposed, in its communication of October 2017, to make **NPL reduction** measures an essential part of the process of completing Banking Union.

While the primary responsibility for tackling high levels of NPLs remains with banks and Member States, there is also a clear EU dimension to reduce current stocks of NPLs, as well as **preventing any excessive build-up of NPLs** in the future given the interconnectedness of the EU's banking system and in particular that of the euro area.

This initiative follows the communication on the mid-term review of the action plan on building a capital markets union, which stressed that capital markets can also help European banks to overcome the challenges of NPLs. In order to help banks better manage the PNP, the Commission proposal aims to:

- **strengthen protection of secured creditors** by giving them access to more efficient methods of recovering the amounts owed on secured loans they have granted to companies through an out-of-court procedure;
- **remove undue impediments to credit servicing by third parties and to the transfer of credits** in order to further develop secondary markets for NPLs.

IMPACT ASSESSMENT: a first impact assessment investigated the situation of credit purchasers and credit servicers. The preferred option to facilitate and harmonise market entry is the use of **common binding standards** allowing cross-border activity by means of a passport.

The second impact assessment dealt with the accelerated extrajudicial collateral enforcement.

The preferred option consists of establishing **a minimum harmonisation of an extrajudicial collateral enforcement procedure** across the EU so that banks in all Member States have at their disposal an efficient procedure for extrajudicial collateral enforcement.

CONTENT : the proposal for a directive aims at avoiding a new excessive accumulation of NPLs on banks' balance sheets by acting on two levels:

1) **A distinct common accelerated extrajudicial collateral enforcement procedure for secured loans:** the proposal provides banks and other entities approved for the granting of secured loans with more efficient methods of recovering, out of court, amounts owing on secured loans they have granted to businesses. This extrajudicial procedure would be applicable with the prior agreement of the lender and the borrower in the loan agreement. It would be limited to **loans to businesses** and would not apply to loans to consumers. It is designed so as to not affect preventive restructuring or insolvency proceedings and not to change the hierarchy of creditors in insolvency.

2) **Encourage the development of secondary markets for NPLs**: the current diverse legislative framework for NPLs in the Member States has hindered the emergence of an effective secondary market for NPLs. The proposal creates a **common set of rules** to ensure the proper conduct of the various actors and their appropriate oversight across the Union, while allowing greater competition among servicers in harmonising the market access across Member States.

The proposal provides that **purchasers of bank loans** are required to notify authorities when acquiring a loan. Third-country purchasers of consumer loans are required to use authorised EU credit servicers. Legal safeguards and transparency rules ensure **consumer protection** so that the transfer of a loan does not affect the rights and interest of the borrower.

In order to prevent the risk of underfunding of future NPLs, the Commission is also presenting a separate proposal amending the Capital Requirements Regulation (CRR) as regards the deductions to be made for insufficient provisioning of non-performing exposures.