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EBF comments on the EC consultation on the development of secondary markets for NPLs and protection of secured creditors

SECTION I: SECONDARY MARKET FOR LOANS

TRANSFER OF LOANS

1. Would you consider the current size, liquidity and structure of secondary markets for NPL in the EU an obstacle to the management and resolution of NPLs in the EU? If yes, would you consider such obstacle to be significant?

   An increase of the current size of secondary markets for NPLs, as well as an improvement in its liquidity should be positive for the NPL secondary market and for the reduction of the NPL stocks. However, significant portfolio sales of NPLs have been completed during the last 2-3 years, especially in certain jurisdictions. For this reason we consider that while improvements could be made, there are no significant obstacles in the secondary market that cannot be overcome to sell NPL portfolios.

   Moreover, in our view in answering this question the regional and jurisdictional approach should be considered as the level of NPLs and the relevant legal framework varies significantly from country to country. Hence, secondary market for NPLs has a different development requirement from jurisdiction to jurisdiction depending on local legislation and other factors. Thus size, liquidity and structure thereof at EU level may have a limited impact at regional / country level.

   Thus, analysis of size, liquidity and structure of the secondary market at country / regional level needs to be performed.

2. What are the key considerations for banks in deciding whether loan sales should be a significant part of their strategy to manage its NPLs?
   In answering please specify:

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- bank internal factors (i.e. any factors inside the bank including the type and characteristics of the NPL portfolio, management capacity etc.)
- external factors (i.e. any factors outside of the bank that are important considerations in this context.

Bank internal factors considered when including the NPL sales in the resolution strategies include *inter alia*:

  - expected price vs. provision coverage level (more exactly if the sale is cash-positive or cash negative for the seller);
  - in-house management capacity;
  - recovery rates (historical vs. sale);
  - NPL ratio and pressure thereof on the bank balance-sheet;
  - reputational and commercial impact of selling the customer relationship to a third party given the investment that may have already been put into that relationship;
  - portfolio size – is the portfolio large enough to justify the cost of sale.

External factors considered include *inter alia*:

  - availability of relevant information;
  - provision of sufficient time for due diligence;
  - buyer universe (existence of investors, number thereof);
  - funding capacity of potential investors;
  - servicing capacity existing in the market;
  - regulatory & legislative constraints (primarily the ones limiting in any manner the transfer of receivables);
  - reputational and customer relations risks.

Loan sales are only one potential strategy, which banks have, to manage their NPLs. It is not the first strategy that banks will turn to in addressing NPLs as the majority of NPLs recoveries are made through ordinary management of customers, restructuring, etc. NPLs sales do represent an opportunity for an acceleration of NPL reduction but they also pose significant challenges to banks:

- it cannot apply to every customer (a portfolio sale can end the relationship with the customer and the bank may not want to end its relationship with all NPL customers, particularly those who have been working with the bank to overcome their financial distress and have the potential to have a better [and performing] relationship in the future);
- it forces the bank to recognize impacts in P&L at the moment of the sale.

Furthermore, loan sales is the accelerator that can allow entities to achieve the desired speed of divestments that cannot be achieved through regular operations.

3. What would be the best way(s) of attracting a wider investor base to secondary loan markets, especially for non-performing loans?

The most important way is to enhance creditors' recovery tools, reducing the complexity, time and cost of recovery procedures. Giving investors an efficient and stable recovery framework reduces uncertainty and, consequently, the risk premium incorporated in the price. Prices and depth of secondary markets for NPLs could be significantly higher if these kinds of measures are introduced.

In particular, in some cases costs such as taxes and notary and registry fees should be reduced. Recovery tools should include both judicial and extrajudicial

procedures. Furthermore, the tax system of some countries should be amended in order to avoid elevated tax charges in the event of a transfer of loans.

Reduction of the information asymmetries between buyers and sellers is another important requirement. The reduction of these asymmetries would reduce the bid and ask spread and increase the number of transactions in the secondary market. Therefore, it would be very desirable to develop a common standard on data capture to facilitate NPL movement (for example like those introduced by the ECB Guidelines on NPLs).

Moreover, development of the servicing capacity in the relevant market is another important element in attracting investors. However, it is important that any servicing agent taking on the responsibility of customer engagement operates to the same standards that were applicable to the selling bank given the potential for reputational and regulatory impacts.

4. In order to widen the investor base, please specify:
   - which incentive(s) should be given?
   - whether certain obstacles to widening the investor base should be removed?

No particular incentives should be given; rather, current obstacles consisting of barriers to entry applied to servicing entities or investors (e.g., capital requirements), legal & regulatory limitations to transfer of loans or clarification and predictability of tax treatment (e.g., certain populist legislative initiatives seeking to increase either corporate income tax or limit the recovery rate at servicer / investor level) should be either lifted, reduced or otherwise closed.

Measures to reduce lengthy judicial procedures are also important to incentivise investors.

5. What are the specific advantages to the development of secondary markets when the acquiring investor is a bank, an investment fund or another type of entity? In particular, would you see specific advantages for
   - helping banks overcome legacy assets;
   - creating investment opportunities for specialised investors?

The most important advantage is to support banks in cleaning up their balance-sheet and freeing up capacity for lending. This is supported primarily by the funding capacity of such type of buyers (primarily banks / investment funds) which enable lager volumes being traded with less time to close, thus speeding up the whole process.

Larger volumes imply need for dedicated servicing capacity (creating thus the premises for market development) and trigger a swifter return of the assets in the market (faster asset sales at lower prices than average which creates room for additional money being invested into other type of investments).

6. What are the main concerns linked to each of these investor types?

A concern with certain types of specialised investment funds is that they will normally not have the same ability (including further financing ability) as a bank NPL seller to support different types of workout strategies, including by further financing. This may adversely affect debtors. It might also be that, once they

purchase a portfolio, they will apply aggressive / unethical recovery strategies, posing a reputational risk for the selling banks.

Growth of the secondary market and improving liquidity should be sustainable. This requires the right balance being struck between various interests at stake, including those NPLs debtors who are owed a duty of care. Especially, as NPLs portfolio transactions can be publicly criticized if the debtors' interests are not seen to be taken into account. This could in turn adversely affect NPL market participants and the development of a sustainable NPL market.

7. What are potential benefits and risks from a public policy point of view when considering the appropriate legal framework for secondary markets for loans, and especially NPLs?
   Please rank the following dimensions (in order of importance):
   - debtor protection,
   - privacy,
   - data secrecy,
   - promoting increased market size and depth and equal treatment of investors

   Benefits:
      - promoting increased market size and depth and equal treatment of investors;
      - support banks in solving legacy assets;
      - swifter return of the assets (owed by distressed / bankrupt debtors) into the economy;
      - Homogenizing tax systems.

   Risks:
      - debtor protection;
      - data protection & privacy
      - reputational and regulatory risk.

   The above risks are present primarily in case of consumers and small businesses and less visible in case of larger corporate debtors.

   Measures should aim at improving economic benefit for all involved stakeholders by resolving NPLs and not only at focusing on transfer of NPLs out of banks (aiming only at reducing NPLs in banks' balance sheets leads to transfer of value from banks to 3rd parties with no visible gain to other stakeholders and the economy as a whole).

8. How can one best strike the balance between such dimensions?

   Emergence of NPLs within banks, and the secondary market of NPLs, put the banks and investors in NPLs into an "ecosystem" type of approach.

   Throughout the EU, there are consumer protection authorities and data protection authorities that cover or should cover matters related to data & consumer protection irrespective of the "owner" of a consumer loan.

   Thus the risks identified above (see question 7) may be further mitigated by actions such as:
      a. recommending the set-up of professional association/s;

b. recommendation to develop "best practices" in the industry followed by efficient "complaint" mechanisms available to debtors (other mechanisms than the ones provided by courts which should be last resort, for example mediation) and consequence management tools applicable to investors / servicers once such practices are breached.

Such tools would, where market growth is needed, be best used in case of consumers. In other jurisdictions, the state of the NPL market is sufficient and these tools do not appear necessary and resources may be better allocated to other policy matters (see also our answer to question 9 below).

9. Do differences in these benefits and risks across Member States justify national differences in the framework for secondary markets for loans? If yes, in which way?

The differences in the framework for secondary markets for NPLs across the EU Member States are justified to a certain extent by the differences in the risks and benefits, as well as the different legal framework in the EU Member States. The maturity of a particular market is probably also a driver for existing differences.

An example may be in the one related to the maturity of the market; e.g., more mature markets have probably already created certain tools for regulating the industry (at various levels) while others are less regulated.

Another example may be related to the size and depth of the secondary market of NPLs. In more mature markets, the buyer universe of NPLs is more developed (both investors and servicers are properly represented in the market) while in others, such a type of market is still developing.

10. Would you consider current rules applicable in Member States pertaining to secondary markets for NPL in the EU a significant obstacle to the further development of these markets?

A best practices exercise across all European countries in order to identify success factors would be relevant to identify legislation gaps and barriers with the purpose of developing those markets.

11. What is the most suitable manner to protect a debtor in the case of transfer of a loan and/or collateral by the creditor to a third party?

The transfer of a loan and/or collateral to a third party should be neutral to the debtor, in what concerns his legal obligations and the duty of care, if applicable. Aggressive or unethical recovery procedures by a third party should be strictly forbidden.

12. What are the (potential) advantages from specialisation across jurisdictions or asset classes?

Specialisation across jurisdictions may be less of an advantage in creating or developing investment opportunities; it may in fact create limitations to business models which may impact the overall value chain within secondary market of NPLs.

Specialisation across asset classes is desirable, though, as it may bring more value to investors by:

a. building predictable business models,
b. increased value extraction out of each asset class etc.

In addition, specialisation probably makes a difference on the servicing i.e. could potentially lead to economies of scale and lower servicing costs/better quality of service.

13. Are you aware of obstacles to operating in secondary markets across national jurisdictions? Would you consider these obstacles to be significant, and/or influence your geographical scope of business operations?

    Please refer to Annex 1 of the EBF's response for an overview of national barriers.

14. Do you consider that an EU regulatory framework (Directive or Regulation) regulating certain aspects of the transfer of loans would be useful? What are in your view the key elements that should be addressed in such a framework?

    We are not certain that measures at the EU level (Directive or Regulation) are the most efficient tools to help reduce the significant levels of NPLs some banks in several member states have on their balance sheet. The implementation of reforms needed to promote the development of secondary markets should aim at the level of the Member States. However, the EU could play an important role in the process of identification of significant obstacles and in ensuring that those EU Member States, which do not have a workable framework for the development of the secondary market for NPLs, implement necessary reforms, if that is considered needed due to the high level of NPLs in those Member States.

    Supportive economic, legal and political frameworks from countries with mature secondary markets can be used as a model for less developed markets. As during the sales process of NPL portfolios, many national laws need to be considered, we believe that a solution at a national level might be more targeted and hence more efficient than a solution at European level.

15. Please provide any other comments that you find useful in relation to this section.

    NPLs sales tend to have positive but also several negative impacts on banks. A negative effect that arises on banks that use the advanced internal ratings-based method (A-IRB) comes from the higher Loss Given Default (LGD) induced by the NPLs quick sale or from banks' mergers and acquisitions, especially when a stable and sound bank buy a troubled bank with a troubled portfolio and is therefore forced to sell portfolios of NPLs quickly. There is a specific EBF proposal for the amendment to Art. 181 CRR on PD/LGD that tries to fix this issue and we encourage the Commission and co-legislators to implement it.

    Moreover, in any secondary market transaction it is important to ensure the "effective transfer of risks". Otherwise, the upcoming IFRS 9 accounting regulation could impose additional loan loss provisioning related to the expected losses of the transferred exposure.

    Detailed and transparent information about the assets to be sold is needed. Using a standard set of data tapes on the assets could be useful, for example, those introduced by the ECB Guidelines on NPLs.

THIRD PARTY SERVICERS

16. What are the advantages of having access to third-party loan servicers in terms of secondary loan market efficiency?
    In particular, do you see specific advantages for
    - helping banks overcome legacy assets;
    - creating investment opportunities for specialised investors?

    Third party specialized servicers are key to foster the NPL market dynamics helping investors to price and operate portfolios.

    They provide specific, local and independent know-how to potential investors that would not consider committing money to a specific market if having to go alone.

    They are able to provide the infrastructure and staff needed to operate a portfolio that an investment fund cannot do on their own, typically allowed to deploy capital but not to have employees or local presence.

    For banks, third party servicers are very useful to manage legacy assets efficiently without incurring fixed costs.

17. Are there any obstacles for banks and non-bank investors to have access to third-party loan servicers?
    If yes, please specify the nature of these obstacles, i.e.
    - regulatory,
    - legal, or
    - other

    Please refer to Annex 1 of the EBF's response for an overview of national barriers.

18. What are the advantages and risks of outsourcing specific activities to third-party loan servicers compared to internal workout of loans? Please be concrete as to the activities that have been outsourced and why this has proved to be beneficial or not.

    The main advantages may relate to i) improvement of recovery curves through champion/challenge strategies comparing internal and external results for comparable portfolios, ii) reduction of collection costs through utilization of more efficient models, iii) specialization of some third parties for some portfolio characteristics leading to better results.

    Reluctance towards outsourcing is based primarily on:

    a. complexity in addressing outsourcing from an internal process point of view (more in the case of small businesses & corporates and less in the case of retail);
    b. retention of risks on the bank (both credit risk but also reputational risk);
    c. loss of control of the relationship with the debtor and a potential reduction in the quality of the service provided to the debtor;
    d. a conflict of interest might be also considered;

e. regulatory requirements in relation to servicing the loan and any sanctions that may be attributable in the event of a breach of these requirements.

19. What are the main risks for debtor protection, in particular for the households in financial difficulties, which are linked (directly or indirectly) with the practices of the third-party loan servicers?

Having no relationship to protect for the future and not necessarily having the ability to support different types of workout strategies (including by further financing), debtors may be adversely affected. A third party servicer may be aggressive in any recovery actions. In addition, considering that the performance of the third party servicer is measured against the price of the relevant NPLs and not against the total exposure (as in case of banks), a third party servicer may not seek to wait / obtain the best price in the market for the relevant collateral.

Thus, there would be the following risks to consider:

a. less diverse workout strategies, e.g. through lack of further finance abilities;
b. highly aggressive recovery actions that may hinge on the privacy of the debtor (e.g., calling at inappropriate hours, disturbing neighbours etc.);
c. low sale price for assets which translates into high value tails which may be further enforced for longer time periods thus affecting the quality of life of the debtor;
d. possible distortion of the market prices for the enforced collateral (typically real estate assets), due to a larger number of real estate assets being put on the market by the servicers with a lower recovery expectation if they have negotiated a significant haircut to the value in the sale price.

20. In the markets and jurisdictions that are relevant to you, is third-party loan servicing mainly focused on management of performing loans, non-performing loans, or both? Please describe the advantages and drawbacks of both situations.

N/A

21. Do, in your experience, third-party loan servicers concentrate on a specific asset class or does their asset mix tend to be more diverse? Please describe the advantages and drawbacks of both.

N/A

22. What specific services are offered by third-party loan servicers, in the markets and jurisdictions that are relevant to you?5 Which services do you consider to be most instrumental in terms of market efficiency? Please be as concrete as possible.

N/A

23. Do you consider that a EU regulatory framework (Directive or Regulation) regulating third-party loan servicers would be useful?
If yes, should such legal framework include rules on
- the licensing requirements for such servicers;
- the supervision of such servicers?

Are there any other elements that should be covered by such a legal framework?

Please refer to answers to question 14.

24. Please provide any other comments that you find useful in relation to this section.

    N/A

REMOVING POSSIBLE CONSTRAINTS TO THE DEVELOPMENT OF SECONDARY MARKETS FOR LOANS

25. Are you aware of significant differences in business practices in different markets and jurisdictions, for example through voluntary codes of conducts, industry standards, etc.? If yes, does this, and how, constitute an obstacle to your business?

    There are jurisdictions where there are voluntary or compulsory codes of conduct / professional associations / industry standards etc. These are in principle more mature markets with a history of such services. The difference may be eventually ascertained by comparing legal proceedings, complaints procedures and recovery rates throughout EU after identifying the jurisdictions where such elements (codes of conduct, industry standards) are implemented.

26. As a market participant, are you actively partaking in several national markets? If so, do you encounter obstacles to operate internationally in an efficient manner? Please specify.

    N/A

27. In the markets and jurisdictions that are relevant to you, are there unduly onerous legal restrictions in place:
    a. on the sale of loan portfolios, including to non-bank entities? Please specify these restrictions and their impact.
    b. on banks that want to outsource some or all loan servicing functions to third-parties, including to non-bank entities. Please specify those restrictions and their impact.

    Such undue restrictions could for example concern the areas of debtor protection, privacy, data secrecy, equal treatment of investors.
    If yes, could the removal of such undue requirements be considered? Please specify where such an approach could be contemplated and describe the advantages and drawbacks thereof.

    Please refer to Annex 1 of the EBF's response for an overview of national barriers.

28. What specific aspects could be improved, in order to facilitate existing cross-border activities and/or entry into new markets?

    The following may be considered among the most important "facilitators" of faster NPL resolution tools:
    a. more efficient enforcement & insolvency legislation;
    b. clearer tax treatment both for sellers of NPLs and also for buyers;
    c. NPL data standardization.

29. Do you consider that the development of a common EU approach would have an added value in the areas of:
    a. the sale and transfer of loans?

b. loan servicing by third parties?
If yes, which areas so far regulated under national law should be the focus of such harmonisation efforts? Potential focal points could include third party servicers' licensing regimes, capital requirements, trade secrecy and consumer protection.
Are there other actions that could be taken at EU level that would yield significant benefits for market efficiency (for example EU guidance or recommendations, the creation of a central register of loan servicers, etc.)?

Please refer to our answer to the question 14 above.

30. Please provide any other comments that you find useful on this section.

N/A

SECTION II: POTENTIAL MECHANISM TO BETTER PROTECT SECURED CREDITORS FROM BORROWER DEFAULT

31. Do similar forms of out-of-court enforcement allowing banks to enforce secured loans exist in your country?.
If yes,
- please describe these.
- what are the benefits of these provisions for banks in terms of enforcement and value recovery from NPLs?
- what are the main risks and challenges arising from these forms of out-of-court enforcement tool?

N/A

32. Do you see benefits in ensuring that every Member State makes available an instrument along the lines of the 'accelerated loan security' facility?

There would be benefits in creating such a form of collateral / security primarily in the case that such s type of collateral remains valid / enforceable in the insolvency / pre-insolvency processes. In case it is not valid / enforceable and insolvency may be opened in a swifter manner at the request of the debtor / third parties, such an "accelerated loan security" becomes a common type of collateral without additional practical use.

In addition, such a type of instrument may need to be transferable in the event it is intended to benefit the full value chain of NPLs (from originator to buyer of NPLs).

Moreover, the benefits mentioned above could be better achieved if the bank's organizations are adequately structured to sell assets in the real estate market.

However, it is rather unlikely that such an advantage for secured creditors can be integrated into the national insolvency regimes of most Member States without disruptions.

33. Do you see the accelerated loan security as a valuable instrument to avoid future accumulation of NPLs in banks' balance sheets?

Yes, provided that such an instrument remains valid / enforceable in insolvency / pre-insolvency processes.

While the accelerated loan security does not tackle the issue of NPLs already on banks' balance sheets, quicker access to out-of-court enforcement would mean that future loans would be less likely to accumulate on the balance sheets of banks, particularly in jurisdictions with suboptimal in-court enforcement procedures.

However, this measure alone is not able to facilitate the recovery of non-performing loans. For this to happen, it is necessary to reduce the timing for recovery of credits in dispute, streamlining credit recovery procedures.

Moreover, as mentioned previously, it is rather unlikely that such an advantage for secured creditors can be integrated into the national insolvency regimes of most Member States without disruptions.

34. Do you agree with the possible main features of an accelerated loan security as described above?

    If not, what are the features that you do not agree with and why?

    We agree with the overall concept as described with the following caveats:

    - As described in the consultation document, the bank would have the right to retain or acquire ownership of the encumbered assets with a view to satisfying the secured claims through a sale or by simply keeping the asset. This could mean that the bank would have to consolidate newly acquired assets on their balance sheets to the detriment of e.g. capital allocation requirements. A different option could be that the ownership of the encumbered asset was not transferred, but rather that the asset was sold either through a private sale or an auction with proceeds going directly to the lender. In this way, the lender would be satisfied while keeping the assets off the balance sheet.
    - The debtors full discharge from further repayment obligations, when the recovered value from the sale of assets is lower than the value of the outstanding loan, could encourage borrowers to act irresponsibly and increase speculative behaviour among borrowers, especially when asset values decrease. While any proceeds from a sale of pledged assets should be subtracted from the outstanding debts, the debtor should still be responsible for remaining payments. Furthermore, full debt discharge may result in being counterproductive, since it does not promote a responsible entrepreneurship model (moral hazard which may also drive up the price of credit, to compensate for this risk). With regards to such a provision, the debtor should remain responsible for the outstanding payments.
    - Creation of such a security by borrowers should not be more expensive or more cumbersome in terms of publicity and registry costs than other securities /collaterals while the sale thereof, after transfer of ownership in the case of default should be in a commercial manner (with prior valuation, with proper publicity in advance etc.) to derive the best value.
    - Finally, we would like to underline that tax impact of such an operation needs to be addressed/clarified (e.g., VAT treatment) as well as additional aspects including partial execution, costs of valuation (if applicable), auction conditions etc.

35. What are the (additional) features that an accelerated loan security should have in order to enhance its effectiveness in avoiding the encumbrance of bank balance sheets with further NPLs in terms of functioning of the mechanisms?

In addition to answers to questions 32 and 34 above, the accelerated loan security could have also the following features:

- Banks shall have the possibility to raise objections to the estimate of the property carried out by the expert appraiser.
- Banks should pay the borrower the difference between the realised value and the amount of the debt due when it recovers the value from the sale of asset (not when the property of the real estate is transferred).
- The property of the real estate could be transferred not only to creditors but also to other third parties.
- Banks should have the possibility to disregard the accelerated loan security clause even if this clause was agreed with the borrower in the credit contract and to decide to activate the traditional enforcement procedures. This would allow banks to decide, from time to time, whether to use the accelerated loan security clause or the traditional enforcement procedures. The borrower should not have any option to choose which of the possible remedies the lender will use.
- If certain conditions exist, banks should have the possibility to way out of the accelerated clause that has been already activated and activate the traditional enforcement procedures.
- The transfer of immovable assets to banks should ensure the exclusion from liabilities and the automatic cancellation of mortgages and other transcriptions made after the transcript of the accelerated loan security, as is the case of sale of immovable assets in the traditional enforcement procedures.
- In addition, lenders should be allowed access to all public and private data registers (Chambers of Commerce, cadastral offices, mortgage registries, credit registries, real estate transactions, length of foreclosures from PST Justice database, etc.), so that banks can perform a proper due diligence before deciding to activate the "private" foreclosure process.

Moreover, it could be appropriate to specify that the accelerated loan security includes movable assets registered in public offices (such as ships and aircrafts).

36. Do you agree with the proposed restriction on the scope of a possible accelerated loan security instrument to loans to businesses and corporates, and on the exclusion of primary residence of borrower even in the case of these loans? Please explain the reasons for your answer.

Generally speaking, we think that accelerated loan security instruments should be considered for all the categories of credit, in order to create a better access and reduce arrears and loss for lenders.

Nevertheless, we consider that this Commission proposal should be limited to businesses and corporates. Indeed, the proposal responds to the overall objective of the Capital Markets Union, which is to create better access to finance for businesses and corporates in the EU. Therefore, the focus should be on these entities rather than consumers and home owners. This is also in line with the Commission proposal on preventive restructuring frameworks and second chance, which focusses on businesses and entrepreneurs.

Without prejudice to what has been said above, we would like to remark that when the Commission proposal considers the exclusion of some categories of movable (i.e. main residence) or of collateral givers (i.e. consumers or non-professional

borrowers, etc.), it seems to do it based on reasons (i.e. necessity to "protect" some categories of collateral, etc.) that are not aligned with some recently approved European legislation that goes in different directions.

In particular, we would like to recall that the recently implemented Mortgage Credit Directive (MCD – Dir. 2014/17/CE) has introduced principles regarding "Arrears and foreclosure" (art. 28) that have also been developed in the EBA Guidelines on arrears and foreclosure.

Art. 28 of the MCD provides, inter alia, that "Member States shall not prevent the parties to a credit agreement from expressly agreeing that return or transfer to the creditor of the security or proceeds from the sale of the security is sufficient to repay the credit".

This means that the Directive - whose main aim is consumer protection – not only seems to take for granted the possibility that, based on the parties will, the credit agreement can provide the return or the transfer of the security to the creditor or the possibility for the creditor to proceed to the sale, but does not see any preclusion related to the nature of the collateral or to the category of borrower for this possibility, but considers the clause an added value for both parties.

When the Commission proposal on "accelerated loan security" tackles the household exclusion, it does not consider the MCD, the Art. 28 provision as well as the fact that these clauses exist in Member States.

Therefore, in order to respond to your question: we think that accelerated loans security instruments should be considered for all the categories of credit, but we believe that this Commission Proposal should be limited to businesses and corporates because it is in the context of the CMU and because "accelerated loan securities mechanisms" are already in place in Member States – on a contractual basis - with regard to the loans covered by MCD.

37. In what ways could an accelerated loan security be rendered potentially advantageous to borrowers to ensure its willing take-up by debtors (e.g. possible discharge of debtors in case the value of the assets becomes less than the debt)?

The accelerated loan security should be advantageous to borrowers in and of itself due to the reduced risk for banks holding this kind of security. If it was really suitable to ensure less risk and easier and more efficient access to quick enforcement for lenders, it could lead to easier access to credit. This effect would be further enhanced if loans secured by the accelerated loan security positively affected the capital requirements of banks, i.e. through reduced risk weights for such loans.

However, a possible discharge of debts in case the value of the asset becomes less than the debt "giving in payment" cannot be supported as this would delete the efficiency of the security. The lender's claim would no longer be guaranteed. Therefore the lender's position would be even worse than without security as long as a part of the debt would be automatically erased. The lender's risk would increase entailing an increase in interest rates and/or restrictions in credit distribution.

Introducing a "giving in payment" option to the benefit of mortgage holders (which could give collateralised property back to banks in exchange for final termination of their contract with no further penalty), would introduce the risk of causing instability and uncertainty for past contracts. Moreover, for banks it would translate in systemic risk increase and for the borrowers it would stimulate moral hazard amongst them.

For future contracts it would lead to a change from "Lending based on credit risk" to "Asset Financing" with the following negative effects for the lending practices:

- Until now, a bank grants a loan to a person and that person is obliged to repay the full value of the loan and interest. The borrower is personally liable and if he/she does not pay, his/her creditor can gain access to his/her assets through legal procedures. Before granting a loan the bank will analyse the financial situation and history of the borrower and assess the risk of non-payment. On the basis of this credit risk analysis the bank will be willing to lend to the borrower.
- Under "giving in payment" this all may change. The borrower can at any time repay the loan by transferring the ownership of the house to the bank. So, when assessing the risk, the bank needs to look at the risk that the borrower will stop repaying and "send the keys to the bank". This risk depends mainly on the value of the house in relationship to the outstanding of the loan and less if the borrower can pay or not.
- Simply put, the bank doesn't grant a loan to an individual anymore, but finances an asset, and the main risk is not the individual borrower and his financial situation, but the value of the asset.
- In order to assess this risk, the bank will look especially at the value of the financed house and make an assessment of the potential fluctuations in value and the discount that needs to be applied if the bank would have to sell the asset, once given in payment.

38. How should an accelerated loan security instrument be designed in order to be consistent with the preventive restructuring framework and the insolvency law of your country (e.g. stay on enforcement actions, cram-down on minority creditors, avoidance actions, ranking of creditors)? In your view, what would be the main obstacles to ensure such consistency?

According to the consultation document, national rules and principles of pre-insolvency and insolvency proceedings would prevail over the accelerated loan security, meaning that the contractual security right for the bank would only be enforceable as long as the debtor is not in financial distress. This aspect would significantly weaken the value of the security and would discourage banks holding such security from supporting restructuring efforts for a debtor's potentially viable business. Furthermore, it would likely limit the viability, effectiveness and relevance of the accelerated loan security severely, since such collateral is generally most relevant in times of financial distress for the borrower.

If the full effect of the collateral is to be realised, the accelerated loan security should be enforceable even when a debtor enters into an insolvency or preventive restructuring proceeding. Avoidance actions should still apply to this type of collateral in order to safeguard the rights of other creditors.

However, it is rather unlikely that such an advantage for secured creditors can be integrated into the national insolvency regimes of most Member States without disruptions

39. How should an accelerated loan security instrument be designed in order to be consistent with the public and private law rules and principles (including for instance property law, public and private law) of your country? In your view, what would be the main obstacles to ensure such consistency?

The accelerated loan security as described is a contractual right and would have to be tailored to each Member State in order to accommodate existing legal frameworks of private law, which are highly diversified within the EU. The Commission proposal could outline the basic aspects of the accelerated loan security, but leave the details to Member States in accordance with the principle of subsidiarity. We would encourage that the instrument should allow for an efficient, i.e. faster collateral disposal, in a fair and transparent way, which will also be sustainable in insolvency procedures (and not null and void, when the client files for insolvency).

Moreover, in our view, in certain EU Member States, one of the main obstacles to efficient enforcement of collateral are the current privileges granted to the debtor, as the weakest party, which tend to weaken negotiations for its future possibility of opposition or revocation. Bankruptcy laws and excessive discretion of the judiciary could undermine the instrument. The whole ranking of privileges needs to be clarified by law since it is not entirely clear nor definitive, and many times it has been defined by court decisions and not by law.

40. How should an accelerated loan security instrument be designed in order to be consistent with the existing national collateral legal framework?

The accelerated loan security would have to provide for specific rules in terms of its relationship with the other collaterals provided by the law of different countries (e.g. mortgages, pledges).

Moreover, the accelerated loan security should supplement the existing options for collateral that debtors currently have at their disposal. The option to use this new security right for banks should be used only when agreed upon by the contracting parties (lender and borrower) and should not impose restrictions on the use of other forms of collateral that are currently available in Member States.

Annex 1: Overview of national barriers to the development of the secondary market for NPLs

Country: AUSTRIA			
	Type	**Description**	**Impact**
Limitations related to NPL buyers	Legal requirements / licensing		- lower recovery rates
	Judicial inefficiency		- lower recovery rates
Limitations related to NPL sellers	Austrian Banking Secrecy (Sec. 38 of the Austrian Banking Act)	Credit institutions and their employees must not pass on information made accessible to them exclusively on the basis of business relations with customers. The obligation to maintain banking secrecy may be repealed only in cases specified in the law, e.g. vis-à-vis criminal law courts in connection with initiated criminal proceedings or with the express consent of bank customers. The assignments of unenforceable claims in conjunction with the assignee not being subject to Sec. 38 of the Austrian Banking Act as person with security clearance and lacking the consent of the debtor are invalid. A judgement regarding unenforceable claims with the assignee being subject to Sec. 38 of the Austrian Banking Act does not exist yet. To put it in a nutshell the trading with enforceable claims is legally harmless but with unenforceable claims void.	
	Barriers to transfer of loans	Debts secured by a mortgage that secures only a single debt and not the whole business relation, cannot be transferred to a new creditor only by	

		assignment. An assignment of such a debt would be invalid under Austrian law. The claim transfer must be done by transferring the mortgage itself, which makes it extremely difficult to transfer such a credit obligation. To optimize this situation, the rules of so called “debt-redemption” should be extended to simple assignment of a claim.	

Country: CYPRUS			
	Type	**Description**	**Impact**
Limitations related to NPL Buyers	External third party servicing platform.	To acquire large NPL portfolios, buyers will typically want to acquire / use independent servicers that have the appropriately sized and skilled workforce to manage local customers. Such servicers do not currently exist in the local market.	- Creates barriers to entry for certain investors and limits the effectiveness of developing an NPL market. - Limits size and adds complexity to portfolio sales.
Limitations related to NPL Buyers	Licensing and consumer loans	Buyers of NPLs must be licensed Credit Acquiring Companies in accordance with the Cyprus law. In the event that consumer loans are to be sold then buyers may need to be a regulated entity and hold a full banking license in order to ensure consumer protections under local law are preserved.	- Potential additional cost and delays in execution.
Limitations related to NPL Sellers	Cross collateralisation	Where whole customer connections are not being sold then collateral covering all facilities requires to be shared. Legal framework does not provide for collateral to be shared effectively.	- Additional complexity to structuring transactions and further reliance on contractual agreements.
Limitations related to legislative / political environment	Efficient insolvency and enforcement framework	Enforcement procedures and bankruptcy proceedings take approx. 2-5 years. Evidence demonstrating Improvements to legislative framework and acceleration of recovery of collateral is limited.	- Potentially lower recovery rates
Limitations related to legislative / political environment	Confidentiality	According to Cyprus Bank secrecy laws, banks may not divulge customer information in a way that allows third parties to	- Buyers rely more on representations from sellers and less on due diligence work. May lead to lower recoveries.

		clearly identify the customer.	

Country: DENMARK			
	Type	**Description**	**Impact**
Limitations related to NPL buyers	Licensing	Buyers of NPLs must be licensed debt collectors in accordance with the Danish Debt Collection Act	- The requirement for a license ensures adequate debtor protection from aggressive debt collection methods.
Limitations related to NPL sellers	Confidentiality	According to the Danish Financial Business Act, banks may not without due cause divulge or use confidential information obtained during the performance of their duties. All customer information is considered confidential unless it is already public knowledge, and the Danish FSA is highly restrictive in its interpretation of what constitutes due cause. The FSA has previously rejected requests from a bank to sell portfolios of NPLs to a third party.	- Unless the borrower consents, a Danish bank is generally not allowed to sell NPLs to third parties.

Country: FRANCE			
	Type	**Description**	**Impact**
Limitations related to NPL buyers	Legal requirements / licensing	In accordance with French regulation, loan servicers have to hold a licence to acquire and service French loans. It remains a hurdle for the development of the NPL market. Moreover, to acquire large NPL portfolios, the buyers will have to acquire and potentially develop existing dedicated platforms that have sufficient trained and knowledgeable staff and the technical capacity to service large numbers of loans.	
	Judicial inefficiency	Slow judiciary and loan recovery process in France, which can have a significant impact on the economics even when the recovery rates are ultimately quite high.	
Limitations related to NPL sellers	Legal/contractual	Banks are required to remove from any loan portfolios up for sale those loans for which a clause rendering the loan non-transferable has been inserted, at the borrower's request, into the underlying contract. Such a clause continues to be in force once a loan becomes non-performing. Art 1343-5 of the civil code allows a debtor to obtain a payment stay for up to 2 years in the event of dispute with a creditor. In France, when a loan has been sold, the debtor can potentially reduce the liability to the amount equal to the sale price in certain circumstances. This pro-borrower provisions ("retrait	- The existence of this right is an element which lengthens the time taken in France to achieve a successful debt restructuring outcome and hence can be expected to reduce investor appetite or prices bid for French NPL's - The buyer of the NPL assumes the risk here with obvious consequences on both appetite for and price of NPL portfolios.

		litigieux") is contained in art 1699 of the civil code.	
	Confidentiality laws	Banks are not allowed to disclose to potential buyers that a mandate or conciliation procedure is underway, which complicates the sale of any NPLs affected by such commonly used out of court proceedings.	- This can simply make it extremely difficult for new would-be owners of bank debt claims to even find out about the investment opportunity.

Country: GERMANY	
	Description
Limitations related to NPL buyers	- No special license requirements; only in case of a transfer of a non-terminated loan agreement under which the customer can make further drawings the buyer needs a banking license.
Limitations related to NPL sellers	- Receivables resulting from bank loans are transferable in general. - Types of legal instruments available for the transfer are (i) assignment of the loan receivable, (ii) transfer of the loan agreement, (iii) sub-participation (i.e. transfer of economic ownership), (iv) share deal pursuant to the German Transformation Act. - Assuming no specific transfer clauses have been included in the finance documents a consent of the debtor to the transfer is only required in case of a transfer of the loan agreement (ii). - Due to the German banking secrecy and Data Protection Law a consent of the debtor to a disclosure of personal data / information regarding the loan to the buyer is only required if the loan is still performing (i.e. loan is neither terminated or terminable). - In case of a transfer of a secured loan the collateral has to be transferred on a case-by-case basis.

Country: GREECE			
	Type	**Description**	**Impact**
Limitations related to NPL Sellers	Legal requirements for the protection of the debtors	Within 12 months from the loan transfer, the Bank is obliged to service a written notice inviting the debtor to settle the loan. Effectively, the Law provides the debtor with the opportunity to settle his loan before the Bank transfers the claim to a third party. However, a 12-month period is excessively long and reduces the volume of NPLs that may be offered for sale.	- disproportionate requirements adding complexity to relevant transactions - risk of legal complexities - limits on the perimeter of NPL portfolios that could be offered for sale
	Notification requirements	The transfer of receivables can be interpreted as requiring formal notification to the individual debtor. The notification requirement immediately raises severe logistical difficulties. The requirement to put debtors on notice could have been achieved through more efficient means such as the registration in a public registry of a summary of the transfer agreement (as is the rule in connection with securitization transactions).	- Time-consuming and burdensome transfer requirements - Increased transaction costs
	Unfavourable tax treatment	Servicing fees that are charged by the Servicers attract VAT. VAT is also imposed in relation to transfer agreements.	- VAT charged on loan servicing increases the costs borne by servicers for the management of NPLs, thus making them less competitive than banks. - VAT charged on loan transfers increases the costs borne by investors for the acquisition of receivables and act as a disincentive for the transfer. Clearly, this treatment is not justified, as the

			transfer of NPLs could be exempt from VAT pursuant to Article 135(1)(d) of the VAT Directive on the basis of being a transaction concerning debt.
Limitations related to NPL servicers	Burdensome operational and compliance requirements	NPL servicers are licensed and directly supervised by the Bank of Greece. The licensing process is extremely burdensome and highly complex. Moreover, the operational and compliance requirements are equivalent to those relating to financial institutions and would appear excessive given the limited scope of the servicing function. The extensive regulatory framework for NPL servicers has led to delays in the granting of licenses.	- Excessive regulation acts as barrier to entry - Delays in the licensing process - Increased compliance costs for NPL servicers

Country: IRELAND			
	Type	**Description**	**Impact**
Limitations related to NPL Sellers	Reputational Risks remain after the NPLs are acquired by 3rd parties [this is particularly relevant where the seller retains the servicing activity, which is not a common feature of the Irish market.] Risks of this nature would occur during servicing transfer from sellers to buyers but tend not to be material.	Staff not familiar with sellers processes and procedures engaging with customers may give rise to customer complaints, impacting on the Banks reputation.	
Limitations related to NPL buyers	Inconsistency/delays in the Courts process	Current legal infrastructure for property possession results in long delays (+5years) in the possession process and inconsistences in approach adopted by Courts. Absence of specialised courts dealing with debt recovery, especially in the case of Buy to Let.	
Limitations on NPL sellers	Pricing	NPL sales normally occur in a depressed market resulting in significant haircuts being offered. In addition, the heightened regulatory preference for accelerated NPL reduction will create a significant increase in the supply of NPL portfolio sales which may have a consequent impact on prices.	- Margins and Capital Allocations.
Limitations related to NPL buyers	Asset realisation	Smaller commercial debtors operate their business from the secured asset.	

Country: ITALY			
	Type	**Description**	**Impact**
Limitations related to NPL sellers	LGD calculation in case of massive NPLs disposals or in case of M&As between banks with a diverse degree of efficiency in the recovery of NPLs	In case of massive NPLs disposals or in case of M&As between banks with a diverse degree of efficiency in the recovery of NPLs a negative effect that arises on banks that use the advanced internal ratings-based method (A-IRB) comes from the higher Loss Given Default (LGD) induced by the deals. if a bank decides (or if it is requested by the regulator) to extraordinary clean up its balance sheet and sell NPLs, this may have several negative consequences : i) a first negative and immediate impact on profit and loss and on capital ratios, which could even lead to the need of raising further capital and a dilution of present shareholders; ii) a second negative effect specifically for IRB-banks, which will be forced to estimate their PDs and LGDs by including all data in their historical data sheet (as per art 181 CRR and as per EBA draft guidelines on PDs and LGDs estimation). This second effect adds a disincentive on selling NPLs, as it generates higher future capital absorption. In fact under the current regulation banks are forced to take into account the suboptimal NPL price disposal in their LGD estimates, regardless the fact that the disposal is a non-recursive, extraordinary clean-up of the balance sheet.	- Including the impact of massive sales of NPLs in estimates of - the loss given default (LGD) parameter automatically raises capital requirements considerably on - All performing loans and consequently reduces capital ratios. - Similar effects may occur in case of M&As deals. - The final effect is a strong disincentive to NPL disposals by A-IRB banks

		As a matter of fact, these NPLs extraordinary disposals provide "non-representative” statistical data to the estimation of LGD, thus overly estimating RWA. A similar effect arises in case of M&As between banks with a diverse degree of efficiency in the recovery of NPLs. An example can help to clearly understand the issue. Bank A is a very good bank with sound financial ratios, which is about to buy Bank B, a troubled one with poor ratios and high NPLs portfolio. Due to the acquisition Bank A’s risk manager will find that its new LGDs estimates under the new consolidated balance sheet, would worsen.	
Limitations related to legislative / political environment	Slow insolvency & enforcement framework	In Italy the average length of insolvency procedures is about 6 years while the average duration of foreclosures is around four years. As longer is the length of foreclosure and insolvency procedures higher is the price gap between seller banks and buyer investors, the still very slow recovery procedures in Italy discourage NPLs disposal, even when the recovery rates are ultimately quite high.	- Slow insolvency & foreclosure procedures disincentive NPLs disposals due to the strong negative impact on capital resulting from the selling.

Country: PORTUGAL			
	Type	**Description**	**Impact**
Limitations related to NPL buyers	N/A	N/A	- N/A
Limitations related to NPL sellers	Asymmetry of information	Given the lack of guidelines or standards in terms of disclosure of information regarding the loans and the relevant debtors (namely in relation to data protection and banking secrecy issues), there are information asymmetries between sellers and buyers.	- less appetite from investors (barrier to entry or pricing effects) - build-up of NPLs in the banks' balance sheets (as a result of a not sufficiently dynamic market)
Limitations related to legislative / political environment	Ineffective enforcement, restructuring and insolvency proceedings	Although we are halfway through the implementation of a few amendments to the Portuguese insolvency and restructuring proceedings, these are still lengthy and complex proceedings. According to official data from the Portuguese Government (2017), the average length of an enforcement proceeding is 49 months; of an insolvency proceeding is 43 months; and of a restructuring proceeding is 5 months. Even though out-of-court preventive restructuring proceedings are available they are not very effective. Furthermore, restructuring proceedings in Portugal, both in and outside of court, have been traditionally used by debtors as a dilatory measure (artificially preserving the debtor's business to the detriment of the creditors).	- low recovery rates - less appetite from investors (barrier to entry or pricing effects) - build-up of NPLs in the banks' balance sheets (as a result of a not sufficiently dynamic market) - no retention of the value-added by the viable businesses to the economy as a whole
	Lack of expertise by the courts	Restructuring and insolvency proceedings	- low recovery rates

	and by some of the remaining insolvency practitioners	usually involve economic, financial and accounting concepts and have specificities that make them singular. Nonetheless, Portugal lacks specialized courts (or judges) for these proceedings. This impacts not only the quality of the assessments and decisions taken by the courts, but also the consistency in the application of the relevant legal frameworks.	- less appetite from investors (barrier to entry or pricing effects) - build-up of NPLs in the banks' balance sheets (as a result of a not sufficiently dynamic market) - no retention of the value-added by the viable businesses to the economy as a whole
	Lack of guidance on banking secrecy issues	Portuguese law regulates the scope of banking secrecy, including a few exceptions. The transfer of loans to third parties is not included as one of the exceptions. Furthermore, the regulatory authorities have never issued any opinion or guidelines as to the impact of banking secrecy and data protection rules in the context of transfer of loans. Therefore, although the market practice suggests that the credit institutions may disclose information and documents regarding the loans being transferred (and there are good technical arguments supporting that), it is not clear in which terms (and with what scope) such disclosure should be done.	- less appetite from investors (barrier to entry or pricing effects) - higher complexity and uncertainty in the transactions - build-up of NPLs in the banks' balance sheets (as a result of a not sufficiently dynamic market)
	Lengthy motion for substitution proceeding	Although seemingly straightforward, the proceeding that allows the buyer of the loans to adhere to the pending proceedings commenced against the debtor before the transfer (notably in order to claim	- less appetite from investors (barrier to entry or pricing effects) - build-up of NPLs in the banks' balance sheets (as a result of a not sufficiently dynamic market)

		the relevant credits) is lengthy and subject to judicial fees.	
	Incomplete tax framework	There is no implementation of tax incentives for the acceptance of debt pardons in restructuring proceedings.	- build-up of NPLs in the banks' balance sheets (as a result of a not sufficiently dynamic market)

Country: ROMANIA			
	Type	**Description**	**Impact**
Limitations related to NPL buyers	Social capital requirements	Social capital requirements are applicable only to buyers of non-performing consumer loans (based on implementation of EU Directive 17/2014); the value of capital requirements is of 110 KEUR.	- creation of entry barriers (small players do not access the market; acquisition of single tickets under discussion if possible to buyers not meeting the social capital) - added complexity in deal structuring by making no separation between SPVs (as NPL acquisition vehicles) and recovery agencies (servicers)
	Registration requirements	Buyers of non-performing consumer loans need to be registered with National Consumer Protection Agency (ANPC); in case of foreign entities, they need to have a local representative registered with ANPC (and meeting the capital requirements above).	- added complexity in deal structuring as registration requirements are without any efficacy in the absence of a body of regulations (or guidelines) and enforcement tools thereof (i.e. mere registration with local consumer protection agency does not ultimately cover the goal of protecting the consumers)
	Barriers to transfer of loans	First: non-performing consumer loans may only be transferred to entities meeting the capital requirements and registration requirements above; breaching the above renders the transfer null and void. Second: corporate loans that are not qualifies as "loss" (as per local banking requirements) – may only be sold to non-banking financial institutions (as per the local regulator interpretation); qualification	- limits the access of small players on the market and creates complexities in structuring a portfolio sale (e.g., no such rule applies to corporate NPLs and in case of mixed portfolios – corporate and consumer – the transaction is added supplementary complexity) - no uniform approach as to definition of "loss" which may lead to non-homogenous portfolios

		as "loss" depends also on internal rules of each bank	
	Consumer protection measures applicable to non-performing mortgage loans	High protection of consumers embedded in the local legislation (in excess of EU requirements) which leads to structural change in business model of servicers with additional costs.	
Limitations related to NPL sellers	LGD calculation	Risk of qualifying a sale of NPLs as being relevant among NPL resolution strategies which may lead to applying the haircuts within the sale of a portfolio to internal LGD calculation methodology without any further analysis on: size and granularity of portfolios on the bank books compared with resources available internally / externally, characteristics of the portfolio/s sold etc.	- Increase of provision coverage for banks although
	Limited deductibility in case of sales of loans (new rule passed in August 2017)	In case of sale (portfolios or single tickets), as of 01.01.2018 the deductibility of the expense done with the sale is limited to 30% of the value of the receivable/s sold.	- Language is very loose and no guidance in the interpretation / application thereof is provided. In the worst case (limited deductibility applies to value of loan considered as expense), most of sales will become cash negative, hence limiting the appetite of sellers.
Limitations related to legislative / political environment	Slow insolvency & enforcement framework	It is considered that as an average the time to money in an insolvency scenario is approx. 5 years while in case of enforcement approx. 3.5 years	- limited investment appetite considering debtor friendly environment and limited protection of capital in case of insolvency / enforcement
	Legislative initiatives for increased debtor protection	Initiatives such as limiting the recovery rates / rights of NPL buyers or seeking to impose a high corporate income tax on such activity	- no predictability of the legislative environment and measures that may be taken by legislative bodies

		(80%) deter development of secondary NPL market. In addition, in terms of laws already passed,	- limited investment appetite or curbing investment appetite of NPL buyers / servicers in the future
	Limited predictability of legal environment	Recent legislative changes such as mandatory payment in kind solution, which was ultimately censored by Constitutional Court, constantly delayed implementation of the personal insolvency legislation etc.	- same as above.

Country: SLOVENIA			
	Type	**Description**	**Impact**
Limitations related to NPL buyers	Restrictions in the area of buying receivables from private individuals (consumer loans)	Requirement to obtain the license on the basis of the banking legislation.	-
Limitations related to NPL sellers	Restrictions in the area of selling receivables from private individuals (consumer loans)	Requirement to obtain the license on the basis of the banking legislation.	-
Limitations related to legislative / political environment	Slow insolvency & enforcement framework	Enforcement procedures and bankruptcy proceedings take approx. 2-5 years. Sale proceedings are not as efficient as they would be if they could be executed on-line.	-
	Interference of politics in management of state's assets	Especially in cases of compulsory settlement procedure companies indirectly owned by the state influence the procedures and obstruct optimal resolutions.	-

Country: SPAIN			
	Type	**Description**	**Impact**
Limitations related to NPL buyers	Consumer protection	Banks in Spain have undertaken a voluntary Good Practice Code. Third parties – such as funds- are not bounded by this code The eviction could be suspended in the case of vulnerable debtors when the property has been acquired at auction by the creditor or those acting on the creditors' behalf.	- The potential impact of transfer to a third party not bounded by the Code, should be addressed between the buyer and the seller of the loan (i.e. reputational risks), but should not be constrained by the regulation
Limitations related to legislative / political environment	Slow insolvency & enforcement framework	Slow judiciary and loan recovery process in Spain, which can have a significant impact on the economics.	- Investment appetite would increase if the enforcement process becomes more agile and predictable
	Regional legislative initiatives	Different "Comunidades Autónomas" (Autonomous Comunities) are enacting divergent regulations.	- The complexity and diversity of the regimes make it difficult to create wider portfolios.

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