



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Senat for its Opinion on the proposal for a Directive of the European Parliament and of the Council on credit servicers, credit purchasers and the recovery of collateral {COM(2018) 135 final}.

This proposal is an important part of the work to strengthen the Economic and Monetary Union. Addressing high stocks of non-performing loans and their possible future accumulation is essential to achieve a better functioning and more integrated Banking Union. Well-developed secondary markets of non-performing loans are also one of the building blocks for a well-functioning Capital Markets Union.

The ‘Action Plan to Tackle Non-Performing Loans in Europe’, adopted by the Council in July 2017, requested the Commission to develop a European approach to foster the development of secondary markets for non-performing loans. It mandated the Commission to take a legislative initiative in order to remove impediments to the transfer of non-performing loans across Europe by banks to non-banks and harmonise the licensing requirements for third-party loan servicers. In proposing this Directive, the Commission is delivering on the commitment in its 2018 Work Programme to present proposals to address the issue of non-performing loans in order to ensure agreement on all outstanding elements of the Banking Union and ultimately to create a deeper and fairer Economic and Monetary Union.

The current diverse legislative framework for non-performing loans in the Member States has hindered the emergence of an effective secondary market facilitating the transfer of non-performing loans across Europe by banks to interested buyers. Considerable differences in national legal systems have led to a situation where credit services and credit purchasers can legally operate in one Member State, but face considerable obstacles to operate in others, resulting also in an overall limited competition in the European internal market. This led to a situation where credit purchasers mostly operate only in few Member States and credit servicers face barriers to expand cross-border and scale up their activities. By consequence, credit institutions

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wishing to dispose of non-performing loans portfolios face a fragmented investor base, while credit servicers face significant difficulties in servicing credits across borders and have limited scope to realise scale economies.

The proposal would create minimum harmonised rules that non-bank credit purchasers and third-party credit servicers need to implement in order to operate within the Union. It would set common standards to ensure their proper conduct and supervision, while allowing greater competition among servicers in harmonising the market access across Member States. This would especially benefit market operators by lowering the cost of entry for potential loan purchasers and credit servicing.

In the 2018 Country Report for Romania the Commission recognised that the Romanian banking sector is well capitalised and that asset quality has improved over the last years. This improvement in asset quality has been achieved through a strongly declining ratio of non-performing loans compared to the peak in 2014, on the back of sales of non-performing loans to third parties including international investors. However, the Commission also highlighted in the Country Report and in its 2018 Recommendation for a Council Recommendation on the 2018 National Reform Programme of Romania and delivering a Council opinion on the 2018 Convergence Programme of Romania, that several ongoing domestic legislative initiatives risk adversely affecting non-performing loans disposal by banks as well as credit and investment. Furthermore, the Commission noted that such initiatives warrant close monitoring. Among them there are, for instance, those aiming to cap the value recoverable by non-performing loans' investors/debt collection companies from non-performing loans acquired from banks and to eliminate the nature of executory title of credit agreements, which would hinder the out-of-court re-possession of collateral.

The Commission welcomes the Senat's broad support for the aims of the proposal and notes its doubts relating to the proposed scope of the Directive. The Commission takes seriously the concerns expressed by the Senat as regards unintended consequences of weakening the national legislative framework and is pleased to have this opportunity to provide a number of clarifications in the enclosed Annex, which also provides replies to the more technical comments and requests in the Senat's Opinion.

Discussions between the Commission and the co-legislators concerning the proposal are now underway. The Council has held the first meetings to discuss the proposal and the European Parliament has appointed two rapporteurs. The Commission remains hopeful that an agreement will be reached in the near future.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Senat and looks forward to continuing the political dialogue in the future.

Yours faithfully,

Member of the Commission

Annex

The Commission has carefully considered each of the issues raised by the Senat in its Opinion and is pleased to offer the following clarifications:

In Point 3a of the Opinion the Senat suggests limiting the scope of the Directive to non-performing loans to avoid more permissive requirements on the quality of the person who manages the performing loans. According to the Senat, the relaxation of provisions currently in place in Romania for credit servicers may damage debtors. In that regard the Commission recalls that the proposal aims to establish a harmonised framework for the authorisation of credit purchasers and credit servicers. While the purpose is to develop a secondary market for non-performing loans, the establishment of different regimes for the purchase and servicing of performing and non-performing loans would further fragment an already small market. Given that non-performing loans may become performing and that credit institutions have discretion to classify loans they consider 'unlikely to pay' as 'non-performing', any acquirer of a portfolio of non-performing loans risks possessing loans that are actually performing. If the European Union's framework was limited to non-performing loans and Member States' rules applied only to performing loans, such investor would risk being outside Member States' applicable legislation unless the investor also fulfils national conditions. In the case of Romania, this would entail that any purchaser of a non-performing loans portfolio would have to be endowed with a banking license. The Commission considers that such extra requirement would materially dissuade new investors to acquire non-performing loans in Romania. It therefore considers that maintaining stricter authorisation requirements for performing loans in Romania than a European Union-wide authorisation regime would render the latter ineffective. Moreover, the Commission does not share the view that the proposal would be damaging for debtors, especially of performing loans, because it includes appropriate safeguards, as explained below.

The Senat suggests in Point 3b of the Opinion that legal requirements for credit servicers should also apply to credit purchasers that administer directly purchased credit. The Senat states that otherwise the procedure for credit purchasers would be over-proportionally lighter. The Commission did not include such provision in the proposal because it considers that this would impose additional burden on credit purchasers in Member States where such a rule does presently not exist. It would in particular risk impairing the well-functioning market for syndicated loans, on which both performing and non-performing corporate loans are exchanged between banks and non-banks, without a comparable authorisation regime for non-banks that administer directly the purchased credit. Other Member States have made a similar point to the one of the Senat in their initial discussions of the proposal.

Point 3c of the Opinion suggests establishing a European Union-wide information system for non-performing loans with the European Banking Authority that provides to creditors the information necessary to determine a credit applicant's leverage. The Commission considers that such a system would substantially enlarge the information set available to both credit institutions when granting credit and non-banks when determining a price for the portfolios of non-performing loans banks aim to dispose.

Credit information systems broadly comparable to those envisaged by the Senat are in place in several Member States. Since these are mainly provided by private institutions, there is no obvious market failure that would justify public intervention. Moreover, the Senat's suggestion would yield severe challenges with respect to, for example, the reporting burden of the financial industry, data protection and the subsidiarity principle. The Commission therefore opted for a narrower approach in its proposal, requesting Member States to ensure that sellers provide all relevant information to potential buyers and make use of technical standards for data to be developed by the European Banking Authority.

The Senat also argues in Point 4 of the Opinion that the proposed Directive would lower debtors' protection and would expose consumers to risks, particularly because it would allow cross-border credit transfer. Indeed, the proposal aims to ensure and foster the possibility of such cross-border credit transfer. The proposal would ensure that any transfer of a credit agreement to a credit purchaser does not affect in any way the current level of protection granted by Union law to consumers. The proposal contains consumer protection measures and introduces an amendment to the Mortgage Credit Directive providing that in the event of an assignment of the creditor's rights to a third party, the consumer is entitled to plead against the assignee any defence which was available to him against the original creditor (in line with existing provisions of the Consumer Credit Directive). Furthermore, in the case of third-country purchasers of consumer loans, the proposal introduces two other additional protections: (1) third-country purchasers have to appoint a representative established in the European Union; and (2) they have to use an authorised credit servicer to service the loan.

The Senat finally considers that the provisions on accelerated extra-judicial collateral enforcement would limit the possibility for companies of credit restructuring or granting a second chance. According to the proposed Directive, the proposal for an extra-judicial collateral enforcement mechanism should be without prejudice to the Directive of the European Parliament and of the Council based on the proposal for a Directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures {COM(2016) 723 final}.