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Delegations will find attached document SWD(2018) 76 final Part 1/2.

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PART 1/2

COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

The development of secondary markets for non-performing loans by removing undue impediments to loan servicing by third parties and the transfer of loans (Part 1/2)

And

Accelerated Extrajudicial Collateral Enforcement (Part 2/2)

Accompanying the document

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} - {SWD(2018) 75 final}

Executive Summary Sheet

Impact assessment on the development of secondary markets for non-performing loans by removing undue impediments to loan servicing by third parties and the transfer of loans

A. Need for action

Why? What is the problem being addressed?

Non-performing loans (NPLs) have piled up in parts of the EU banking sector in the aftermath of the financial and sovereign crises and ensuing recessions. Elevated levels of NPLs affect financial stability as they weigh on the profitability and eventually viability of the affected institutions and have an impact, via reduced bank lending, on economic growth. As a result, NPLs have a negative impact on both the functioning of the Banking Union and on the creation of a Capital Markets Union. To further address the challenges of high NPLs in Europe, the "Action Plan To Tackle Non-Performing Loans in Europe" calls upon various institutions to take appropriate measures. One of its key policy areas is to develop and enhance the functioning of secondary markets for NPLs, specifically to remove impediments to transfers of NPLs from banks to other entities and to simplify and harmonise requirements for loan servicers. Limited participation of non-banks led to low demand, weak competition and low bid prices on secondary markets, which disincentivises banks to sell NPLs. A particular factor that discourages NPL investors to enter the market is the difficulty to access third-party loan servicers, which have been virtually absent in most EU Member States until recently and act on segmented markets.

What is this initiative expected to achieve?

Member States have very different rules for third parties acquiring NPLs from banks, as well as rules for offering loan servicing services that restrict both the free flow of NPLs and investment opportunities for third-country investors. The general objective is to stimulate demand for NPLs by generating a larger investor basis through lowering entry barriers, and consequently also greater competition among investors. Facilitating the expansion of loan servicers across borders would allow them to tap scale economies, compete for cross-border business and provide their services at lower prices to non-bank NPL investors. Stronger participation of third-country firms would augment the effects of higher competition on NPL prices and loan servicing fees. At the same time, it needs to be ensured that borrower rights are preserved if a credit is transferred from a bank to a non-bank.

What is the value added of action at the EU level?

Without measures at EU level, national markets for NPLs and loan servicers will remain fragmented and underdeveloped. Though a single market framework would not undo all fragmentation, EU measures would foster cross-border expansion of both investors and loan servicers, so as to come close to a shared investor base among all EU Member States. The value added of action at EU level also consists in incentivising Member States to take a more active stance in reducing regulatory barriers to entry, although uncoordinated policy measures at the national level would exacerbate the existing market fragmentation.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

Establishing a set of non-binding common principles that target the most significant barriers to market entry in countries with high NPLs could reduce the restrictions pertaining to the transfer of NPLs and loan servicing in Member States where most needed, but would not generate a single market. A Directive that allows the use of passporting could increase the investor base for NPLs and competition on loan servicing markets while allowing Member States to continue to regulate national specificities. A Regulation with a single rule book that allows passporting and covers entry and conduct rules for investors and loan servicers would be the best option to increase quickly the investor base for NPLs and reduce the currently high stock of NPLs in the EU and some of its Member States in particular. The single rule book would deliver an outcome closest to a single market, but could imply that market entry could become more costly in those Member States in which market entry is already simple, and should be formulated such that it minimises the additional obstacles. The preferred option consists in a binding legal instrument that harmonises entry and conduct rules for purchasers and loan servicers. Whether this should be done in form of a regulation or a directive will depend on policy preferences and whether the priority is to opt for a measure that is most effective, or for a measure that maintains more room for national discretion.

Who supports which option?
While the dominant majority of the replies to the public consultation affirms that the current size, liquidity and structure of secondary markets for NPLs in the EU are an obstacle to the management and resolution of NPLs in the EU and a majority supports an EU framework for NPL investors, the minority share is sizeable (almost a third). A substantial majority supports an EU framework for loan servicers. Only a small minority either objects or abstains. Almost all respondents that support an EU framework for loan servicers advocate that the framework should cover a licensing regime and about half of them propose it regulates their supervision. Several advocate measures to access data and improve data transparency.
C. Impacts of the preferred option
What are the benefits of the preferred option (if any, otherwise main ones)?
All options would reduce entry costs for NPL investors and loan servicers and incentivise NPL investors to expand activity to underdeveloped market segments in the EU. If they make it possible for NPL investor and loan servicers to act throughout the EU, competition will intensify, which leads to higher bid prices for NPLs and lower costs for loan servicing. Loan servicers will benefit from potential to tap scale economies on the single market. Quantification can only be done on a best effort basis using unsatisfying data and a methodology of which each step can be challenged. It suggests a significant impact on NPL sales, i.e. they could increase from currently about EUR 100 billion per year for the EU as a whole to a range of 103 to 115 billion after one year depending on the policy taken. The measures could reduce ratios in some Member States in the order of half a percentage point. Since the different policy options address a narrow set of actors, consisting of the selling bank, the potential buyer, the loan servicer and the ultimate debtor, the main impact will also relate to these stakeholders.
What are the costs of the preferred option (if any, otherwise main ones)?
The required re-writing of law and its implementation will entail one-off costs at EU and national level. Some Member States may face rising demand or authorisation and licensing from NPL investors and/or loan servicers, which would imply higher administrative costs unless the fee charged for the licensing process fully covers these costs. Absence of data and heterogeneity of the few available data observations prevent an estimation of the cost. Direct environmental impacts are not expected.
How will businesses, SMEs and micro-enterprises be affected?
Smaller NPL investors and loan servicing firms would over-proportionally benefit because they encounter a larger relative decline in the costs of compliance with legislation relative to their total costs. The impact on highly indebted SMEs will depend on the behaviour of individual loan servicers. Depending on the individual operator, loan services may help them more than banks to arrive at a more suitable payback profile of their loans, but they may also apply existing borrower rights in a stricter way than banks. On balance, an enhanced environment for banks to offload NPLs from their balance sheets through loan sales should be positive for the SME sector as a whole since it will create room for banks to expand lending to viable companies.
Will there be significant impacts on national budgets and administrations?
Significant impacts on national budgets and administrations are not expected. The targeted reduction of compliance costs could reduce administrative burden for the public sector.
Will there be other significant impacts?
Although the legal relationship between ultimate debtor and debt holder does not change with the transfer of an NPL from a bank to a non-bank investor, a clear majority of respondents to the public consultation considers involvement of third-party loan servicers a challenge to existing debtor protection rights. Since some Member States currently use rules for loan servicers to protect consumers in credit relationships, an EU framework would usefully also include safeguards for borrower rights.
D. Follow up
When will the policy be reviewed?
The Commission shall establish a programme for monitoring the outputs, results and impacts of this initiative. The monitoring programme shall set out the means by which the data and other necessary evidence will be collected. Five years after the entry in force, the Commission shall carry out an evaluation of this initiative on the basis of a collection of relevant data and indicators.