

European Commission Consultation: Developing the Secondary Market for Non-Performing Loans

The European Commission ("Commission") has released a consultation paper to evaluate the merits of introducing measures to support secondary markets for distressed debt and the development of a new, contractual-based loan security obligation.

Consultation

The Commission describes the issue of non-performing loans ("NPLs") as a top priority for the European Union, and the consultation is a policy-driven mission to address the high levels of NPLs that have amassed on some European banks' balance sheets as a result of the financial crisis and subsequent recessions. The overarching aim is a clearer route for affected banks, with the appropriate support, to offer NPLs on the secondary market.

Constraints on the Secondary Market

The Commission has acknowledged there are current restrictions (varying legal regimes, business practices, etc.) that hinder the secondary loan market for NPLs, and it seeks to implement, where appropriate, a harmonised legal framework, clearer processes for the sale and transfer of loans and easier access to third-party loan servicers.

Transferability of Loans

Citing restrictions on the free availability of asset and loan information from banks, the Commission intends to explore what other restrictions there are on the transfer of NPLs and options to alleviate these and, in turn, lift barriers affecting the growth of the secondary market.

Accelerated Loan Security Instrument

In light of the varying protections afforded to creditors across Member States, the Commission wants to explore the option of developing a new EU contractual instrument to facilitate expedited foreclosure of collaterals. The new instrument is envisaged as an alternative method for creditors to gain contractual security over the assets of the debtor which may, in the event of default, be accelerated by a swift out-of-court process.

Restructuring and Insolvency

Whilst the new accelerated loan instrument is aimed at providing a non-judicial process of transferring secured assets, the Commission's proposal would be fully consistent with national insolvency and restructuring laws. The Commission noted that the instrument would need to preserve the order of priority of creditors and judicial decisions in insolvency proceedings.

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