

Targeted consultation on improving transparency and efficiency in secondary markets for non- performing loans (NPLs)

8. September 2021

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BDIU, the German Association of Debt Collection Companies, represents the interests of more than 500 companies in the field of credit management, debt collection and debt purchase.

Each year our members re-inject between 5 and 10 billion Euros of valid claims back into the (German) economy, thereby securing above all the liquidity of micro, small, medium and large enterprises, while helping to keep the cost of credit at a reasonable level for all consumers.

As Credit Purchasers and/or Servicers for NPL our members stabilise creditors, i.e. banks, provide borrowers with a tailored, long-term and holistic payment plan and as specialised entities in this field manage to resolve the borrowers' debt situation more efficiently than creditors themselves could. Since Credit Servicers are specialised in handling non-, just as under-performing loans and have a longer time perspective than original creditors they can handle borrowers with more care and flexibility. To our members, NPLs are not a distraction, or a side business but lie within the core of their business model. This is why professional Credit Servicers have staffed operations to manage a large number of NPLs at a time. BDIU's Code of Conduct, upon which our members agreed in 2020, ensures compliance with ethical provisions for treating borrowers/consumers fairly while servicing loans or collecting debt.

In the context of the European Commission Non-Performing Loans Action Plan of December 2020, proposals for a European Data Hub regarding NPL transactions were drawn up.

The proposal includes the mandatory disclosure of:

- sales data (volume of the portfolio, price etc.)
- and post-sales data (mostly realisation data over time)
- both to (all) other (potential) market participants.

Even though we support the EU's general goal to further develop and foster the European secondary market for NPL, BDIU would like to outline some outstanding issues and sensitize the Commission for what seem to be misperceptions or biased conclusions:

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1. There is strong competition in the Credit Purchasing market:

The Commission's view regarding the lack of competition in the NPL secondary markets is without empirical evidence. On the contrary, transactions and competition across Europe have increased significantly in recent years. This is underlined by the observation, that even though EU NPL Banking volumes according to EBA have decreased by more than 40% over the last 4 years, the market activity and transaction volumes have (with exception of 2020 due to the pandemic) steadily increased.

2. Further transparency is needed but has to respect trade secrets:

Sales data on NPL-portfolios, especially information on the (legal) characteristics of the loan, the counterparties or the collateral is crucial for the financial due diligence and valuation in NPL transactions. In addition, valid, accurate, and up-to-date information is key to the efficient collection/recovery of the loan by credit purchasers or their servicers.

BDIU shares the Commission's view that transparency and data quality are important elements also for accurate NPL pricing. Therefore BDIU encourages initiatives on pre-defined data sets to be provided to potential investors in NPL sales processes to ensure efficient and fair pricing. But: The question, what a fair price is cannot only be answered from the seller's perspective. Also the buyer's perspective needs to be taken into account. Especially since in NPL-transactions it is the buyer, who takes the full risk of the NPL just as – together with the servicer – the efforts and responsibilities to realise payments on the loan.

Especially sharing commercially sensitive data, specifically post-sales data, should not be mandatorily demanded from the Credit Purchaser or Servicer. Sensitive data includes transactional or performance related data, such as sales and realisation data, valuation, performance, or data referring to costs and workout strategies.

3. Credit Purchasers' business models need to be respected:

It is true, that post-trade information provided by NPL buyers on recovery cash flow for the assets that they have purchased could deliver crucial insights into the market for NPLs. But mandatory disclosure of this kind of data would force NPL purchasers to uncover trade secrets.

Gathering, validating and processing loan-related data is one of the core activities of Credit Purchasers and their Servicers. The ability to gather, validate and make use of data is one of the key-abilities determining the success or failure of NPL-market participants. It is just the ability that distinguishes successful purchasers/servicers from unsuccessful ones and it drives competition between different purchasers/servicers.

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As in any other industry market participants should not be demanded to share sensitive information publicly/via potentially open platforms or hubs or disclose trade secrets or business processes which have been developed and sharpened over years, or even decades.

Full transparency with these types of data/trade secrets could obviously be beneficial not only for the sell-side but also for less developed market participants and direct competitors. It would cause lasting damage for established and successful Credit Purchasers/Service providers and – after all – reduce competition on the purchaser side to a minimum and might even discourage purchasers/investors from investing in NPL assets at all.

4. Credit Purchasers should not be discouraged from investing:

Gathering, validating and processing Data not only to determine a portfolio's value but also to recover loans is one of the key-cost-drivers of the industry. Any obligation to share sensitive data and to disclose it to competitors will decrease the incentives for purchasers to continue buying portfolios and discourage them from investing in potential new products, asset classes, or portfolios. This would contradict the goals of the proposal.

5. Sharing sensitive data brings privacy challenges:

Apart from that, before sensitive personal/third-party/borrower-related data could be transferred to a data hub it needed to be anonymised. Such anonymisation is difficult to achieve and a massive cost-driver for Credit Purchasers/Service providers. Especially with regard to the amounts of data, the number of data subjects and data points, the sensitivity of the information, and the potentially different techniques that would be used. It would also be unjustified to shift the burden of anonymisation to Credit Service providers / Credit Purchasers unless such parties voluntarily requested to also make use of the proposed Data Hub themselves.

Conclusion

In the proposed and extensive form, a data sharing obligation for Credit Purchasers would negatively impact their business models and would most likely paralyze the European NPL secondary market on the purchaser side.

BDIU recommends to revisit the idea of imposing data sharing requirements in context of a data hub on Credit Purchasers. Mandatory transfers and disclosure of data are only possible as far as:

- Trade secrets are respected and core business activities are protected;
- The scope of the data to be transferred to a data hub is reduced to an absolute minimum;
- Especially post-sales data are excluded from the scope.

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