
The Alternative Credit Council (‘ACC’)

The ACC welcomes the positive initiative of the Proposed Directive to encourage the development of an efficient secondary market for NPLs while also promoting a resilient financial system and high borrower protection standards across the European Union.

We would offer the following comments in relation to the Amendments tabled by Members of the European Parliament on 7 January 2020 to the ECON Committee report on credit servicers and credit purchasers published on 29 November 2019 (the EP draft report).

1. Exemption of Investment Firms from the definition of credit servicer

The EP draft report and the Council General Agreement both incorporate an exemption for AIFMs and UCITS Management Companies. These asset managers are already authorised and supervised under existing regulation, and the authorisation of AIFMs and UCITS Management Companies also specifically prohibits them from carrying out activities not covered by their authorisation.

We support Amendment 285 to Article 2 (4)a which proposes a similar exemption for MiFID investment firms who are also subject to an existing regulatory framework under MiFID legislation. MiFID entities often act as advisors to credit purchasers. They are already subject to conduct of business requirements which are as strict as those imposed on many other regulated entities such as credit institutions. Requiring them to obtain an additional authorisation is therefore unnecessary.

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1 The ACC currently represents over 170 members that manage over $400bn of private credit assets. The ACC is an affiliate of AIMA and is governed by its own board which ultimately reports to the AIMA Council. ACC members provide an important source of funding to the economy, providing finance to mid-market corporates, SMEs, real estate developments, infrastructure as well as for trade and receivables operations. They are also active participants in the secondary markets (including NPLs markets) which play a crucial role in the financing of SMEs across Europe.


This exemption for regulated AIFMs, UCITS Management Companies and MiFID entities should also be mirrored in the Recitals to the Directive.

| Amendment supported by the ACC: | 285 |

2. Exclusion of specific types of loans from the Proposed Directive

We support the amendments proposed in the EP draft report which would narrow the scope of the Proposed Directive so that it only applies to non-performing loans through the Amendments to Article 1. In addition, the ACC welcomes Amendment 292 to Article 2(5)a (new) which would explicitly exclude syndicated loan arrangements. The syndicated lending market is an important funding mechanism for mid-sized companies and infrastructure projects in Europe. Existing market practices regarding the treatment of non-performing wholesale loans are currently working well and therefore there is no evidence that further regulation of this market is necessary. The ACC also supports the exclusion of securitisation special purpose entities via Amendments to Article 2(3)a (new), to reaffirm the separate and comprehensive regulation of securitisation as set out in Regulation (EU) 2017/2402.

The below Amendments are supported by the ACC:

| Amendments restricting scope to non-performing loans: | 261 |
| Amendment excluding wholesale loans: | 292 |
| Amendments excluding securitisation special purpose entities: | 282, 283 |

The below Amendments are not supported by the ACC:

| Amendments regulating performing credit agreements: | 235, 270, 271, 272, 273, 280, 281, 393 |

Despite these positive changes, several inconsistencies and challenges remain. These include:

3. Supporting the development of the secondary market for NPLs

The Amendment proposed to the EP draft report to Article 15(2)b would afford discretion to Member States to introduce additional requirements on credit purchasers. This goes against a core objective of the Proposed Directive which is to develop a harmonised approach and facilitate more efficient transfer of NPLs. This proposed Amendment will facilitate the introduction of additional barriers within Member States that will prevent the transfer of loans (both performing and non-performing) to non-bank financial institutions. This outcome is inconsistent with the original objective of the proposal to encourage the development of secondary markets for NPLs.
The Proposed Directive also imposes additional reporting obligations and procedural requirements on credit institutions, credit servicers and credit purchasers regarding the transfer of non-performing credit agreements. It is likely that these requirements will hinder, rather than support, the market for NPLs by introducing additional cost and operational burdens to credit institutions, credit servicers and credit purchasers. Furthermore, it is unclear how the provision of this additional information to National Competent Authorities will support greater investment by market participants in the European NPL market.

Any additional reporting requirements must be consistent with the calls for proportionality expressed in Recital 32 and Article 2(4)a (new) and any information provided to competent authorities must not be made public in any form without prior anonymisation. Competent authorities already receive substantial information on the activities of credit institutions and asset managers from disclosure requirements within the existing regulatory framework. Any additional requirements must be consistent with existing disclosure requirements under the Capital Requirements Regulation, AIFMD, MiFID or UCITS Directive.

The requirement for credit purchasers to be authorised in the EU proposed by Amendment 254 to Recital 34 would also significantly restrict the growth of the secondary market by closing off the EU market to non-EU based credit purchasers. Non-EU entities must comply with national law related to borrower protection in the same way as EU-based credit purchasers. Requiring third country purchasers to be authorised entities therefore appears to be discriminatory. This requirement will have a detrimental impact on the secondary market by making the purchase of EU NPLs less attractive for non-EU entities.

The below Amendments are supported by the ACC:

| Amendments calling for proportionality of reporting requirements: | 252, 398, 399, 400 |

The below Amendments are not supported by the ACC:

| Amendments extending the scope of member states to authorise and regulate credit servicers: | 229, 230, 370, 371 |
| Amendments extending the scope of member states to authorise and regulate the activity of credit purchasers: | 220, 232, 239, 240, 248, 249, 255, 256, 310, 311, 312, 334, 340, 397, 403, 404, 405, 406, 407, 408 |
| Amendment requiring credit servicers and credit purchasers to be based in the EU: | 254 |
4. Consumer protection rules are already addressed through existing EU Directives and national legislation

The transfer of non-performing loans to creditors does not expose consumers to any potential risks that are not already addressed through existing safeguards and consumer protection rules. The primary legal and regulatory safeguards for borrowers are generally found within the legal systems of Member States. At the European level, consumers obtaining finance currently benefit from various legal protections that help safeguard their interests (see Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property, Directive 2008/48/EC on credit agreements for consumers, and Directive 2013/36/EC on access to the activity of credit institutions). Furthermore, national laws relating to property rights, insolvency, restructuring, contracts, fraud and misrepresentation provide EU Member States with a range of tools to ensure there is an appropriate balance between the legitimate interests of borrowers and creditors.

It is therefore unnecessary for additional protections to be introduced within the Proposed Directive. The ACC strongly recommends that any amendments requiring disproportionate levels of forbearance measures and rules of conducts applicable to credit purchasers are rejected. In addition, the ACC cautions against the inclusion of measures to allow for debt buy back rights conferred upon the borrower as well as those requiring written consent from the borrower for the transfer of a loan secured by residential mortgages.

The below Amendments are not supported by the ACC:

| Amendments excluding consumer loans and loans secured by primary residences from the secondary market: | 242, 243 260, 270, 271, 272, 273, 277, 291, 308 |
| Amendments imposing forbearance measures for consumers on credit purchasers: | 225, 226, 306, 387, 392 |
Amendments imposing rules of conduct for credit purchasers for the purpose of consumer protection: 207, 307, 314, 337, 389, 446
Amendment imposing debt buy-back rights for consumers on credit purchasers: 246, 338, 388
Amendments requiring written borrower consent for loan transfers: 244, 307, 393, 461
Amendments requiring written borrower consent for loan transfers secured by residential property: 244, 307

5. Maintain the proposed EU Passporting regime for credit servicers

The ACC supports the removal of the requirement to designate an EU domiciled agent to represent credit purchasers not established in the Union through the removal of Article 17 as proposed in the EP draft report. We are, however, concerned that several Amendments restrict the application of EU passporting regarding consumer loans as well as with respect to credit agreements issued to business borrowers secured by the immovable residential property which is the primary residence of a business borrower. Requiring credit servicers to obtain an authorisation and establish a branch or a subsidiary in the Member State where it intends to operate would be contrary to the stated objective of the Proposed Directive where Recital (9) specifically states that ‘any proposed measure should also simplify and harmonise the authorisation requirements for credit servicers’. Moreover, it is unclear how such imposition of additional authorisation requirements on credit servicers will provide borrowers with any additional safeguards or prevent potential regulatory and supervisory arbitrage.

The below Amendments are supported by the ACC:

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The below Amendments are not supported by the ACC:

| Amendments imposing requirement to authorise a branch in each Member State a credit servicer intends to operate: | 364, 365, 366, 367, 372, 374, 376, 377 |

In addition, clarity is required throughout the Directive, particularly as it pertains to the below Amendments which should refer to the ‘consumer’ as opposed to the ‘borrower’. Given the definition
of borrower as ‘a legal or natural person, other than a consumer, who has concluded a credit agreement with a creditor’ (Amendment 293), the terms should not be used interchangeably throughout the Directive.

Thus, the ACC recommends the redrafting of the below Amendments so that they apply strictly to consumers:


**ACC Contact**
Nick Smith, Director
Email: nsmith@lendingforgrowth.org
Tel: +44 (0)20 7822 8380