Transparency in private securitisations as a prerequisite to promote the Secondary Market of NPEs in the EU

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I. General remarks

Establishing an appropriate legal and regulatory environment in the EU facilitates the development of high-quality securitisation markets across Europe. Over the past years, securitisation markets have undergone important legislative and regulatory developments, both at the national and European level. The importance of a well-functioning European securitisation market became clearer following the global financial crisis and the sovereign debt crisis, which brought along a dramatic increase of NPEs in some European countries.

The global financial crisis and ensuing recessions have left a number of European banks experiencing high levels of NPEs, with significant adverse impacts on their profitability and their ability to lend to businesses, including to SMEs. The high level of NPEs has recently acquired even greater importance, in view of the need to tackle the severe economic shock caused by the COVID-19 pandemic. NPEs constitute a drag on economic activity, especially for countries that mainly rely on bank financing, as is the case in the euro area countries, such as Greece.

II. The proposed new EU Directive

Alongside the Securitisation Regulation (EU) 2017/2402 (SECR), laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation (completed by the relevant Commission implementing acts, DelReg (EU) 2020/1224 and ImplReg (EU) 2020/1225), the proposed Directive on credit servicers, credit purchasers and the recovery of collateral of March 2018 (currently in its final phase, pending adoption) aims at stimulating demand for NPEs. The new proposed Directive aims at developing a competitive and integrated European market for credit purchasers and credit servicers, through their regulation, so as to widen the investor base for EU securitisations and, thus, creating the prerequisites for a secondary market for NPEs.

Facilitating the expansion of loan servicers across borders would enable them to tap scale economies, compete for cross-border business and provide their services at

more competitive prices to non-bank NPL investors. The Greek legal framework on securitisations (Law 3156/2003), dating back to 2003, has been complemented and enriched by Law 4354/2015, which already entails a vast spectrum of the regulatory requirements entailed in the proposed Directive.

III. The secondary securitisation market and the need for transparency

Any well-functioning secondary market is based on liquidity and tradability. A legal framework on the secondary securitisation market should therefore create the market prerequisites for the initial investor to sell the securitisation product. It is a commonplace that such secondary market, in order to be able to offer fair prices, requires transparency. Transparency in the securitisation market is linked to the ability of investors to exercise due diligence on the assets, by assessing the creditworthiness of a given securitisation instrument and, thus, the quality of the assets.

Prior to holding a securitisation position, investors carry out a due diligence assessment, which enables to assess the risks associated with their contemplated investment (Article 5 (2) SECR). Said due diligence assessment is based on the information that the originator, the sponsor and the securitisation special purpose entity (SSPE) make available to the (potential) investor (Article 7 par. 1 of the SECR, complemented by Commission Delegated Regulation (EU) 2020/1224 supplementing Regulation (EU) 2017/2402 with regard to regulatory technical standards specifying the information and the details of a securitisation to be made available by the originator, sponsor and SSPE ("DelReg (EU) 2020/1224) and Commission Implementing Regulation (EU) 2020/1225 laying down implementing technical standards with regard to the format and standardised templates for making available the information and details of a securitisation by the originator, sponsor and SSPE ("ImplReg (EU) 2020/1225").

IV. Private securitisations and the secondary securitisation market

Enhancing market transparency by creating a comprehensive framework under which (potential) investors will have access to all relevant information over the entire life of the securitised assets is particularly complicated for private securitisations. This becomes even more apparent in the case of Greece, as Law 3156/2003 only allows securitisations through private placement, which means that Greek originators can only transfer NPLs within the framework of the so-called "private securitisations".

Direct contact between the originator, on the one hand, and the investors, on the other hand, so that the latter receive the information necessary to perform their due diligence, is nearly impossible in a secondary market. Expecting or requesting

potential investors in the secondary market to conduct their own due diligence tremendously increases transaction costs and renders the securitisation market inefficient and less attractive.

V. Transparency requirements according to the SECR

Article 7 par. 2 third subpar. of the SECR exempts private securitisations from the obligation to disclose detailed information about the transaction through a securitisation repository. Private securitisations, however, continue to be subject to significant transparency requirements, set out in Article 7 par. 1 SECR and DelReg (EU) 2020/1224 and ImplReg (EU) 2020/1225.

Therefore, a framework to ensure appropriate, sufficient and proportionate information for the due diligence purposes of investors in the secondary market, seems to be essential even for private securitisations. In any case, the transparency requirement is imposed for both public and private securitisations, since, in accordance with Article 29 SECR, competent authorities have to supervise the compliance with the transparency requirements for all securitisations.

VI. The necessary equilibrium

Thus, the main issue is to achieve a balance between transparency and confidentiality as regards private securitisations also taking into account the associated costs: how extensive and structured should this information be in the case of private securitisations, for a potential investor to easily and at a low cost form an opinion as to the quality of securitised assets considering, at the same time, that some of this information may be confidential?

As regards the supervision of the transparency requirements, this is performed in different ways across competent authorities, which does not create a level playing field and negatively impacts the data quality for private securitisations. Such fragmentation in the market should be tackled and legal certainty should be achieved for reporting entities of private securitisations.

Less information needs to be balanced against the need to ensure adequate supervision of private transactions, which requires access to sufficient information on the part of supervisors but also of the potential investors.

Costs of disclosing securitisation information and the factors that impact on such costs should be assessed and weighted against the benefits of a transparent NPLs market. Current size, liquidity, and structure of NPLs secondary markets in the EU are obstacles to the management and resolution of NPEs. A well-functioning, high level legal environment, allowing for transparency in the market, plays an integral role in the restructuring of NPLs secondary markets.

VII. The Commission's goals

This is among the issues the European Commission seeks to address via its Consultation on the functioning of the EU securitisation framework (launched in July 2021). The Commission is interested in whether the exemption provided under the third subparagraph of Article 7 par. 2 of the SECR gives rise to a disproportionate number of private securitisations or if market participants structure securitisations as private securitisations in order to circumvent the disclosure obligations through securitisation repositories (cf. Article 46(c) and (d) of the SECR).

The Commission further addressed the question whether the current regime enables supervisors and (potential) investors to access sufficient and proportionate information on private securitisations, particularly considering that (potential) investors need to be able to meet the applicable due diligence requirements. Through the Consultation, the Commission seeks to identify whether the available information should be more granular (i.e. include loan-level data), whether it should cover all asset classes and all maturities, as well as if there is any missing, unnecessary, or useless information.

Finally, the Commission seeks to address the question whether the definition of "private securitisation" needs to be adjusted. It is noted that the Joint Committees' report on the implementation and functioning of the Securitisation Regulation (published on 17 May 2021) criticised the definition as being too broad and called for a more precise legal definition, allowing to clearly identify private securitisations that should comply with the transparency requirements. The Joint Committee's report also stated that information reported for those private securitisations should be made available through a securitisation repository to ensure the supervision of the compliance with said transparency requirements.