Association for Financial Markets in Europe

Consultation response

EBA consultation on Implementing Technical Standards on NPL transaction data templates

12 August 2022

On behalf of the Association for Financial Markets in Europe ("**AFME**")[1] and its members, we welcome the opportunity to present our response to the consultation paper of the European Banking Authority ("**EBA**") dated 16 May 2022 on the draft Implementing Technical Standards ("**Draft ITS**") specifying the templates to be used by credit institutions for the provision of information referred to in Article 15(1) of Directive (EU) 2021/2167 ("**NPL Directive**") (hereunder the "**EBA Consultation Paper**").

As stated in AFME's response to the EBA consultation paper on the ESMA NPL data templates from August 2021, AFME and its members are supportive of the review of the data templates to be used under the NPL Directive given the renewed approach of the European Commission to its NPL action plan as part of the Capital Markets Review Process and given the increased prominence of NPL transactions in light of the Covid-19 pandemic. Further, we acknowledge and welcome the work done to date to streamline the templates from their original iteration and thank the EBA for the several roundtables, hearings and consultations with market participants aimed at collaborating to achieve a common agenda.

However, whilst the transparency objective is clear and appreciated by all, there remains a great deal of variance in how the systems of different institutions record and monitor information and the data that may be available depending on the nature and history of the related underlying exposure and the requirements of the relevant jurisdiction, which in turn results in significant inconsistency of reporting across different transactions. It is believed that requiring EU credit institutions to implement systems required to collect, store and report the data as set out in the Draft ITS without taking into account any such differences and variations will be challenging on many fronts and potentially detrimental to fostering the secondary market of NPLs. Consideration is therefore required to be given to the categorisation of data fields as mandatory and the ability of, and resulting cost for, institutions to also comply with any securitisation reporting templates and/or with any rules on sustainability-related disclosures to end investors, for example, to avoid a disproportionate approach.

[1] AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is listed on the EU Register of Interest Representatives, registration number 6511006398676.

Association for Financial Markets in Europe
London Office: 39th Floor, 25 Canada Square, London E14 5LQ, United Kingdom T: +44 (0)20 3828 2700
Brussels Office: Rue de la Loi 82, 1040 Brussels, Belgium T: +32 (0)2 788 3971
Frankfurt Office: Bürohaus an der Alten Oper, Neue Mainzer Straße 75, 60311 Frankfurt am Main, Germany
T: +49 (0)69 153 258 963
www.afme.eu

AFME members welcome the fact that the Draft ITS exclude from their scope NPL securitisations governed by the Securitisation Regulation ("**SECR**"), it should be pointed out however that much of the information required for both the ESMA templates under the SECR and the templates proposed under the Draft ITS need to be collected at origination. As a result, we understand that lenders will be bound to collect all the information needed for *both* templates in order to preserve future financing options, which may prove too burdensome and lead to inconsistencies. The review of the materiality thresholds and the proposed internal governance arrangements are also welcomed for the reasons set out below.

1. **Scope of application**

Market participants had expected that loans originated prior to 1 July 2018 would be grandfathered in their entirety but the EBA Consultation Paper suggests that the general obligation to provide "necessary information" on the portfolio applies even to loans that pre-date the application period of the NPL Directive on a "best-efforts" basis. The position under the EBA Consultation Paper is not only directly at odds with the purpose of the reporting regime but also results in a great deal of uncertainty for the market as a result of the lack of clarity as to what the EBA considers to be "necessary information" and the format of the information to be provided. Clear guidance from the EBA would be considered helpful in this context to avoid inconsistent and illogical approaches being taken by different market participants (including in circumstances where the portfolio is comprised of individual NPLs which are in scope and others which are out of scope (see below our comments under paragraph 4 in respect of the need to have a proportional approach towards mixed portfolios)). Further, much of the information is required to be collected at origination and the impact of the lack of available data for more historic portfolios should not be underestimated. We consider that the lack of clear and transparent grandfathering of these portfolios may act as a significant barrier to the market.

2. **Categorisation of data fields**

There is significant overlap of data amongst the data fields and we believe that the proposed approach is disproportionate and excessive for a number of reasons. Such reasons include (i) various fields of information are already publicly available (including, but not limited to, date of latest annual financial statements, 1.19 or currency of financial statements, 1.20), (ii) certain data fields are not considered relevant by purchasers in the general market and are therefore unnecessary as a result of their low frequency and marginal impact on the pricing or valuation of the portfolios (including, but not limited to, name of counterparty group, 1.01 or contract identifier, 2.03), and (iii) certain fields are discoverable through the general due diligence process that a purchaser would undertake as part of the market standard purchase process and therefore it is unnecessary, inefficient and unduly onerous to require the seller to repeat such information in the data templates (including, but not limited to, amortisation type 3.08 or financial reporting (e.g. Annual EBIT, 1.29)).

We consider that the focus ought to lie on (i) the quality of the information provided and (ii) the selection of the specific data which would actually underpin the competitiveness of the secondary market for NPLs on an efficient basis, rather than a very prescribed and inflexible number of data fields.

3. "No-data" option

We note that the omission of a "no-data" option is divergent from the approach under the SECR and there is concern that this has real potential to cause a barrier to the market. There are several considerations that should be borne in mind when considering what data might be available in respect of NPL portfolios, including variances relating to the relevant jurisdictions, seasoning of the portfolios, the type of underlying loans and assets and the level of sophistication of prospective buyers. Further, in the context of the particular facts and circumstances of a particular portfolio it might be that such data is legitimately unavailable (e.g. the building area of the real estate collateral (4.14)), of marginal or no relevance (e.g. date that the order for possession is granted by the court, 1.43) or it is disproportionate to obtain such data (e.g. total amount of legal fees accrued at the cut-off date, 1.44, the production of which would require banks to employ many resources, time and effort without commensurate added value to the investor). The approach outlined in the EBA Consultation Paper seems to imply that there is a general reluctance from sellers to share information, which the market considers to be a very narrow and inconsistent view. We are of the view that the absence of certain data fields for the reasons outlined above should not be an obstacle when the potential purchaser and the seller are both willing participants in the transaction (including on the basis of certain information which may be reported under a different data template) and therefore we consider that the availability of a "no data" option is critical to ensure a functioning market.

In this context, the definition of "ND2" provided under the Draft ITS seems to imply that all data becomes available from the banks' reporting systems at month-end. Given that the Draft ITS does not provide for a definition of "reporting system", there is a concern that this may not accurately reflect the reality of the data collection process in that many data may become available from the banks' operational/business systems intra-month. Also, from a practical perspective, it is also unclear how the timings of data collection are meant to work *vis-à-vis* the timings for closing NPL sales, given that certain mandatory reporting information may only become available at the end of a month and not all of NPL sales will close at month-end.

4. Materiality threshold and proportionality

Whilst the inclusion of a materiality threshold is welcomed, we consider that the construct as laid out in the EBA Consultation Paper fails to take into account the depth and inherent variances of the NPL market and nuances between particular portfolios and the sophistication of certain type of investors and therefore, the proposed €25,000 materiality threshold may lead to a disproportionate approach. For example, where the majority of the portfolio consists of individual NPLs carrying value below €25,000, the requirement to use the data templates for a minority proportion of the portfolio being sold is disproportionately onerous and burdensome. Equally, the requirement to use the more fulsome data templates in relation to individual NPLs carrying value above €25,000 may be disproportionately onerous and burdensome when the prospective buyer is a sophisticated and experienced participant in the NPL market. It is believed that, for example, in the wholesale secondary market most of the buyers are sufficiently sophisticated and experienced counterparties who typically would not look at more than 12-15 core data fields in the context of their investment decision, which contrasts with the 133 mandatory data fields for loans exceeding the materiality threshold provided for under the Draft ITS.

In this context, we are of the view that the materiality threshold should also take into account both the nature and composition of the underlying portfolio and the sophistication of the prospective investors/buyers. This would mean that, for example, the obligation to report on the more fulsome templates for loans carrying above the €25,000 materiality threshold could be disapplied if (i) the individual NPLs above the €25,000 materiality threshold in the portfolio are less than, for example, 20% of the portfolio face value or (ii) the seller can provide evidence that it has agreed with the prospective sophisticated buyer that any such templates/specific data fields should be disapplied. This would allow EU banks to run a more efficient and tailored made marketing process in relation to sales of NPLs and provide the data on a more consistent and uniform basis across Europe, which we believe is in line with the goals and objectives of the Draft ITS.

5. Internal governance arrangements

The Draft ITS contemplates internal governance arrangements for credit institutions which aim to ensure the "completeness, consistency and accuracy of the information provided to prospective buyers". It is provided that (i) the information has to be (A) validated by staff independent from the staff involved in the sales process and (B) subject to an appropriate managerial approval and (ii) credit institutions have the duty to rectify without undue delay any errors or inaccuracies in the information provided. This rather prescriptive and rigid formulation may cause fragmentation among different internal functions in the context of the validation process within such credit institutions, it may therefore increase costs and inefficiency and the time period for completing a transaction which in turn could reduce competitiveness in relation to other competitors incorporated outside the EU and therefore that do not have to comply with such requirements. We consider that there already exists sufficient protection to such concerns through the existing governance and regulatory framework and usual contractual obligations and recourse in such transactions.

Lastly, it should be taken into account that certain information relates to complex factual and legal matters (e.g. the lien position (4.05)) or require lenders to rely on third parties (e.g. agents in the case of syndicated loans) to be able to confirm the right position. In these cases, responsibility for the accuracy of such reporting should not fall entirely on lenders.

AFME Contacts

Shaun Baddeley
shaun.baddeley@afme.eu
+44 (0)20 3828 2698
+44 (0)7584 582 759

Maria Pefkidou
maria.pefkidou@afme.eu
+44 (0)20 3828 2707
+44 (0)7789 870 120

Pablo Portugal
pablo.portugal@afme.eu
+32 (0)2 788 3974
+32 479 027 993