

18 December 2019

Mr. Mario Nava
Director DG FISMA
European Commission
1049 Bruxelles
Belgium
e-mail: mario.nava@ec.europa.eu

cc: Council of the EU – Finland Presidency
e-mail: sinna.rissanen@formin.fi

Dear Mr. Nava,

EFMLG comments on the Proposal for a Directive of the European Parliament and of the Council on credit servicers, credit purchasers and the recovery of collateral - accelerated extrajudicial collateral enforcement

The European Financial Market Lawyers Group (EFMLG)¹ welcomes the progress made by the Council of the EU regarding the first leg of the proposed directive of the European Parliament and of the Council on credit servicers, credit purchasers and the recovery of collateral (the Proposed Directive), which covers the creation of the conditions for the development of a secondary market in the European Union.

The EFMLG is also pleased that European Parliament's debate on the Proposed Directive is now restarting and would like to flag the importance of a swift process within the trilogue negotiations in order to have the Directive in force within the best delays.

The EFMLG, which supports that the Directive follows the lines drawn by the Commission and the Council, had the opportunity to express its views about the Proposed Directive in its letter to the European Commission dated 30 March 2019 (see attachment).

EFMLG members share the view that the new rules will stimulate demand for non-performing loans (NPLs) by generating a larger investor basis and enhancing competition among investors, address high stocks of NPLs and their possible future accumulation, and therefore contribute to the completion of the Banking Union in the EU and the development of a Capital Markets Union. Also, the EFMLG understands that the Proposed Directive is not intended to carve out securitization transactions, which in certain Member States represent the main way to execute NPL disposals.

The EFMLG regrets, however, the slow progress on the section of the Proposed Directive relating to the proposed accelerated extrajudicial collateral enforcement (AECE) procedure for recovery of collateral value. On 27 November 2019 the Council adopted its position on AECE based on a minimum harmonization approach, while the European Parliament has yet to start its discussions.² Enforcement of collateral is often

¹ The EFMLG is a group of senior legal experts from the EU banking sector dedicated to making analysis and undertaking initiatives intended to foster the harmonization of laws and market practices and facilitate the integration of financial markets in Europe. The members of the Group are selected on the basis of their personal experience amongst lawyers of major credit institutions based in the EU active in the European financial markets. The Group is hosted by the European Central Bank.

² See <https://www.consilium.europa.eu/en/press/press-releases/2019/11/27/non-performing-loans-council-adopts-position-on-a-new-mechanism-for-out-of-court-enforcement/>.

a lengthy and costly process, which erodes the net present value of the collateral concerned. Consequently, creating a harmonized extra-judicial mechanism to foreclose non-financial collateral as an EU regime will be an effective alternative to judicial proceedings as well as to existing out-of-court processes which are currently available in some Member States.

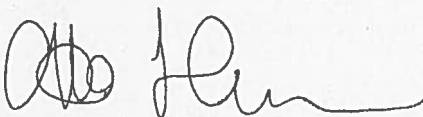
The new regime should not affect nor alter existing legislation, procedures and practices in Member States and it should be coordinated with existing EU legislation (e.g. Directive (EU) 2019/2013 on Preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt).³ It is to be understood as an additional, optional, expedited and efficient out-of-court mechanism, aiming to enforce secured loans against companies and entrepreneurs (not consumers), subject to previous common agreement between the parties. The proposed AECE mechanism aims to achieve a satisfactory degree of predictability and to speed up the enforcement proceedings, thus addressing and tackling existing impediments to cross-border activity of credit institutions within the EU.

The promotion of a common, uniform and predictable enforcement mechanism for security rights over immovables and movables on an EU-level will address existing obstacles to the Single Market by reducing existing uncertainty as to the efficiency of enforcement proceedings in the Member States and by incentivizing credit institutions to scale up their cross-border activity. It may, thus, contribute to reversing fragmentation tendencies within the banking sector, a legacy of the recent international financial crisis and the sovereign debt crisis of some euro area Member States.

In the EFMLG's view the creation of such a mechanism can decisively facilitate the prevention of future NPL's accumulation, reduce fragmentation and foster competition in the Single Market. Therefore, such mechanism can contribute to the integration and cost-efficiency of the European banking sector, as well as to the stabilization of the European financial system and the completion of the Banking Union. Subsequently, the EFMLG considers the proposed mechanism as a meaningful step towards enhancing the European Union's internal market, and hopes that an ambitious compromise is possible between the Council and the European Parliament.

The EFMLG believes that a policy intervention, i.e. the legislative treatment through a Directive, is needed in order to address the absence of a common out-of-court mechanism in the EU for the creation and enforcement (realization) of security over immovable assets and movable assets provided as security and not falling within the scope of the Financial Collateral Directive.⁴

Yours faithfully,



Otto Heinz

Chair of the EFMLG

³ Full text available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1023&from=EN/>.

⁴ Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on Financial Collateral Arrangements, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002L0047&from=EN>.