

BKS STATEMENT

On 16 May 2022, the EBA launched a public consultation on the draft Implementing Technical Standards (“ITS”) for the data templates for Non-Performing Loans (“NPL”) (“ITS Data Templates”).

It is expected that the revised ITS Data Templates will become mandatory for credit institutions during 2023 to reflect the information requirements of the Credit Service Providers and Credit Purchasers Directive (Directive (EU) 2021/2167). The consultation ends on 31 August 2022. Following the consultation, the draft ITS Data Templates will be finalized and submitted to the European Commission by the end of 2022 (EBA 2022).

This statement includes comments from the German *Bundesvereinigung Kreditankauf und Servicing e.V.* („**BKS**”).

The EBA has designed the ITS Data Templates to provide potential purchasers of NPLs with standardized information for the purposes of financial due diligence and valuation. The objective of the standardized templates is to increase efficiency in the market for NPLs by providing a common data standard in the EU that allows for cross-country comparison and thus reduces information asymmetries between sellers and purchasers of NPL portfolios. By establishing standard templates, the EBA aims to reduce barriers to entry for small banks and investors seeking to trade NPLs. The ITS Data Templates are complemented by a data glossary and guidance on how to complete the data templates.

OUR KEY FINDINGS:

- Currently, there is no mandatory and uniform data standard for NPL transactions. The draft ITS Data Templates will not become mandatory for credit institutions before 2023, and no specific start date has been announced yet.
- According to Article 16 (7) of Directive (EU) 2021/2167, the ITS Data Templates are to be used for loans granted on or after 01 July 2018 that became non-performing after December 28, 2021.
- The scope of the NPL Data Templates (only) refers to credit institutions as sellers.
- The ITS Data Templates do not apply to NPL securitizations as they are covered by Regulation (EU) 2017/2402 and (EU) 2020/1224. The disclosure templates for NPL securitizations differ significantly from the proposed ITS Data Templates.
- The draft ITS Data Templates include requirements for the exchange of confidential information as well as governance requirements for credit institutions to ensure that the information provided is complete, accurate, and consistent.
- The data fields in the ITS Data Templates are classified as mandatory or non-mandatory depending on the amount of the loan, with fewer mandatory fields for loans below EUR 25,000 (manifestation of the principle of proportionality). The data fields differ in their scope depending on the type of borrower (consumer or business) and the type of loan (secured or unsecured).

- The draft ITS Data Templates do not provide for regulatory reporting requirements but are intended to be used for the exchange of information between parties involved in an NPL sale process.
- The draft ITS Data Templates include data fields on the counterparty/counterparties and counterparty group/counterparty group (template/template 1), counterparty/counterparty relationships with the loan and collateral (template/template 2), the contractual characteristics of the loan itself (template/template 3), and any collateral and guarantees with associated enforcement procedures (template/template 4), as well as past collection and repayment schedules for the loan (template/template 5).
- Credit institutions shall determine (individually) what information may be considered confidential on the basis of the data protection, data secrecy and banking secrecy legislation applicable to them.
- All information classified as confidential in this manner will be shared only in compliance with the appropriate confidentiality agreements and through secure channels such as electronic virtual data rooms.
- However, for non-mandatory data fields listed in the data glossary, the data field must not be left blank if the information required in the template is not available. Instead, defined codes for missing data options shall be used to explain the reasons for the missing data, similar to the missing data options used in the European securitization disclosures.

OUR GENERAL COMMENTS:

- We generally support the EBA and the European Commission in their efforts to create a standardized NPL data template.
- Also, we generally agree that some data fields are more important for due diligence and valuation than others.
- **Mandatory Data Fields:** However, we are concerned that the introduction of mandatory data fields will create an obstacle for credit institutions to sell their NPLs. In our view, a market-oriented solution would be for investors to accept the purchase of the loans, possibly at a lower price, in spite of incomplete data, if the relevant data were not provided. The more effort a seller puts into his data, the higher the expected purchase price, since the investor can evaluate more accurately what he is buying. Conversely, a seller also consciously accepts discounts if the preparation of the data is only possible with disproportionate effort. In many cases, the (internal and possibly external) costs of collecting all mandatory fields will not be justified by the expected (possibly relatively small) price increase. We therefore consider it important that the completion of the mandatory fields does not represent an insurmountable hurdle for the transaction to take place if some data is not available. Against this background, the EBA must clarify what the consequences are if a seller cannot provide all "mandatory" fields.
- From the point of view of German market participants, "*mandatory*" is ultimately only a concretization of the duty to provide information under Section 402 of the German Civil Code. As a secondary obligation, this is initially without sanction. Such a provision merely defines the content of the secondary obligation inherent in Section 402 of the German Civil Code. In our opinion, the same should also apply to the other EU jurisdictions.
- **Consequences for Individual Sales:** From our reading of the draft ITS Data Templates (no explicit limit for volumes or number of units), an attempt is made to even regulate individual sales and not only portfolio deals, for which there have been internationally accepted market standards in Europe for 30 years (e.g. LMA). This contradicts the nature of the secondary market, which can be used flexibly and without lengthy preparations in the event of strong and rapid

market movements. This requires a clarification by the EBA that sales of individual receivables are excluded from the mandatory use of the ITS Draft Templates also in the future.

- **Threshold Amount:** The threshold amount currently provides for the carrying amount of 25 000 euros as the limit between reduced and full data retrieval. There is no clarification, however, as to whether this is the book value of the receivable (after amortization / risk provisioning) or the nominal value. Should it be the book value, it could be recognized from the limit in what amount risk provisioning or depreciation was made on the part of the seller. This has to be clarified.
- Also, in order not to jeopardize the efficient execution of NPL transactions, we believe that the limit for non-mandatory fields should generally be raised from 25 000 euros to 50 000 euros.
- **NBO Data Requirement:** The consultation suggests that in cases where credit institutions decide to split the NPL sale into a non-binding offer (NBO) phase and a binding offer phase, the information required for financial due diligence and valuation should only be disclosed at the beginning of the second binding offer phase. This is not in line with market practice, where investors already receive a comprehensive data tape in the first NBO phase after signing a non-disclosure agreement. Certain sensitive fields, among others, especially for consumer loans can be removed from the initial NBO data tape if needed. But organizing a meaningful NBO without a detailed data set will not provide a reliable criterion for selecting investors for the binding offer phase.
- **Future Data Processing:** In the data requirements list, one only looks at the current status quo of loan processing, but does not consider what data is likely to be needed in the future. In particular, the topic of “digital” should be addressed. From our point of view, it will be important in the future to know which contact medium the customer has used, which payment method he has chosen, when the last contact took place via which medium, etc. This should come from the bank systems and be able to be reported accordingly.
- **Preparation of Balance Sheet Data for Long-Standing Insolvency Cases:** In general, investors calculate insolvency cases according to the expected values and time frames published by insolvency administrators in their reports. An outdated balance sheet no longer has any informative value, but is expected by the ITS Data Templates as mandatory data field (Total Assets 1.25, Total Liabilities 1.26, Total Debt 1.27, above all: Annual Turnover 1.28). What has not been clarified at all from our point of view is the revolving, i.e. regularly recurring, sale of receivables from the collection business. Do such cases (just like the individual sales mentioned above) fall under these obligations? Sales of a minimum size of 15 euros per receivable (classic overdraft) are customary in the market. For this, a seller shall certainly not provide 91 obligatory data points on a weekly basis.

OVERVIEW OF QUESTIONS FOR CONSULTATION

1. DO THE RESPONDENTS AGREE THAT THESE DRAFT ITS FITS FOR THE PURPOSE OF THE UNDERLYING DIRECTIVE?

From our perspective we agree with the future general European standardization.

The general idea of facilitating the sales of NPL on secondary markets and reducing entry barriers for smaller potential participants definitely makes the usage of the standardized ITS reasonable. However, in order to be in line with European regulation the ITS do not have to be as comprehensive as the ITS Draft Templates suggest. In many cases data will not even be collected by the credit institutions, while data will additionally not be processed and worked with especially by smaller purchasers. The complexity of the ITS will potentially lead to even greater entry barriers for both sellers and purchasers.

Furthermore, there are the requirements for the respective country-specific regulations in the EU that the regulatory framework must contain. This is where things are likely to get difficult, given the eventual need for country-specific details to evaluate NPL value: But adding national additional information would lead to overload (return to more than 600 data fields with loss of transparency and usability). This conflict must be solved.

The draft ITS fit on the whole, except for template 5, which is far from existing standard (esp. for consumer loans in many countries) and usability (see suggestion for replacement by a new table in the comments in ANNEX II).

We would also like the draft ITS to include clarification as to when its scope applies. So, only for intra-EU transactions or also transactions with non-EU countries?

2. WHAT ARE THE RESPONDENTS' VIEWS ON THE CONTENT OF TEMPLATE 1? PLEASE PROVIDE ANY SPECIFIC COMMENT YOU MAY HAVE ON THE DATA FIELDS IN THE DEDICATED COLUMNS OF THE DATA GLOSSARY?

Please see the comments in ANNEX II.

In addition, in the course of the emerging sustainability debate, it could be considered whether a query of such sustainability agreements anchored in the loan agreements could be inserted into the templates. It should be indicated in each case, whether a KYC review (result, if applicable) has taken place and whether ESG criteria are complied with.

3. WHAT ARE THE RESPONDENTS' VIEWS ON THE CONTENT OF TEMPLATE 3? PLEASE PROVIDE ANY SPECIFIC COMMENT YOU MAY HAVE ON THE DATA FIELDS IN THE DEDICATED COLUMNS OF THE DATA GLOSSARY?

Please see the comments in ANNEX II.

4. WHAT ARE THE RESPONDENTS' VIEWS ON THE CONTENT OF TEMPLATE 4? PLEASE PROVIDE ANY SPECIFIC COMMENT YOU MAY HAVE ON THE DATA FIELDS IN THE DEDICATED COLUMNS OF THE DATA GLOSSARY?

Please see the comments in ANNEX II.

5. WHAT ARE THE RESPONDENTS' VIEWS ON THE CONTENT OF TEMPLATE 5? PLEASE PROVIDE ANY SPECIFIC COMMENT YOU MAY HAVE ON THE DATA FIELDS IN THE DEDICATED COLUMNS OF THE DATA GLOSSARY?

Please see the comments in ANNEX II.

We highly recommend replacing template 5 in full – especially if sellers want to avoid significant haircuts to prices. A detailed collection history is key to proper NPL valuation and – at least for consumer loans – standard in many countries. We included a detailed suggestion for a new template 5.

A detailed collection history is definitely essential for NPL valuation, but we would recommend removing the repayment schedule for the next 36 months after cut-off. These forecasted cash flows will and should be calculated by the potential buyer without necessitating the seller to do so.

We additionally recommend providing a detailed collection history on the basis of an xml-table instead of using the excel template for better structure and readability.

6. DO THE RESPONDENTS AGREE ON THE STRUCTURE OF TEMPLATE 2 TO REPRESENT THE RELATIONSHIP ACROSS THE TEMPLATES? IF NOT, DO YOU HAVE ANY OTHER SUGGESTION OF STRUCTURE?

The structure fits in general. Exception may be for extremely complex situations, which should not be relevant for the definition of a common standard.

In our opinion, the categories "Amount of collateral", "Amount of currency" and "Insolvency proceedings pending?" should be added. This should provide further essential information, so that one can find out the most important information about the commitment at a glance.

7. DO THE RESPONDENTS AGREE ON THE STRUCTURE AND THE CONTENT OF THE DATA GLOSSARY? PLEASE PROVIDE ANY SPECIFIC COMMENT YOU MAY HAVE ON THE DATA FIELDS IN THE DEDICATED COLUMNS OF THE DATA GLOSSARY?

Please see the comments in ANNEX II.

8. WHAT ARE THE RESPONDENTS' VIEWS ON THE CONTENT OF INSTRUCTIONS?

The instruction is already formulated in great detail. It includes many essential criteria, especially related to "Corporates" & "Secured Loans". Thus, we are "only" proposing extensions/adjustments in order to better address criteria with regard to consumer NPL.

The part 2 instructions on template 1 are misleading or rather unclear. It is stated that template 1 provides the information for the identification of the counterparty, which is obviously correct, but thereby drawing attention to the different roles the counterparty can assume. While we are not clear on the definition of the roles as it is not clarified in the instructions, the data field on the role of the counterparty is furthermore not part of template 1, but of template 2.

9. DO THE RESPONDENTS AGREE ON THE USE OF THE 'NO DATA OPTIONS' AS SET OUT IN THE INSTRUCTIONS?

We generally agree on the usage of "no data options", but would suggest changing these into the following three options:

ND1: data not available by the credit institution

ND2: data only available from DD-MM-YYYY

ND3: data field not applicable

We do see that there is a need for great transparency, but in this case the credit institution has to unnecessarily disclose internal information on which data is collected in which system, while it does not have any additional benefit for the potential purchaser.

The options ND 1 to ND 3, however, shall be justified in a plausible way so that it is avoided that the NPL seller side applies the "no data option" arbitrarily and excessively and de facto undermines the transparency initiative of the EBA.

10. WHAT ARE RESPONDENTS' VIEWS ON WHETHER THE PROPOSED SET OF TEMPLATES, DATA GLOSSARY AND INSTRUCTIONS ARE ENOUGH TO ACHIEVE THE DATA STANDARDISATION IN THE NPL TRANSACTIONS ON SECONDARY MARKETS, OR THERE MAY BE A NEED FOR SOME FURTHER TECHNICAL SPECIFICATIONS OR TOOLS

TO SUPPORT DIGITAL PROCESSING OR EFFICIENT PROCESSING OR USE OF TECHNOLOGY (E.G., BY MEANS OF THE EBA DATA POINT MODEL OR XBRL TAXONOMY)?

In general, we assume that the proposed documents will lead to an improved environment for European NPL transactions. However, it is essential for the valuation of consumer loans to receive "historical monthly collections at the individual payment level". Please see suggested changes for template 5 in ANNEX II in comment 5,08.

We also would like to see a short overview of European insolvency proceedings (in particular jurisdiction and costs) and an overview of confidentiality requirements in EU countries. This could be presented in the form of an additional information letter, for example. Furthermore, we suggest that digital file management and provision should be given priority in the ITS, the overall goal should be digital file management, also from a sustainability perspective. This should be taken into account in the draft ITS.

11. WHAT ARE THE RESPONDENTS' VIEWS ON THE APPROACH TO THE PROPORTIONALITY, INCLUDING DIFFERENTIATING MANDATORY DATA FIELDS AROUND THE THRESHOLD? PLEASE PROVIDE ANY SPECIFIC COMMENT YOU MAY HAVE ON THE DATA FIELDS IN THE DEDICATED COLUMNS OF THE DATA GLOSSARY?

We have recommended to flag more fields as mandatory to increase simplicity, transparency and to decrease risk of haircuts within valuation due to lack of data. Provision of some of these fields also are common standard for NPL transactions as of today in several countries. As a result of such changes, the threshold could be increased to 50 000 euros.

12. DO THE RESPONDENTS AGREE WITH THE PROPOSED CALIBRATION OF 25 000 EUROS THRESHOLD IN LINE WITH ANACREDIT REGULATION? IF NOT, WHAT ALTERNATIVE THRESHOLD SHOULD BE INTRODUCED, AND WHY?

In case of suggested mandatory fields to be adjusted as suggested by us, we would recommend an increase to 50 000 euros.

13. WHAT ARE THE RESPONDENTS' VIEWS ON THE OPERATIONAL PROCEDURES, CONFIDENTIALITY AND DATA GOVERNANCE REQUIREMENTS SET OUT IN THE DRAFT ITS?

We agree on the operational procedures and the data governance requirements, but we do see an issue with the confidentiality / data protection regulations. First, the GDPR is more or less in conflict with the complexity and comprehensive structure of the templates. Second, the option of considering information as confidential on the basis of own internal rules or market practices as stated in 1 (b) provides some kind of a workaround in case information is not available or the credit institution is not willing to provide this kind of information to potential buyers.

Article 7 no. 3 should be sufficiently specified at this point or deleted completely. The terms used there are not a real reference standard.