

# Comments on

## EBA/CP/2022/05 Draft Implementing Technical Standards (NPL Transaction Data Templates)

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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.

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## General remarks

Specific comments on questions 2-5 and question 7 in section 5.3 are provided in the attached MS Excel document (Annex II to the draft ITS). In addition to comments on individual data fields, the focus there is on the historical data required in Template 5 on the collection procedure and repayments, including repayment plans.

The new NPL templates contain a total of 157 data fields, which is significantly less than in all previous versions. Nevertheless, 76 data fields (of which 45 are mandatory) require information which has no equivalent in data already collected to meet other reporting obligations (ANACREDIT, FINREP, ESMA RTS 2020/1124, CRR, IAS/IFRS). It may therefore be assumed that institutions will initially have to collect substantially more data compared to the status quo.

For smaller banks (users of national GAAP) the situation will be further exacerbated by the fact that eleven data fields refer to IAS/IFRS figures for which no comparable data may be available. The requirements may therefore once again be "overfulfilled" (cf. question 1).

Credit institutions will have to provide any prospective buyer with the information required in the templates (Article 4 of the ITS). We would suggest including an opt-out provision. Where information is already available to, or not requested by, prospective buyers, credit institutions should be allowed to choose not to provide the information using the templates. Such an opt-out could be exercised, for example, if a data room exists that contains the complete documentation for legal due diligence purposes or financial reports for financial due diligence. In cases like that institutions should be able to opt out of providing mandatory data using the template because the data have already been provided elsewhere. Where investors already have the information from other sources, they should have the option of waiving receipt of the templates or of requesting only the specification of the non-performing loan.

### Options 13 a/b, page 41

The EBA (cf. Draft cost-benefit analysis/impact assessment, options 13 a/b, page 41) has decided not to take on board the recommendation by many 2021 discussion paper respondents to introduce a portfolio-based threshold for NPL sales (in terms of volume or number). It argues that larger exposures might otherwise be included in a portfolio consisting only of exposures below the (currently proposed) threshold of €25,000. Smaller banks, especially, often sell only individual loans (since, from their perspective, they only hold one "big" problem loan). It may be assumed that smaller banks will in future refrain from such sales to avoid collecting and reporting the associated data. We would therefore recommend setting a unit-based threshold (portfolios with no more than ten loans, for example, earmarked for sale). This would meet the needs of smaller banks and, given the low number of loans involved, avoid circumvention of reporting requirements.

According to our interpretation, a lack of thresholds would also mean that the sale of individual loans would fall within the scope of the ITS. For around 30 years, sales of this kind have been subject in the EU to accepted minimum standards (such as those of the Loan Market Association – LMA), which can also be used flexibly in the event of strong and rapid movements on secondary markets. We therefore recommend clarifying that the sale of individual loans will be excluded from the scope of the ITS.

It is also not clear whether the revolving sale of receivables from collection business should fall within the scope of the ITS. We would like to point out in this context that such sales are common in the market from a minimum size of 15 euros per receivable (classic account overdrafts). In our opinion, it would be

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unreasonable if the seller of such receivables had to complete 91 mandatory data fields on each receivable every week.

### **Recital 9 and Article 8(1) of the draft ITS**

Recital 9 (on page 18 of the consultation paper) and Article 8(1) of the draft ITS would interfere in institutions' procedures for collecting data. It is envisaged that the validation of data for the templates should be carried out by functions independent of those responsible for the sale of exposures.

In our opinion, these requirements go too far. First, we believe that the quality of the data can be sufficiently ensured by setting up a "four eyes" principle in the workout unit in which non-performing loans are managed and sales are organised. The workout department is maintained specifically for servicing restructuring and workout cases and is independent of the marketing and other credit units with a view, in particular, to ensuring workout expertise. Second, the proposed requirements are not in line with market practices (if exposures are to be sold, a project team is normally formed within the bank to rigorously monitor and record the sales process). Nor do they adequately reflect the principle of proportionality: smaller banks, which are supposed to gain easier access to the market as a result of the templates (cf. paragraph 4 on page 6 of "Background and rationale"), do not have the resources to operate separate functions.

We therefore believe that it would be neither efficient nor appropriate to establish an independent unit to review data collections on NPLs. In any event, the decision to sell an exposure will already have been approved by management. We see no added value in requiring an additional management decision on the data compiled on this exposure.

Furthermore, the templates should contain a disclaimer stating that the credit institution assumes no liability for the information being incomplete or insufficient for an investment decision by prospective buyers. The market for distressed assets is dominated on the buyer side by investment banks with specialised units trading and investing in distressed assets and by specialised distressed funds. The level of professional and analytical expertise on the buying side is very high. Investing in distressed assets is a high-risk business. We doubt that it would make sense to broaden the investor basis by providing spreadsheets on which to base the necessary analysis. Such data will not normally be sufficient to make an investment decision. It is the buyer who must carry out the analysis and bear the risk, as laid down for example in the LMA standards for distressed asset sales. If that risk partially shifts to the seller, the market will not expand but become significantly smaller. Providing data like the valuation of securities or balance sheet information will partially shift the analysis to the seller side. Information that includes a valuation or analysis should therefore not be part of NPL transaction data templates, in our opinion. If certain information is provided in a data room, it should be possible to exclude this information from the templates. If, for example, complete legal documentation is provided for legal due diligence purposes by potential investors, a spreadsheet summary of the legal structure would be superfluous. The market normally focuses on certain major investment opportunities. As a result, certain titles are liquid because investors already have deep insight into the borrower and its business. In these liquid situations, requiring an extensive process for providing data to potential investors will not improve sales opportunities. On the contrary, it would make it impossible to quickly realise existing sales opportunities. To preserve these opportunities, it would be very helpful if sales were possible without providing NPL transaction data templates or by providing a much shorter version which just identified the sold title.

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### **Background, paragraph 5 on page 6**

Paragraph 5 of the background section of the consultation paper mentions NPL data hubs although there is currently no mandate to establish such hubs.

### **Background, paragraph 6 on page 6**

Although the NPL data templates are explicitly not intended to give rise to any supervisory reporting requirements (cf. Background, paragraph 6 on page 6) and (national) supervisory authorities are not to be (and have not been) assigned any role with regard to the use and enforcement of the templates (cf. Background, paragraph 42 on page 14), the EBA expects competent (national) authorities to check the availability of the data and the use of the templates as part of their supervisory (on-site) monitoring activities (cf. paragraph 42). We would point out that actions lacking a legal basis run counter to European legal principles.

The templates are to be used for transactions involving loans originated on or after 1 July 2018 that became non-performing after 28 December 2021. It is not clear precisely what is meant by "originated". Is it based on the same definition as that in Article 469a of Regulation 2019/630? We would appreciate clarification.

## **Questions**

### **1. Do the respondents agree that these draft ITS fits for the purpose of the underlying directive?**

We think the draft ITS do not comply with the directive. With respect to Article 16(4) of the directive, for example, the draft ITS fail to adequately consider either existing market practices in data sharing between buyers and sellers or the importance of minimising processing costs for credit institutions and credit purchasers.

### **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 (Annex II to the draft ITS) added for your feedback.**

When selling loans that became non-performing a long time ago, the information from an outdated balance sheet is not meaningful. In such cases, investors base their calculations on the expected values and time frames published in the insolvency administrator's report. The information in the mandatory data fields Total Assets 1.25, Total Liabilities 1.26, Total Debt 1.27 and, above all, Annual Turnover 1.28 should therefore not be based on balance sheet values in cases such as these.

### **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 (Annex II to the draft ITS) added for your feedback.**

### **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 (Annex II to the draft ITS) added for your feedback.**

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**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 (Annex II to the draft ITS) added for your feedback.?**

**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?**

**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 (Annex II to the draft ITS) added for your feedback.**

**8. What are the respondents' views on the content of instructions?**

**9. Do the respondents agree on the use of the 'No data options' as set out in the instructions?**

**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)?**

**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 (Annex II to the draft ITS) added for your feedback.**

**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?**

With regard to proportionality (cf. question 12, implemented in Article 5(3)), the EBA has decided not to take on board the vast majority of responses to its May 2021 discussion paper and proposes introducing a threshold of only €25,000. This amount reflects the reporting threshold for AnaCredit. Below this threshold, 91 mandatory items of information will still have to be provided. This is likely to prove difficult for banks wishing to sell NPLs as the reporting systems of banks below the AnaCredit threshold only collect a limited amount of additional data.

The situation is further complicated by the fact that exposures of this size mainly consist of unsecured loans, which are most likely to be acquired by collection services in the event of a sale.

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Pricing in this market segment is usually based on just a few items of information (principal claim, ancillary claim, age of exposure, time elapsed since termination, whether conditions for enforceability are met). The EBA's proposed requirements go beyond market practices.

We would recommend setting three thresholds:

- First threshold at €25,000 with no mandatory data collection below this amount.
- Second threshold at €50/100,000, below which reduced data requirements within the meaning of the draft ITS would apply.  
N.B.: The limits for retail transactions at many local banks are set at €50,000 or €100,000, so the reporting requirements could be aligned with the business segments of these banks, which should also be seen in the context of the separation of functions (see above, page 3, on recital 9 and Article 8(1) of the draft ITS).
- Third threshold for exposures above €50/100,000: all data requirements within the meaning of the draft ITS would apply.

In addition, it is not clear whether the threshold refers to the book value of the claim (after write-off or risk provisioning) or to the nominal value. If the book value is to be used as a basis, there would be no relief for some banks since the amount of risk provisioning or write-off can be recognised above the threshold. This is of no interest for the relationship between seller and buyer.

**13. What are the respondents' views on the operational procedures, confidentiality and data governance requirements set out in the draft ITS?**