

14 March 2019

Proposed Directive of the European Parliament and of the Council on credit servicers, credit purchasers and the recovery of collateral (Proposed Directive)

The Alternative Credit Council (ACC)¹ is a global body that represents asset management firms in the private credit and direct lending space. It currently represents over 140 members that manage over \$450bn of private credit assets. The ACC is an affiliate of the Alternative Investment Management Association (AIMA)² and is governed by its own board which ultimately reports to the AIMA Council.

The ACC has been an active stakeholder throughout the consideration of the Proposed Directive since its publication in March 2018. Our members are active participants in the secondary market. They provide a new source of capital that helps to finance SMEs, reduce the dependency of the economy on the banking sector and support economic growth. We welcomed the initiative of the EU Commission to address the high levels of non-performing loans ('NPLs') and promote a resilient financial system. We have also sought to engage constructively with the Council and European Parliament by providing technical input and information on how to achieve the objectives of the proposal in the most effective way. We are pleased to share our comments on the recently published European Parliament draft report.

Although the draft report contains some positive proposals, the report also contained substantial amendments to the Directive that we do not believe are consistent with the objectives of the proposal. We would therefore strongly recommend that the impact of such amendments are carefully assessed before rushing into the adoption of a new framework. We have summarised our initial comments on the draft report and the general direction of travel with the Directive below.

Restricting the development of the secondary market

The amendment proposed under Article 15(2)b would give discretion to Member States to introduce additional requirements on credit purchasers. This proposed amendment will facilitate the introduction of additional barriers within Member States that will prevent the transfer of loans (both performing and non-performing) to non-bank financial institutions. This outcome would not be consistent with the original objective of the proposal to encourage the development of secondary markets for NPLs and to promote this activity. We also note that this amendment effectively overrides the Commission's original proposal under Article 15(2) that "*a credit purchaser is not subject to any additional requirements for the*

¹ The ACC is a global body that represents asset management firms in the private credit and direct lending space. It currently represents over 140 members that manage over \$450bn of private credit assets. The ACC is an affiliate of AIMA and is governed by its own board which ultimately reports to the AIMA Council. ACC members provide an important source of funding to the economy, providing finance to mid-market corporates, SMEs, commercial and residential real estate developments, infrastructure as well the trade and receivables business. The ACC's core objectives are to provide direction on policy and regulatory matters, support wider advocacy and educational efforts, and generate industry research with the view to strengthening the sector's sustainability and wider economic and financial benefits.

² The AIMA is the global representative of the alternative investment industry, with more than 1,900 corporate members in over 60 countries. AIMA works closely with its members to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes, and sound practice guides. Providing an extensive global network for its members, AIMA's primary membership is drawn from the alternative investment industry whose managers pursue a wide range of sophisticated asset management strategies. AIMA's manager members collectively manage more than \$2 trillion in assets.

purchase of credit agreements other than as provided for by the national measures transposing this Directive”.

This represents a substantial change to the Proposed Directive at a late stage of the legislative cycle. The amendments proposed in the EU Parliament draft report will undermine a critical objective of the Proposed Directive and encourage further fragmentation in the European market. We therefore urge policymakers to reconsider their approach and reintroduce the original Article 15(2).

Definition of Credit Servicer

The Parliament’s draft report and Council’s recent discussions both incorporate an exemption for AIFMs and UCITS Mancos on the basis that both are already subject to more stringent regulation under the AIFMD and UCITS Directive. We would propose a similar exemption for MiFID investment firms who are also subject to an existing regulatory framework under MiFID legislation. MiFID entities often act as advisors to credit purchasers and requiring them to obtain an additional authorisation is unnecessary. We would therefore call on policymakers to include an exemption from the definition of credit servicer within Article 2(4)(a) for the reasons given above and also to ensure a level playing field between different types of European-licensed firm.

Types of loans captured by the Proposed Directive

We support the amendments proposed by the Parliament which would narrow the scope of the Proposed Directive so that it only applies to non-performing loans. Even with this reduced scope there is still an implicit focus on loans to consumers and SMEs that does not fully recognise the specificities of the wholesale loan market. This market acts as an important funding mechanism for mid-sized companies and infrastructure projects in Europe. We would therefore recommend that wholesale loans are also exempted from the Proposed Directive.

Deletion of the requirement to have a representative of credit purchasers not established in the Union

We strongly support the deletion of the requirement for credit purchasers not established in the Union to designate a representative established in the Union. Non-EU-based credit purchasers of loans to EU borrowers remain subject to applicable borrower protection laws in the same way as EU-based credit purchasers. Requiring third country purchasers to appoint an entity responsible for regulatory compliance appears to be discriminatory. This requirement will have a detrimental impact on the secondary market by making the purchase of EU NPLs less attractive for non-EU entities. We support the proposal to remove this requirement on non-EU credit purchasers in the EU Parliament draft report.

Reporting and record keeping requirements

We support amendments aiming at improving the materiality of the amount of information or documentation to be kept and maintained (amendments to Article 9) or reported to the competent authorities (amendments to Article 13). Competent authorities already receive substantial information on the activities of credit institutions and asset managers from disclosure requirements within the existing regulatory framework. The Proposed Directive’s initial reporting requirements would lead to substantial operational costs on creditors for little discernible benefits. The more focussed reporting requirements proposed by the EU Parliament draft report will ensure that supervisors receive more relevant information.

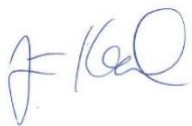
Finalisation of the proposals

While we recognise the work that has been undertaken by The EU Commission, Council and EU Parliament to initiate and develop these proposals, we are concerned at the pace of change that is currently being pursued. Substantial modifications to the Directive are being introduced across several key areas with little time provided to policymakers or affected businesses to assess the impact of the changes. The removal of the AECE mechanism in its entirety from the Directive is indicative that the original purpose of the Directive has changed substantially during the legislative review process and that further reflection on the text is necessary.

In addition to the issues highlighted above, there are several areas where the proposals put forward in the draft EU Parliament report are inconsistent or unclear. Furthermore, it is also unclear whether the cumulative impact of these changes on the overarching goal of the Proposed Directive – to support the development of a secondary NPL market – has been adequately considered. We do not believe that any desire to finalise these proposals during the current legislative programme should supersede the need to prepare an effective and workable framework. We would therefore urge policymakers to reconsider their approach to this file and take additional time to reflect. In its current form the proposal will not meet its objectives.

We hope that you will find our comments useful and we would be happy to discuss them further with you and/or your colleagues should that be desirable.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "J. Król", is positioned below the "Yours sincerely," text.

Jiří Król
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Global Head of Government Affairs
ACC