

Response to European Commission Consultation

Development of secondary markets for nonperforming loans and distressed assets and protection of secured creditors from borrowers' default

SECTION 1: SECONDARY MARKET FOR LOANS

EU-COM Q.1

Would you consider the current size, liquidity and structure of secondary markets for NPL in the EU an obstacle to the management and resolution of NPLs in the EU? If yes, would you consider such obstacle to be significant?

FENCA

In general, secondary markets for NPLs in the EU are currently working satisfactorily in most member states regarding their respective size, liquidity and structure, with banks and other financial institutions transferring NPLs to well-funded acquirers of secondary debt. In a number of member states of the EU, though, particularly in some Southern and Eastern jurisdictions, it can be observed that the secondary markets for NPLs have not yet matured. The tools for resolving this issue are, however, in place and these markets will develop accordingly, as long as they are not overloaded. In general, the capacity is available in these markets, though there is currently a reticence on the banks' side to sell their NPLs. As a result, in many cases adequate data on the NPL portfolios is not available, since due to the lack of relevant experience banks are often not in the position to fully anticipate the quantity and quality of data that acquirers of secondary debt, including debt collection agencies and debt purchase companies, would normally expect. As a result, a pricing gap is created that is holding back the market.

EU-COM Q.2

What are the key considerations for banks in deciding whether loan sales should be a significant part of their strategy to manage its NPLs?

In answering please specify:

- *bank internal factors (i.e. any factors inside the bank including the type and characteristics of the NPL portfolio, management capacity etc.)*
- *external factors (i.e. any factors outside of the bank that are important considerations in this context).*

FENCA

It is difficult to answer on behalf of the banks, however the main drivers are likely to include capital adequacy and capital management. There also often appears to be a balancing act between compliance on the one hand and revenue optimisation on the other. Internally, the priority for banks seems to be to achieve the best possible profit from a debt sale within their accounting standards, while remaining within national and EU regulations. Externally, reputational risk is a factor when working with a new partner, and the preparation of adequate due diligence data on a portfolio can create a gap in perceived risk and therefore price.

EU-COM Q.3

What would be the best way(s) of attracting a wider investor base to secondary loan markets, especially for non-performing loans?

FENCA

There already exist a considerable number of investors and loan servicers who would be willing and capable of clearing secondary loan markets across the EU. Investment funds and large European debt purchasers are particularly well placed to assist, along with established third party servicers in place in all jurisdictions. In order to make the market for non-performing loans more attractive for investors, a number of general conditions could be improved.

First, in all markets mechanisms should be in place that provide a minimum degree of protection of debt purchasers' and other investors' investments, so that the overall risk would be lowered.

Second, there is an appetite on the side of investors to become active in more than one market. Consequently, lowering the existing barriers between secondary loan markets within the EU to cross-border investment (e.g. with regard to authorisation) would attract a wider investor base.

Third, access to adequate, detailed and standardised information on the debtor and – where necessary – on the quality of the assets would attract investors, since availability of this information would help assess financial risks much more easily and reliably.

Fourth, a certain degree of standardisation across the information available would increase further the appetite of debt purchasers and other investors for cross-border investment.

Fifth, there should be no over-regulation of the markets, but rather a continuation of the current light-touch approach where best practices in member states which have an established and mature NPL market (such as Germany and the UK) could serve as models for new and still-to-be-developed markets (such as South and Eastern member states).

Finally, some degree of convergence of insolvency frameworks, enforcement laws and tax regimes (sales taxes such as VAT, treatment of debt sales and transaction taxes) across the EU 28 jurisdiction could prove helpful to the secondary market.

EU-COM Q.4

In order to widen the investor base, please specify...

Q.4.1 *...which incentive(s) should be given?***FENCA**

A stable legal framework for insolvency and enforcement across the whole EU market would be useful and desirable. EU-backed guarantees or low-interest funding could help provide additional incentives on marginal deals, particularly in Greece and Italy. Differing national tax regimes and rates exist across member states, so a more unified tax regime could act as an incentive, as stated above in our response to question 3.

Q.4.1 *... whether certain obstacles to widening the investor base should be removed?***FENCA**

The main obstacle is uncertainty, particularly as to accurate data, pricing and economic outlook. Any guidance or funding to alleviate these risks would be welcome. Any perceived or actual barriers to overseas investment should be minimised, in order to maintain an "open for business" approach with investors from beyond the EU.

EU-COM Q.5

What are the specific advantages to the development of secondary markets when the acquiring investor is a bank, an investment fund or another type of entity? In particular, would you see specific advantages for

- *helping banks overcome legacy assets;*
- *creating investment opportunities for specialised investors?*

FENCA

The development of secondary markets has advantages for investors and loan servicers, including debt purchase companies. Because of their specialisation and specific expertise of handling large portfolios of debt, these investors and service providers can handle secondary loans, and in particular NPLs, with much greater efficiency. Typically, banks can obtain more value through the sale of assets of this nature than by retaining them on their balance sheets. Debt buyers, as well as funds and asset managers, will collect the relevant assets better and value them more accurately, since – apart from their specific expertise – they are also in the position to spend more time and resources on these activities. From the debtor’s point of view, it is of equal importance that, given that debt collection is at the heart of debt purchasers’ business, the analytics, systems and training available to them assures that there is a much greater focus on helping consumers who have got into arrears with their payments to rehabilitate their finances.

EU-COM Q.6

What are the main concerns linked to each of these investor types?

FENCA

Lack of experience of a particular asset class, geography or creditor. The servicing capability for different asset types, eg real estate, car finance etc. The risk of inconsistent or inadequate customer treatment. Failure to transfer sufficient data to the secondary market.

EU-COM Q.7

What are potential benefits and risks from a public policy point of view when considering the appropriate legal framework for secondary markets for loans, and especially NPLs?

Please rank the following dimensions (in order of importance):

- *debtor protection,*
- *privacy,*

- *data secrecy,*
- *promoting increased market size and depth and equal treatment of investors*

FENCA

The benefits of an appropriate and balanced legal framework for secondary markets for loans from a public policy point of view would certainly include a more liquid banking and lending market with lower lending charges to all customers and businesses. Furthermore, this would result in improved resilience within the entire banking sector, as well as in a thriving private sector investor base working closely with banks and collections platforms in each member state. This would enable a more accurate risk assessment which in turn could reduce the perceived volatility of the investments and therefore help to close any price gap. In terms of risks, the protection of the debtor is the top priority in any appropriate legal framework for secondary markets for loans. This certainly extends to the issue of privacy and data secrecy. A functioning framework has to provide enough protection of debtors, while at the same time allowing loan service providers such as debt purchase and debt collection companies and investors to retrieve and process the necessary amount of data. Otherwise the effect of any legal framework will be detrimental to increasing the market size for secondary loans, and in fact may cause investors and loan servicers to shy away from investing into these markets. This in turn would have a negative effect on banks and debtors alike. The differing collection practices across member states do not provide a level playing field. In some States customer focus is not mature, and in others litigation can take up to 48 months. A more consistent insolvency framework could assist in these areas. Promoting increased market size and equal treatment of investors is crucial if the remaining NPL stock is to be cleared.

EU-COM Q.8

How can one best strike the balance between such dimensions?

FENCA

FENCA would recommend a continued light touch approach to regulation where possible for the investors and special loan servicers in the sector, complemented by a set of recommendations on best practice from functioning, well-developed secondary loan markets. Regulations such as the GDPR also governs business practices here, in order to provide consistent fair treatment of individuals in debt across the EU.

EU-COM Q.9

Do differences in these benefits and risks across Member States justify national differences in the framework for secondary markets for loans?

FENCA

Yes., we do feel national differences are justified. As has been mentioned above, secondary markets for non-performing loans are in different states of development and maturity across the EU. Some EU jurisdictions such as Germany and the UK already have sophisticated credit markets which function well, and are already highly regulated at a national level. There is consequently no need to provide overarching EU regulation or mechanisms in such member states, as this may restrict investment in already active markets. By contrast, in jurisdictions where secondary markets are in their infancy and where lower levels of investment in NPLs takes place, incentives and further national regulation may help to strengthen the secondary market, while at the same time taking into account a sufficient degree of debtor protection.

As stated in our response to questions 3 and 4 above, some degree of convergence of tax and insolvency and enforcement frameworks may be helpful.

EU-COM Q.10

Would you consider current rules applicable in Member States pertaining to secondary markets for NPL in the EU a significant obstacle to the further development of these markets?



FENCA

One of the most significant obstacles across all Member States is the often restricted access to and availability of sufficient information. At purchase stage, all investors and loan servicers, including from FENCA's point of view debt purchasers and debt collection agencies, need reliable and granular information on the asset quality of NPLs to be able to make a better informed decision on the viability of purchasing any portfolio.

Likewise, debt purchasers and debt collection agencies need to have much better access to data that is held by relevant stakeholders, in particular by credit bureaus. Access to this data is regulated differently in every jurisdiction in the EU.

Finally, it is important that this data has at least a certain degree of standardisation to allow like-for-like comparison and to encourage – and in some cases even enable – cross-border investment.

Investors who have limited information tend to use a much higher discount rate to reflect their uncertainty about the quality and thus the value of an NPL portfolio, accounting thus for additional perceived risk. As a result, this often produces a wide gap between bid and ask prices, and a consequent reduction in completed debt sales.

EU-COM Q.11

What is the most suitable manner to protect a debtor in the case of transfer of a loan and/or collateral by the creditor to a third party?

FENCA

The main benefit for the debtor is that in the overwhelming majority of cases a debt purchaser is able to offer a discounted settlement or payment by means of a much longer payment plan than the original creditor. This will protect the debtor from foreclosure, litigation or insolvency and help them to put their finances back in order.

In addition, it is important that all legal rights of the debtor are transferred when the debt is transferred, so that the debtor is not disadvantaged legally or financially. Incentives for repayment plans rather than immediate payment in full or litigation could further help in this regard.

To protect the debtor, it is also paramount to provide them with full and transparent information during the transfer process. The General Data Protection Regulation will assist in this regard, and our industry is already preparing for the new regulation by developing a Code of Conduct.

Finally, “signposting” to free impartial debt advice where appropriate is an additional way to provide protection to the debtor.

EU-COM Q.12

What are the (potential) advantages from specialisation across jurisdictions or asset classes?

FENCA

Specialised loan servicers, such as debt purchasers and debt collection agencies, bring with them experience of handling different asset classes and jurisdictions, which has advantages for both creditors and debtors. The latter receive advice and expertise regarding compliance with local legal and regulatory frameworks. The opportunity to share best practice across jurisdictions is also helpful in raising standards across the board. This includes knowledge of national and/or sector-specific codes of conduct and other means of self-regulation.

On the debtor’s side the specialisation of debt purchasers and debt collection agencies means that there is ample experience in taking the specific personal situation of debtors in a specific jurisdiction into account and to provide the best possible solution for them.

EU-COM Q.13

Are you aware of obstacles to operating in secondary markets across national jurisdictions? Would you consider these obstacles to be significant, and/or influence your geographical scope of business operations?

FENCA

The different degrees to which access to data is available in different jurisdictions and how this may lead to either a reluctance in operating in secondary markets across national jurisdictions and/or a wide gap between bid and ask prices has already been described under question 10 and remains one of the most significant obstacles.

Further obstacles that are significant and may influence debt purchasers on the geographical scope of their business operations include the lack of incentives, regulatory impediments in terms of direct regulation, insolvency rules, tax legislation or other national laws, lack of experience of the local business culture, as well as cross-border licensing restrictions.

EU-COM Q.14

Do you consider that an EU regulatory framework (Directive or Regulation) regulating certain aspects of the transfer of loans would be useful? What are in your view the key elements that should be addressed in such a framework?

FENCA

As mentioned above, in FENCA's view the efficient functioning of a secondary market for NPLs is not dependent on an EU-wide regulatory framework. Given the different degrees to which national markets have developed, an EU-wide framework may be too stringent or unnecessary in member states with mature, well-functioning markets, while not addressing the specific problems in states with less mature secondary markets.

There is a potential danger that regulation would exacerbate this problem, as there is a possibility it could create uncertainty and potentially stall the market during the passage of the legislation. We therefore feel that an EU regulatory framework is unnecessary, and could potentially be counterproductive to the secondary market. However, as stated previously, a certain degree of convergence in tax and insolvency frameworks as well as in enforcement could be beneficial.

EU-COM Q.15

Please provide any other comments that you find useful in relation to this section.

FENCA

FENCA would be happy to provide further information or meet with the appropriate representatives of DG FISMA and other relevant DGs of the Commission to elaborate on any of the areas in this consultation.

EU-COM Q.16

What are the advantages of having access to third-party loan servicers in terms of secondary loan market efficiency?

In particular, do you see specific advantages for:

- *helping banks overcome legacy assets;*
- *creating investment opportunities for specialised investors?*

FENCA

Third party loan servicers, in particular debt purchasers and debt collection agencies, can help banks to concentrate on underwriting and lending to new borrowers, while assisting with capital adequacy and reducing credit risk when legacy assets are sold.

Access to third party servicers can also enable financial investors to invest without needing to set up their own platform, thus widening the available pool of investors.

he debt purchasers and debt collection agencies can provide specialism, expertise and efficiency. They focus solely on the resolution of the underlying debts, and will typically perform better than in-house platforms in terms of collection performance and taking into account the individual situation of the debtor, allowing for discounted settlements and longer repayment plans.

This market provides attractive investment opportunities for specialised investors in terms of funding portfolios, or acquiring the platform business itself.

EU-COM Q.17

Are there any obstacles for banks and non-bank investors to have access to third-party loan servicers?

FENCA

Yes. FENCA represents 80 % of all debt purchasers and debt collection agencies in the EU, and considers the access of banks to its members to be generally good in most Member States.

In some jurisdictions, regulatory hurdles are high, with extensive regulatory due diligence being needed before a bank can work with a third-party servicer for the first time. This tends to lead to a concentration of outsourcing to a smaller number of third party suppliers. This can reduce access to third party servicers, particularly those smaller firms who specialise in niche activities or asset classes.

Banks may also impose differing requirements on third-party servicers as a result of their own interpretations of the regulatory and supervisory regimes under which they operate. This is in addition to conflicting regulation from other areas spilling over, for example mortgage loan regulation impacting an unsecured servicer.

EU-COM Q.18

What are the advantages and risks of outsourcing specific activities to third-party loan servicers compared to internal workout of loans? Please be concrete as to the activities that have been outsourced and why this has proved to be beneficial or not.

FENCA

The activities most often outsourced are:

Third party collections (which can also include customer service contracts on performing loans or services). Third party servicers can provide specialist services in these areas, as their core activity is the resolution of the underlying debts. As a result in greater investment in systems and training, they will typically perform better than in-house platforms in terms of collection performance and taking into account the individual situation of the debtor, allowing for discounted settlements and longer repayment plans. The risks can be a reduction of debtor data on transfer, inconsistent or inappropriate treatment of the debtor, and lack of control. However, in some states these aspects are dealt with by means of proper due diligence, self-regulation and performance monitoring, including third party oversight and creditor/investor auditing.

Debt sale. The benefits are freeing up capital and resources at the banks, a better customer journey for the debtor, and an increased return to the economy. Risks include inaccurate pricing, and those set out above for servicers, however data transfer is likely to be more extensive on debt sale as part of the due diligence process.

Tracing, data enhancement, outsourcing production of letters, SMS, email, IT systems, analytics, field agency work (visiting the debtor). The risks and benefits of these services tend to be similar to the services above. The benefits include lower costs, better customer journey and the outsourcing of non-core activities. The potential risks are mainly related to data loss or errors during transfer, but again these can be mitigated.

EU-COM Q.19

What are the main risks for debtor protection, in particular for the households in financial difficulties, which are linked (directly or indirectly) with the practices of the third-party loan servicers?

FENCA

Generally speaking, the main risks for debtor protection potentially include over-assertive collection techniques, and non-compliance with legal or regulatory frameworks.

However, these risks mainly exist with third-party loan servicers that have not signed up to a national code of conduct with regard to consumer protection, or do not have any other self-regulation in place.

Regarding debt purchase and debt collection, FENCA members will soon be able to subscribe to the FENCA Code of Conduct for the GDPR, which FENCA is currently developing and which will then be extended to all standard business processes for collections and debt purchase, as already defined and agreed by the FENCA members across all EU jurisdictions.

All of FENCA's members, i.e. the national associations of debt purchasers and debt collection agencies, also operate under significant levels of self-regulation, with codes of practices, frequent conferences and best practice events, and regular training/guidance/accreditation programmes on the national level. As a result, the overwhelming majority of creditors will only conduct business relationships with third party suppliers who are a member of one of FENCA's national associations.

EU-COM Q.20

In the markets and jurisdictions that are relevant to you, is third-party loan servicing mainly focused on management of performing loans, non-performing loans, or both? Please describe the advantages and drawbacks of both situations.



FENCA

Since FENCA is a European Federation, its members deal with both performing and non-performing loans. However, the majority of the EUR 300bn of debt being collected by FENCA members is non-performing. Both types of loans can have their benefits and downsides, with performing debts generally being dealt with by means of customer service activity by the servicer, often in the name of the original creditor, whereas non-performing loans will be outsourced to a debt collection agency or sold to a debt buyer. Many of the advantages and risks have been stated above, however pricing and compliance with all relevant regulations are the potential challenges and drawbacks to the detriment of the creditor, the bank, the servicer and the debtor.

EU-COM Q.21

Do, in your experience, third-party loan servicers concentrate on a specific asset class or does their asset mix tend to be more diverse? Please describe the advantages and drawbacks of both.

FENCA

Both debt purchasers and debt collection agencies deal with a variety of asset classes, although there are specialised lawyers, tracing agents and data enhancement firms who specialise in their own areas and support the work of debt purchasers and debt collection agencies. Larger platforms and debt buyers are likely to have departments for a number of debt types, e.g. for unsecured or secured debt, for real estate, or for Government work etc. Many also have departments for dealing with customers encountering vulnerability, health issues and hardship.

Specialised servicers will generally know their respective niche and expertise very well, and can excel in customer outcomes and performance.

The larger players can benefit from good data analytics and customer matching (customers they already know on other accounts) as well as lower costs of funding for debt purchases and sound compliance and corporate risk governance.

EU-COM Q.22

What specific services are offered by third-party loan servicers, in the markets and jurisdictions that are relevant to you? (The range of activities could include debt collection, monitoring loan performance, payment and invoicing services, gathering and developing information, one-stop-shop, full life-of-loan services that include sourcing and structuring of debt and equity, underwriting and due diligence services, etc.)

Which services do you consider to be most instrumental in terms of market efficiency? Please be as concrete as possible.

FENCA

The activities most often offered by third party loan servicers, particularly debt collection agencies and debt purchasers, are:

Third party collections (or customer service contracts). This is the main service offered, often combined with a debt sale, and will consist of contact with the debtor by means of telephone, letter and email/SMS in order to negotiate an affordable solution.

Debt sale, either direct to a debt purchaser or to an investor. This is becoming the predominant method of transfer in the secondary market, with subsequent collection activity sometimes being outsourced to a debt collection agency.

Litigation is sometimes outsourced to specialist or general lawyers. In some jurisdictions, legal action can only be undertaken by firms of lawyers.

Tracing, or the location of the debtor, remains a specialist activity in many jurisdictions. The tracing agent will typically use publically available and other data sources to find the right person, and may then either commence recovery activity or send the updated details back to the creditor, buyer or DCA.

Field agency work (visiting the customer). Some DCAs have their own field agents, others outsource this activity.

EU-COM Q.23

Do you consider that a EU regulatory framework (Directive or Regulation) regulating third-party loan servicers would be useful?

FENCA

No.

EU-COM Q.24

Please provide any other comments that you find useful in relation to this section.

FENCA

For similar reasons to those listed in our answer to question 14, in FENCA's view regulating third-party loan servicers through an EU-wide regulatory framework is not a suitable solution. Given the diversity of third-party servicers, our view is that a "one-size-fits-all" approach is neither possible nor desirable.

Regarding the debt purchase and debt collection sector, numerous different regimes of licensing and regulatory authorisation are in place, and there is already a high degree of self-regulation on both EU and national levels, from the planned pan-European Code of Conduct all the way to national codes of conduct and best practices guidance.

Any further regulation on an EU level would potentially stifle active and well-functioning markets, while creating uncertainty and delay for investors, potentially stalling the resolution of the NPL divestment across the EU.

FENCA is happy to provide further information and meet with the appropriate representatives of DG FISMA and other relevant parties of the Commission to elaborate on any of the areas in this consultation.

EU-COM Q.25

Are you aware of significant differences in business practices in different markets and jurisdictions, for example through voluntary codes of conducts, industry standards, etc.?

FENCA

No.

EU-COM Q.26

As a market participant, are you actively partaking in several national markets?

FENCA

Yes. FENCA is represented by our members across all 28 Member States. At present, there exist the obstacles to operating internationally as mentioned above, including tax, cross-border deals and national insolvency and enforcement frameworks. However, with increasing levels of investment already being attracted from within and beyond the EU, the obstacles of access to debtor data and price gap expectations between sellers and buyers are probably the greatest issues.

EU-COM Q.27

In the markets and jurisdictions that are relevant to you, are there unduly onerous legal restrictions in place:

Q.27.1

...on the sale of loan portfolios, including to non-bank entities? Please specify these restrictions and their impact:

FENCA

This differs by jurisdiction, and we would be happy to instigate contact with our national members to provide further information from the 20 respective markets and jurisdictions if requested.

Q.27.2

...on banks that want to outsource some or all loan servicing functions to third-parties, including to non-bank entities. Please specify those restrictions and their impact:

FENCA

This differs by jurisdiction, and we would be happy to instigate contact with our national members to provide further information from the 20 respective markets and jurisdictions if requested.

Q.27.3

...such undue restrictions could for example concern the areas of debtor protection, privacy, data secrecy, equal treatment of investors. If yes, could the removal of such undue requirements be considered? Please specify where such an approach could be contemplated and describe the advantages and drawbacks thereof.

FENCA

Yes, but again, this differs by jurisdiction, and we would be happy to instigate contact with our national members to provide further information from the 20 respective markets and jurisdictions if requested.

EU-COM Q.28

What specific aspects could be improved, in order to facilitate existing cross-border activities and/or entry into new markets? Going beyond mere facilitating, what would accelerate the resolution of NPLs?

FENCA

A continuation of the current light touch regulation is crucial. Further ECB guidance could encourage divesting of NPLS, and IFRS9 and Basel IV could both help in this regard. However, any potential cap on Loan to Value levels could lead to fewer loans being granted to individuals and this is not necessarily in the individual's interest, and could be counterproductive to financial markets.

Guarantees or low-cost funding from the EU would need to be made available to any investor, not just those operating in the EU, since many international funds could decide to pull out of European deals if there was a structural advantage for EU investors.

EU-COM Q.29

What specific aspects could be improved, in order to facilitate existing cross-border activities and/or entry into new markets? Going beyond mere facilitating, what would accelerate the resolution of NPLs?

- *the sale and transfer of loans?*
- *loan servicing by third parties?*

Are there other actions that could be taken at EU level that would yield significant benefits for market efficiency (for example EU guidance or recommendations, the creation of a central register of loan servicers, etc.)?



FENCA

As stated earlier, a “one size fits all” approach would be overly restrictive or duplicative in some jurisdictions, and inadequate in others. Tax and insolvency frameworks and data availability could however assist the market.

Any further EU-wide regulation would duplicate good national regulation and override appropriate local self-regulation and codes of conduct in some areas, while not providing a strong enough regime in others.

EU-COM Q.30

Please provide any other comments that you find useful on this section:

FENCA

Additional information to question 25

Regarding the debt purchase and debt collection sector there are no significant differences in business practices between markets and jurisdictions. That can be clearly demonstrated by the European Standard Business Processes which FENCA and its members defined for all jurisdictions within the EU, and which all members have agreed to adhere to.

Likewise, as has been mentioned above, FENCA is planning to develop a pan-European Code of Conduct for the entire debt purchase and debt collection industry. This process is supported by all FENCA members, and the European Standard Business Practices will form a solid foundation for this initiative.

In addition, on the national level FENCA members have a variety of provisions for self-regulation, national codes of conduct, association initiatives and state regulation. Generally, the existing frameworks help raising standards for investors, third-party loan service providers and debtors’ protection throughout the secondary market in each member state.

Relationships with the debt advice sector may still vary, but in a large number of cases and jurisdictions these have been built over a number of years. As a result, real collaboration is possible, in many cases benefiting both the debtor and the servicer.

SECTION 2: POTENTIAL MECHANISM TO BETTER PROTECT SECURED CREDITORS FROM BORROWER DEFAULT

EU-COM Q.31

Do similar forms of out-of-court enforcement allowing banks to enforce secured loans exist in your country?

FENCA

Yes, but this differs by jurisdiction, and we would be happy to instigate contact with our national members to provide further information.

Q.31.1

If yes, what are the benefits of these provisions for banks in terms of enforcement and value recovery from NPLs?

FENCA

This differs by jurisdiction, and we would be happy to instigate contact with our national members to provide further information.

Q.31.2

If yes, what are the main risks and challenges arising from these forms of out-of-court enforcement tool?



FENCA

This differs by jurisdiction, and we would be happy to instigate contact with our national members to provide further information.

EU-COM Q.32

Do you see benefits in ensuring that every Member State makes available an instrument along the lines of the 'accelerated loan security' facility?

FENCA

Yes, as long as the instrument is easily accessible and administered at a local level.

EU-COM Q.33

Do you see the accelerated loan security as a valuable instrument to avoid future accumulation of NPLs in banks' balance sheets?

FENCA

In principle, yes. However, we would need to consider the finer detail of any proposed mechanism, and would be happy to work with you to ensure any proposal would meet the needs of the collections, debt sale and credit management industry. As we represent around 100,000 employees across Europe and over 80% of the debt being collected, we trust FENCA is well placed to assist you in this regard.

EU-COM Q.34

Do you agree with the possible main features of an accelerated loan security as described above?

FENCA

Yes.

EU-COM Q.35

What are the (additional) features that an accelerated loan security should have in order to enhance its effectiveness in avoiding the encumbrance of bank balance sheets with further NPLs in terms of functioning of the mechanisms?

FENCA

The ability of each Member State to adapt the instrument to its own legal framework. Protection of, and equal rights available to, investors outside the EU.

EU-COM Q.36

Do you agree with the proposed restriction on the scope of a possible accelerated loan security instrument to loans to businesses and corporates, and on the exclusion of primary residence of borrower even in the case of these loans?

FENCA

Yes, the extension of the proposal to personal indebtedness may reduce consumer protection. Existing national consumer law provides adequate protection in some Member States, with the legal system providing a safety net for consumers, and it is unlikely that most consumers would understand the nature of the accelerated instrument.

EU-COM Q.37

In what ways could an accelerated loan security be rendered potentially advantageous to borrowers to ensure its willing take-up by debtors (e.g. possible discharge of debtors in case the value of the assets becomes less than the debt)?

FENCA

The possible discharge in case the sale renders less than the loan, would be attractive to the debtor. The refund of excess value on sale, if also granted, would effectively however provide

a “no lose” position for the debtor who after all will have defaulted in order to trigger the instrument. EU funding to close the gap may help to retain interest in the scheme by investors.

EU-COM Q.38

How should an accelerated loan security instrument be designed in order to be consistent with the preventive restructuring framework and the insolvency law of your country (e.g. stay on enforcement actions, cram-down on minority creditors, avoidance actions, ranking of creditors)? In your view, what would be the main obstacles to ensure such consistency?

FENCA

This differs often widely by jurisdiction, and FENCA would be happy to instigate contact with our national members to provide detailed information on various jurisdictions to DG FISMA if requested.

EU-COM Q.39

How should an accelerated loan security instrument be designed in order to be consistent with the public and private law rules and principles (including for instance property law, public and private law) of your country? In your view, what would be the main obstacles to ensure such consistency?

FENCA

This differs often widely by jurisdiction, and FENCA would be happy to instigate contact with our national members to provide detailed information on various jurisdictions to DG FISMA if requested.

EU-COM Q.40

How should an accelerated loan security instrument be designed in order to be consistent with the existing national collateral legal framework?



FENCA

This differs often widely by jurisdiction, and FENCA would be happy to instigate contact with our national members to provide detailed information on various jurisdictions to DG FISMA if requested.