

Greek NPLs law: implementation unfolds

On 16 December 2015, Greece introduced a legal framework for the outsourcing of the management and the sale of non-performing loans (NPLs) (please see our detailed newsletter on this matter¹). Almost 3 months later, on 10 March 2016, the Bank of Greece (BoG) issued a long-awaited decision (the ExCo Decision²) which sets the details of licensing and operational requirements for companies that manage and buy NPLs from Greek banks and other eligible sellers.

In a nutshell

The NPL Law³ had to some degree given forewarning that the level of regulation of NPL managers and NPL buyers by the BoG would be substantial; the ExCo Decision confirmed this approach.

In short, the licensing requirements for non-regulated NPL managers and buyers include submission to the BoG of paperwork similar to what is required for a banking or financial institution. The process involves the submission of a detailed 2-year business plan, as well as a fit and proper review of shareholders and managers, which the BoG performs on the basis of "international standards and best practices" (the draft ExCo decision initially published for consultation made specific cross-references to the standards and guidelines issued by EBA and the Committee of European Banking Supervisors that were removed from the final decision).

From an operational point of view, NPL managers and buyers need to publish financial statements at the same times as the Greek banks; they must submit to the BoG, among others, data on Non-Performing Exposures as per EBA's technical standards, reports on internal control, IT systems, risk management and compliance, and reports on customer interaction (information and treatment of complaints); they must also disclose to the BoG information on specific categories of debtors, and materials allowing the BoG to confirm compliance with the applicable Greek Code of Conduct on distressed borrowers.

In addition, NPL managers and buyers have in place procedures and manuals for various items, such as conflicts of interest, accounting and auditing systems, NPL management (including prioritisation, segmentation, design and development of restructuring solutions, assessment of restructuring sustainability, criteria which qualify debtors as socially sensitive and criteria for the viability of corporate debtors), debtor interaction and communication, outsourcing criteria, compliance with legislation on distressed debtors, consumer protection and AML. In the same context, they may be required to set up corporate committees and/or separate

¹ <http://zeya.com/articles/greek-npls-law-first-step-towards-secondary-market>

² Bank of Greece Executive Committee Decision No 82; link to the Greek version of the document: http://www.bankofgreece.gr/BogDocumentPEE/ΠΕΕ_82_8_3_2016.pdf

³ Greek law 4354/2015 passed on 16 December 2015 (the NPL Law)

operational units on internal control, risk management, compliance, treatment of distressed borrowers and implementation restructuring schemes.

Furthermore, the minimum content of servicing agreements has been extended to include description of certain parameters allowing the assignor (owner of receivables) to confirm compliance of the NPL manager with the ExCo Decision.

By way of general rule, NPL managers and buyers have been subjected to the following core banking regulations: BoG decision no 2577/2006 on Governance and Internal Control⁴, BoG Code of Conduct on distressed borrowers and relevant reporting regulations⁵ and BoG decision no 2501/2002 on information provided to retail customers⁶.

Supervision vs marketability: proportionality lost?

Some of the ExCo Decision requirements, such as the publication of financial statements under IFRS, are similar to what would be the market standard, irrespective of the introduction of legal obligations. Some others are justifiable, because they look at the particulars of the services offered by NPL managers/buyers; for example, if a manager or buyer refinances NPLs (and, in such respect, provides financing services on a professional basis, which is a regulated activity by the Basel framework), it is reasonable to expect of such entity to comply with capital requirements similar to those applicable to financing institutions (the ExCo Decision sets the minimum capital of NPL managers with refinancing operations by reference to the minimum capital of factoring companies, currently at €4.5 million).

Other requirements though lack an obvious legal or market justification. We point to two noteworthy topics, i.e. the operational and reporting requirements of SPV managers and buyers and the mandatory coupling of buyers with managers.

(a) Operational and reporting requirements of SPV buyers/managers

Depending on the type of entity that holds an NPL management licence (new special purpose vehicle or existing entity), reporting and internal systems obligations may be more or less cumbersome. Regulated EU institutions that can passport their services into Greece (always via a Greek branch) have very limited operational and reporting obligations compared to new –otherwise unlicensed– entities which are being set up in Greece either as a Greek company or a branch of a foreign one. Reporting is also lighter for existing financial institutions established in Greece, such as factoring and credit companies, which are allowed to extend the scope of their licence to include NPL management. Similarly, where the owner of the portfolio is a regulated entity with primary obligation to report on NPLs, the manager is released from the respective obligations. Therefore, the current regulations seem to treat entities that will have as exclusive scope the buying (and managing) NPLs

⁴The document is available in English on the BoG's website; please follow the link: http://www.bankofgreece.gr/BogDocumentEn/GA.BG_2577-9.03.2006_Framework_of_operational_principles_and_criteria_for_the_evaluation_of_the_organisation_and_Internal_C.pdf

⁵ The document is available in English on the BoG's website; please follow the link: http://www.bankofgreece.gr/BogDocumentEn/CICD_116_1_25.8.2014_EN.pdf also available are the relevant Executive Committee Decisions: http://www.bankofgreece.gr/BogDocumentPEE/EXECUTIVE%20COMMITTEE%2042_30_5_2014.PDF and <http://www.bankofgreece.gr/BogDocumentPEE/Amendment%20to%20EXECUTIVE%20COMMITTEE%20ACT%2042.pdf>

⁶ The document is available in English on the BoG's website; please follow the link:

http://www.bankofgreece.gr/BogDocumentEn/GA.BG_2501-31.10.2002_Credit_institutions_disclosure_requirements_to_retail_customeras_with_respect_to_terms_and_conditio.pdf

similarly (as regards reporting and other operational obligations) to regulated institutions that provide full financial services (such as banks and leasing / factoring companies). This imposes a disproportional burden and cost on SPV buyers, which will be reflected on the values investors are willing to pay to the Greek banks for the purchase of the banks' NPL portfolios; we note that compliance with general Greek law civil and criminal rules, such as AML and protection of consumers, will be (rightfully) mandatory for such entities; this, coupled with the fact that SPV buyers have a very limited scope (and, therefore, pose less of a contamination threat in case they fail), corroborates the argument that the BoG should only focus on their operations if/when they breach the rules and not on a precautionary basis – at least not to such a detailed extent.

(b) No stand-alone NPL buyers

The NPL Law and the ExCo Decision imply that acquisition of NPLs must be combined with assumption of their management and may not be pursued as a standalone operation. This legal basis of such requirement is obscure; we note that under the Greek securitisation law (Greek law 3156/2003), whose provisions have been cherry-picked and incorporated into the NPL Law, securitisation SPVs may be buyers only, whilst the servicing of the loan portfolios may be assigned to third-party eligible servicers; in fact, this has been the case for the bulk of securitisations of Greek banks' receivables over the past 10+ years. Finally, from a practical standpoint, this approach limits the universe of buyers, as it excludes investors without NPL management capacities from the Greek NPL market.

(c) BoG's discretion to 'adjust'

According to the ExCo Decision, the BoG may adjust its regulatory requirements based on proportionality and level of complexity of portfolios; however it is not clear whether this caveat aims to serve as a ground for the enhancement of supervision or to ease the regulatory constraints where the volumes managed are small or simpler to manage.

Almost there

The perimeter of NPLs which are eligible for sale remains to be determined, following the recent extension of the exemption of certain categories⁷ of loans from the NPL Law until 15 April 2016, a point reportedly being subject to ongoing discussions between the Greek government and its sovereign lenders. Similarly, enactment of legislation on the tax treatment of NPL managers is imminent and expected to clarify whether the prevailing tax treatment will be that of securitisation vehicles (which are subject to significant tax exemptions) or the framework applicable to credit institutions.

We continue to be of the view that the NPL framework legislator took a step towards the right direction; nevertheless, now is the time to stop and listen to the reactions of the various market players to the new law and the BoG decision and to consider looking back to legislation that has worked flawlessly since 2003 for the sale of banking receivables, i.e. the Greek securitisation law (Greek law 3156/2003): what better than to deal with a new and challenging asset class by applying long-tested legal technology?

⁷ Namely consumer loans, loans to SMEs and loans collateralised with Greek State guarantees or the debtors' primary residence.

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