

Global Banking & Financial Policy Review 2017/2018

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Greece - towards the creation of a secondary market for bank loan and credit receivables¹

By Athanasia Tsene, Partner, Bernitsas Law Firm

A national strategy was first adopted in 2015 (as required by the European Stability Mechanism Programme (the ESM Programme)) in order to address the problem of non-performing exposures (NPEs). Several legislative, regulatory and supervisory measures have been taken since 2015 aiming to ease the burden on debtors and releasing banks' resources that could be used for the financing of the real economy.

Based on the Overview of the Greek Financial System, published by the Bank of Greece in January 2017²:

(a) the prolonged recession and the banks' effort to reduce their NPEs and preserve their capital base has resulted in limited bank lending activity so that, although new NPE formation has been gradually declining since 2015, the NPE ratio rose marginally during the first half of 2016 (to 45.1%, from 44.2% at end-2015), mainly due to a decrease in performing exposures; and

(b) with respect to NPE management, a considerable percentage of loans is modified and remodified, resulting in a significant increase of long-term solutions as opposed to recoveries.

Based on the latest Report on Operational Targets for Non-Performing Exposures, published by the Bank of Greece on June 6 2017³:

(i) the stock of NPEs as at the end of March 2017 reached €105.1 billion or 45.2% of total exposures, corresponding to a decrease of 1.1% (compared to the end of December 2016) or 3.3% (compared to March 2016, when the stock of NPEs reached its peak), primarily due to extensive write-offs by the banks and only to a limited extent to collections, liquidations and sales of loans; and

(ii) the operational targets submitted by the banks to the Bank of Greece in September 2016 for their NPEs on the basis of their own macroeconomic assumptions and NPEs' strategy set a target for a 38% reduction of their NPEs (reaching €66.7 billion by the end of 2019), with the largest part of the reduction expected to take effect in 2018 and 2019, mainly driven by the curing of loans and by write-offs and, to a lesser extent, by liquidations, collections and sales of loans.

Persistence of the NPE ratio at this high level is a most significant challenge for the Greek banking system. Effective management of the

stock of NPEs is both a priority in the public interest and a requirement under the ESM Programme. The data published by the Bank of Greece suggest that such effective management requires further action on several fronts, intended to facilitate recoveries through collections, liquidations and sales of loans.

To this effect and also as part of the deliverables for the second review of the ESM Programme (which was recently completed), further legislative and regulatory steps have been taken in 2016 and in 2017, primarily intended to:

(1) enhance the banking supervision framework for NPEs (as discussed below);

(2) simplify the legal and regulatory framework on servicing and transfers of bank loan and credit receivables (first introduced by Law 4354/2015), including in respect of the licensing and ongoing supervision requirements applicable to servicing companies (as discussed below);

(3) address inefficiencies and uncertainties in the context of court, enforcement and insolvency and pre-insolvency proceedings, through further amendments of the Code of Civil Procedure and the Bankruptcy Code (including by Law 4446/2016 and Law 4472/2017); and

(4) introduce, by the very recently enacted Law 4469/2017, an out-of-court workouts framework available to debtors being individuals and legal entities that are capable of being declared bankrupt, have revenues from business activities and are tax resident in Greece, provided that certain criteria are met in respect of these debtors and also in respect of their financial indebtedness, tax indebtedness or other indebtedness to public law legal entities.

In connection with the enhancement of the banking supervision framework (item (1) above):

- In July 2016, following consultation with public entities, supervised institutions and consumer organisations, the Bank of Greece introduced a revised Code of Conduct on Loans in Arrears (the Code of Conduct) by Decision 195/1/29.07.2016 of the Credit and Insurance Committee of the Bank of Greece⁴, intended to standardise the policies and procedures to be applied by the banks for the purposes of identifying and implementing forbearance,

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Bernitsas Law has advised extensively on the recent recapitalization and restructuring of the Greek systemic banks and in the context of the bank recovery and resolution legal framework and the further consolidation of the banking sector, as well as new debt issuances by major domestic corporates.

We have actively participated in the consultation process for the recently enacted legal and regulatory framework on the creation of a secondary market for Non-Performing Loans. We have advised on the establishment of NPL management companies and acted as counsel to international and domestic market players in connection with transfers of NPL portfolios.

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resolution and closure solutions for loans in arrears by reference to specific categories of borrowers.

- The revised Code of Conduct: (i) is binding on banks as well as servicing companies and companies having acquired bank loan and credit receivables; (ii) provides that its procedures apply in respect of debtors being individuals, professionals and small businesses with an average turnover of less than €1 million during the last three years; (iii) distinguishes between cooperating and non-cooperating borrowers; (iv) introduces the notion of reasonable living expenses and requires specific policies for debtors belonging to socially vulnerable groups; and (v) requires the assessment of recovery solutions by reference to the net present value of settlement plans and (where a forbearance solution has been ruled out and a resolution and closure action is proposed instead) a recent estimate of the liquidation value.
- In August 2016, Executive Committee Act 102/30.8.2016 of the Bank of Greece introduced new modifications and improvements to the templates applicable to quarterly reporting by Greek banks (on a solo basis and on a consolidated basis) on their NPEs, in order for that reporting to include data intended to monitor operational targets and key performance indicators (KPIs) for actions taken by banks for dealing with their NPEs as well as their actions for the servicing of their loans in arrears in accordance with the Code of Conduct⁵.

In connection with the simplification of the recent legal and regulatory framework pertaining to servicing and transfers of bank loan and credit receivables (item (2) above):

- As expected, Law 4354 (passed in 2015 as part of the deliverables under the ESM Programme and amended in 2016 as part of the deliverables for the first review of the ESM Programme) was further amended in 2017 by Law 4472/2017 as part of the deliverables for the second review of the ESM Programme. The new amendment is intended to standardise, simplify and expedite the licensing and ongoing supervision requirements for servicing companies.
- Executive Committee Act 118/19.5.2017 of the Bank of Greece (which has replaced previous Executive Committee Act 82/8.3.2016 of the Bank of Greece) currently applies in respect of the licensing requirements and ongoing reporting and other obligations applicable to servicing companies, as well as the relevant ongoing reporting and other obligations applicable to banks in respect of their servicing arrangements with servicing companies and also in respect of sales of NPEs.
- Article 65 of Law 4472/2017 includes specific provisions on the protection of bank officers against personal or criminal liability in connection with restructurings and write-downs of loans concluded with a view to achieving recovery of at least part of those loans and in accordance with the applicable banking supervision framework and the internal procedures of the relevant bank.
- The measures summarised above are in the right direction and have already had a positive impact, taking into account that there are already seven licensed servicing companies operating in the Greek market (with further licences being expected to be granted in the next few months) and that the first sale process of an NPE portfolio owned by a systemic Greek bank (Eurobank) is ongoing, while further sale processes for NPE portfolios are expected to be announced shortly by other Greek banks.



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About the author

Athanasia Tsene has vast experience in the structuring, drafting, negotiating and implementation of international financial transactions. She has been advising Greek and international clients on the legal and regulatory aspects of the development of a secondary market of non-performing loans in the portfolios of Greek systemic banks. She also advises extensively on derivatives and collateral arrangements as well as on regulatory compliance. Tsene's clients include all the major banks and financial institutions with a local presence and she has acted in innovative and ground breaking deals which have paved the way for future transactions in the banking sector.

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1. By way of update of the Greek chapter of 2016-2017 Yearbook of the Global Banking and Financial Policy Review, this article is intended to summarize the latest developments in connection with servicing and transfers of NPEs.
 2. http://www.bankofgreece.gr/BogEkdoseis/OVERVIEW_OF_THE_GREEK_FINANCIAL_SYSTEM_Jan_2017_en.pdf
 3. http://www.bankofgreece.gr/BogEkdoseis/Report_Operational_Targets_for_NPEs_EN_clean_Final_June_2017.pdf
 4. http://www.bankofgreece.gr/Pages/en/Supervision/nonperform_exposures/CodeCond.aspx
 5. http://www.bankofgreece.gr/Pages/en/Supervision/nonperform_exposures/default.aspx