

Credit Servicing Directive: Technical Standards

The Implementing Regulation

Please see our March update¹ and September update² on the transposition of the EU Credit Servicing Directive ("Directive") in Ireland.

In a further development, on 26 September 2023, the European Commission ("Commission") adopted an Implementing Regulation³ containing related implementing technical standards ("ITS"); these specify the templates to be used by credit institutions for the provision of information referred to in Article 16(1) of the Directive.

The Commission also published accompanying annexes containing:

- (a) Annex I⁴, data templates for non-performing loans ("NPLs");
- (b) Annex II⁵, a data glossary; and
- (c) Annex III⁶, instructions for use of the information in the other two annexes.

The European Banking Authority ("EBA") published a final report⁷ on the draft ITS in December 2022. The published ITS follow the EBA report in all major respects.

The ITS will apply 20 days after publication in the Official Journal of the EU.

Objectives

The stated objective of the ITS is to provide a common standard for NPL transactions across the EU, enabling cross-country comparison and reducing information asymmetries between sellers and buyers. The templates will be used by credit institutions to provide detailed information on their credit exposures in the banking book to credit purchasers. Credit institutions must provide prospective buyers with the information specified before entering into the contract for sale or transfer.

Before providing the information, credit institutions and prospective buyers must enter into confidentiality agreements drafted in conformity with applicable Union law. Credit institutions must use secure channels including virtual data rooms or similar electronic means to provide the information.

¹ <https://maples.com/en/knowledge-centre/2023/3/transposition-of-the-credit-servicing-directive>

² <https://maples.com/en/knowledge-centre/2023/9/irish-credit-servicing-looking-to-the-future>

³ [https://ec.europa.eu/transparency/documents-register/api/files/C\(2023\)6306_0/090166e5020626b7?rendition=false](https://ec.europa.eu/transparency/documents-register/api/files/C(2023)6306_0/090166e5020626b7?rendition=false)

⁴ [https://ec.europa.eu/transparency/documents-register/api/files/C\(2023\)6306_1/090166e5020626e7?rendition=false](https://ec.europa.eu/transparency/documents-register/api/files/C(2023)6306_1/090166e5020626e7?rendition=false)

⁵ [https://ec.europa.eu/transparency/documents-register/api/files/C\(2023\)6306_2/090166e50206272b?rendition=false](https://ec.europa.eu/transparency/documents-register/api/files/C(2023)6306_2/090166e50206272b?rendition=false)

⁶ [https://ec.europa.eu/transparency/documents-register/api/files/C\(2023\)6306_3/090166e502062d22?rendition=false](https://ec.europa.eu/transparency/documents-register/api/files/C(2023)6306_3/090166e502062d22?rendition=false)

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[https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Draft Technical Standards/2022/EBA-ITS-2022-05 ITS on NPL transaction data templates/1045969/Final report on draft ITS on NPL transaction data templates.pdf](https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Draft%20Technical%20Standards/2022/EBA-ITS-2022-05%20ITS%20on%20NPL%20transaction%20data%20templates/1045969/Final%20report%20on%20draft%20ITS%20on%20NPL%20transaction%20data%20templates.pdf)

Exclusions

The ITS expressly do not apply to sales or transfers:

- (a) held in a credit institution's trading book (as opposed to their banking book);
- (b) as part of sales of portfolios not limited to non-performing credit agreements;
- (c) as part of restructuring within insolvency, resolution or liquidation proceedings;
- (d) through securitisation (where the EU's Securitisation Regulation applies);
- (e) pursuant to credit default swap, total return swap and other derivative contracts, contracts of insurance and sub-participation contracts; and
- (f) pursuant to a financial collateral arrangement.

Conclusion

This is a welcome development in the process of transposition of the Directive. Understanding the details of the data templates provided for in the ITS, as well as associated issues such as treatment of personal data and confidential information, information granularity, completeness and accuracy will be important for banks selling loans and for their sale process advisors.

We will continue to monitor developments in relation to the Directive.

Further Information

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