



EUROPEAN CENTRAL BANK  
BANKING SUPERVISION

## Template for comments

Public consultation on the draft addendum to the ECB guidance to banks on non-performing loans

### Institution/Company

Mediobanca - Banca di Credito Finanziario S.p.A.

### Contact person

#### Mr/Ms

█

#### First name

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#### Surname

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Please tick here if you do not wish your personal data to be published.

### General comments

## Template for comments

### Public consultation on the draft addendum to the ECB guidance to banks on non-performing loans




Please enter all your feedback in this list.

When entering feedback, please make sure that:

- each comment deals with a single issue only;
- you indicate the relevant article/chapter/paragraph, where appropriate;
- you indicate whether your comment is a proposed amendment, clarification or deletion.

Deadline: 8 December 2017

ID	Chapter	Paragraph	Page	Type of comment	Detailed comment	Concise statement as to why your comment should be taken on board	Name of commenter	Personal data
1	2 - General Concept	2.1	3	Clarification	<p>The prescriptions contained within the Addendum should not be applied also to companies whose core activity consists in purchasing and managing NPLs (following a sustainable business model), given its unfitting to their activity and being potentially capable of undermining the NPLs market structure. By lowering the profitability of purchasing and managing NPLs, it would be more difficult for the originator bank to sell them at a later time. The aim of the Addendum should be the introduction of a capital buffer additional to a share of residual and incidental assets of a traditional bank, although this introduction could generate distorting effects in its activity. Even more so, the introduction of a so strict requirement on the whole credit stock held by a specialized companies is less acceptable; it can be demonstrated by analyzing its business model that it is capable to earn profits and create value thanks to a dedicated personnel, IT systems, procedures and know-how completely focused on this activity. Keeping in mind that the discount applied by these specialized companies includes not only a premium for the risk assumed (which theoretically is the same the selling bank would have faced) but also the cost of managing and funding them, and finally a profit margin, the application of the backstop on the same timeline appears heavily unjustifiable and substantially inappropriate. Necessarily NPLs are derecognized by a traditional bank and by a specialized companies at a totally different pace: the former needs to consider the cost of risk to incorporate it within prices, and thus needs to be sure about NPLs values with a sound and fast management of impaired credit positions; the latter, on the other hand, participates to the process by paying to the traditional bank a price which theoretically equals the value that the originator bank would earn during time, net of the profit justified by the longer collection period. However, internal models for portfolio valuation and management use criteria similar to backstop on a longer term basis (5 years for unsecured credits and at least 10 years for secured ones).</p>	<p>We believe that the prescriptions contained within the Addendum should not be applied also to companies whose core activity consists in purchasing and managing NPLs (following a sustainable business model), given its unfitting to their activity that relies on long-lasting collection procedures, and being potentially capable of undermining the NPLs market structure. By lowering the profitability of purchasing and managing NPLs, it would be more difficult for the originator bank to sell them at a later time. Therefore, using a common temporal approach as for both traditional bank and companies whose core activity consists in purchasing and managing NPLs is substantially inappropriate because necessarily NPLs are derecognized by a traditional bank and by a specialized companies at a totally different pace.</p>		Publish

	3 - Definitions applied in this addendum	3.1	7	Amendment	<p>Restructuring plans aim at restoring the economic-financial conditions to ensure counterparty business continuity. Insolvency regulation in Europe and Bank's objective go well beyond the mere credit recovery, pursuing a firm rebalancing necessarily spread along an adequate and generally material period of time. In addition, the negotiations under insolvency regulation usually take a significant amount of time (often beyond one year) and according to the Guidance on NPL the Bank is asked to classify at least in the Unlikely to Pay category well in advance vs. the beginning of negotiations for a restructuring. This would lead to some paradoxical situation for unsecured loan in which when the bank signs the Debt Restructuring Agreement, it could have potentially fully provisioned the credit without having the possibility to reclassify in the performing status the exposure. This element would discourage the bank to pursue an adequate and safe route for the restructured counterparty.</p> <p>Such positions are subject to specific and reinforced monitoring to verify on a regular basis that counterparty's behavior is in line with the agreed plan and to eventually timely detect any deviations and deterioration signals. Backstop application is more suitable to exposures towards counterparts where business continuity is compromised ("gone concern") and where the bank activity is driven by credit recovery based on collaterals. This logic is typical of cases where the bank has terminated the credit contract and not applicable to borrowers with a regular restructuring plan in place. Similar considerations can be raised for counterparties subject to forbearance measures when the concessions have been provided to non performing clients.</p>	<p>The adoption of the Addendum's prescription on going concern and restructuring positions would lead to discourage and limit the corporate restructuring performed by the banking system with impact on overall economic activity</p>		Publish
	3 - Definitions applied in this addendum	3.1	7	Amendment	<p>Vintage calculation from contract resolution: the NPL status correctly included in the application perimeter would be the Bad Loans only. Specifically the vintage calculation should start from the contract resolution date and not from classification to NPE. Only following the contract resolution, legal proceedings (like foreclosure) can be put in place and it's therefore adequate to consider collateral effectiveness.</p>	<p>A predefined timing, not accounting for the proper vintage calculation, would force the Bank to limit restructuring and cure periods, under the threaten of huge capital requirements. This would undermine the relationship Bank - Client and affect the overall economic system.</p>		Publish
4	2 - General Concept	2.1	3	Deletion	<p>Mediobanca supports the proposal of the EU Commission on the application of statutory prudential backstops only on new originated loans (after the entry into force of the new provisions) turning to NPLs and not to all new NPLs. Indeed the pricing applied to already granted loans didn't consider the additional capital burden implied by the Addendum.</p>	<p>It's fundamental to delete any retroactivity elements to avoid distortion and to allow for a fair pricing on newly originated transactions</p>		Publish

5	2 - General Concept	2.1	3	Amendment	Even if the prudential provisioning expectations apply to all exposures that are newly classified as non-performing as of January 1st, 2018, it seems that the actual scope of the provisions of the Addendum is potentially broader; in fact, the Addendum would also apply to the stock of outstanding loans, considering that in-bonus loans could become non-performing after January 1st 2018.	The Addendum should apply only to loans originated after after January 1st 2018.		Publish
6	4 - Prudential provisioning backstop	4.1 - 4.2	10-11	Amendment	The statement "(...) It is immaterial whether he delays in realising the security were due to reasons beyond the banks control (e.g. length of time it takes to conclude legal proceedings)" may generate inequality between countries where local laws on civil proceedings are not harmonized; a calibration of the provisioning backstops considering the judicial recovery time of loans in the different Member States is crucial, otherwise the measure would have a different specific-weight in each of them.	"Level playing field" between member states can be better assured providing for different calibration measures considering - so far as practicable - the specific context of EU Member States local laws on civil proceedings.		Publish