

NPLs in Spain: A new market landscape

REPORT ON THE FORTHCOMING LAW ON SELLERS, PURCHASERS AND SERVICERS
OF NON-PERFORMING LOANS



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Introduction

In Spain, the market for non-performing loans (“NPLs”) has significantly evolved in recent years. This evolution has occurred within a context of economic recovery and reforms aimed at promoting financial stability for borrowers of these loans and enhancing the transparency of the system. Despite these tailwinds, Spain remains one of the European Union countries with the highest volume of non-performing loans. The stock of these loans managed in Spain in 2024 amounted to approximately EUR459.678 billion, with around EUR12.9 billion recovered¹ (nearly 1% of the GDP).

In Spain, the sector ends year 2025 with an upcoming law on credit servicers and purchasers, at a very advanced stage. This Law introduces a harmonised framework for the purchase and management of NPLs and establishes requirements for the authorisation and monitoring of servicers and purchasers of such loans. Noteworthy developments include the obligation for the purchasers of NPLs to appoint a servicer, and the duty to report in detail to the supervisor, and to safeguard the borrowers’ rights and protections further to the assignment of the NPLs. These duties also apply to servicers and, under certain circumstances, to sellers of NPLs.

¹ “Estudio de Mercado del sector de la recuperación de créditos y la morosidad 2024”, (market research on the recovery of debt and late payment sector), Asociación Nacional de Empresas de Gestión de Créditos, available at <https://www.angeco.com/publicaciones/estudio-de-mercado-del-sector-de-la-recuperacion-de-creditos-y-la-morosidad-2024/>



Outstanding tasks for the Spanish NPLs market

The registration of NPLs transactions with the Spanish property registries has been a significant challenge and, sometimes, a troublesome obstacle for new creditors. New creditors have found themselves unable to ensure that, upon acquiring a mortgage-backed loan, their new ownership is seamlessly recorded on the property register. Until the forthcoming law is in force, such obstacles will persist, generating uncertainty, and affecting efficiency and competition within the sector. This hurdle stems from the inconsistent criteria among property registries regarding

the registration of loan assignment – without losing sight of the trouble to verify the legal standing of the assignee in certain court proceedings related to the NPLs acquired.

The lack of a sole registration approach for the registration of NPLs' assignments has also had adverse consequences within the insolvency scope. In practice, this has caused delays in the handling of Spanish insolvency proceedings. These issues have undermined the duration, efficiency, and predictability of our insolvency proceedings, despite the clear legislative goal of streamlining and speeding them up.



The forthcoming law on sellers, purchasers and servicers of non-performing loans

The new regime for registering the assignments of secured NPLs

The forthcoming approval of the Law on loan servicers and purchasers, transposing Directive (EU) 2021/2167, means a major milestone for the purchase of NPLs in Spain. The Law addresses and solves some of the historical inefficiencies of our registration system, and strengthens legal certainty for all players, improving the sector overall.

First, the upcoming Law exempts purchasers and new creditors of NPLs from the obligation to register with the Registry of Real Estate Lenders of the Bank of Spain ("BdE") or other administrative registries if they appoint an authorized servicer, a credit entity, or a credit financial institution ("CFI") to manage the NPLs.

As long as these requirements are met, property registrars cannot refuse to register the secured loan assignment transactions, including those formalised before the law takes effect, even if the new holder is not registered with the relevant administrative registry. In practice, this removes the main obstacle to "close" transactions for the assignment of NPLs portfolios and enables the regularisation of the registration of a number of assignments pending registry access and at a standstill.

This exemption is justified by Directive (EU) 2021/2167 itself, which reserves the registration obligation to servicers, and not to credit purchasers, unless the latter directly manage the loan vis-à-vis the borrower, a circumstance that is very rare in practice. The purpose of the reform is well-founded. In most cases, loan servicers handle NPLs relationships and management, and make decisions regarding their recovery. Therefore, it is consistent that registration and regulatory compliance obligations fall on servicers rather than purchasers or new creditors.

The Law imposes obligations on both purchasers and sellers of NPLs

The regulation applies to the purchase of NPLs (which includes acquiring the underlying claims or assigning the contractual position under the related contracts) involving borrowers who have committed a payment default that has not been remedied, or where there are doubts about the potential recovery of credits without initiating the enforcement of collateral. Transactions involving "performing" loans fall outside the scope of the upcoming Law. Additionally, the Law excludes from its scope:

(i) purchases by credit entities or credit financial entities (CFIs) from the European Union; and (ii) the management and purchase of loans or loan contracts from the so-called Spanish "bad bank" ("SAREB"), or those performed by the Deposit Guarantee Fund.

The law establishes requirements for information and reporting to the BdE for purchasers of NPLs, as well as the obligation to maintain the conditions and guarantees of the loan after the assignment. A key requirement is the obligation for purchasers domiciled within the European Union to appoint a servicer when acquiring NPLs or contracts involving consumers. Purchasers of loans or contracts domiciled outside the EU must take a step further, as this obligation also applies when they acquire NPLs or contracts involving any natural person (not just consumers) or MSMEs. Additionally, these purchasers must appoint a representative domiciled in Spain, who will be responsible for regulatory compliance before the BdE.

In turn, sellers of NPLs must ensure the protection of borrowers' rights, and provide purchasers with information about the loans and collateral using standardised templates. This obligation may increase the complexity and cost of NPLs sales, particularly when entire portfolios are transferred, as the required templates for conveying information exceed the standard content of a regular data tape. This also opens a new negotiation point in SPAs, when determining the representations and warranties of each party regarding the accuracy of the information provided in accordance with the statutory templates. Additionally, sellers must also pay attention to new reporting obligations to the BdE regarding various aspects such as the purchasers, outstanding loan balances, and the number and volume of NPLs transferred in each bi-annual reporting period.

In summary, these new requirements for sellers – generally, the originating credit entities, though not exclusively, as secondary market portfolio sales are not insignificant – will require close coordination in gathering information across wholesale banking, retail banking, and compliance areas. These new obligations may impact the profitability of NPL transactions and, consequently, the originating entities' willingness to initiate or conclude these balance sheet "cleanup" transactions. In any case, the upcoming Law acknowledges the need for flexibility in obligations and duties when the transaction is not a full assignment or "true sale", as the parties may opt for alternative sub-participation structures that tend to simplify processes and may maximise expected returns due to their greater flexibility.

New developments in servicing, and impact on the purchase and sale of NPLs

The forthcoming Law on servicers and purchasers of NPLs introduces a comprehensive regulatory framework for servicing. This framework establishes activity reservation and an authorisation, registration and monitoring system by the BdE. The Law requires the appointment of a servicer when acquiring NPLs or contracts involving: (i) consumers (for EU purchasers); or (ii) any natural person – whether or not a consumer – or MSMEs (for non-EU purchasers).

NPLs servicing has been broadly defined to include tasks related to collection or recovery, renegotiation thereof, claims management, and/or communication with borrowers regarding interest rates, fees, or overdue payments. Performance of any of these tasks is sufficient to qualify the relevant activities as servicing and therefore subject to activity reservation². As previously explained, appointing a servicer will exempt purchasers of NPLs or contracts from their obligation to register with the BdE's Registry of Real Estate Lenders.

Servicers and purchasers of NPLs shall always act in good faith, fairly, and professionally towards borrowers. They must provide clear, non-misleading information, respect borrowers' privacy, and avoid undue pressure. After the purchase, they must apply those best practice codes to which the selling entity of the loan or contract was adhered.

The forthcoming Law also imposes minimum content requirements for servicing contracts, and allows servicers to outsource tasks to third parties, provided that these third parties meet certain conditions and comply with specific obligations. However, outsourcing does not include the receipt of funds from borrowers, and does not exempt servicers from their responsibilities or obligations towards the BdE and borrowers.

Finally, servicers must fulfil reporting obligations to the BdE's Central Credit Registry (the so-called CIRBE) regarding NPLs and credit contracts under their management.

² Credit entities and CFIs will be allowed to perform NPL servicing activities, requiring no further authorization or registration.





Authorization procedure for servicers

One of the main developments introduced by the upcoming Law on servicers and purchasers of NPLs is the establishment of an authorisation procedure for servicers.

The essential features and requirements of this authorisation procedure are as follows:



Bank of Spain

- Processing of authorization and registration applications from credit servicers
- Management and organization of the Credit Servicers Registry
- Communication with sellers, purchasers, and servicers



Registered office in Spain/European passport

- Company incorporated under Spanish law and domiciled in Spain
- European passport under Free Provision of Services
- Permanent Establishment



Suitability and integrity

- Professional experience of the management body/directors
- Commercial integrity of administrators and persons or entities with significant holdings



Governance and internal control

- Corporate governance system
- Risk management procedures
- Mechanisms for recording, processing, and resolving borrowers' complaints

Pre-insolvency and insolvency implications of the forthcoming law on sellers, purchasers and servicers of non-performing loans

Safeguarding separate assets in the event of the servicer's insolvency proceedings

To receive and hold funds paid by borrowers, servicers must have a separate payment account with a credit entity authorised in an EU Member State. This account will exclusively channel funds received from borrowers to credit purchasers.

The forthcoming Law on servicers and credit purchasers introduces relevant improvements in restructuring to strengthen the protection of funds received by servicers from borrowers and kept in their accounts to pay creditors. Such servicers' funds and accounts will not be affected by the approval of a restructuring plan for the servicer, and their holders (purchasers of loans) will enjoy an absolute right of separation with regard to any potential claim against the servicers. This is particularly important in the event of an insolvency or restructuring plan.

Thus, the proposed reform puts an end to the risk that assets managed by a servicer would be included within its insolvency estate, or affected by its restructuring plan, which hindered competition in our NPLs secondary market.

Price of the loan assignment and unfair reduction of the value of claims in non-consensual restructuring plans

The latest reform of the Spanish restructuring model introduced a specific ground for dissenting creditors to challenge cross-class-cram-down restructuring plans.

Under the Spanish regime, the sacrifice required of dissenting creditors is considered "disproportionate" when the reduction of their claims' value clearly exceeds what is necessary to ensure the debtor's viability. Regarding purchasers of NPLs, the Spanish rule includes a rebuttable presumption that there will be no "disproportion" when dissenting creditors acquired the affected debt at a discount still greater than the reduction in value imposed by the plan. Thus, if the restructuring plan reduces the value of the assigned loan below the purchase price paid by the new creditor, a disproportionate reduction will be presumed. This is a particular feature of the Spanish restructuring system that should be taken into account, as it may disrupt or reinforce loan purchasers' strategies to influence Spanish restructurings, depending on the discount applied to the loan and the circumstances surrounding its acquisition.

In any event, preserving the reference to this presumption of a disproportionate reduction in the value of NPLs in the forthcoming Law is an express acknowledgement of the need to protect the economic position of purchasers of such loans, and to promote transparency, certainty and fairness in restructuring processes. We mention this because a purchaser of an NPL affected by a cross-class-cram-down can still provide the court with evidence that the reduction in the value of their claim is disproportionate, regardless of the price paid for the NPL. Reasons for this disproportion will be easy to find, since investors may have set the purchase price of an NPL based on elements other than the loan's current "value".

Contacts

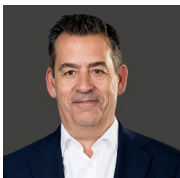


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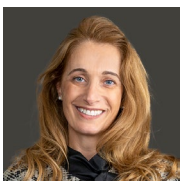


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