

Euro PP – Frequently asked questions

Since its inception in France in the second semester of 2012, the Euro Private Placement (Euro PP) market has enabled companies of various sizes to obtain more than 13 billion Euros of financing through more than 150 operations for almost as many borrowers from a growing number of institutional investors, as a complement to traditional bank financing.

Today, Euro PP is a dynamic market which has been able to structure itself quickly, thanks in large part to the efforts of the Euro PP Working Group, to offer a secure legal framework to both borrowers and investors.

1. What is a Euro Private Placement (Euro PP)?

A Euro PP is a **medium / long term financing operation** taking place between a company, listed or not, and a **limited number of institutional investors**, based on deal-specific documentation negotiated between the borrowers and the investors, often with the participation of an arranger.

The negotiation of the contractual documentation is an important feature of the Euro PP that makes it different from public or syndicated bond issues, and therefore a funding instrument particularly suitable to the specific needs of a large range of borrowers such as medium-sized companies.

Euro PPs can take the form of a note issue, listed (on a traditional regulated market exchange or on a multilateral trading facility) or not, or a loan.

2. Who are the members of the Euro PP Working Group?

The Euro PP Working Group benefits from the practical experience of all Euro PP market players by gathering representatives from each type of participant in a typical Euro PP transaction operation – a true asset for the credibility of its work. As a result of this consensual approach, the Euro PP Working Group is able to offer well-balanced documents reflecting input from each side of the market.

Set up in September 2013 under the auspices of the *Banque de France*, the French Treasury (*Direction du Trésor*) and the *CCI Paris-Ile-de-France*, the Euro PP Working Group's members represent borrowers, intermediaries and investors, in particular via the participation of relevant business associations (Af2i, AFG, AFTE, AMAFI, ASMEP-ETI, FBF, FFSA, GEMA, MEDEF and Paris Europlace), and receive legal support from the law firms CMS Bureau Francis Lefebvre, Gide and Kramer Levin.

3. What is the *Euro Private Placements (Euro PP) Charter*?

Published in March 2014 by the Euro PP Working Group, the Euro PP Charter is freely available at no cost on the Euro PP Working Group Steering Committee website (www.euro-privateplacement.com), in both French and English. It sets out good practices and guidelines, notably on the role of the different participants (borrowers, investors and intermediaries), a transaction's key phases (preparation, execution and management until maturity) as well as its legal terms, all on the basis of a non-binding framework. The Euro PP Charter is therefore a useful educational document for all market players.

The Euro PP Charter served as a model for the drafting of the Pan-European Corporate Private Placement Market Guide led by ICMA (International Capital Market Association) with the aim of developing the private placement market at the European level.

4. Where can I find a Euro PP model contract?

In January 2014 the Euro PP Working Group published two model contracts:

- in loan format (a loan agreement)
- in note format (subscription agreement, terms and conditions of the notes), drafted in coordination with ICMA (International Capital Market Association).

These Euro PP model contracts are freely available at no cost on the Euro PP Steering Committee website (www.euro-privateplacement.com), in French, English and Italian.

These models provide concrete examples of Euro PP legal documentation. Their flexibility enables them to be adapted to reflect the particular specificities of the transaction, the borrower's characteristics and/or market conditions, all as part of the negotiation between the borrower, the arranger and the investors.

5. Are the Euro PP model contracts tailored to my situation?

The Euro PP model contracts result from a collective effort carried out by representatives of various Euro PP market players (borrowers, intermediaries, investors and lawyers), working together as part of the Euro PP Working Group, culminating in drafting that is both practical and consensual.

This pragmatic approach has allowed consideration of various interests (financing goals of unrated medium sized companies, institutional investors' search for diversification in the private debt sector, need for legal certainty). This approach has also resulted in model documentation that is both well-balanced (appropriately responding to the various parties' particular needs) and flexible (adapted to reflect the particular transaction, the borrower's situation, investor constraints and the market situation). For example, Euro PP models allow modifications to the negative pledge clause, include guidelines relating to financial commitments and offers proposed language for certain clauses (including change of control, make-whole call, residual call and information clauses) that can then be adjusted. Moreover, the documentation can cover situations where security is granted if required by the transaction.

This flexibility leaves full discretion to borrowers and investors to guide them through their negotiation while allowing them to use Euro PP contracts for a variety of different credit ratings or situations.

6. How does the representation of investors work under French law? What is a *masse*?

In the case of a **Euro PP loan**, the monitoring of the lenders' rights and interests and of securities is usually entrusted to a credit agent and to a security agent, which both act in accordance with instructions given by the lenders with regards to the majority rules defined in the contract.

In the case of a **Euro PP note**, French law provides for collective representation of the noteholders to protect the lenders' interests and noteholders' rights. This representation is carried out through two entities: the "Representative of the Masse" and the general meeting of noteholders.

The Representative of the Masse represents the noteholders' common interest. It can therefore accomplish, on behalf of the noteholder group, any act of management for the protection of the noteholders' common interest and has a general duty to represent them. Its missions may be adjusted depending on the noteholders' willingness to manage themselves or delegate all or part of the loan monitoring (fulfillment of financial commitments, relation with investors and borrowers in case of renegotiation, amendment, default, etc.). During the term of the notes, the Representative of the Masse is appointed to be the preferred interlocutor of both note issuer and noteholders.

General meetings of noteholders are competent to decide on any measures intended to defend the noteholders' common interest and to adopt any proposed modifications to the issuing contract. Decisions are taken at general meetings through majority voting, thereby facilitating the ability to grant waivers and to take decisions concerning relevant topics falling within the general meeting's purview.

The existence of a "*masse*" (or noteholder group) also facilitates the management of any secured interests. Security is granted to the benefit of the *masse* and not to the benefit of each noteholder taken on an individual basis, which reduces the formal requirements for adhering to security documents and to intercreditor agreements.

The Representative of the Masse takes or provides securities or grants releases on behalf of the *masse*, i.e. the community of present and future noteholders. Its central role allows for efficient management of the relationship with banking creditors. When the security is shared between a loan and a note financing, it manages the relationship with the security agent. In this regard the Representative of the Masse's role is similar to that of the credit agent and the security agent in a loan agreement.

The function of Representative of the Masse, which is in the course of becoming quickly professionalized, is generally fulfilled by specialized players that meet particular criteria such as skills and independence.

7. Should I get my Euro PP listed?

A Euro PP can be done through a listed note issue, on a traditional regulated market exchange or on a multilateral trading facility, or can be unlisted. Making the choice to list the note issue depends on several factors reflecting investors' needs and/or issuing constraints, such as placement criteria applicable to certain investors, availability of IFRS accounts (required only for regulated exchanges), as well as the level of confidentiality desired for the transaction, its terms or information concerning the borrower.

8. Which law should govern my Euro PP transaction?

Under EU law, the law governing a contract is chosen by the parties. Any law can be chosen, irrespective of the registered address, the nationality of parties or the place of listing, subject to the existence of an "international" element justifying this choice.

Euro PP model contracts provide for French law as governing law, which is a convenient choice for a borrower with its head office in France. A borrower whose head office is not located in France can choose to subject its contract to French law or to use its own law or another law with which it would be more familiar, in which case it can adapt the Euro PP model contracts as needed.

9. What is done in case of insolvency of the borrower?

The law applicable to a Euro PP contract does not determine the law that will govern a borrower's potential insolvency as, regardless of the choice made by the parties, insolvency proceedings will always be governed by the law of the head office of the borrower (or its center of main interests, if different). Even if parties choose a different law to govern the Euro PP contract from the borrower's applicable law, the law governing the borrower will still be applicable to insolvency proceedings (including in determining the rank of creditors in insolvency proceedings).