



## US-STYLE CO-OP PACTS GO BIG IN EUROPE

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LONDON, Jun 21 - European leveraged finance creditors have herded together to sign co-operation agreements in recent weeks, adopting the US-style tactic to mitigate any 'lender-on-lender violence' and mounting concerns in Europe over a possible rise in priming transactions.

Co-ops unify creditors for a limited time period, aimed at restricting priming behaviours among peers and securing blocking majorities against coercive measures proposed by borrowers.

The pacts, although common in the US, were only rarely seen in Europe until a few months ago. In the US, the lending syndicate is more disparate than in the European market, meaning creditors typically prioritise economic matters ahead of relationships with other lenders. Sponsors in Europe also have less track record of behaving aggressively towards lenders.

In April, the major part of the lender group behind Altice France's secured debt signed a co-op agreement for six months, keeping close watch on how French-Israeli billionaire owner Patrick Drahi might deal with the debt-riddled telecoms group which is sitting on €24bn of debt.

Since then, the list of co-ops has continued to grow.

Bondholders of the heavily indebted French IT firm Atos earlier this month were looking to align their interests and finalise a co-op agreement for one to two months.

Elsewhere, bondholders of Ardagh were reported to be considering a co-op approach after the beverage can producer raised at least US\$1.1bn-equivalent in senior secured loans from Apollo in April for refinancing. The move primed all classes of notes.

"The development of co-ops in Europe is interesting because it's a lot of people getting together quickly," said a leveraged finance banker. "Everyone joined these co-ops and wanted to be part of it. It created a united front for now against the owners."

Co-ops normally form before a restructuring deal has been tabled, potentially limiting the aggressive options that a company can pursue.

"If you have creditors agreeing not to act in certain ways against other creditors and you have enough creditors signed up to that, you are reducing the optionality available to the company," said Mark Fine, restructuring partner at McDermott Will & Emery.

## Protective mechanisms

Many European creditors have traditionally taken a view that owners and private equity sponsors are unlikely to risk reputational damage by exploiting loosened covenant-lite documentations behind high-yield bonds and leveraged loans, and implement financing engineering such as 'dropdowns' and 'uptiers' in distressed situations.

However, with elevated interest rates putting many companies under liquidity pressure, creditors now increasingly worry that companies could resort to coercive measures, commonly seen in the US, raising fresh capital by playing one group of creditors against another.

"[Co-ops] can certainly serve a purpose in Europe as a lot of the more aggressive liability management exercises that could be implemented rely on New York styled covenant packages that are just as common in Europe now," said Fine.

"Such permissive documents allow for heightened risk of creditor-on-creditor violence, so the cooperation agreements have derived from creditors wanting to protect themselves against that."

And creditors could even rush into a co-op agreement when they perceive an imminent threat.

In the case of Altice France, the company made it clear in an earnings call in March that bondholders would have to take a haircut in order to de-leverage, creating urgency for creditors to act.

"Co-op agreements indirectly stem from cov-lite provisions," said Karl Clowry, restructuring partner at Addleshaw Goddard. "Sometimes it's insecurity because people may sign up when they think they are going to be primed."

## New challenge

However, co-ops could create their own difficulties, especially for large creditor groups exposed to a range of debt instruments, as lenders might hold different tranches of loans or bonds. That would make it harder to align interests, particularly when it comes to trading.

"The tricky bit is assessing if others in the co-op have the same drivers -- did they buy at the same price, have any cross-holdings and determining their trading strategy?" said Clowry.

While co-ops have just started to gain traction, lawyers say its effectiveness on debt recovery will be key to determining whether the tactic is here to stay in the European market.

"[Co-ops'] durability as a permanent feature of the market will likely be a function of their impact on relative recoveries," said Joseph Swanson, senior managing director and co-head of financial restructuring, EMEA and Asia at Houlihan Lokey.

In addition, other lawyers questioned whether co-ops would run up against any laws in the European Union.

"One thing to be cognisant of is how enforceable co-ops are in Europe," said Fine. "It hasn't really been tested in Europe. Would EU regulators deem signing a co-op agreement as anti-competitive behaviour? We haven't seen enough examples to test that."