

Credit servicers and credit purchasers (Non-performing loans Directive)

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The Committee on Economic and Monetary Affairs adopted the report by Esther DE LANGE (EPP, NL) and Irene TINAGLI (S&D, IT) on the proposal for a directive of the European Parliament and of the Council on credit servicers, credit purchasers and the recovery of collateral.

The committee responsible recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal as follows.

Objectives

The Directive should foster the development of secondary markets for non-performing loans (NPLs) in the EU by establishing safeguards and minimum requirements for the transfer of NPLs by credit institutions to non-credit institutions, while safeguarding borrowers' rights.

This Directive should therefore establish a Union-wide framework for both purchasers and servicers of non-performing credit agreements issued by credit institutions, whereby credit servicers should obtain authorisation and be subject to the supervision of Member States' competent authorities.

This Directive should be without prejudice to the rules governing credit origination in accordance with Union and national law, including in cases when credit servicers can be considered to engage in credit intermediation.

Creditors should not be allowed to transfer to third parties performing credit agreements concluded with consumers.

Conditions for granting an approval

The amended text specifies that the applicant should be a legal person having its registered office or head office in the Member State where it seeks authorisation.

In order to protect the debtor or borrower, the conditions for granting and maintaining authorisation should ensure that the credit manager or the members of the management or administrative bodies have a clean criminal record with regard to relevant criminal offences involving damage to property, criminal offences relating to financial activities, money laundering, fraud or offences against physical integrity and are not subject to insolvency proceedings or have never been declared bankrupt, unless they have been reinstated in accordance with national law.

Member States should also ensure that:

- the management body as a whole possesses adequate knowledge and experience to conduct the business in a competent and responsible manner, appropriate to the activity to be carried out;
- the applicant applies a policy ensuring compliance with consumer protection rules and transparency in the fair and diligent treatment of borrowers;

- the applicant has sufficient initial capital or segregated accounts and that there are no obstacles to effective supervision of the applicant arising from the structure of its group;
- the applicant has, where appropriate, adequate anti-money laundering and anti-terrorism procedures in place.

Protection of borrowers

A new article stipulates that in their relations with debtors, creditors should act in good faith, fairly, professionally and with respect for the debtors' privacy. They should provide borrowers with information that is not misleading, refrain from disclosing personal information without the borrower's permission, and refrain from communicating with borrowers in a manner that constitutes harassment, coercion or abuse of influence.

Fees and penalties charged to borrowers by creditors should not exceed the costs directly related to debt management. Prior to any debt collection, the creditor should send the borrower a mandatory notification providing clear proof of the debt, based on a credit agreement falling within the scope of the Directive.

Member States should require that creditors undertake, with due diligence, to make best efforts to exercise, where appropriate, reasonable forbearance in respect of borrowers experiencing payment difficulties.

Credit purchasers

The amended text provides that where a credit institution transfers a non-performing credit agreement, they should be required to inform their supervisor and the competent authority for supervising compliance with this Directive, on a biannual basis, about at least the aggregated outstanding balance of the transferred credit portfolios, as well as the number and size of the loans included and whether it includes agreements concluded with consumers.

For each portfolio transferred in a single transaction, information provided should include the legal entity identifier or, when not available, the identity and address of the purchaser and, where applicable, its representative in the EU.

Transposition

Entities currently carrying out credit servicing activities under national law would be allowed to continue to do so in their home Member State for 6 months after the deadline for transposition of the Directive.

After the expiry of that six month period, only credit servicers authorised under the national laws implementing this Directive will be able to operate on the market.