

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

2018/0063A(COD) - 19/10/2021 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a legislative resolution 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 European Parliament's position adopted at first reading under the ordinary legislative procedure amends the Commission's proposal as follows:

Objective

The new directive **harmonises the rules for credit servicers and credit purchasers with regard to non-performing loans** issued by credit institutions. Its aim is to support the development of secondary markets for non-performing loans in the EU while ensuring that the sale of such loans does not undermine the rights of borrowers.

The directive covers both the creditor's rights under a non-performing credit agreement and the non-performing credit agreement itself.

Authorisation

A designated authority in the home Member State will be responsible for the authorisation and supervision of credit servicers, in close cooperation with the authorities of other Member States.

The directive specifies that the applicant must be a legal person having its registered office or head office in the Member State where it applies for authorisation.

Conditions for granting and maintaining authorisations should ensure that:

- the members of the applicant's management or administrative organ: (i) have a **clean police record** in relation to relevant criminal offences, in particular those relating to property, financial services and activities, money laundering, usury, fraud, tax crimes, violation of professional secrecy; (ii) have always been **transparent**, open and cooperative in their past business dealings with supervisory and regulatory authorities;
- the applicant's management or administrative organ, as a whole, has **adequate knowledge and experience** to conduct the business in a competent and responsible manner;
- the persons who hold qualifying holdings are of sufficiently good repute;
- the applicant has in place **robust governance arrangements** and adequate internal control mechanisms, including risk management and accounting procedures;
- the applicant: (i) applies an appropriate policy ensuring compliance with rules for the protection of borrowers; (ii) has in place adequate **anti-money laundering and counter terrorist financing procedures**; (iii) is subject by virtue of applicable national law to reporting and public disclosure requirements.

Member States should determine whether credit servicers, when performing credit servicing activities in their territory, are either: (a) allowed to receive and hold funds from borrowers to transfer those funds to credit purchasers; or (b) prohibited from receiving and holding funds from borrowers.

Member States should ensure that:

- within 90 days of receipt of a complete application or, the competent authorities of the home Member State notify the applicant whether the authorisation is granted or refused and provide reasons for refusal;
- the competent authorities of the home Member State have the necessary **supervisory and investigatory powers, and sanctioning powers** to withdraw the authorisation granted to a credit servicer, where any of the following applies to such a credit servicer.

Protection of borrowers

Member States should require that credit purchasers and credit servicers, in their relationships with borrowers: (i) act in good faith, fairly and professionally; (ii) provide information to borrowers that is not misleading, unclear or false; (iii) respect and protect the personal information and privacy of borrowers; (iv) communicate with borrowers in a way that does not constitute harassment, coercion or undue influence.

In advance of the **first debt collection** and whenever requested by borrowers, they should provide information to borrowers on, among others, the transfer that took place, the identification and contact details of the credit purchaser and of the credit servicer, where one is appointed, as well as information on the amounts due by the borrower and a statement to the effect that all relevant Union and national law continues to apply.

Credit purchasers

Credit institutions should provide **detailed information** to prospective credit purchasers so as to enable them to conduct their own assessment of the value of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself.

The Directive provides that where a credit institution transfers non-performing credit agreements, it should be required to inform its competent authority and the competent authorities of the host Member State, on a biannual basis, of at least the aggregate outstanding balance of the transferred credit portfolios, as well as the number and size of the credits included and whether the transfer includes credit agreements concluded with consumers.

Freedom to provide credit servicing activities in a host Member State

To ensure the right of a credit servicer to engage in **cross-border activities** and to provide for their supervision, this Directive sets up a procedure for the exercise of the right of an authorised credit servicer to engage in cross-border activities. Communication between competent authorities of the home and the host Member States as well as with a credit servicer should take place within reasonable deadlines. The competent authorities of the Member State where the credit was granted should also receive information on cross-border activities from the competent authorities of the home Member State.

After the expiry of a period of **six months** following the deadline for transposition of the directive, only credit servicers authorised under the national laws transposing this Directive should be permitted to operate on the market.