

## Basic information

**2018/0063A(COD)**

COD - Ordinary legislative procedure (ex-codecision procedure)  
Directive

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

Amending Directive 2014/17/EU [2011/0062\(COD\)](#)

### Subject

2.50.04 Banks and credit  
2.50.08 Financial services, financial reporting and auditing  
2.50.10 Financial supervision

### Legislative priorities

[Joint Declaration 2021](#)  
[Joint Declaration 2022](#)

Procedure completed

## Key players

European  
Parliament

### Committee responsible

**ECON** Economic and Monetary Affairs

### Rapporteur

[DE LANGE Esther \(EPP\)](#)

[TINAGLI Irene \(S&D\)](#)

### Appointed

18/07/2019

18/07/2019

### Former committee responsible

**ECON** Economic and Monetary Affairs

### Former rapporteur

### Appointed

### Committee for opinion

**IMCO** Internal Market and Consumer Protection

### Rapporteur for opinion

The committee decided not to give an opinion.

### Appointed

**JURI** Legal Affairs

The committee decided not to give an opinion.

### Former committee for opinion



**IMCO** Internal Market and Consumer Protection

### Former rapporteur for opinion

### Appointed




**JURI** Legal Affairs

Council of the European Union		
European Commission	<b>Commission DG</b>	<b>Commissioner</b>
	Financial Stability, Financial Services and Capital Markets Union	DOMBROVSKIS Valdis
European Economic and Social Committee		

Key events			
Date	Event	Reference	Summary
14/03/2018	Legislative proposal published	COM(2018)0135 	Summary
19/04/2018	Committee referral announced in Parliament, 1st reading		
21/10/2019	Resumption of business from the previous parliamentary term		
14/01/2021	Vote in committee, 1st reading		
14/01/2021	Committee report tabled for plenary, 1st reading	A9-0003/2021	Summary
14/01/2021	Committee decision to open interinstitutional negotiations with report adopted in committee		
18/01/2021	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 72)		
20/01/2021	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 72)		
13/07/2021	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE691.247 GEDA/A(2021)005234	
19/10/2021	Decision by Parliament, 1st reading	T9-0424/2021	Summary
19/10/2021	Results of vote in Parliament		
05/11/2021	Act adopted by Council after Parliament's 1st reading		
24/11/2021	Final act signed		
08/12/2021	Final act published in Official Journal		

Technical information	
<b>Procedure reference</b>	2018/0063A(COD)
<b>Procedure type</b>	COD - Ordinary legislative procedure (ex-codecision procedure)
<b>Procedure subtype</b>	Legislation
<b>Legislative instrument</b>	Directive
<b>Amendments and repeals</b>	Amending Directive 2014/17/EU 2011/0062(COD)
<b>Legal basis</b>	Treaty on the Functioning of the European Union TFEU 053-p1 Treaty on the Functioning of the European Union TFEU 114
<b>Other legal basis</b>	Rules of Procedure EP 165
<b>Mandatory consultation of other institutions</b>	European Economic and Social Committee

Stage reached in procedure	Procedure completed
Committee dossier	ECON/9/00276

Documentation gateway				
<b>European Parliament</b>				
Document type	Committee	Reference	Date	Summary
Committee draft report		<a href="#">PE644.827</a>	29/11/2019	
Amendments tabled in committee		<a href="#">PE645.006</a>	20/12/2019	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A9-0003/2021</a>	14/01/2021	<a href="#">Summary</a>
Text agreed during interinstitutional negotiations		<a href="#">PE691.247</a>	28/06/2021	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T9-0424/2021</a>	19/10/2021	<a href="#">Summary</a>
<b>Council of the EU</b>				
Document type		Reference	Date	Summary
Coreper letter confirming interinstitutional agreement		<a href="#">GEDA/A/(2021)005234</a>	28/06/2021	
Draft final act		<a href="#">00054/2021/LEX</a>	24/11/2021	
<b>European Commission</b>				
Document type		Reference	Date	Summary
Legislative proposal		<a href="#">COM(2018)0135</a> 	14/03/2018	<a href="#">Summary</a>
Document attached to the procedure		<a href="#">SWD(2018)0075</a> 	14/03/2018	
Document attached to the procedure		<a href="#">SWD(2018)0076</a> 	14/03/2018	
Commission response to text adopted in plenary		<a href="#">SP(2021)728</a>	10/12/2021	
<b>Other institutions and bodies</b>				
Institution/body	Document type	Reference	Date	Summary
ECB	European Central Bank: opinion, guideline, report	<a href="#">CON/2018/0054</a> <a href="#">OJ C 444 10.12.2018, p. 0015</a>	20/11/2018	<a href="#">Summary</a>

Additional information		
Source	Document	Date
European Commission	<a href="#">EUR-Lex</a>	

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

2018/0063A(COD) - 14/01/2021 - Committee report tabled for plenary, 1st reading/single reading

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.

## **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.

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

2018/0063A(COD) - 14/03/2018 - Legislative proposal

PURPOSE: to strengthen the ability of credit institutions to cope with loans that have become non-performing or are at risk of becoming non-performing by establishing a Union-wide framework for servicers of credit agreements issued by credit institutions.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure on an equal footing with the Council.

BACKGROUND: **non-performing loans (NPLs) are one of the main risks** that still threaten the European banking system. Non-performing loans are loans where the borrower is unable to make the scheduled payments to cover interest or capital reimbursements.

The establishment of a comprehensive strategy to address the problem of non-performing loans (NPLs) is a priority for the Union.

The Commission proposed, in [its communication](#) of October 2017, to make **NPL reduction** measures an essential part of the process of completing Banking Union.

While the primary responsibility for tackling high levels of NPLs remains with banks and Member States, there is also a clear EU dimension to reduce current stocks of NPLs, as well as **preventing any excessive build-up of NPLs** in the future given the interconnectedness of the EU's banking system and in particular that of the euro area.

This initiative follows [the communication](#) on the mid-term review of the action plan on building a capital markets union, which stressed that capital markets can also help European banks to overcome the challenges of NPLs. In order to help banks better manage the PNP, the Commission proposal aims to:

- **strengthen protection of secured creditors** by giving them access to more efficient methods of recovering the amounts owed on secured loans they have granted to companies through an out-of-court procedure;
- **remove undue impediments to credit servicing by third parties and to the transfer of credits** in order to further develop secondary markets for NPLs.

IMPACT ASSESSMENT: a first impact assessment investigated the situation of credit purchasers and credit servicers. The preferred option to facilitate and harmonise market entry is the use of **common binding standards** allowing cross-border activity by means of a passport.

The second impact assessment dealt with the accelerated extrajudicial collateral enforcement.

The preferred option consists of establishing **a minimum harmonisation of an extrajudicial collateral enforcement procedure** across the EU so that banks in all Member States have at their disposal an efficient procedure for extrajudicial collateral enforcement.

CONTENT : the proposal for a directive aims at avoiding a new excessive accumulation of NPLs on banks' balance sheets by acting on two levels:

1) **A distinct common accelerated extrajudicial collateral enforcement procedure for secured loans:** the proposal provides banks and other entities approved for the granting of secured loans with more efficient methods of recovering, out of court, amounts owing on secured loans they have granted to businesses. This extrajudicial procedure would be applicable with the prior agreement of the lender and the borrower in the loan agreement. It would be limited to **loans to businesses** and would not apply to loans to consumers. It is designed so as to not affect preventive restructuring or insolvency proceedings and not to change the hierarchy of creditors in insolvency.

2) **Encourage the development of secondary markets for NPLs:** the current diverse legislative framework for NPLs in the Member States has hindered the emergence of an effective secondary market for NPLs. The proposal creates a **common set of rules** to ensure the proper conduct of the various actors and their appropriate oversight across the Union, while allowing greater competition among servicers in harmonising the market access across Member States.

The proposal provides that **purchasers of bank loans** are required to notify authorities when acquiring a loan. Third-country purchasers of consumer loans are required to use authorised EU credit servicers. Legal safeguards and transparency rules ensure **consumer protection** so that the transfer of a loan does not affect the rights and interest of the borrower.

In order to prevent the risk of underfunding of future NPLs, the Commission is also presenting a [separate proposal](#) amending the Capital Requirements Regulation (CRR) as regards the deductions to be made for insufficient provisioning of non-performing exposures.

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

2018/0063A(COD) - 20/11/2018 - European Central Bank: opinion, guideline, report

### OPINION of the European Central Bank on a proposal for a directive on credit servicers, credit purchasers and the recovery of collateral.

The ECB recalls that it has been a strong proponent of the development of secondary markets for bank assets, particularly non-performing loans (NPLs). It believes that the development of secondary markets may contribute to reducing NPLs, and that, well-functioning secondary markets may also prevent stocks of NPLs from building up in the future. The ECB considers it essential that the legal framework applicable to secondary markets enables the efficient transfer of NPLs off the balance sheet of credit institutions.

It makes the following observations:

#### Reporting requirements

The proposed directive establishes a number of reporting requirements for credit servicers, credit purchasers and credit institutions. The Union legislators should carefully consider whether these reporting requirements would impede the efficient functioning of the secondary market for NPLs, since a significant reporting burden could deter new entrants to the market or result in duplication of data for competent authorities.

#### Technical standards for NPL data

The proposed directive gives the European Banking Authority (EBA) a mandate to develop draft implementing technical standards that specify the formats to be used by creditors that are credit institutions for the provision of detailed information on their credit exposures in the banking book to credit purchasers for the screening, financial due diligence and the valuation of the credit agreement.

In the light of the new regulatory developments flowing from Regulation (EU) 2016/867, it is important that any data templates developed by the EBA should take into account the collection of granular credit and credit risk data or any other relevant initiatives to ensure that there is no duplication of efforts and to minimise reporting requirements for credit institutions.

#### Data collection by competent authorities in the context of an accelerated extrajudicial collateral enforcement mechanism

Since the collection of this information relates to the efficacy of the accelerated extrajudicial collateral enforcement mechanism rather than the prudential supervision of credit institutions, the Union legislators would need to clarify that the task to collect such information should not be conferred on the ECB.