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#### **INFORMATION NOTE**

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From: General Secretariat of the Council  
To: Permanent Representatives Committee/Council

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Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on credit servicers and credit purchasers  
- Outcome of the European Parliament's first reading  
(Strasbourg, 18 - 21 October 2021)

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#### **I. INTRODUCTION**

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure<sup>1</sup>, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the co-rapporteurs, Esther de Lange (EPP, NL) and Irene Tinagli (S&D, IT), presented a compromise amendment (amendment number 2) to the abovementioned proposal for a directive on behalf of the Committee on Economic and Monetary Affairs. This amendment had been agreed during the informal contacts referred to above.

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<sup>1</sup> OJ C 145, 30.6.2007, p. 5.

In addition, the Left group GUE/NGL tabled one amendment (amendment number 3).

## II. VOTE

When it voted on 19 October 2021, the plenary adopted the compromise amendment (amendment number 2) to the abovementioned proposal for a directive. No other amendments were adopted. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto<sup>2</sup>.

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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<sup>2</sup> The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

## **P9\_TA(2021)0424**

### **Credit servicers and credit purchasers \*\*\*I**

**European Parliament legislative resolution of 19 October 2021 on the proposal for a directive of the European Parliament and of the Council on credit servicers, credit purchasers and the recovery of collateral (COM(2018)0135 – C8-0115/2018 – 2018/0063A(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0135),
  - having regard to Article 294(2), Article 53 and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0115/2018),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Central Bank of 20 November 2018<sup>3</sup>
  - having regard to the opinion of the European Economic and Social Committee of 11 July 2018<sup>4</sup>,
  - having regard to the decision by the Conference of Presidents on 16 October 2019 to authorise the Committee on Economic and Monetary Affairs to split the above-mentioned Commission proposal and to draw up two separate legislative reports on the basis thereof,
  - having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 28 June 2021 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0003/2021),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>3</sup> OJ C 444, 10.12.2018, p. 15.

<sup>4</sup> OJ C 367, 10.10.2018, p. 43.

**Position of the European Parliament adopted at first reading on 19 October 2021 with a view to the adoption of Directive (EU) 2021/... of the European Parliament and of the Council on credit servicers *and* credit purchasers *and* amending Directives 2008/48/EC and 2014/17/EU**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53 and Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank<sup>5</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>6</sup>,

Acting in accordance with the ordinary legislative procedure<sup>7</sup>,

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<sup>5</sup> OJ C 444, 10.12.2018, p. 15.

<sup>6</sup> OJ C 367, 10.10.2018, p. 43.

<sup>7</sup> Position of the European Parliament of 19 October 2021.

Whereas:

- (1) The establishment of a comprehensive strategy to address the issue of non-performing loans (NPLs) is a priority for the Union. While addressing NPLs is primarily the responsibility of credit institutions and Member States, there is also a clear Union dimension to the reduction of current stocks of NPLs, as well as to the prevention of any excessive build-up of NPLs in the future. Given the interconnectedness of the banking and financial systems across the Union, where credit institutions operate in multiple jurisdictions and Member States, there is significant potential for spill-over effects between Member States and the Union at large, both in terms of economic growth and financial stability.
- (2) An integrated financial system will enhance the resilience of the economic and monetary union to adverse shocks by facilitating private cross-border risk-sharing, while at the same time reducing the need for public risk-sharing. In order to achieve those objectives, the Union should complete the banking union and further develop a capital markets union (CMU). Addressing high stocks of NPLs and their possible future accumulation is essential to *strengthening* the banking union as it is indispensable for ensuring competition in the banking sector, preserving financial stability and encouraging lending so as to create jobs and growth within the Union.

- (3) The Council conclusions of 11 July 2017 on Action Plan to Tackle Non-Performing Loans in Europe (the ‘Action Plan’) called upon various institutions to take appropriate measures to further address the high number of NPLs in the Union *and prevent their possible future accumulation*. The Action Plan sets out a comprehensive approach that focuses on a mix of complementary policy actions in four areas: (i) bank supervision and regulation, (ii) reform of restructuring, insolvency and debt recovery frameworks, (iii) developing secondary markets for distressed assets, and (iv) fostering restructuring of the banking system. Action in those areas is to be taken at national level and at Union level where appropriate. The Commission announced a similar intention in its communication of 11 October 2017 on completing the banking union, which called for a comprehensive package on tackling NPLs within the Union.
- (4) This Directive, together with other measures which the Commission has put forward, as well as the action taken by the European Central Bank (ECB) in the context of banking supervision under the Single Supervisory Mechanism and by the European Supervisory Authority (European Banking Authority) (EBA), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>8</sup>, will create the appropriate environment for credit institutions to deal with NPLs on their balance sheets, and will reduce the risk of future NPL accumulation.

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<sup>8</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

- (5) *When developing macro-prudential approaches to prevent the emergence of system-wide risks associated with NPLs, the European Systemic Risk Board, established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council<sup>9</sup>, is required to issue, where appropriate, macro-prudential warnings and recommendations relating to the secondary market for NPLs.*
- (6) Regulation (EU) 2019/630 of the European Parliament and of the Council<sup>10</sup> introduced new rules in Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>11</sup> that require credit institutions to put aside sufficient resources when new loans become non-performing, which should create appropriate incentives to address NPLs at an early stage and should prevent an excessive accumulation of them. Where loans become non-performing, more efficient enforcement mechanisms for secured loans would allow credit institutions to **implement a holistic strategy to** enforce NPLs, subject to **strong and effective** safeguards for borrowers. Nevertheless, should NPL stocks become too high, credit institutions should be able to sell them in efficient, competitive and transparent secondary markets to other operators. Competent authorities of credit institutions guide them in doing so, based on their existing bank-specific, so-called Pillar 2, powers under Regulation (EU) No 575/2013. Where NPLs become a significant and broad-based problem, Member States are able to set up national asset management companies or other alternative measures within the framework of current state aid and bank resolution rules.

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<sup>9</sup> *Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).*

<sup>10</sup> Regulation (EU) 2019/630 of the European Parliament and of the Council of 17 April 2019 amending Regulation (EU) No 575/2013 as regards minimum loss coverage for non-performing exposures (OJ L 111, 25.4.2019, p. 4).

<sup>11</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

(7) This Directive should enable credit institutions to better deal with loans that become non-performing by improving conditions for the sale of the credit to third parties. ■ Moreover, when credit institutions face a large build-up of NPLs and lack the staff or expertise to properly service them, they should be able to either outsource the servicing of those loans to a specialised credit servicer or to transfer the credit agreement to a credit purchaser that has the necessary risk appetite and expertise to manage it.

■

(8) While the terms ‘loans’ and ‘banks’ are commonly referred to in the public debate, the more precise legal terms of ‘credit’ or ‘credit agreements’ and ‘credit institution’ are used hereafter. *Moreover, this Directive covers both a creditor’s rights under a non-performing credit agreement and the non-performing credit agreement itself.*

(9) This Directive should foster the development of secondary markets for NPLs in the Union by removing impediments to, *and laying down safeguards for*, the transfer of NPLs by credit institutions to *credit purchasers*, while at the same time safeguarding *borrowers’* rights. Any measures adopted should ■ harmonise the authorisation requirements for credit servicers. 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 from, and be subject to the supervision of, Member States’ competent authorities.*



- (10) █ Currently, credit purchasers and credit servicers cannot reap the benefits of the internal market due to barriers erected by divergent national regimes in the absence of a dedicated and coherent regulatory and supervisory regime. ***At present, there are no common Union standards for the regulation of credit servicers. In particular, no common standards have been set for the regulation of debt collection.*** Member States have very different rules for how ***credit purchasers*** are able to acquire credit agreements from credit institutions. ***Credit purchasers*** that purchase credit issued by credit institutions are not regulated in some Member States, while in others they are subject to various requirements, sometimes amounting to a requirement to obtain an authorisation as a credit institution. Those differences between regulatory requirements have resulted in considerable obstacles to legally purchasing credit cross-border in the Union mainly by increasing the compliance costs faced when seeking to purchase credit portfolios. As a result, credit purchasers operate in a limited number of Member States, which has resulted in weak competition in the internal market, as the number of interested credit purchasers remains low. That in turn has led to an inefficient secondary market for NPLs. In addition, the essentially national markets for NPLs tend to remain of a small volume.

- (11) The limited participation of *credit purchasers* has resulted in low demand, weak competition and low bid prices for portfolios of credit agreements on secondary markets, which is a disincentive for credit institutions to sell non-performing credit agreements. Therefore, there is a clear Union dimension to the development of markets for credits granted by credit institutions and sold to *credit purchasers*. On the one hand, it should be possible for credit institutions to sell non-performing **■** credit agreements on a Union-wide scale in efficient, competitive and transparent secondary markets. On the other hand, completion of the banking union and the CMU make it necessary to act in order to prevent the accumulation of non-performing credit agreements on credit institutions' balance sheets so that they can continue to perform their role of financing the economy. ***Therefore, this Directive covers credit purchasers acting in the course of their trade, business or profession when they acquire a credit agreement only where that credit agreement is a non-performing credit agreement.***
- (12) ***Non-performing credit originally granted by a credit institution might become performing in the process of servicing the credit. In that case, credit servicers should be able to continue carrying out their activities, based on their authorisation as credit servicers in accordance with this Directive.***

**■**

- (13) Certain Member States regulate credit servicing activities, but to varying degrees. Firstly, only some Member States regulate those activities, and, those that do, define them very differently. The increased regulatory compliance costs operate as a barrier to the development of expansion strategies by means of secondary establishment or cross-border provision of services. Secondly, a considerable number of Member States require authorisations for some of the activities that those credit servicers engage in. Those authorisations impose different requirements and do not provide for possibilities of cross-border scaling up. Again, that operates as a barrier to the provision of cross-border services. Finally, in some cases, local establishment is required by law, which hinders the exercise of the freedom to provide cross-border services.
- (14) While credit servicers can provide their services to credit institutions and to credit purchasers that are not credit institutions, a competitive and integrated market for credit servicers is linked to the development of a competitive and integrated market for credit purchasers. ■ Credit purchasers often ***decide to outsource credit servicing activities to other entities, as they*** do not have the capacity to service credit themselves, ***and thus can be reluctant to*** purchase credit from credit institutions if they cannot outsource ***certain services***.

- (15) The lack of competitive pressure on the market for purchasing credit and for credit servicing activities results in credit servicing firms charging credit purchasers high fees for their services and leads to low prices on secondary markets for credit. That reduces incentives for credit institutions to offload their stock of NPLs.
- (16) Therefore, action at Union level is necessary in order to address the position of credit purchasers and credit servicers in relation to ***non-performing*** credit originally granted by credit institutions. ***However, this Directive is without prejudice to the rules of Union and national law governing credit origination, including in cases when credit servicers can be considered to engage in credit intermediation. This Directive is also without prejudice to national rules imposing additional requirements in respect of a credit purchaser or a credit servicer as concerns the renegotiation of the terms and conditions of a credit agreement.***
- (17) ***It is open to Member States to regulate credit servicing activities that do not fall within the scope of this Directive, such as services offered for credit agreements issued by non-credit institutions or credit servicing activities performed by natural persons, including by imposing requirements equivalent to those under this Directive. Those entities and natural persons, however, would not benefit from the possibility of passporting such services to other Member States.***

- (18) *This Directive should not affect restrictions under national law regarding the transfer of a creditor's rights under a non-performing credit agreement, or a transfer of the non-performing credit agreement itself, that is not terminated in accordance with national civil law with the effect that all amounts payable under the credit agreement become immediately due, where that is required for the transfer to an entity outside the banking system. Accordingly, there will be Member States where, taking into account the national rules, the acquisition of non-performing credit agreements that are not past due, or are less than 90 days past due, or are not terminated in accordance with national civil law by non-regulated creditors, will remain limited. It is open to Member States to regulate the transfer of performing credit agreements, including by imposing requirements equivalent to those under this Directive.*
- (19) This Directive should not affect Union law concerning judicial cooperation in civil matters, notably the provisions on the law applicable to contractual obligations and on jurisdiction, including the application of those acts and provisions in individual cases under Regulations (EC) No 593/2008<sup>12</sup> and (EU) No 1215/2012<sup>13</sup> of the European Parliament and of the Council. All creditors and any persons representing them are bound to respect Union law in their dealings with the consumer and national authorities to ensure that consumer rights are protected.

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<sup>12</sup> Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

<sup>13</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

- (20) *Credit servicers and credit purchasers should always act in good faith, treat borrowers fairly and respect their privacy. They should not harass nor give misleading information to borrowers. 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.*
- (21) In addition, this Directive does not reduce the scope of application of Union consumer protection rules and, to the extent that credit purchasers qualify as creditors under Directives 2008/48/EC<sup>14</sup> and 2014/17/EU<sup>15</sup> *of the European Parliament and of the Council*, they should be subject to the specific obligations set out in Article 20 of Directive 2008/48/EC and Article 35 of Directive 2014/17/EU, respectively. *Moreover, this Directive is without prejudice to the protection of consumers guaranteed by Directive 2005/29/EC of the European Parliament and of the Council<sup>16</sup>, which prohibits unfair commercial practices including those carried out during the enforcement of a contract where a consumer is misled as to the consumer's rights or obligations, or is subject to harassment, coercion or undue influence including in terms of the timing, location, nature or persistence of the enforcement actions, in terms of the use of threatening or abusive language or behaviour, or in terms of threats to take any action that cannot legally be taken.*

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<sup>14</sup> *Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).*

<sup>15</sup> *Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34).*

<sup>16</sup> *Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22).*

(22) *Article 47 of the Charter of Fundamental Rights of the European Union ensures the right to a fair and public hearing by an independent and impartial tribunal and the possibility of being advised, defended and represented by a lawyer. That can be of particular relevance for the full and complete understanding of all the issues and legal arguments being addressed and to ensure comprehensive preparation of court representation for the case in dispute. Borrowers who lack sufficient resources should be able to resort to legal aid, where that is necessary to ensure effective access to justice and under the conditions laid down by the applicable national laws.*

- (23) Union credit institutions **█** undertake credit servicing activities as part of their normal business. They have the same obligations with regard to credit **agreements that** they have issued themselves as **those** purchased from another credit institution. Since they are already regulated and supervised, application of this Directive to their credit servicing or purchasing activities would mean unnecessary duplication of authorisation and compliance costs and therefore they are not covered by this Directive. ***The outsourcing by credit institutions of credit servicing activities, in relation to both performing and non-performing credit agreements, to credit servicers or to other third parties, is also outside the scope of this Directive because credit institutions are already required to observe the applicable outsourcing rules. Moreover, creditors that are non-credit institutions but are nevertheless supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC or with Directive 2014/17/EU and undertake credit servicing activities for credits granted to consumers as part of their normal business are not covered by this Directive when performing credit servicing activities in that Member State. Furthermore, alternative investment fund managers, management companies and investment companies (provided that an investment company has not designated a management company) authorised or registered under Directive 2009/65/EC of the European Parliament and of the Council<sup>17</sup> or Directive 2011/61/EU of the European Parliament and of the Council<sup>18</sup> should also not fall within the scope of this Directive. Finally, there are some professions that undertake ancillary activities similar to credit servicing activities as part of their profession, namely public notaries, lawyers and bailiffs that pursue their professional activities under national law, and that implement the enforcement of binding measures and, therefore, Member States should be able to exempt those professions from the application of this Directive.***
- (24) In order to allow existing credit purchasers and credit servicers to adapt to the requirements of the national provisions transposing this Directive and, in particular, to allow credit servicers to be authorised, this Directive ***allows entities that are currently providing credit***

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<sup>17</sup> *Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).*

<sup>18</sup> *Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).*



*servicing activities under national law to continue to do so in their home Member State for a period of six months after the transposition deadline of this Directive. After the expiry of that six-month period, only credit servicers authorised under the national laws transposing this Directive should be permitted to operate on the market.*

- (25) *Member States that already have in place rules equivalent to, or stricter than, those established in this Directive for credit servicing activities should be able to recognise in their national law transposing this Directive the possibility for existing entities providing credit servicing activities to be automatically recognised as authorised credit servicers.*

- (26) The authorisation of a credit servicer to provide credit servicing activities throughout the Union should be subject to a uniform and harmonised set of conditions that should be applied in a proportionate manner by the competent authorities.■
- (27) *To avoid a reduction in borrower protection and in order to promote trust, the conditions for granting and maintaining an authorisation as a credit servicer should ensure that credit servicers, persons who hold a qualifying holding in the credit servicer, and members of its management or administrative organ, have a clean police record in relation to relevant criminal offences linked to, among others, crimes against property, crimes related to financial activities, money laundering, fraud or crimes against physical integrity, and are not subject to an insolvency procedure nor have previously been declared bankrupt, unless they have been reinstated in accordance with national law. Compliance with the requirement for members of the management or administrative organ of credit servicers to have been transparent, open and cooperative in their past business dealings with supervisory and regulatory authorities should be assessed based on the information available to, or within the knowledge of, the competent authority at the time the authorisation is granted. If no information is available, or if there is no knowledge of any information, or if there is no past interaction with supervisory and regulatory authorities at that time, then the requirement is deemed fulfilled.*

(28) *Member States should ensure that the management, as a whole, of a credit servicer has adequate knowledge and experience to conduct the business in a competent and responsible manner, according to the activity to be carried out. It is for each Member State to lay down the requirements regarding good repute, adequate knowledge and experience, but those should not impair the free movement of authorised credit servicers within the Union. For that purpose, the EBA should develop guidelines to reduce the risk of divergent interpretations of the requirements on adequate knowledge and experience. Further, to ensure compliance with the rules for debtor protection as well as with the rules for the protection of personal data, appropriate governance arrangements and internal control mechanisms, as well as appropriate procedures for the recording and handling of complaints, should be established and be subject to supervision. In addition, credit servicers should have in place adequate anti-money laundering and counter terrorist financing procedures where national provisions transposing Directive (EU) 2015/849 of the European Parliament and of the Council<sup>19</sup> designate credit servicers as obliged entities for the purpose of preventing and combating money laundering and terrorist financing. Moreover, credit servicers should be obliged to act fairly and with due consideration for the financial situation of borrowers. Where debt advice services facilitating debt repayment are available at national level, credit servicers should consider referring borrowers to such services.*

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<sup>19</sup> *Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).*

**(29) *Member States should determine, in their national law transposing this Directive, whether or not credit servicers in their territory are permitted to receive and hold funds from borrowers while performing credit servicing activities. In cases where the receiving and holding of funds from borrowers is permitted in a Member State and credit servicers intend to do so as part of their business model, additional requirements should apply to those credit servicers, in order to deal with the risks that could arise in cases of insolvency, namely account and fund segregation, as well as in cases of the discharge of the borrower. Where a credit servicer's home Member State prohibits credit servicers from receiving and holding funds from borrowers, a credit servicer cannot then do so, neither in its home Member State nor in any host Member State, even if a host Member State permits the receiving and holding of funds, precisely because the credit servicer was not authorised to that purpose by its home Member State. In contrast, where a home Member State does permit credit servicers to receive and hold funds from borrowers and includes in its national law the relevant requirements, a credit servicer should be able to receive and hold funds from borrowers in its home Member State as well as in any host Member State that also permits the receiving and holding of funds from borrowers.***

- (30) To avoid lengthy procedures and uncertainty, it is necessary to establish requirements regarding the information **that** applicants for authorisation as a credit servicer are required to submit, as well as reasonable deadlines for the issue of an authorisation and the circumstances for its withdrawal. Where competent authorities withdraw an authorisation of a credit servicer that provides credit servicing activities in other Member States, competent authorities of the host Member State **and also of the Member State where the credit was granted, when different from the host and the home Member States**, should be informed. Equally, an up-to-date **■** public register **or list** should be established in **the home and the host** Member States **and made publicly available on the website of the competent authorities** to ensure transparency as regards the number and identity of authorised credit servicers.
- (31) ***The contractual relationship between the credit servicer and the credit purchaser and the obligations of the credit servicer towards the credit purchaser should not be altered by the outsourcing of credit servicing activities to credit service providers.*** Credit servicers should be responsible for making sure that the outsourcing of their credit servicing activities to credit service providers does not result in undue operational risk, nor in non-compliance by the credit service provider with any requirements of Union or national law, nor restrict the capacity of a regulatory supervisor to perform its duty and safeguard borrower rights.

- (32) When a *credit purchaser* entrusts to a credit servicer the management and enforcement of a credit agreement, the *credit purchaser* delegates its rights and duties and also its direct contact with the borrower to the credit servicer while still remaining ultimately responsible. Accordingly, the relationship between *credit purchaser* and credit servicer should be clearly established in *a written credit servicing agreement* and it should be possible for competent authorities to verify how such a relationship is determined. *Moreover, credit servicers should act fairly and with due consideration for the financial situation of borrowers. To the extent that a credit purchaser does not itself perform the servicing of the credit agreements it acquires, Member States should be able to provide that the credit servicer and the credit purchaser are required to agree in the credit servicing agreement that the credit servicer notifies the credit purchaser prior to outsourcing credit servicing activities.*
- (33) 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.*

- (34) *A credit servicer carrying out activities in a host Member State should be subject to the restrictions and requirements established in the national law of that host Member State in accordance with this Directive, including, where applicable, the prohibition on receiving and holding funds from borrowers, that are not related to other authorisation requirements of credit servicers. If, under the national provisions of a host Member State transposing this Directive, additional requirements for authorisation as a credit servicer are imposed, such additional requirements should not apply to credit servicers performing cross-border credit servicing activities in that host Member State.*
- (35) In order *to ensure* an effective and efficient supervision of cross-border credit servicers, a specific framework should be created for cooperation between the competent authorities of the home and of the host Member States *and, where appropriate, the competent authorities of the Member State where the credit was granted*. That framework should allow the exchange of information, while preserving its confidentiality, *professional secrecy, protection of individual and business rights*, on- and off-site inspections, the provision of assistance, the notification of results of checks and inspections and of any measures taken.

- (36) An important prerequisite for the taking up of the role by credit purchasers and credit servicers should be that they ***have the possibility of accessing*** all relevant information and Member ***States*** should make that possible, while at the same time observing Union and national data protection rules. ***In that context, it is essential that credit institutions 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. Credit institutions should provide that information only once during the process, either during the initial phase or the subsequent phases, but in any event prior to the conclusion of the contract of transfer. That obligation to provide information is necessary and justified in order for prospective credit purchasers to be able to make informed choices before entering into a transaction and, therefore, it is legitimate for credit institutions to share borrowers’ personal data with prospective credit purchasers. Such information should be strictly limited to what is necessary to enable prospective credit purchasers to assess the value of a creditor’s rights under a non-performing credit agreement, or of the non-performing credit agreement itself, and the likelihood of recovery of the value of that agreement. Member States should ensure that the provision of information to prospective credit purchasers and its subsequent use complies with the relevant Union data protection framework.***



- (37) 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. For each credit portfolio transferred in a single transaction, the information provided should include the legal entity identifier (LEI) of the credit purchaser, or where applicable of its representative, or, where not available, the identity and address of the credit purchaser and, where applicable, of its representative in the Union. Competent authorities should be able to require that the information be provided on a quarterly basis instead, whenever they consider it necessary, including due to the high number of transactions during a crisis period. The competent authorities of the host Member State should be obliged to transmit that information to the authorities competent to supervise the credit purchaser*** . Such transparency requirements allow for a harmonised and effective monitoring of the transfer of credit agreements within the Union. ***In order to comply with the principle of proportionality, competent authorities should, in order to avoid duplication, take into account information that is already available to them by other means, in particular as regards credit institutions. Member States should ensure that notification requirements to competent authorities in respect of a credit portfolio once such portfolio has been transferred to a credit purchaser remain the responsibility of the credit servicer.***

- (38) The Action Plan recognised that credit institutions' data infrastructure would be strengthened by having uniform and standardised data for non-performing credit agreements. The EBA has developed data templates that provide information about credit exposures in the banking book and allow potential buyers to evaluate the value of the credit agreements and carry out their due diligence. ***On the one hand***, applying such data templates to credit agreements would reduce information asymmetries between potential buyers and sellers of credit agreements and, thus, contribute to the development of a functioning secondary market in the Union. ***On the other hand, where such data templates are excessively detailed, they can generate an excessive burden for credit institutions without any appreciable gain in information terms.*** Therefore, the EBA should ***carry out a review of the data templates with a view to further developing*** them into implementing technical standards ***for credit institutions. Credit institutions should be required to use the data templates for transfers of non-performing credit agreements, including transfers to other credit institutions. That obligation should apply to transfers of non-performing credit agreements only, and does not encompass complex transactions where non-performing credit agreements are included as a part of such a transaction, including sales of branches, sales of business lines or sales of clients' portfolios not limited to non-performing credit agreements and transfers as part of an ongoing restructuring operation of the selling credit institution within insolvency, resolution or liquidation proceedings. In order to comply with the principle of proportionality, those information requirements should be applied to credit institutions in a proportionate manner having regard to the nature and size of the credits. At the same time, the extent of the obligation of credit institutions to comply with data templates should take into account the date of conclusion of the non-performing credit agreements. Other sellers of credit agreements should be able to use those standards in order to facilitate the valuation of credit agreements for sale. In addition, in the case of securitisation transactions, where mandatory transparency templates are provided for, any double reporting as a result of this Directive should be avoided.***

- (39) *The Commission should be empowered to adopt implementing technical standards, developed by the EBA, in order to specify the templates to be used by credit institutions for the provision of information required under this Directive. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 of the Treaty on the Functioning of the European Union and in accordance with Article 15 of Regulation (EU) No 1093/2010.*
- (40) *As credit purchasers are not creating new credit but, instead, and as provided in this Directive, are buying only existing non-performing credit agreements at own risk, they do not cause prudential concerns and their potential contribution to systemic risk is negligible. It is therefore not justified to require credit purchasers to apply for an authorisation but it is however important that Union and national consumer protection rules continue to apply and the borrowers' rights continue to be those arising from the initial credit agreement.*
- (41) *Third-country credit purchasers might make it harder for Union borrowers to rely on their rights under Union law and for national authorities to supervise the enforcement of non-performing credit agreements. Credit institutions might also be discouraged from transferring such non-performing credit agreements to third-country credit purchasers because of the reputational risk involved. To the extent that the representative of a third-country purchaser of credits granted to natural persons, including consumers and independent workers, or of credits granted to micro, small and medium-sized enterprises (SMEs) is not a credit institution, or a non-credit institution supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC or with Directive 2014/17/EU, or a credit servicer authorised in the Union, that representative should appoint such an entity in order to ensure that the same standards of borrowers' rights are preserved after the transfer of the non-performing credit agreement.*

- (42) *Moreover, in order to better ensure that the same standards of consumers' rights are preserved after the transfer of a non-performing credit agreement, a credit purchaser domiciled in the Union, or that has its registered office or, if under its national law it has no registered office, its head office in the Union should also be required to appoint a credit institution, or a non-credit institution supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC or with Directive 2014/17/EU, or a credit servicer, to perform credit servicing activities in respect of non-performing credit agreements concluded with consumers.*
- (43) *Host Member States should be able to extend the obligation to appoint a credit servicer in relation to other credit agreements. In cases where the transfer of a credit portfolio includes both credit agreements with consumers, other natural persons or SMEs for which the appointment of a credit institution, or of a non-credit institution supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC or with Directive 2014/17/EU, or of a credit servicer, is required and simultaneously includes also other credit agreements for which no such appointment is required, the credit purchaser or, where applicable, its representative should comply with the appointment obligation in respect of credit agreements with consumers, other natural persons or SMEs. The credit servicer and the credit purchaser should comply with applicable Union and national law, and the national authorities in individual Member States should be given the necessary powers to effectively supervise their activity.*

- (44) *When a credit purchaser, or its representative designated in accordance with this Directive, is required to appoint a credit servicer, or a credit institution, or a non-credit institution supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC or with Directive 2014/17/EU, and opts to manage and enforce itself the rights and obligations related to a creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself, the credit purchaser, or its representative designated in accordance with this Directive, is considered to be a credit servicer, and should therefore be authorised under this Directive.*
- (45) Credit purchasers that use the services of credit servicers, or of credit institutions, *or of non-credit institutions supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC or with Directive 2014/17/EU*, should inform the competent authorities *of their home Member State* thereof so as to allow *relevant competent authorities* to exercise their supervisory *powers* as regards the conduct of the credit servicer, *or of the credit institution, or of the non-credit institution supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC or with Directive 2014/17/EU*, vis-à-vis the borrower. Credit purchasers should also inform in a timely manner the competent authorities in charge of their supervision if they engage a different credit *servicer, credit institution, or non-credit institution supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC or with Directive 2014/17/EU*.

- (46) Credit purchasers that enforce the purchased credit agreement directly should do so in compliance with the law applicable to the credit agreement, including consumer protection rules applicable to the borrower. National rules concerning in particular the enforcement of contracts, consumer protection and criminal law continue to apply and competent authorities should ensure compliance of those credit purchasers with such rules on Member States' territory.
- (47) In order to facilitate the enforcement of the obligations set out in this Directive, where a credit purchaser *is not domiciled in the Union, or does not have its registered office or, if under its national law it has no registered office, its head office* in the Union, national law transposing this Directive should provide that, where a transfer of a credit agreement is concluded, a third-country credit purchaser designates a representative *that is domiciled in the Union, or that does have its registered office or, if under its national law it has no registered office, its head office* in the Union, mandated to be addressed by the competent authorities in addition to or instead of the credit purchaser. That representative is responsible for the obligations imposed on credit purchasers by this Directive *without prejudice to obligations imposed on credit servicers. Credit purchasers transferring non-performing credit agreements should inform the competent authority of the home Member State, on a biannual basis and on an aggregated level, 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. For each portfolio transferred in a single transaction, the information provided should include the legal entity identifier (LEI) of the credit purchaser, or where applicable of its representative in the Union, or, where not available, the identity and address of the credit purchaser and, where applicable, of its representative in the Union. Competent authorities should be able to require that the information be provided on a quarterly basis instead, whenever they consider it necessary, including due to the high number of transactions during a crisis period.*

- (48) At present, different authorities are entrusted with the authorisation and supervision of credit servicers and credit purchasers in Member States, and therefore it is essential that Member States clarify the role of such authorities and allocate adequate powers, especially as they might need to supervise entities engaged in providing services in other Member States. In order to ensure efficient and proportionate supervision across the Union, Member States should grant the necessary powers for competent authorities to carry out their duties under this Directive, including the power to obtain necessary information, to investigate possible infringements of this Directive, to handle borrowers' complaints and to impose **administrative penalties** and remedial measures, including the withdrawal of authorisations. Where such administrative **penalties and remedial measures** are applied, Member States should ensure that competent authorities apply them in a proportionate manner and give reasons for their decisions and that, in addition, those decisions should be subject to judicial review including in cases where competent authorities do not act within the timeframes provided.
- (49) *The provisions concerning infringements of this Directive are without prejudice to a Member State's right to intervene in cases of infringements of national law relating to, for example, consumer protection, to borrowers' rights, or to criminal activities. In such cases, the competent authorities of the host Member State and of the Member State where the credit was granted are the ones competent to decide whether there has been an infringement of national law and thus their powers are not limited by this Directive.*

- (50) Since the performance of secondary markets for credit will depend to a large extent on the good reputation of the entities involved, credit servicers should establish an efficient mechanism by which to treat complaints from borrowers. Member States should ensure that the authorities competent for the supervision of credit *purchasers* and credit servicers have effective and accessible procedures to deal with borrowers' complaints.
- (51) Both Regulations (EU) 2016/679<sup>20</sup> and (EU) 2018/1725<sup>21</sup> of the European Parliament and of the Council apply to the processing of personal data for the purposes of this Directive. In particular, where personal data is processed for the purposes of this Directive, the precise purpose should be specified, the relevant legal basis referred to, the relevant security requirements laid down in Regulation (EU) 2016/679 complied with, and the principles of necessity, proportionality, purpose limitation, *and transparent* and proportionate data retention period respected. ***For those purposes, an industry-wide code of conduct, in accordance with Article 40 of Regulation (EU) 2016/679, is preferred.*** Also, personal data protection by design and data protection by default should be embedded in all data processing systems developed and used within the framework of this Directive. Equally, administrative cooperation and mutual assistance between the competent authorities of the Member States should be compatible with the rules on the protection of personal data laid down in Regulation (EU) 2016/679, and in accordance with national data protection rules implementing Union law.

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<sup>20</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>21</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of *natural persons* with regard to the processing of personal data by the *Union* institutions, bodies, *offices and agencies* and on the free movement of such data, *and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).*



(52) In order to ensure a high level of consumer protection, Union and national law provide for a number of rights and safeguards related to credit agreements ■ granted to a consumer. Those rights and safeguards apply in particular to the negotiation and conclusion of the credit agreement, ***to the use of unfair business-to-consumer commercial practices as laid down in Directive 2005/29/EC*** and to ***the*** performance or default ***of the credit agreement***. That is notably the case in relation to long-term consumer credit agreements falling within the scope of Directive 2014/17/EU, in respect of the right of the consumer to discharge fully or partially the consumer's obligations under a credit agreement prior to the expiry of that credit agreement or to be informed by means of the European Standardised Information Sheet, where applicable, on the possible transfer of the credit agreement to a credit purchaser. Borrower rights should also not be altered if the transfer of the credit agreement between a credit institution and a credit purchaser takes the form of contract novation. ***As a general principle, it should be ensured that borrowers are not worse off following the transfer of their credit agreement from a credit institution to a credit purchaser. This Directive should not prevent Member States from applying stricter provisions in order to protect borrowers.***

- (53) Without prejudice to *other* obligations under Directives *2008/48/EC* and *2014/17/EU*, and in order to ensure a high level of consumer protection, *those Directives should be amended, to ensure that* the consumer is presented, in due time and prior to any modifications to the terms and conditions of the credit agreement, with a clear and comprehensive list of any such changes, the timescale for their implementation and the necessary details as well as the name and address of the national authority to which the consumer is able to lodge a complaint.
- (54) *The information regarding the modification of the terms and conditions of a credit agreement under Directives 2008/48/EC and 2014/17/EU, as introduced by the amendments set out in this Directive, should not affect any consumer rights laid down in Directives 2008/48/EC and 2014/17/EU, including information rights.*

- (55) The importance placed by the Union legislator on the protection provided for consumers in Council Directive 93/13/EEC<sup>22</sup> and in Directives 2008/48/EC and 2014/17/EU **■**, means that the assignment of a creditor's rights under a credit agreement, or of the credit agreement itself, to a credit purchaser should not affect the level of protection granted by Union law to consumers in any way. Credit purchasers and credit servicers should therefore comply with *applicable* Union *and national* law as applicable to the initial credit agreement and the *borrower* should retain the same level of protection as provided under *applicable* Union *and national* law or as determined by Union or national conflict of law rules. *Member States should ensure that no costs related to the transfer of the credit agreement, other than those already included in that credit agreement, are charged to the borrower. As regards charges on consumers in the event of default, amendments should be introduced to Directive 2008/48/EC requiring Member States to follow the same rules as in Directive 2014/17/EU on the placing of caps on fees and penalties.*

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<sup>22</sup> *Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).*

(56) *In respect of consumers, Directives 2008/48/EC and 2014/17/EU should be amended by this Directive to establish that Member States should require creditors to have adequate policies and procedures so that they make efforts to exercise, where appropriate, reasonable forbearance before foreclosure proceedings are initiated. Account should be taken of the EBA Guidelines on arrears and foreclosure of 19 August 2015, of the EBA Guidelines on management of non-performing and forborne exposures of 31 October 2018 and of the ECB Guidance to banks on non-performing loans of March 2017. When deciding which forbearance measures to take, creditors should take into account the individual circumstances of the consumer, the consumer's interests and rights and the consumer's ability to repay the credit, including in particular if the credit agreement is secured by residential immovable property that is the consumer's primary residence. Forbearance measures should be able to consist of certain concessions to the consumer, such as a total or partial refinancing of a credit agreement, or a modification of its existing terms and conditions including, among others, an extension of its term, a change of the type of credit agreement, a deferral of payment of all or part of the instalment repayment for a period, a change of interest rate, an offer of a payment holiday, partial repayments, currency conversions, partial forgiveness and debt consolidation. Member States should have appropriate forbearance measures in place at national level. The list of forbearance measures provided in this Directive, as amendments to Directives 2008/48/EC and 2014/17/EU, is not exhaustive, and therefore Member States remain free to provide for additional measures. Likewise, it is open to Member States not to provide for a specific measure if so foreseen at national level, as long as a reasonable number of measures remains available. Where after foreclosure proceedings outstanding debt remains, Member States should ensure the protection of minimum living conditions and put in place measures to facilitate debt repayment while avoiding long-term over-indebtedness. At least where the price obtained for the residential immovable property affects the amount owed by the consumer, Member States should encourage creditors to take reasonable steps to obtain the best efforts price for the foreclosed residential immovable property in the context of market conditions. Member States should not prevent the parties to a credit agreement from expressly agreeing that the transfer of the security to the creditor is sufficient in order to repay the credit, in particular when the credit is secured by the consumer's primary residence.*

- (57) In order to ensure that the level of protection of the consumer is not affected in the event of an assignment to a third party of the creditor's rights under a mortgage credit agreement or of the *credit* agreement itself, an amendment to Directive 2014/17/EU should be introduced to establish that, in cases of a transfer of credit covered by that Directive, the consumer is entitled to plead against the credit purchaser any defence which was available to the consumer as against the original creditor and to be informed of the assignment.
- (58) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>23</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the Union legislator considers the transmission of such documents to be justified.
- (59) *The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on 24 January 2019.*

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<sup>23</sup> *OJ C 369, 17.12.2011, p. 14.*

- (60) *The efficient functioning of this Directive should be reviewed by the Commission, as the establishment of an internal secondary market for non-performing credit agreements with a high level of consumer protection progresses. The Commission is well placed to analyse specific cross-border issues that cannot be identified or properly addressed by individual Member States, such as the risk of money laundering and terrorist financing that could arise in relation to credit servicing and credit purchasers' activities and the cooperation between competent authorities from different Member States. It is therefore appropriate that in its review of this Directive the Commission should also include a thorough assessment of the money laundering and terrorist financing risks associated with the activities performed by credit servicers and credit purchasers and the administrative cooperation between competent authorities.*
- (61) *Since the objectives of this Directive, namely, to enhance the development of secondary markets for NPLs in the Union while ensuring further strengthened protection of borrowers, in particular of consumers, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,*

HAVE ADOPTED THIS DIRECTIVE:

## Title I

### Subject matter, scope and definitions

#### *Article 1*

##### Subject matter

This Directive lays down a common framework and requirements for:

- (a) credit servicers *of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, issued by a credit institution established in the Union, who act on behalf of a credit purchaser;*
- (b) credit purchasers of *a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, issued by a credit institution established in the Union.*

#### *Article 2*

##### Scope

1. This Directive shall apply to:
  - (a) credit *servicers acting on behalf of a credit purchaser in respect of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, issued by a credit institution established in the Union* in accordance with applicable Union and national law ;

- (b) **█** credit *purchasers of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, issued by a credit institution established in the Union* **█** in accordance with applicable Union and national law.

**█**

2. *With regard to credit agreements falling within its scope, this Directive shall not affect contract law principles nor civil law principles under national law with regard to the transfer of a creditor's rights under a credit agreement, or of the credit agreement itself, nor the protection granted to consumers or borrowers pursuant in particular to Regulations (EC) No 593/2008 and (EU) No 1215/2012, and Directives 93/13/EEC, 2008/48/EC, 2014/17/EU* **█** *and the national provisions transposing those Directives or other relevant provisions of Union and national law relating to consumer protection and borrowers' rights.*
3. *This Directive shall not affect the restrictions imposed in Member States' national laws regarding the transfer of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, that is not past due, or is less than 90 days past due, or is not terminated in accordance with national civil law.*



4. *This Directive shall not affect requirements in Member States' national laws regarding the servicing of a creditor's rights under a credit agreement, or of the credit agreement itself, when the credit purchaser is a securitisation special purpose entity as defined in Article 2, point (2), of Regulation (EU) 2017/2402 of the European Parliament and of the Council<sup>24</sup> as long as such national laws:*

*(a) do not affect the level of consumer protection provided by this Directive;*

*(b) ensure that competent authorities receive the necessary information from credit servicers.*

5. **█** This Directive shall not apply to the following:

*(a) the servicing of a creditor's rights under a credit agreement, or of the credit agreement itself, carried out by:*

*(i) a credit institution established in the Union;*

*(ii) an alternative investment fund manager (AIFM) authorised or registered in accordance with Directive 2011/61/EU, or a management company, or an investment company authorised in accordance with Directive 2009/65/EC provided that the investment company has not designated a management company under that Directive, on behalf of the fund it manages;*

*(iii) a non-credit institution subject to supervision by a competent authority of a Member State in accordance with Article 20 of Directive 2008/48/EC or Article 35 of Directive 2014/17/EU when performing activities in that Member State;*

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<sup>24</sup> *Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).*

- (b) the servicing of *a creditor's rights under a credit agreement, or of the credit agreement itself*, that was not issued by a credit institution established in the Union *except where the creditor's rights under the credit agreement, or the credit agreement itself*, is replaced by a credit agreement issued by such credit institution ■ ;
- (c) the purchase of *a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, by a credit institution* established in the Union ■ ;
- (d) the transfer of *a creditor's rights under a credit agreement, or of the credit agreement itself*, transferred before the date referred to in Article 32(2), first subparagraph.

6. *Member States may exempt from the application of this Directive the servicing of a creditor's rights under a credit agreement, or of the credit agreement itself, carried out by public notaries and bailiffs as defined by national law or lawyers as defined in Article 1(2), point (a), of Directive 98/5/EC of the European Parliament and of the Council<sup>25</sup> when conducting credit servicing activities as part of their profession.*

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<sup>25</sup> *Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ L 77, 14.3.1998, p. 36).*

*Article 3*  
Definitions

For the *purposes* of this Directive, the following definitions apply:

- (1) 'credit institution' means a credit institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013;
- (2) 'creditor' means a credit institution ■ that has issued a credit ■ , or a credit purchaser;
- (3) 'borrower' means a legal or natural person who has concluded a credit agreement with a *credit institution, including its legal successor or assignee*;

■

- (4) 'credit agreement' means an agreement as originally issued, modified or replaced, whereby a *credit institution grants* a credit in the form of a deferred payment, a loan or other similar financial accommodation;
- (5) '*credit servicing agreement*' means a written contract concluded between a credit purchaser and a credit servicer concerning the services to be provided by the credit servicer on behalf of the credit purchaser;

■

- (6) 'credit purchaser' means any natural or legal person, other than a credit institution, ***that purchases a creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself***, in the course of its trade, business or profession, ***in accordance with applicable Union and national law***;
- (7) '***credit service provider***' means a third party used by a credit servicer to perform any of the credit servicing activities;
- (8) '***credit servicer***' means a legal person that, in the course of its business, manages and enforces the rights and obligations related to a creditor's rights under a non-performing credit agreement, or to the non-performing credit agreement itself, on behalf of a credit purchaser, and carries out at least one or more credit servicing activities;
- (9) '***credit servicing activities***' means one or more of the following activities:
- (a) ***collecting or recovering from the borrower, in accordance with national law, any payments due related to a creditor's rights under a credit agreement or to the credit agreement itself***;
  - (b) ***renegotiating with the borrower, in accordance with national law, any terms and conditions related to a creditor's rights under a credit agreement, or of the credit agreement itself, in line with the instructions given by the credit purchaser, where the credit servicer is not a credit intermediary as defined in Article 3, point (f), of Directive 2008/48/EC or in Article 4, point (5), of Directive 2014/17/EU***;

- (c) *administering any complaints relating to a creditor's rights under a credit agreement or to the credit agreement itself;*
- (d) *informing the borrower of any changes in interest rates or charges or of any payments due related to a creditor's rights under a credit agreement or to the credit agreement itself;*

**I**

- (10) 'home Member State' means, *with respect to a credit servicer*, the Member State in which *its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated or, with respect to a credit purchaser, the Member State in which the credit purchaser or its representative is domiciled*, or its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated;
- (11) 'host Member State' means the Member State, other than the home Member State, in which a credit servicer has established a branch *or where it provides credit servicing activities, and in any event where the borrower is domiciled, or its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated;*
- (12) 'consumer' means a *natural person who, in credit agreements covered by this Directive, is acting for purposes which are outside his trade, business or profession;*
- (13) '*non-performing credit agreement*' means a *credit agreement that is classified as a non-performing exposure in accordance with Article 47a of Regulation (EU) No 575/2013.*

## Title II

### Credit servicers

## Chapter I

### Authorisation of credit servicers

#### *Article 4*

##### General requirements

1. Member States shall require a credit servicer to obtain an authorisation in a home Member State before commencing its activities within its territory in accordance with the requirements set out in the national provisions transposing this Directive.
2. Member States shall confer the power to grant an authorisation referred to in paragraph 1 of this Article upon the competent authorities designated pursuant to Article 21(3).

#### *Article 5*

##### Requirements for granting an authorisation

1. ***Without prejudice to Article 6***, Member States shall lay down the following requirements for the granting of an authorisation referred to in Article 4(1):
  - (a) the applicant is **■** a legal person as referred to in Article 54 of the Treaty on the Functioning of the European Union ***and its registered office or, if under its national law it has no registered office, its head office, is in the Member State in which the applicant is seeking authorisation;***

(b) ■ the members of the applicant's management or administrative organ *are of sufficiently good repute, which is demonstrated by proving that:*

■

(i) *they* have a clean police record or other national equivalent 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* or to physical integrity, *and also in relation to any other offences under laws relating to companies, bankruptcy, insolvency or consumer protection;*

(ii) *the cumulative effects of minor incidents do not impinge on their good repute;*

(iii) *they have always been transparent, open and cooperative in their past business dealings with supervisory and regulatory authorities;*

(iv) *they* are not ■ subject to any *ongoing* insolvency procedure nor have previously been declared bankrupt unless reinstated in accordance with national law;

(c) *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;*

- (d) *the persons who hold qualifying holdings in the applicant within the meaning of Article 4(1), point (36) of Regulation (EU) No 575/2013 are of sufficiently good repute, which is demonstrated by fulfilling the requirements set out in points (b)(i) and (iv) of this paragraph;*
- (e) the applicant has in place **robust** governance arrangements and **adequate** internal control mechanisms, **including risk management and accounting procedures**, which ensure respect for borrower rights and compliance with **the laws governing a creditor's rights under a credit agreement, or the credit agreement itself, and with Regulation (EU) 2016/679;**
- (f) the applicant applies an appropriate policy ensuring **compliance with rules for the protection, and** the fair and diligent treatment, of borrowers, including by taking into account their financial situation and, where available, the need for such borrowers to be referred to debt advice or social services;
- (g) the applicant has in place adequate and specific internal procedures that ensure the recording and handling of complaints from borrowers;



- (h) the applicant has in place adequate anti-money laundering and counter terrorist financing procedures where national provisions transposing Directive (EU) 2015/849 designate credit servicers as obliged entities for the purpose of preventing and combating money laundering and terrorist financing;*
- (i) the applicant is subject by virtue of applicable national law to reporting and public disclosure requirements.*

- 2. The EBA shall, after consulting all relevant stakeholders and reflecting all interests involved, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 for the requirements set out in paragraph 1, point (c), of this Article.*
3. The competent authorities of the home Member State shall refuse an authorisation referred to in Article 4(1) where the applicant does not comply with the requirements set out in paragraph 1 *of this Article and, where relevant, in Article 6(2), point (a).*

*Article 6*  
*Ability to hold funds*

1. *Member States shall determine whether credit servicers, when performing credit servicing activities in their territory, are either:*
  - (a) *allowed to receive and hold funds from borrowers in order to transfer those funds to credit purchasers; or*
  - (b) *prohibited from receiving and holding funds from borrowers.*
  
2. *In cases where credit servicers are allowed to receive and hold funds from borrowers under paragraph 1, point (a), Member States shall:*
  - (a) *lay down, in addition to the requirements for the granting of an authorisation set out in Article 5(1), a requirement that the applicant has a separate account in a credit institution into which all funds received from borrowers are to be credited and kept until their channelling to the respective credit purchaser, under the conditions agreed with the credit purchaser;*
  - (b) *ensure that those funds are protected in accordance with national law in the interest of the credit purchasers against the claims of the other creditors of the credit servicers, in particular in the event of insolvency;*

- (c) *determine that, when a borrower makes a payment to a credit servicer in order to, partially or totally, reimburse the amounts due related to a creditor's rights under a non-performing credit agreement, or to the non-performing credit agreement itself, that payment is treated as having been paid to the credit purchaser;*
  - (d) *require a credit servicer to deliver a receipt or a letter of discharge to the borrower, on paper or another durable medium, whenever the credit servicer receives funds from the borrower, acknowledging the amounts received.*
3. *Where a credit servicer does not intend to receive and hold funds from borrowers as part of its business model, the credit servicer shall convey that intention in its application for the authorisation referred to in Article 4(1). In such cases, the requirements laid down in accordance with paragraph 2, point (a), of this Article shall not apply.*

#### *Article 7*

##### *Procedure for authorisation of credit servicers*

1. Member States shall establish a procedure for the authorisation of credit servicers that enables an applicant to submit an application and provide all the information necessary for the competent authority of the home Member State to verify that the applicant has satisfied all the conditions laid down in the national provisions transposing Article 5(1), *and, where relevant, in Article 6(2), point (a).*

2. The application for authorisation of credit servicers referred to in paragraph 1 shall be accompanied by the following:
- (a) evidence of the applicant's legal status and ***a copy of its act of incorporation and of the company by-laws***;
  - (b) the address of the applicant's head office or its registered office;
  - (c) the identity of the members of the applicant's management or administrative organ ***and the persons*** who hold qualifying holdings within the meaning of Article 4(1), point (36), of Regulation (EU) No 575/2013;
  - (d) evidence that the applicant ***fulfils*** the conditions laid down in Article 5(1), points (b) and (c);
  - (e) ***evidence that the persons*** who hold qualifying holdings ***within the meaning of Article 4(1), point (36), of Regulation (EU) No 575/2013 fulfil the conditions laid down in Article 5(1), point (d), of this Directive***;
  - (f) evidence of the governance arrangements and internal control mechanisms referred to in Article ***5(1), point (e)***;
  - (g) evidence of the policy referred to in Article ***5(1), point (f)***;
  - (h) evidence of the internal procedures referred to in Article ***5(1), point (g)***;
  - (i) ***evidence of the procedures referred to in Article 5(1), point (h)***;
  - (j) ***where relevant, evidence of the existence of a separate account in a credit institution as provided for in Article 6(2), point (a)***;
  - (k) any outsourcing agreement as referred to in Article 12(1).

3. Member States shall ensure that the competent authorities of a home Member State assess, within **45** days of receipt of the application for authorisation, whether that application is complete. ■
4. Member States shall ensure that ■, within **90 days** of receipt of a complete application **or, if the application is considered incomplete, of receipt of the required information**, the competent authorities **of the home Member State notify the applicant whether the authorisation is granted or refused and provide reasons for refusal**.
5. Member States shall ensure that an applicant has the right of appeal before a tribunal in cases where the competent authorities of the home Member State decide to refuse an application for authorisation pursuant to Article 5(3) and also in cases where, **within the time limit provided for in paragraph 4 of this Article**, no decision is taken by the competent authorities in respect of **the** application ■.

#### *Article 8*

##### Withdrawal of authorisation

1. Member States shall ensure that the competent authorities of the home Member State **have the necessary supervisory and investigatory powers, and sanctioning powers, in accordance with Article 22 in order to** withdraw the authorisation granted to a credit servicer, where any of the following applies to such a credit servicer:
  - (a) does not make use of the authorisation within 12 months of its grant;
  - (b) expressly renounces the authorisation;
  - (c) has ceased to engage in the activities of a credit servicer for more than **12** months;

- (d) has acquired an authorisation through false statements or other irregular means;
  - (e) no longer *fulfils* the requirements for the granting of an authorisation as a credit servicer set out in Article 5(1) *and, where relevant, in Article 6(2) point (a)*;
  - (f) commits a serious infringement of the applicable rules, including the national provisions transposing this Directive, *or of other consumer protection rules, including applicable rules of the host Member State and of the Member State where the credit was granted.*
2. Where an authorisation is withdrawn in accordance with paragraph 1 of this Article, Member States shall ensure that the competent authorities of the home Member State immediately inform the competent authorities of the host Member State in cases where the credit servicer provides services under Article 13, *and also the competent authorities of the Member State where the credit was granted, when different from the host and the home Member States.*

#### *Article 9*

##### Register of authorised credit servicers

1. Member States shall ensure that the competent authorities establish and maintain *at least a list or, where considered more appropriate,* a national register, of all █ credit servicers authorised to provide services within their territory, including credit servicers providing services under Article 13.

*The EBA shall develop guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 for establishing and maintaining such lists or registers and specifying the types of information included in them in order to guarantee a level playing field across the Union and transparency for credit purchasers and for borrowers.*

2. The *list or* register referred to in paragraph 1 shall be made publicly accessible online *on the website of the competent authorities* and shall be updated on a regular basis.
3. Where an authorisation has been withdrawn pursuant to Article 8, the competent authorities shall update the *list or* register referred to in paragraph 1 of this Article without delay.

#### *Article 10*

##### *Relationship with the borrower, communication of the transfer and subsequent communications*

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

2. *Member States shall ensure that, after any transfer of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, to a credit purchaser, and always in advance of the first debt collection, but also whenever requested by the borrower, the credit purchaser or, when appointed to perform credit servicing activities, the entity referred to in Article 2(5), point (a)(i) or (iii), or the credit servicer, sends to the borrower a communication, on paper or on another durable medium, that includes at least the following:*

- (a) information on the transfer that took place, including the date of transfer;*
- (b) the identification and contact details of the credit purchaser;*
- (c) when appointed, the identification and contact details of the credit servicer or of the entity referred to in Article 2(5), point (a)(i) or (iii);*
- (d) when appointed, evidence regarding the authorisation of a credit servicer granted pursuant to Article 7;*
- (e) where relevant, the identification and contact details of the credit service provider;*
- (f) presented in a prominent way, a contact reference point at the credit purchaser or, when appointed to perform credit servicing activities, at the entity referred to in Article 2(5), point (a)(i) or (iii), or at the credit servicer and, where relevant, at the credit service provider, from which to receive information when needed;*



- (g) information on the amounts due by the borrower at the time of the communication, detailing what is due as capital, interests, fees and other permitted charges;*
- (h) a statement to the effect that all relevant Union and national law concerning in particular the enforcement of contracts, consumer protection, borrower's rights and criminal law continues to apply;*
- (i) the name, address and contact details of the competent authorities of the Member State in which the borrower is domiciled, or its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated and to which the borrower can submit a complaint.*

*The communication provided for in the first subparagraph shall be written in language which is clear and understandable for the general public.*

- 3. Member States shall ensure that, in all subsequent communications with the borrower, the credit purchaser or, when appointed to perform credit servicing activities, the entity referred to in Article 2(5), point (a)(i) or (iii), or the credit servicer, includes the information set out in paragraph 2, point (f) of this Article, except where it is the first communication after the appointment of a new credit servicer, in which case the information set out in paragraph 2, points (c) and (d) of this Article, shall also be included.*

4. ***Paragraphs 2 and 3 shall be without prejudice to any additional requirements regarding communications provided for in other applicable Union or national law.***

*Article 11*

Contractual relationship between a credit servicer and a ***credit purchaser***

1. ***When a credit purchaser does not itself perform credit servicing activities, Member States shall ensure that the appointed credit servicer provides its services in respect of the management and enforcement of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, on the basis of a credit servicing agreement with the credit purchaser.***
2. The ***credit servicing agreement referred to in paragraph 1*** shall provide for the following:
  - (a) a detailed description of credit servicing activities to be carried out by the credit servicer;
  - (b) the level of remuneration of the credit servicer or how the remuneration is to be calculated;
  - (c) the extent to which the credit servicer can represent the ***credit purchaser*** in relation to the borrower;
  - (d) an undertaking by the parties to comply with the Union and national law applicable to a ***creditor's rights under a credit agreement, or to the credit agreement itself***, including in respect of consumer ***and data*** protection;
  - (e) ***a clause requiring the fair and diligent treatment of the borrowers.***

3. *Member States shall ensure that the credit servicing agreement referred to in paragraph 1 contains a requirement pursuant to which the credit servicer notifies the credit purchaser prior to outsourcing any of its credit servicing activities.*
4. Member States shall ensure that the credit servicer keeps and maintains the following records for at least **five** years from the date on which *the credit servicing agreement* referred to in paragraph 1 *is terminated, or for the duration of the statutory limitation period applicable in the home Member State, but in either case for a period of no longer than 10 years*:
  - (a) *relevant* correspondence with both the *credit purchaser* and the borrower, *under the conditions provided for under applicable national law*;
  - (b) *relevant* instructions received from the *credit purchaser* in respect of a *creditor's rights under each non-performing* credit agreement, *or the non-performing credit agreement itself*, that it manages and enforces on behalf of that *credit purchaser*, *under the conditions provided for under applicable national law*;
  - (c) *the credit servicing agreement*.
5. Member States shall ensure that the credit servicer makes the records referred to in paragraph 4 available to competent authorities upon request.

## Article 12

### Outsourcing by a credit servicer

1. Member States shall ensure that where a credit servicer uses a ***credit service provider*** to perform ***any of the credit servicing activities***, the credit servicer remains fully responsible for complying with all obligations under national provisions transposing this Directive. The outsourcing of those credit servicing activities shall be subject to the following conditions:
  - (a) the conclusion of a written outsourcing agreement between the credit servicer and the credit service provider under which the credit service provider is required to comply with ***the applicable legal provisions, including national provisions transposing this Directive, and the relevant Union or national law applicable to a creditor's rights under a credit agreement, or to the credit agreement itself***;
  - (b) ***the outsourcing to a credit service provider of all credit servicing activities at the same time is forbidden***;
  - (c) the contractual relationship ***between the credit servicer and the credit purchaser*** and the obligations of the credit servicer towards ***the credit purchaser or towards borrowers*** is not altered ***by the outsourcing agreement with the credit service provider***;

- (d) the *compliance of a credit servicer with the requirements of its authorisation* as set out in Article 5(1) *is not affected by the outsourcing of some of its credit servicing activities*;
- (e) the outsourcing to the credit service provider does not prevent the supervision by competent authorities of a credit servicer in accordance with Articles 14 and 21;
- (f) the credit servicer has direct access to all relevant information concerning the credit servicing activities outsourced to the credit service provider;
- (g) *after the outsourcing agreement is terminated*, the credit servicer *has* the expertise and resources to be able to provide the outsourced credit servicing activities **█** .

*The outsourcing of credit servicing activities shall not be undertaken in such a way as to impair the quality of the credit servicer's internal control, or the soundness or continuity of its credit servicing activities.*

2. *Member States shall ensure that the credit servicer informs the competent authorities of the home Member State and, where applicable, of the host Member State, prior to outsourcing its credit servicing activities in accordance with paragraph 1.*

3. Member States shall ensure that the credit servicer keeps and maintains records of *relevant* instructions provided to the credit service provider, *in accordance with the conditions provided for under applicable national law, and of the outsourcing agreement referred to in paragraph 1 for a period of* at least *five* years from the date *on which the outsourcing agreement is terminated, or for the duration of the statutory limitation period applicable in the Member State, but in either case up to a maximum period of 10 years.*
4. Member States shall ensure that the credit servicer and the credit service provider make the information referred to in paragraph 3 available to competent authorities upon request.
5. *Member States shall ensure that credit service providers are not permitted to receive and hold funds from borrowers.*

## Chapter II

### Cross-border credit servicing activities

#### *Article 13*

Freedom to provide credit servicing activities in a host Member State

1. Member States shall ensure that a credit servicer having obtained an authorisation in accordance with Article 4(1) in a home Member State has the right to provide in the Union those services that are covered by that authorisation, ***without prejudice to any restrictions or requirements established in the national law of the host Member State in accordance with this Directive, including, where applicable, a prohibition on receiving and holding funds from borrowers, that are not related to other authorisation requirements of credit servicers, or to those established for the renegotiation of the terms and conditions related to a creditor's rights under a credit agreement or of the credit agreement itself.***
  
2. Member States shall ensure that where a credit servicer having obtained an authorisation in accordance with Article 4(1) in a home Member State intends to provide services in a host Member State, the credit servicer submits to the competent authority of the home Member State the following information:
  - (a) the host Member State in which the credit servicer intends to provide services ***and, where that information is already known to the credit servicer, the Member State where the credit was granted, when different from the host and the home Member States;***

- (b) where applicable, the address of the credit servicer's branch established in the host Member State;
- (c) where applicable, the identity and address of *the credit service provider* in the host Member State;
- (d) the identity of the persons responsible for managing the provision of credit servicing activities in the host Member State;
- (e) where applicable, details of the measures taken to adapt the internal procedures, governance arrangements and internal control mechanisms of the credit servicer in order to ensure compliance with the laws applicable to a *creditor's rights under a credit agreement or to the credit agreement itself*;
- (f) *a description of the procedure established in order to comply with the anti-money laundering and counter terrorist financing rules, whereby the national law of the host Member State transposing Directive (EU) 2015/849 designates credit servicers as obliged entities for the purpose of preventing and combating money laundering and terrorist financing*;
- (g) *that the credit servicer has appropriate means to communicate in the language of the host Member State or in the language of the credit agreement*;
- (h) *whether or not the credit servicer is authorised in its home Member State to receive and hold funds from borrowers.*



3. The competent authorities of the home Member State shall, within **45** days of receipt of **all** information referred to in paragraph 2, communicate that information to the competent authorities of the host Member State, which shall acknowledge receipt thereof without delay. The competent authorities of the home Member State shall thereafter inform the credit servicer ***of the date on which the information was communicated to the competent authorities of the host Member State and the date on which those competent authorities acknowledge receipt of the information. The competent authorities of the home Member State shall also communicate all information referred to in paragraph 2 to the competent authorities of the Member State where the credit was granted, when different from the host and the home Member States.***
4. Member States shall ensure that a credit servicer has the right of appeal before a tribunal where the competent authorities of the home Member State fail to communicate the information referred to in paragraph 2.
5. Member States shall ensure that **■** the credit servicer is able to start providing services in the host Member State from the earlier of the following:
  - (a) receipt of the communication from the competent authorities of the host Member State acknowledging receipt of the communication referred to in paragraph 3;
  - (b) in the absence of any receipt of the communication referred to in point (a) of this paragraph, after the expiry of two months from the date of ***submission of all*** information referred to in paragraph 2 ***to the competent authorities of the host Member State.***

6. Member States shall ensure that a credit servicer informs the competent authorities of the home Member State of *any subsequent* change to the information *that is required to be* communicated in accordance with paragraph 2. *In such cases, Member States shall ensure compliance with* the procedure set out in paragraphs 3, 4 and 5.
7. Member States shall ensure that the competent authorities of the host Member State record in the list or register referred to in Article 9 the credit servicers which are authorised to provide credit servicing activities in their territory and the details of the home Member State.

#### *Article 14*

##### Supervision of credit servicers which provide cross-border services

1. Member States shall ensure that the competent authorities of the home Member State review and evaluate the ongoing compliance, by a credit servicer which performs credit servicing activities in a host Member State, with the requirements of this Directive.
2. Member States shall ensure that the competent authorities of a home Member State are empowered to supervise, investigate and impose administrative **■** penalties and remedial measures on credit servicers in respect of *the requirements of this Directive when performing* their credit servicing activities in a host Member State.

3. Member States shall ensure that the competent authorities of the home Member State communicate the measures taken in respect of the credit servicer to the competent authorities of the host Member State *and, where appropriate, of the Member State where the credit was granted, when different from the host and the home Member States.*
4. Member States shall ensure that where a credit servicer *performs credit servicing activities* in a host Member State, the competent authorities of the home Member State and the competent authorities of the host Member State *and, where appropriate, of the Member State where the credit was granted, when different from the host and the home Member States* shall cooperate closely in the performance of their functions and duties **■**, in particular when carrying out checks, investigations and on-site inspections **■**.
5. Member States shall ensure that the competent authorities of the home Member State, in the exercise of their functions and duties provided for in this Directive, ask the competent authorities of the host Member State for their assistance in carrying out an on-site inspection of a branch set up, or of *a credit service provider* appointed, in a host Member State. *The on-site inspection of a branch or of a credit service provider shall be conducted in accordance with the law of the Member State where the inspection is carried out.*

6. Member States shall further ensure that the competent authorities of the host Member State are entitled to decide on the most appropriate measures to be taken in each individual case in order to meet the request of assistance by the competent authorities of the home Member State.
7. Where the competent authorities of the host Member State *decide* to conduct on-site inspections on behalf of the competent authorities of the home Member State, they shall inform the competent authorities of the home Member State of the results thereof without delay.
8. On their own initiative, the competent authorities of the host Member State may conduct checks, inspections and investigations in respect of credit servicing activities provided within their territory by a credit servicer authorised in a home Member State. The competent authorities of the host Member State shall provide the results of those checks, inspections and investigations to the competent authorities of the home Member State without delay.
9. Member States shall ensure that where the competent authorities of the host Member State have evidence that a credit servicer *performing credit servicing activities* within its territory, as provided for in Article 13, infringes the *applicable rules, including* obligations arising from the national provisions transposing this Directive, they transmit that evidence to the competent authorities of the home Member State and request that they take appropriate measures, *without prejudice to the supervisory, investigatory and sanctioning powers of the competent authorities of the host Member State regarding the credit servicer under national law, namely those applicable to the credit or the credit agreement.*

10. *Member States shall ensure that where the competent authorities of the Member State where the credit was granted, when different from the host and the home Member States, have evidence that a credit servicer infringes the obligations provided for in this Directive, or in the national rules applicable to the credit or the credit agreement, they transmit that evidence to the competent authorities of the home Member State and request that they take appropriate measures, without prejudice to the supervisory, investigatory and sanctioning powers of the competent authorities of the Member State where the credit was granted, when different from the host and the home Member States.*
11. Member States shall ensure that the competent authorities of the home Member State communicate details of any administrative or other procedure initiated in respect of the evidence provided by the host Member State, or of any **■ administrative** penalties and remedial measures taken against the credit servicer, or of a reasoned decision why no measures were taken, to the competent authorities of the host Member State that referred the evidence no later than two months from the date of the request referred to in paragraph 9. Where a procedure has been initiated, the competent authorities of the home Member State shall regularly inform the competent authorities of the host Member State about its status.

**12. *Where a credit servicer continues to infringe the applicable rules, including its obligations under this Directive, and after the competent authorities of the host Member State have informed the home Member State thereof, Member States shall ensure that the competent authorities of the host Member State are entitled to impose appropriate administrative penalties and remedial measures in order to ensure compliance with this Directive when either of the following apply:***

- (a) no adequate and effective steps were taken by the credit servicer to rectify the infringement in a reasonable time; or***
- (b) in an urgent case, where immediate action is necessary in order to address a serious threat to the collective interests of the borrowers.***

***The competent authorities of the host Member State may impose the administrative penalties and remedial measures referred to in the first subparagraph notwithstanding any administrative penalties and remedial measures already imposed by the competent authorities of the home Member State.***

***In addition, the competent authorities of the host Member State may prohibit further activities of a credit servicer that infringes the applicable rules, including its obligations under this Directive, until such time as an adequate decision is taken by the competent authority of the home Member State or the credit servicer takes steps to remedy the infringement.***

### Title III

#### Credit purchasers

##### *Article 15*

Right to information regarding *a creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself*

1. Member States shall ensure that a *credit institution provides a prospective credit purchaser with* necessary information *regarding a creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself, and, if applicable, the collateral, so as to enable the prospective credit purchaser to conduct its own assessment of* the value of the *creditor's rights under the non-performing credit agreement, or of the non-performing credit agreement itself*, and the likelihood of recovery of the value of that agreement prior to entering into a contract for the transfer of that *creditor's rights under the non-performing credit agreement, or of the non-performing credit agreement itself, while ensuring the protection of information made available by the credit institution and of the confidentiality of business data.*

2. ***On a biannual basis***, Member States shall require **■** credit ***institutions that transfer*** to a credit purchaser ***a creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself***, to inform the competent authorities ***of the host Member State*** designated in accordance with Article 21(3) of this Directive, ***and the competent authorities referred to in Article 4(5) of Directive 2013/36/EU of the European Parliament and of the Council<sup>26</sup>, of at least*** the following:
- (a) ***the legal entity identifier (LEI) of the credit purchaser or, where applicable, of its representative designated in accordance with Article 19, or where such identifier does not exist, of:***
    - (i) ***the identity of the credit purchaser or of the members of the credit purchaser's management or administrative organ and the persons who hold qualifying holdings in the credit purchaser within the meaning of Article 4(1), point (36), of Regulation (EU) No 575/2013; and***
    - (ii) ***the address of the credit purchaser or, where applicable, its representative designated in accordance with Article 19;***
  - (b) ***the aggregate outstanding balance of the creditor's rights under the non-performing credit agreements or of the non-performing credit agreements transferred;***

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<sup>26</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).



- (c) the *number and size* of the *creditor's rights under the non-performing credit agreements or of the non-performing credit agreements transferred*;
  - (d) *whether the transfer includes the creditor's rights under the non-performing credit agreements, or the non-performing credit agreements themselves, concluded with consumers and the types of assets securing the non-performing credit agreements, when applicable.*
3. *The competent authorities referred to in paragraph 2 may require credit institutions to provide the information referred to in that paragraph on a quarterly basis whenever they deem necessary, including in order to better monitor a high number of transfers that might occur during a crisis period.*
  4. *Member States shall ensure that* the competent authorities *of the host Member State* communicate without delay the information referred to in *paragraphs 2 and 3*, and any other information that they might consider to be necessary for carrying out their functions and duties according to this Directive, to the competent *authorities* of the *home* Member State *of the credit purchaser* ■ .
  5. Paragraphs *1 to 4* shall be applied in accordance with Regulations (EU) 2016/679 and (EU) 2018/1725.

## Article 16

### Implementing technical standards for *data templates*

1. The EBA shall develop draft implementing technical standards to specify the templates to be used by **■** credit institutions for the provision of information referred to in Article 15(1), in order to provide detailed information on their credit exposures in the banking book to credit purchasers for the *analysis*, financial due diligence and valuation of a *creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself*.
2. *The EBA shall specify in the draft implementing technical standards referred to in paragraph 1 of this Article the data fields, including which data fields are mandatory, and the data treatment for confidential information as set out in Article 15(1).*
3. *The draft implementing technical standards shall be proportionate to the nature and size of credits and credit portfolios.*
4. *When preparing the draft implementing technical standards referred to in paragraph 1, the EBA shall take into consideration all of the following:*
  - (a) *existing market practices in data sharing between buyers and sellers;*
  - (b) *the feedback received from users of their experience of using existing EBA non-performing loans transaction templates;*
  - (c) *existing similar requirements at Member State level;*
  - (d) *the importance of minimising processing costs for credit institutions and credit purchasers.*

5. The EBA shall submit the draft implementing technical standards referred to in paragraph 1 to the Commission by ... [*nine months after the date of the entry into force of this Directive*].
6. Power is conferred on the Commission to adopt the implementing technical standards referred to in paragraph 1, in accordance with Article 15 of Regulation (EU) No 1093/2010.
7. *The data templates shall be used for transactions relating to credits issued on or after 1 July 2018 that become non-performing after ... [the date of entry into force of this Directive]. For credits that originate between 1 July 2018 and the date of entry into force of the implementing technical standards referred to in paragraph 1, credit institutions shall complete the data template with the information already available to them.*
8. *Member States shall ensure that credit institutions also apply the implementing technical standards referred to in paragraph 6 to the transfer of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, to other credit institutions. The data templates shall be used by credit institutions for the provision of information between credit institutions in cases where there is only a transfer of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself.*

*Article 17*

Obligations of credit purchasers

1. Member States shall ensure that:

- (a) a credit purchaser domiciled in the Union, or that has its registered office or, if under its national law it has no registered office, its head office in the Union appoints an entity referred to in Article 2(5), point (a)(i) or (iii), or a credit servicer, to perform credit servicing activities in respect of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, concluded with consumers;*
- (b) where a credit purchaser is not domiciled in the Union, or does not have its registered office or, if under its national law it has no registered office, its head office in the Union, its representative designated in accordance with Article 19(1) appoints an entity referred to in Article 2(5), point (a)(i) or (iii), or a credit servicer, except in cases where the representative is itself an entity referred to in Article 2(5), point (a)(i) or (iii), or a credit servicer, to perform credit servicing activities in respect of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, concluded with:*
- (i) natural persons, including consumers and independent workers;*
- (ii) micro, small and medium-sized enterprises (SMEs), as defined in Article 2 of the Annex to Commission Recommendation 2003/361/EC<sup>27</sup>.*

*Host Member States may extend the requirement provided for in the first subparagraph to other credit agreements.*

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<sup>27</sup> Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

2. Member States shall ensure that a credit purchaser is not subject to any additional requirements for the purchase of *a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself*, other than as provided for by the national provisions transposing this Directive, *or by provisions of applicable consumer protection law, contract law, civil law or criminal law*. Member States shall ensure that relevant Union and national law concerning in particular the enforcement of contracts, consumer protection, borrowers' rights, credit origination, bank secrecy rules and criminal law continues to apply to the credit purchaser upon the transfer of the creditor's rights under the credit agreement, or of the credit agreement itself, to the credit purchaser. The level of protection provided under Union and national law to consumers and other borrowers, as well as insolvency rules, shall not be affected by the transfer of the creditor's rights under the credit agreement, or of the credit agreement itself, to the credit purchaser, without prejudice to national and international rules on promissory notes and bills of exchange.
3. *This Directive is without prejudice to national powers regarding credit registers, including the power to require information from credit purchasers regarding a creditor's rights under a credit agreement, or the credit agreement itself, and its performance.*

4. *Member States may allow credit purchasers to engage natural persons to service the credit agreements that they have acquired. Those natural persons shall be subject to a national regulation and supervision regime and shall not benefit from the freedom provided for in this Directive to perform credit servicing activities in another Member State.*
5. *Member States shall ensure that the appointed credit servicer, or the entity referred to in Article 2(5), point (a)(i) or (iii), complies, on behalf of the credit purchaser, with the obligations imposed on the credit purchaser pursuant to paragraph 2 of this Article and Articles 18 and 20. In cases where no credit servicer or entity referred to in Article 2(5), point (a)(i) or (iii) is appointed, the credit purchaser or its representative shall remain subject to those obligations.*

*Member States may require that the appointed credit servicer, or the entity referred to in Article 2(5), point (a)(i) or (iii), complies, on behalf of the credit purchaser, with the obligations imposed on the credit purchaser in accordance with national law including in relation to paragraph 3 of this Article.*

Article 18

Use of credit servicers **■** or *other entities*

1. **Where** the credit purchaser or, where applicable, *its* representative designated in accordance with Article 19 **appoints an entity referred to in Article 2(5), point (a)(i) or (iii), or a credit servicer, to perform credit servicing activities in relation to the transferred creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself**, Member States shall require that credit purchaser or *its* representative **to inform the competent authorities of its home Member State** of the identity and address of the *entity referred to in Article 2(5), point (a)(i) or (iii)*, or of the credit servicer, **at the latest on the date on which the credit servicing activities start**.
2. Where the credit purchaser or, where applicable, its representative designated in accordance with Article 19 **appoints an entity other than the one notified under paragraph 1 of this Article**, it shall notify the competent authorities **of its home Member State** thereof at the latest on **the date** of that change and shall indicate the identity and address of the new **entity that it has** appointed to perform credit servicing activities in relation to the transferred **creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself**.

3. Member States shall require the competent authorities of the *home* Member State *of* the credit purchaser **■** to transmit without undue delay to the competent authorities *of the host Member State, to the competent authorities of the Member State in which the credit was granted, and to the competent authorities of the home Member State of the new credit servicer, the* information received in accordance with *paragraphs 1 and 2*.

*Article 19*

Representative of a third-country credit purchaser

1. Member States shall provide that where a transfer of a *creditor's rights under a non-performing* credit agreement, *or of the non-performing credit agreement itself*, is concluded, a credit purchaser that is not domiciled *in the Union, or that does not have its registered office or, if under its national law it has no registered office, its head office* in the Union designates in writing a representative that is domiciled *in the Union or that does have its registered office or, if under its national law it has no registered office, its head office* in the Union.
2. The representative referred to in paragraph 1 shall be addressed in addition to, or instead of, the credit purchaser by competent authorities on all issues related to the ongoing compliance with this Directive and be fully responsible for compliance with the obligations imposed on the credit purchaser under the national provisions transposing this Directive.

**■**



*Article 20*

Transfer of a *creditor's rights under a non-performing* credit agreement, *or of the non-performing credit agreement itself*, by a credit purchaser *and communication to the competent authorities*

1. Member States shall require a credit purchaser or, where applicable, its representative designated in accordance with Article 19, that transfers a *creditor's rights under a non-performing* credit agreement, *or the non-performing credit agreement itself*, to inform the competent *authorities of its home Member State on a biannual basis of the legal entity identifier (LEI) of the new credit purchaser and, where applicable, of its representative designated in accordance with Article 19 or, where such identifier does not exist, of:*
  - (a) *the identity of the new credit purchaser or, where applicable, its representative designated in accordance with Article 19, or of the members of the new credit purchaser's or its representative's management or administrative organ and the persons who hold qualifying holdings in the new credit purchaser or its representative within the meaning of Article 4(1), point (36), of Regulation (EU) No 575/2013; and*
  - (b) *the address of the new credit purchaser or, where applicable, of its representative designated in accordance with Article 19.*

*Additionally, the credit purchaser or its representative shall inform the competent authorities of its home Member State of at least the following:*

- (a) the aggregate outstanding balance of the creditor's rights under the non-performing credit agreements, or of the non-performing credit agreements transferred;*
- (b) the number and size of the creditor's rights under the non-performing credit agreements or of the non-performing credit agreements transferred;*
- (c) whether the transfer includes a creditor's rights under a non-performing credit agreement, or a non-performing credit agreement itself, concluded with consumers and the types of assets securing the non-performing credit agreement, when applicable.*

*2. The competent authorities referred to in paragraph 1 may require credit purchasers or, where applicable, their representatives designated in accordance with Article 19, to provide the information referred to in that paragraph on a quarterly basis whenever those competent authorities deem necessary, including in order to better monitor a high number of transfers that might occur during a crisis period.*

*3. Member States shall ensure that the competent authorities referred to in paragraphs 1 and 2 transmit without undue delay the information received in accordance with those paragraphs to the competent authorities of the host Member State and to the competent authorities of the home Member State of the new credit purchaser.*

## Title IV

### Supervision

#### Article 21

##### Supervision by competent authorities

1. Member States shall ensure that credit servicers and, where applicable, credit service providers to whom credit servicing activities have been outsourced in accordance with Article 12, comply with the national provisions transposing this Directive on an ongoing basis and shall ensure that those activities are subject to adequate supervision by the competent authorities of the home Member State in order to assess such compliance.
2. The home Member State of a credit purchaser or, where applicable, its representative designated in accordance with Article 19, shall ensure that the competent authorities referred to in paragraph 1 of this Article are responsible for the supervision of the obligations set out in Article *10 and in Articles 17 to 20* in respect of the credit purchaser or, where applicable its representative designated in accordance to Article 19.
3. Member States shall designate the competent authorities responsible for carrying out the functions and duties under the national provisions transposing this Directive.

4. Where Member States designate more than one competent authority pursuant to paragraph 3, they shall determine their respective tasks *and designate one of them to be a single point of entry for all necessary exchanges and interactions with competent authorities of home or host Member States.*
5. Member States shall ensure that appropriate measures are in place to enable the competent authorities designated pursuant to paragraph 3 of this Article to obtain from credit purchasers or their representatives designated in accordance with Article 19, credit servicers, credit service providers to whom a credit servicer outsources credit servicing activities under Article 12, borrowers and any other persons or public authority, the information necessary to carry out the following:
  - (a) assess ongoing compliance with the requirements laid down in the national provisions transposing this Directive;
  - (b) investigate possible infringements of those requirements;
  - (c) impose administrative penalties and remedial measures in accordance with the national provisions transposing Article 23.
6. Member States shall ensure that the competent authorities designated pursuant to paragraph 3 have the expertise, resources, operational capacity and powers necessary for the exercise of their functions and duties laid down in this Directive.

## Article 22

### Supervisory role and powers of competent authorities

1. Member States shall ensure that the competent authorities of the home Member State designated pursuant to Article 21(3) are given all supervisory, investigatory and sanctioning powers, necessary for the exercise of their functions and duties laid down in this Directive, including *at least* the following:
  - (a) the power to grant or refuse an authorisation pursuant to *Articles 5 and 6*;
  - (b) the power to withdraw an authorisation pursuant to Article 8;
  - (c) *the power to prohibit any of the credit servicing activities*;
  - (d) the power to conduct on-site and off-site inspections;
  - (e) the power to impose administrative **■** penalties and remedial measures in accordance with the national provisions transposing Article 23;
  - (f) the power to review outsourcing agreements concluded between credit servicers and credit service providers in accordance with Article 12(1);
  - (g) *the power to require credit servicers to remove members of their management or administrative organ when they fail to comply with the requirements set out in Article 5(1), point (b)*;

- (h) the power to require credit servicers to modify or update their internal governance arrangements and internal control mechanisms in order to effectively ensure respect for borrowers' rights in accordance with the laws governing the credit agreement;*
- (i) the power to require credit servicers to modify or update their policies adopted to ensure the fair and diligent treatment of borrowers, and the recording and handling of complaints from borrowers;*
- (j) the power to request further information pertaining to the transfer of a creditor's rights under the non-performing credit agreement, or of the non-performing credit agreement itself.*

2. *Member States shall ensure that the competent authorities of the host Member State designated pursuant to Article 21(3) and of the Member State where the credit was granted, when different from the host and the home Member States, are given all necessary powers for the exercise of their functions and duties laid down in this Directive.*

3. Member States shall ensure that the competent authorities of the home Member State evaluate, *by applying a risk-based approach*, the implementation by a credit servicer of the requirements set out in Article 5(1), points (e) to *(h)*.

4. Member States shall determine the extent of the evaluation referred to in paragraph 3, having regard to the size, nature, scale and complexity of the activities of the credit servicer concerned.
5. The competent authorities of the home Member State shall ***inform the competent authorities of the host Member State, or of the Member State where the credit was granted, when different from the host and the home Member States, of the results of the evaluation referred to in paragraph 3 upon request of one of those competent authorities, or where the competent authorities of the home Member State consider it appropriate. The details of any administrative penalties or remedial measures imposed shall be transmitted by the competent authorities of the home Member State to the competent authorities of the host Member State and, where appropriate, of the Member State where the credit was granted, when different from the host and the home Member States.***

6. Member States shall ensure that when carrying out the evaluation referred to in paragraph 3, the competent authorities of the home and ***of the*** host Member States, ***and of the Member State where the credit was granted, when different from the host and the home Member States***, exchange all information necessary to enable them to carry out their respective functions and duties laid down in this Directive.
7. Member States shall ensure that the competent authorities of the home Member State are able to require a credit servicer, credit service provider or credit purchaser or its representative designated in accordance with Article 19 that does not meet the requirements of the national provisions transposing this Directive to take, at an early stage, all necessary actions or steps in order to comply with those provisions.

#### *Article 23*

##### Administrative penalties and remedial measures

1. ***Without prejudice to the right of Member States to lay down criminal penalties***, Member States shall lay down rules establishing appropriate administrative penalties and remedial measures applicable in at least the following situations:
  - (a) a credit servicer fails to ***comply with the requirement set out in the national provisions transposing Article 11*** or enters into an outsourcing agreement infringing the national provisions transposing Article 12 or the credit service provider to whom the credit servicing activities were outsourced commits a serious infringement of the applicable legal provisions, including the national provisions transposing this Directive;



- (b) a credit servicer's governance arrangements and internal control mechanisms *as set out in Article 5(1), point (e)* fail to ensure respect for borrower rights and compliance with personal data protection rules;
- (c) a credit servicer's policy is inadequate for the proper treatment of borrowers as set out in Article 5(1), point (f);
- (d) a credit servicer's internal procedures *as set out in Article 5(1), point (g)* fail to provide for the recording and handling of complaints from borrowers according to the obligations set out in the national provisions transposing this Directive;
- (e) a credit purchaser or, where applicable, its representative designated in accordance with Article 19 fails to communicate the information provided for by national provisions transposing Articles 18 and 20;
- (f) a credit purchaser or, where applicable, its representative designated in accordance with Article 19 fails to comply with the requirement of the national provisions transposing Article 17;
- (g) a credit purchaser fails to comply with the requirement of the national provisions transposing Article 19;

- (h) a credit institution fails to communicate the information set out in the national provisions transposing Article 15;*
- (i) a credit servicer allows one or more persons not complying with the requirements set out in Article 5(1), point (b) to become or remain a member of its management or administrative organ;*
- (j) a credit servicer fails to comply with the requirements set out in the national provisions transposing Article 24;*
- (k) a credit purchaser or, where applicable, credit servicers or any entity mentioned under Article 2(5), point (a)(i) or (iii), fails to comply with national provisions transposing Article 10;*
- (l) a credit servicer receives and holds funds from borrowers when this is not permitted in a Member State in accordance with Article 6(1), point (b);*
- (m) a credit servicer fails to comply with the requirements set out in the national provisions transposing Article 6(2).*

2. The administrative penalties and remedial measures referred to in paragraph 1 shall be effective, proportionate and dissuasive and shall include at least the following:

- (a) a *withdrawal* of an authorisation to carry out activities as a credit servicer;

- (b) an order requiring the credit servicer or credit purchaser or, where applicable, its representative designated in accordance with Article 19 to remedy the infringement, and to cease the conduct and to desist from a repetition of that conduct;
  - (c) administrative pecuniary penalties.
3. Member States shall ensure that administrative penalties and remedial measures are effectively implemented.
4. Member States shall ensure that when determining the type of administrative penalties or remedial measures and the amount of those administrative pecuniary penalties that competent authorities take into account *relevant* circumstances, *including the following*:
- (a) the gravity and the duration of the infringement;
  - (b) the degree of responsibility of the credit servicer or credit purchaser or, where applicable, its representative designated in accordance with Article 19, responsible for the infringement;
  - (c) the financial strength of the credit servicer or credit purchaser responsible for the infringement, including by reference to the total turnover of a legal person or the annual income of a natural person;

- (d) the importance of profits gained or losses avoided because of the infringement by the credit servicer or credit purchaser or, where applicable, its representative designated in accordance with Article 19, responsible for the infringement, insofar as those profits or losses can be determined;
- (e) the losses caused to third parties by the infringement, insofar as those losses can be determined;
- (f) the level of cooperation by the credit servicer or credit purchaser responsible for the infringement with the competent authorities;
- (g) previous infringements by the credit servicer or credit purchaser or, where applicable, its representative designated in accordance with Article 19, responsible for the infringement;
- (h) any actual or potential systemic consequences of the infringement.

5. **█** Member States shall ensure that competent authorities *can* apply the administrative penalties and remedial measures set out in paragraph 2 to members of the management or administrative organ, and to other individuals who under national law are responsible for the infringement.

6. Member States shall ensure that before taking any decision imposing the administrative penalties or remedial measures set out in paragraph 2 of this Article, the competent authorities give the concerned credit servicer, credit purchaser or where applicable, its representative designated in accordance with Article 19, the opportunity to be heard.
7. Member States shall ensure that any decision imposing the administrative *penalties* or remedial measures set out in paragraph 2 is properly reasoned and is subject to the right of appeal.
8. ***Member States may decide not to lay down rules for administrative penalties for infringements that are subject to criminal penalties under their national law. In that case, Member States shall communicate to the Commission the relevant criminal law provisions.***

## Title V

### Safeguards and duty to cooperate






#### *Article 24* Complaints



1. Member States shall ensure that credit servicers establish and maintain effective and transparent procedures for the handling of complaints from borrowers.
2. Member States shall ensure that the treatment by credit servicers of complaints from borrowers is free of charge and that credit servicers record the complaints and the measures taken to address them.
3. Member States shall ensure that the competent authorities establish and publish a procedure for the handling of complaints from borrowers concerning credit purchasers, credit servicers and credit service providers, and shall ensure that they are treated promptly when received.

#### *Article 25*

#### Personal data protection

The  processing of  personal data  for the purposes of this Directive shall be carried out in accordance with Regulations (EU) 2016/679 and (EU) 2018/1725.

## *Article 26*

### Cooperation between competent authorities

1. Member States shall ensure that the competent authorities referred to in Articles 8, 13, 14, 15, 18, 20 and 22 cooperate with each other whenever necessary for the purpose of carrying out their functions and duties or of exercising their powers under the national provisions transposing this Directive. Those competent authorities shall also coordinate their actions in order to avoid possible duplication and overlap when applying supervisory powers and administrative penalties and remedial measures to cross-border cases.
2. Member States shall ensure that competent authorities, on request and without undue delay, provide each other with the information required for the purpose of carrying out their functions and duties under the national provisions transposing this Directive.

3. Member States shall ensure that competent authorities receiving confidential information in the exercise of their functions and duties under this Directive use that information only in the course of their functions and duties ***under the national provisions transposing this Directive. The exchange of information between competent authorities shall be subject to the obligation of professional secrecy referred to in Article 76 of Directive 2014/65/EU of the European Parliament and of the Council<sup>28</sup>.***
4. ***Member States shall provide that all persons working, or who have worked, for the competent authorities and auditors or experts acting on behalf of the competent authorities are bound by the obligation of professional secrecy.***
5. Member States shall take the necessary administrative and organisational measures to facilitate the cooperation provided for in this Article.
6. The EBA shall facilitate the exchange of information between competent authorities in the Member States and promote their cooperation.

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<sup>28</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).



Title VI

Amendments

*Article 27*

*Amendments to Directive 2008/48/EC*

*Directive 2008/48/EC is amended as follows:*

**(1)** *the following article is inserted:*

*‘Article 11a*

*Information regarding the modification of the terms and conditions of a credit agreement*

*Without prejudice to other obligations provided for in this Directive, Member States shall ensure that prior to modifying the terms and conditions of the credit agreement, the creditor communicates the following information to the consumer:*

- (a) a clear description of the proposed changes and, where applicable, of the need for consumer consent or of the changes introduced by operation of law;*
- (b) the timescale for the implementation of the changes referred to in point (a);*
- (c) the means for complaint available to the consumer regarding the changes referred to in point (a);*
- (d) the time period available for lodging any such complaint;*
- (e) the name and address of the competent authority to which the consumer can submit that complaint.’;*

(2) *the following article is inserted:*

*'Article 16a*

*Arrears and enforcement*

*1. Member States shall require creditors to have adequate policies and procedures so that they make efforts to exercise, where appropriate, reasonable forbearance before enforcement proceedings are initiated. Such forbearance measures shall take into account, among other elements, the consumer's circumstances and may consist of, among other possibilities:*

- (a) a total or partial refinancing of a credit agreement;*
- (b) a modification of the existing terms and conditions of a credit agreement, which may include among others:
  - (i) extending the term of the credit agreement;*
  - (ii) changing the type of credit agreement;*
  - (iii) deferring payment of all or part of the instalment repayment for a period;*
  - (iv) changing the interest rate;*
  - (v) offering a payment holiday;*
  - (vi) partial repayments;*
  - (vii) currency conversions;*
  - (viii) partial forgiveness and debt consolidation.**

2. *The list of potential forbearance measures set out in point (b) of paragraph 1 is without prejudice to rules set out in national law and does not require Member States to provide for all of those measures in their national law.*
3. *Member States may require that, where the creditor is permitted to define and impose charges on the consumer arising from the default, those charges are no greater than is necessary to compensate the creditor for costs it has incurred as a result of the default.*
4. *Member States may allow creditors to impose additional charges on the consumer in the event of default. In that case, Member States shall place a cap on those charges.’;*

**(3) Article 22(1) is replaced by the following:**

- ‘1. *Insofar as this Directive contains harmonised provisions, Member States may not maintain or introduce in their national law provisions diverging from those laid down in this Directive. However, Article 16a(3) and (4) shall not preclude Member States from maintaining or introducing more stringent provisions in order to protect consumers.’*

Article 28

Amendments to Directive 2014/17/EU

**Directive 2014/17/EU is amended as follows:**

**(1)** the following article **■** is inserted:

***‘Article 27a***

***Information regarding the modification of the terms and conditions of a credit agreement***

***Without prejudice to other obligations provided for in this Directive, Member States shall ensure that, prior to modifying the terms and conditions of the credit agreement, the creditor communicates the following information to the consumer:***

- (a) a clear description of the proposed changes and, where applicable, of the need for consumer consent or of the changes introduced by operation of law;***
- (b) the timescale for the implementation of the changes referred to in point (a);***
- (c) the means for complaint available to the consumer regarding the changes referred to in point (a);***
- (d) the time period available for lodging any such complaint;***
- (e) the name and address of the competent authority to which the consumer can submit that complaint.’;***

(2) *Article 28 is amended as follows:*

(a) *paragraph 1 is replaced by the following:*

*‘1. Member States shall require creditors to have adequate policies and procedures so that they make efforts to exercise, where appropriate, reasonable forbearance before foreclosure proceedings are initiated. Such forbearance measures shall take into account, among other elements, the consumer’s circumstances and may consist of, among other possibilities:*

*(a) a total or partial refinancing of a credit agreement;*

*(b) a modification of the existing terms and conditions of a credit agreement, which may include among others:*

*(i) extending the term of the credit agreement;*

*(ii) changing the type of credit agreement;*

*(iii) deferring payment of all or part of the instalment repayment for a period;*

*(iv) changing the interest rate;*

*(v) offering a payment holiday;*

*(vi) partial repayments;*

*(vii) currency conversions;*

*(viii) partial forgiveness and debt consolidation.’;*

**(b) the following paragraph is inserted:**

**‘ 1a. The list of potential forbearance measures set out in point (b) of paragraph 1 is without prejudice to rules set out in national law and does not require Member States to provide for all of those measures in their national law.’;**

(3) the following article is inserted:

“Article 28a

Assignment of the creditor's rights or of the credit agreement itself

1. In the event of an assignment to a third party of the creditor’s rights under a credit agreement, or of the credit agreement itself, the consumer shall be entitled to plead against the assignee any defence which was available to the consumer as against the original creditor, including set-off where the latter is permitted in the Member State concerned.
2. The consumer shall be informed of an assignment referred to in paragraph 1, ***except where the original creditor, by agreement with the assignee, continues to service the credit vis-à-vis the consumer.***’.

## Title VII

### Final provisions

#### *Article 29*

##### Committee

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>29</sup>.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

#### *Article 30*

##### Evaluation

1. ***By ... [five years after the date of entry into force of this Directive], the Commission shall carry out an evaluation of this Directive and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. The evaluation shall consist of at least the following:***
  - (a) the number of authorised credit servicers in the Union and the number of credit servicers providing their services in a host Member State;***

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<sup>29</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (b) the number of creditors' rights under non-performing credit agreements or of non-performing credit agreements purchased from credit institutions by credit purchasers domiciled or having their registered office or, if under their national law they have no registered office, their head office, in the same Member State as the credit institution, or in a different Member State than the credit institution, or outside of the Union;*
- (c) an assessment of the existing money laundering and terrorist financing risk associated with the activities performed by credit servicers and credit purchasers;*
- (d) an assessment of the cooperation between competent authorities under Article 26.*

2. Where the evaluation identifies significant problems with the functioning of this Directive, the report shall outline how the Commission intends to address the identified problems, including steps and timings of the potential revision.



*Article 31*  
*Review clause*

*Without prejudice to the legislative prerogatives of the European Parliament and the Council, by ... [24 months after the date of entry into force of this Directive], the Commission shall submit to the European Parliament and to the Council a report on:*

- (a) the adequacy of the regulatory framework regarding a potential introduction of caps on charges arising from the event of default applicable to credit agreements concluded with:
  - (i) natural persons for purposes related to the trade, business or profession of those natural persons;*
  - (ii) SMEs, as defined in Article 2 of the Annex to Recommendation 2003/361/EC;*
  - (iii) any borrower, provided that the credit is guaranteed by a natural person or is secured by assets or property belonging to that natural person;**

- (b) *relevant aspects, including potential forbearance measures, of credit agreements concluded with:*
- (i) *natural persons for purposes related to the trade, business or profession of those natural persons;*
  - (ii) *SMEs, as defined in Article 2 of the Annex to Recommendation 2003/361/EC;*
  - (iii) *any borrower, provided that the credit is guaranteed by a natural person or is secured by assets or property belonging to that natural person;*
- (c) *the need for, and feasibility of, developing implementing or regulatory technical standards or other appropriate means to introduce common reporting formats for communications to borrowers under Article 10(2) and on forbearance measures.*

*Where appropriate, the report referred to in the first paragraph shall be accompanied by a legislative proposal.*

*Article 32*

Transposition

1. Member States shall adopt and publish, by ... *[24 months after the date of entry into force of this Directive]*, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate the text of those measures to the Commission.

2. They shall apply the measures referred to in paragraph 1 from ... *[24 months after the date of entry into force of this Directive plus one day]*.

*By way of derogation from the first subparagraph, entities already carrying out in accordance with national law credit servicing activities on ... [24 months after the date of entry into force of this Directive plus one day] shall be allowed to continue carrying out those credit servicing activities in their home Member State until ... [30 months after the date of entry into force of this Directive] or until the date on which they obtain an authorisation in accordance with this Directive, whichever is the earlier.*

*Member States that already have in place regimes that are equivalent to, or stricter than, those established in this Directive for credit servicing activities may allow entities already carrying out credit servicing activities under those regimes on ... [24 months after the date of entry into force of this Directive plus one day] to be automatically recognised as authorised credit servicers by the national provisions transposing this Directive.*

3. When Member States adopt the measures referred to in paragraph 1, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
4. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 33*

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 34*

Addressees

This Directive is addressed to the Member States.

Done at ...,

*For the European Parliament*

*For the Council*

*The President*

*The President*