



Plenary sitting

A9-0003/2021

14.1.2021

*****I**

REPORT

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))

Committee on Economic and Monetary Affairs

Rapporteur: Esther de Lange, Irene Tinagli

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▬ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council 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 2018¹
 - having regard to the opinion of the European Economic and Social Committee of 11 July 2018²,
 - 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 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.

¹ OJ C 444, 10.12.2018, p. 15.

² OJ C 367, 10.10.2018, p. 43.

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

2018/0063 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on credit servicers *and* credit purchasers **█**

(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 Economic and Social Committee³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The establishment of a comprehensive strategy to address the issue of non-performing loans (NPLs) is a priority for the Union⁴. While addressing NPLs is primarily the responsibility of credit institutions and Member States, there is also a clear Union dimension to reduce current stocks of NPLs, as well as to prevent 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 these objectives, the Union should complete the Banking Union and further develop a

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **█** .

³ OJ C , , p. .

⁴ See the Reflection Paper on Deepening the Economic and Monetary Union at: https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-emu_en.pdf, 31.5.2017

Capital Markets Union (CMU). Addressing high stocks of NPLs and their possible future accumulation is essential to **strengthening** the Banking Union as it is essential for ensuring competition in the banking sector, preserving financial stability and encouraging lending so as to create jobs and growth within the Union.

- (3) In July 2017 the Council in its "Action Plan to Tackle Non-Performing Loans in Europe"⁵ 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. Actions in these areas are to be taken at national level and at Union level where appropriate. The Commission announced a similar intention in its "Communication on completing the Banking Union" of 11 October 2017⁶, which called for a comprehensive package on tackling NPLs within the Union.
- (4) This Directive, together with other measures which the Commission is putting forward, as well as the action taken by the ECB in the context of banking supervision under the Single Supervisory Mechanism (SSM) and by the European Banking Authority 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.
- (4a) ***In the process of 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 Council⁷, should develop appropriate macro-prudential standards and supervision for financial institutions involved in the secondary market for NPLs.***
- (5) Credit institutions will be required 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 will guide them in this, based on their existing bank-specific, so-called Pillar 2, powers under Regulation (EU) No 575/2013 of the European Parliament and of the Council⁸ (CRR). Where NPLs become a significant and broad-based problem, Member

⁵ 11/07/2017, <http://www.consilium.europa.eu/en/press/press-releases/2017/07/11/conclusions-non-performing-loans/pdf>.

⁶ Communication to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions on completing the Banking Union, COM(2017) 592 final, 11.10.2017.

⁷ 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).

⁸ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

States can set up national asset management companies or other alternative measures within the framework of current state aid and banks resolution rules.

- (6) This Directive should enable credit institutions to better deal with loans once these become non-performing by improving conditions to **sell** 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, one viable solution would be to either outsource the servicing of these 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.
- (6a) *Creditors should, where possible, make an effort to avoid transferring to third parties NPLs and exposures secured by immovable residential property which is the primary residence of a borrower. Member States should adopt measures to encourage creditors to exercise reasonable forbearance before foreclosure proceedings in respect of distressed borrowers are initiated, in accordance with Article 28 of Directive 2014/17/EU of the European Parliament and of the Council⁹ and the EBA Guidelines on arrears and foreclosure of 19 August 2015 (EBA/GL/2015/12). In particular, when deciding on which steps or forbearance measures to take, creditors should take into account the individual circumstances of the borrower, the borrower's interests and rights and the borrower's ability to repay. Forbearance measures could include certain concessions to the borrower, such as a total or partial refinancing of a credit agreement and a modification of the previous terms and conditions of a credit agreement, such as an extension of the term of the mortgage, a change of the type of mortgage, a deferral of payment of all or part of the instalment repayment for a period, the change of the interest rate, and the offer of a payment holiday. Where there remains outstanding debt after foreclosure proceedings, Member States should ensure the protection of minimum living conditions and put in place measures to facilitate repayment while avoiding long-term over-indebtedness. At least where the price obtained for the 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 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 borrower's primary residence.*

- (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 the 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 **laying down safeguards and minimum requirements** for the transfer of NPLs by credit institutions to non-credit institutions, while at the same time safeguarding **borrowers'** rights. Any proposed measure should **harmonise** the authorisation requirements for credit servicers. This Directive should therefore establish a Union-wide

⁹ 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).

framework for both purchasers and servicers of *non-performing* credit agreements issued by credit institutions, *whereby credit servicers should obtain authorisation and be subject to the supervision of Member States' competent authorities.*

- (10) **█** Currently, credit purchasers and credit servicers cannot reap the benefits of the internal market due to barriers erected by divergent national legislations 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 out for the regulation of debt collection.* Member States have very different rules for how non-credit institutions may acquire credit agreements from credit institutions. Non-credit institutions which 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 of a credit institution. These differences of 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 little competition in the internal market, as the number of interested credit purchasers remains low. This 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 non-credit institutions 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 non-credit institutions. 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 a Capital Markets Union 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, the provisions of this Directive cover credit purchasers acting in the course of their trade, business or profession when they acquire a credit agreement only where that agreement has been qualified as a non-performing credit agreement.*
- (11a) *Non-performing credit originally granted by a credit institution, might, in the process of servicing the credit, become performing. In that case, credit servicers should be able to continue carrying out their activities, based on their authorisation.*
- (12) Creditors should be able to enforce a credit agreement and recover the amounts due themselves or they should be able to entrust such recovery to another person who provides such services on a professional basis, namely credit servicers. Equally, purchasers of credit from credit institutions often use the services of credit servicers in order to recover amounts due and yet credit servicing activities are not subject to a Union framework.
- (13) Certain Member States regulate credit servicing activities, but to varying degrees. Firstly, only some Member State regulate these 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 requires authorisations for some of the activities that these credit servicers engage in. These authorisations impose different requirements and do not provide for possibilities of cross-border scaling up, this again operating 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 the credit servicing to other entities, as they* do not have the capacity to service credit themselves, *and thus may 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 on the market 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. This 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 governing credit origination in accordance with Union and national law, 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 the credit purchaser or the credit servicer as concerns the renegotiation of terms and conditions under a credit agreement.*
- (16a) *It is open to Member States to regulate the 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, however, would not benefit from the possibility to passport such services to other Member States.*
- (16b) *This Directive should not affect restrictions under national law regarding the transfer of creditor's rights under a non-performing credit agreement or a transfer of the 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. In that way, there will be Member States where, taking into account the national rules, the acquisition of non-performing credit agreements that are not past due, 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.*

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- (18) The importance placed by the Union legislature on the protection provided for consumers in Directive 2014/17/EU, Directive 2008/48/EC of the European Parliament

and of the Council¹⁰ and Council Directive 93/13/EEC¹¹ means that the assignment of the creditor's rights under a credit agreement or of the 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.

- (19) This Directive should not affect acts of 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 Regulation (EC) No 593/2008 of the European Parliament and of the Council¹² and, Regulation (EU) 1215/2012 of the European Parliament and of the Council¹³. All creditors and any persons representing them are bound to respect those acts of Union law in their dealings with the consumer and national authorities to ensure that consumer rights are protected.
- (20) 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 promised or 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 of the European Parliament and the of the Council¹⁴** and to **the performance or default of the credit agreement**. This is notably the case in relation to long-term consumer credit agreements falling within Directive 2014/17/EU, in respect of the right of the consumer to discharge fully or partially his obligations under a credit agreement prior to the expiry of that 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 purchaser takes the form of contract novation. **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 or credit servicer. This Directive should not restrict Member States from applying stricter consumer protection provisions to credit servicers or credit purchasers.**
- (20a) Credit servicers and credit purchasers should always act in good faith, treat consumers fairly and respect their privacy. They should not harass nor give misleading information to consumers, and they should not charge fees to consumers**

¹⁰ 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 60/34, 22.5.2008, p. 66).

¹¹ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).

¹² 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. 6–16.

¹³ Regulation (EU) 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. 1-32.

¹⁴ 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).

that exceed the costs directly related to the management of the debt. Member States could place a cap on those fees and penalties in accordance with the general legal principles of fairness, rationality and proportionality.

- (21) In addition, this Directive does not reduce the scope of application of Union consumer protection rules and to the extent credit purchasers qualify as creditors under the provisions of Directive 2014/17/EU and Directive 2008/48/EC, they should be subject to the specific obligations set by Article 35 of the Directive 2014/17/EU or Article 20 of the Directive 2008/48/EC, respectively. ***Moreover, this Directive is without prejudice to the protection of consumers guaranteed by Directive 2005/29/EC, which prohibits unfair 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 or coercion including in terms of the timing, location, nature or persistence of the enforcement actions or contacts, or 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.***
- (21a) ***In any court hearing involving a distressed borrower, there should be consideration of the equality of representation status to ensure a full and fair hearing and full and complete understanding of all of the parameters and legal arguments being addressed. There should be an equivalence of legal representation provided and available to all distressed borrowers and sufficiently in advance to ensure comprehensive preparation of all relevant facts and detail for appropriate court representation of the case in dispute. Where necessary, and under applicable national law, that service should be provided at the cost of the Member State through free legal aid or its equivalent.***
- (22) 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 and ***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. ***Also, the outsourcing by the credit institutions of credit servicing activities, in relation to both performing and non-performing credit agreements, to credit servicers or other third parties, is outside the scope of this Directive because the credit institutions already have to observe the applicable outsourcing rules. Moreover, creditors that are not credit institutions but are nevertheless regulated and supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC and Directive 2014/17/EU and undertake credit servicing activities for loans granted to consumers as part of their normal business are not covered by this Directive when performing in that Member State credit servicing activities for loans issued by credit institutions. Further, alternative investment fund manager, management company and investment company (provided that the investment company has not designated a management company) authorised or registered under Directive 2011/61/EU of the European Parliament and of the Council¹⁵ or Directive 2009/65/EC of the European Parliament***

¹⁵ 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 Text with EEA relevance
OJ L 174, 1.7.2011, p. 1–

and of the Council¹⁶ should not fall within the scope of this Directive. Also, there are some professions that undertake ancillary activities similar to servicing activities, namely public notaries, lawyers, bailiffs and officials, that perform under national law court provisions and implement the enforcement of binding measures and, therefore, Member States may decide not to apply this Directive for those professions.

- (23) In order to allow existing credit purchasers and credit servicers to adapt to the requirements of the national provisions implementing this Directive and, in particular, to allow credit servicers to be authorised, this Directive ***allows entities that are currently providing credit servicing activities under national law to continue to do so in their home Member State for 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 implementing this Directive will be able to operate on the market.***
- (23a) ***Member States that have already in place rules equivalent or stricter than those established in this Directive for credit servicing activities may recognise in their national law implementing this Directive the possibility for existing entities providing credit servicing activities to be automatically recognised as authorised credit servicers.***
- (24) 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. ***A credit servicer authorisation covers credit servicing activities irrespective of the type of credits. Therefore, the credit servicers may passport themselves for servicing performing loans in Member States where performing loans transfer is permitted. Considering the long-term nature of the relationship between credit servicers and borrowers as well as the challenging requirements that have to be fulfilled, only a legal person can act as a credit servicer and therefore apply for an authorisation.*** To avoid a reduction in debtor or 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 or ***members*** of the management ***or administrative organ*** have a clean police record in relation to serious criminal offences linked to crimes against property, to crimes related to financial activities, ***to money laundering, to fraud*** or to crimes against the physical integrity and ***are not subject to an insolvency procedure or have not previously been declared bankrupt, unless they have been reinstated in accordance with national law. Member States should ensure that the management body as a whole possess 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 assess the good repute, adequate knowledge and experience conditions, but it should not impair the free movement of authorised credit servicers within the Union. For this purpose, the EBA should develop guidelines to reduce the risk of divergent interpretations of these requirements. Moreover, Member States should ensure that the applicant has sufficient initial capital or account segregation, and that there are no obstacles to the effective supervision of the applicant stemming from the structure of its group.*** Finally, to ensure compliance with debtor protection as well as personal

¹⁶ 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).

data protection rules, it is necessary to require that appropriate governance arrangements and internal control mechanisms and recording and handling of complaints, are established and subject to supervision, **and that adequate own funds and liquidity requirements or account segregation, appropriate measures for taking up, managing, monitoring, and mitigating risks as well as reporting and public disclosure requirements are established. In addition, credit servicer should have adequate anti-money laundering and counter terrorism procedures in place, where the home and host Member State national legislation transposing Directive 2015/849/EU of the European Parliament and of the Council¹⁷ designates 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 the borrowers. Where debt advice services facilitating debt repayment are available at national level, the credit servicers should consider referring borrowers to such services.

- (25) To avoid lengthy procedures and uncertainty, it is necessary to establish requirements regarding the information **that** applicants are required to submit, as well as the reasonable deadlines for the issue of an authorisation and the circumstances for its withdrawal of authorisation. Where authorities withdraw an authorisation of a credit servicer which provides credit servicing activities in other Member States, competent authorities in the host Member State should be informed. Equally, an up-to-date **public register or list** should be established in each Member State **and made publicly available on the website of the competent authorities** to ensure transparency as regards the number and identity of authorised credit servicers.
- (26) **The contractual relationship between the credit servicer and the creditor and obligations of the credit servicer towards the creditor should not be altered by the outsourcing to credit service providers.** It should be established that credit servicers are responsible for making sure that where they outsource their activities to credit service providers, this does not result in undue operational risk or non-compliance by the credit service provider with any national or Union legal requirements or restrict the capacity of a regulatory supervisor to perform its duty and safeguard borrower rights.
- (27) Given that when a creditor entrusts the management and enforcement of a credit agreement, the creditor delegates its rights and duties and also its direct contact with the borrower to the credit servicer while still remaining ultimately responsible, the relationship between creditor 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 be obliged to act fairly and with due consideration for the financial situation of the borrowers. To the extent that the credit purchaser does not perform itself the servicing of the loans acquired, Member States should be able to provide that the credit servicer and creditor are required to agree in the credit servicing agreement that the credit servicer notifies the creditor prior to outsourcing of credit servicing activities.**

¹⁷ 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).

- (28) 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 activity. Communication between authorities in the home and host Member States as well as with a credit servicer should take place within reasonable deadlines.
- (28a) *A credit servicer carrying out activities in a host Member States should be subject to the restrictions and requirements established in the national law of the host Member State in accordance with this Directive.*
- (29) In order *to ensure* an effective and efficient supervision of cross-border credit servicers, a specific framework should be created for the cooperation between home and the host competent authorities. This 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.
- (30) An important prerequisite for the taking up of the role by credit purchasers and credit servicers should be that they *have the possibility to get* access *to* all relevant information and Member States should ensure that this is possible, while at the same time observing Union and national data protection rules.
- (31) Where a credit institution transfers a *non-performing* credit agreement, they should be required to inform their supervisor and the competent authority for supervising compliance with this Directive, *on a biannual basis*, about *at least the aggregated outstanding balance* of the transferred credit *portfolios, as well as the number and size of the loans included and whether it includes agreements concluded with consumers. For each portfolio transferred in a single transaction, information provided should include the legal entity identifier or, when not available, the identity and address* of the purchaser and, where applicable, its representative in the Union. That competent authority should be obliged to transmit that information to the authorities competent to supervise the credit purchaser and the competent authority where the borrower is established. 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. In addition, in the case of securitisation transactions, where mandatory transparency templates are foreseen, any double reporting as a result of this Directive should be avoided.*
- (32) As part of the Council's Action Plan, credit institutions' data infrastructure would be strengthened by having uniform and standardised data for non-performing credit agreements. The European Banking Authority 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 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 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, including a public consultation of stakeholders and competent authorities, with a view to further developing the data templates into implementing technical standards for credit institutions. 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 their size and complexity. Other sellers of credit agreements should be encouraged to use those standards in order to facilitate the valuation of credit agreements for sale.

- (33) *Credit purchasers* are *often* investment funds, financial institutions or credit institutions. As they are not creating new credit, but are buying *as provided in this Directive 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 those types of investors 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.
- (34) Third-country credit purchasers may make it harder for the Union consumer to rely on their rights under Union law and for the national authorities to supervise the enforcement of the credit agreement. Credit institutions may also be discouraged from transferring such credit agreements to third-country credit purchasers because of the reputational risk involved. Imposing an obligation on a credit servicer authorised in the Union for servicing a credit agreement ensures that the same standards of borrowers' rights are preserved after the transfer of the credit agreement. The credit servicer is under an obligation to respect the applicable Union and national laws and the national authorities in individual Member States should be given the necessary powers to effectively supervise its activity.
- (34a) *When a credit purchaser manages and enforces the rights and obligations related to the creditor's rights under a credit agreement or the credit agreement itself, the credit purchaser is considered to be a credit servicer, and should therefore be authorised under this Directive.*
- (35) Credit purchasers that use the services of credit servicers or credit institutions should inform the competent authorities thereof so as to allow them to exercise their supervisory as regards the conduct of the credit servicer vis-à-vis the borrower. Credit purchasers also have an obligation to inform in a timely manner the competent authorities in charge of their supervision if they engage a different credit institution or credit servicer.
- (36) 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, criminal law, continue to apply and competent authorities should ensure their compliance with them on Member States' territory.
- (37) In order to facilitate the enforcement of the obligations set out in the Directive, where a credit purchaser is not established in the Union national law implementing this Directive should provide that, where a transfer of a credit agreement is concluded, a third country

credit purchaser appoints a *credit institution* established in the Union *or authorised credit servicer*. *Credit purchasers transferring non-performing credit agreements should inform the competent authority of the home Member State, on a biannual basis and at an aggregated level, about at least the aggregated outstanding balance of the transferred credit portfolios, as well as number and size of the loans included, and whether it includes agreements concluded with consumers. For each portfolio transferred in a single transaction, the information provided should include the legal entity identifier or, when not available, the identity and address of the purchaser.*

- (38) At the moment, 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 their role and allocate adequate powers, especially as they may 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 breaches, to handle borrowers' complaints and to impose *penalties* and remedial measures, including the withdrawal of the authorisation. Where such *penalties* 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 also in cases where competent authorities do not act within the timeframes provided.
- (38a) *The provisions concerning breaches of this Directive are without prejudice to a Member State's right to intervene in cases of breaches of national law, for example, of specific consumer protection rules, borrowers' rights rules adopted only at national level, or regarding criminal activities. In such cases the competent authorities of the host Member State are the ones competent to decide whether there has been a breach of national law and thus their powers are not limited by this Directive.***

- (52) Without prejudice to pre-contractual obligations under Directive 2014/17/EU, Directive 2008/48/EC and Directive 93/13/EEC, and in order to ensure a high level of consumer protection, the consumer should be 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 where he or she may lodge a complaint.
- (53) 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 borrower complaints. Member States should ensure that authorities competent for the supervision of credit purchases and credit servicers have effective and accessible procedures to deal with borrowers' complaints.
- (54) Both the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council¹⁸ and Regulation (EU) 2018/1725 of the European Parliament and of the

¹⁸ 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).

Council¹⁹ 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, **transparent** and proportionate data retention period respected. 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 of the European Parliament and of the Council, and in accordance with national data protection rules implementing Union legislation.

- (55) 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 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 him against the original creditor and to be informed of the assignment.
- (56) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents, 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 legislator considers the transmission of such documents to be justified.
- (56a) The European Data Protection Supervisor has been consulted and provided its opinion on 24 January 2019.*
- (56b) The efficient functioning of this Directive will need to be reviewed as the establishment of the internal secondary market of the non-performing loans with a high level of consumer protection will progress. 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 include also 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.*

¹⁹ 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 and 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).**

HAVE ADOPTED THIS DIRECTIVE:

Title I

Subject matter, scope and definitions

Article 1

Subject matter

1. This Directive lays down a common framework and requirements for:
 - (a) credit servicers *of 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 *creditor's rights under a non-performing credit agreement or of the non-performing agreement itself* issued by a credit institution *established in the Union*;

2. *This Directive relates to non-performing credit agreements only. Creditors shall not be allowed to transfer to third parties performing credit agreements concluded with consumers.*

Article 2

Scope

1. Articles 3 to 22 and Articles 34 to 43 of 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, in accordance with applicable Union or national law*, issued by a credit institution established in the Union .
 - (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;

3. *With regard to credit agreements falling within its scope, this Directive shall not affect neither contract law principles nor civil law principles under national law with regard to the transfer of 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 Regulation (EU) No 1215/2012 of the European Parliament and of the*

Council²⁰, Regulation (EC) No 593/2008 of the European Parliament and of the Council²¹, Directive 2014/17/EU, Directive 2008/48/EC, Directive 93/13/EEC and the national provisions transposing them or other relevant Union law and national law relating to consumer protection and borrowers' rights.

- 3a.** *This Directive shall not affect the restrictions in the Member States' national laws regarding the transfer of creditor's rights under a non-performing credit agreement that is not past due, is less than 90 days past due or is not terminated in accordance with national civil law, or the transfer of such a non-performing credit agreement.*
- 3b.** *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 point (2) of Article 2 of Regulation (EU) 2017/2402 of the European Parliament and of the Council²² as long as such national laws:*
- (i) provide the same level of consumer protection;*
 - (ii) ensure that competent authorities receive the necessary information from credit servicers;*
 - (iii) do not hinder credit servicers from the possibility to passport themselves to other Member States.*
- 4.** Articles 3 to 8, **from 9 to 22** and 34 to 43 of 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 they manage;*
 - (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.*
 - (b)** the servicing of *creditor's rights under* a credit agreement *or of the credit agreement itself* that was not issued by a credit institution established in the

²⁰ 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).

²¹ 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).

²² 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).

Union²³ except where the *creditor's rights under a credit agreement or the credit agreement itself* is replaced by a credit agreement issued by such an institution²⁴ ;

- (c) the purchase of *creditor's rights under a non-performing credit agreement or of the non-performing credit agreement itself* by a credit institution established in the Union²⁴ ;
- (d) the transfer of *a creditor's right under a credit agreement or of the credit agreement itself* transferred before the date referred to in the second subparagraph of Article 41(2).

4a. Member States may exempt from the application of this Directive the servicing of creditor's rights under a credit agreement or the credit agreement itself carried out by members of a profession, subject to the supervision of each Member State, such as public notaries and bailiffs as defined by national law, or lawyers as defined in point (a) of Article 1(2) of Directive 98/5/EC of the European Parliament and of the Council²³ when conducting activities referred to in Article 3(9) of this Directive as part of their profession.

■

Article 3

Definitions

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

- (1) 'credit institution' means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013²⁴;
- (2) 'creditor' means a credit institution ■ who has issued a credit ■, or a credit purchaser;
- (3) 'borrower' means a legal or natural person who has concluded a credit agreement with a creditor, *including its legal successor or assignee*;

■
(4a) 'borrower experiencing payment difficulties' means a natural or legal person who has concluded a credit agreement that has been qualified or is likely to be qualified as non-performing within the meaning of point 11a;

- (5) 'credit agreement' means an agreement as originally issued, modified or replaced, whereby a *credit institution or any other* creditor grants or promises to grant a credit in the form of a deferred payment, a loan or other similar financial accommodation;

²³ *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).*

²⁴ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

(5a) *'credit servicing agreement'* means a written contract between a creditor and a credit servicer concerning the services to be provided by the credit servicer on behalf of the creditor;

■

(7) 'credit purchaser' means any natural or legal person other than a credit institution or a subsidiary of a credit institution which purchases *a creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself* in the course of his trade, business or profession, *in accordance with applicable Union and national law*;

(7a) *'credit service provider'* means a third party used by a credit servicer to perform any of the activities listed in point (7b);

(7b) *'credit servicer'* means a legal person who, in the course of its business, manages and enforces the rights and obligations related to the creditor's rights under a non-performing credit agreement or to the non-performing credit agreement itself on behalf of the creditor or on behalf of itself, and carries out at least one or more of the following activities:

(a) *collecting or recovering payments due related to the creditor's rights under a credit agreement or to the credit agreement itself from the borrower where it is not a payment service as defined in Annex I of Directive 2015/2366, in accordance with national law*;

(b) *renegotiating, in accordance with the requirements provided in the national law, of the terms and conditions related to the creditor's rights under a credit agreement or of the credit agreement itself with borrowers in line with the instructions given by the creditor, where he is not a credit intermediary as defined in point (5) of Article 4 of Directive 2014/17/EU or point (f) of Article 3 of Directive 2008/48/EC*;

(c) *administering any complaints in relation to the creditor's rights under a credit agreement or to the credit agreement itself*;

(d) *informing the borrower of any changes in interest rates, charges or of payments due related to the creditor's rights under a credit agreement or the credit agreement itself*.

■

(9) 'home Member State' means, *in respect to the 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, in respect to the credit purchaser, the Member State in which the credit purchaser is domiciled or established*.

(10) 'host Member State' means a Member State, other than the home Member State, in which a credit servicer has established a branch, has appointed a *credit service provider referred to in Article 10* or where *the borrower is domiciled or established at the time of concluding the credit agreement*.

(11) '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.*

(11a) *non-performing credit agreement' means a credit claim that meets the criteria set by Annex V, Part 2, paragraph 213 of Commission Implementing Regulation (EU) No 680/2014²⁵ to be considered as a non-performing exposure.*

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.
 - 1a. *Member States that already have in place equivalent or stricter regimes than those established in this Directive for credit servicing activities may recognise in their national law provisions transposing this Directive the possibility for existing entities providing credit servicing activities to be automatically recognised as authorised credit servicers.*
2. Member States shall confer the power to grant such authorisations upon the competent authorities designated pursuant to Article 20(3).

Article 5

Requirements for granting an authorisation

1. Member States shall *as a minimum* lay down the following requirements for the granting of an authorisation as 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 he is seeking authorisation;*
 - (b) **■** the members of its management or administrative organ *are of sufficiently good repute by proving that.*

²⁵ *Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council*

- (ii) *they have a clean police record or other national equivalent in relation to relevant criminal offences, in particular relating to property, to banking, financial, insurance activities or concerning securities markets or securities payment instruments, including laws on money laundering, market manipulation, insider dealing, usury, fraud, tax crimes, violation of professional secrecy or to physical integrity, and any other offences under legislation relating to companies, bankruptcy, insolvency or consumer protection;*
 - (iia) *the cumulative effects of minor incidents do not impinge on their good repute;*
 - (iib) *they have always been transparent, open and cooperative in their past business dealings with supervisory and regulatory authorities;*
 - (iii) *they are not subject to any ongoing insolvency procedure or have previously been declared bankrupt unless reinstated in accordance with national law; and*
 - (iia) *the management, as a whole, has adequate knowledge and experience to conduct the business in a competent and responsible manner.*
- (ba) *the persons who hold qualifying holdings in the applicant, within the meaning of point (36) of Article 4(1) of Regulation (EU) No 575/2013 are of sufficiently good repute, by fulfilling the requirements in points (ii) to (iia) of subparagraph (b) of this paragraph;*
- (c) the applicant has appropriate governance arrangements and internal control mechanisms in place 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,*
- (d) the applicant applies an appropriate policy ensuring *compliance with rules for the protection of consumers and transparency of* the fair and diligent treatment of the 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;
- (e) the applicant has adequate and specific internal procedures in place which ensure the recording and handling of borrower complaints;
- (ea) *the applicant has sufficient suitable employees who speak the language of the Member State where the borrower resides at the time of the conclusion of the credit agreement;*
- (eb) *the applicant has adequate anti-money laundering and counter terrorism procedures in place, where the home or host Member State national measures transposing Directive 2015/849/EU designate credit servicers as obliged entities for the purpose of preventing and combating money laundering and terrorist financing;*
- (ec) *the applicant's management system allows the applicant to meet its commitments, such as a sufficient initial capital or account segregation;*

- (ed) *there are no obstacles to the effective supervision of the applicant stemming from the structure of its group;*
- (ee) *the applicant is subject by virtue of applicable national law to:*
 - (i) *robust governance arrangements, which include adequate internal control mechanisms and sound administration and accounting procedures;*
 - (ii) *adequate own funds and liquidity requirements or account segregation;*
 - (iii) *appropriate measures for taking up, managing, monitoring and mitigating the risks it is or might be exposed to;*
 - (iv) *reporting and public disclosure requirements.*
- 1a. *EBA shall issue guidelines to specify the conditions referred to in paragraph 1, points (ec) and (ed) and the minimum requirements referred to in paragraph 1, point (ee) of this Article. Those guidelines shall be adapted in accordance with Article 16 of Regulation (EU) No 1093/2010.*
- 1b. *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 point (b)(iii) of paragraph 1 of this Article.*
- 2. 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.
- 2a. *Member States shall ensure that where competent authorities of the host Member State have determined that the applicant does not fulfil the conditions laid down in this Article, they shall send a communication containing all relevant information to the home Member State.*

Article 6

Procedure for granting or refusing an authorisation

- 1. Member States shall establish a procedure for the authorisation of credit servicers which 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 measures transposing Article 5(1).
- 2. The application for authorisation, referred to in paragraph 1, shall be accompanied by the following:
 - (a) evidence of the applicant's legal status and *a copy of the 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 applicant's management or administrative organ *and the person* who *holds* qualifying holdings within the meaning of point (36) of Article 4(1) of Regulation (EU) No 575/2013;
 - (d) evidence that the applicant *fulfils* the conditions laid down in Article 5(1)(b);

(da) evidence that the persons referred to in point (c) of this paragraph fulfils the conditions laid down in point (ba) of Article 5(1);

(e) evidence of the governance arrangements and internal control mechanisms referred to in point (c) of Article 5(1);

(f) evidence of the policy referred to in point (d) of Article 5(1);

(g) evidence of the internal procedures referred to in (e) of Article 5(1);

(g a) evidence of the procedures referred to in point (eb) of Article 5(1);

(h) any outsourcing agreement as referred to in Article 10(1).

3. Member States shall ensure that the competent authorities of a home Member State assess, within **30** working 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 required information, the*** competent authorities of the home Member State ***notify the applicant*** whether the ***authorisation is granted or refused and, where applicable, provide reasons for refusal*** .
5. Member States shall ensure that an applicant has the right of appeal before a tribunal either where the competent authorities of the home Member State decide to refuse an application for authorisation pursuant to Article 5(2) or where, ***within the time limit provided for in paragraph 4 of this Article***, no decision is taken by the competent authorities in respect of an application.

Article 7

Withdrawal of authorisation

1. Member States shall ensure that the competent authorities of the home Member State ***have the necessary supervisory, investigatory and sanctioning powers in accordance with Article 21 in order to*** withdraw the authorisation granted to a credit servicer, where such a credit servicer either:
 - (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 conditions set out in Article 5(1);
 - (f) commits a serious breach of the applicable rules, including the national law provisions transposing this Directive, ***or of other consumer protection rules***.
- 1a. Member States shall ensure that where competent authorities of the host Member State have determined that a credit servicer acts in a way that falls under points (e) or (f) of the first paragraph, they shall send a communication containing all relevant information to the competent authorities of the home Member State.***

2. Where an authorisation is withdrawn in accordance with paragraph 1, Member States shall ensure that the competent authorities of the home Member State shall immediately inform the competent authorities in the host Member States if the credit servicer provides services under Article 11.

Article 8

Register of authorised credit servicers

1. Member States shall ensure that 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 11. ***Where applicable, and at the request of a competent authority, EBA shall provide for best-practices guidelines in order to guarantee a level playing field across the Union.***
2. The ***list or*** register shall be made publicly accessible online ***on the website of the competent authority*** and shall be updated on a regular basis.
3. In case an authorisation has been withdrawn, the competent authorities shall update the ***list or*** register without delay.

Article 8a

Borrowers' protection

1. ***Member States shall require that creditors, in their relationships with debtors, act in good faith, fairly, professionally and respect their privacy.***
2. ***Member States shall ensure that creditors comply with the following requirements:***
 - (a) ***the information provided by creditors to borrowers shall not be misleading, unclear or false;***
 - (b) ***creditors shall protect the personal information and privacy of borrowers and shall not communicate that information to persons other than the borrower, including family members or employers, unless authorised to do so by the borrower;***
 - (c) ***creditors shall not communicate to borrowers in a way that constitutes harassment, coercion, or undue influence.***
3. ***Member States shall ensure that fees and penalties charged to borrowers by creditors do not exceed the costs directly related to the management of the debt.***
4. ***Member States shall ensure that, in advance of any debt collection, the creditor sends to the borrower a mandatory notification that provides unequivocal evidence of the debt relied on in a credit agreement falling under this Directive. The notification shall not exceed three pages in length and shall include, in language which is clear and understandable for the general public, at least the following:***
 - (a) ***the evidence of the debt relied on in a credit contract;***
 - (b) ***the identification of the creditor including its contact details;***
 - (c) ***where relevant, the identification of the credit servicer and its rights;***

- (d) *the legal base of the debts, details of the amounts requested, and their source (capital, interest, penalties, procedural costs);*
 - (e) *a key selection of the borrower's rights description, including necessarily the protection against harassment and misleading behaviour;*
 - (f) *a contact reference point from where to receive information and advice for borrowers experiencing payment difficulties;*
 - (g) *where relevant, the information under points (a) to (f) in respect of costs or agreements that do not fall under this Directive but that nevertheless form part of the debt collection.*
5. *Member States shall require that in the event of a transfer of a creditor's rights under a credit agreement, or of the credit agreement itself, to a credit purchaser, the borrower is notified in due time about the transfer and 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 to the credit purchaser or the credit servicer.*
6. *Member States shall require that creditors undertake, with due diligence, to make best efforts to exercise, where appropriate, reasonable forbearance in respect of borrowers experiencing payment difficulties.*
7. *Forbearance measures shall prioritize consumers and include at least the following potential measures that shall be communicated in a standardised format to borrowers experiencing payment difficulties, based on an affordability assessment:*
- (a) *options regarding a partial refinancing of a credit agreement;*
 - (b) *options regarding a potential modification, to the benefit of the borrower, of the existing terms and conditions of the credit agreement including, among others:*
 - (i) *extending the term of the credit agreement;*
 - (ii) *changing the type of the credit agreement;*
 - (iii) *deferring payment of all or part of the instalment repayment for a period;*
 - (iv) *changing the interest rate up to a certain cap;*
 - (v) *offering a payment holiday or grace periods, or both;*
 - (vi) *partial repayments;*
 - (vii) *currency conversions;*
 - (viii) *partial forgiveness and debt consolidation;*
8. *The qualification of credit agreements as non-performing shall be made without prejudice to the creditor's forbearance requirements.*
9. *EBA shall develop draft regulatory technical standards to specify the format of the notification under paragraph 4 and the standardised formats as referred in paragraph 7.*
- EBA shall submit those draft regulatory technical standards to the Commission by ... [one year after the entry into force of this Directive].*

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 9

Contractual relationship between a credit servicer and a creditor

1. Member States shall ensure that ***when a credit purchaser does not perform itself the credit servicing activities, a credit servicer appointed in accordance with Article 15(1)*** provides its services in respect of the management and enforcement of ***the creditor's rights under a credit agreement or of a credit agreement itself*** on the basis of a ***credit servicing*** agreement with a creditor.
2. The ***credit servicing*** agreement **■** 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 creditor in relation to the borrower;
 - (d) an undertaking by the parties to comply with the Union and national law applicable to the credit agreement ***or the creditor's rights***, including in respect of consumer ***and data*** protection;
(da) a clause requiring the fair and diligent treatment of the borrowers.
- 2a. ***Member States shall require, where necessary, that a credit servicing agreement also provide a requirement, according to which:***
 - (i) ***the credit servicer notifies the creditor prior to outsourcing any of its activity as credit servicer;***
 - (ii) ***the borrower is informed of the credit servicing agreement as well as of any further outsourcing of credit servicing activities as defined in Article 3(7b) letters a)-d);***
 - (iii) ***the costs and remuneration of the credit servicer are not charged to the borrower;***
 - (iv) ***the borrower is entitled to plead against the credit servicer any relevant defence which was available to the borrower in respect of the original creditor.***
3. Member States shall ensure that the credit servicer keeps and maintains the following records for at least ***five*** years from the date ***when the agreement*** referred to in paragraph 1 ***is terminated or for the statutory limitation period applicable in the home Member State, however no longer than 10 years:***
 - (a) ***relevant*** correspondence with both the creditor and the borrower, ***under the conditions provided for in the applicable national law;***

(b) *relevant* instructions received from the creditor in respect of each *creditor's rights under a credit agreement or the credit agreement itself* that it manages and enforces on behalf of that creditor, *under the conditions provided for in the applicable national law*;

(ba) the credit servicing agreement.

4. Member States shall ensure that the credit servicer makes the records referred to in paragraph 3 available to competent authorities upon request.

Article 10

Outsourcing by a credit servicer

1. Member States shall ensure that where a *third party performs a credit servicer activity related to any of the activities listed in point (7b) of Article 3* that would normally be undertaken by that credit servicer ('credit service provider'), the credit servicer remains fully responsible for complying with all obligations under the 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 obliged to comply with *the applicable legal provisions, including provisions of national law transposing this Directive, and the relevant Union or national law applicable to the creditor's rights under a credit agreement or to the credit agreement itself*;

(b) the obligations of credit servicers under this Directive may not be delegated;

(c) the contractual relationship *between the credit servicer and the creditor* and obligations of the credit servicer towards *the creditor or the borrowers shall not be 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) *shall not be affected by the outsourcing of the credit servicing activities*;

(e) the outsourcing to the credit service provider *shall* not prevent the supervision by competent authorities of a credit servicer in accordance with Articles 12 and 20;

(f) the credit servicer has direct access to all relevant information concerning the outsourced services to the credit service provider;

(g) the credit servicer retains the expertise and resources to be able to provide the outsourced activities, after the outsourcing agreement is terminated.

The outsourcing of the activities listed in point (7b) of Article 3 shall not be undertaken in such a way as to impair the quality of the credit servicer's internal control, soundness or continuity of its credit services.

2. Member States shall ensure that the credit servicer *informs without delay the competent authority of the home Member State and, where applicable, the host Member State, prior to the outsourcing of activities in accordance with* paragraph 1.

- 2a. *Member States shall ensure that the credit servicer keeps and maintains records of relevant instructions provided to the credit service provider, under the conditions*

provided for in the applicable national law, and of the outsourcing agreement for a period of at least five years from the date on which the agreement referred to in paragraph 1 is terminated or for the statutory limitation period in the Member State, up to a maximum period of 10 years.

3. Member States shall ensure that the credit servicer and the credit service provider make the information referred to in paragraph 2a available to competent authorities upon request.

Chapter II

Cross Border Credit Servicing

Article 11

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 5 in a home Member State has the right to provide in the Union those services that are covered by that authorisation, ***without prejudice to restrictions and requirements established in the national law of the host Member States in accordance with this Directive, or those established for the renegotiation of the terms and conditions related to the creditor's rights under a credit agreement or of the credit agreement itself.***
2. Member States shall ensure that where the credit servicer authorised in accordance with Article 5 in a home Member State intends to provide services in a host Member State, it shall submit 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;
 - (b) where applicable, the address of the branch established in the host Member State;
 - (c) where applicable, identity and address of ***a credit service provider*** in a host Member State;
 - (d) the identity of the persons responsible for managing the provision of credit servicing activities in the host Member State;
 - (e) as the case may be, details of the measures taken to adapt the internal procedures, governance arrangements and internal control mechanisms to ensure compliance with the laws applicable to the ***creditor's rights under a credit agreement or to the credit agreement itself.***
3. The competent authorities of the home Member State shall, within 30 working days of the 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 such confirmation of receipt.
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.

5. Member States shall ensure that **■** the credit servicer may start providing services in the host Member State from the earlier of the following:
 - (a) receipt of the communication from the competent authorities in the host Member State acknowledging receipt of the communication referred to in paragraph 3;
 - (b) in the absence of any receipt of a communication referred to in point (a), after the expiry of two months from the date of **submission of all** information referred to in paragraph **2 to the competent authority of the host Member State**.
6. Member States shall ensure that a credit servicer shall inform the competent authority of the home Member State of change subsequent to the information communicated in accordance with paragraph 2 by means of the procedure set out in paragraphs 3 to 5.
7. Member States shall ensure that the competent authorities of the host Member State record in the register referred to in Article 8 the credit servicers who are authorised to provide credit servicing activities in their territory and the details of the home Member State.

Article 12

Supervision of credit servicers who 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 who provides services 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 their activities in a host Member State.
3. Member States shall ensure that the competent authorities of the home Member State will communicate the measures taken in respect of the credit servicer to the competent authorities of the host Member States.
4. Member States shall ensure that where a credit servicer which is domiciled or established in a home Member State, has set up a branch or appointed **a credit service provider** in a host Member State, the competent authorities of the home Member State and the competent authorities of the host Member State shall cooperate closely in the performance of their functions and duties provided for in this Directive, in particular when carrying out checks, investigations and on-site inspections in that branch or in respect of that **credit service provider**.
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 shall ask the competent authorities of the host Member State for their assistance in carrying out an on-site inspection of a branch set up in 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 shall be 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 these 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 providing services within its territory, in accordance with Article 11, is in breach of the ***requirements laid down in Article 5 of this Directive, and of the applicable rules, including*** obligations arising from the national provisions transposing this Directive, it shall transmit that evidence to the competent authorities of the home Member State and request that they take appropriate measures.
10. 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 about **■** penalties and remedial measures taken against the credit servicer or a reasoned decision why no measures were taken, to the competent authorities of the host Member State who referred the evidence no later than two months from the request referred to in paragraph 8. 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.

■

11a. *Where a credit servicer continues to be in breach of the applicable rules, including its obligations under this Directive, and after having informed the home Member State, Member States shall ensure that the competent authorities of the host Member State are entitled to adopt appropriate administrative penalties and remedial measures in order to ensure compliance with this Directive when any of the following apply:*

- (a) no adequate and effective steps were taken by the credit servicer to rectify the breach in a reasonable time; or*
- (b) despite remedial measures already being taken by the competent authorities of the home Member State; or*
- (c) in an urgent case, where immediate action is necessary in order to address a serious threat to the collective interests of the borrowers.*

In addition, the competent authorities of the host Member State may prohibit further activities of a credit servicer that is in breach of its obligations under this Directive in that Member State until an adequate decision is taken by the competent authority of the home Member State or the credit servicer takes steps to remedy the breach.

Title III

Credit purchasers

Article 13

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 creditor *provides the credit purchaser with necessary information to a reasonable extent regarding the 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 credit purchaser to conduct its own assessment of the value of the 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 prior to entering into a contract for the transfer of that creditor's rights under a non-performing credit agreement or of that non-performing credit agreement, while ensuring the protection of information made available by the creditor and of the confidentiality of business data.*
2. *On a biannual basis*, Member States shall require **credit institutions** that transfer a *creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself* to a credit purchaser to inform the competent authorities designated in accordance with Article 20(3) of this Directive and Article 4 of Directive 2013/36/EU²⁶ *of at least the following:*
 - (-a) the legal entity identifier (LEI) of the credit purchaser or, where such identifier does not exist, of:*
 - (i) the identity of the credit purchaser or members of the purchaser's management or administrative organ and the persons who hold qualifying holdings in the purchaser within the meaning of point (36) of Article 4(1) of Regulation (EU) No 575/2013; and*
 - (ii) the address of the credit purchaser;*
 - (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 the creditor's rights under the non-performing credit agreements or non-performing credit agreements concluded with consumers and the types of assets securing them, when applicable.*
3. The competent authorities *designated in accordance with Article 20(3)* shall communicate without delay the information referred to in that paragraph and any other information that they might consider to be necessary for carrying out their task

²⁶ 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 and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

according to this Directive to the competent authorities of the *home* Member State of the credit purchaser

4. The provisions laid down in paragraphs 1, 2 and 3 shall be applied in accordance with Regulation (EU) 2016/679 and Regulation (EC) No 45/2001.

Article 14

Technical standards for data formats

1. ***Within four months from ... [the date of entry into force of this Directive], EBA shall carry out a review of the data templates that provide information about credit exposures in the banking book. After a public consultation of stakeholders and competent authorities, EBA shall develop draft implementing technical standards that specify the formats to be used by creditors who are credit institutions for the provision of information as set out in Article 13(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 the creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself. EBA shall specify in the implementing technical standards the required data fields for creditor's rights under a non-performing credit agreement or for the non-performing credit agreement itself in order to meet the information requirements laid down in Article 13(1).***
2. EBA shall submit those draft implementing technical standards to the Commission by ... ***[12 months from date of the entry into force of the Directive]***.
3. Power is conferred on the Commission to adopt the implementing technical standards referred to in the paragraph 1, in accordance with Article 15 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council²⁷.

Article 15

Obligations of credit purchasers

1. Member States shall ensure that a credit purchaser, ***who is not itself a credit servicer, appoints an entity*** referred in points (a)(i) and (ii) of Article 2(4) or a credit servicer to perform credit servicing activities in respect of ***non-performing credit agreements or of a creditor's rights under a non-performing credit agreement.***
2. Member States shall ensure that a credit purchaser is not subject to any additional ***administrative*** 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 measures transposing this Directive, ***or by provisions of applicable consumer protection law or contract 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 a credit agreement or of***

²⁷ 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).

the credit agreement itself to the credit purchaser. The level of protection provided under Union and national law to consumers and other borrowers shall not be affected by the transfer of the creditor's rights under a credit agreement or of the credit agreement itself to the credit purchaser.

- 2a. This Directive is without prejudice to national powers regarding credit registers, including the power to require information to credit purchasers regarding the creditor's rights under a credit agreement or the credit agreement itself and its performance.*
- 2b. This Directive does not affect Member States' laws extending the scope of the Directive or imposing additional requirements on those credit purchasers that do not hold a licence in accordance with Regulation No 575/2013 and Directive 2013/36/EU.*
- 2c. Member States may allow credit purchasers to engage natural persons to service the credits that they have acquired. Those natural persons should be subject to a national regulation and supervision regime and should not benefit from the freedom to provide services in another Member State provided for in this Directive.*
- 2d. Member States shall ensure that the appointed credit servicer, upon the transfer to the credit servicer of the creditor's rights under a credit agreement or of the credit agreement itself, assumes responsibility for the necessary information and notification requirements to the competent authority.*



Article 19

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

1. *When a credit purchaser █ transfers a creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself to another credit purchaser, who is not a credit servicer itself, Member States shall require the appointed credit servicer to inform the competent authorities of the home Member State on a quarterly basis for each transfer about the new credit purchaser's legal entity identifier (LEI) or, where such identifier does not exist, about:*
 - (i) the identity of the new credit purchaser or of members of the new purchaser's management or administrative organ and the persons who hold qualifying holdings in the new purchaser within the meaning of point (36) of Article 4(1) of Regulation (EU) No 575/2013; and*
 - (ii) the address of the new purchaser.*

Additionally, on an aggregated level, the credit purchaser shall inform at least the following:(a) the aggregated 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 the 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 creditor's rights under non-performing credit agreements or non-performing credit agreements concluded with consumers and the types of assets securing them, when applicable.*
2. Member States shall ensure that the competent authorities referred to in paragraph 1 shall transmit without undue delay the information received **█** to the competent authorities of the Member State where the new credit purchaser **█** is domiciled or established.

TITLE IV

Supervision

Article 20

Supervision by competent authorities

1. Member States shall ensure that credit servicers and, where applicable, credit service providers to whom activities have been outsourced in accordance with Article 10, comply with the national provisions transposing this Directive on an on-going 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.
- █**
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 as single point of entry for all necessary exchanges and interactions with competent authorities of either 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 to obtain from credit purchasers or their representatives, credit servicers, credit service providers to whom a credit servicer outsources activities under Article 10, borrowers and any other persons or public authority the information necessary to carry out the following:
- (a) assess the ongoing compliance with the requirements laid down in the national provisions transposing this Directive;
 - (b) investigate possible breaches of those requirements;
 - (c) impose administrative penalties and remedial measures in accordance with the provisions transposing Article 22.
- 5a. The competent authorities shall verify whether the requirements set out in Article 5 are fulfilled, whether they have reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted or whether there is an increased risk thereof in connection with that institution.***

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 21

Supervisory role and powers of competent authorities

1. Member States shall ensure that competent authorities of the home Member State designated pursuant to Article 20(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 Article 5;
 - (b) the power to withdraw an authorisation pursuant to Article 7;
 - (ba) the power to prohibit certain activities;**
 - (c) the power to conduct on-site and off-site inspections;
 - (d) the power to impose administrative penalties and remedial measures in accordance with the provisions transposing Article 22;
 - (e) the power to review outsourcing agreements entered into by credit servicers with credit service providers in accordance with Article 10(1);
 - (ea) the power to require a credit servicer to remove members of its management or administrative organ when they fail to comply with the requirements set out in point (b) of Article 5(1);**
 - (eb) 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;**
 - (ec) 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 borrower complaints;**
 - (ed) the power to request further information pertaining to the transfer of a creditor's rights under the non-performing credit agreements or of the non-performing credit agreements themselves.**
2. 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 in points (c), (d), (e) **and (eb)** of Article 5(1).
3. Member States shall determine the extent of the evaluation referred to in paragraph 2, having regard to the size, nature, scale and complexity of the activities of the credit servicer concerned.
4. The competent authorities of the home Member State shall **■** inform the competent authorities of host Member States of the results of the evaluation referred to in paragraph 2, including details of any administrative penalties or remedial measures taken.

5. Member States shall ensure that when carrying out the evaluation referred to in paragraph 2, the competent authorities of the home and host Member States exchange all information necessary to enable them to carry out their respective tasks laid down in this Directive.
6. Member States shall ensure that the competent authority of the home Member State is able to require a credit servicer, credit service provider or credit purchaser ■ 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 22

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 measures transposing Article 9 of this Directive*** or enters into an outsourcing agreement in breach of the provisions transposing Article 10 or the credit service provider to whom the functions were outsourced commits a serious breach of the applicable legal rules, including the national law transposing this Directive;
 - (b) a credit servicer's governance arrangements and internal control mechanisms ***as set out in Article 5(1)(c)*** 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 in Article 5(1)(d);
 - (d) a credit servicer's internal procedures ***as set out in Article 5(1)(e)*** fail to provide for the recording and handling of borrower complaints according to the obligations set in the national measures transposing this directive;

■

 - (ga) ***a credit institution fails to communicate information set out in the national measures transposing Article 13 of this Directive;***
 - (gb) ***a credit servicer allows one or more persons not complying with the requirements set out in point (b) of Article 5(1) to become or remain a member of its management or administrative organ;***
 - (gc) ***a credit servicer fails to comply with the requirements set out in the national measures transposing Article 35 of this Directive;***
 - (gd) ***a creditor fails to comply with the requirements of debt collection set out in Article 8a(1) to (5).***
2. The penalties and 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 ■ to remedy the breach, and to cease the conduct and to desist from a repetition of that conduct;
 - (c) administrative pecuniary penalties.
- 3. Member States shall also ensure that administrative penalties and remedial measures are effectively implemented.
- 4. Member States shall ensure that when determining the type of administrative penalties or other 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 breach;
 - (b) the degree of responsibility of the credit servicer or credit purchaser ■ responsible for the breach;
 - (c) the financial strength of the credit servicer or credit purchaser responsible for the breach, 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 breach by the credit servicer or credit purchaser ■ responsible for the breach, insofar as they can be determined;
 - (e) the losses caused to third parties by the breach, insofar as those losses can be determined;
 - (f) the level of cooperation by the credit servicer or credit purchaser responsible for the breach with the competent authorities;
 - (g) previous breaches by the credit servicer or credit purchaser ■ responsible for the breach;
 - (h) any actual or potential systemic consequences of the breach.
- 5. ■ Member States shall also 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 breach.
- 6. Member States shall ensure that before taking any decision imposing administrative penalties or remedial measures set out in paragraph 2 of this Article, the competent authorities give the concerned credit servicer *or* credit purchaser ■ the opportunity to be heard.
- 7. Member States shall ensure that any decision imposing administrative *penalties* or remedial measures as set out in paragraph 2 is properly reasoned and is subject to the right of appeal.
- 7a. *Member States may decide not to lay down rules for administrative penalties for infringements which 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 VI

Safeguards and duty to cooperate

Article 34

Modification of the credit agreement

Without prejudice to the obligations to inform the consumer pursuant to Directive 2014/17/EU, Directive 2008/48/EC and Directive 93/13/EEC, Member States shall ensure that prior to **substantially** modifying the terms and conditions of **the creditor's rights under a non-performing credit agreement or of the non-performing credit agreement itself** either by consent or by operation of law, the creditor communicates the following information to the consumer:

- (a) a clear **■** description of the proposed changes **and the need for debtor consent or, where applicable, of the changes introduced by operation of law**;
- (b) the timescale for the implementation of those changes;
- (c) the grounds of complaint available to the consumer regarding those modifications;
- (d) the time period available for lodging any such complaint;
- (e) the name and address of the competent authority where that complaint may be submitted.

Article 35

Complaints

1. Member States shall ensure that a credit servicer communicates, without delay, the following information to the borrower:
 - (a) the identity of the credit servicer;
 - (b) a copy of its authorisation granted pursuant to Article 6;
 - (c) the name, address and contact details of the competent authorities of the Member State where the borrower is domiciled or established and where the borrower may submit a complaint.
2. The communication referred to in paragraph 1 shall be in writing, or by electronic means where permitted under Union or national law.
3. Member States shall ensure that, in all subsequent communications with the borrower as well as in any communication by phone, the credit servicer includes or states the information listed in points (a) and (c) of paragraph 1.
4. Member States shall ensure that credit servicers establish and maintain effective and transparent procedures for the handling of complaints received from borrowers.

5. 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 measures taken to address them.
6. Member States shall ensure that the competent authorities establish and publish a procedure for the handling of complaints by borrowers concerning credit purchasers, credit servicers and credit service providers and to ensure that they are treated promptly when received.

Article 36

Personal data protection

The provision of information to individuals about the processing of personal data and the processing of such personal data and any other processing of personal data for the purposes of this Directive shall be carried out in accordance with Regulation (EU) 2016/679 and with Regulation (EC) No 45/2001 **and for which an industry-wide code of conduct prepared in accordance with Article 40 of Regulation (EU) 2016/679 is preferred.**

Article 37

Cooperation between competent authorities

1. Member States shall ensure that the competent authorities referred to in Articles 7, 11, 12, 13, 16, 18, 19 and 21 shall cooperate with each other whenever necessary for the purpose of carrying out their duties or of exercising their powers under the national provisions transposing this Directive. Those authorities shall also coordinate their actions in order to avoid possible duplication and overlap when applying supervisory powers and administrative penalties and measures to cross-border cases.
2. Member States shall ensure that competent authorities shall, on request and without undue delay, provide each other with the information required for the purposes 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 shall use that information only in the course of their functions and duties ***under the national provisions transposing this Directive. The exchange of information shall be subject to the conditions of professional secrecy as referred to in Article 76 of Directive 2014/65/EU of the European Parliament and of the Council²⁸.***
- 3a. Member States shall provide that all persons working for or who have worked for the competent authorities and auditors or experts acting on behalf of the competent authorities shall be bound by the obligations of professional secrecy.***
4. Member States shall take the necessary administrative and organisational measures to facilitate the cooperation provided for in this Article.

²⁸ 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).

5. The European Banking Authority shall facilitate the exchange of information between competent authorities in the Member States and promote their cooperation.

Title VII

Amendment

Article 38

Amendment to Directive 2014/17/EU

The following Article 28a is inserted:

"Article 28a

1. In the event of an assignment to a third party of the creditor's rights under a credit agreement or of the agreement itself, the consumer shall be entitled to plead against the assignee any defence which was available to him 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 the assignment referred to in paragraph 1."

Title VIII

Final provisions

Article 39

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 Council²⁹.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply³⁰.

Article 40

Evaluation

1. By[Five years after the 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

²⁹ 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).

³⁰ *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).*

the European Parliament, the Council and the European Economic and Social Committee. *The evaluation shall consist at least of 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;*
 - (b) *the number of creditor's rights under non-performing credit agreements or of the non-performing credit agreements purchased from credit institutions by credit purchasers domiciled or established in the same Member State as the credit institution, in a different Member State than the credit institution, or outside of the Union;*
 - (c) *the assessment of the existing money laundering and terrorist financing risk associated with the activities performed by the credit servicers and credit purchasers;*
 - (d) *the cooperation between competent authorities under Article 37.*
2. Where the evaluation identifies important problems with the functioning of the Directive, the Report should outline how the Commission is intending to address the identified problems, including steps and timings of the potential revision.

Article 41

Transposition

1. Member States shall adopt and publish, by ... **[24 months from the date of entry into force]** at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.
2. They shall apply those provisions from *the day after ... [24 months from the date of entry into force]*.
By way of derogation, entities already carrying out in accordance with national law credit servicing activities defined in Article 3(9) on the date specified in the first subparagraph shall be allowed to continue to carry out those activities in their home Member State until ... [30 months from 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 earlier.
3. When Member States adopt those provisions, 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 42

Entry into force

This Directive shall enter into force on the 20th day following that of its publication in the Official Journal of the European Union.

Article 43

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

MINORITY POSITION

MEP Gunnar BECK

I welcome measures to improve banking supervision and the development of macro-prudential standards. However, I believe that creating an internal secondary market for NPLs, and establishing national asset management companies, only creates more favourable conditions for banks to contain the consequences of their bad investment decisions, without actually reducing the probability of bad investment decisions. Instead, we ought to look at the causes of NPLs, taking into account their regional concentration: the architecture of the euro prevents member states with a higher risk of loans to become non-performing from taking appropriate monetary policy measures. Further harmonisation of the Banking Union and further integration of European financial markets does not solve this problem at all. Only monetary and fiscal stability will secure the performance of loans and profitability of banks, not the further mutualisation of risk. This will only make the euro area more vulnerable to speculation by foreign credit purchasers. The regional concentration of NPLs does not justify far-reaching harmonisation, especially vis-a-vis countries with already sufficiently developed secondary markets.

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Credit servicers and credit purchasers	
References	COM(2018)0135 – C8-0115/2018 – 2018/0063A(COD)	
Date submitted to Parliament	13.3.2018	
Committee responsible Date announced in plenary	ECON 19.4.2018	
Committees asked for opinions Date announced in plenary	IMCO 19.4.2018	JURI 19.4.2018
Not delivering opinions Date of decision	IMCO 23.4.2018	JURI 7.1.2021
Rapporteurs Date appointed	Esther de Lange 18.7.2019	Irene Tinagli 18.7.2019
Discussed in committee	12.12.2019	27.1.2020
Date adopted	14.1.2021	
Result of final vote	+: 38 –: 4 0: 13	
Members present for the final vote	Gunnar Beck, Isabel Benjumea Benjumea, Stefan Berger, Gilles Boyer, Francesca Donato, Derk Jan Eppink, Engin Eroglu, Markus Ferber, Jonás Fernández, Raffaele Fitto, Frances Fitzgerald, José Manuel García-Margallo y Marfil, Luis Garicano, Sven Giegold, Valentino Grant, Claude Gruffat, José Gusmão, Enikő Győri, Eero Heinäluoma, Danuta Maria Hübner, Stasys Jakeliūnas, Othmar Karas, Billy Kelleher, Ondřej Kovařík, Georgios Kyrtos, Philippe Lamberts, Aušra Maldeikienė, Pedro Marques, Costas Mavrides, Jörg Meuthen, Csaba Molnár, Siegfried Mureşan, Caroline Nagtegaal, Luděk Niedermayer, Lefteris Nikolaou-Alavanos, Dimitrios Papadimoulis, Piernicola Pedicini, Kira Marie Peter-Hansen, Sirpa Pietikäinen, Dragoş Pîslaru, Antonio Maria Rinaldi, Alfred Sant, Joachim Schuster, Ralf Seekatz, Pedro Silva Pereira, Paul Tang, Cristian Terheş, Irene Tinagli, Ernest Urtasun, Inese Vaidere, Johan Van Overtveldt, Stéphanie Yon-Courtin, Marco Zanni, Roberts Zīle	
Substitutes present for the final vote	Chris MacManus	
Date tabled	14.1.2021	

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

38	+
PPE	Isabel Benjumea Benjumea, Stefan Berger, Markus Ferber, José Manuel García-Margallo y Marfil, Enikő Győri, Danuta Maria Hübner, Othmar Karas, Georgios Kyrtzos, Aušra Maldeikienė, Siegfried Mureşan, Luděk Niedermayer, Sirpa Pietikäinen, Ralf Seekatz, Inese Vaidere
S&D	Jonás Fernández, Eero Heinäluoma, Pedro Marques, Costas Mavrides, Csaba Molnár, Alfred Sant, Joachim Schuster, Pedro Silva Pereira, Paul Tang, Irene Tinagli
Renew	Gilles Boyer, Engin Eroglu, Luis Garicano, Billy Kelleher, Ondřej Kovařík, Caroline Nagtegaal, Dragoş Pîslaru, Stéphanie Yon-Courtin
Verts/ALE	Sven Giegold, Claude Gruffat, Philippe Lamberts, Piernicola Pedicini, Kira Marie Peter-Hansen, Ernest Urtasun

4	-
The Left	José Gusmão, Chris MacManus, Dimitrios Papadimoulis
NI	Lefteris Nikolaou-Alavanos

13	0
PPE	Frances Fitzgerald
ID	Gunnar Beck, Francesca Donato, Valentino Grant, Jörg Meuthen, Antonio Maria Rinaldi, Marco Zanni
Verts/ALE	Stasys Jakeliūnas
ECR	Derk Jan Eppink, Raffaele Fitto, Cristian Terheş, Johan Van Overtveldt, Roberts Zīle

Key to symbols:

+ : in favour

- : against

0 : abstention