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NOTE

From:	Presidency
To:	Delegations
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on credit servicers, credit purchasers and the recovery of collateral - Compromise legal draft

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on credit servicers, credit purchasers and the recovery of collateral

(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 Committee¹,

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 Union². 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.

¹ OJ C , , p. .

² 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

- (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 Capital Markets Union (CMU). Addressing high stocks of NPLs and their possible future accumulation is essential to **completing 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"³ 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 2017⁴, 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.
- (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 enforce NPLs, subject to appropriate safeguards for borrowers. Nevertheless, should NPL stocks become too high ~~—as it is currently the case for some credit institutions and some Member States—~~ 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 Council⁵ (CRR). Where NPLs become a significant and broad-based problem, Member States can set up national asset management companies or other alternative measures within the framework of current state aid and banks resolution rules.

³ 11/07/2017, <http://www.consilium.europa.eu/en/press/press-releases/2017/07/11/conclusions-non-performing-loans/pdf>.

⁴ 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.

⁵ 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).

- (6) This Directive should enable credit institutions to better deal with loans once these become non-performing by improving conditions to either enforce the collateral used to secure the credit or to sell the credit to third parties. The introduction of accelerated collateral enforcement as a swift mechanism for the recovery of collateral value would reduce the costs for resolving NPLs and would hence support both credit institutions and purchasers of NPLs in recovering value. 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.
- (7) The two solutions for credit institutions to deal with NPLs provided for by this Directive are mutually reinforcing. The shorter time for enforcement and the increased recovery rates, as expected with accelerated extrajudicial collateral enforcement increases the value of an NPL. In turn, this would raise bid prices in NPL transactions. A further effect is that selling NPLs will be less complicated if the loan is collateralised. The reason for this is that price determination is simpler for a collateralised NPL than an unsecured one in a secondary market transaction because the value of the collateral sets a minimum value of a NPL. With a more liquid and better functioning secondary market for NPLs where investors would show greater interest for NPLs incorporating the accelerated enforcement feature, there would be additional incentives for credit institutions to use accelerated extrajudicial collateral enforcement at the time of issue of the new loans. Moreover, the harmonisation achieved by this Directive would foster development of pan-Union NPL investors, thus further improving market liquidity.
- (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. Furthermore, unless otherwise specified, the terms bank and credit institution also cover their subsidiaries.
- (9) This Directive should foster the development of secondary markets for NPLs in the Union by removing impediments to the transfer of NPLs by credit institutions to non-credit institutions, while at the same time safeguarding consumers' rights. Any proposed measure should also simplify and harmonise the authorisation requirements for credit servicers. This Directive should therefore establish a Union-wide framework for both purchasers and servicers of credit agreements issued by credit institutions.

- (10) However, 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. 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 or even 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.
- (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. ~~Since eCredit purchasers often~~ **decide to outsource the credit servicing to other entities, as they** do not have the capacity to service credit themselves, ~~they and, thus,~~ may **be reluctant to not** purchase credit from credit institutions, ~~if they cannot outsource the credit servicing to other entities,~~ **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 credit originally granted by credit institutions. **However, the Directive is without prejudice to the rules governing credit origination in accordance to Union and Member States' law.** It is not proposed to cover credit originally issued by non-credit institutions or debt collection in general at this stage, as there is no evidence of macroeconomic relevance, misaligned incentives or ill-functioning markets for such an extended scope.
- (16a) It is open to Member States to extend the scope of the credit servicer's authorisation also to services offered for credit agreements issued by non-credit institutions. Such an inclusion of credit agreements issued by non-credit institutions in the credit servicer's authorisation should not allow them to passport such a service to other Member States.**
- (17) Although the purpose of this Directive is to strengthen the credit institutions' capacity to deal with credit that has become non-performing or risks becoming non-performing, the secondary market for credit covers both performing and non-performing credit. Actual market sales encompass credit portfolios, consisting of a mix of performing, under-performing and non-performing credit. The portfolios include credit that is both secured and unsecured and that is owed by consumers or businesses. ~~Where rules for the enforcement of credit differed for each type of credit or borrower, there would be additional costs to the packaging of those credit portfolios for sale.~~ The provisions in this Directive that target the development of the secondary market **for credit agreements sold by credit institutions** cover performing and non-performing credit in order to avoid a situation that these additional costs would discourage investor participation and fragment this emerging market. Credit institutions ~~will~~**should** benefit from facing a larger investor base and more efficient credit servicers.

Similar benefits will accrue to asset management companies that are instrumental in some Member States in marketing both non-performing and performing credit originated from credit institutions that had been resolved or been restructured or that have otherwise offloaded them from their balance sheets⁶. **In view of the need to guarantee a high level of borrower and consumer protection, to safeguard financial stability and to avoid interference with applicable licensing requirements, the provisions of this Directive should allow credit purchasers that are not credit institutions to acquire a credit agreement in question only where it has been qualified as a non-performing credit agreement. Since this Directive only provides for a minimum harmonisation of the requirements concerning credit purchasers, it is open to the Member States to regulate the activity of credit purchasers that do not hold a licence in accordance with Regulation No 575/2013 and Directive 2013/36/EU in their national laws, including by imposing requirements equivalent to those under this Directive.**

- (18) The importance placed by the Union legislature on the protection provided for consumers in Directive 2014/17/EU of the European Parliament and of the Council ⁷, Directive 2008/48/EC of the European Parliament and of the Council ⁸ and Council Directive 93/13/EEC⁹ 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 ~~or~~**and national** law as applicable to the initial credit agreement and the consumer 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 ~~regardless of the law applicable to the credit purchaser or credit servicer. Also, the Directive does not affect contract law principles under national law with regard to the transfer of a credit agreement claims and the assignment of credit of the creditors' rights under a credit agreement.~~

⁶ See Commission staff working document SWD(2018 72) on the AMC Blueprint.

⁷ 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).

⁸ 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).

⁹ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).

- (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 Council¹⁰ and, Regulation (EU) 1215/2012 of the European Parliament and of the Council¹¹. 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/EU and to ~~its~~^{the} performance or default of the credit agreement~~thereof~~. 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.
- (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~~ and Directive 2008/48/EC ~~and Directive 2005/29/EU~~, 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.
- (22) Union credit institutions and their subsidiaries included in the supervision on a consolidated basis of the credit institution pursuant to Regulation (EU) No 575/2013 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 ~~credit they 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. Further, fund managers licensed under Directive 2011/61/EU or Directive 2014/91/EU, as well as public notaries conducting independent public activities within a liberal profession and officials that perform under national law court provisions and implement the enforcement of binding measures should not be fall within the scope of this Directive.

¹⁰ 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.

¹¹ 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.

- (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 will only apply to transfers of credit agreements or creditors' rights that take place six months after the transposition deadline of this Directive has expired.
- (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. In light of the competitive market and 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 who are part of the management of the service provider 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 ~~that they are of good~~ repute. Member States should ensure that they the members of the management or administrative organ are of sufficiently good repute, as a management body as a whole, and 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.] Similarly, these persons as well as the credit servicer should not be subject to an insolvency procedure or have not previously been declared bankrupt, unless they have been reinstated in accordance with national law. Finally, to ensure compliance with debtor protection as well as personal 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. ~~[Moreover, credit servicer should have adequate anti-money laundering and counter terrorism procedures in place in accordance with national laws.]~~ 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.~~ 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 ~~online~~ public register **or list** should be established in each Member State **and made publicly available on the websites 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 writing** 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.** ~~Where debt advice services facilitating debt repayment are available at national level, the credit servicers should consider referring borrowers to such services.~~ **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.**
- (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.
- (29) In order ~~for~~ **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 ~~can~~ **have the possibility to get access all** to 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 credit agreement, they should be required to inform their supervisor and the competent authority for supervising compliance with this Directive on a quarterly basis and on an aggregated level about [at least] the ~~main characteristics~~ 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 information 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 the duplication, take into account information that is already available to them by other means, in particular as regards credit institutions.
- (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. These templates should also include data on performing ~~credit agreements~~ loans, which should be less comprehensive than data on non-performing loans. 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. The EBA should therefore develop the data templates into implementing technical standards ~~and~~ and that credit institutions and other sellers of credit agreements~~credit purchaser~~ should be encouraged to use those standards in order to facilitate the valuation of credit agreements for sale.
- (33) ~~Since the valuation of a portfolio of non-performing credit is complicated and complex, actual buyers on secondary markets are sophisticated investors. Credit purchasers are~~ Often they are investment funds, financial institutions or credit institutions. As they are not creating new credit, but are buying as foreseen in the 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 ~~or to set special conditions for them to engage in such activities. 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. Prior to their first purchase of credit agreements or creditor's rights issued by a credit institution in the Union, credit purchasers should notify the competent authority of the home Member State about their legal entity identifier, or when not available about their identity and address. Additionally, they should inform the competent authority about their deed of incorporation and the Member State where the purchase occurred. Competent authorities should forward this information to the EBA, which should draw up and publish a list of active credit purchasers in the Union to ensure transparency and facilitate the matching process between sellers and purchasers of credit agreements.

In order to keep this list up to date, the credit purchaser should inform the competent authority of the home Member State about any change concerning the information given.

- (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 the representative of the third-country purchasers of consumer credit to appoint a credit institution or a credit servicer authorised in the Union for servicing a credit agreement ensures that the same standards of consumers' 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.
- (35) Credit purchasers that use the services of credit servicers or credit institutions should inform ~~on a quarterly basis and on an aggregated level~~ 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 representative established in the Union, mandated to be addressed by the competent authorities in addition or instead of the credit purchaser. This representative is responsible for the obligations imposed on credit purchasers by this Directive. **Credit purchasers transferring non-performing credit agreements should inform the competent authority of the home Member State on a quarterly basis and on 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 information 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.**

- (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 ~~sanctions~~**penalties** and remedial measures, including the withdrawal of the authorisation. Where such ~~sanctions~~**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 do not include breaches of national law, for example, specific consumer protection rules adopted only at national level or criminal activities. In such cases the competent authorities of the host Member State should be the ones competent to decide if there is a breach of national law and thus their powers should not be limited by this Directive.

- (39) In the Council's "Action Plan to Tackle Non-Performing Loans in Europe", a legislative initiative was put forward to enhance the protection of secured creditors by providing them with more efficient methods of value recovery from secured credit through an accelerated extrajudicial collateral enforcement procedure.
- (40) Expedited and efficient out-of-court enforcement mechanisms which enable secured creditors to recover value from collateral in case of borrower's default are not available in some Member States, which means that in those Member States secured creditors are only able to enforce collateral in court, which can be lengthy and costly. Where available, the scope and efficiency of the extrajudicial enforcement procedures vary from one Member State to another. For that reason it is necessary to establish a distinct common mechanism available in all Member States. That mechanism should not, however, replace existing national enforcement measures including those that do not require the involvement of courts.
- (41) The inefficiency of some Member States' extrajudicial enforcement procedures is an important factor for low recovery rates where business borrowers default on secured credit agreements. The length of some existing procedures entails additional costs for secured creditors and loss of value of the assets provided as collateral. In the Member States which have not established extrajudicial enforcement procedures for various types of collateral, secured creditors face often lengthy judicial enforcement processes.

- (42) Existing enforcement procedures within the Union sometimes result in a lack of level-playing field for credit institutions and companies across the Union with regard to access to credit, particularly for SMEs which depend on bank credit more than larger companies. Uneven recovery rates across Member States lead to differences in the availability of bank credit for SMEs because the credit institutions' lending capacity decreases as NPLs accumulate on their balance sheets, due to prudential requirements and internal resources which need to be dedicated to dealing with NPLs. This contributes to a lack of confidence in the ability to enforce collateral in different Member States and may lead to higher borrowing costs corresponding to place of establishment and irrespective of their real creditworthiness. Therefore, a common new procedure is required for the single market, the Banking Union and the Capital Markets Union and it is necessary to ensure that credit institutions and undertakings which are authorised to issue credit by concluding secured credit agreements in all Member States have the ability to enforce those agreements through effective and expedited extrajudicial enforcement procedures.
- (43) In order to protect consumers, credit agreements provided to consumers should be excluded from the scope of the accelerated extrajudicial enforcement mechanism provided for in this Directive. Equally, in order to protect sole entrepreneurs, this mechanism should not apply to credit agreements secured by collateral in the form of real estate which is the main residence of the sole entrepreneur.
- (44) Since this accelerated extrajudicial collateral enforcement mechanism is a voluntary instrument which is subject to agreement between the secured creditor and the business borrower, it is necessary that the borrower be informed about the consequences and of the conditions under which this accelerated procedure may be used by the creditor. Therefore the conditions should be established in a written agreement, or in a notarised format where national law so provides, between the creditor and the borrower.
- (45) In order to protect business borrowers, it is appropriate to ensure that the necessary measures are in place to ensure that creditors afford borrowers a reasonable period of time for execution of payment to avert this kind of enforcement.
- (46) In order to ensure that this accelerated extrajudicial collateral enforcement mechanism is an expedited and effective instrument to recover value from collateral, the agreement by which the secured creditor and the business borrower agree upon it should comprise a directly enforceable title, which is a clause in the agreement that enables direct execution of the collateral through AECE without the need to obtain an enforceable title from the court.
- (47) In Member States which have already established extrajudicial enforcement procedures, those procedures are interlinked with elements of national civil, commercial, property, insolvency and public laws, and the type of enforcement procedure that may be used depends on the type of the asset provided as collateral, with procedures for immovable assets often entailing stricter procedural elements and minimum judicial oversight. Therefore Member States should have flexibility in deciding upon the type of enforcement procedure which is made available to secured creditors for the purpose of this accelerated extrajudicial collateral enforcement: public auction or private sale, or, under some national frameworks, the appropriation of the asset.

- (48) In order to ensure that the secured creditor only recovers what it is due by the business borrower under the credit agreement, Member States should ensure that the secured creditor is obliged to pay the business borrower any positive difference between the sum outstanding of the secured credit agreement and the proceeds of the sale of the asset (following public auction or private sale) or, in the case of appropriation between the sum outstanding and the valuation of the asset performed for the purpose of the appropriation. It is appropriate that where Member States provide for the realisation of collateral by means of appropriation, the positive difference to be paid out to the borrower should be the difference between the sum outstanding of the secured credit agreement and the valuation of the asset. Where less than the sum outstanding of the secured credit agreement is recovered through this accelerated enforcement, Member States should not prevent the parties to a secured credit agreement from expressly agreeing that the realisation of collateral by means of AECE is sufficient to repay the credit.
- (49) Member States should ensure that where a secured credit agreement which provides for the accelerated extrajudicial collateral enforcement set out in this Directive is transferred by the creditor to a third party, that third party would acquire the right to avail himself of the accelerated extrajudicial collateral enforcement under the same terms and conditions as the secured creditor.
- (50) In order to ensure consistency with pre-insolvency and insolvency rules, Member States should ensure that where a preventive restructuring proceeding, as provided for in the Proposal for a Directive of the European Parliament and of the Council on preventive restructuring and second chance¹², is initiated in respect of the business borrower, the realisation of the collateral pursuant to an AECE is subject to a stay of individual enforcement actions in accordance with applicable national laws transposing that Directive. In the case of any insolvency proceedings which are initiated in respect of the business borrower, the realisation of the collateral pursuant to an AECE should also be subject to a stay of individual enforcement actions in accordance with applicable national laws. It should be left to national law whether secured creditors have preferential access to the collateral under this accelerated mechanism even once insolvency proceedings are open.
- (51) Given the limited availability of data on the number of extrajudicial procedures used by credit institutions to recover value from collateral in case of borrower's default, national competent authorities which supervise credit institutions should be required to collect information on the number of secured credit agreements which are enforced through AECE and the timeframes for such enforcement. In order to gain a better understanding of the effectiveness of the exercise of AECE within the Union, Member States should provide annual statistical data on these matters to the Commission starting from one year after the date of application of this Directive.

¹² **Proposal for a Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU, COM/2016/0723 final, 22.11.2016.**

- (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. ~~Further, Member States should ensure that effective remedies are provided to consumers to ensure the possibility of out-of-court settlement of consumer disputes.~~
- (54) Both the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council¹³ and Regulation ~~(EC) No 45/2001~~ **(EU) 2018/1725** of the European Parliament and of the Council¹⁴ apply to the processing of personal data for the purposes of this Directive. In particular, where personal data is processed for the purposes of this Directive, the precise purpose should be specified, the relevant legal basis referred to, the relevant security requirements laid down in Regulation (EU) 2016/679 complied with, and the principles of necessity, proportionality, purpose limitation and 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.

¹³ 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).

¹⁴ **Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).**

- (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,

(57) The European Data Protection Supervisor has been consulted and provided its opinion on [X/Y/2018].

HAVE ADOPTED THIS DIRECTIVE:

Title I

Subject matter, scope and definitions

Article 1

Subject matter

This Directive lays down a common framework and requirements for:

- (a) ~~a credit servicers~~ **of a credit agreement issued by a credit institution** ~~or by its subsidiary established in the Union, and who~~ acting on behalf of a credit institution, or **of a credit purchaser** ~~or credit purchaser in respect of a credit agreement issued by a credit institution or by its subsidiaries;~~
- (b) ~~a credit purchasers~~ of a credit agreement issued by a credit institution **established in the Union** ~~or by its subsidiaries established in the Union;~~
- (c) a supplementary common accelerated extrajudicial collateral enforcement mechanism in respect of secured credit agreements concluded between creditors and business borrowers which are secured by collateral.

Article 2

Scope

1. Articles 3 to 22 and Articles 34 to 43 of this Directive shall apply to:
 - (a) ~~a credit servicers~~ **acting on behalf of a credit institution or of a credit purchaser in respect** of a credit agreement, **in accordance with applicable Union or national law**, issued by a credit institution established in the Union ~~or by its subsidiaries established in the Union~~ **which acts on behalf of a creditor, in accordance with applicable Union or national law**;
 - (b) ~~a credit purchasers~~ of a **non-performing** credit agreement issued by a credit institution established in the Union ~~or by its subsidiaries established in the Union~~, **whereby the credit purchaser assumes the creditor's obligations under the credit agreement, in accordance with applicable Union and national law**;
2. Articles 3, 23 to 33 and 39 to 43 of this Directive shall apply to secured credit agreements concluded between creditors and business borrowers which are secured by any movable and immovable assets owned by the business borrower and which have been posed as collateral to a creditor in order to secure repayment of claims arising from the secured credit agreement.
3. **With regard to credit agreements falling within its scope**, This Directive ~~does~~ **shall** not affect ~~neither contract law principles under national law~~ **with regard to the transfer of claims and the assignment of credit agreements, nor** the protection granted to consumers ~~or borrowers~~, pursuant **in particular**, to Directive 2014/17/EU, Directive 2008/48/EC, Council Directive 93/13/EEC and the national provisions transposing them **nor other relevant Union law and national consumer protection laws**, ~~with regard to credit agreements falling within its scope~~.
4. Articles 3 to 22 and 34 to 43 of this Directive shall not apply to the following:
 - (a) the servicing of a credit agreement carried out by
 - (i) a credit institution established in the Union or its subsidiaries established in the Union;
 - (ii) ~~or by an alternative investment fund manager licensed under Directive 2011/61/EU~~ **or Directive 2014/91/EU** on behalf of the fund it manages;

(iii) a public notary who conducts independent public service activities exercised within a liberal profession subject to the supervision of each Member State, as defined by national law or a national of a Member State who is authorised to pursue his or her professional activities under the professional titles referred to in 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 shall not be considered a credit servicer for the purpose of this Directive, unless their only tasks consist in conducting activities defined in Article 3(9) of this Directive.

- (b) the servicing of a credit agreement that was not issued by a credit institution established in the Union ~~or its subsidiaries established in the Union~~, except where the credit agreement issued is replaced by a credit agreement issued by such an institution ~~or its subsidiaries~~;
- (c) the purchase of a credit agreement by a credit institution established in the Union or its subsidiaries that are established in the Union and are included in the supervision of the credit institution on a consolidated basis pursuant to Regulation (EU) No 575/2013 ~~established in the Union~~;
- (d) the transfer of credit agreements transferred before the date referred to in the second subparagraph of Article 41(2).

5. Articles 3, 23 to 33 and ~~34~~ 39 to 43 of this Directive shall not apply to:

- (a) secured credit agreements concluded between creditors and borrowers who are consumers as defined in point (a) of Article 3 of Directive 2008/48/EC;
- (b) secured credit agreements concluded between creditors and business borrowers who are non-profit making companies;
- (c) secured credit agreements concluded between creditors and business borrowers which are secured by the following categories of collateral:
 - (i) financial collateral arrangements as defined in Article 2(1)(a) of Directive 2002/47/EC¹⁵;
 - (ii) immovable residential property which is the primary residence of a business borrower.

¹⁵ **Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements** (OJ L 168 , 27.6.2002, p. 43).

Article 3

Definitions

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

- (1) 'credit institution' means a credit institution ~~or its subsidiary~~ as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013¹⁶;
- (2) 'creditor' means a credit institution or any legal person who has issued a credit in the course of his trade, business or profession, or a credit purchaser;
- (3) 'borrower' means a legal or natural person who has concluded a credit agreement with a creditor;
- (4) 'business borrower' means a legal or natural person, other than a consumer, who has concluded a credit agreement with a creditor;
- (5) 'credit agreement' means **[creditor's rights under a ~~credit contractual~~ agreement or the ~~credit~~ agreement itself]** as originally issued, modified or replaced, whereby a creditor grants or promises to grant a credit in the form of a deferred payment, a loan or other similar financial accommodation;
- (6) **'credit servicing agreement' means a written contract between a creditor and a credit servicer about the services to be provided by the credit servicer on behalf of the creditor;**
- (7) 'secured credit agreement' means a credit agreement concluded by a credit institution or another undertaking authorised to issue credit, which is secured by either of the following collateral;
 - (a) a mortgage, charge, lien or other comparable security right commonly used in a Member State in relation to immovable assets;
 - (b) a pledge, charge, lien or other comparable security right commonly used in a Member State in relation to movable assets;
- (8) 'credit purchaser' means any natural or legal person other than a credit institution ~~or a subsidiary of a credit institution~~ which purchases a credit agreement **[or the creditors' rights under a credit agreement]** ~~as defined in paragraph 5~~ in the course of his trade, business or profession **in accordance with applicable Union and national law;**

¹⁶ **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).**

(9) 'credit servicer' means any legal person, other than a credit institution, who, in the course of its business, manages and enforces the rights and obligations under the credit agreement or the credit claim on behalf of the creditor and carries out at least one or more of the following activities:

i) Collecting or recovering payments due under the credit agreement from the borrower where it is not a 'payment service' as defined in Annex I of Directive 2015/2366, in accordance with national law;

ii) renegotiating the terms and conditions of the credit agreement or credit claim with borrowers in line with the instructions offered by the creditor, in accordance with national law, where they are he is not a 'credit intermediary' as defined in Article 4(5) of Directive 2014/17/EU or Article 3(f) of Directive 2008/48/EC, in accordance with national law;

iii) administering any complaints in relation to the credit agreement or credit claim;

iv) informing the borrower of any changes in interest rates, charges or of payments due under the credit agreement].

~~Nationals of Member States who are authorised to pursue their professional activities under the professional titles referred to in 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 shall not be considered credit servicers for the purpose of this Directive, even when conducting activities defined in paragraph (9) (i) to (iii).~~

~~(10) 'credit servicer' means any natural or legal person, other than a credit institution, or its subsidiaries, which carries out one or more of the following activities on behalf of a creditor: who undertakes credit servicing on behalf of a credit institution or any legal person who issued a credit in the course of his trade, business or profession or a credit purchaser;~~

~~A credit servicer enforces the rights and obligations under the credit agreement on behalf of the creditor and carries out at least one of the following activities:~~

- ~~(a) monitors the performance of the credit agreement;~~
- ~~(b) collects and manages information about the status of the credit agreement, of the borrower and of any collateral used to secure the credit agreement;~~
- ~~(c) informs the borrower of any changes in interest rates, charges or of payments due under the credit agreement;~~
- ~~(d) enforces the rights and obligations under the credit agreement on behalf of the creditor, including administering repayments;~~

- (e) ~~renegotiates the terms and conditions of the credit agreement with borrowers, where they are not a 'credit intermediary' as defined in Article 4(5) of Directive 2014/17/EU or Article 3(f) of Directive 2008/48/EC;~~
- (f) ~~handles borrowers' complaints.~~
- (10) 'home Member State' means **in respect to the credit servicer** the Member State in which ~~the authorisation is granted to~~ the credit servicer **is established or in respect to the credit purchaser the Member State in which the credit purchaser or his representative** is domiciled or established.
- (11) 'host Member State' means a Member State, other than the home Member State, in which a credit servicer has established a branch, has appointed an agent or where a credit servicer provides services.
- (12) 'consumer' means a consumer as defined in point (a) of Article 3 of Directive 2008/48/EC.
- (13) **'non-performing credit agreement' means a credit agreement that is classified as non-performing exposure in accordance with Regulation (EU) No 575/2013.**

Title II

Credit servicers

Chapter I

Authorisation of credit servicers

Article 4

General requirements

1. Member States shall require a credit servicer to obtain an authorisation in a home Member State before commencing its activities within its territory in accordance with the requirements set out in the national provisions transposing this Directive.
2. Member States shall confer the power to grant such authorisations upon the competent authorities designated pursuant to Article 20(3).

Article 5

Requirements for granting an authorisation

1. Member States shall lay down the following requirements for the granting of an authorisation as referred to in Article 4(1):
 - (a) the applicant is ~~a citizen of the Union or~~ a legal person as referred to in Article 54 of the Treaty on the Functioning of the European Union and its registered office or principal place of business is in the Member State in which he is seeking authorisation;
 - (b) ~~where the applicant is a legal person, the members of its management or administrative organ and 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, or where the applicant is a natural person,~~ shall have the following characteristics:
 - (i) are of sufficiently good repute ~~and have adequate knowledge and experience to conduct the business in a competent and responsible manner~~;
 - (ii) have a clean police record or other national equivalent in relation to serious criminal offences relating to property, to financial activities, money laundering, fraud, tax crimes, violation of professional secrecy or to physical integrity;
 - (iii) are not ~~currently~~ subject to any on-going insolvency procedure or have previously been declared bankrupt unless reinstated in accordance with national law;
 - (iv) the management, taken as a whole, has adequate knowledge and experience to conduct the business in a competent and responsible manner.
 - (bb) 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 sufficient good repute and fulfil requirements in point (ii) and (iii) 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 personal data protection rules in accordance with the laws governing the credit agreement~~;~~

- (d) the applicant applies an appropriate policy ensuring compliance with rules for the protection of bank 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~~ 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;
 - (f) ~~[the applicant has in force adequate anti-money laundering and counter-terrorism procedures in place in accordance with national laws transposing the Directive 2015/849/EU].~~
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.
- 3. EBA shall develop guidelines that specify the minimum level required of the requirements mentioned under paragraph 1(b) point (i) and (iv), as well as under paragraph 1(bb) of this Article.**

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 ~~its instrument of constitution, where appropriate~~;
 - (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 persons who hold qualifying holdings within the meaning of point (36) of Article 4(1) of Regulation (EU) No 575/2013;

evidence that the applicant ~~and the persons referred to in point (c) of this Article~~, complies with the conditions laid down in Article 5(1)(b);

(dd) evidence that the persons referred to in point (c) of this paragraph, comply with the conditions laid down in Article 5(1)(bb);

- (d) evidence of the governance arrangements and internal control mechanisms referred to in Article 5(1)(c);
 - (e) evidence of the policy referred to in Article 5(1)(d);
 - (f) evidence of the internal procedures referred to in Article 5(1)(e);
 - (g) ~~[evidence of the procedures referred to in Article 5(1)(f);]~~
 - (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 ~~3020 working~~ days of receipt of the application for authorisation, whether that application is complete. ~~Member States shall ensure that the competent authorities of a home Member State assess, within 2030 working days of receipt of the application for authorisation, whether that application is complete. Where the application is considered incomplete, the competent authorities shall set a new deadline by which the applicant is to provide the any further additional information. Upon reviewing the additional information the competent authority and they shall notify the applicant when whether they consider an the application to be 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.** ~~competent authorities of the home Member State assess, within 3090 working days from the date of receipt of a complete application, whether the applicant complies with the national provisions transposing this Directive. Where the application is considered not to be complete or compliant, the competent authority shall have the opportunity to set a deadline by which the applicant will have the possibility to provide the information required by Article 5 (1). The competent authorities shall, on conclusion of that assessment, either adopt a fully reasoned decision when either granting or refusing the authorisation or adopt a simple decision when granting the authorisation which shall be notified to the applicant within five95 working days from the date of receipt of a complete application.~~
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 six months from the submission of a complete application,** no decision is taken by the competent authorities in respect of ~~an the~~ application ~~for authorisation, within six months of lodging a complete 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** ~~when deciding in order to~~ **may** 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 six months;
 - (d) has acquired an authorisation through false statements or other irregular means;
 - (e) no longer ~~fulfills~~ ~~meets~~ 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 other consumer protection rules**.
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, when preferred, where considered more appropriate,** a national register of all authorised credit servicers authorised to provide services within their territory, including credit servicers providing services under Article 11.
2. The **list or** register ~~or list~~ shall be made publicly accessible online **on the websites of the competent authorities** 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 ~~or list~~ without delay.

Contractual relationship between a credit servicer and a creditor

1. Member States shall ensure that a credit servicer provides its services in respect of the management and enforcement of a credit agreement on the basis of a credit servicing agreement ~~as referred to in Article 3(6) on the basis of a written agreement~~ with a creditor.
2. The credit servicing agreement ~~referred to in the paragraph 1~~ shall provide for the following:
 - (a) a detailed description of credit servicing activities to be carried out by the credit servicer;
 - (b) the level of remuneration of the credit servicer or how the remuneration is to be calculated;
 - (c) the extent to which the credit servicer can represent the 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, including in respect of consumer and data protection~~;~~;
 - (e) a clause requiring the fair and diligent treatment of the borrowers ~~, including by taking into account their financial situation and, where suitable, the need to refer borrowers to debt advice or social services.~~
- 2a. Member States may require that the credit servicing agreement also provides a requirement according to which the credit servier notifies the creditor prior to outsourcing any of its activity as credit servicer.**
3. Member States shall ensure that the credit servicer keeps and maintains the following records for at least 10 5 years from the date when the agreement of the contract ~~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) ~~all~~ relevant correspondence with both the creditor and the borrower, under the conditions provided for in the applicable national law;
 - (b) ~~all~~ relevant instructions received from the creditor in respect of each credit agreement that it manages and enforces on behalf of that creditor, under the conditions provided for in the applicable national law;
 - (c) 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 credit servicer uses a third party (~~credit service provider~~) to perform any of the activities stated-listed in Article 3(409) ('credit service provider') 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:~~

For the purpose of the first subparagraph a written outsourcing agreement between the credit servicer and the credit service provider shall be concluded, ~~in~~ which shall provide that the credit service provider is obliged to comply with the applicable legal provisions, including national law transposing this Directive, and the relevant Union or national law applicable to the credit agreement. The contractual relationship ~~and obligations of~~ between the credit servicer and the creditor and obligations of the credit servicer towards the creditor or borrowers its clients shall not be altered with by the outsourcing agreement with the credit service provider. 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. 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.

The outsourcing of those activities stated in Article 3(9) 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.

- (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 relevant Union or national law applicable to the credit agreement;~~
- (b) ~~the obligations of credit servicers under this Directive may not be delegated;~~
- (c) ~~the contractual relationship and obligations of the credit servicer towards its clients are not altered;~~
- (d) ~~the conditions for the authorisation of the credit servicer as set out in Article 5(1) are not affected;~~
- (e) ~~the outsourcing to the credit service provider does 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.~~

2. Member States shall ensure that, upon request, the credit servicer informs without delay the competent authority of the home, and where applicable the host, Member State ~~without undue delay~~ about the outsourcing of activities in accordance with paragraph 1.
3. Member States shall ensure that the credit servicer keeps and maintains records of ~~all~~ relevant instructions provided to the credit service provider, under the conditions provided for in the applicable national law, and the outsourcing agreement for at least ~~10~~ 5 years from the date ~~when the agreement of the contract~~ referred to in paragraph 1 is terminated or for the statutory limitation period in the Member State, however, no longer than 10 years.
34. Member States shall ensure that the credit servicer and the credit service provider make the information referred to in paragraph ~~23~~ 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.
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 an agent appointed 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 credit agreement.
3. The competent authorities of the home Member State shall, within 30 working days of the receipt of ~~all the~~ 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 ~~once the competent authorities of a home Member State communicate the information referred to in paragraph 2,~~ 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 the submission of all information referred to in paragraph 2 to the competent authority of the host Member State~~of communication of the information referred to in paragraph 3.~~
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 ~~32~~ 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.

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 ~~sanctions or~~ 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 an agent 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 agent.
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 an agent appointed in a host Member State. **The on-site inspection of a branch or of an agent 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~~s~~ 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 **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 ~~sanctions or~~ 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.
11. Member States shall ensure that where, after having informed the home Member State no adequate measures were taken in a reasonable time or despite measures taken by the competent authorities of the home Member State or in an urgent case, **where immediate action is necessary to address a serious threat to the collective interests of the borrowers, given that** the credit servicer continues to be in breach of the **applicable rules, including its** obligations under this Directive, the competent authorities of the host Member State are entitled to take appropriate administrative ~~sanctions or~~ penalties and remedial measures in order to ensure compliance with the **applicable rules**~~provisions of this Directive within its territory~~ after informing without delay the competent authorities of the home Member State. **In addition, the competent authorities of the host Member State may prohibit further activities of such credit servicers in its Member State until an adequate decision is taken by the competent authority of the home Member State or a remedial measure is taken by the credit servicer.**

Title III

Credit purchasers

Article 13

Right to information regarding the credit agreement

1. Member States shall ensure that a creditor ~~shall~~ provides ~~all~~ the necessary information regarding the credit agreement and, if applicable, the collateral, to a credit purchaser to enable that credit purchaser to assess the value of the credit agreement and the likelihood of recovery of the value of that agreement prior to entering into a contract for the transfer of that credit agreement while ensuring the protection of information made available by the creditor and the confidentiality of business data.
2. **On a quarterly basis** Member States shall require ~~a credit institutions or the subsidiary of a credit institution~~ that transfer a credit agreement ~~or a credit right~~ 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/EU¹⁷, for each transfer of credit agreement portfolio about the legal entity identifier (LEI) of the credit purchaser or, where applicable, of its representative designated in accordance with Article 17, or where such identifier does not exist about:
 - (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 purchaser or, where applicable, its representative designated in accordance with Article 17, its head office or its registered office.the identity and address of the credit purchaser and, where applicable, of its representative designated in accordance with Article 17 and **Additionally, on an aggregate level, the credit institution shall inform about [at least]** of the following:
 - (c) **when applicable, the types of assets securing the credit agreements or credit claims transferred, including information on whether it is a credit agreements or credit claims concluded with consumers;**

¹⁷ 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).

~~the residual nominal values~~ **the aggregated outstanding balance** of the credit agreements ~~or credit claims transferred;~~

- (d) ~~the identity and address of the borrower and of the credit purchaser and, where applicable, of its representative designated in accordance with Article 17;~~
 - (e) ~~type,~~ **the number and average size of credit agreements~~loans~~ included in the transferred portfolios;**
 - (f) **on whether ~~they~~the transferred portfolios include credit agreements concluded with consumers or credit rights concerning consumers and the ~~transferred types~~ of assets securing them, when applicable.**
3. The competent authorities referred to in paragraph 2 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 according to this Directive to the competent authorities of the **home** Member State ~~whereof~~ the credit purchaser or its representative, designated in accordance with Article 17, ~~is established and of the Member State where the borrower is established or resident.~~
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 ~~NPL~~ data formats

1. 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 screening, financial due diligence and valuation of the credit agreement. **EBA shall specify in the implementing technical standards the required minimum data fields for ~~performing loans~~credit agreements in order to meet the information requirements as set out in Article 13(1).**
2. EBA shall submit those draft implementing technical standards to the Commission by [31 December ~~2019~~].
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 Council¹⁸.

¹⁸ 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).

Article 15

Obligations of credit purchasers

1. Member States shall ensure that the representative of a credit purchaser referred to in Article 17(1) appoints a credit institution established in the Union ~~or its subsidiary established in the Union~~ or an authorised credit servicer to perform credit servicing activities in respect of credit agreements concluded with consumers.
2. Member States shall ensure that a credit purchaser is not subject to any additional administrative requirements for the purchase of credit agreements other than as provided for by the national measures transposing this Directive or governing contract law. Member States shall ensure that relevant Union and national law concerning in particular the enforcement of contracts, consumer protection and criminal law continues to apply to the credit purchaser upon assignment of the credit agreement to the credit purchaser. The level of protection provided under Union and national law to consumers shall not be affected by the assignment of the credit agreement to the credit purchaser.

The previous paragraph is without prejudice to national powers regarding credit registers, including the power to require information to credit purchasers regarding the credit agreement and its performance.

3. Member States shall ensure that a credit purchaser or, where applicable, its representative designated in accordance with Article 17 notifies the competent authorities of the home Member State without delay of information concerning its first purchase of credit agreements issued from a credit institution in the Union on the secondary market, as regards:
 - (a) the legal entity identifier (LEI) of the credit purchaser or, where applicable, of its representative designated in accordance with Article 17; or where such identifier does not exist;
 - (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 purchaser or, where applicable, its representative designated in accordance with Article 17, its head office or its registered office.
 - (b) the deed of incorporation of the purchaser;
 - (c) the Member State where the purchase occurred.

Member States shall require that the competent authority receiving information under this paragraph transmits this information without delay to the EBA. The EBA shall establish a list of all credit purchasers that are active on the secondary market in the Union and make this list available on its website. This list shall be kept up to date by the EBA on the basis of information received from the credit purchaser and provided by the competent authorities.

Article 16

Use of credit servicers; or credit institutions ~~or their subsidiaries~~

1. Where the credit purchaser or, where applicable, its representative designated in accordance with Article 17, decides to engage a credit institution or a credit servicer to perform credit servicing activities in relation to the transferred credit agreement, Member States shall require the credit purchaser ~~or, where applicable, their~~its ~~representative designated in accordance with Article 17,~~ to inform the competent authorities of the home Member State ~~where the credit purchaser or their representative is domiciled or established~~ of the identity and address of the credit institution, ~~its subsidiary or the credit servicer that they have engaged to perform credit servicing activities in relation to the transferred credit agreement.~~
2. Where the credit purchaser or the representative designated in accordance with Article 17 engages a different credit institution ~~or subsidiary~~ to service the credit or a different credit servicer, it shall notify the competent authorities of the home Member State referred to in paragraph 1 thereof at least ~~two weeks in advance~~ the day of that change and shall indicate the identity and address of the new credit institution, ~~its subsidiary~~ or credit servicer that they have engaged to perform credit servicing activities in relation to the transferred credit agreement.
3. Member States shall require the competent authorities of the home Member State ~~where of~~ the credit purchaser or, where applicable, their representative designated, in accordance with Article 17, ~~is domiciled or established~~ to transmit without undue delay to the competent authorities responsible for the supervision of the credit institution, ~~its subsidiary~~ or credit servicer referred to in the paragraphs 1 and 2, the information received in accordance with Article 13(3).

Article 17

Representative of credit purchasers not established in the Union

1. Member States shall provide that where a transfer of the credit agreement is concluded, a credit purchaser that is not domiciled or established in the Union has designated in writing a representative who is domiciled or established in the Union.
2. The representative referred to in paragraph 1 shall be addressed in addition to or instead of the credit purchaser by competent authorities on all issues related to the ongoing compliance with this Directive and be fully responsible for compliance with the obligations imposed on the credit purchaser under the national provisions transposing this Directive.

~~Article 18~~

~~Credit purchasers directly enforcing a credit agreement~~

- ~~1. Member States shall ensure that a credit purchaser or, where applicable, its representative designated in accordance with Article 17 communicates on a quarterly basis to the competent authorities of the Member State where the credit purchaser or, where applicable, its representative is domiciled or established, for each portfolio the identity and address of the credit purchaser and, where applicable, of its representative designated in accordance with Article 17, and on an aggregate level, about its purchased credit agreements that it intends to directly enforce a credit agreement by providing the following information:~~
 - ~~(a) the type of assets securing the credit agreement including information on whether it is a credit agreements concluded with consumers;~~
 - ~~(b) the residual nominal values of the credit agreements purchased;~~
 - ~~(c) the identity and address of the borrower and of the credit purchaser or of its representative designated in accordance with Article 17;~~
 - ~~(d) type, number and average size of loans included in the transferred portfolios;~~
 - ~~(e) on whether they include credit agreements concluded with consumers or credit rights concerning consumers and the transferred types of assets securing them, when applicable.~~
- ~~2. Member States shall require the competent authorities referred to in paragraph 1, to transmit without undue delay the information received in accordance with paragraph 1 to the competent authorities of the Member State where the borrower is established.~~

Article 19

Transfer of a credit agreement by a credit purchaser and communication to the competent authority

1. Member States shall require a credit purchaser or, where applicable, its representative designated in accordance with Article 17, that transfers a credit agreement ~~or a credit right~~ to another credit purchaser to inform the competent authorities ~~referred to in Article 18(1)~~ **of the home Member State on a quarterly basis for each transfer of credit agreement about the new credit purchaser legal entity identifier (LEI) and, where applicable, of its representative designated in accordance with Article 17, or where such identifier does not exist about:**
 - (i) the identity of the new credit purchaser or 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 or, where applicable, its representative designated in accordance with Article 17, its head office or its registered office,**

~~and~~ **Additionally,** on an aggregated level **the credit purchaser shall inform** about ~~of the transfers, the identity and address of the new credit purchaser and, where applicable, its representative designated in accordance with Article 1~~ **[at least] the following:**

 - (a) **the aggregated outstanding balance of the credit agreements transferred;**
 - (b) **the number and size of credit agreements included in the transferred portfolios;**
 - (c) **on whether the transferred portfolios include credit agreements concluded with consumers or credit rights concerning 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 in accordance with Article 13(3) to the competent authorities of the Member State where the new credit purchaser and, where applicable, its representative 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.
2. The Member State where the credit purchasers or, where applicable, their representative designated in accordance to Article 17, are domiciled or established shall ensure that the competent authorities referred to in paragraph 1 are responsible for the supervision of the obligations set in Articles 15-19 in respect of credit purchasers or, where applicable their representatives designated in accordance to Article 17.
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 also verify whether the requirements set out in Article 5 are still fulfilled or where they have reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, or there is 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;
 - (c) the power to conduct on-site and off-site inspections;
 - (d) the power to impose administrative ~~sanctions or~~ 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);~~3~~
 - (f) **the power to remove members of a credit servicer's management or administrative organ when they fail to comply with the requirements set out in Article 5(1)(b);**
 - (g) **the power to require credit servicers to modify or update the internal governance arrangements and internal control mechanisms of a credit servicer in order to effectively ensure respect for borrower rights in accordance with the laws governing the credit agreement;**
 - (h) **the power to require credit servicers to modify or update the policies adopted by credit servicers to ensure the fair and diligent treatment of the borrowers, and the recording and handling of borrower complaints;**
 - (i) **the power to request further information pertaining to the transfer of a credit agreement.**

2. Member States shall ensure that the competent authorities of the home Member State evaluate, by applying a risk based approach~~at least once a year~~, the implementation by a credit servicer of the requirements set in points (c), (d), ~~and~~ (e) ~~[and (f)]~~ 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 ~~regularly, and at least once a year~~, inform the competent authorities of host Member States, upon request, of the results of the evaluation referred to in paragraph 2, including details 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 or its representative appointed in accordance with Article 17 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 fails to enter into an outsourcing agreement 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;
- (e) a credit purchaser or, where applicable, its representative designated in accordance with Article 17 fails to communicate the information provided for by national measures transposing Article 16, 18 and 19;
- (f) a credit purchaser or, where applicable, its representative designated in accordance with Article 17 fails to comply with the requirement of the national measures transposing Article 15;
- (g) a credit purchaser fails to comply with the requirement of the national measures transposing Article 17~~;~~;
- (h) a credit institution fails to communicate information set out in the national measures transposing Article 13 of this Directive;
- (i) a credit servicer allows one or more persons not complying with the requirements as set in Article 5(1)(b) to become or remain a member of its management or administrative organ;
- (j) a credit servicer fails to comply with the requirement set out in the national measures transposing Article 35 of this Directive.

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 ~~cancellation~~withdrawal of an authorisation to carry out activities as a credit servicer;
- (b) an order requiring the credit servicer or credit purchaser or, where applicable, its representative designated in accordance with Article 17 to remedy the breach, and to cease the conduct and to desist from a repetition of that conduct;
- (c) administrative ~~fin~~~~es~~pecuniary penalties~~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 ~~fin~~pecuniary penalties that competent authorities take into account ~~all the following~~relevant circumstances, including the following; ~~where relevant~~:
- (a) the gravity and the duration of the breach;
 - (b) the degree of responsibility of the credit servicer or credit purchaser or, where applicable, its representative designated in accordance with Article 17, 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 or, where applicable, its representative designated in accordance with Article 17, 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 or, where applicable, its representative designated in accordance with Article 17, responsible for the breach;
 - (h) any actual or potential systemic consequences of the breach.
5. ~~Where the situations referred to in paragraph 1 apply to legal persons~~, 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, credit purchaser or where applicable, its representative designated in accordance with Article 17, the opportunity to be heard.
7. Member States shall ensure that any decision imposing administrative ~~sanctions~~penalties or remedial measures as set out in paragraph 2 is properly reasoned and is subject to the right of appeal.

8. Member States may decide not to lay down rules for administrative penalties for infringements which are subject to criminal penalties under their national law. In that case, Member States shall communicate to other competent authorities the relevant criminal law provisions.

TITLE V

Accelerated Extrajudicial Collateral Enforcement

Article 23

Conditions for the voluntary use of Accelerated Extrajudicial Collateral Enforcement

1. Member States shall ensure that this accelerated extrajudicial collateral enforcement mechanism may be exercised by a creditor where all of the following conditions are fulfilled:
 - (a) the mechanism has been agreed in writing, or in a notarised format if so provided by the Member State, by the creditor and business borrower and that agreement specifies the enforcement event and the period of time in which the business borrower may execute payment following that event in order to avert the execution of this accelerated extrajudicial collateral enforcement;
 - (b) the business borrower has been clearly informed about the application and consequences of this accelerated extrajudicial collateral enforcement prior to the conclusion of the agreement referred to in point (a);
 - (c) within 4 weeks of the enforcement event, or such later point in time where so negotiated by the creditor and the business borrower, the creditor has notified the business borrower, in writing, of all of the following:
 - (i) the creditor's intention to realise the assets through this accelerated extrajudicial collateral enforcement mechanism to satisfy the contractual obligations of the secured credit agreement;
 - (ii) the type of enforcement measure to be applied as referred to in Articles 25 and 26;
 - (iii) the time period for the execution of payment before the use of the accelerated extrajudicial collateral enforcement mechanism referred to in point (a);
 - (iv) the default amount of the secured credit agreement due pursuant to the contractual obligations of the secured credit agreement;

- (d) the business borrower has not executed the full payment as stipulated in the creditor's notification referred to in point (c).

For the purposes of paragraph 1, the agreement referred to in paragraph 1(a) shall include a directly enforceable title.

For the purposes of paragraph 1(a), Member States may establish that in cases where a business borrower has paid at least 85% of the amount of the secured credit agreement, the period referred to therein may be extended by at least six months.

- 2. Member States shall ensure that the business borrower is not permitted to dispose of the assets pledged as collateral as of receipt of the notification referred to in paragraph 1(c) and is subject to a general duty to cooperate and to furnish all relevant information where this accelerated extrajudicial collateral enforcement mechanism is exercisable in accordance with paragraph 1.
- 3. Member States shall ensure that the creditor affords the business borrower a reasonable period of time for execution of payment and makes reasonable efforts to avoid the use of this accelerated extrajudicial collateral enforcement mechanism.

Article 24

Enforcement

- 1. Member States shall ensure that collateral may be realised pursuant to this accelerated extrajudicial collateral enforcement mechanism.
- 2. Member States shall provide for at least one or both of the following means to realise the collateral as referred to in paragraph 1 for each type of security right and collateral:
 - (a) public auction;
 - (b) private sale.

For each of these means, Member States may provide that a notary, bailiff or other public official is appointed where appropriate to ensure an efficient and expedited distribution of sale proceeds and transfer of the collateral to an acquirer, or safeguard the borrower's rights.

3. Where Member States establish the extrajudicial enforcement procedure by means of appropriation, the right of the creditor to retain the asset in or towards satisfaction of business borrower's liability shall be governed by the applicable laws in each Member State. Member States shall ensure that in the case of appropriation the positive difference to be paid out to the business borrower shall be the difference between sum outstanding of the secured credit agreement and the valuation of the asset.
4. For the purposes of the realisation referred to in paragraph 2, Member States shall ensure that the creditor organises a valuation of the assets, in order to determine the reserve price in cases of public auction and private sale, and that the following conditions are met:
 - (a) the creditor and the business borrower agree on the valuer to be appointed;
 - (b) the valuation is conducted by an independent valuer;
 - (c) the valuation is fair and realistic;
 - (d) the valuation is conducted specifically for the purposes of the realisation of the collateral after the enforcement event;
 - (e) the business borrower has the right to challenge the valuation before a court in accordance with Article 29.
5. For the purposes of point (a), where the parties cannot agree upon the appointment of a valuer for the purposes of realising the collateral referred to in paragraph 2, a valuer shall be appointed by a decision of a judicial court, in accordance with the national law of the Member State in which the business borrower is established or is domiciled.

Article 25

Public auction

1. Member States shall ensure that the realisation of collateral by means of public auction is conducted in accordance with the following elements:
 - (a) the creditor has publicly communicated the time and place of the public auction at least 10 days prior to that auction;
 - (b) the creditor has made reasonable efforts to attract the highest number of potential buyers;
 - (c) the creditor has notified the business borrower, and any third party with an interest in or right to the asset, of the public auction, including its time and place, at least 10 days prior to that auction;

- (d) a valuation of the asset has been conducted prior to the public auction;
 - (e) the reserve price of the asset is at least equal to the valuation amount determined prior to the public auction;
 - (f) the asset may be sold at a reduction of no more than 20% of the valuation amount where both of the following apply:
 - (i) no buyer has made an offer in line with the requirements referred to in points (e) and (f) at the public auction;
 - (ii) there is a threat of imminent deterioration of the asset.
2. Where the asset has not been sold by public auction, Member States may provide for the realisation of the collateral by private sale.
 3. Where a Member State provides for a second public auction, points (a) to (e) of paragraph 1 shall apply but the asset may be sold at a further reduction, as determined by Member States.

Article 26

Private sale

1. Member States shall ensure that the realisation of collateral by means of private sale is conducted in accordance with the following elements:
 - (a) the creditor has made reasonable efforts, including adequate public advertising, to attract potential buyers;
 - (b) the creditor has notified the business borrower, and any relevant third party with an interest in or right to the asset, of its intention to sell the asset at least 10 days prior to offering the asset for sale;
 - (c) a valuation of the asset has been conducted prior to the private sale, and or a public auction in accordance with point (c) of Article 25(1);
 - (d) the guide price of the asset is at least equal to the amount established in the valuation referred to in point (c), at the time of offering the asset for private sale;
 - (e) the asset may be sold at a reduction of no more than 20% of value where both of the following apply:
 - (i) no buyer has made an offer in line with the requirements referred to in points (d) and (e) within 30 days;
 - (ii) there is a threat of imminent deterioration of the asset.

2. Where the asset has not been sold by private sale within 30 days of offering the asset for sale, Member States shall ensure that the creditor publicly advertises the sale for an additional period of at least 30 days before concluding any sale.
3. Where a Member State provides for a second attempt at private sale, points (a) to (d) of paragraph 1 shall apply but the asset may be sold at a further reduction, as determined by Member States.

Article 27

Competing security rights

Member States shall provide that the priority attached to competing security rights in the same collateral is not affected by the enforcement of one of those rights by means of the national provisions transposing this Directive.

Article 28

Right to challenge the enforcement

Member States shall ensure that the business borrower has the right to challenge the use of this accelerated extrajudicial collateral enforcement mechanism before a national court where the sale of the assets provided as collateral has not been conducted in accordance with the national provisions transposing Articles 24(3), 25 and 26, or the valuation of the assets has not been conducted in accordance with the national provisions transposing Article 24(4).

Article 29

Restitution of the exceeding amount

Member States shall ensure that the creditor is required to pay the business borrower any positive difference between the sum outstanding of the secured credit agreement and the proceeds of the sale of the asset.

Article 30

Settlement of the outstanding amount

Without prejudice to articles 19 to 23 of the Directive (EU) 20XX/XX of the European Parliament and of the Council¹⁹, in cases where the amount realised after the use of this accelerated extrajudicial collateral enforcement mechanism is an amount lower than the sum outstanding of the secured credit agreement, Member States may provide for the settlement of all liabilities under that agreement, in accordance with applicable national laws.

Article 31

Transfer of secured credit agreements to third parties

Member States shall ensure that where a secured credit agreement which provides for the right to use accelerated extrajudicial collateral enforcement is transferred by the credit institution or its subsidiary to any third party, that third party shall acquire the right to use this accelerated extrajudicial collateral enforcement mechanism in case of the business borrower's default under the same terms and conditions as the credit institution.

Article 32

Restructuring and insolvency proceedings

1. This Directive shall be without prejudice to the Directive (EU) 20XX/XX of the European Parliament and of the Council²⁰.
2. Member States shall ensure that where insolvency proceedings are initiated in respect of a business borrower, the realisation of collateral pursuant to national laws transposing this Directive is subject to a stay of individual enforcement actions in accordance with applicable national laws.

¹⁹ Directive (EU) .../.... of the European Parliament and of the Council of [...] on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU (OJ L [...], [...], p. [...]).

²⁰ Directive (EU) .../.... of the European Parliament and of the Council of [...] on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU (OJ L [...], [...], p. [...]).

Article 33

Data collection

1. Member States and, in the case of credit institutions competent authorities which supervise credit institutions, shall, on an annual basis, collect information from creditors on the number of secured credit agreements which are enforced through this accelerated extrajudicial collateral enforcement and the timeframes for such enforcement.
2. Member States and, in the case of credit institutions, competent authorities which supervise credit institutions, shall, on an annual basis, collect the following information from creditors:
 - (a) the number of proceedings pursuant to the national provisions transposing this Directive initiated, pending and realised, including:
 - (i) the number of proceedings in respect of movable assets,
 - (ii) the number of proceedings in respect of immovable assets.
 - (b) the length of the proceedings from notification to settlement, arranged by means of realisation (public sale, private sale, or appropriation);
 - (c) the average costs of each proceedings, in EUR;
 - (d) the settlement rates.
3. Member States shall aggregate the data referred to in paragraph 2 and compile statistics from that aggregate data for the full calendar year beginning **DATE [OP: Please insert a date of the January 1 following adoption of this act]**.
4. The statistics referred to in the first subparagraph shall be communicated to the Commission on annual basis and by 31 March of the calendar year following the year for which data is collected.

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 modifying the terms and conditions of a credit agreement either by consent or by operation of law, the creditor communicates the following information to the consumer:

- (a) a clear and comprehensive description of the proposed changes;
- (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 (e)~~ 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, depending on the nature of the complaints, to ensure that they are treated promptly when received.
- ~~7. Member States shall ensure in accordance to paragraph 6 that effective remedies are provided to consumers, including the possibility of out of court settlement of consumer disputes in accordance with Directive 2013/11/EU.~~

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~~ (EU) 2018/1725.

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.**
4. **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.**
- ~~5.~~ Member States shall take the necessary administrative and organisational measures to facilitate the cooperation provided for in this Article.
- ~~56.~~ 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 Council²¹.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

²¹ **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).**

Article 40

Evaluation

1. 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 the European Parliament, the Council and the European Economic and Social Committee. [The evaluation shall consist at least of the following:

(i) the number of authorised credit servicers in the Union and the number of credit servicers providing their services in a host Member State;

(ii) the number of credit purchasers on the secondary market covered by the list of EBA and the number of 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.]
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 [31 December ~~2020~~2021] 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 [1 January ~~2021~~2022].

However, Articles 4(1), 7, 9 to 12 shall apply from [1 July ~~2021~~2022].
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
