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European Union

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From:	General Secretariat of the Council
To:	Delegations
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Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on credit servicers and credit purchasers – Letter to the Chairperson of the European Parliament Committee on Economic and Monetary Affairs

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Following the Permanent Representatives Committee meeting of 28 June 2021 which endorsed the final compromise text with a view to agreement, delegations are informed that the Presidency sent the attached letter, together with its Annex, to the Chair of the European Parliament Committee on Economic and Monetary Affairs.

Encl.:



Brussels, 28 June 2021

Ms. Irene TINAGLI  
Chairperson, European Parliament Committee  
on Economic and Monetary Affairs  
European Parliament  
rue Wiertz 60  
B-1047 Brussels  
Belgium

**Subject:** Proposal for a directive of the European Parliament and of the Council on credit servicers and credit purchasers 2018/0063(COD)

Dear Ms TINAGLI,

Following the informal negotiations between the representatives of the three institutions, a draft overall compromise package was agreed today by the Permanent Representatives' Committee.

I am therefore now in a position to confirm that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise package contained in the Annex to this letter (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

On behalf of the Council I also wish to thank you for your close cooperation which should enable us to reach agreement on this dossier at first reading.

Yours sincerely

Nuno Brito

Chairman of the Permanent Representatives Committee (Part 2)

copy to: Commissioner Mairead McGuinness  
Ms Esther de Lange, EP Rapporteur

**DIRECTIVE (EU) .../...**  
**OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of**

**on credit servicers and credit purchasers**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> OJ C 367, 10.10.2018, p. 43.

Whereas:

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

- (3) In July 2017 the Council in its "Action Plan to Tackle Non-Performing Loans in Europe" 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 2017, which called for a comprehensive package on tackling NPLs within the Union.
- (4) This Directive, together with other measures which the Commission is putting forward, as well as the action taken by the ECB in the context of banking supervision under the Single Supervisory Mechanism (SSM) and by the European Banking Authority will create the appropriate environment for credit institutions to deal with NPLs on their balance sheets, and will reduce the risk of future NPL accumulation.

- (4a) In the process of developing macro-prudential approaches to prevent the emergence of system-wide risks associated with NPLs, the European Systemic Risk Board, established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council<sup>2</sup>, should issue, where appropriate, macro-prudential warnings and recommendations relating to the secondary market for NPLs.
- (5) Credit institutions will be required to put aside sufficient resources when new loans become non-performing, which should create appropriate incentives to address NPLs at an early stage and should prevent an excessive accumulation of them. Where loans become non-performing, more efficient enforcement mechanisms for secured loans would allow credit institutions to implement a holistic strategy to enforce NPLs, subject to strong and effective safeguards for borrowers. Nevertheless, should NPL stocks become too high, credit institutions should be able to sell them in efficient, competitive and transparent secondary markets to other operators. Competent authorities of credit institutions will guide them in this, based on their existing bank-specific, so-called Pillar 2, powers under Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>3</sup> (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.

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<sup>2</sup> *Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).*

<sup>3</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and 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 sell the credit to third parties. Moreover, when credit institutions face a large build-up of NPLs and lack the staff or expertise to properly service them, one viable solution would be to either outsource the servicing of these loans to a specialised credit servicer or to transfer the credit agreement to a credit purchaser that has the necessary risk appetite and expertise to manage it.
- (6a) In respect of consumers, amendments to Directive 2014/17/EU of the European Parliament and of the Council<sup>4</sup> and to Directive 2008/48/EC of the European Parliament and of the Council<sup>5</sup> should be introduced to establish that Member States should require creditors to have adequate policies and procedures so that they make efforts to exercise, where appropriate, reasonable forbearance before foreclosure proceedings are initiated, taking into account the EBA Guidelines on arrears and foreclosure of 19 August 2015 (EBA/GL/2015/12) and ECB Guidance to banks on non-performing loans of March 2017(ECB/2017). When deciding on which forbearance measures to take, creditors should take into account the individual circumstances of the consumer, the consumer's interests and rights and his or her ability to repay the credit, including in particular if the credit agreement is secured by immovable residential property which is the primary residence of a consumer. Forbearance measures may include certain concessions to the consumer, such as a total or partial refinancing of a credit agreement and a modification of the previous terms and conditions of a credit agreement, which, may include among others, an extension of the term of the credit agreement, a change of the type of the credit agreement, a deferral of payment of all or part of the instalment repayment for a period, the change of the interest rate, the offer of a payment holiday, partial repayments, currency conversions, partial forgiveness and debt consolidation. Member States should have appropriate forbearance measures in place at national level. The list of forbearance measures provided in this Directive, as amendments to Directive 2014/17/EU and to Directive 2008/48/EC, is not exhaustive, and therefore Member States may provide for additional measures.

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

<sup>5</sup> Directive *2008/48/EC* of the European Parliament and of the Council of *23 April 2008* on credit agreements for consumers *and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66)*.

Likewise, it is open to Member States not to provide for a specific measure if so foreseen at national level, as long as a reasonable number of measures remains available. Where after foreclosure proceeding outstanding debt remains, Member States should ensure the protection of minimum living conditions and put in place measures to facilitate repayment while avoiding long-term over-indebtedness. At least where the price obtained for the immovable property affects the amount owed by the consumer, Member States should encourage creditors to take reasonable steps to obtain the best efforts price for the foreclosed immovable property in the context of market conditions. Member States should not prevent the parties to a credit agreement from expressly agreeing that the transfer of the security to the creditor is sufficient in order to repay the credit, in particular when the credit is secured by the consumer's primary residence.

- (8) While the terms 'loans' and 'banks' are commonly referred to in the public debate, the more precise legal terms of 'credit' or 'credit agreements' and 'credit institution' are used hereafter. Moreover, this Directive covers both the creditor's rights under a non-performing credit agreement and the non-performing credit agreement itself.
- (9) This Directive should foster the development of secondary markets for NPLs in the Union by removing impediments and laying down safeguards for the transfer of NPLs by credit institutions to credit purchasers, while at the same time safeguarding borrowers' rights. Any proposed measure should harmonise the authorisation requirements for credit servicers. This Directive should therefore establish a Union-wide framework for both purchasers and servicers of non-performing credit agreements issued by credit institutions, whereby credit servicers should obtain authorisation and be subject to the supervision of Member States' competent authorities.



- (10) Currently, credit purchasers and credit servicers cannot reap the benefits of the internal market due to barriers erected by divergent national legislations in the absence of a dedicated and coherent regulatory and supervisory regime. At present, there are no common Union standards for the regulation of credit servicers. In particular, no common standards have been set out for the regulation of debt collection. Member States have very different rules for how credit purchasers may acquire credit agreements from credit institutions. Credit purchasers 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 credit purchasers has resulted in low demand, weak competition and low bid prices for portfolios of credit agreements on secondary markets, which is a disincentive for credit institutions to sell non-performing credit agreements. Therefore, there is a clear Union dimension to the development of markets for credits granted by credit institutions and sold to credit purchasers. On the one hand, it should be possible for credit institutions to sell non-performing credit agreements on a Union-wide scale in efficient, competitive and transparent secondary markets. On the other hand, completion of the Banking Union and a Capital Markets Union make it necessary to act in order to prevent the accumulation of non-performing credit agreements on credit institutions' balance sheets so that they can continue to perform their role of financing the economy. Therefore, the provisions of this Directive cover credit purchasers acting in the course of their trade, business or profession when they acquire a credit agreement only where that agreement has been qualified as a non-performing credit agreement.
- (11a) Non-performing credit originally granted by a credit institution, might, in the process of servicing the credit, become performing. In that case, credit servicers should be able to continue carrying out their activities, based on their authorisation.

- (13) Certain Member States regulate credit servicing activities, but to varying degrees. Firstly, only some Member State regulate these activities, and, those that do, define them very differently. The increased regulatory compliance costs operate as a barrier to the development of expansion strategies by means of secondary establishment or cross-border provision of services. Secondly, a considerable number of Member States requires authorisations for some of the activities that these credit servicers engage in. These authorisations impose different requirements and do not provide for possibilities of cross-border scaling up, this again operating as a barrier to the provision of cross-border services. Finally, in some cases, local establishment is required by law, which hinders the exercise of the freedom to provide cross-border services.
- (14) While credit servicers can provide their services to credit institutions and to credit purchasers that are not credit institutions, a competitive and integrated market for credit servicers is linked to the development of a competitive and integrated market for credit purchasers. Credit purchasers often decide to outsource the credit servicing to other entities, as they do not have the capacity to service credit themselves, and thus may be reluctant to purchase credit from credit institutions, if they cannot outsource certain services.
- (15) The lack of competitive pressure on the market for purchasing credit and on the market for credit servicing activities results in credit servicing firms charging credit purchasers high fees for their services and leads to low prices on secondary markets for credit. This reduces incentives for credit institutions to offload their stock of NPLs.

- (16) Therefore, action at Union level is necessary in order to address the position of credit purchasers and credit servicers in relation to non-performing credit originally granted by credit institutions. However, this Directive is without prejudice to the rules governing credit origination in accordance with Union and national law, including in cases when credit servicers can be considered to engage in credit intermediation. This Directive is also without prejudice to national rules imposing additional requirements in respect of the credit purchaser or the credit servicer as concerns the renegotiation of terms and conditions under a credit agreement.
- (16a) It is open to Member States to regulate the credit servicing activities that do not fall within the scope of this Directive, such as services offered for credit agreements issued by non-credit institutions or credit servicing activities performed by natural persons, including by imposing requirements equivalent to those under this Directive. Those entities, however, would not benefit from the possibility to passport such services to other Member States.
- (16b) This Directive should not affect restrictions under national law regarding the transfer of creditor's rights under a non-performing credit agreement or a transfer of the credit agreement itself that is not terminated in accordance with national civil law with the effect that all amounts payable under the credit agreement become immediately due, where that is required for the transfer to an entity outside the banking system. In that way, there will be Member States where, taking into account the national rules, the acquisition of non-performing credit agreements that are not past due, are less than 90 days past due, or are not terminated in accordance with national civil law by non-regulated creditors, will remain limited. It is open to Member States to regulate the transfer of performing credit agreements, including by imposing requirements equivalent to those under this Directive.

- (18) The importance placed by the Union legislature on the protection provided for consumers in Directive 2014/17/EU, Directive 2008/48/EC and Council Directive 93/13/EEC<sup>6</sup> means that the assignment of the creditor's rights under a credit agreement or of the agreement itself to a credit purchaser should not affect the level of protection granted by Union law to consumers in any way. Credit purchasers and credit servicers should therefore comply with applicable Union and national law as applicable to the initial credit agreement and the borrower should retain the same level of protection as provided under applicable Union and national law or as determined by Union or national conflict of law rules. Member States should ensure that no costs related to the transfer of the credit agreement other than those already included in the aforementioned credit agreement are charged to the borrower.
- (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 Council<sup>7</sup> and, Regulation (EU) No 1215/2012 of the European Parliament and of the Council<sup>8</sup>. 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.

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<sup>6</sup> *Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).*

<sup>7</sup> Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

<sup>8</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

- (19a) The modification of a credit agreement under Directive 2014/17/EU and to Directive 2008/48/EC as provided in this Directive, should not affect any consumer rights as laid down in Directive 2014/17/EU and to Directive 2008/48/EC, including information rights.
- (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 granted to a consumer. Those rights and safeguards apply in particular to the negotiation and conclusion of the credit agreement, to the use of unfair business-to-consumer commercial practices as laid down in Directive 2005/29/EC of the European Parliament and of the Council<sup>9</sup> and to the performance or default of the credit agreement. This is notably the case in relation to long-term consumer credit agreements falling within Directive 2014/17/EU, in respect of the right of the consumer to discharge fully or partially his obligations under a credit agreement prior to the expiry of that agreement or to be informed by means of the European Standardised Information Sheet, where applicable, on the possible transfer of the credit agreement to a credit purchaser. Borrower rights should also not be altered if the transfer of the credit agreement between a credit institution and a purchaser takes the form of contract novation. As a general principle, it should be ensured that borrowers are not worse off following the transfer of their credit agreement from a credit institution to a credit purchaser. This Directive should not restrict Member States from applying stricter provisions in order to protect borrowers.

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<sup>9</sup> *Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22).*

- (20a) Credit servicers and credit purchasers should always act in good faith, treat borrowers fairly and respect their privacy. They should not harass nor give misleading information to borrowers. In advance of the first debt collection and whenever requested by borrowers, they should provide information to borrowers on the transfer that took place, the identification and contact details of the credit purchaser and, when appointed, the identification and contact details of the credit servicer, as well as information on the amounts due by the borrower and a statement informing that the relevant Union and national law continue to apply, among other information to be specified. On charges to consumers, amendments are introduced to Directive 2008/48/EC requiring Member States to follow the same rules as in Directive 2014/17/EU on the placing of caps for fees and penalties.
- (21) In addition, this Directive does not reduce the scope of application of Union consumer protection rules and to the extent credit purchasers qualify as creditors under the provisions of Directive 2014/17/EU and Directive 2008/48/EC, they should be subject to the specific obligations set by Article 35 of Directive 2014/17/EU or Article 20 of Directive 2008/48/EC, respectively. Moreover, this Directive is without prejudice to the protection of consumers guaranteed by Directive 2005/29/EC, which prohibits unfair practices including those carried out during the enforcement of a contract where a consumer is misled as to the consumer's rights or obligations, or is subject to harassment or coercion including in terms of the timing, location, nature or persistence of the enforcement actions or contacts, or in terms of the use of threatening or abusive language or behaviour, or in terms of threats to take any action that cannot legally be taken.

- (21a) Article 47 of the Charter of Fundamental Rights of the European Union ensures the right to a fair and public hearing by an independent and impartial court and the possibility of being advised, defended and represented by a lawyer. This may be of particular relevance for the full and complete understanding of all of the issues and legal arguments being addressed and to ensure comprehensive preparation of court representation for the case in dispute. Borrowers who lack sufficient resources should be able to resort to legal aid, where necessary to ensure effective access to justice and under the conditions laid down by the applicable national laws.
- (22) Union credit institutions undertake credit servicing activities as part of their normal business. They have the same obligations with regard to credit agreements that they have issued themselves and those purchased from another credit institution. Since they are already regulated and supervised, application of this Directive to their credit servicing or purchasing activities would mean unnecessary duplication of authorisation and compliance costs and therefore they are not covered by this Directive. Also, the outsourcing by the credit institutions of credit servicing activities, in relation to both performing and non-performing credit agreements, to credit servicers or other third parties, is outside the scope of this Directive because the credit institutions already have to observe the applicable outsourcing rules. Moreover, creditors that are not credit institutions but are nevertheless regulated and supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC and Directive 2014/17/EU and undertake credit servicing activities for loans granted to consumers as part of their normal business are not covered by this Directive when performing in that Member State credit servicing activities. Further, alternative investment fund manager, management company and investment company (provided that the investment company has not designated a management company) authorised or registered under Directive 2011/61/EU of the European Parliament and of the Council<sup>10</sup> or Directive 2009/65/EC of the European Parliament and of the Council<sup>11</sup> should not fall within the scope of this Directive. Also, there are some professions that undertake

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<sup>10</sup> *Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).*

<sup>11</sup> *Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).*



ancillary activities similar to servicing activities, namely public notaries, lawyers, bailiffs and officials, that perform under national law court provisions and implement the enforcement of binding measures and, therefore, Member States may decide not to apply this Directive for those professions.

- (23) In order to allow existing credit purchasers and credit servicers to adapt to the requirements of the national provisions implementing this Directive and, in particular, to allow credit servicers to be authorised, this Directive allows entities that are currently providing credit servicing activities under national law to continue to do so in their home Member State for six months after the transposition deadline of this Directive. After the expiry of that six month period, only credit servicers authorised under the national laws implementing this Directive will be able to operate on the market.
- (23a) Member States that have already in place rules equivalent or stricter than those established in this Directive for credit servicing activities may recognise in their national law implementing this Directive the possibility for existing entities providing credit servicing activities to be automatically recognised as authorised credit servicers.
- (24) The authorisation of a credit servicer to provide credit servicing activities throughout the Union should be subject to a uniform and harmonised set of conditions that should be applied in a proportionate manner by the competent authorities.

- (24a) To avoid a reduction in borrower protection and in order to promote trust, the conditions for granting and maintaining an authorisation as a credit servicer should ensure that credit servicers, persons who hold a qualifying holding in the credit servicer or members of the management or administrative organ have a clean police record in relation to relevant criminal offences linked to among others crimes against property, to crimes related to financial activities, to money laundering, to fraud or to crimes against the physical integrity and are not subject to an insolvency procedure or have not previously been declared bankrupt, unless they have been reinstated in accordance with national law. Compliance with the requirement for members of the management or administrative organ of credit servicers to have been transparent, open and cooperative in their past business dealing with supervisory and regulatory authorities should be assessed based on the information available to (or within the knowledge of) the competent authority at the time the authorisation is granted. If no information is available (or if there is no knowledge of any information) or if there is no past interaction with other authorities at that time, then the requirement is deemed fulfilled.

(24b) Member States should ensure that the management body as a whole possess adequate knowledge and experience to conduct the business in a competent and responsible manner, according to the activity to be carried out. It is for each Member State to assess the good repute, adequate knowledge and experience conditions, but it should not impair the free movement of authorised credit servicers within the Union. For this purpose, the EBA should develop guidelines to reduce the risk of divergent interpretations of these requirements. Further 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. In addition, credit servicers should have adequate anti-money laundering and counter terrorist financing procedures in place, where national legislation transposing Directive 2015/849/EU of the European Parliament and of the Council<sup>12</sup> designates credit servicers as obliged entities for the purpose of preventing and combating money laundering and terrorist financing. Moreover, credit servicers should be obliged to act fairly and with due consideration for the financial situation of the borrowers. Where debt advice services facilitating debt repayment are available at national level, the credit servicers should consider referring borrowers to such services.

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<sup>12</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

(24c) Member States should determine, in their national legislation transposing this Directive, whether or not, credit servicers in their territory are allowed to receive and hold funds from the borrowers, while performing credit servicing activities. In cases where the receiving and holding of funds from borrowers are allowed in a Member State and credit servicers intend to do that as part of their business model, additional requirements should apply to credit servicers in order to deal with the risks that could arise in case of insolvency, namely account and fund segregation, as well as the discharge of the borrower. In cases where Member States prohibit credit servicers from receiving and holding funds from the borrowers, a credit servicer cannot then do so, neither in the home Member State nor in any host Member State, even if the host Member State allows the holding of funds, precisely because the credit servicer was not authorised to that purpose by its home Member State. On the contrary, when the home Member State opts to allow credit servicers to receive and hold funds and includes in its national law the aforementioned requirements, the credit servicer may receive funds from borrowers in their home Member State and also in any host Member State that opts in the same way.

- (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 and in the Member State where the credit was granted, when different from the host and the home Member States, should be informed. Equally, an up-to-date public register or list should be established in the home Member State and the host Member State and made publicly available on the website of the competent authorities to ensure transparency as regards the number and identity of authorised credit servicers.
- (26) The contractual relationship between the credit servicer and the credit purchaser and obligations of the credit servicer towards the credit purchaser 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 credit purchaser entrusts the management and enforcement of a credit agreement, the credit purchaser delegates its rights and duties and also its direct contact with the borrower to the credit servicer while still remaining ultimately responsible, the relationship between credit purchaser and credit servicer should be clearly established in a written credit servicing agreement and it should be possible for competent authorities to verify how such a relationship is determined. Moreover, credit servicers should be obliged to act fairly and with due consideration for the financial situation of the borrowers. To the extent that the credit purchaser does not perform itself the servicing of the loans acquired, Member States should be able to provide that the credit servicer and credit purchaser are required to agree in the credit servicing agreement that the credit servicer notifies the credit purchaser 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. The competent authorities of the Member State where the credit was granted should also receive information on cross-border activities from the home Member State.

- (28a) A credit servicer carrying out activities in a host Member State should be subject to the restrictions and requirements established in the national law of the host Member State including, where applicable, the prohibition to receive and hold funds from the borrowers, but not related with other authorisation requirements of credit servicers, in accordance with this Directive. Therefore, if under the national provisions of the Member States transposing this Directive additional requirements for authorisation are defined, they should not be required to credit servicers performing cross-border servicing in a host Member State.
- (29) In order to ensure an effective and efficient supervision of cross-border credit servicers, a specific framework should be created for the cooperation between home and the host competent authorities and, where appropriate, for the competent authorities of the Member State where the credit was granted. This framework should allow the exchange of information, while preserving its confidentiality, professional secrecy, protection of individual and business rights, on and off-site inspections, the provision of assistance, the notification of results of checks and inspections and of any measures taken.

- (30) An important prerequisite for the taking up of the role by credit purchasers and credit servicers should be that they have the possibility to get access to all relevant information and Member States should ensure that this is possible, while at the same time observing Union and national data protection rules. In this context, it is essential that credit institutions provide detailed information to prospective credit purchasers so as to enable them to conduct their own assessment of the value of the creditor's rights under the non-performing credit agreement or the non-performing credit agreements itself. Credit institutions are obliged to provide this information only once during the process, either in the initial phase or the subsequent phases, but prior to the contract of the transfer. Additionally, this obligation is necessary and justified for prospective credit purchasers to be able to make informed choices before entering into a transaction and, therefore, it is legitimate for credit institutions to share with prospective credit purchasers borrowers' personal data. Such information is to be strictly limited to what is necessary to enable prospective credit purchasers to assess the value of the creditor's rights under a non-performing credit agreement or the non-performing credit agreements itself and the likelihood of recovery of the value of that agreement. The Member States should ensure that the provision of information to prospective credit purchaser and its subsequent use complies with the relevant Union data protection framework.



- (31) Where a credit institution transfers a non-performing credit agreement, they should be required to inform their supervisor and the competent authority of the host Member State, on a biannual basis, about at least the aggregate outstanding balance of the transferred credit portfolios, as well as the number and size of the loans included and whether it includes agreements concluded with consumers. For each portfolio transferred in a single transaction, information provided should include the legal entity identifier or, when not available, the identity and address of the purchaser and, where applicable, its representative in the Union. Competent authorities should have the possibility to require that this information should be provided on a quarterly basis instead, whenever they consider it necessary, including due to the high number of transactions during a crisis period. The competent authority of the host Member State should be obliged to transmit that information to the authorities competent to supervise the credit purchaser . Such transparency requirements allow for a harmonised and effective monitoring of the transfer of credit agreements within the Union. In order to comply with the principle of proportionality, competent authorities should, in order to avoid duplication, take into account information that is already available to them by other means, in particular as regards credit institutions. Member States should ensure that notification requirements to competent authorities in respect of a credit portfolio once such portfolio has been transferred to a credit purchaser remain the responsibility of the credit servicer. In addition, in the case of securitisation transactions, where mandatory transparency templates are foreseen, any double reporting as a result of this Directive should be avoided.

(32) As part of the Council's Action Plan, credit institutions' data infrastructure would be strengthened by having uniform and standardised data for non-performing credit agreements. The European Banking Authority has developed data templates that provide information about credit exposures in the banking book and allow potential buyers to evaluate the value of the credit agreements and carry out their due diligence. On the one hand, applying such templates to credit agreements would reduce information asymmetries between potential buyers and sellers of credit agreements and, thus, contribute to the development of a functioning secondary market in the Union. On the other hand, where such templates are excessively detailed, they can generate an excessive burden for credit institutions without any appreciable gain in information terms. Therefore, the EBA should carry out a review of the data templates with a view to further developing the data templates into implementing technical standards for credit institutions. Credit institutions will be required to use the data formats for sales of non-performing credit agreements, including to other credit institutions, as specified in Article 14. This obligation should apply to the sale of non-performing credit agreements only, and does not encompass complex transactions where non-performing credit agreements are included as a part of such a transaction, including the sale of branches, of business lines or sales of clients' portfolios not limited to non-performing credit agreements and the sale as a part of an ongoing restructuring operation of the selling credit institution within insolvency, resolution or liquidation proceedings. In order to comply with the principle of proportionality, those information requirements should be applied to credit institutions in a proportionate manner having regard to the nature and size of the loans. At the same time, the extent of the obligation of credit institutions to comply with data formats should take into account the date of conclusion of the non-performing credit agreements. Other sellers of credit agreements may use those standards in order to facilitate the valuation of credit agreements for sale.

- (33) As credit purchasers are not creating new credit, but are buying as provided in this Directive only existing non-performing credit agreements at own risk, they do not cause prudential concerns and their potential contribution to systemic risk is negligible. It is therefore not justified to require credit purchasers to apply for an authorisation but it is however important that Union and national consumer protection rules continue to apply and the borrowers' rights continue to be those arising from the initial credit agreement.
- (34) Third-country credit purchasers might make it harder for the Union borrowers to rely on their rights under Union law and for national authorities to supervise the enforcement of credit agreements. Credit institutions might also be discouraged from transferring such credit agreements to third-country credit purchasers because of the reputational risk involved. To the extent that the representative of a third-country purchaser of credits granted to natural persons, including consumers and independent workers, or of credits granted to micro, small and medium-sized enterprises (SMEs) is not a credit institution or a non-credit institution supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC or with Directive 2014/17/EU, or a credit servicer authorised in the Union, that representative should appoint such entities in order to ensure that the same standards of borrowers' rights are preserved after the transfer of the credit agreement.

- (34a) Moreover, in order to better ensure that the same standards of consumers' rights are preserved after the transfer of a non-performing credit agreement, credit purchasers domiciled or established in the Union should also be required to appoint a credit institution, or a non-credit institution supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC or with Directive 2014/17/EU or a credit servicer, to perform credit servicing activities in respect of credits concluded with consumers.
- (34b) Host Member States may extend the obligation to appoint a credit servicer in relation to other credit agreements. In cases where the transfer of a credit portfolio includes both credit agreements with consumers, other natural persons or SMEs for which the appointment of a credit institution, or of a non-credit institution supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC or with Directive 2014/17/EU, or of a credit servicer, is required and simultaneously includes also other credit agreements for which no such appointment is required, the credit purchaser or, where applicable, its representative should comply with the appointment obligation, where applicable, in respect of credit agreements with consumers, other natural persons or SMEs. The credit servicer and the credit purchaser should comply with the applicable Union and national laws, and the national authorities in individual Member States should be given the necessary powers to effectively supervise their activity.

- (34c) When a credit purchaser, or its representative designated in accordance with Article 17, is required to appoint a credit servicer or a credit institution, or a non-credit institution supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC or with Directive 2014/17/EU and opts to manage and enforce by itself the rights and obligations related to the creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself, the credit purchaser is considered to be a credit servicer, and should therefore be authorised under this Directive.
- (35) Credit purchasers that use the services of credit servicers or credit institutions, or non-credit institutions supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC or with Directive 2014/17/EU should inform the competent authorities of their home Member State thereof so as to allow relevant competent authorities to exercise their supervisory powers as regards the conduct of the credit servicer, or the credit institution, or the non-credit institution supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC or with Directive 2014/17/EU vis-à-vis the borrower. Credit purchasers also have an obligation to inform in a timely manner the competent authorities in charge of their supervision if they engage a different credit servicer, credit institution, or non-credit institution supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC or with Directive 2014/17/EU.

- (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 without prejudice to obligations imposed on credit servicers. Credit purchasers transferring non-performing credit agreements should inform the competent authority of the home Member State, on a biannual basis and at an aggregate level, about at least the aggregate outstanding balance of the transferred credit portfolios, as well as number and size of the loans included, and whether it includes agreements concluded with consumers. For each portfolio transferred in a single transaction, the information provided should include the legal entity identifier or, when not available, the identity and address of the purchaser and, where applicable, its representative in the Union. Competent authorities should have the possibility to require that this information should be provided on a quarterly basis instead whenever they consider it necessary, including due to the high number of transactions during a crisis period.

- (38) At the moment, different authorities are entrusted with the authorisation and supervision of credit servicers and credit purchasers in Member States, and therefore it is essential that Member States clarify their role and allocate adequate powers, especially as they may need to supervise entities engaged in providing services in other Member States. In order to ensure efficient and proportionate supervision across the Union, Member States should grant the necessary powers for competent authorities to carry out their duties under this Directive, including the power to obtain necessary information, to investigate possible breaches, to handle borrowers' complaints and to impose penalties and remedial measures, including the withdrawal of the authorisation. Where such penalties are applied, Member States should ensure that competent authorities apply them in a proportionate manner and give reasons for their decisions and that in addition those decisions should be subject to judicial review also in cases where competent authorities do not act within the timeframes provided.
- (38a) The provisions concerning breaches of this Directive are without prejudice to a Member State's right to intervene in cases of breaches of national law, for example, of specific consumer protection rules, borrowers' rights rules adopted only at national level, or regarding criminal activities. In such cases the competent authorities of the host Member State and of the Member State where the credit was granted, are the ones competent to decide whether there has been a breach of national law and thus their powers are not limited by this Directive.

- (52) Without prejudice to other obligations under Directive 2014/17/EU and Directive 2008/48/EC, and in order to ensure a high level of consumer protection, amendments are being introduced in Directive 2014/17/EU and Directive 2008/48/EC, to ensure that 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 purchasers and credit servicers have effective and accessible procedures to deal with borrowers' complaints.



- (54) Both the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>13</sup> and Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>14</sup> apply to the processing of personal data for the purposes of this Directive. In particular, where personal data is processed for the purposes of this Directive, the precise purpose should be specified, the relevant legal basis referred to, the relevant security requirements laid down in Regulation (EU) 2016/679 complied with, and the principles of necessity, proportionality, purpose limitation, transparent and proportionate data retention period respected. An industry-wide code of conduct, in accordance with Article 40 of Regulation (EU) 2016/679, is preferred. Also, personal data protection by design and data protection by default should be embedded in all data processing systems developed and used within the framework of this Directive. Equally, administrative cooperation and mutual assistance between the competent authorities of the Member States should be compatible with the rules on the protection of personal data laid down in Regulation (EU) 2016/679, and in accordance with national data protection rules implementing Union legislation.

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<sup>13</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>14</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of *natural persons* with regard to the processing of personal data by the *Union* institutions and bodies, *offices and agencies* and on the free movement of such data, *and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39)*.

- (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 credit agreement itself, an amendment to Directive 2014/17/EU should be introduced to establish that, in cases of a transfer of credit covered by that Directive, the consumer is entitled to plead against the credit purchaser any defence which was available to him against the original creditor and to be informed of the assignment.
- (56) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (56a) The European Data Protection Supervisor has been consulted and provided its opinion on 24 January 2019.
- (56b) The efficient functioning of this Directive will need to be reviewed as the establishment of the internal secondary market of the non-performing loans with a high level of consumer protection will progress. The Commission is well placed to analyse specific cross-border issues that cannot be identified or properly addressed by individual Member States, such as the risk of money laundering and terrorist financing that could arise in relation to credit servicing and credit purchasers' activities and the cooperation between competent authorities from different Member States. It is therefore appropriate that in its review of this Directive the Commission include also a thorough assessment of the money laundering and terrorist financing risks associated with the activities performed by credit servicers and credit purchasers and the administrative cooperation between competent authorities.

HAVE ADOPTED THIS DIRECTIVE:

## Title I

### Subject matter, scope and definitions

#### *Article 1*

##### Subject matter

This Directive lays down a common framework and requirements for:

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

## *Article 2*

### Scope

- 1. This Directive shall apply to:
  - (a) credit servicers acting on behalf of a credit purchaser in respect of a creditor's rights under a non-performing credit agreement or of the non-performing credit agreement itself, in accordance with applicable Union or national law, issued by a credit institution established in the Union;
  - (b) credit purchasers of a creditor's rights under a non-performing credit agreement or of the non-performing credit agreement itself, issued by a credit institution established in the Union in accordance with applicable Union and national law.
- 3. With regard to credit agreements falling within its scope, this Directive shall not affect neither contract law principles nor civil law principles under national law with regard to the transfer of creditor's rights under a credit agreement or of the credit agreement itself, nor the protection granted to consumers or borrowers, pursuant in particular to Regulation (EU) No 1215/2012, Regulation (EC) No 593/2008, Directive 2014/17/EU, Directive 2008/48/EC, Directive 93/13/EEC and the national provisions transposing them or other relevant Union law and national law relating to consumer protection and borrowers' rights.

- 3a This Directive shall not affect the restrictions in the Member States' national laws regarding the transfer of creditor's rights under a non-performing credit agreement that is not past due, is less than 90 days past due or is not terminated in accordance with national civil law, or the transfer of such a non-performing credit agreement.
- 3b This Directive shall not affect requirements in Member States' national laws regarding the servicing of a creditor's rights under a credit agreement or of the credit agreement itself, when the credit purchaser is a securitisation special purpose entity as defined in point (2) of Article 2 of Regulation (EU) 2017/2402 of the European Parliament and of the Council<sup>15</sup> as long as such national laws:
  - (i) do not affect the level of consumer protection provided by this Directive;
  - (ii) ensure that competent authorities receive the necessary information from credit servicers.
- 4. This Directive shall not apply to the following:
  - (a) the servicing of a creditor's rights under a credit agreement or of the credit agreement itself carried out by:
    - (i) a credit institution established in the Union;

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<sup>15</sup> *Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).*

- (ii) an alternative investment fund manager (AIFM) authorised or registered in accordance with Directive 2011/61/EU, or a management company or an investment company authorised in accordance with Directive 2009/65/EC provided that the investment company has not designated a management company under that Directive, on behalf of the fund they manage;
  - (iii) a non-credit institution subject to supervision by a competent authority of a Member State in accordance with Article 20 of Directive 2008/48/EC or Article 35 of Directive 2014/17/EU when performing activities in that Member State;
- (b) the servicing of creditor's rights under a credit agreement or of the credit agreement itself that was not issued by a credit institution established in the Union except where the creditor's rights under a credit agreement or the credit agreement itself is replaced by a credit agreement issued by such an institution;
  - (c) the purchase of creditor's rights under a non-performing credit agreement or of the non-performing credit agreement itself by a credit institution established in the Union;
  - (d) the transfer of a creditor's right under a credit agreement or of the credit agreement itself transferred before the date referred to in the second subparagraph of Article 41(2).

- 4a. Member States may exempt from the application of this Directive the servicing of creditor's rights under a credit agreement or the credit agreement itself carried out by public notaries and bailiffs as defined by national law or lawyers as defined in point (a) of article 1(2) of Directive 98/5/EC of the European Parliament and of the Council<sup>16</sup> when conducting activities referred to in Article 3(7c) of this Directive as part of their profession.
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### *Article 3*

#### Definitions

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

- (1) 'credit institution' means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013;
- (2) 'creditor' means a credit institution who has issued a credit, or a credit purchaser;

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

- (3) 'borrower' means a legal or natural person who has concluded a credit agreement with a credit institution, including its legal successor or assignee;
- (5) 'credit agreement' means an agreement as originally issued, modified or replaced, whereby a credit institution grants a credit in the form of a deferred payment, a loan or other similar financial accommodation;
- (5a) 'credit servicing agreement' means a written contract between a credit purchaser and a credit servicer about the services to be provided by the credit servicer on behalf of the credit purchaser;
- (7) 'credit purchaser' means any natural or legal person, other than a credit institution, which purchases a creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself as defined in paragraph 5 in the course of his trade, business or profession, in accordance with applicable Union and national law;



- (7a) 'credit service provider' means a third party used by a credit servicer to perform any of the credit servicing activities;
- (7b) 'credit servicer' means a legal person who, in the course of its business, manages and enforces the rights and obligations related to the creditor's rights under a non-performing credit agreement or to the non-performing credit agreement itself on behalf of the credit purchaser, and carries out at least one or more credit servicing activities;
- (7c) 'credit servicing activities' means one or more of the following activities:
- (a) collecting or recovering from the borrower, in accordance with national law, any payments due related to a creditor's rights under a credit agreement or to the credit agreement itself;
  - (b) renegotiating with the borrower, in accordance with national law, any terms and conditions related to a creditor's rights under a credit agreement or of the credit agreement itself in line with the instructions given by the credit purchaser, where the credit servicer is not a credit intermediary as defined in point (5) of Article 4 of Directive 2014/17/EU or in point (f) of Article 3 of Directive 2008/48/EC;
  - (c) administering any complaints relating to a creditor's rights under a credit agreement or to the credit agreement itself;
  - (d) informing the borrower of any changes in interest rates or charges or of any payments due related to a creditor's rights under a credit agreement or to the credit agreement itself;

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

## Title II

### Credit servicers

#### **1. Chapter I**

#### **2. 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. Without prejudice to Article 5a, 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 legal person as referred to in Article 54 of the Treaty on the Functioning of the European Union and its registered office or, if under its national law it has no registered office, its head office is in the Member State in which the applicant is seeking authorisation;

- (b) the members of its management or administrative organ are of sufficiently good repute by proving that:
  - (ii) they have a clean police record or other national equivalent in relation to relevant criminal offences, in particular relating to property, financial services and activities, money laundering, usury, fraud, tax crimes, violation of professional secrecy or to physical integrity, and any other offences under legislation relating to companies, bankruptcy, insolvency or consumer protection;
  - (iia) the cumulative effects of minor incidents do not impinge on their good repute;
  - (iib) they have always been transparent, open and cooperative in their past business dealings with supervisory and regulatory authorities;
  - (iic) they are not subject to any ongoing insolvency procedure or have previously been declared bankrupt unless reinstated in accordance with national law; and
- (ba) the management, 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 sufficiently good repute by fulfilling the requirements in point (ii) and (iii) of subparagraph (b) of this paragraph;
- (c) the applicant has robust governance arrangements and adequate internal control mechanisms in place, including risk management and accounting procedures, which ensure respect for borrower rights and compliance with the laws governing a creditor's rights under a credit agreement or the credit agreement itself and with Regulation (EU) 2016/679;
- (d) the applicant applies an appropriate policy ensuring compliance with rules for the protection and the fair and diligent treatment of the borrowers, including by taking into account their financial situation and, where available, the need for such borrowers to be referred to debt advice or social services;
- (e) the applicant has adequate and specific internal procedures in place which ensure the recording and handling of borrower complaints;
- (eb) the applicant has adequate anti-money laundering and counter terrorist financing procedures in place, where national legislation transposing Directive 2015/849/EU designates credit servicers as obliged entities for the purposes of preventing and combating money laundering and terrorist financing;

- (ee) the applicant is subject by virtue of applicable national law to reporting and public disclosure requirements.
- 1b. EBA shall, after consulting all relevant stakeholders and reflecting all interests involved, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 for the requirements set out in point (bb) of paragraph 1 of this Article.
  - 2. The competent authorities of the home Member State shall refuse an authorisation referred to in Article 4(1), where the applicant does not comply with the requirements set out in paragraph 1 and, where relevant, in point (a) of Article 5a(2).

## Article 5a

### Ability to hold funds

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

- (c) determine that, when a borrower delivers a payment to a credit servicer in order to, partially or totally, reimburse the amounts due related to the creditor's rights under a non-performing credit agreement or to the non-performing credit agreement itself, that payment is treated as having been paid to the credit purchaser;
  - (d) require credit servicers to deliver a receipt or a letter of discharge to the borrower, on paper or another durable medium, whenever the credit servicer receives funds from the borrower, acknowledging the amounts received.
- 3. Where the credit servicer does not intend to hold and receive funds from borrowers as part of its business model, which shall be conveyed in the application for the authorisation, the requirement laid down in point (a) of paragraph 2 does not apply.

#### *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), and, where relevant, in point (a) of Article 5a(2).



- 2. The application for authorisation, referred to in paragraph 1, shall be accompanied by the following:
  - (a) evidence of the applicant's legal status and a copy of the act of incorporation and of the company by-laws;
  - (b) the address of the applicant's head office or its registered office;
  - (c) the identity of the members of applicant's management or administrative organ and the persons who hold qualifying holdings within the meaning of point (36) of Article 4(1) of Regulation (EU) No 575/2013;
  - (d) evidence that the applicant fulfils the conditions laid down in Article 5(1)(b);
  - (da) evidence that the persons referred to in point (c) of this paragraph fulfils the conditions laid down in point (ba) of Article 5(1);
  - (e) evidence of the governance arrangements and internal control mechanisms referred to in point (c) of Article 5(1);
  - (f) evidence of the policy referred to in point (d) of Article 5(1);
  - (g) evidence of the internal procedures referred to in point (e) of Article 5(1);
  - (ga) evidence of the procedures referred to in point (eb) of Article 5(1);
  - (gb) where relevant, evidence of the existence of a separate account in a credit institution as foreseen in point (a) of Article 5a(2);
  - (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 45 days of receipt of the application for authorisation, whether that application is complete.
- 4. Member States shall ensure that, within 90 days of receipt of a complete application or, if the application is considered incomplete, of required information, the competent authorities of the home Member State notify the applicant whether the authorisation is granted or refused and, where applicable, provide reasons for refusal.
- 5. Member States shall ensure that an applicant has the right of appeal before a tribunal either where the competent authorities of the home Member State decide to refuse an application for authorisation pursuant to Article 5(2) or where, within the time limit provided for in Paragraph 4 of this Article, no decision is taken by the competent authorities in respect of the application.

#### *Article 7*

#### Withdrawal of authorisation

- 1. Member States shall ensure that the competent authorities of the home Member State have the necessary supervisory, investigatory and sanctioning powers in accordance with Article 21 in order to withdraw the authorisation granted to a credit servicer, where such a credit servicer either:
  - (a) does not make use of the authorisation within 12 months of its grant;
  - (b) expressly renounces the authorisation;
  - (c) has ceased to engage in the activities of a credit servicer for more than 12 months;

- (d) has acquired an authorisation through false statements or other irregular means;
  - (e) no longer fulfils the conditions set out in Article 5(1) and, where relevant, in point (a) of Article 5a(2);
  - (f) commits a serious breach of the applicable rules, including the national law provisions transposing this Directive, or of other consumer protection rules, including applicable rules from the host Member State and from the Member State where the credit was granted.
- 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, and in the Member State where the credit was granted, when different from the host and the home Member States.

#### *Article 8*

##### Register of authorised credit servicers

- 1. Member States shall ensure that competent authorities establish and maintain at least a list or, where considered more appropriate, a national register of all credit servicers authorised to provide services within their territory, including credit servicers providing services under Article 11.
- The EBA shall develop guidelines providing for best-practices for the establishment and maintaining such lists or registers and specifying for the types of information included in them in order to guarantee a level playing field across the Union and transparency for the credit purchasers and borrowers.

- 2. The list or register shall be made publicly accessible online on the website of the competent authority and shall be updated on a regular basis.
- 3. In case an authorisation has been withdrawn, the competent authorities shall update the list or register without delay.

#### Article 8a

##### Relationship with borrowers, communication of the transfer and subsequent communications

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

- 2. Member States shall ensure that, after any transfer of a creditor's rights under a non-performing credit agreement or of the non-performing credit agreement itself to a credit purchaser, and always in advance of the first debt collection, but also whenever requested by the borrower, the credit purchaser or, when appointed to perform credit servicing activities, the entity mentioned in Article 2(4)(a)(i) and (iii) or the credit servicer sends to the borrower a communication, on paper or on another durable medium, that includes information about at least the following:
  - (a) the transfer that took place, including the date of transfer;
  - (b) the identification and contact details of the credit purchaser;
  - (c) when appointed, the identification and contact details of the credit servicer or of the entity mentioned in Article 2(4)(a)(i) and (iii);
  - (d) when appointed, evidence regarding the credit servicer authorisation granted pursuant to Article 6;
  - (e) where relevant, the identification and contact details of the credit service provider;
  - (f) presented in a prominent way, a contact reference point in the credit purchaser or, when appointed to perform credit servicing activities, the entity mentioned in Article 2(4)(a)(i) and (iii) or in the credit servicer and, where relevant, in the credit service provider from where to receive information when needed;

- (g) information on the amounts due by the borrower at the time of the communication, detailing what is due as capital, interests, fees and other permitted charges;
  - (h) a statement informing that all relevant Union and national law concerning in particular the enforcement of contracts, consumer protection, borrower's rights and criminal law continue to apply;
  - (i) 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.
- The communication foreseen in the first subparagraph shall be written in language which is clear and understandable for the general public.
- 3. Member States shall ensure that, in all subsequent communications with the borrower, the credit purchaser or, when appointed to perform credit servicing activities, the entity mentioned in Article 2(4)(a)(i) and (iii) or the credit servicer includes or states the information listed in point (f) of paragraph 2, except in the case of the first communication after the appointment of a new credit servicer where the information in points (c) and (d) shall also be communicated.

- 4. Paragraphs 2 and 3 are without prejudice to additional communication requirements foreseen in other EU or national legislation.

### *Article 9*

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

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

- 2a. Member States shall require that a credit servicing agreement also provides a requirement, according to which the credit servicer notifies the credit purchaser prior to outsourcing any of its credit servicing activities as credit servicer.
- 3. Member States shall ensure that the credit servicer keeps and maintains the following records for at least five years from the date when the agreement referred to in paragraph 1 is terminated or for the statutory limitation period applicable in the home Member State, however no longer than 10 years:
  - (a) relevant correspondence with both the credit purchaser and the borrower, under the conditions provided for in the applicable national law;
  - (b) relevant instructions received from the credit purchaser in respect of each creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself that it manages and enforces on behalf of that credit purchaser, under the conditions provided for in the applicable national law;
  - (ba) the credit servicing agreement.
- 4. Member States shall ensure that the credit servicer makes the records referred to in paragraph 3 available to competent authorities upon request.



## *Article 10*

### Outsourcing by a credit servicer

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

- (d) the compliance of a credit servicer with the requirements of its authorisation as set out in Article 5(1) is not affected by the outsourcing of some of its credit servicing activities;
  - (e) the outsourcing to the credit service provider does not prevent the supervision by competent authorities of a credit servicer in accordance with Articles 12 and 20;
  - (f) the credit servicer has direct access to all relevant information concerning the outsourced services to the credit service provider;
  - (g) after the outsourcing agreement is terminated, the credit servicer has the expertise and resources to be able to provide the outsourced activities.
- The outsourcing of the credit servicing activities shall not be undertaken in such a way as to impair the quality of the credit servicer's internal control, soundness or continuity of its credit services.
  - 2. Member States shall ensure that the credit servicer informs the competent authority of the home Member State and, where applicable, the host Member State, prior to the outsourcing of activities in accordance with paragraph 1.
  - 2a. Member States shall ensure that the credit servicer keeps and maintains records of relevant instructions provided to the credit service provider, under the conditions provided for in the applicable national law, and of the outsourcing agreement for a period of at least five years from the date on which the agreement referred to in paragraph 1 is terminated or for the statutory limitation period in the Member State, up to a maximum period of 10 years.
  - 3. Member States shall ensure that the credit servicer and the credit service provider make the information referred to in paragraph 2a available to competent authorities upon request.
  - 3a. Member States shall ensure that credit service providers cannot hold and receive funds from borrowers.

### 3. Chapter II

#### 4. 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 4(1) in a home Member State has the right to provide in the Union those services that are covered by that authorisation, without prejudice to restrictions and requirements established in the national law of the host Member States in accordance with this Directive, including, where applicable, the prohibition to receive and hold funds from borrowers, but not related with other authorisation requirements of credit servicers, or those established for the renegotiation of the terms and conditions related to the creditor's rights under a credit agreement or of the credit agreement itself.
- 2. Member States shall ensure that where the credit servicer authorised in accordance with Article 4(1) 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 and, where this information is already known to the credit servicer, the Member State where the credit was granted, when different from the host and the home Member States;

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

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

- 6. Member States shall ensure that a credit servicer shall inform the competent authority of the home Member State of any change subsequent to the information that shall be communicated in accordance with paragraph 2. In such a case Member States shall ensure compliance with the procedure set out in paragraphs 3 to 5.
- 7. Member States shall ensure that the competent authorities of the host Member State record in the register referred to in Article 8 the credit servicers who are authorised to provide credit servicing activities in their territory and the details of the home Member State.

### *Article 12*

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

- 1. Member States shall ensure that the competent authorities of the home Member State review and evaluate the ongoing compliance by a credit servicer who provides services in a host Member State with the requirements of this Directive.
- 2. Member States shall ensure that the competent authorities of a home Member State are empowered to supervise, investigate and impose administrative penalties and remedial measures on credit servicers in respect of the requirements of this Directive when performing 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 and, where appropriate, of the Member State where the credit was granted, when different from the host and the home Member States.
- 4. Member States shall ensure that where a credit servicer which is domiciled or established in a home Member State performs credit servicing activities in a host Member State, the competent authorities of the home Member State and the competent authorities of the host Member State and, where appropriate, of the Member State where the credit was granted, when different from the host and the home Member States shall cooperate closely in the performance of their functions and duties, in particular when carrying out checks, investigations and on-site inspections.
- 5. Member States shall ensure that the competent authorities of the home Member State in the exercise of their functions and duties provided for in this Directive shall ask the competent authorities of the host Member State for their assistance in carrying out an on-site inspection of a branch set up in or of a credit service provider appointed in a host Member State. The on-site inspection of a branch or of a credit service provider shall be conducted in accordance with the law of the Member State where the inspection is carried out.

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



- 9a. Member States shall ensure that where the competent authorities of the Member State where the credit was granted, when different from the host and the home Member States, have evidence that a credit servicer is in breach of the obligations foreseen in this Directive or in the national rules applicable to the credit or the credit agreement it shall transmit that evidence to the competent authorities of the home Member State and request that they take appropriate measures, without prejudice to the supervisory, investigatory and sanctioning powers of the competent authorities of the Member State where the credit was granted, when different from the host and home Member State.
- 10. Member States shall ensure that the competent authorities of the home Member State communicate details of any administrative or other procedure initiated in respect of the evidence provided by the host Member State, or about penalties and remedial measures taken against the credit servicer or a reasoned decision why no measures were taken, to the competent authorities of the host Member State who referred the evidence no later than two months from the request referred to in paragraph 9. Where a procedure has been initiated, the competent authorities of the home Member State shall regularly inform the competent authorities of the host Member State about its status.
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- 11a. Where a credit servicer continues to be in breach of the applicable rules, including its obligations under this Directive, and after having informed the home Member State, Member States shall ensure that the competent authorities of the host Member State are entitled to adopt appropriate administrative penalties and remedial measures in order to ensure compliance with this Directive when any of the following apply:
  - (a) no adequate and effective steps were taken by the credit servicer to rectify the breach in a reasonable time; or
  - (c) in an urgent case, where immediate action is necessary in order to address a serious threat to the collective interests of the borrowers.
- The competent authority of the host Member State may adopt measures despite remedial measures already being taken by the competent authorities of the home Member State.
- In addition, the competent authorities of the host Member State may prohibit further activities of a credit servicer that is in breach of the applicable rules, including its obligations under this Directive until an adequate decision is taken by the competent authority of the home Member State or the credit servicer takes steps to remedy the breach.

## Title III

### Credit purchasers

#### *Article 13*

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

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

- 2. On a biannual basis, Member States shall require credit institutions that transfer a creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself to a credit purchaser to inform the competent authorities of the host Member States designated in accordance with Article 20(3) of this Directive, and the competent authority referred to in Article 4(5) of Directive 2013/36/EU<sup>17</sup> of at least the following:
  - (-a) the legal entity identifier (LEI) of the credit purchaser or, where applicable, of its representative designated in accordance with Article 17, or where such identifier does not exist, of:
    - (i) the identity of the credit purchaser or members of the credit purchaser's management or administrative organ and the persons who hold qualifying holdings in the purchaser within the meaning of point (36) of Article 4(1) of Regulation (EU) No 575/2013; and
    - (ii) the address of the credit purchaser or where applicable, its representative designated in accordance with Article 17;
  - (a) the aggregate outstanding balance of the creditor's rights under the non-performing credit agreements or of the non-performing credit agreements transferred;

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<sup>17</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions 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).

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

## *Article 14*

### Technical standards for data formats

- 1. EBA shall develop draft implementing technical standards that specify the formats to be used by credit institutions for the provision of information as set out in Article 13(1), in order to provide detailed information on their credit exposures in the banking book to credit purchasers for the analysis, financial due diligence and valuation of the creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself.
- 1a. Member States shall ensure that credit institutions shall also apply the draft implementing technical standards referred to in the previous paragraph to the transfer of creditor's rights under non performing credit agreements or of non-performing credit agreements to other credit institutions. The data formats shall be provided when the transaction between credit institutions only involve the transfer of creditor's rights under non-performing credit agreements or non-performing credit agreements.
- 1b. EBA shall specify in the draft implementing technical standards the data fields, including which data fields are mandatory, and the data treatment for confidential information as set out in Article 13(1).
- 1c. The implementing technical standards shall be proportionate to the nature and size of the loans and loan portfolios.

- 1d. When preparing the draft implementing technical standards, EBA shall take into consideration:
  - a) existing market practices in data sharing between buyers and sellers;
  - b) the feedback received from users of their experience of using existing EBA non-performing loans transaction templates;
  - c) existing similar requirements at Member States level; and
  - d) the importance of minimizing the processing costs for credit institutions and credit purchasers.
- 2. EBA shall submit those draft implementing technical standards to the Commission by ... [nine months from date of the entry into force of this Directive].
- 3. Power is conferred on the Commission to adopt the implementing technical standards referred to in the paragraph 1, in accordance with Article 15 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>18</sup>.
- 3a. The data formats shall be used for transactions relating to loans issued after 1 July 2018, which turn non-performing after the date of entry into force of this Directive. For loans that have been originated between the 1st of July 2018 and the entry into force of the implementing technical standards, the credit institutions should fill in the data format with the information already available to them.

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<sup>18</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

## Article 15

### Obligations of credit purchasers

- 1. Member States shall ensure that:
  - (a) a credit purchaser domiciled or established in the Union appoints an entity referred to in Article 2(4)(a)(i) or (iii), or a credit servicer to perform credit servicing activities in respect of a creditor's rights under a non performing credit agreement, or of the non performing credit agreement itself, concluded with consumers;
  - (b) where a credit purchaser is not domiciled or established in the Union, its representative designated in accordance with Article 17(1) appoints an entity referred to in Article 2(4)(a)(i) or (iii) or a credit servicer, except in cases where the representative is itself an entity referred to in Article 2(4)(a)(i) or (iii) or a credit servicer, to perform credit servicing activities in respect of a creditor's rights under a non performing credit agreement, or of the non performing credit agreement itself, concluded with:
    - (i) natural persons, including consumers and independent workers;
    - (ii) micro, small and medium-sized enterprises (SMEs), as defined in Article 2 of Commission Recommendation 2003/361/EC<sup>19</sup>.
  - Host Member States may extend this requirement in relation to other credit agreements.

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<sup>19</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).



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

- 2c. Member States may allow credit purchasers to engage natural persons to service the credit agreements that they have acquired. Those natural persons should be subject to a national regulation and supervision regime and should not benefit from the freedom to provide services in another Member State provided for in this Directive.
- 2d. Member States shall ensure that the appointed credit servicer, or an entity referred to in Article 2(4)(a)(i) or (iii), complies with the obligations imposed on the credit purchaser pursuant to Articles 15(2), 16 and 19 on behalf of the credit purchaser. In cases where no credit servicer or an entity referred to in Article 2(4)(a)(i) or (iii) is appointed, the credit purchaser or its representative maintains the obligation to comply with those duties.

Member States may require that the appointed credit servicer or an entity referred to in Article 2(4)(a)(i) or (iii) complies, on behalf of the credit purchaser, with obligations imposed to the credit purchaser in accordance with national law including in relation to Article 15(2a).

## *Article 16*

### Use of credit servicers or other entities

- 1. Where the credit purchaser or, where applicable, its representative designated in accordance with Article 17 engages an entity mentioned in Article 2(4)(a)(i) and (iii) or a credit servicer to perform crediting servicing activities in relation to the transferred creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself, Member States shall require the credit purchaser or the representative designated in accordance with Article 17, to inform the competent authorities of its home Member State of the identity and address of the entity mentioned in Article 2(4)(a)(i) and (iii) or the credit servicer to perform credit servicing activities in relation to the transferred creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself, at the latest on the day that the credit servicing activities start.
- 2. Where the credit purchaser or the representative designated in accordance with Article 17 changes the entity notified under paragraph 1, it shall notify the competent authorities of its home Member State thereof at least the day of that change and shall indicate the identity and address of the new entity that it has engaged to perform credit servicing activities in relation to the transferred creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself.

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

*Article 17*

Representative of credit purchasers not established in the Union

- 1. Member States shall provide that where a transfer of the creditor's rights under a non-performing credit agreement or the non-performing credit agreements itself 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 19*

- Transfer of a creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself by a credit purchaser and communication to the competent authority
- 1. Member States shall require a credit purchaser or, where applicable, its representative designated in accordance with Article 17, that transfers a creditor's rights under a non-performing credit agreement or the non-performing credit agreements itself to inform the competent authority of its home Member State on a biannual basis about the new credit purchaser's 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 credit purchaser's management or administrative organ and the persons who hold qualifying holdings in the new credit 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.
- Additionally, on an aggregated level the credit purchaser shall inform about at least the following:
  - (a) the aggregated outstanding balance of the creditor's rights under the non-performing credit agreements or of the non-performing credit agreements transferred;

- (b) the number and size of the creditor's rights under the non-performing credit agreements or of the non-performing credit agreements transferred;
- (c) whether the transfer includes creditor's rights under non-performing credit agreements or non-performing credit agreements concluded with consumers and the types of assets securing them, when applicable.
- 1a. The competent authority referred to in the previous paragraph may require from credit purchasers to receive the information foreseen in that paragraph in a quarterly basis whenever that competent authority deems necessary, including to better monitor a high number of transfers that may occur during a crisis period.
- 2. Member States shall ensure that the competent authority referred to in paragraphs 1 and 1a shall transmit without undue delay the information received in accordance with those paragraphs to the competent authorities of the host Member States and to the competent authority of the home Member State of the new credit purchaser.

## 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 8a, 15 to 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 to be a 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.
- 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 Articles 5 and 5a;
  - (b) the power to withdraw an authorisation pursuant to Article 7;
  - (ba) the power to prohibit any of the credit servicing activities;
  - (c) the power to conduct on-site and off-site inspections;
  - (d) the power to impose administrative penalties and remedial measures in accordance with the provisions transposing Article 22;
  - (e) the power to review outsourcing agreements entered into by credit servicers with credit service providers in accordance with Article 10(1);

- (ea) the power to require credit servicers to remove members of their management or administrative organ when they fail to comply with the requirements set out in point (b) of Article 5(1);
  - (eb) the power to require credit servicers to modify or update their internal governance arrangements and internal control mechanisms in order to effectively ensure respect for borrowers' rights in accordance with the laws governing the credit agreement;
  - (ec) the power to require credit servicers to modify or update their policies adopted to ensure the fair and diligent treatment of borrowers, and the recording and handling of borrower complaints;
  - (ed) the power to request further information pertaining to the transfer of a creditor's rights under the non-performing credit agreements or of the non-performing credit agreements themselves.
- 1a. Member States shall ensure that the designated competent authorities of the host Member State pursuant to Article 20(3) and of the Member State where the credit was granted, when different from the host and the home Member States, are given all necessary powers for the exercise of their functions and duties laid down in this Directive.

- 2. Member States shall ensure that the competent authorities of the home Member State evaluate, by applying a risk-based approach, the implementation by a credit servicer of the requirements set in points (c), (d), (e) and (eb) of Article 5(1).
- 3. Member States shall determine the extent of the evaluation referred to in paragraph 2, having regard to the size, nature, scale and complexity of the activities of the credit servicer concerned.
- 4. The competent authorities of the home Member State shall inform the competent authorities of host Member State, or of the Member State where the credit was granted, when different from the host and the home Member States, of the results of the evaluation referred to in paragraph 2, upon request of the competent authorities of the host Member State, or of the Member State where the credit was granted, when different from the host and the home Member States, or where the competent authorities of the home Member State consider it appropriate. The details of any administrative penalties or remedial measures taken shall always be transmitted by the competent authorities of the home Member State to the competent authorities of the host Member State and, where appropriate, of the Member State where the credit was granted, when different from the host and the home Member States.

- 5. Member States shall ensure that when carrying out the evaluation referred to in paragraph 2, the competent authorities of the home and of the host Member States, and of the Member State where the credit was granted, when different from the host and the home Member States, exchange all information necessary to enable them to carry out their respective 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 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 Articles 16 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;

- (ga) a credit institution fails to communicate the information set out in the national measures transposing Article 13 of this Directive;
  - (gb) a credit servicer allows one or more persons not complying with the requirements set out in point (b) of Article 5(1) to become or remain a member of its management or administrative organ;
  - (gc) a credit servicer fails to comply with the requirements set out in the national measures transposing Article 35 of this Directive;
  - (gd) a credit purchaser or, where applicable, credit servicers or any entity mentioned under Article 2(4)(a)(i) and (iii) fails to comply with rules of conduct and communication duties set out in Article 8a;
  - (ge) a credit servicer receives and holds funds from borrowers when this is not allowed in a Member State in accordance with point b of article 5a(1);
  - (gf) a credit servicer fails to comply with the requirements set out in the national measures transposing Article 5a(2) 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 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 pecuniary penalties.
- 3. Member States shall also ensure that administrative penalties and remedial measures are effectively implemented.
- 4. Member States shall ensure that when determining the type of administrative penalties or other remedial measures and the amount of those administrative pecuniary penalties that competent authorities take into account relevant circumstances, including the following:
  - (a) the gravity and the duration of the breach;
  - (b) the degree of responsibility of the credit servicer or credit purchaser 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. 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 penalties or remedial measures as set out in paragraph 2 is properly reasoned and is subject to the right of appeal.
- 7a Member States may decide not to lay down rules for administrative penalties for infringements which are subject to criminal penalties under their national law. In that case, Member States shall communicate to the Commission the relevant criminal law provisions.

## TITLE VI

### Safeguards and duty to cooperate

#### *Article 35*

#### Complaints

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

#### *Article 36*

#### Personal data protection

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

## *Article 37*

### Cooperation between competent authorities

- 1. Member States shall ensure that the competent authorities referred to in Articles 7, 11, 12, 13, 16, 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.
- 3a Member States shall provide that all persons working for or who have worked for the competent authorities and auditors or experts acting on behalf of the competent authorities shall be bound by the obligations of professional secrecy.
- 4. Member States shall take the necessary administrative and organisational measures to facilitate the cooperation provided for in this Article.
- 5. The European Banking Authority shall facilitate the exchange of information between competent authorities in the Member States and promote their cooperation.

## Title VII

### Amendments

#### *Article 38*

#### Amendments to Directive 2014/17/EU

Directive 2014/17/EU is amended as follows:

- (1) the following article is inserted:

“Article 27a

Information regarding the modification of the credit agreement

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

- (a) a clear description of the proposed changes and, where applicable, the need for consumer consent or of the changes introduced by operation of law;
- (b) the timescale for the implementation of those changes;
- (c) the means for 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.”;

(2) Article 28 is amended as follows:

(a) paragraph 1 is replaced by the following:

- “1. Member States shall require creditors to have adequate policies and procedures so that they make efforts to exercise, where appropriate, reasonable forbearance before foreclosure proceedings are initiated. Such forbearance measures shall take into account, among other elements, the consumer’s circumstances and may consist in, among other possibilities:
  - (a) a total or partial refinancing of a credit agreement;
  - (b) a modification of the existing terms and conditions of a credit agreement, which may include among others:
    - (i) extending the term of the credit agreement;
    - (ii) changing the type of the credit agreement;
    - (iii) deferring payment of all or part of the instalment repayment for a period;
    - (iv) changing the interest rate;

- (v) offering a payment holiday;
    - (vi) partial repayments;
    - (vii) currency conversions;
    - (viii) partial forgiveness and debt consolidation.”;
  - (b) the following paragraph is inserted:
    - “1a. The list of potential measures referred to in point (b) of paragraph 1 is without prejudice to rules set out in national law and does not require Member States to provide for all of those measures in national law.”;

(3) the following Article 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, except where the original creditor, by agreement with the assignee, continues to service the credit vis-à-vis the consumer.”.

## Article 38a

### Amendments to Directive 2008/48/EC

Directive 2008/48/EC is amended as follows:

(1) the following article is inserted:

“Article 11a

Information regarding the modification of the credit agreement

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

- (a) a clear description of the proposed changes and, where applicable, the need for consumer consent or of the changes introduced by operation of law;
- (b) the timescale for the implementation of those changes;
- (c) the means for 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.”;



(2) the following article is inserted:

“Article 16a

Arrears and enforcement

- 1. Member States shall require creditors to have adequate policies and procedures so that they make efforts to exercise, where appropriate, reasonable forbearance before enforcement proceedings are initiated. Such forbearance measures shall take into account, among other elements, the consumer’s circumstances and may consist in, among other possibilities:
  - (a) a total or partial refinancing of a credit agreement;
  - (b) a modification of the existing terms and conditions of a credit agreement, which may include among others:
    - (i) extending the term of the credit agreement;
    - (ii) changing the type of the credit agreement;
    - (iii) deferring payment of all or part of the instalment repayment for a period;
    - (iv) changing the interest rate;
    - (v) offering a payment holiday;
    - (vi) partial repayments;
    - (vii) currency conversions;
    - (viii) partial forgiveness and debt consolidation.

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

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

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

## 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 Council<sup>20</sup>.
- 2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

#### *Article 40*

##### Evaluation

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

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<sup>20</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

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

#### Article 40a

#### Review clause

- Without prejudice to the prerogatives of the European Parliament and the Council, by ... [24 months after the entering into force of this Directive], the European Commission shall submit to the European Parliament and to the Council a report on:
  - (a) the adequacy of the regulatory framework regarding a potential introduction of caps on charges arising from the default applicable to credit agreements concluded with:
    - (i) natural persons for purposes related with trade, business or profession of that persons;
    - (ii) micro, small or medium-sized enterprises (SMEs), as defined in Article 2 of the Annex of the Commission Recommendations of 6 May 2003;
    - (iii) any borrower, provided that the credit is guaranteed by a natural person or is secured by assets or property belonging to that person;

- (b) relevant aspects, including potential forbearance measures, of credit agreements concluded with:
  - (i) natural persons for purposes related with trade, business or profession of that persons;
  - (ii) micro, small or medium-sized enterprises (SMEs), as defined in Article 2 of the Annex of the Commission Recommendations of 6 May 2003;
  - (iii) any borrower, provided that the credit is guaranteed by a natural person or is secured by assets or property belonging to that person;
- (c) the need and feasibility to develop implementing or regulatory technical standards or other appropriate means to introduce common reporting formats for communication to borrowers under paragraph 2 of Article 8a and on forbearance measures.
- If appropriate, this report shall be accompanied by a legislative proposal.

*Article 41*

Transposition

- 1. Member States shall adopt and publish, by ... [24 months from the date of entry into force] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

- 2. They shall apply those provisions from the day after ... [24 months from the date of entry into force].
- By way of derogation, entities already carrying out in accordance with national law credit servicing activities on the date specified in the first subparagraph shall be allowed to continue to carry out those activities in their home Member State until ... [30 months from the date of entry into force of this Directive] or until the date on which they obtain an authorisation in accordance with this Directive, whichever is earlier.
- Member States that already have in place equivalent or stricter regimes than those established in this Directive for credit servicing activities may allow entities already carrying out credit servicing activities under those regimes on the date specified in the first subparagraph to be automatically recognised as authorised credit servicers by the national law provisions transposing this Directive.
- 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 twentieth 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 ...,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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