



Council of the
European Union

Brussels, 26 March 2019
(OR. en)

Interinstitutional File:
2018/0063 (COD)

7344/19
ADD 1

EF 99
ECOFIN 284
JAI 269
JUSTCIV 82
DRS 21
COMPET 238
EJUSTICE 36
EMPL 163
SOC 209
IA 95
CODEC 649

'I' ITEM NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee (Part 2)

Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on credit servicers, credit purchasers and the recovery of collateral

- Mandate for negotiations with the European Parliament

[Previous Presidency Drafting](#)

[Previous Presidency Drafting](#)

[RO Presidency Drafting 08.03.2019](#)

[RO Presidency Drafting 08.03.2019](#)

[RO Presidency Drafting after Silence Procedure](#)

[RO Presidency Drafting after Silence Procedure](#)

2018/0063 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on credit servicers **and credit purchasers**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

- (1) The establishment of a comprehensive strategy to address the issue of non-performing loans (NPLs) is a priority for the Union². While addressing NPLs is primarily the responsibility of credit institutions and Member States, there is also a clear Union dimension to reduce current stocks of NPLs, as well as to prevent any excessive build-up of NPLs in the future. Given the interconnectedness of the banking and financial systems across the Union where credit institutions operate in multiple jurisdictions and Member States, there is significant potential for spill-over effects between Member States and the Union at large, both in terms of economic growth and financial stability.
- (2) An integrated financial system will enhance the resilience of the Economic and Monetary Union to adverse shocks by facilitating private cross-border risk-sharing, while at the same time reducing the need for public risk-sharing. In order to achieve these objectives, the Union should complete the Banking Union and further develop a Capital Markets Union (CMU). Addressing high stocks of NPLs and their possible future accumulation is essential to ~~completing~~ strengthening the Banking Union as it is essential for ensuring competition in the banking sector, preserving financial stability and encouraging lending so as to create jobs and growth within the Union.
- (3) In July 2017 the Council in its "Action Plan to Tackle Non-Performing Loans in Europe"³ called upon various institutions to take appropriate measures to further address the high number of NPLs in the Union and prevent their possible future accumulation. The Action Plan sets out a comprehensive approach that focuses on a mix of complementary policy actions in four areas: (i) bank supervision and regulation (ii) reform of restructuring, insolvency and debt recovery frameworks, (iii) developing secondary markets for distressed assets, and (iv) fostering restructuring of the banking system. Actions in these areas are to be taken at national level and at Union level where appropriate. The Commission announced a similar intention in its "Communication on completing the Banking Union" of 11 October 2017⁴, which called for a comprehensive package on tackling NPLs within the Union.
- (4) This Directive, together with other measures which the Commission is putting forward, as well as the action taken by the ECB in the context of banking supervision under the Single Supervisory Mechanism (SSM) and by the European Banking Authority will create the appropriate environment for credit institutions to deal with NPLs on their balance sheets, and will reduce the risk of future NPL accumulation.
- (5) Credit institutions will be required to put aside sufficient resources when new loans become non-performing, which should create appropriate incentives to address NPLs at an early stage and should prevent an excessive accumulation of them. Nevertheless, should NPL stocks become too high ~~as it is currently the case for some credit institutions and some Member States~~ credit institutions should be able to sell them in efficient, competitive and transparent secondary markets to other operators. Competent authorities of credit institutions will guide them in this, based on their existing bank-specific, so-called Pillar 2, powers

² See the Reflection Paper on Deepening the Economic and Monetary Union at: https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-emu_en.pdf, 31.5.2017

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

⁴ Communication to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions on completing the Banking Union, COM(2017) 592 final, 11.10.2017.

under Regulation (EU) No 575/2013 of the European Parliament and of the Council⁵ (CRR). Where NPLs become a significant and broad-based problem, Member States can set up national asset management companies or other alternative measures within the framework of current state aid and banks resolution rules.

- (6) This Directive should enable credit institutions to better deal with loans once these become non-performing by improving conditions sell the credit to third parties. 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.
- (8) While the terms 'loans' and 'banks' are commonly referred to in the public debate, the more precise legal terms of 'credit' or 'credit agreements' and 'credit institution' are used hereafter. ~~Furthermore, unless otherwise specified, the terms bank and credit institution also cover their subsidiaries.~~ Moreover, the Directive covers both the creditor's rights under a credit agreement and the credit agreement itself.
- (9) This Directive should foster the development of secondary markets for NPLs in the Union by removing impediments to the transfer of NPLs by credit institutions to non-credit institutions, while at the same time safeguarding consumers' ~~and other borrowers'~~ rights. Any proposed measure should also simplify and harmonise the authorisation requirements for credit servicers. This Directive should therefore establish a Union-wide framework for both purchasers and servicers of credit agreements issued by credit institutions.
- (10) However, currently, credit purchasers and credit servicers cannot reap the benefits of the internal market due to barriers erected by divergent national legislations in the absence of a dedicated and coherent regulatory and supervisory regime. Member States have very different rules for how non-credit institutions may acquire credit agreements from credit institutions. Non-credit institutions which purchase credit issued by credit institutions are not regulated in some Member States, while in others they are subject to various requirements, sometimes amounting to a requirement to obtain an authorisation of a credit institution. These differences of regulatory requirements have resulted in considerable obstacles to legally purchasing credit cross-border in the Union mainly by increasing the compliance costs faced when seeking to purchase credit portfolios. As a result, credit purchasers operate in a limited number of Member States, which has resulted in little competition in the internal market, as the number of interested credit purchasers remains low. This has led to an inefficient secondary market for NPLs. In addition, the essentially national markets for NPLs tend to remain of a small volume.
- (11) The limited participation of non-credit institutions has resulted in low demand, weak competition and low bid prices for portfolios of credit agreements on secondary markets, which is a disincentive for credit institutions to sell non-performing credit agreements. Therefore, there is a clear Union dimension to the development of markets for credits granted by credit institutions and sold to non-credit institutions. On the one hand, it should be possible for credit institutions to sell non-performing ~~or even performing~~ credit agreements on a Union-wide scale in efficient, competitive and transparent secondary markets. On the other hand, completion of the Banking Union and a Capital Markets Union

⁵ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

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 that are not credit institutions when they acquire as a business or profession a credit agreement in question only where it has been qualified as a non-performing credit agreements.

- (12) Creditors should be able to enforce a credit agreement and recover the amounts due themselves or they should be able to entrust such recovery to another person who provides such services on a professional basis, namely credit servicers. Equally, purchasers of credit from credit institutions often use the services of credit servicers in order to recover amounts due and yet credit servicing activities are not subject to a Union framework.
- (13) Certain Member States regulate credit servicing activities, but to varying degrees. Firstly, only some Member State regulate these activities, and, those that do, define them very differently. The increased regulatory compliance costs operate as a barrier to the development of expansion strategies by means of secondary establishment or cross-border provision of services. Secondly, a considerable number of Member States requires authorisations for some of the activities that these credit servicers engage in. These authorisations impose different requirements and do not provide for possibilities of cross-border scaling up, this again operating as a barrier to the provision of cross-border services. Finally, in some cases, local establishment is required by law, which hinders the exercise of the freedom to provide cross-border services.
- (14) While credit servicers can provide their services to credit institutions and to credit purchasers that are not credit institutions, a competitive and integrated market for credit servicers is linked to the development of a competitive and integrated market for credit purchasers. Since eCredit purchasers often decide to outsource the credit servicing to other entities, as they do not have the capacity to service credit themselves, they and, thus, may be reluctant to not purchase credit from credit institutions, if they cannot outsource the credit servicing to other entities, if they cannot outsource certain services.
- (15) The lack of competitive pressure on the market for purchasing credit and on the market for credit servicing activities results in credit servicing firms charging credit purchasers high fees for their services and leads to low prices on secondary markets for credit. This reduces incentives for credit institutions to offload their stock of NPLs.
- (16) Therefore, action at Union level is necessary in order to address the position of credit purchasers and credit servicers in relation to credit originally granted by credit institutions. However, the Directive is without prejudice to the rules governing credit origination in accordance to Union and Member States' law, including in cases when credit servicers can be considered to engage in credit intermediation, for instance as a result of renegotiating the terms and conditions under a credit agreement. The Directive is also without prejudice to the national rules imposing additional requirements for the credit purchaser or the credit servicer as concerns the renegotiation of the terms and conditions under a credit agreement. It is not proposed to cover credit originally issued by non-credit institutions or debt collection in general at this stage, as there is no evidence of macroeconomic relevance, misaligned incentives or ill-functioning markets for such an extended scope.
- (16a)** It is open to Member States to 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 extend the scope of the credit servicer's authorization also to. Such an inclusion of credit agreements issued by non-credit institutions in the credit servicer's authorisation should not allow them. Those entities, however, would not benefit from the possibility to passport such services to other Member States.~~

- (17) ~~Although the purpose of this Directive is to strengthen the credit institutions' capacity to deal with credit that has become non-performing or risks becoming non-performing, the secondary market for credit covers both performing and non-performing credit. Actual market sales encompass credit portfolios, consisting of a mix of performing, under-performing and non-performing credit. The portfolios include credit that is both secured and unsecured and that is owed by consumers or businesses. Where rules for the enforcement of credit differed for each type of credit or borrower, there would be additional costs to the packaging of those credit portfolios for sale. The provisions in this Directive that target the development of the secondary market for credit agreements sold by credit institutions cover performing and non-performing credit in order to avoid a situation that these additional costs would discourage investor participation and fragment this emerging market. Credit institutions will should benefit from facing a larger investor base and more efficient credit servicers. Similar benefits will accrue to asset management companies that are instrumental in some Member States in marketing both non-performing and performing credit originated from credit institutions that had been resolved or been restructured or that have otherwise offloaded them from their balance sheets⁶. In view of the need to guarantee a high level of borrower and consumer protection, to safeguard financial stability and to avoid interference with applicable licensing requirements, the provisions of this Directive should allow credit purchasers that are not credit institutions to acquire a credit agreement in question only where it has been qualified as a non-performing credit agreement. Since this Directive only provides for a minimum harmonisation of the requirements concerning credit purchasers, it is open to the Member States to regulate the activity of credit purchasers that do not hold a licence in accordance with Regulation No 575/2013 and Directive 2013/36/EU in their national laws, including by imposing requirements equivalent to those under this Directive.~~
- (18) The importance placed by the Union legislature on the protection provided for consumers in Directive 2014/17/EU of the European Parliament and of the Council ⁷, Directive 2008/48/EC of the European Parliament and of the Council ⁸ and Council Directive 93/13/EEC⁹ means that the assignment of the credit 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 ~~consumer~~ 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

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

⁷ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34).

⁸ Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 60/34, 22.5.2008, p. 66).

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

law rules regardless of the law applicable to the credit purchaser or credit servicer. Also, the Directive does not affect contract law principles under ~~[existing]~~ the restrictions in the national law with regard to ~~restrictions on the transfer of non-performing credit agreements that are not past due or are less than 90 days past due~~ claims and the assignment of credit of the creditors' rights under such ~~non-performing credit agreements under a credit agreement~~. **Similarly, the Directive does not affect the restrictions in national laws regarding transfer of creditor's rights under a non-performing credit agreement or 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 this is required for the transfer to an entity outside the banking system.** This way, there will be Member States where, taking into account the national rules, the acquisition of ~~unlikely to pay~~ **non-performing** credit agreements that are not past due, ~~or are less than 90 days past due~~ **or are not terminated in accordance with national civil law** by non-regulated creditors will remain limited. Nevertheless, it is open to Member States to regulate the transfer of performing credit agreements, including by imposing requirements equivalent to those under this Directive.

- (19) This Directive should not affect acts of Union law concerning judicial cooperation in civil matters, notably the provisions on the law applicable to contractual obligations and on jurisdiction, including the application of those acts and provisions in individual cases under Regulation (EC) No 593/2008 of the European Parliament and of the Council¹⁰ and, Regulation (EU) 1215/2012 of the European Parliament and of the Council¹¹. All creditors and any persons representing them are bound to respect those acts of Union law in their dealings with the consumer and national authorities to ensure that consumer rights are protected.
- (20) In order to ensure a high level of consumer protection, Union and national law provide for a number of rights and safeguards related to credit agreements promised or granted to a consumer. Those rights and safeguards apply in particular to the negotiation and conclusion of the credit agreement, to the use of unfair business-to-consumer commercial practices as laid down in Directive 2005/29/EU and to ~~it's~~ the performance or default of the credit agreement thereof. This is notably the case in relation to long-term consumer credit agreements falling within Directive 2014/17/EU, in respect of the right of the consumer to discharge fully or partially his obligations under a credit agreement prior to the expiry of that agreement or to be informed by means of the European Standardised Information Sheet, where applicable, on the possible transfer of the credit agreement to a credit purchaser. Borrower rights should also not be altered if the transfer of the credit agreement between a credit institution and a purchaser takes the form of contract novation.
- (21) In addition, this Directive does not reduce the scope of application of Union consumer protection rules and to the extent credit purchasers qualify as creditors under the provisions of Directive 2014/17/EU, ~~and~~ Directive 2008/48/EC ~~and~~ Directive 2005/29/EU, they should be subject to the specific obligations set by Article 35 of the Directive 2014/17/EU or Article 20 of the Directive 2008/48/EC, respectively.

¹⁰ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 4.7.2008, p. 6–16.

¹¹ Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20.12.2012, p. 1-32.

- (22) Union credit institutions ~~and their subsidiaries included in the supervision on a consolidated basis of the credit institution pursuant to Regulation (EU) No 575/2013~~ undertake credit servicing activities as part of their normal business. They have the same obligations with regard to credit agreements that they have issued themselves and ~~credit they~~ those purchased from another credit institution. Since they are already regulated and supervised, application of this Directive to their credit servicing or purchasing activities would mean unnecessary duplication of authorisation and compliance costs and therefore they are not covered by this Directive. **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 the Directive 2008/48/EC and the Directive 2014/17/EU and undertake credit servicing activities for loans granted to consumers as part of their normal business are not covered by this Directive when performing in that Member State credit servicing activities for loans issued by credit institutions. Further, **alternative investment fund manager, management company and investment company (provided that the investment company has not designated a management company)** ~~fund managers licensed authorized or registered~~ under Directive 2011/61/EU or Directive 2009/65/EC 2014/91/EU, should not fall within the scope of this Directive. Also, there are some legal professions that undertake ancillary activities similar to servicing activities ~~and that are regulated and supervised according to Union or national legislation, such as~~ as well as **namely** public notaries conducting independent public activities within a liberal profession, lawyers, bailiffs and officials that perform under national law court provisions and implement the enforcement of binding measures and the transfer and the servicing of credits in the context of a securitization under Regulation (EU) 2017/2402 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 and, therefore, Member States may decide not to apply should not fall within the scope of 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 ~~will only apply to transfers of non performing credit agreements that take place~~ **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 has expired. After the expiry of that six months 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 recognize in their national law implementing this Directive the possibility for existing entities providing credit servicing activities to be automatically recognized as authorized credit servicers.**
- (24) The authorisation of a credit servicer to provide credit servicing activities throughout the Union should be subject to a uniform and harmonised set of conditions that should be applied in a proportionate manner by the competent authorities.). **A credit servicer authorisation covers credit servicing activities irrespective of the type of credits. Therefore, the credit servicers may passport themselves for servicing performing loans**

in Member States where performing loans transfer is permitted. In light of the necessity to assure a competitive market and the challenging requirements that have to be fulfilled, Considering the long term nature of the relationship between a credit servicer and borrowers as well as the challenging requirements that have to be fulfilled, only a legal person can act as a credit servicer and therefore apply for an authorisation. To avoid a reduction in debtor or borrower protection and in order to promote trust, the conditions for granting and maintaining an authorisation as a credit servicer should ensure that ~~credit servicers, persons who hold a qualifying holding in the credit servicer or who are part of the management or administrative organ of the service provider~~ the members of the management or administrative organ of the service provider have a clean police record in relation to serious criminal offences linked to crimes against property, to crimes related to financial activities, to money laundering, to fraud or to crimes against the physical integrity and are not subject to an insolvency procedure or have not previously been declared bankrupt, unless they have been reinstated in accordance with national law that they are of good repute. Member States should ensure that ~~they~~ the members of the management or administrative organ are of sufficiently good repute, and the management body as a whole, and possess adequate knowledge and experience to conduct the business in a competent and responsible manner, according to the activity to be carried out. It is for each Member State to assess the good repute, adequate knowledge and experience conditions, but it should not impair the free movement of authorised credit servicers within the Union. ~~{For this purpose, the EBA should develop guidelines to reduce the risk of divergent interpretations of these requirements.}~~ Similarly, these persons as well as the credit servicer should not be subject to an insolvency procedure or have not previously been declared bankrupt, unless they have been reinstated in accordance with national law. Finally, to ensure compliance with debtor protection as well as personal data protection rules, it is necessary to require that appropriate governance arrangements and internal control mechanisms and recording and handling of complaints, are established and subject to supervision. ~~{Moreover, credit servicer should have adequate anti-money laundering and counter terrorism procedures in place in accordance with national laws.}~~ **In addition, credit servicer should have adequate anti-money laundering and counter terrorism 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.** Moreover, credit servicers should be obliged to act fairly and with due consideration for the financial situation of the borrowers. ~~Where debt advice services facilitating debt repayment are available at national level, the credit servicers should consider referring borrowers to such services.~~ Where debt advice services facilitating debt repayment are available at national level, the credit servicers should consider referring borrowers to such services.

- (25) To avoid lengthy procedures and uncertainty, it is necessary to establish requirements regarding the information that applicants are required to submit, as well as the reasonable deadlines for the issue of an authorisation and the circumstances for its withdrawal of authorisation. Where authorities withdraw an authorisation of a credit servicer which provides credit servicing activities in other Member States, competent authorities in the host Member State should be informed. Equally, an up-to-date ~~online~~ public register or list should be established in each Member State and made publicly available on the websites of the competent authorities to ensure transparency as regards the number and identity of authorised credit servicers.
- (26) The contractual relationship between the credit servicer and the creditor and obligations of the credit servicer towards the creditor should not be altered by the outsourcing to credit service providers. It should be established that credit servicers are responsible for making

sure that where they outsource their activities to credit service providers, this does not result in undue operational risk or non-compliance by the credit service provider with any national or Union legal requirements or restrict the capacity of a regulatory supervisor to perform its duty and safeguard borrower rights.

- (27) Given that when a creditor entrusts the management and enforcement of a credit agreement, the creditor delegates its rights and duties and also its direct contact with the borrower to the credit servicer while still remaining ultimately responsible, the relationship between creditor and credit servicer should be clearly established in a written credit servicing agreement ~~writing~~ and it should be possible for competent authorities to verify how such a relationship is determined. Moreover, credit servicers should be obliged to act fairly and with due consideration for the financial situation of the borrowers. ~~Where debt advice services facilitating debt repayment are available at national level, the credit servicers should consider referring borrowers to such services.~~ **To the extent that the credit purchaser does not perform itself the servicing of the loans acquired,** Member States should be able to provide that the credit servicer and creditor are required to agree in the credit servicing agreement that the credit servicer notifies the creditor prior to outsourcing of credit servicing activities.
- (28) To ensure the right of a credit servicer to engage in cross-border activities and to provide for their supervision, this Directive sets up a procedure for the exercise of the right of an authorised credit servicer to engage in cross-border activity. Communication between authorities in the home and host Member States as well as with a credit servicer should take place within reasonable deadlines.
- (29) In order ~~for~~ to ensure an effective and efficient supervision of cross-border credit servicers, a specific framework should be created for the cooperation between home and ~~the~~ host competent authorities. This framework should allow the exchange of information, while preserving its confidentiality, professional secrecy, protection of individual and business rights, on and off-site inspections, the provision of assistance, the notification of results of checks and inspections and of any measures taken.
- (30) An important prerequisite for the taking up of the role by credit purchasers and credit servicers should be that they ~~can~~ have the possibility to get access all to relevant information and Member States should ensure that this is possible, while at the same time observing Union and national data protection rules.
- (31) Where a credit institution transfers a credit agreement they should be required to inform their supervisor and the competent authority for supervising compliance with this Directive on a quarterly basis and on an aggregated level about ~~[at least]~~ ~~the main characteristics~~ aggregated outstanding balance of the transferred credit portfolios, as well as number and size of the loans included and whether it includes agreements concluded with consumers. For each portfolio transferred in a single transaction information should include the legal entity identifier, or when not available the identity and address of the purchaser and, where applicable, its representative in the Union. That competent authority should be obliged to transmit that information to the authorities competent to supervise the credit purchaser and the competent authority where the borrower is established. ~~Competent authorities should forward information regarding to new credit purchasers to the EBA, which should draw up and publish a list of active credit purchasers in the Union to ensure transparency and facilitate the matching process between sellers and purchasers of credit agreements.~~ Such transparency requirements allow for a harmonised and effective monitoring of the transfer of credit agreements within the Union. In order to comply with the principle of proportionality,

competent authorities should, in order to avoid the duplication, take into account information that is already available to them by other means, in particular as regards credit institutions.

- (32) As part of the Council's Action Plan, credit institutions' data infrastructure would be strengthened by having uniform and standardised data for non-performing credit agreements. The European Banking Authority has developed data templates that provide information about credit exposures in the banking book and allow potential buyers to evaluate the value of the credit agreements and carry out their due diligence. Applying such templates to credit agreements would reduce information asymmetries between potential buyers and sellers of credit agreements and, thus, contribute to the development of a functioning secondary market in the Union. The EBA should therefore develop the data templates into implementing technical standards ~~and and that for~~ credit institutions. ~~and~~ Other sellers of credit agreements/credit purchaser should are should be encouraged to use those standards in order to facilitate the valuation of credit agreements for sale.
- (33) ~~Since the valuation of a portfolio of non-performing credit is complicated and complex, actual buyers on secondary markets are sophisticated investors. Credit purchasers are Ooften they are~~ investment funds, financial institutions or credit institutions. As they are not creating new credit, but are buying ~~as foreseen provided in the Directive only~~ existing non-performing credit agreements at own risk, they do not cause prudential concerns and their potential contribution to systemic risk is negligible. It is therefore not justified to require those types of investors to apply for an authorisation, ~~but or to set special conditions for them to engage in such activities. It~~ is however important that Union and national consumer protection rules continue to apply and the borrowers' rights continue to be those arising from the initial credit agreement. ~~Prior to their first purchase of non-performing credit agreements or creditor's rights issued by a credit institution in the Union, credit purchasers should notify the competent authority of the home Member State about their legal entity identifier, or when not available about their identity and adress. Additionally, they should inform the competent authority about their deed of incorporation and the Member State where the purchase occurred. Competent authorities should forward this information to the EBA, which should draw up and publish a list of active credit purchasers in the Union to ensure transparency and facilitate the matching process between sellers and purchasers of credit agreements. In order to keep this list up to date, the credit purchaser should inform the competent authority of the home Member State about any change concerning the information given.~~
- (34) Third-country credit purchasers may make it harder for the Union consumer to rely on their rights under Union law and for the national authorities to supervise the enforcement of the credit agreement. Credit institutions may also be discouraged from transferring such credit agreements to third-country credit purchasers because of the reputational risk involved. **To the extent that ~~Imposing an obligation on~~ the representative of the third-country purchasers of consumer credit ~~to appoint is not~~ a credit institution, ~~other regulated and supervised creditor/a non-credit institution creditors regulated and supervised by a competent authority of a Member State in accordance with the Directive 2008/48/EC and the Directive 2014/17/EU or a credit servicer authorised in the Union for servicing a credit agreement this representative will be under an obligation to appoint such regulated entities in order to ensures for servicing a credit agreement ensures~~ that the same standards of consumers' rights are preserved after the transfer of the credit agreement. **Member States are entitled to impose the same obligation in relation to other credits than those granted to consumers and/or to credit purchasers established on their territories which are not a supervised****

creditor or credit servicer. The credit servicer and the supervised creditor is are under an obligation to respect the applicable Union and national laws and the national authorities in individual Member States should be given the necessary powers to effectively supervise its their activity. ~~Member States are entitled to impose the same obligation to non-supervised credit purchasers established on their territories.~~

- (35) Credit purchasers that use the services of credit servicers or credit institutions should inform ~~on a quarterly basis and on an aggregated level~~ the competent authorities thereof so as to allow them to exercise their supervisory as regards the conduct of the credit servicer vis-à-vis the borrower. Credit purchasers also have an obligation to inform in a timely manner the competent authorities in charge of their supervision if they engage a different credit institution or credit servicer.
- (36) Credit purchasers that enforce the purchased credit agreement directly should do so in compliance with the law applicable to the credit agreement, including consumer protection rules applicable to the borrower. National rules concerning in particular the enforcement of contracts, consumer protection, criminal law, continue to apply and competent authorities should ensure their compliance with them on Member States' territory.
- (37) In order to facilitate the enforcement of the obligations set out in the Directive, where a credit purchaser is not established in the Union national law implementing this Directive should provide that, where a transfer of a credit agreement is concluded, a third country credit purchaser appoints a representative established in the Union, mandated to be addressed by the competent authorities in addition or instead of the credit purchaser. This representative is responsible for the obligations imposed on credit purchasers by this Directive. Credit purchasers transferring non-performing credit agreements should inform the competent authority of the home Member State on a quarterly basis and on an aggregated level about ~~at least~~ the aggregated outstanding balance of the transferred credit portfolios, as well as number and size of the loans included and whether it includes agreements concluded with consumers about the share that agreements concluded with consumers represents. For each portfolio transferred in a single transaction information should include the legal entity identifier, or when not available the identity and address of the purchaser and, where applicable, its representative in the Union.
- (38) At the moment, different authorities are entrusted with the authorisation and supervision of credit servicers and credit purchasers in Member States, and therefore it is essential that Member States clarify their role and allocate adequate powers, especially as they may need to supervise entities engaged in providing services in other Member States. In order to ensure efficient and proportionate supervision across the Union, Member States should grant the necessary powers for competent authorities to carry out their duties under this Directive, including the power to obtain necessary information, to investigate possible breaches, to handle borrowers' complaints and to impose ~~sanctions~~penalties and remedial measures, including the withdrawal of the authorisation. Where such ~~sanctions~~penalties are applied, Member States should ensure that competent authorities apply them in a proportionate manner and give reasons for their decisions and that in addition those decisions should be subject to judicial review also in cases where competent authorities do not act within the timeframes provided.
- (38a) The provisions concerning breaches of this Directive is without prejudice to a Member State's right to intervene in cases of breaches do not include breaches of national law, for example, specific consumer protection rules, borrower rights rules adopted only at national level or regarding criminal activities. In such cases the competent authorities of the host

Member State are the ones competent to decide if there is a breach of national law and thus their powers are not limited by this Directive.

- (52) Without prejudice to pre-contractual obligations under Directive 2014/17/EU, Directive 2008/48/EC and Directive 93/13/EEC, and in order to ensure a high level of consumer protection, the consumer should be presented, in due time and prior to any modifications to the terms and conditions of the credit agreement, with a clear and comprehensive list of any such changes, the timescale for their implementation and the necessary details as well as the name and address of the national authority where he or she may lodge a complaint.
- (53) Since the performance of secondary markets for credit will depend to a large extent on the good reputation of the entities involved, credit servicers should establish an efficient mechanism by which to treat borrower complaints. Member States should ensure that authorities competent for the supervision of credit purchases and credit servicers have effective and accessible procedures to deal with borrowers' complaints. ~~Further, Member States should ensure that effective remedies are provided to consumers to ensure the possibility of out-of-court settlement of consumer disputes.~~
- (54) Both the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council¹² and Regulation ~~(EC) No 45/2001~~ (EU) 2018/1725 of the European Parliament and of the Council¹³ apply to the processing of personal data for the purposes of this Directive. In particular, where personal data is processed for the purposes of this Directive, the precise purpose should be specified, the relevant legal basis referred to, the relevant security requirements laid down in Regulation (EU) 2016/679 complied with, and the principles of necessity, proportionality, purpose limitation, transparent and proportionate data retention period respected. Also, personal data protection by design and data protection by default should be embedded in all data processing systems developed and used within the framework of this Directive. Equally, administrative cooperation and mutual assistance between the competent authorities of the Member States should be compatible with the rules on the protection of personal data laid down in Regulation (EU) 2016/679 of the European Parliament and of the Council, and in accordance with national data protection rules implementing Union legislation.
- (55) In order to ensure that the level of protection of the consumer is not affected in the event of an assignment to a third party of the creditor's rights under a mortgage credit agreement or of the agreement itself, an amendment to Directive 2014/17/EU should be introduced to establish that, in cases of a transfer of credit covered by that Directive, the consumer is

¹² 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).

¹³ ~~Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).~~ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC Text with EEA relevance.

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,
- (57) The European Data Protection Supervisor has been consulted and provided its opinion on 24 January 2019 [C/Y/2018].
- (58) 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 the 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) ~~a credit servicerss of a creditor's rights under a credit agreement or of the credit agreement itself issued by a credit institution or by its subsidiary established in the Union, and who acting on behalf of a credit institution, or of a credit purchaser or credit purchaser in respect of a credit agreement issued by a credit institution or by its subsidiaries;~~
- (b) ~~a credit purchaserss 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 or by its subsidiaries established in the Union;~~

Article 2

Scope

1. Articles 3 to 22 and Articles 34 to 43 of this Directive shall apply to:
 - (a) ~~a credit servicers acting on behalf of a credit institution or of a credit purchaser in respect of creditor's rights under a credit agreement or of the creditor's rights agreement itself, in accordance with applicable Union or national law, issued by a credit institution established in the Union or by its subsidiaries established in the Union which acts on behalf of a creditor, in accordance with applicable Union or national law;~~
 - (b) ~~a credit purchasers of 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 or of the creditor's rights under such agreement or by its subsidiaries established in the Union, whereby the credit purchaser assumes the creditor's obligations under the credit agreement, in accordance with applicable Union and national law;~~

3. ~~With regard to credit agreements falling within its scope, This Directive does shall not affect neitherecontract law principles under national law with regard to the transfer of claims and the assignment of credit agreements, nor neither contract law principles or 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 Directive 2014/17/EU, Directive 2008/48/EC, Council Directive 93/13/EEC and the national provisions transposing them nor other relevant Union law and national consumer protection laws, with regard to credit agreements falling within its scope.~~
 - 3a. ~~This Directive shall not affect the [existing] restrictions in the Member States national laws regarding the transfer of creditor's rights under a non-performing credit agreements that are is not past due, or are is less than 90 days past due or are not terminated in accordance with national civil law, or the transfer of ereditor's rights under such a non-performing credit agreements.~~
 - 3b. ~~**This Directive shall not affect the requirements in the Member States national laws regarding the servicing of creditor's rights under a credit agreement or of the credit agreement itself, when the credit purchaser is a securitisation special purpose entity, as defined in Article 2 (2) of Regulation (EU) 2017/2402.**~~

4. Articles 3 to 22 and 34 to 43 of this Directive shall not apply to the following:
 - (a) the servicing of a creditor's rights under a credit agreement or the credit agreement itself carried out by
 - (i) ~~a credit institution established in the Union, or its subsidiaries established in the Union and included in the supervision of the credit institution on a consolidated basis~~

~~pursuant to Regulation (EU) No 575/2013 or the non-credit institutions 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,~~

~~(ii) or by an alternative investment~~ **an alternative investment fund manager (AIFM) authorised or registered in accordance with licensed under 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 manages,~~

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

~~a public notary who conducts independent public service activities exercised within members of a liberal profession subject to the supervision of each Member State, such as public notaries, bailiffs or lawyers as defined by national law or a national of a Member State who is authorised to pursue his or her professional activities under the professional titles referred to in art. 1(2)(a) of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained shall not be considered a credit servicer for the purpose of this Directive, unless their only tasks consist in conducting activities defined referred to in Article 3(9) of this Directive.~~

- ~~(b) the servicing of a creditor's rights under a credit agreement or of the credit agreement itself that was not issued by a credit institution established in the Union or its subsidiaries established in the Union, except where the creditor's rights under a credit agreement issued or the creditor's right agreement itself is replaced by a credit agreement issued by such an institution or its subsidiaries;~~
- ~~(c) the purchase of a creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself by a credit institution established in the Union or its subsidiaries that are established in the Union and are included in the supervision of the credit institution on a consolidated basis pursuant to Regulation (EU) No 575/2013 established in the Union;~~
- ~~(d) the transfer of creditor's rights under a non-performing credit agreement or the credit agreement itself transferred before the date referred to in the second subparagraph of Article 41(2).~~
- ~~(e) the transfer and the servicing of creditor's rights or the credit agreement itself in the context of a securitization under Regulation (EU) 2017/2402 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.~~

4a) Member States may exempt from the application of this Directive the servicing of creditor's rights under a credit agreement or the credit agreement itself carried out by

~~members of a legal liberal profession, subject to the supervision of each Member State, such as~~ public notaries and bailiffs as defined by national law or lawyers as defined in art. 1(2)(a) of 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, when conducting activities referred to in Article 3(9) of this Directive as part of their profession;

Article 3

Definitions

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

- (1) 'credit institution' means a credit institution ~~or its subsidiary~~ as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013¹⁴;
- (2) 'creditor' means a credit institution who has issued a credit or a credit purchaser;
- (3) 'borrower' means a legal or natural person who has concluded a credit agreement with a creditor, including its the legal successor or the debtor assignee;
- (5) 'credit agreement' means ~~[creditor's rights under a credit contractual agreement or the credit agreement itself]~~ an written agreement as originally issued, modified or replaced, whereby a creditor grants or promises to grant a credit in the form of a deferred payment, a loan or other similar financial accommodation;
- (6) 'credit servicing agreement' means a written contract between a creditor and a credit servicer about the services to be provided by the credit servicer on behalf of the creditor;
- (8) 'credit purchaser' means any natural or legal person other than a credit institution, or a subsidiary of a credit institution its subsidiary that are established in the Union and are included in the supervision of the credit institution on a consolidated basis pursuant to Regulation (EU) No 575/2013 which purchases a creditor's rights under a non-performing credit agreement or the non-performing creditors' rights under a non-performing credit such agreement itself as defined in paragraph 5 in the course of his trade, business or profession in accordance with applicable Union and national law;
- (9) 'credit servicer' means ~~any legal person, other than a credit institution, who, in the course of its business, manages and enforces the rights and obligations related to the creditor's rights under a credit agreement or the credit agreement itself or related to the creditor's rights or the credit claim~~ on behalf of the creditor and carries out at

¹⁴ **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).**

~~least one or more of the following activities: The activities of the credit services may include and out at least one or more of the following activities:~~

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

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

~~iii) administering any complaints in relation to the creditor's rights under a credit agreement or to the credit agreement itself or to the creditor's rights or credit claim;~~

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

~~Nationals of Member States who are authorised to pursue their professional activities under the professional titles referred to in Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained shall not be considered credit servicers for the purpose of this Directive, even when conducting activities defined in paragraph (9) (i) to (iii).~~

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

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

- ~~(a) monitors the performance of the credit agreement;~~
- ~~(b) collects and manages information about the status of the credit agreement, of the borrower and of any collateral used to secure the credit agreement;~~
- ~~(c) informs the borrower of any changes in interest rates, charges or of payments due under the credit agreement;~~
- ~~(d) enforces the rights and obligations under the credit agreement on behalf of the creditor, including administering repayments;~~
- ~~(e) renegotiates the terms and conditions of the credit agreement with borrowers, where they are not a 'credit intermediary' as defined in Article 4(5) of Directive 2014/17/EU or Article 3(f) of Directive 2008/48/EC;~~

- (f) ~~handles borrowers' complaints.~~
- (10) 'home Member State' means, in respect to the credit servicer, the Member State in which 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 ~~the authorisation is granted to the credit servicer is established~~ or, in respect to the credit purchaser, the Member State in which the credit purchaser or his representative is domiciled or established.
- (11) 'host Member State' means a Member State, other than the home Member State, in which a credit servicer has established a branch, has appointed an ~~agent credit service provider referred to in Article 10~~ or where provides services, respectively where a credit servicer conducts activities in relation to the borrowers is domiciled or established ~~provides services.~~
- (12) 'consumer' means a natural person who, in credit agreements covered by this Directive, is acting for purposes which are outside his trade, business or profession ~~consumer as defined in point (a) of Article 3 of Directive 2008/48/EC.~~
- (13) 'non-performing credit agreement agreement' means a credit agreement agreement that is classified as non-performing exposure in accordance with Regulation (EU) No 575/2013.

Title II

Credit servicers

Chapter I

Authorisation of credit servicers

Article 4

General requirements

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

Requirements for granting an authorisation

1. Member States shall lay down the following requirements for the granting of an authorisation as referred to in Article 4(1):
 - (a) ~~the applicant is a citizen of the Union or a legal person as referred to in Article 54 of the Treaty on the Functioning of the European Union and its registered office or principal place of business, if under its national law it has no registered office, its head office is in the Member State in which he is seeking authorisation;~~
 - (b) ~~where the applicant is a legal person, the members of its management or administrative organ and the persons who hold qualifying holdings in the applicant, within the meaning of point (36) of Article 4(1) of Regulation (EU) No 575/2013, or where the applicant is a natural person, shall have the following characteristics:~~
 - ~~(i) are of sufficiently good repute by proving that they and have adequate knowledge and experience to conduct the business in a competent and responsible manner;~~
 - (ii) have a clean police record or other national equivalent in relation to serious criminal offences relating to property, to financial activities, money laundering, fraud, tax crimes, violation of professional secrecy or to physical integrity;
 - (iii) are not ~~currently~~ subject to any on-going insolvency procedure or have previously been declared bankrupt unless reinstated in accordance with national law;

and

 - (iv) the management, taken as a whole, has adequate knowledge and experience to conduct the business in a competent and responsible manner.
 - ~~(bb) the persons who hold qualifying holdings in the applicant, within the meaning of point (36) of Article 4(1) of Regulation (EU) No 575/2013 are of sufficiently good repute and by fulfilling the requirements in point (ii) and (iii) of subparagraph (b) of this paragraph;~~
 - (c) the applicant has appropriate governance arrangements and internal control mechanisms in place which ensure respect for borrower rights and compliance with ~~personal data protection rules in accordance with~~ the laws governing the creditor's rights under a credit agreement or the creditor's rights agreement itself and with Regulation (EU) 2016/679;
 - (d) the applicant applies an appropriate policy ensuring compliance with rules for the protection of ~~and~~ **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 and, where available, the need for such borrowers to be referred to debt advice or social services;~~

- (e) the applicant has adequate and specific internal procedures in place which ensure the recording and handling of borrower complaints;
 - (f) ~~[the applicant has in force adequate anti-money laundering and counter terrorism procedures in place in accordance with national laws transposing the Directive 2015/849/EU].~~
 - (f) the applicant has adequate anti-money laundering and counter terrorism 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.**
2. The competent authorities of the home Member State shall refuse an authorisation referred to in Article 4(1), where the applicant does not comply with the requirements set out in paragraph 1.
- ~~3. EBA shall, after consulting all relevant stakeholders and reflecting all interests involved, issue develop guidelines in accordance with Article 16 of Regulation (EU) No. 1093/2010 that specify the minimum level required of for the requirements mentioned under paragraph 1(b) point (i) and (iv), as well as under paragraph 1(bb) of this Article.~~

Article 6

Procedure for granting or refusing an authorisation

1. Member States shall establish a procedure for the authorisation of credit servicers which enables an applicant to submit an application and provide all the information necessary for the competent authority of the home Member State to verify that the applicant has satisfied all the conditions laid down in the national measures transposing Article 5(1).
2. The application for authorisation, referred to in paragraph 1, shall be accompanied by the following:
 - (a) evidence of the applicant's legal status and a copy of the act of incorporation and of the company by-laws its instrument of constitution, where appropriate;
 - (b) the address of the applicant's head office or its registered office;
 - (c) the identity of the members of applicant's management or administrative organ and the persons who hold qualifying holdings within the meaning of point (36) of Article 4(1) of Regulation (EU) No 575/2013;
 - (d) ~~evidence that the applicant and the persons referred to in point (c) of this Article, comply~~ with the conditions laid down in Article 5(1)(b);
 - (dd) evidence that the persons referred to in point (c) of this paragraph, comply with the conditions laid down in Article 5(1)(bb);
 - (e) evidence of the governance arrangements and internal control mechanisms referred to in Article 5(1)(c);
 - (f) evidence of the policy referred to in Article 5(1)(d);

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

(h) [~~evidence of the procedures referred to in Article 5(1)(f);~~]

evidence of the procedures referred to in Article 5(1)(f);

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

3. Member States shall ensure that the competent authorities of a home Member State assess, within ~~3020~~ working days of receipt of the application for authorisation, whether that application is complete. ~~Member States shall ensure that the competent authorities of a home Member State assess, within 2030 working days of receipt of the application for authorisation, whether that application is complete. Where the application is considered incomplete, the competent authorities shall set a new deadline by which the applicant is to provide the any further additional information. Upon reviewing the additional information the competent authority and they shall notify the applicant when whether they consider anthe application to be complete.~~
4. Member States shall ensure that, within 90 days of receipt of a complete application or, if the application is considered incomplete, of required information, the competent authorities of the home Member State notify the applicant whether the authorisation is granted or refused and, where applicable, provide reasons for refusal. ~~competent authorities of the home Member State assess, within 3090 working days from the date of receipt of a complete application, whether the applicant complies with the national provisions transposing this Directive. Where the application is considered not to be complete or compliant, the competent authority shall have the opportunity to set a deadline by which the applicant will have the possibility to provide the information required by Article 5 (1). The competent authorities shall, on conclusion of that assessment, either adopt a fully reasoned decision when either granting or refusing the authorisation or adopt a simple decision when granting the authorisation which shall be notified to the applicant within five95 working days from the date of receipt of a complete application.~~
5. Member States shall ensure that an applicant has the right of appeal before a tribunal either where the competent authorities of the home Member State decide to refuse an application for authorisation pursuant to Article 5(2) or where, within the time limit provided for in Paragraph (4) of this Article ~~six months from the submission of a complete application,~~ no decision is taken by the competent authorities in respect of ~~anthe~~ application ~~for~~ authorisation, ~~within six months of lodging a complete application.~~

Article 7

Withdrawal of authorisation

1. Member States shall ensure that the competent authorities of the home Member State have the necessary supervisory, investigatory and sanctioning powers in accordance with Article 21 ~~when deciding in order to may~~ withdraw the authorisation granted to a credit servicer, where such a credit servicer either:
 - (a) does not make use of the authorisation within 12 months of its grant;

- (b) expressly renounces the authorisation;
 - (c) has ceased to engage in the activities of a credit servicer for more than six months;
 - (d) has acquired an authorisation through false statements or other irregular means;
 - (e) no longer fulfills ~~meets~~ the conditions set out in Article 5(1);
 - (f) commits a serious breach of the applicable rules, including the national law provisions transposing this Directive or of ~~other~~ consumer protection rules.
2. Where an authorisation is withdrawn in accordance with paragraph 1, Member States shall ensure that the competent authorities of the home Member State shall immediately inform the competent authorities in the host Member States if the credit servicer provides services under Article 11.

Article 8

Register of authorised credit servicers

1. Member States shall ensure that competent authorities establish and maintain at least a list or, when preferred where considered more appropriate, a national register of all authorised credit servicers authorised to provide services within their territory, including credit servicers providing services under Article 11.
2. The list or register ~~or list~~ shall be made publicly accessible online on the websites of the competent authorities and shall be updated on a regular basis.
3. In case an authorisation has been withdrawn, the competent authorities shall update the list or register ~~or list~~ without delay.

Article 9

Contractual relationship between a credit servicer and a creditor

1. Member States shall ensure that when a credit purchaser does not perform itself the credit servicing activities, a the appointed credit servicer provides its services in respect of the management and enforcement of the creditor's rights under a credit agreement or of the a creditor's right agreement itself on the basis of a credit servicing agreement as referred to in Article 3(6) on the basis of a written agreement with a creditor.
2. The credit servicing agreement ~~referred to in the paragraph 1~~ shall provide for the following:
 - (a) a detailed description of credit servicing activities to be carried out by the credit servicer;
 - (b) the level of remuneration of the credit servicer or how the remuneration is to be calculated;

- (c) the extent to which the credit servicer can represent the creditor in relation to the borrower;
 - (d) an undertaking by the parties to comply with the Union and national law applicable to the creditor's rights under a credit agreement or the creditor's rights agreement itself, including in respect of consumer and data protection;
 - (e) a clause requiring the fair and diligent treatment of the borrowers, including by taking into account their financial situation and, where suitable, the need to refer borrowers to debt advice or social services.
- 2a. Member States may require that the credit servicing agreement also provide a requirement according to which the credit servicer notifies the creditor prior to outsourcing any of its activity as credit servicer.
3. Member States shall ensure that the credit servicer keeps and maintains the following records for a period at least ~~10~~ 5 years from the date when the agreement of the contract referred to in paragraph 1 is terminated or for the statutory limitation period applicable in the home Member State, however, no longer than 10 years:
- (a) all-relevant correspondence with both the creditor and the borrower, under the conditions provided for in the applicable national law;
 - (b) all-relevant instructions received from the creditor in respect of each creditor's right under a credit agreement or the creditor's rights agreement itself that it manages and enforces on behalf of that creditor, under the conditions provided for in the applicable national law;
 - (c) the credit servicing agreement.
4. Member States shall ensure that the credit servicer makes the records referred to in paragraph 3 available to competent authorities upon request.

Article 10

Outsourcing by a credit servicer

1. Member States shall ensure that where a credit servicer uses a third party (~~'credit service provider'~~) to perform any of the activities stated listed in Article 3(109) ('credit service provider') that would normally be undertaken by that credit servicer (~~'credit service provider'~~), the credit servicer remains fully responsible for complying with all obligations under the national provisions transposing this Directive. ~~The outsourcing of those credit servicing activities shall be subject to the following conditions:~~

For the purpose of the first subparagraph a written outsourcing agreement between the credit servicer and the credit service provider shall be concluded, in which shall provide that the credit service provider is obliged to comply with the applicable legal provisions, including national law transposing this Directive, and the relevant Union or national law applicable to the creditor's rights under a credit agreement or the creditor's rights agreement itself. The contractual relationship and obligations of between the credit servicer and the creditor and obligations of the credit servicer towards the creditor or borrowers is

clients shall not be altered with by the outsourcing agreement with the credit service provider. The compliance of a credit servicer with the requirements of its authorisation as set out in Article 5(1) shall not be affected by the outsourcing of the credit servicing activities. The outsourcing to the credit service provider shall not prevent the supervision by competent authorities of a credit servicer in accordance with Articles 12 and 20.

The outsourcing of those activities stated in Article 3(9) shall not be undertaken in such a way as to impair the quality of the credit servicer's internal control, soundness or continuity of its credit services.

- (a) ~~the conclusion of a written outsourcing agreement between the credit servicer and the credit service provider under which the credit service provider is obliged to comply with relevant Union or national law applicable to the credit agreement;~~
- (b) ~~the obligations of credit servicers under this Directive may not be delegated;~~
- (c) ~~the contractual relationship and obligations of the credit servicer towards its clients are not altered;~~
- (d) ~~the conditions for the authorisation of the credit servicer as set out in Article 5(1) are not affected;~~
- (e) ~~the outsourcing to the credit service provider does not prevent the supervision by competent authorities of a credit servicer in accordance with Articles 12 and 20;~~
- (f) ~~the credit servicer has direct access to all relevant information concerning the outsourced services to the credit service provider;~~
- (g) ~~the credit servicer retains the expertise and resources to be able to provide the outsourced activities, after the outsourcing agreement is terminated.~~

2. Member States shall ensure that, upon request, the credit servicer informs without delay the competent authority of the home, and where applicable the host, Member State without undue delay about the outsourcing of activities in accordance with paragraph 1.
3. Member States shall ensure that the credit servicer keeps and maintains records of all relevant instructions provided to the credit service provider, under the conditions provided for in the applicable national law, and the outsourcing agreement for at least 40 5 years from the date when the agreement of the contract referred to in paragraph 1 is terminated or for the statutory limitation period in the Member State, however, no longer than 10 years.
34. Member States shall ensure that the credit servicer and the credit service provider make the information referred to in paragraph 23 available to competent authorities upon request.

Chapter II

Cross-Border Credit Servicing

Article 11

Freedom to provide credit servicing activities in a host Member State

1. Member States shall ensure that a credit servicer having obtained an authorisation in accordance with Article 5 in a home Member State has the right to provide in the Union those services that are covered by that authorization,
 - 1a. Paragraph 1 is without prejudice the restrictions and requirements established in the national law of the host Member State in accordance with Article 2 or those established for the renegotiation of the terms and conditions related to the creditor's rights under a credit agreement or of the credit agreement itself.**
2. Member States shall ensure that where the credit servicer authorised in accordance with Article 5 in a home Member State intends to provide services in a host Member State, it shall submit to the competent authority of the home Member State the following information:
 - (a) the host Member State in which the credit servicer intends to provide services;
 - (b) where applicable, the address of the branch established in the host Member State;
 - (c) where applicable, identity and address of ~~an agent appointed~~ the 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 creditor's rights agreement itself;
 - (ee) a description of the procedure established in order to comply with the anti-money laundering and counter terrorism 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.**
3. The competent authorities of the home Member State shall, within 30 working days of the receipt of ~~all the~~ information referred to in paragraph 2, communicate that information to the competent authorities of the host Member State which shall acknowledge receipt thereof without delay. The competent authorities of the home Member State shall thereafter inform the credit servicer **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 ~~of such confirmation of receipt.~~

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

Article 12

Supervision of credit servicers who provide cross-border services

1. Member States shall ensure that the competent authorities of the home Member State review and evaluate the ongoing compliance by a credit servicer who provides services in a host Member State with the requirements of this Directive.
2. Member States shall ensure that the competent authorities of a home Member State are empowered to supervise, investigate and impose administrative ~~sanctions or~~ penalties and remedial measures on credit servicers in respect of their activities in a host Member State.
3. Member States shall ensure that the competent authorities of the home Member State will communicate the measures taken in respect of the credit servicer to the competent authorities of the host Member States.
4. Member States shall ensure that where a credit servicer which is domiciled or established in a home Member State, provides services, has set up a branch or appointed ~~an agent~~ credit service provider in a host Member State, the competent authorities of the home Member State and the competent authorities of the host Member State shall cooperate closely in the performance of their functions and duties provided for in this Directive, in particular when carrying out checks, investigations and on-site inspections in that branch or in respect of that ~~agent~~ credit service provider.

5. Member States shall ensure that the competent authorities of the home Member State in the exercise of their functions and duties provided for in this Directive shall ask the competent authorities of the host Member State for their assistance in carrying out an on-site inspection of a branch set up in or of an ~~agent~~ credit service provider appointed in a host Member State. The on-site inspection of a branch or of an ~~agent~~ 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 decides to conduct on-site inspections on behalf of the competent authorities of the home Member State, they shall inform the competent authorities of the home Member State of the results thereof without delay.
8. On their own initiative, the competent authorities of the host Member State may conduct checks, inspections and investigations in respect of credit servicing activities provided within their territory by a credit servicer authorised in a home Member State. The competent authorities of the host Member State shall provide the results of these checks, inspections and investigations to the competent authorities of the home Member State without delay.
9. Member States shall ensure that where the competent authorities of the host Member State have evidence that a credit servicer providing services within its territory, in accordance with Article 11, is in breach of the applicable rules, including obligations arising from the national provisions transposing this Directive, it shall transmit that evidence to the competent authorities of the home Member State and request that they take appropriate measures.
10. Member States shall ensure that the competent authorities of the home Member State communicate details of any administrative or other procedure initiated in respect of the evidence provided by the host Member State, or about ~~sanctions or~~ penalties and remedial measures taken against the credit servicer or a reasoned decision why no measures were taken, to the competent authorities of the host Member State who referred the evidence no later than two months from the request referred to in paragraph 8. Where a procedure has been initiated, the competent authorities of the home Member State shall regularly inform the competent authorities of the host Member State about its status.
11. Member States shall ensure that where, after having informed the home Member State no adequate measures were taken in a reasonable time or despite measures taken by the competent authorities of the home Member State or in an urgent case, where immediate action is necessary to address a serious threat to the collective interests of the borrowers, given that the credit servicer continues to be in breach of the applicable rules, including its obligations under this Directive, the competent authorities of the host Member State are entitled to take appropriate administrative ~~sanctions or~~ penalties and remedial measures in order to ensure compliance with the applicable rules ~~provisions of this Directive within its territory~~ after informing without delay the competent authorities of the home Member State. In addition, the competent authorities of the host Member State may prohibit further activities of such credit servicers in its Member State until an adequate decision is taken by

the competent authority of the home Member State or a remedial measure is taken by the credit servicer.

Title III

Credit purchasers

Article 13

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

1. Member States shall ensure that a creditor ~~shall provide~~ all the necessary information regarding the creditor's rights under a non-performing credit agreement or the non-performing creditor's rights agreement itself and, if applicable, the collateral, to a credit purchaser to enable that credit purchaser 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 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 creditor's rights agreement while ensuring the protection of information made available by the creditor and the confidentiality of business data.
2. On a quarterly basis Member States shall require ~~a credit institutions or the subsidiary of a credit institution~~ that transfer a creditor's rights under a non-performing credit agreement or the non-performing credit agreements itself or a credit right to a credit purchaser to inform the competent authorities designated in accordance with Article 20(3) of this Directive and Article 4 of Directive 2013/36/EU¹⁵, for each transfer of credit agreement portfolio about the legal entity identifier (LEI) of the credit purchaser or, where applicable, of its representative designated in accordance with Article 17, or where such identifier does not exist about:
 - (i) the identity of the credit purchaser or members of the credit purchaser's management or administrative organ and the persons who hold qualifying holdings in the credit 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, its head office or its registered office.

~~the identity and address of the credit purchaser and, where applicable, of its representative designated in accordance with Article 17 and Additionally, on an aggregate level, the credit institution shall inform about [at least] of the following:~~

 - (b) ~~when applicable, the types of assets securing the credit agreements or credit claims transferred, including information on whether it is a credit agreements or credit~~

¹⁵ 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).

~~claims concluded with consumers; the residual nominal values the aggregated outstanding balance of the creditor's rights under the non-performing credit agreements or of the non-performing creditor's rights agreements or credit claims transferred;~~

- ~~(c) the identity and address of the borrower and of the credit purchaser and, where applicable, of its representative designated in accordance with Article 17.;~~
- ~~(d) type, the number and average size of creditor's rights under a the non-performing credit agreements or of the non-performing credit agreements itself loans included in the transferred portfolios;~~
- ~~(e) on whether they the transferred operation portfolios includes creditor's rights under the non-performing credit agreements or non-performing credit agreements concluded with consumers or creditor's rights concerning consumers and the transferred types of assets securing them, when applicable.~~

3. The competent authorities designated in accordance with Article 20(3) of this Directive referred to in paragraph 2 shall communicate without delay the information referred to in that paragraph and any other information that they might consider to be necessary for carrying out their task according to this Directive to the competent authorities of the home Member State ~~whereof~~ the credit purchaser or its representative, designated in accordance with Article 17, ~~is established and of the Member State where the borrower is established or resident.~~ ~~The competent authorities designated in accordance with Article 4 of Directive 2013/36/EU shall submit to EBA the information about the identity and address of each new credit purchaser notified by credit institutions in accordance with paragraph 2, and EBA shall publish and maintain a list of all credit purchasers notified.~~
4. The provisions laid down in paragraphs 1,2 and 3 shall be applied in accordance with Regulation (EU) 2016/679 and Regulation (EC) No 45/2001.

Article 14

Technical standards for ~~NPL~~ data formats

1. EBA shall develop draft implementing technical standards that specify the formats to be used by creditors who are credit institutions for the provision of information as set out in Article 13(1), in order to provide detailed information on their credit exposures in the banking book to credit purchasers for the screening, financial due diligence and valuation of the creditor's rights under a non-performing credit agreement or of the non-performing creditor's rights agreement itself. EBA shall specify in the implementing technical standards the required minimum data fields for performing loans creditor's rights under a non-performing credit agreements or for the non-performing creditor's rights agreement itself in order to meet the information requirements as set out in Article 13(1).
2. EBA shall submit those draft implementing technical standards to the Commission by ~~[31 December 2019]~~ 12 months from the entry into force of the Directive.

3. Power is conferred on the Commission to adopt the implementing technical standards referred to in the paragraph 1, in accordance with Article 15 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council¹⁶.

Article 15

Obligations of credit purchasers

1. Member States shall ensure that the representative of a credit purchaser referred to in Article 17(1) ~~and the credit purchaser established in the Union~~ appoints ~~credit institution established in the Union or its subsidiary established in the Union~~ an entity mentioned in Article 2(4)(a)(i) and (iii) or an authorised credit servicer to perform credit servicing activities in respect of creditor's rights under a non-performing credit agreements or of the credit agreement itself, ~~concluded with consumers or creditor's rights~~, concluded with consumers, except in case the representative is an entity mentioned in Article 2(4)(a)(i) and (iii) or a credit servicer.

Member States may extend the requirement in the previous subparagraph of this Article in relation to:

a) other credit agreements than those concluded with consumers;

b) credit purchasers established in the Union, who are not entities mentioned in Article 2(4)(a)(i) and (iii) or credit servicers.

~~Member States may extend the requirement from Para. (1) in relation to credit purchaser established in the Union.~~

2. Member States shall ensure that a credit purchaser is not subject to any additional administrative requirements for the purchase of creditor's rights under a non-performing credit agreement or the non-performing credit agreements itself other than as provided for by the national measures transposing this Directive, ~~the consumer protection law or governing contract law~~. Member States shall ensure that relevant Union and national law concerning in particular the enforcement of contracts, consumer protection, ~~borrower's rights~~ and criminal law continues to apply to the credit purchaser upon assignment the transfer of the creditor's rights under a credit agreement or the creditor's rights agreement itself to the credit purchaser. The level of protection provided under Union and national law to consumers ~~and other borrowers~~ shall not be affected by the transfer assignment of the creditor's rights under a credit agreement or the creditor's rights agreement itself to the credit purchaser.

2a. ~~The previous paragraph~~ This Directive is without prejudice to national powers regarding credit registers, including the power to require information to credit purchasers regarding the creditor's rights under a credit agreement or the creditor's rights agreement itself and its performance.

3. Member States may allow credit purchasers to engage natural persons to service the credits they acquired. Those natural persons should be subject to a national regulation and

¹⁶ 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).

supervision regime and should not benefit from the freedom to provide services in another Member State in accordance with this Directive.

~~Member States shall ensure that a credit purchaser or, where applicable, its representative designated in accordance with Article 17 notifies the competent authorities of the home Member State without delay of information concerning its intention to first purchase for the first time of credit agreements issued from a credit institution in the Union on the secondary market, as regards:~~

~~(a) the legal entity identifier (LEI) of the credit purchaser or, where applicable, of its representative designated in accordance with Article 17; or where such identifier does not exist:~~

~~(i) the identity of the credit purchaser or members of the purchaser's management or administrative organ and the persons who hold qualifying holdings in the purchaser within the meaning of point (36) of Article 4(1) of Regulation (EU) No 575/2013 and~~

~~(ii) the address of the purchaser or, where applicable, its representative designated in accordance with Article 17, its head office or its registered office.~~

~~(b) the deed of incorporation of the purchaser;~~

~~(c) the Member State where the purchase occurred.~~

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

Article 16

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

1. ~~Where the credit purchaser or, where applicable, its representative designated in accordance with Article 17, decides to engage a credit institution an entity mentioned in Article 2(4)(a)(i) **and (iii)** or a credit servicer to perform credit servicing activities **referred to in Article 3 (9)** in relation to the transferred creditor's rights under a non-performing credit agreement or the non-performing credit agreements itself, Member States shall require the credit purchaser or, where applicable, their representative designated in accordance with Article 17, to inform the competent authorities of the home Member State where the credit purchaser or their representative is domiciled or established of the identity and address of the **credit institution**, its subsidiary **entity mentioned in Article 2(4)(a)(i) and (iii)** or the credit servicer that they have engaged to perform credit servicing activities in relation to the transferred credit agreement.~~
2. Where the credit purchaser or the representative designated in accordance with Article 17 engages a different ~~a credit institution~~ an entity mentioned in Article 2(4)(a)(i) **and (iii)** ~~or~~

~~subsidiary~~ to service the credit or a different credit servicer, it shall notify the competent authorities of the home Member State referred to in paragraph 1 thereof at least ~~two weeks in advance~~ the day of that change and shall indicate the identity and address of the new credit institution, its subsidiary [entity mentioned in Article 2\(4\)\(a\)\(i\) and \(iii\)](#) or credit servicer that they have engaged to perform credit servicing activities in relation to the transferred creditor's rights under a non-performing credit agreement or the non-performing creditor's rights agreement itself.

3. Member States shall require the competent authorities of the home Member State where of the credit purchaser or, where applicable, their representative designated, in accordance with Article 17, ~~is domiciled or established~~ to transmit without undue delay to the competent authorities responsible for the supervision of the credit institution, ~~its subsidiary~~ or credit servicer referred to in the paragraphs 1 and 2, the information received in accordance with Article 13(3).

Article 17

Representative of credit purchasers not established in the Union

1. Member States shall provide that where a transfer of the 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 18

~~Credit purchasers directly enforcing a credit agreement~~

- ~~1. Member States shall ensure that a credit purchaser or, where applicable, its representative designated in accordance with Article 17 communicates on a quarterly basis to the competent authorities of the Member State where the credit purchaser or, where applicable its representative is domiciled or established, for each portfolio the identity and address of the credit purchaser and, where applicable, of its representative designated in accordance with Article 17, and on an aggregate level, about its purchased credit agreements that it intends to directly enforce a credit agreement by providing the following information:~~
 - ~~(a) the type of assets securing the credit agreement including information on whether it is a credit agreements concluded with consumers;~~
 - ~~(b) the residual nominal values of the credit agreements purchased;~~
 - ~~(c) the identity and address of the borrower and of the credit purchaser or of its representative designated in accordance with Article 17.;~~
 - ~~(d) type, number and average size of loans included in the transferred portfolios;~~

- (e) ~~on whether they include credit agreements concluded with consumers or credit rights concerning consumers and the transferred types of assets securing them, when applicable.~~

2. ~~Member States shall require the competent authorities referred to in paragraph 1, to transmit without undue delay the information received in accordance with paragraph 1 to the competent authorities of the Member State where the borrower is established.~~

Article 19

Transfer of a creditor's rights under a non-performing credit agreement or the non-performing credit agreements 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 or a credit right to another credit purchaser to inform the competent authorities referred to in Article 18(1) of the home Member State on a quarterly basis for each transfer of credit agreement about the new credit purchaser'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 purchaser's management or administrative organ and the persons who hold qualifying holdings in the new purchaser within the meaning of point (36) of Article 4(1) of Regulation (EU) No 575/2013 and

(ii) the address of the new purchaser or, where applicable, its representative designated in accordance with Article 17, its head office or its registered office.

~~and~~ Additionally, on an aggregated level the credit purchaser shall inform about of the transfers, the identity and address of the new credit purchaser and, where applicable, its representative designated in accordance with Article 17 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 creditor's rights agreements transferred;
- (b) the number and size of the creditor's rights under the non-performing credit agreements or of the non-performing creditor's rights claims included in the agreements transferred portfolios;
- (c) on whether the transferred portfolios includes creditor's rights under non-performing credit agreements or non-performing credit agreements concluded with consumers or creditor's rights claims rights concerning consumers and the types of assets securing them, when applicable.

2. Member States shall ensure that the competent authorities referred to in paragraph 1 shall transmit without undue delay the information received ~~in accordance with Article 13(3)~~ to the competent authorities of the Member State where the new credit purchaser and, where applicable, its representative is domiciled or established.

~~3. The competent authorities referred to in paragraph 1 shall submit to EBA the information about the identity and address of each new credit purchaser notified in accordance with paragraph 1. EBA shall update the list referred to in Article 13 (3).~~

TITLE IV

Supervision

Article 20

Supervision by competent authorities

1. Member States shall ensure that credit servicers and, where applicable, credit service providers to whom activities have been outsourced in accordance with Article 10, comply with the national provisions transposing this Directive on an on-going basis and shall ensure that those activities are subject to adequate supervision by the competent authorities of the home Member State in order to assess such compliance.
2. The Member State where the credit purchasers or, where applicable, their representative designated in accordance to Article 17, are domiciled or established shall ensure that the competent authorities referred to in paragraph 1 are responsible for the supervision of the obligations set in Articles 15-19 in respect of credit purchasers or, where applicable their representatives designated in accordance to Article 17.
3. Member States shall designate the competent authorities responsible for carrying out the functions and duties under the national provisions transposing this Directive.
4. Where Member States designate more than one competent authority pursuant to paragraph 3, they shall determine their respective tasks and designate one of them as single point of entry for all necessary exchanges and interactions with competent authorities of either home or host Member States.
5. Member States shall ensure that appropriate measures are in place to enable the competent authorities designated pursuant to paragraph 3 to obtain from credit purchasers or their representatives, credit servicers, credit service providers to whom a credit servicer outsources activities under Article 10, borrowers and any other persons or public authority the information necessary to carry out the following:
 - (a) assess the ongoing compliance with the requirements laid down in the national provisions transposing this Directive;
 - (b) investigate possible breaches of those requirements;
 - (c) impose administrative penalties and remedial measures in accordance with the provisions transposing Article 22.

~~(5a) — The competent authorities shall also verify whether the requirements set out in Article 5 are still fulfilled or where they have reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, or there is increased risk thereof in connection with that institution.~~

6. Member States shall ensure that the competent authorities designated pursuant to paragraph 3, have the expertise, resources, operational capacity and powers necessary for the exercise of their functions and duties laid down in this Directive.

Article 21

Supervisory role and powers of competent authorities

1. Member States shall ensure that competent authorities of the home Member State designated pursuant to Article 20(3), are given all supervisory, investigatory and sanctioning powers necessary for the exercise of their functions and duties laid down in this Directive, including at least the following:
 - (a) the power to grant or refuse an authorisation pursuant to Article 5;
 - (b) the power to withdraw an authorisation pursuant to Article 7;
 - (c) the power to conduct on-site and off-site inspections;
 - (d) the power to impose administrative ~~sanctions or~~ penalties and remedial measures in accordance with the provisions transposing Article 22;
 - (e) the power to review outsourcing agreements entered into by credit servicers with credit service providers in accordance with Article 10(1);
 - (f) the power to require a credit servicer to remove members of a credit servicer's its management or administrative organ when they fail to comply with the requirements set out in Article 5(1)(b);
 - (g) the power to require credit servicers to modify or update the internal governance arrangements and internal control mechanisms of a credit servicer in order to effectively ensure respect for borrower rights in accordance with the laws governing the credit agreement;
 - (h) the power to require credit servicers to modify or update the policies adopted by credit servicers to ensure the fair and diligent treatment of the borrowers, and the recording and handling of borrower complaints;
 - (i) the power to request further information pertaining to the transfer of the creditor's rights under the a non-performing credit agreements or of the non-performing creditor's rights agreements themselves.
2. Member States shall ensure that the competent authorities of the home Member State evaluate, by applying a risk based approach at least once a year, the implementation by a credit servicer of the requirements set in points (c), (d), ~~and~~ (e) **and (f)** ~~[and (f)]~~ of Article 5(1).

3. Member States shall determine the extent of the evaluation referred to in paragraph 2, having regard to the size, nature, scale and complexity of the activities of the credit servicer concerned.
4. The competent authorities of the home Member State shall ~~regularly, and at least once a year,~~ inform the competent authorities of host Member States, ~~upon request, of the results of the evaluation referred to in paragraph 2, including details~~ of the results of the evaluation referred to in paragraph 2, including details of any administrative penalties or remedial measures taken.
5. Member States shall ensure that when carrying out the evaluation referred to in paragraph 2, the competent authorities of the home and host Member States exchange all information necessary to enable them to carry out their respective tasks laid down in this Directive.
6. Member States shall ensure that the competent authority of the home Member State is able to require a credit servicer, credit service provider or credit purchaser or its representative appointed in accordance with Article 17 that does not meet the requirements of the national provisions transposing this Directive to take at an early stage, all necessary actions or steps in order to comply with those provisions.

Article 22

Administrative penalties and remedial measures

1. Without prejudice to the right of Member States to lay down criminal penalties, Member States shall lay down rules establishing appropriate administrative penalties and remedial measures applicable in at least the following situations:
 - (a) a credit servicer fails to comply with the requirement set out in the national measures transposing Article 9 of this Directive ~~or fails to enter into an outsourcing agreement~~ or enters into an outsourcing agreement in breach of the provisions transposing Article 10 or the credit service provider to whom the functions were outsourced commits a serious breach of the applicable legal rules, including the national law transposing this Directive;
 - (b) a credit servicer's governance arrangements and internal control mechanisms as set out in Article 5(1)(c) fail to ensure respect for borrower rights and compliance with personal data protection rules;
 - (c) a credit servicer's policy is inadequate for the proper treatment of borrowers as set in Article 5(1)(d);
 - (d) a credit servicer's internal procedures as set out in Article 5(1)(e) fail to provide for the recording and handling of borrower complaints according to the obligations set in the national measures transposing this directive;
 - (e) a credit purchaser or, where applicable, its representative designated in accordance with Article 17 fails to communicate the information provided for by national measures transposing Article 16, 18 and 19;

- (f) a credit purchaser or, where applicable, its representative designated in accordance with Article 17 fails to comply with the requirement of the national measures transposing Article 15;
 - (g) a credit purchaser fails to comply with the requirement of the national measures transposing Article 17~~;~~;
 - (h) a credit institution fails to communicate information set out in the national measures transposing Article 13 of this Directive;
 - (i) a credit servicer allows one or more persons not complying with the requirements as set in Article 5(1)(b) to become or remain a member of its management or administrative organ;
 - (j) a credit servicer fails to comply with the requirement set out in the national measures transposing Article 35 of this Directive.
2. The penalties and measures referred to in paragraph 1 shall be effective, proportionate and dissuasive and shall include at least the following:
- (a) a ~~cancellation~~ withdrawal of an authorisation to carry out activities as a credit servicer;
 - (b) an order requiring the credit servicer or credit purchaser or, where applicable, its representative designated in accordance with Article 17 to remedy the breach, and to cease the conduct and to desist from a repetition of that conduct;
 - (c) administrative ~~fin~~~~es~~~~pecuniary penalties~~ pecuniary penalties.
3. Member States shall also ensure that administrative penalties and remedial measures are effectively implemented.
4. Member States shall ensure that when determining the type of administrative penalties or other remedial measures and the amount of those administrative ~~fin~~~~es~~ pecuniary penalties that competent authorities take into account ~~all the following relevant circumstances, including the following; where relevant:~~ all the following 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 ~~for the annual income of a natural person~~;
 - (d) the importance of profits gained or losses avoided because of the breach by the credit servicer or credit purchaser or, where applicable, its representative designated in accordance with Article 17, responsible for the breach, insofar as they can be determined;

- (e) the losses caused to third parties by the breach, insofar as those losses can be determined;
 - (f) the level of cooperation by the credit servicer or credit purchaser responsible for the breach with the competent authorities;
 - (g) previous breaches by the credit servicer or credit purchaser or, where applicable, its representative designated in accordance with Article 17, responsible for the breach;
 - (h) any actual or potential systemic consequences of the breach.
5. ~~Where the situations referred to in paragraph 1 apply to legal persons,~~ Member States shall also ensure that competent authorities can apply the administrative penalties and remedial measures set out in paragraph 2 to members of the management or administrative organ, and to other individuals who under national law are responsible for the breach.
6. Member States shall ensure that before taking any decision imposing administrative penalties or remedial measures set out in paragraph 2 of this Article, the competent authorities give the concerned credit servicer, credit purchaser or where applicable, its representative designated in accordance with Article 17, the opportunity to be heard.
7. Member States shall ensure that any decision imposing administrative ~~sanctions~~ penalties or remedial measures as set out in paragraph 2 is properly reasoned and is subject to the right of appeal.
8. Member States may decide not to lay down rules for administrative penalties for infringements which are subject to criminal penalties under their national law. In that case, Member States shall communicate to other competent authorities the Commission the relevant criminal law provisions.

TITLE VI

Safeguards and duty to cooperate

Article 34

Modification of the credit agreement

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

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

Article 35

Complaints

1. Member States shall ensure that a credit servicer communicates, without delay, the following information to the borrower:
 - (a) the identity of the credit servicer;
 - (b) a copy of its authorisation granted pursuant to Article 6;
 - (c) the name, address and contact details of the competent authorities of the Member State where the borrower is domiciled or established and where the borrower may submit a complaint.
2. The communication referred to in paragraph 1 shall be in writing, or by electronic means where permitted under Union or national law.
3. Member States shall ensure that, in all subsequent communications with the borrower as well as in any communication by phone, the credit servicer includes or states the information listed in points (a) ~~and (e)~~ of paragraph 1.
4. Member States shall ensure that credit servicers establish and maintain effective and transparent procedures for the handling of complaints received from borrowers.
5. Member States shall ensure that the treatment by credit servicers of complaints from borrowers is free of charge and that credit servicers record the complaints and measures taken to address them.
6. Member States shall ensure that the competent authorities establish and publish a procedure for the handling of complaints by borrowers concerning credit purchasers, credit servicers and credit service providers and, depending on the nature of the complaints, to ensure that they are treated promptly when received.
- ~~7. Member States shall ensure in accordance to paragraph 6 that effective remedies are provided to consumers, including the possibility of out of court settlement of consumer disputes in accordance with Directive 2013/11/EU.~~

Article 36

Personal data protection

The provision of information to individuals about the processing of personal data and the processing of such personal data and any other processing of personal data for the purposes of this Directive shall be carried out in accordance with Regulation (EU) 2016/679 and with Regulation (EC) No 45/2001 (EU) 2018/1725.

Article 37

Cooperation between competent authorities

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

Title VII

Amendment

Article 38

Amendment to Directive 2014/17/EU

The following Article 28a is inserted:

"Article 28a

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

Title VIII

Final provisions

Article 39

Committee

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council¹⁷.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Article 40

Evaluation

1. Five years after the entry into force of this Directive, the Commission shall carry out an evaluation of this Directive and present a Report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. The evaluation shall consist at least of the following:
 - (i) the number of authorised credit servicers in the Union and the number of credit servicers providing their services in a host Member State;
 - (ii) ~~the number of credit purchasers on the secondary market covered by the list of EBA and~~ the number of creditor's rights under non-performing credit agreements or of the non-performing creditor's rights 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.

¹⁷ **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).**

(iii) the assessment of the existing money-laundering and terrorist financing risk associated with the activities performed by the credit servicers **and credit purchasers**;

(iv) the cooperation between competent authorities under Article 37.

2. Where the evaluation identifies important problems with the functioning of the Directive, the Report should outline how the Commission is intending to address the identified problems, including steps and timings of the potential revision.

Article 41

Transposition

1. Member States shall adopt and publish, by [~~31 December 2020~~2021 24 months from the 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 [~~1 January 2020~~2021 the day after 24 months from the entry into force].

~~However, Articles 4(1), 7, 9 to 12 shall apply from [1 July 2021]2022 30 months from the entry into force].~~

By way of derogation, Entities already carrying out in accordance with national law credit servicing activities set out defined in Article 3 (9) on the date specified in the first subparagraph before [1 January 2020]2021 24 months from the entry into force shall be allowed to continue to carry out those activities in their home Member State accordance with applicable national law until [1 July 2021]2022 30 months from the entry into force or until the date on which they obtain an authorisation in accordance with this Directive, whichever is earlier.

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

Article 42

Entry into force

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

Article 43

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
