

The Credit Servicing Directive: Promoting the EU Market for NPLs

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Guide to the Credit Servicing Directive – Part 1

Authors

Angelo Messore

Partner



Anna Travanini

Associate



[lexia.it](https://www.lexia.it)

Directive (EU) 2022/2167 (the “Credit Servicing Directive”) introduced a common framework for the management and disposal of non-performing loans (“NPLs”).

The Directive provides for new authorisation obligations for credit servicers and imposes information sharing and reporting obligations to credit institutions and credit purchasers executing NPL transactions.

The purpose of the EU rules is to facilitate the transfer of NPLs in the EU, at the same time ensuring that credit servicing activities are conducted in accordance with harmonised standards and principles.

The deadline for the transposition of the Directive is approaching, as Member States will have to implement the new rules by 29 December 2023.



The EU reforms on NPLs

The Credit Servicing Directive was originally proposed in March 2018 as part of the EU Action Plan to reduce NPLs in Europe. The Action Plan comprised a package of measures aimed at reducing the stock of NPLs of European banks and included the new EU rules and ECB guidelines imposing the application of a statutory prudential backstop for the provisioning of NPLs.

The purpose of the proposed legislation on credit servicing and credit purchaser was to facilitate the disposal of NPLs by EU credit institutions by encouraging the development and integration of secondary markets for this type of assets.

The proposal was aimed at counterbalancing the effects deriving from the introduction of the EU rules on calendar provisioning by making it easier for credit institutions to transfer their NPLs’ portfolios.

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After years of discussions and negotiations – which led to a reduction of the scope of the original proposal – the final text of the Credit Servicing Directive was approved in 2022, and will now have to be implemented by the end of 2023.

Who will be affected by the Credit Servicing Directive?



The directive does not apply to credit servicing activities carried out by banks established in the European Union, by alternative investment fund managers or UCITS managers acting on behalf of the managed funds or by non-banking entities subject to the supervision of the competent authorities. European banks that acquire rights or credit contracts are also excluded from the scope of application of the Directive.

The Directive applies to the following entities:

- ▶ Credit services acting on behalf of a credit purchaser in respect of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, provided that it was issued by a credit institution established in the EU in accordance with applicable EU and national law.
- ▶ Credit purchasers buying the creditor's rights and/or agreements referred to above.

The Directive does not apply to servicing activities carried out by credit institutions established in the EU, AIFMs or UCITS management or investment companies acting on behalf of the funds they manage, or non-credit institutions subject to supervision by competent authorities. EU credit institutions purchasing creditors' rights or credit agreements are also exempt from the Credit Servicing Directive.

Authorisation of credit servicers

Under the Credit Servicing Directive credit services are defined as legal persons that, in the course of their business, manage and enforce the rights and obligations related to a creditor's rights under a non-performing credit agreement, or to the non-performing credit agreement itself, on behalf of a credit purchaser, and carry out at least one or more credit servicing activities identified in the Directive – such as for instance the collection and recovery of borrower's payments.

Credit servicers will have to be authorized by Member States to carry out their activities within their territories. The authorisation will be granted after having considered, among others, the good repute of the members of their management body and the relevant shareholders of the company, and the adoption of appropriate governance arrangements and internal control mechanisms as well as of internal procedures on the handling of borrowers' complaints.

Member States must determine whether credit servicers will be allowed to receive and hold borrowers' funds or prohibited to do so. Competent authorities will establish and maintain a list or national register of credit servicers authorised in accordance with the Credit Servicing Directive.



Rules of conduct and EU passport for credit servicers

Credit servicers must abide by a number of obligations while managing the relationship with the borrower. The Credit Servicing Directive also regulates the content of the credit servicing agreement entered into between the credit servicer and the credit purchaser. Credit servicers will be subject to certain record keeping obligations concerning, for instance, the correspondence with the credit purchaser and the borrower and the instructions received from the credit purchaser. Outsourcing by credit servicers will be subject to specific conditions as well as to notification obligations towards competent authorities.



The Directive provides for a specific authorization regime for entities that operate as credit servicers and also regulates the obligations applicable to credit servicers.

As a result of the common framework introduced under the Credit Servicing Directive, credit servicers that are authorized under the Directive will be entitled to carry out their services in other EU Member States on a cross-border basis.

Information sharing between credit institutions and credit purchasers

Credit purchasers will be entitled to receive information from credit institutions regarding the creditor's rights under the non-performing credit agreement, or the non-performing credit agreement itself, as well as the collateral (if any), to help them assessing the value of the right or agreement and the likelihood of recovering the debt. Credit purchasers will have to ensure the protection of information made available by the credit institutions and the confidentiality of business data.

The information between credit institutions and credit purchasers will be shared on the basis of the templates specified in the implementing technical standards (ITS) drafted by the EBA. On a bi-annual basis credit institutions must report the information identified in the Credit Services Directive to their national competent authorities regarding the NPL transactions made by them.

Obligations of credit purchasers

The Credit Servicing Directive introduces certain obligations to credit purchasers that apply also to entities that are not domiciled, established or registered in the European Union. At the same time, Member States cannot impose additional requirements for the purchase of NPLs other than those provided for by the Credit Servicing Directive, or national consumer protection law, contract law, civil law or criminal law.



Credit purchasers are obliged to report certain information regarding the NPL transactions entered into by them on a bi-annual basis to competent authorities of their home Member States.



Banks and credit buyers will be subject to certain information sharing and reporting obligations to the competent authorities in relation to completed NPL transfer operations.

What are the possible impacts of the Credit Servicing Directive?

The rules of the Credit Servicing Directive will become applicable at a time when NPLs are no longer at the top of the EU regulatory agenda. The number and volume of NPL transactions in EU countries is significantly lower than the 2018 peak.

However, investors that purchased NPLs in the past years may now be required to offload their NPL exposures by selling them on the secondary market. The implementation of the Credit Servicing Directive might facilitate this process by making the cross-border transfer of NPL portfolios smoother.



This article is the first in a series of articles dedicated to the Credit Servicing Directive published by Lexia. The remaining articles in the series will be made available on the [Lexia website](#).



Our Financial Services, Fintech & Blockchain Team



Angelo Messore
Partner



Francesco Dagnino
Partner



Andrea Berruto
Senior Associate



Giulietta Minucci
Senior Associate



Federico Bonardi
Associate



Tommaso Fossati
Associate



Carlo Giuliano
Associate



Francesca Omenetti
Associate



Giorgia Rastrelli
Associate



Anna Travanini
Associate



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