



An Roinn Airgeadais
Department of Finance

Credit Servicers Directive Public Consultation

The consultation period is now closed.

This document sets out the outcome of the consultation and the decisions on each of the items which were the subject of the consultation.

June 2023

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Consultation Process

The consultation period will run from 16 January to 8 March 2023. Any submissions received after this date may not be considered.

The public consultation on the discretions available in Directive (EU) 2021/2167 is now closed.

This document sets out the decisions taken following consideration of the submissions received.

However, these decisions remain subject to change if and where necessary in the context of the finalisation of the transposition of the Directive.

It remains the objective to transpose the Directive by the deadline of 29 December 2023.

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How to Respond

The preferred means of response is by email to:

creditservicersconsultation@finance.gov.ie

Alternatively, you may respond by post to:

Credit Servicers Directive – Public Consultation,
Banking Division,
Department of Finance,
Government Buildings,
Upper Merrion Street,
Dublin 2.
D02 R583.

Please include contact details in your response.

When responding, also please indicate whether you are contributing to the consultation process as a professional adviser, representative body, business representative or a member of the public.

The consultation period is now closed.

Freedom of Information

Responses to this consultation are subject to the provisions of the Freedom of Information Acts. Parties should also note that responses to the consultation may be shared with the Central Bank of Ireland and other relevant public bodies and may be published on the website of the Department of Finance. Parties should clearly indicate where their responses contain personal information, commercially sensitive information or confidential information which they would not wish to be released under FOI or published.

After the Consultation

The submissions received in response to this consultation will be taken into consideration when taking decision on the national discretions contained within the Credit Servicers Directive and when transposing the provisions of that Directive into Irish law.

However, it should be noted that the transposition process and the available national discretions as set out in this public consultation paper, together with the decisions which may be made in respect of those discretions, will be subject to legal and other relevant considerations as part of the transposition process.

Ten submissions were received in response to the public consultation and they are published on the Department of Finance website in association with this document.

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Credit Servicers Directive

Directive (EU) 2021/2167 of the European Parliament and of the Council on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU (either the 'Credit Servicers Directive' or 'the Directive') was published on 8 December 2021 and EU Member States are required to adopt and publish the national measures to transpose the provisions of the Directive by 29 December 2023. A copy of the Directive is available from the EU Official Journal at <https://eur-lex.europa.eu/eli/dir/2021/2167/oj>.

The main purpose of the Directive is to foster the development of a secondary market for non-performing loans and it lays down a common framework for the transfer and management of bank originated non-performing loans which are transferred or sold after 29 December 2023 while at the same time safeguarding borrowers' rights. It provides for a Union-wide regulatory arrangement for both the purchasers and servicers of such credit agreements and in particular it provides that a new authorisation framework for 'credit servicers' to be overseen by national competent authorities (which in the case of Ireland will be the Central Bank) and such authorised entities will have the right to passport credit servicing activities across the EU based on a home Member State authorisation.

This EU framework, however, will not apply to the sale of performing loans originated by credit institutions, or to the sale of non-performing loans originated by credit institutions which take place before 30 December 2023, or after that date the sale of a non performing loan by an EU credit institution to another EU credit institution, or the sale of a performing or non-performing loans originated by non-credit institutions. Therefore, it is proposed to retain the existing national credit servicing regulatory framework, as provided for in the Consumer Protection (Regulation of Retail Credit Firms) Acts 2015 and 2018 and the Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Act 2022, in respect of the servicing of those activities and agreements that fall outside the scope of this Directive. However, for the servicing of these agreements which fall inside the scope of the Directive, the provisions of the Directive as transposed will have to apply and it is proposed to transpose the necessary provisions as set out in the Directive by way of regulations made under section 3 of the European Communities Act 1972.

In addition to the activities of 'credit servicers', the Directive also places certain obligations on credit institutions, credit purchasers, 'credit service providers' and 'appointed representatives'. However, apart from credit institutions (which have their own separate authorisation and regulatory framework in EU law), an authorisation requirement is not provided for in respect of credit purchasers and the other entities insofar as they are dealing with the type of agreement which falls within the scope of the Directive.

In addition to the provisions relating to the sale and servicing of bank originated non-performing loans, the Directive also makes certain amendments to the Consumer Credit Directive (2008) and the Mortgage Credit Directive (2014) which will, inter alia, impose obligations on creditors to have adequate policies and procedures so that they adopt reasonable forbearance procedures before initiating default enforcement proceedings.

The main provisions of the Credit Servicers Directive are:-

Title I comprises of the subject matter of the Directive, its scope and definitions.

Article 1 sets out the subject matter of the Directive.

Article 2 sets out the scope of the directive and the entities, activities and agreements which fall inside and outside the scope of the Directive.

Article 3 sets out definitions for the purposes of the Directive, including that of 'credit servicer', 'credit servicing activities', 'credit purchaser, and 'non-performing credit agreement'.

Title II establishes a framework for the regulation of credit servicers.

Article 4 sets the general requirement that credit servicers will have to obtain an authorisation in their home Member State.

Article 5 sets out the detailed requirements necessary for granting such an authorisation.

Article 6 provides that Member States shall determine whether or not credit servicers shall be allowed to receive and hold funds from borrowers.

Article 7 sets out the procedure and information which will have to be submitted with an application for authorisation.

Article 8 documents the circumstances where a credit servicers authorisation may be revoked.

Article 9 introduces an obligation for the set-up of a public register of authorised credit servicers in each Member State.

Article 10 sets out certain conduct of business requirements for credit purchasers and credit servicers and certain information which is to be provided to a borrower.

Article 11 contains a requirement that the relationship between a credit servicer and a credit purchaser is based on a written agreement which, among other issues, is to include a clause requiring the fair and diligent treatment of borrowers.

Article 12 provides for rules concerning the outsourcing of activities by credit servicers by ensuring that they remain fully responsible for all obligations under the national provisions transposing this Directive.

Article 13 provides that authorised credit servicers will have the freedom to provide services in other Member States.

Article 14 provides for specific rules on how such cross-border credit servicers shall be supervised by sharing the burden of supervision between home and host Member State competent authorities.

Title III covers credit purchasers.

Article 15 provides that credit institutions shall provide a prospective credit purchaser with necessary information regarding a creditor's rights under a non-performing credit agreement.

Article 16 mandates the development by the European Banking Authority of technical standards for data templates for the purposes of the provision of the information required by Article 15.

Article 17 imposes an obligation on credit purchasers to appoint a credit servicer (or alternatively a credit institution or an entity otherwise authorised to provide credit) to perform credit servicing activities in respect of agreements concluded with certain types of debtor. It also provides that Member States shall ensure that a credit purchaser is not subject to any additional requirements for the purchase of a creditor's rights under a non-performing credit agreement, other than as provided for by the national provisions transposing this Directive, or by provisions of applicable consumer protection law, contract law, civil law or criminal law.

Article 18 provides that, where a credit purchaser appoints a credit servicer or other authorised entity, it shall inform the relevant competent national authority.

Article 19 provides that where a credit purchaser is not domiciled in the Union it shall designate in writing a representative which is domiciled in the Union.

Article 20 introduces information obligations of a credit purchaser in case the purchaser transfers the credit agreement.

Title IV covers the supervision by competent authorities.

Article 21 sets obligations of on-going compliance with the national provisions transposing this Directive and the designation of competent authorities responsible for carrying out the functions and duties set by the national provisions implementing the Directive. It is proposed to designate the Central Bank as the competent authority in Ireland for this Directive.

Article 22 details the supervisory powers of the competent authorities.

Article 23 provides for the rules on administrative penalties and remedial measures.

Title V provides for safeguards and a duty to cooperate.

Article 24 provides that credit servicers shall establish and maintain a complaints framework.

Article 25 provides that the processing of data for the purposes of this Directive shall be carried out in accordance with Regulations (EU) 2016/679 and (EU) 2018/1725.

Article 26 provides that national competent authorities shall as necessary cooperate for the purposes of carrying out their functions and duties under this Directive.

Title VI provides for amendments to other Directives.

Article 27 makes certain amendments to the Consumer Credit Directive (2008).

Article 28 makes certain amendments to the Mortgage Credit Directive (2014).

Title VII contains the Directive's final provisions.

Article 29 provides that a committee shall assist the EU Commission.

Article 30 provides that, by 2026, the EU Commission shall carry out an evaluation of the Credit Servicers Directive.

Article 31 provides that, by 2023, the EU Commission shall submit a report on certain specified matters.

Article 32 provides for transposition deadlines and in particular indicates that Member States shall adopt and publish, by 29 December 2023, the laws, regulations and administrative provisions necessary to comply with this Directive.

Article 33 indicates when the Directive entered into force (which was 28 December 2021).

Discretions provided for in the Directive and associated Consultation Questions

As indicated, there is an obligation to transpose the minimum requirements of the Credit Servicers Directive into Irish law. However, within the Directive a limited number of discretionary options have been identified for consideration by Member States on certain issues in relation to the Directive. These are set out below and, if you have any views on whether or not such a discretion should be exercised in the context of the transposition of the Directive, you are welcome to submit them. The reasons for your particular views (and any relevant background material to support your position) will also be welcome.

Discretion in Article 2(6)

Article 2 sets out the scope of the Directive and sets out the entities, activities and agreements which fall within and outside its scope. Paragraph 6 of this Article, however, provides that Member States may exempt the servicing of agreements by public notaries and bailiffs (as defined by national law) or lawyers (as defined in Article 1(2), point (a), of Directive 98/5/EC of the European Parliament and of the Council) when conducting credit servicing activities as part of their profession from the application of the Directive.

- **Question 1:** Do you think that Ireland should exclude public notaries, bailiffs and lawyers from the application of the Directive as transposed into Irish law?

Decision: Do not to exercise this discretion.

Under the domestic regulatory framework for credit servicing firms, these entities are not exempted from the requirement to be authorised if they perform credit servicing activities.

A similar position will be taken in the transposition of the Directive.

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Discretion in Article 6(1)

Article 6 provides that Member States shall determine whether credit servicers shall be allowed to receive and hold funds from borrowers in order to transfer those funds to credit purchasers or should be prohibited from receiving and holding funds from borrowers. If it is decided to allow credit servicers to receive and hold funds from borrowers, the provisions as set out in Article 6(2) will have to be applied. It should also be noted that, pursuant to Article 13 (and having regard to Recital 34), where a credit servicer is allowed to receive and hold funds from borrowers in its home Member State, when it is operating in a host Member State it will be subject to the restrictions and requirements of the host Member State in accordance with the Directive including any prohibition on receiving and holding from borrowers which may apply in the host Member State.

- **Question 2:** Do you think that credit servicers authorised in Ireland under this Directive should be allowed to receive and hold funds from borrowers, or should be prevented from doing so?

Decision: Exercise this discretion.

The management of payments by borrowers and the holding of funds on behalf of credit purchasers is considered to be an important function of credit servicers.

It has been decided to exercise this discretion and to provide for the measures required of credit servicers in Article 6(2) in the transposition of the Directive.

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Discretion in Article 11(4)

Article 11 provides that the relationship between a credit servicer and a credit purchaser shall be based on a contractual agreement. Paragraph 4 of this Article provides that credit servicers shall maintain specified records (such as relevant instructions received from the credit purchaser) for a period of at least five years from the date on which the credit servicing agreement between the credit purchaser and the credit servicer is terminated. However, the Directive also provides that, subject to a maximum limitation period of ten years, Member States may require credit servicers to keep and maintain such records for a period of more than five years.

- **Question 3:** Do you think that Ireland should require credit servicers to keep and maintain relevant records for a period of more than five years after the termination of a credit servicing agreement with a credit purchaser?

Decision: Exercise this discretion.

This discretion will be exercised.

In line with the record retention period as provided for in the Consumer Protection Code, a record retention period of six years will be provided for in the transposition of the Directive.

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Discretion in Article 17(1)

Article 17 places an obligation on credit purchasers to appoint a credit servicer (or alternatively a credit institution or an entity otherwise authorised to provide credit) to perform credit servicing activities in respect of agreements concluded with certain types of debtor.

If the credit purchaser is domiciled in the Union (i.e. an EU-based credit purchaser) it has, pursuant to paragraph (a), to do so in respect of non-performing credit agreements which were concluded with consumers.

However, if the credit purchaser is not domiciled in the Union (i.e. a third country based credit purchaser) it has, pursuant to paragraph (b), to do so in respect of credit agreements concluded not only with consumers but also with natural persons more generally, including independent workers, and micro, small and medium-sized enterprises (SMEs).

However, Article 17(1) contains a discretion which would allow host Member States to require that EU based credit purchasers to appoint a credit servicer in relation to credit agreements other than those concluded with consumers. It should be noted that, to the extent that this particular discretion is exercised, it will move the authorization and supervision of the servicers of such agreements from the existing national authorisation and supervision framework in respect of credit servicing firms to the EU authorisation and supervision framework as provided for in this Directive.

- **Question 4:** Do you think that Ireland should exercise this discretion and provide that EU based credit purchasers should appoint credit servicers under this EU framework in respect of credit agreements other than non-performing agreements concluded with consumers?

Decision: Do not exercise this discretion.

It has been decided to maintain the existing domestic regulatory regime for credit servicers and credit purchasers (including the obligation on the holder of the legal title to the rights of the creditor to be authorised) for matters and agreements not expressly covered by the scope of the Directive.

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Discretion in Article 17(4)

The Directive generally provides that only a legal person may be authorised as a credit servicer. Nevertheless, Article 17(4) provides that Member States may allow credit purchasers to engage natural persons to service credit agreements that they have acquired. In such circumstances, however, such persons shall be subject to a national regulation and supervision regime and shall not benefit from the freedom provided for in the Directive to perform credit servicing activities in another Member State

- **Question 5:** Do you think Ireland should exercise this discretion to allow natural persons to service credit agreements which fall within the scope of this Directive?

Decision: Do not to exercise this discretion.

It has been decided to maintain the default Directive position that a credit servicer must be a legal person.

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Discretion in Article 17(5)

Article 17(3) provides that the Directive is without prejudice to national powers regarding credit registers, such as the central credit register, including the power to require information from credit purchasers regarding a creditor's rights under a credit agreement, or the credit agreement itself, and its performance.

Article 17(5), however, permits Member States to provide that the appointed credit servicer shall comply, on behalf of the credit purchaser, with the obligations imposed on the credit purchaser including in relation credit registers.

- **Question 6:** Do you think Ireland should allow a credit servicer to comply, on behalf of the credit purchaser, with the obligations of the credit purchaser including in relation to credit registers?

Decision: Do not exercise this discretion.

The Credit Reporting Act 2013 provides for the reporting obligations and duties of all credit information providers in relation to the Central Credit Register and it is considered that these are appropriate and effective and should continue to apply.

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Discretion in Article 27

Article 27 provides for certain amendments to the Consumer Credit Directive (2008), including the insertion of a new Article 16a in that Directive on '*Arrears and enforcement*'. This provides that, in respect of the credit agreements which fall within the scope of that Directive, creditors will be required to have adequate policies and procedures so that they can make efforts to exercise, where appropriate, reasonable forbearance before enforcement proceedings are initiated and which may consist of a number of listed possibilities.

The Directive, however, states that the list of potential forbearance measures is without prejudice to rules set out in national law and that it '*does not require Member States to provide for all those measures in their national law*'.

- **Question 7:** Do you think Ireland should exercise this discretion and not provide for all of the identified forbearance measures in the transposition of the new Article 16a of the Consumer Credit Directive?

Decision: Do not exercise this discretion.

All the forbearance options listed in new article 16a of the Consumer Credit Directive will be included in the statutory instrument transposing this Directive.

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That new Article 16a of the Consumer Credit Directive (2008) also provides that *'Member States may require that, where the creditor is permitted to define and impose charges on the consumer arising from the default, those charges are no greater than is necessary to compensate the creditor for costs it has incurred as a result of the default'* and that *'Member States may allow creditors to impose additional charges on the consumer in the event of default. In that case, Member States shall place a cap on those charges'*.

- **Question 8:** Do you think that Ireland should allow creditors to (i) define and impose charges on a consumer arising from default, (ii) if so, require that those charges shall be no greater than is necessary to compensate the creditor for costs it has incurred as a result of the default, (iii) allow creditors to impose additional charges on the consumer in the event of default and (iv) if the answer to (iii) is in the positive, what cap should be placed on those charges?

Decision: Exercise this discretion (in part).

In line with a similar provision contained in the European Union (Consumer Mortgage Credit Agreements) Regulations 2016, the new Article 16a of the Consumer Credit Directive will be transposed in a manner to provide that (i) a creditor can impose a charge on a consumer arising from a consumer's default but that any such charge, if imposed by a creditor, shall be no greater than is necessary to compensate the creditor for the cost it has incurred as a result of the default and (ii) a creditor shall not be allowed to impose 'additional' charges on a consumer in the event of default.

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Discretion in Article 28

Article 28 provides for certain amendments to the Mortgage Credit Directive (2014), including an amendment to Article 28 of that Directive on 'Arrears and foreclosure'. Essentially, the amendment involves the replacement of the existing first paragraph of that Article with provisions which will require creditors to have adequate policies and procedures so that they can make efforts to exercise, where appropriate, reasonable forbearance before enforcement proceedings are initiated and which may consist of a number of listed possibilities. This is identical to the provision which is being separately inserted into Consumer Credit Directive (2008) as referenced above.

However, like with the equivalent Consumer Credit Directive (2008) amendment, the Directive also states that, in respect of the Mortgage Credit Directive (2014), the potential forbearance measures is without prejudice to rules set out in national law and that it '*does not require Member States to provide for all those measures in their national law*'.

- **Question 9:** Similar to Question 7, do you think Ireland should exercise this discretion and not provide for all of the identified forbearance measures in the transposition of the amendment to Article 28 of the Mortgage Credit Directive?

Decision: Do not exercise this discretion.

Adopt the same position to the transposition of the amended Article 28 of the Mortgage Credit Directive as that set out in respect of the new Article 16a of the Consumer Credit Directive.

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Discretion in Article 32(2)

Article 32 provides for transposition and related matters and in particular provides for the commencement of the provisions of the Directive and it provides, inter alia, that entities already carrying out in accordance with national law credit servicing activities on 30 December 2023 shall be allowed to continue carrying out those credit servicing activities in their home Member State until 29 June 2024 or until the date on which they obtain an authorisation in accordance with this Directive, whichever is the earlier.

In addition, this Article also provides that Member States that already have in place regimes that are equivalent to, or stricter than, those established in this Directive for credit servicing activities may allow entities already carrying out credit servicing activities under those regimes on 30 December 2023 to be automatically recognised as authorised credit servicers by the national provisions transposing this Directive.

Ireland already has a national authorisation and supervisory regime in place in respect of credit servicing firms which it is considered is broadly equivalent to that set out in this Directive.

- **Question 10:** Do you think that Ireland's existing national authorisation and regulatory regime in respect of credit servicing firms (i) is equivalent to, or stricter than, those established in this Directive for credit servicing activities and (ii) if so, should such regulated entities be automatically recognised as authorised credit servicers?

Decision: Exercise this discretion.

This discretion will be exercised and entities carrying out credit servicing activities under the provisions of Part V of the Central Bank Act 1997 will be recognized as authorized credit servicers.

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