

# EU Directive on non-performing loans: Luxembourg Bill introduces a framework for their transfer and a new PFS category

## What's new?

The NPL Directive establishes a European framework for the transfer of a creditor's rights under an NPL or of the NPL itself (together, "**transfer of NPL**"). It allows credit institutions to offload NPLs that weigh on their balance sheet, thereby increasing overall financial stability and fostering new lending activity.

The first part of the Bill faithfully transposes the NPL Directive.

*Ratione materiae*, the Bill only covers NPLs (that are credit agreements classified as non-performing exposures in accordance with the Capital Requirements Regulation ("**CRR**"), originally entered into by a credit institution). Performing loan agreements are consequently out of scope.

*Ratione personae*, the Bill addresses the relationships between (i) credit servicers (*gestionnaires de crédit*), a new category of PFS and defined as any legal person that, on a professional basis, manages and enforces the rights and obligations related to NPLs on behalf of credit purchasers; (ii) credit purchasers (*acheteurs de crédits*) (defined as any natural or legal person, other than a credit institution, that purchases NPLs), and (iii) credit service providers (*prestataires de services de gestion de crédit*) (defined as third parties to which credit servicers resort for the performance of certain credit servicing activities).

Credit institutions, fund managers and certain lenders (within the meaning of the Consumer Code) are out of scope when managing NPLs (meaning that they are not subject to additional licensing requirements), while remaining subject to some obligations, such as informing the borrower of a transfer of an NPL or of the identity of the credit purchaser.

The second part of the Bill foresees amendments to existing laws, including the Consumer Code and the Law of 5 April 1993 on the financial sector, as amended ("**LFS**"), the latter notably regarding the creation of that new PFS category, which will be supervised by the CSSF.

## What are the main features of the Bill?

**Pre-contractual information of credit purchasers** Credit institutions have to provide specific information to credit purchasers before entering into NPL purchase agreements.

**Appointment of a credit servicer** A credit purchaser has to appoint an entity to carry out credit servicing activities in relation to an NPL entered into with consumers (unless the credit purchaser is authorised to manage the NPL itself). This entity would have to be (i) a credit servicer, (ii) a credit institution, or (iii) a regulated lender (any of them, an "**appointed entity**"). A credit servicing agreement containing specific information (like a detailed description of the credit servicing services, the remuneration of the credit servicer, etc.) is required.

**Third-country credit purchasers** Third-country credit purchasers have to comply with the same obligations as EU credit purchasers in relation to NPLs concluded with natural persons (including consumers) and micro, small and medium-sized enterprises. In addition, third-country credit purchasers have to appoint a representative established in the EU that will be responsible for ensuring compliance with all obligations applicable to credit purchasers.

**Outsourcing** Credit servicers have the right to outsource part of the credit servicing activities to credit service providers. Such outsourcing, which has to be based on a written outsourcing agreement, has to comply with certain legal requirements. Credit servicers remain fully responsible for complying with their obligations under the law.

**Information of the CSSF** The CSSF has to be informed of (i) the identity and address of the appointed entity or its representative, (ii) the decision of the credit servicer to outsource part of the credit servicing activities to a credit service provider as well as the content of the outsourcing agreement and (iii) all relevant information regarding the transfer of an NPL.

### **What will change?**

**Amendments will be made with regard to the Consumer code and the LFS.** Firstly, new obligations for lenders will be codified in the Consumer Code regarding information to communicate to the consumer ensuring that the consumer is fully aware of the changes made to his/her contract and his/her right to file a complaint.

Secondly, a new PFS category, 'credit servicer', will be introduced in the LFS. The regulatory regime of a credit servicer will be similar to the one applicable to existing PFS categories in terms of prior CSSF authorisation, compliance with, *inter alia*, capital, shareholding and governance requirements, and EU passporting.

A credit servicer can opt for the holding of borrower funds, in which case additional obligations will apply, such as the segregation of funds.

The CSSF, designated as the competent supervisory authority in Luxembourg, will be able to investigate and sanction credit servicers in case of violation of the LFS or of the provisions of the Bill, notably by prohibiting any credit servicing activities. Administrative fines of up to EUR 5,000,000 or 10% of the annual turnover for legal persons can be imposed.

### **What's next?**

The Bill will now go through the customary legislative process and should, in accordance with the NPL Directive, enter into force on 30 December 2023.

Entities that are already performing debt recovery activities pursuant to Article 28-3 of the LFS are allowed to continue to do so until they are authorised as credit servicers by the CSSF, at the latest on 29 June 2024.

*The regulatory team at Elvinger Hoss Prussen would be happy to assist you in assessing the potential impact of the Bill on your entity*

For any further information please contact us or visit our website at [www.elvingerhoss.lu](http://www.elvingerhoss.lu).

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