

Irish Credit Servicing – Transposition of the EU Credit Servicing Directive

What You Need to Know

- a) The [European Union \(Credit Servicers and Credit Purchasers\) Regulations 2023](#) ("Regulations") transpose the Credit Servicers and Credit Purchasers Directive ([EU 2021/2167](#) ("Directive")) into Irish law with effect from 30 December 2023.
- b) As detailed in our [previous update](#), the Directive established a EU-wide framework for the transfer and management of non-performing loans ("NPLs") to facilitate the development of secondary markets for NPLs and enhance consumer protection.
- c) This update examines the implications for credit servicers and purchasers in Ireland and aims to give guidance on adapting to this new regulatory landscape.

Scope and Ireland's Existing Regime

The Regulations apply to credit servicers and credit purchasers involved in the transfer and management of creditor's rights under NPLs, or of the NPLs themselves, issued by credit institutions established in an EU Member State. Various exclusions apply, and the Regulations are also stated to be without prejudice to various existing frameworks - for example, existing EU and Irish consumer protection regimes. There are also several questions as regards to their scope which remain to be resolved in practice; most notably whether the Regulations apply only to in-scope NPLs which are first transferred after 30 December 2023 or

to any in-scope NPLs initially sold prior to that date and transferred again after it.

While the Regulations generally follow the provisions of the Directive, their introduction establishes two parallel regulatory regimes in Ireland as the existing Irish credit servicing regulatory framework regime will be retained¹ for NPLs outside the scope of the Directive ("Local Regime"). The existence of parallel regimes will require stakeholders to have a nuanced understanding of both EU-wide and Irish-specific obligations and their application to mixed portfolios of loans.

The primary distinction is that the Local Regime includes both the holding of legal title and the exercise of control or key decision making within the scope of regulated credit servicing activity, whereas credit servicing under the Regulations is limited to more day-to-day loan administration and borrower communication types of activities typical of the EU industry to date.

Helpfully, Ireland has decided existing authorised credit servicing firms will be deemed authorised under the Regulations which should minimise disruption on both the market and borrower side. It is hoped, for example, that this might allow credit servicing firms to continue to hold legal title for loans in scope of the new regime on behalf of credit purchasers (where preferred from a stakeholder perspective).

¹ As set out in the Consumer Protection (Regulation of Credit Servicing Firms) Acts 2015 and 2018 and the Consumer

Protection (Regulation of Retail Credit and Credit Servicing Firms) Act 2022.

Key Terms

Authorisation Requirements and Passporting

The Directive provides for the introduction of a new authorisation framework for credit servicers, overseen by a national competent authority. As expected, the Central Bank of Ireland ("Central Bank") is designated as the Irish national competent authority. The authorisation process involves comprehensive assessments of financial stability, business conduct, and consumer protection law adherence.

Given the dual regimes in Ireland, new firms seeking to enter the Irish credit servicing market will need to consider applying for both licences should they want to be competitive in the Irish market which may be seen as burdensome leading to less choice in the marketplace.

Under the Regulations existing Irish-authorized credit servicing firms are automatically recognised as licenced under the Directive. This means those firms could, in theory, immediately access the new credit servicing passport to enter other EU markets. While the credit servicing market is naturally fragmented as it often requires local expertise (such as language skills), it may make sense for larger independent and captive credit servicers in Ireland to take advantage of the passport regime to consolidate their corporate structures and operations in Ireland.

Credit Servicers' Ability to Hold Funds

Ireland has permitted credit servicers to receive and hold funds from borrowers so that they can transfer those funds to credit purchasers. This is a welcome development, given it both reflects existing practice in Ireland and enhances Ireland's potential to become the EU hub for credit servicing. The Regulations also provide helpful supplemental provisions. For example, requiring credit servicers to operate segregated bank accounts and providing that the funds in

such accounts are not available to other creditors if a credit servicer becomes insolvent.

Codified Obligations and Terms Required in the Credit Servicing Contract

The Regulations impose statutory obligations on both credit servicers and purchasers in the conduct of their relationships with their borrowers, for example, to act in good faith, fairly and professionally. These largely mirror existing obligations of credit servicing firms, but nonetheless represent an increased burden for credit purchasers and will lead to renewed focus on credit servicing agreement terms, as well as becoming a point of diligence on future portfolio transfers.

The Regulations also mandate the inclusion of certain specified terms in credit servicing agreements with respect to the borrower. Many of these requirements are reflected in current servicing agreements or could be considered satisfied by existing standard terms.

Credit Purchasers' Requirements

The primary obligation of a credit purchaser is to appoint a credit servicer. The Directive gave Member States certain discretion over which asset classes are in scope of this obligation. The Regulations state that where the credit purchaser's home state is Ireland this provision will only apply to consumer loans. If the credit purchaser's home state is not in the EU, an Irish representative of the purchaser must be appointed. In this instance, the obligation to appoint a credit servicer applies also to any in-scope NPLs concluded with any natural persons or SMEs.

In an Irish context, this distinction is unlikely to apply in practice as the credit purchaser used to acquire Irish loans is nearly always incorporated in Ireland. As such, the requirement to appoint a credit servicer will likely only apply to EU bank-originated consumer loans in practice, and for all other NPLs the question will be whether the Local

Regime instead applies to them. If so (for example, for EU bank-originated Irish SME NPLs), the question may become which regime to opt into, which may in turn be impacted by questions such as where it is preferable for the legal title to such loans to be held.

Transparency Requirements – Primary vs Secondary Sales

The Regulations transpose the Directive's transparency requirements which mandate disclosure by EU credit institutions of standardised loan-level information (for example, as provided for in the EU-level templates) for primary sales. In addition, credit purchasers (or their representatives) who have subsequently sold on any loans are required to report certain information to the Central Bank (at least biannually). For example, the details of the new credit owner and the number of loans transferred.

Such provisions will apply to any interim holder of a portfolio, such as an initial acquisition SPV used to acquire a portfolio before its subsequent securitisation. Given the Regulations assume that the credit servicer will not hold the legal title to the loan, the market will need to adopt an agreed position on how to interpret the Regulations for a given portfolio should the Irish credit servicer continue to act as the legal title holder going forward.

Looking Forward

With the Directive now implemented, Ireland can aim to become a preferred country of establishment for credit servicing. Given Ireland's well-understood advantages in attracting foreign direct investment, ability to leverage its natural talent and developed financial sector we expect that it will prove an attractive destination for credit servicers looking to expand their operations into the EU market.

From our initial discussions with both credit purchasers and servicers, the Regulations are likely to be well received by NPL market

participants. The decision to grandfather credit servicing firms and permit them to receive and hold funds on behalf of credit purchasers has been welcomed and will contribute towards achieving the Directive's aim of reducing obstacles to purchasing, selling, and servicing cross-border credit in the EU. However, some queries have been raised on the decision to maintain two parallel, yet different, credit servicing regimes. This will require NPL market participants to consider how they intend to structure transactions to comply with the respective requirements of each regime.

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