
Draft bill on credit servicers and credit purchasers

Publication of the Draft Bill implementing the Directive on credit servicers and credit purchasers

Spain - Legal flash

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Key aspects

- The **Bank of Spain** is designated as supervisor of the obligations resulting from this regulation, in cooperation with other EU competent authorities.
- The Draft Bill covers **non-performing credit rights and agreements**, while **excluding those that are performing**.
- The new regulation will also apply to loans **originated by financial credit establishments**.
- The Draft Bill applies to credit institutions and financial credit establishments **selling** credit agreements or performing **credit servicing activities**.



BACKGROUND

Last Tuesday, May 14, 2024, the Council of Ministers approved the draft bill on credit servicers and credit purchasers (the “**Draft Bill**”), to implement Directive (EU) 2021/2167 of the European Parliament and of the Council of November 24, 2021, on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU (the “**NPL Directive**”).

Ultimately, this bill (like the NPL Directive) seeks to ensure appropriate and harmonized **credit risk management standards** within the EU’s **non-performing loans** strategy. For this purpose, it develops secondary markets for **NPLs**.

Among other measures, the Draft Bill subjects credit servicing activities carried out by credit servicers (also known in the markets for NPLs as “servicers”) to **authorization, registration and supervision** by the Spanish Central Bank (Bank of Spain).

The Draft Bill is at the preliminary stage of **public hearing** within the Ministry of Economy, Trade and Business, open for submissions until May 31. It is being processed under the **urgency procedure**, which shortens the deadlines. Considering that it still has to go through all the stages of the parliamentary process, it is likely to be approved towards the **end of 2024**.

Below we explain the most relevant aspects of the Draft Bill, which will also amend two legislative instruments: Act 16/2011, of June 24, on consumer credit contracts (the “**CCCA**”) and Act 5/2019, of March 15, on real estate credit contracts (the “**RECCA**”).

The Draft Bill will enter into force **20 days after its publication** in the Official Gazette of the Spanish State. However, it provides for a complex transitional regime affecting various provisions, as explained below.

Furthermore, numerous provisions of the Draft Bill will require **implementing regulations**.

NON-PERFORMING LOANS

- Both the Draft Bill and the NPL Directive distinguish between the **transfer of credit rights under credit agreements** and the **transfer of credit agreements themselves**.

The Draft Bill establishes a legal regime **applicable to both transactions**.

- In the implementation of the NPL Directive, the Spanish legislature limits the scope



of the Draft Bill to **non-performing** credit rights and credit agreements, while **excluding those that are performing**.

According to the Draft Bill, where non-performing credit rights or credit agreements **become performing**, credit servicers may continue carrying out their activities on identical terms.

- > The Draft Bill clarifies that **non-performing credit rights and credit agreements are those that meet the definition of non-performing exposure of 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.**

According to that provision, **non-performing exposures** include those where the obligor is more than **90 days** past due on any credit obligation. Competent authorities may replace the 90 days with 180 days for exposures **secured by residential property**.

Below we refer to non-performing credit rights and agreements jointly and indistinctly as “**NPLs**.”

- > The Draft Bill does not affect the credit rights **transfer or assignment regime** set out under the Spanish Civil Code and the Spanish Commercial Code, nor does it affect general consumer and borrower protection under EU and national rules.

AFFECTED SUBJECTS AND BODIES

- > The Draft Bill distinguishes between **credit servicing** and **credit purchasing**. It thus regulates each activity differently, with particular emphasis on **credit servicing**.
- > In the transposition of the NPL Directive, the Spanish legislature extends the new regime to NPLs **originated by financial credit establishments** (*establecimientos financieros de crédito*).

Therefore, the Draft Bill regulates aspects relating to the servicing of NPLs granted both by **credit institutions established in the EU** and by **financial credit establishments**.

It should be clarified that the Draft Bill affects credit institutions and financial credit establishments when they act as **credit sellers** or when they carry out **credit servicing activities**—which, however, are not subject to **authorization or registration**.



- The Draft Bill **excludes** credit servicing activities carried out by certain **types of companies** on behalf of the **funds** they **manage**, such as management companies of collective investment institutions (*sociedades gestoras de instituciones de inversión colectiva or SGIC*), among others.
- The Draft Bill also regulates NPLs granted to any **borrower**, including **individuals and legal entities**, and for purposes that are not related to their trade, business or profession. However, certain provisions refer only to **consumers**, defined as **natural persons** acting for purposes outside their trade, business or profession. These same provisions also refer to the self-employed, microenterprises and SMEs.
- The **Bank of Spain** is designated as supervisor of the obligations resulting from the Draft Bill, in cooperation with other EU competent authorities. It will be in charge of the authorization and registration of credit servicers, as explained below.
- The Bank of Spain will carry out its supervisory tasks in parallel with the **Spanish Data Protection Agency** in matters within its competence, although both will cooperate and coordinate with each other.

RELEVANT ASPECTS FOR CREDIT SERVICERS

Outsourcing

- Credit servicers may **outsource** part of their activities to **credit service providers**, although this will not exempt them from complying with their obligations.
- Outsourcing is subject to conditions and requirements to ensure the quality of the activity. Credit service providers **are not permitted to receive and hold funds** from borrowers.

Credit servicing authorization regime

- The Draft Bill subjects **credit servicing activities** to authorization, unless these activities are carried out by credit institutions and financial credit establishments.
- The Draft Bill allows authorized credit servicers to **receive and hold funds** from borrowers so as to transfer them to credit purchasers if so provided in their bylaws.
- Authorization is subject to having **internal procedures for recording and processing borrower complaints**.

As explained in our Legal Flash [Administrative Authority for the Protection of Financial Customers](#), this requirement is linked to a bill currently before the Spanish



Parliament. Assuming that this regulation will be enacted beforehand, the Draft Bill refers to it in relation to the **handling of borrower claims**. In the event that this does not occur, the Draft Bill provides that the **claims service of the Bank of Spain** will deal with claims and complaints.

- The Draft Bill develops the **freedom to provide credit servicing activities** in the EU by credit servicers authorized in a Member State in accordance with the NPL Directive and applicable national law.

Register of credit servicers

- Authorized credit servicers in Spain or in another Member State will be registered in a register maintained by the Bank of Spain and **publicly available** on its website.
- The register will include the identity of the members of the **entity's board** (or equivalent body) and **effective management**, as well as the **type of lenders** whose NPLs it services.
- The Bank of Spain will develop **standardized models** with the information to be included in this register, in accordance with the [EBA guidelines](#) published last March.

Resolution of claims and complaints

- Credit servicers must register, attend to and resolve complaints and claims from borrowers or guarantors. For this purpose, they must have a customer service department subject to operating rules that may be developed by regulation (unless already specifically regulated).
- Claims and complaints related to breaches of the Draft Bill may be brought before the aforementioned **Independent Administrative Authority for the Protection of Financial Customers**—the regulation of which is currently in process.

RELEVANT ASPECTS FOR PURCHASERS

General aspects

- Credit purchasers must continue to apply the **codes of good practice** to which the originating credit institution has adhered. Thus, sellers and purchasers must agree on **the least burdensome way to safeguard borrowers' rights** under these codes.
- The Draft Bill clarifies that the sale and purchase of NPLs does not affect the purchaser's or the originator's civil or criminal liability, nor the **priority of claims**



under insolvency law.

- Under the Draft Bill, **EU purchasers** must appoint a **credit servicer** (or a credit institution or a credit financial establishment) to carry out the NPL servicing activities where credit agreements have been entered into with individuals, consumers, self-employed persons, microenterprises and SMEs.

Non-EU purchasers must also appoint a **representative** established in **Spain** for communication purposes with the Bank of Spain. If the representative is not authorized to perform credit servicing activities, it must designate the entity that will carry them out.

- The Draft Bill determines the **minimum content** of the credit servicing agreement, including a debt renegotiation policy in accordance with the CCCA and the RECCA.
- On receiving the funds from a borrower, the credit purchaser or credit servicer must provide the borrower with an **acknowledgment letter** stating the amounts received.
- Also, the Draft Bill **amends the RECCA** so that credit purchasers will only be required to **register as lenders** if they actually carry out a real estate lending activity within its scope.

Notice of transfers

- The Draft Bill **requires purchasers** or, if applicable, the appointed credit servicer to notify any transfer to the borrowers (whether **individuals, legal persons** or consumers) before the first debt collection, but also whenever requested by the borrower.
- The Draft Bill determines the **minimum content** of the transfer notification, including, among other information, the date of the transfer, identification and contact details of the purchaser and of the credit servicer (with reference, if applicable, to the **registration certificate**), as well as information on the amounts due.
- This general notification of transfers of NPLs is without prejudice to that provided for in the Draft Bill within the scope of the **RECCA**, as explained below in connection with the amendments to that Act. This notification must be made **one month in advance**.
- The Draft Bill clarifies that these provisions on transfer notifications to borrowers are without prejudice to **additional requirements** under other applicable **transparency regulations**.



RELEVANT ASPECTS FOR SELLERS

- > The Draft Bill details the **information obligations** of NPLs sellers concerning their potential purchasers. They must submit this information in accordance with the **templates** provided for in the **technical standards** contained in **Commission Implementing Regulation (EU) 2023/2083 of 26 September 2023**.

According to its transitional regime, once the Draft Bill enters into force, this obligation will apply to transfers of **loans granted since July 1, 2018, that have become non-performing after December 28, 2021**.

Credit institutions and credit financial establishments must also use the templates mentioned above in the transfer of loans **granted between July 1, 2018, and October 19, 2023** (date of entry into force of the above Implementing Regulation), including the information already available to them.

- > Purchasers selling NPLs (acquired from their originators or from other purchasers in the **secondary market**) must report to the Bank of Spain on a biannual basis (or quarterly at the request of the Bank of Spain), indicating the main aspects of the relevant transactions.

The information to be provided must include the identity of the purchaser, the outstanding balance and number of NPLs sold, whether the debtors are individuals (including consumers), self-employed, microenterprises or SMEs, as well as the type of collateral and the relevant asset.

The Bank of Spain may prepare a **standard model** and specify the content of the information to be submitted in compliance with this obligation.

- > The **credit servicer** acting on behalf of the purchaser must fulfill the above information obligations regarding the relevant NPLs. If no entity has been appointed, the purchasers themselves will fulfill them.

AMENDMENTS TO THE CCCA

The Draft Bill introduces the following amendments to the **Consumer Credit Contracts Act (CCCA)**:

- > Precautionary measures in relation to the **unilateral modification** of the economic conditions of **indefinite or automatically extendable fixed-term loans**. These measures include reinforced information obligations in the credit agreement in the face of the unilateral modification—entitling the borrower to terminate the



agreement.

- Reinforced contractual information obligations regarding **financing linked to the sale of goods or services** in anticipation of early termination or repayment, and for the calculation of the **indemnity** to the supplier of those goods or services.
- Lenders' obligation to have a **debt renegotiation policy** according to certain content and other requirements, without prejudice to the provisions under codes of good practice.

In the case of **vulnerable borrowers** (as defined in the CCCA), this renegotiation policy must include a—duly substantiated—partial write-off option before the transfer of the loan, based on the estimated amount of the transfer. The Draft Bill further defines the situation of vulnerability for these purposes.

- **Late payment and acceleration fees**, reinforcing precontractual information and collection management. Also, the maximum late payment interest is set at the ordinary rate plus **3%**.
- Further requirements on the information to be provided to consumers in the event of **changes to credit agreements**, particularly with regard to consumer claim rights.
- These amendments to the CCCA would enter into force **two months** after the publication of the Draft Bill. In certain cases, they would apply to **contracts concluded before that date**.

AMENDMENTS TO THE RECCA

The Draft Bill also introduces the following amendments to the **Real Estate Credit Contracts Act (RECCA)** regarding real estate financing to consumers (individuals):

- Credit **purchasers** must only **register as lenders** if their activity actually consists in granting real estate loans within the scope of the RECCA.

Under its current wording, the RECCA considers **credit servicing** as real estate lenders' activity—which has led to the interpretation that credit purchasers must be registered. The Draft Bill clarifies this issue in the above sense.

- Creditors are subject to a **new obligation** to have a **debt renegotiation policy** according to certain content and other requirements, without prejudice to the provisions under codes of good practice. As with the CCCA, the Draft Bill also incorporates similar provisions into the RECCA for **vulnerable borrowers**.



- New regulation on the transfer of loans to adapt the RECCA to the CCCA and the other provisions of the Draft Bill.

Specifically, **assignees will be subject to the regulations on customer protection and transparency** under the RECCA and the codes of good practice to which the creditor has adhered. Thus, the assignee will have to determine the least burdensome way to safeguard borrowers' rights.

- **Lenders** are required to inform the borrowers of the transfer **one month** in advance unless the original lender continues servicing the loan with regard to the consumer. The notification will include the details of the new creditor, as well as the consumer's rights—which are the same as with respect to the original lender.
- As in the case of the CCCA, the Draft Bill introduces further requirements on the information to be provided to consumers in the event of **changes to loan agreements**, particularly about consumer claim rights.
- The Draft Bill changes the wording of certain provisions relating to the authorization and registration of real estate credit intermediaries and lenders.

These amendments to the RECCA would enter into force **two months** after the publication of the Draft Bill. In certain cases, they would apply to **contracts concluded before that date**.

For additional information, please contact our [*Knowledge and Innovation Group*](#) lawyers or your regular contact person at Cuatrecasas.

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