

Austrian implementation of the EU directive on addressing non-performing loans

Directive (EU) 2021/2167 on credit servicers and credit purchasers ("Loan Servicer Directive")

19 February 2025

Developing a liquid secondary market for non-performing loans ("NPLs")

With its Loan Servicer Directive, the European Union aims to reduce the current stock of NPLs by removing hindrances to the transfer of NPLs and ensuring a harmonised regulatory framework, while also safeguarding the legitimate interests of borrowers.

Macroprudential background and rationales

Excessive holdings of NPLs on the balance sheet of credit institutions add to systemic risk. Those holdings have accumulated over the past few years, with the COVID-19 pandemic accelerating the process and leading to a high ratio of NPLs across the EU. To address this issue, the EU prioritised developing a deep and liquid market for distressed assets to enable credit institutions to sell their NPLs, thereby reducing their balance sheet risk.¹ Hence, the envisaged risk dispersion in the private sector should strengthen the resilience of credit institutions and free up resources currently bound by NPLs.

Austrian draft legislation

Whilst the Loan Servicer Directive should have been transposed into national law by 29 December 2023, the Austrian legislator published its [legislative proposal](#) at the beginning of February. According to the draft legislation, the Loan Servicer Directive shall be implemented in a new act on credit purchasers and credit servicers (*Kreditdienstleister- und Kreditkäufergesetz – "KKG"*) and by amending the banking act (*Bankwesengesetz – BWG*), the act on the financial markets authority (*Finanzmarktaufsichtsbehördengesetz – FMABG*) as well as the act on consumer credit (*Verbraucher kreditgesetz – VKrG*), including the act relating to immovable property (*Hypothekar- und Immobilienkreditgesetz – HIKrG*).

The legislative draft is under review until 21 February 2025.

¹ Council's conclusions of 11 July 2017 on "Action Plan to Tackle Non-Performing Loans in Europe" and the Commission's communication of 16 December 2020 on "Tackling Non-performing Loans in the Aftermath of the COVID-19 Pandemic".

Scope

The KKG only applies to the purchase and servicing of **non-performing credit agreements** (i.e. NPLs) **originated by credit institutions in the EU**. Non-performing credit agreements are defined by reference to non-performing exposures under the Capital Requirements Regulation² and the following indicators, amongst others, will cause a credit agreement to be classified as "non-performing":

- There has been a **default**.
- The exposure is considered **impaired under the applicable accounting framework**.
- The exposure remains **due for more than 30 days**.
- The exposure would **likely not be paid back** without the realisation of collateral.

The KKG introduces **two new types of regulated entities**:

A **credit purchaser** (*Kreditkäufer*) is any natural or legal person that either purchases a creditor's rights under an NPL or the NPL itself in the course of its business.

A **credit servicer** (*Kreditdienstleister*) is a legal person that manages and enforces the creditor's rights and obligations under NPLs on behalf of a credit purchaser in the course of its business and carries out at least one **credit servicing activity** from among the following:

- (a) Collecting or recovering from the borrower any payments due related to an NPL.
- (b) Renegotiating with the borrower any terms and conditions related to an NPL.
- (c) Administering any complaints relating to an NPL.
- (d) Informing the borrower of any changes in interest rates or charges or of any payments due related to an NPL.

The following entities and/or activities are **exempt**:

- Credit Institutions.
- AIFMs and other specified regulated entities (even when performing credit servicing activities).
- Credit servicing activities in relation to an NPL, which has not been granted by an EU credit institution.
- The purchase of an NPL by an EU credit institution.
- Any transfer before the KKG comes into force.

² Article 47a 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 amending Regulation (EU) No 648/2012.

Overview

The below table illustrates the licensing and conduct requirements applicable to credit purchasers and credit servicers, as well as any indirect ramifications for credit institutions.

	Credit Purchasers	Credit Servicers	Credit Institutions
Authorisation	No authorisation required.	Authorisation with the Austrian Financial Markets Authority (subsequent "passporting" possible). <ul style="list-style-type: none"> Fit and proper. Good governance. 	No additional authorisation required.
Transfer	Safeguarding confidentiality interests.	N/A	Providing prospective credit purchasers with information sufficient for conducting a credit assessment.
Ongoing	Appointing a credit servicer by concluding a credit servicing agreement (mandatory content specified) for NPLs with consumers or if the credit purchaser is not domiciled in the EU. To be notified to the FMA.	Ensuring that the credit servicing activities are conducted in compliance with all legal requirements: <ul style="list-style-type: none"> Limitations to outsourcing. Credit servicers may not receive nor hold any funds from debtors. 	Reporting as regards the identity of the credit purchasers and specificities of the NPLs transferred.
Conduct	Acting in good faith ; providing true and clear information; protecting personal information; communicating in a way that does not constitute harassment, coercion or undue influence. Information obligations (upon transfer, debt collection or whenever requested) as regards the new creditor, the credit agreement and further details that are relevant for the borrower.		N/A

What is not regulated?

It is important to note that the KKG does not address some of the most important structuring considerations when transferring Austrian NPLs or NPLs by an Austrian credit institution, these include:

- The KKG does not address **Austrian banking secrecy** rules, meaning they will remain in full force and must be adhered to when transferring NPLs to credit purchasers and sharing information with credit servicers (any transfer in violation of Austrian banking secrecy may be declared null and void).
- Austrian date protection** rules, which must also be complied with.
- The KKG does not affect **Austrian civil law**, especially the provisions regarding the assignment of claims and mandatory consumer protection laws.
- Austrian stamp duty** potentially incurred when assigning NPL claims.

About Wolf Theiss

Wolf Theiss is one of the leading European law firms in Central, Eastern and South-Eastern Europe with a focus on international business law. With more than 360 lawyers in 13 countries, over 80% of the firm's work involves cross-border representation of international clients. Combining expertise in law and business, Wolf Theiss develops innovative solutions that integrate legal, financial and business know-how.

In respect of the KKG, we are happy to advise:

- Credit servicers in obtaining their authorization and complying with their ongoing obligations;
- Credit purchasers in complying with their ongoing obligations and in structuring the acquisition of NPLs; and
- Credit institutions in ensuring compliance with the KKG and structuring the sale of NPLs.

For more information, please contact:



Zeno Grabmayr
Partner

E zeno.grabmayr@wolftheiss.com
T +43 1 51510 1208



Chiara Schurich
Associate

E chiara.schurich@wolftheiss.com
T +43 1 51510 1087