

CMS | Romania adopts new rules for authorisation of credit servicers with implementation of Directive (EU) 2021/ 2167 on credit servicers and credit purchasers



On 7 March 2024, Romania published Emergency Government Ordinance no. 15/2024 on credit servicers and credit purchasers (also known as the NPL Ordinance) in the Official Gazette, which implemented Directive (EU) 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU.

The NPL Ordinance will enter into force in Romania on 17 March.

The NPL Ordinance establishes and aligns with the EU framework on the applicable regime for ‘credit servicers’, acting on behalf of a credit purchaser, servicing the creditor’s rights under a non-performing agreement or the non-performing credit agreement, originated by a credit institution established in the EU; and for ‘credit purchasers’ acquiring creditor’s rights under a non-performing agreement or the non-performing credit agreement, originated by a credit institution established in the EU.

The NPL Ordinance also establishes applicable requirements in connection with servicing agreements, outsourcing, information undertakings for credit institutions in case of a potential assignment, and reporting obligations for credit institutions in case of assignment of non-performing loans.

In cases where a credit servicer is a legal entity with its headquarters in Romania, the servicer is required to obtain authorisation in Romania before carrying out credit-servicing activities. The competent authority to grant such authorisation in Romania is the National Authority for Consumer Protection (ANPC). The main requirements for authorisation include:

- the management body and the persons owning a qualifying holding must have a good reputation;
- the management board must have adequate knowledge and experience;
- the applicant must have appropriate governance arrangements, internal policies and procedures (e.g. to ensure protection and fair and diligent treatment of borrowers) for recording and handling complaints by borrowers, and regarding anti-money laundering and counter-terrorist financing. These arrangements, policies and procedures must be confirmed by the National Bank of Romania;
- the applicant must comply with any reporting requirements and public disclosures.

Importantly, the NPL Ordinance does not allow credit servicers to receive and hold funds from borrowers.

The authorisation procedure and related fees will be detailed in an ANPC order to be published 90 days after the NPL Ordinance entered into force. However, Romanian entities carrying out credit servicing activities in

accordance with the national legislation can continue carrying out these activities until 29 June 2024 or the date they obtained an authorisation via the NPL Ordinance (or whichever comes first).

Although, the Directive does not impose any authorisation requirements on credit purchasers, the NPL Ordinance does not formally repeal existing legislation that requires an entity (not authorised as a credit institution or a non-banking financial institution) to be authorised as a debt-collection entity to acquire receivables from non-performing loans.

It is still unclear how the regime under the NPL Ordinance will be reconciled with Romania's existing legislation for debt collection entities, especially vis-à-vis the Directive's preamble, which argues the Directive was conceived because "credit purchasers and credit servicers cannot reap the benefits of the internal market due to barriers erected by divergent national regimes in the absence of a dedicated and coherent regulatory and supervisory regime".

For more information on the NPL Ordinance and Romanian legislation on debt collection entities, contact your CMS client partner or these CMS experts: **Cristina Reichmann** and **Diana Dona**.