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Regulatory changes for credit servicers and credit purchasers

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 6 MINUTES

To some extent, banks always struggle with non-performing credit agreements on their balance sheets. In short, non-performing credit agreements (or non-performing loans, or NPLs) are credit agreements that classify as a “non-performing exposure” such as default. NPLs decrease a bank's profitability and reduce its ability to extend credit.

This is why banks are eager to sell NPL portfolios. Dutch regulatory law is geared to this through article 3 of the Exemption Regulation to the Dutch Financial Supervision Act. This article stipulates that the purchaser of credit claims (often a special purpose vehicle, or SPV, by a commercial party) does not require a license as a credit provider, provided that the management and execution of those agreements is done by a credit manager (*kredietbeheerder*).

That credit manager will generally be the bank itself, or a servicer with an intermediary license issued by the AFM. A credit manager of mortgage credit agreements has also finally been exempt from the ban on commissions since 2020, allowing the credit manager to receive compensation for managing and executing the credit agreements without having to apply for an exemption.

This national framework is about to change with the implementation of Directive (EU) 2021/2176. This directive introduces a single European framework for the secondary market of non-performing credit agreements. On June 12, 2023, the Dutch government published the consultation [proposal](#) for the Directive's implementation law. It is envisioned that the implementation law enters into force by December 30, 2023. Below are the main changes and our observations on them.

Licensing requirement for credit servicers

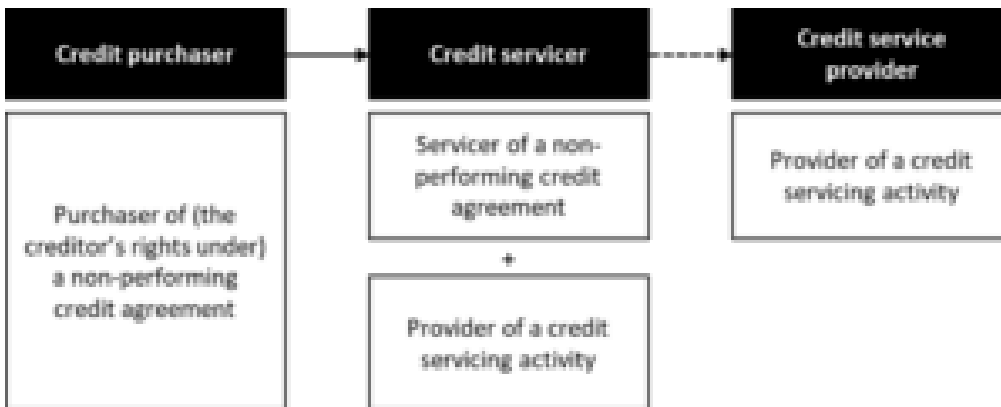
One of the main takeaways from the consultation proposal is that a licensing requirement is introduced for parties servicing non-performing credit agreements (credit servicers). This relates to NPLs that were economically or legally transferred on or after December 30, 2023. This is familiar for the Dutch market, as these parties are currently already subject to licensing requirements as credit intermediaries for their role as credit manager. A few specific new rules of conduct will be added, such as the obligation to maintain a separate bank account for collected credit amounts.

It is also notable that credit servicers who will provide collection services will be exempt from the forthcoming Dutch Collection Services Quality Act (*Wet kwaliteit incassodienstverlening*, or Wki) [<https://finnius.com/de-wet-kwaliteit-incassodienstverlening>]. There is no such exception (yet?) for ‘ordinary’ credit intermediaries.

New definitions in the DFSA

Article 1:1 of the Dutch Financial Supervision Act (*Wet op het financieel toezicht*, or DFSA) defines the non-performing credit agreement (NPL)[\[1\]](#), as well as the terms credit buyer, credit servicer and credit service provider. This will take some getting used to for parties used to working with the definitions credit provider and credit intermediary. Therefore, below we post a visualization of the

new terms with an explanation.



Below, we explain the terms and their impact on existing market participants.

Credit purchaser

A **credit purchaser** is someone (not a credit institution) who purchases (the creditor's rights under) a non-performing credit agreement in the course of its trade, business or profession.

This means that it does not matter whether a credit agreement itself is transferred to the purchaser or whether the monetary claims under that credit agreement are transferred by assignment (*cessie*). Banks are not included in the definition of credit purchase.

Purchasers of credit claims are currently exempt from the licensing requirement for offering credit. The consultation proposal does not alter this exemption under the Exemption Regulation.

Credit purchasers will be subject to a reporting requirement when they engage credit servicers. They must also comply with semi-annual reporting obligations on the NPL portfolio to the Dutch Authority for the Financial Markets (AFM). This differs from the current situation. The contents of the reports are still unknown.

Credit servicer

A **credit servicer** is someone who services a non-performing credit agreement and is not a bank, credit provider or investment fund manager (AIF/UCITS).

Servicing a non-performing credit agreement means, in the course of its trade, business or profession, managing and enforcing (the creditor's rights under) a non-performing credit agreement, and at least performing one credit servicing activity.

Providing a credit servicing activity includes one or more of the following activities:

1. collecting and recovering payments due from the borrower;
2. renegotiating the terms of the non-performing credit agreement with the borrower in accordance with instructions from the credit purchaser, provided that the person performing this activity is not an intermediary;
3. managing all complaints related to the non-performing credit agreement; or
4. notifying the borrower of any changes in interest rates, charges or all payments due.

Existing credit servicers licensed as credit intermediaries are also in scope of the definition of credit servicer, if they manage NPLs. This means that intermediaries who assist in managing NPLs will also become subject to licensing under the new rules. Credit intermediaries must then meet the additional requirements. The legislator has flagged this confluence in the explanatory notes to the consultation proposal, but has not proposed a light regime. Thus, the intermediary will have to apply for a license to service non-performing credit agreements.

Credit service provider

A **credit service provider** is a third party used by a credit servicer to perform any of the credit servicing activities. Thus, a credit service provider can never service a non-performing credit agreement on behalf of a credit purchaser. The support provided by a credit service provider usually occurs through outsourcing by the credit servicer.

Given the definition of providing a credit servicing activity, it makes sense that a credit service provider assists in the management of a credit agreement as referred to in the definition of intermediation in article 1:1 of the DFSA. This means that a credit service provider will nevertheless require a license for credit intermediation, unless the credit service provider limits itself to negotiating the terms of the NPL.

Action required

A good preparation is half the battle:

- Credit purchasers may start thinking about how they want to designate and notify on credit servicers, and what function within the organization will be responsible for reporting on NPL portfolios to the AFM on a semi-annual basis;
- Credit servicers licensed for credit intermediation will also require applying for a license to service NPLs; and
- Credit service providers will have to enter into (outsourcing) agreements with credit servicers, ensuring compliance with the new rules of conduct.

Are you affected by the consultation proposal or would you like to know whether you are in scope? We are glad to assist you and review your options. Meanwhile, Finnius keeps a close eye on the developments and changes following the publication of the consultation proposal.

[1] A non-performing credit agreement is an agreement under which a Dutch or European credit institution grants a credit and which is designated as a non-performing exposure as referred to in article 47a of the Capital Requirements Regulation (CRR). An example of such a non-performing credit agreement is a private mortgage credit with a default of at least 180 days. This follows from article 47a jo. 178(1)(b) CRR.

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