

Comments

Comments on the “Draft Guidelines on the establishment and maintenance of national lists or registers of credit servicers under Directive 2021/2167”

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General comments

In principle, we support the establishment of harmonised lists or registers of credit servicers within the EU, a move that would help increase transparency. However, in contrast to the EBA’s view, the users of such a data resource are not only credit purchasers and borrowers, but also the selling credit institutions. The background to this is the continued proper processing of non-performing loan exposures due to the reputational effect or follow-up obligation, among other things. This applies to both the initial and subsequent sales.

The Consultation Paper is addressed to the individual European supervisory authorities, which are obliged by the EBA to establish national lists or registers of credit servicers. As well as establishing national lists or registers, the EBA should aim to create an overarching, Europe-wide consolidated register of all credit servicers based on data from all the national registers, so as to ensure Europe-wide transparency on credit servicers and to standardise and simplify the supervisory process.

Specific comments

Consultation question 1:

Do you have any comments on the information on credit servicers to be included in the lists or registers as proposed in Guideline 4.1?

In addition to the information on credit servicers listed in the chapter 4.1 of the Consultation Paper, we suggest capturing the following additional information in the national lists or registers:

- The name of the credit servicer should always include the company form (e.g. GmbH) so that third parties can assess the liability position.
- The responsible managing directors or executive board members of credit servicers who are authorised representatives should also be recorded in the lists or registers and, if necessary (e.g. change in management), updated promptly, for example on the basis of commercial register extracts.
- In addition to the “authorisation status” (points k. and l.), the date of authorisation should be stated.

We would also like to propose adding credit servicers currently in the approval process to the list.

In the comments on the content of the list or register (Background Chapter “Content of the list or register” 3.2.1, paras. 11 & 13; Guidelines 4.1 para. 9.j), reference is made to the date of authorization of the credit servicer. It should be emphasised here that - also in the interest of consumers and credit purchasers - the historical approval date or the date of first approval prior to the entry into force of the Credit Servicer Directive (CSD) is meant. Due to the national implementations of the CSD and the national re-authorizations that may be required as a result (cf. ongoing consultation on the Secondary Credit Market Act), a date from 2023 would otherwise appear for many credit servicers. The desired information on how long a credit servicer has been active in the market (a sign of soundness and reliability) would then no longer be available.

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Consultation question 2:

Do you have any comments on the accessibility requirements of the lists or registers, as proposed in Guideline 4.2?

The register of credit servicers should allow a free choice of user language. It would be preferable if a German version of the register were also available to users alongside the English version.

Additionally, users should have the option to access register data from previous reference dates, e.g. in an archive, if no historical entries on credit servicers will be captured (e.g. old address in case of relocation).

The access requirements for the list or register make it clear that the costs for this will have to be borne by the (national) Competent Authority (CA). Most CAs are financed by appropriate levies. In this respect, the question arises as to which companies will have to bear the costs of the list or register. Primarily, this should be the credit servicers, because they are primarily obligated by the Credit Servicer Directive (CSD). The CSD, in turn, provides the legal basis for this consultation.

Consultation question 3:

Do you have any comments on the approach for updating the lists or registers, as proposed in Guideline 4.3?

There is no justification for presenting the data for an indefinite period, especially if the credit servicer no longer has any business activities. The classic storage periods (e.g. those stipulated in the German Fiscal Code) should therefore be taken as a guide and storage/presentation should be implemented accordingly.

In addition, the deadlines for withdrawal of authorisations and the authorisation to provide services should be seen as equally weighted, meaning that the two-day deadline would apply to both cases. All other changes can be implemented in the period mentioned.

The focus of the data presented is based largely on the negative aspects (withdrawal of authorisations). However, the relevant authorisation may also be “returned”. A separate category should be included for this in the information presented, as it has a different external impact on the credit servicer’s reputation.

In the event that the national Competent Authority (NCA) does not capture new information on credit servicers in a timely manner or does so incorrectly, what mechanisms are in place to ensure that obsolete or inaccurate information is not interpreted to the disadvantage of users of the lists or registers? The question of liability may also arise in this case.

Consultation question 4:

Do you have any comments on the approach for providing an overview of competent authorities that handle complaints under the CSD in the EU, as proposed in Guideline 4.4?

If the complaint will be received by a recipient other than the NCA, a mechanism must be in place to ensure that there is no multiple supervision. This is particularly important since a “complaint unit” without any follow-up consequences for authorisation cannot be effective with regard to the credit servicer.

Ideally, further details and guidance on the complaint process will be contained in the EBA Guidelines, e.g. on the format, minimum content of a complaint and processing deadlines.