

## Platis - Anastassiadis & Associates

The associate law firm of EY Greece

### Greece

## Law 5072/2023: New regulatory framework for purchasing credit and credit servicing

Law 5072/2023 entitled "Loans: Transparency, competition, protection of the vulnerable - Transposition of Directive (EU) 2021/2167, reintroduction of the HERCULES program and other urgent provisions" (Government Gazette A' 198/4.12.2023) consists of 122 articles and is divided into 7 parts (the "Law"). Part B' specifically addresses the transposition of Directive (EU) 2021/2167 on credit servicers and credit purchasers and the amendment of Directives 2008/48/EC and 2014/ 17/EU ("Part B").

Part B introduces amendments which reform the operating framework of credit servicers and credit purchasers of Law 4354/2015 and updates the rules and procedures currently in force.

In particular, it regulates issues related to credit services and credit purchasers, their relationships, the supervision of their activities, the cross-border activity of credit servicers and their relationships with borrowers, thereby promoting the fair treatment of borrowers, good faith in transactions, transparency and respect of their rights.

The Law enters into force on the date of its publication, i.e., 4.12.2023. With the implementation of the provisions of Articles 3 to 41 of the Law, comprising Part B, Articles 1 to 3 of Law 4354/2015 on Credit Servicing Firms and Credit Acquiring Firms are repealed.

## I. The main provisions of the Law

### 1. Scope

Part B shall apply to:

- a) credit servicers acting on behalf of a credit purchaser or credit institution or financial institution based or legally established in the EU, in respect of the creditor's rights under a credit issued by a credit institution or financial institution based or legally established in the EU, in accordance with the applicable law; and
- b) credit purchasers of creditors' rights in the context of a performing or non-performing credit agreement, issued by a credit institution or financial institution based or legally established in the EU, in accordance with the applicable law.

The Law uses the terms "credit" and "credit agreement", terms that include credits in the form of a deferred payment, a loan or other similar financial accommodation, as well as the rights of the creditor arising from credit agreements issued by a credit or financial institution. It is noted that the servicing of claims of electricity supply companies does not seem to fall within the scope of the Law, as opposed to Law 4354/2015.

### 2. Licensing of Credit Servicers

- A. Credit servicer licenses are issued exclusively by the Bank of Greece (the "BoG") to Credit Servicing Firms ("E.D.A.D.P.") which are sociétés anonymes established for the purpose of credit servicing. E.D.A.D.P. must have their registered seat in Greece and a minimum paid-up share capital of 100,000 euros, deposited in a credit institution that is not affiliated with the E.D.A.D.P. entity within the meaning of Law 4308/2014.
- B. Existing companies that were established and licensed in accordance with article 1 of Law 4354/2015 are considered Credit Servicing Firms as above. However, it is stipulated that by March 29, 2024 they must submit the information required for licensing, in accordance with Part B, and until June 29, 2024 BoG will evaluate if they comply with the requirements of the Law. If the companies are found compliant, BoG will grant them a license. If not, BoG will either revoke their license or take other necessary measures to ensure compliance.
- C. Articles 6 and 8 of the Law outline and enrich the requirements for the issuance of a credit servicing license by incorporating, *inter alia*, the content of the questionnaires which the applicants filled out and submitted in accordance with Executive

Committee Act 118/2017 ("Framework of establishment and operation of credit servicing firms) and the information required to accompany the application, respectively.

- D. The Law explicitly states that credit servicers may collect and hold funds from borrowers in order to transfer them to the purchasers whose credits they manage. For this purpose, in order to obtain a license, credit servicers must maintain a separate bank account, deliver a receipt or a letter of discharge to the borrower who makes the payment of the funds and determine the payment of amounts related to the credit agreements as payment to the credit purchaser. In the event that the E.D.A.D.P. does not intend to hold funds, it must indicate this in its licensing application. The Ministry of National Economy and Finance will issue a decision outlining the specific form and content of the application for licensing credit servicers who will collect funds, including any other essential data and supporting documents.
- E. Upon receiving an application for a license, BoG shall review the application within 45 days in order to assess its completeness. If the application is incomplete, BoG shall provide the applicant with a minimum of 15 days to submit the missing information. In any case, BoG will then either approve or reject the application within 90 days of receiving the complete application or within 60 days of receiving the missed information. If BoG does not respond within these deadlines, the application will be deemed implicitly rejected.
- F. The Law provides for the creation and maintenance of a public register by the BoG, which shall be electronically accessible to the public and in which all licensed E.D.A.D.P.s, as well as credit servicers based in another EU member state that provide activities in Greece with or without establishment, are registered.

### 3. Obligations of credit purchasers and credit servicers to borrowers

- A. The Law establishes essential obligations for purchasers and servicers to guarantee transparency in the transfer of creditor's rights and safeguard borrowers' rights. Notably, the above persons must act in good faith and fairly, refrain from providing borrowers with misleading or false information, protect borrowers' personal data and communicate with them in a manner that is free from harassment, coercion or undue influence.

- B. Furthermore, credit purchasers, credit servicers or the appointed company that carries out servicing activities, are obliged to provide borrowers with the information and data specified in article 13 of the Law, including information on the transfer of creditor rights, information on the amounts due by the borrower, contact details of the credit purchaser, the credit servicer and the competent authorities to which complaints can be filed. This information must be provided both upon the transfer of creditor rights and upon borrower request.
- C. In order to enhance transparency, for the first time, credit servicers are obliged to implement an electronic personalized information system. Through this system, borrowers will immediately be informed about their debt and, at a minimum, the following will be readily available:
- ▶ A detailed record of the amounts due as capital, interests, fees, any other charges and the applicable interest rate;
  - ▶ The periodicity of the installments, their amount, the date of payment of each installment, the current balance, and the debt service account.

The above electronic system shall be updated at least once a month and shall be operational by March 31, 2024.

#### 4. Credit servicing agreement

- A. As per the provisions of Law 4354/2015, the assignment of the servicing takes place with the signing of a credit servicing agreement, which is now subject to publication in the book of article 3 of Law 2844/2000, as was already the case for a claims transfer agreement.

However, when the assignment of the servicing is initiated by a credit or financial institution, the above publication is not required. The format and content of the publication form of servicing agreements will be defined by a decision of the Ministry of National Economy and Finance, following the opinion of the BoG.

- B. For a period of at least five (5) years following the termination of the servicing assignment agreement, the credit servicer must retain all relevant correspondence with the borrower and the credit purchaser, as well as any relevant instructions received from the credit purchaser and the credit servicing agreement.

#### 5. Outsourcing the servicing activities

Article 15 of the Law establishes the possibility of outsourcing credit servicing activities to a third entity,

which operates as a credit services provider, subject to certain requirements. Specifically, the Law requires, *inter alia*, the conclusion of a written outsourcing agreement between the credit servicer and the credit services provider, the outsourcing of certain and not all activities, and that the supervision of the credit servicer is not hindered. It is noted that credit service providers are not permitted to receive and hold funds of borrowers.

#### 6. Legal standing of credit servicers

With article 115 of the Law, the legislator seeks to remove any uncertainty surrounding the legal standing of credit managers, which has arisen from recent decisions of Greek courts pertaining to the servicing of claims securitized in accordance with Law 3156/2003. In particular, it is expressly stated that credit servicers have legal standing as non-beneficiary parties to proceed with judiciary actions and participate in pre-bankruptcy and insolvency proceedings. In fact, the legal standing of credit servicers is solely demonstrated through the publicity formalities stipulated in Article 3 of Law 2844/2000, eliminating the need for further documentation. In cases where the credit servicing agreement is not published (when the servicing is assigned by a credit or financial institution), then a summary or extract of the agreement is deemed sufficient.

#### 7. Cross-border credit servicing activities

- A. Subject to any restrictions or requirements imposed by the national law of the host member states, E.D.A.D.P. have the right to provide credit servicing services in other EU member states ("host Member States") exercising either the freedom of establishment (establishing a branch) or the freedom to provide services. It is noted that the above right to exercise cross-border activities concerns exclusively claims from non-performing credits issued by credit institutions based in the EU on behalf of credit purchasers.

E.D.A.D.P. must disclose specific information to the BoG, such as the address of the branch, the identity details and address of the credit service provider in the host Member State, if applicable, as well as their anti-money laundering procedures. The above information is communicated by the BoG to the competent authorities of the host Member State. The BoG is designated as the body responsible for monitoring and evaluating the continuous compliance of the E.D.A.D.P. that exercise activities to host Member States, for conducting investigations and imposing sanctions and corrective measures.

- B. Accordingly, authorized credit servicers with a registered seat in another EU member state can offer in Greece the services they are licensed for, subject to the restrictions specified in the Law and upon notification to the BoG by the member state where the credit servicer is based of equivalent information, as mentioned in the previous paragraph. The Law provides that the Bank of Greece cooperates closely with the competent authorities of the member state where the credit servicer is based in exercising supervisory powers and regulates in detail the framework of cooperation and actions.

## 8. Information on credits being transferred

- A. The Law explicitly stipulates that credit institutions based in Greece, leasing companies, factoring companies, credit companies and financing institutions, are obligated to provide all the necessary information on the credits that are to be transferred to prospective purchasers, an obligation that was already being observed in practice and is now enshrined in law.
- B. In addition, the above entities are obliged to inform the BoG on a semi-annual basis (or quarterly, if deemed necessary) about credit transfers by providing specific data.

## 9. Credit purchasers' obligations

- A. The Law provides for the obligation to designate in writing a representative based in the EU in case that the credits purchaser is not domiciled in the EU, or does not have its registered office (or its head office, if it does not have a registered office under its law) in the EU. The representative has the same obligations as a credit purchaser and the BoG may address him for any compliance issue. The representative may be a credit servicer, a credit institution, a non-credit institution subject to supervision, a credit institution based in Greece, a leasing company, a factoring company, a credit company or a microfinance institution.
- B. Corresponding obligation with the one under item 7.B. above is also established for credit purchasers based in Greece or for representatives based in Greece, when they transfer to a new credit purchaser or representative any claims from credit agreements.

## 10. Supervision

The provisions of Articles 25 - 30 of Part B define the competent authorities for the supervision of purchasers and credit servicers, their supervisory role, their powers as well as the administrative sanctions and corrective measures they have the right to impose on offenders.

Specifically, apart from the BoG, which has the main supervisory role and supervises the licensing of credit servicers and purchasers, representatives and credit service providers, the following competent authorities have been added:

1. The Hellenic Data Protection Authority, in order to ensure the respect and protection of borrowers' personal data;
2. The Ministry of National Economy and Finance, responsible (a) for ensuring compliance with the obligation of credit servicers and purchasers to act in good faith and fairly, to provide information to borrowers that is not vague and misleading and to communicate with them in a fair manner, as well as (b) to control compliance with the electronic personalized information system.

## II. Conclusions

The Law is a part of the broader strategy to address the issue of non-performing loans, reduce their elevated levels and prevent their future buildup. This aligns with the overarching objective of maintaining financial stability, fostering lending activity, and propelling economic growth within the European Union.

The Greek legislator had already extensively dealt with the issue of managing the volume of non-performing loans through Law 4354/2015, which also serves as a basis for this new Law. The new legislation further enriches the existing legal framework by establishing protective measures for consumers in their interactions with purchasers and credit servicers. At the same time, it introduces provisions that eliminate key obstacles to the lawful purchase of cross-border credits within the EU, fostering competition in the internal market and attracting a wider pool of potential credit purchasers.

## About Platis - Anastassiadis & Associates Law Partnership

Platis - Anastassiadis & Associates is part of the EY Law network operating in 90 countries globally and is comprised of 3,500+ people.

We are an independent law office with a core team of 45 lawyers. Our office provides high quality legal services across the full range of commercial and financial transactions.

Especially in our geographical area, we have established an ongoing cooperation with the respective law firms which are associated with EY, in order to offer seamless and consistent regional services to our clients that have cross country operations.

Our experience allows us to better understand our clients' needs and offer them integrated multidisciplinary solutions in the fields of accounting, tax and financial advisory services.

Platis - Anastassiadis & Associates law office is solution focused. We work closely with our clients to seek innovative and practical ways of dealing with their issues. Our priority is to help our clients meet their business objectives. Our expertise, commitment and enthusiasm has resulted in the build up of a client base which includes local and international listed, state and private sector companies and financial institutions.

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