

EBA Consultation Paper: Draft Guidelines on complaints-handling of credit servicers under Directive (EU) 2021/2167

Introduction

This consultation seeks feedback on proposed draft Guidelines on complaints-handling of credit servicers under Directive (EU) 2021/2167 – Credit Services Directive (CSD).

The EBA points out in the executive summary that the main purpose of the Directive is to foster the development of secondary markets for non-performing loans (NPLs) in the Union, by removing impediments to, and laying down safeguards for, the transfer of NPLs by credit institutions to credit purchasers, while at the same time safeguarding borrowers' rights.

As set out in recital 50 of the Directive, the performance of secondary markets for credit will depend to a large extent on the good reputation of the entities involved. For this reason, Article 24 (1) of the Directive provides that "Member States shall ensure that credit servicers establish and maintain effective and transparent procedures for the handling of complaints from borrowers".

The proposed Guidelines extend to credit servicers under Directive 2021/2167 the application of the existing Joint Committee Guidelines (JC Guidelines) on complaints-handling. The JC Guidelines were developed by the three European Supervisory Authorities (ESAs) and apply across the banking, investment, and insurance sectors since 2014.

The EBA is arguing that the existing JC Guidelines on complaints handling represent an identical set of requirements that has been uniformly applicable for many years to financial institutions across the banking, investment, and insurance sectors. The Guidelines are therefore to the benefit of all parties involved: a) consumers, who will be able to rely on the same approach irrespective of what type of product they have purchased and where they have purchased it within the EU, thereby improving consumer confidence in financial services, b) firms, some of which may sell products from more than one sector and c) national CAs that have to supervise only one set of Guidelines in their respective jurisdiction.

Consultation question: Do you consider there to be a reason why the requirements on complaints handling for credit servicers under Directive (EU) 2021/2167 that are being proposed in this CP should differ from the ones in the existing JC Guidelines on complaints handling that are applicable to other financial institutions across the banking, Investment and insurance sectors?

In this context, two options have been considered by the EBA in this regard:

- Option 1a: Issuing completely new Guidelines (the 'draft Guidelines') on complaints-handling of credit servicers.
- Option 1b: Issuing new Guidelines (the 'draft Guidelines'), proposing to apply the JC Guidelines to credit servicers.

The EBA considers that issuing completely new draft Guidelines on complaints-handling of credit servicers could have the benefit to bring tailored requirements related to credit servicers specificities. Nevertheless, this tailoring would lead to a distortion of requirements between those draft Guidelines and the existing JC Guidelines that are uniformly applicable for many years to financial institutions across the banking, investment, and insurance sectors. Moreover, for the NCAs, this distortion would create additional costs as a specific complaints-handling supervision processes should be developed for credit servicers.

Applying the JC Guidelines to credit servicers, by setting through the draft Guidelines the same requirements related to the credit servicers than the ones related to the firms mentioned in the JC Guidelines, would have the benefit of having more certainty on the relevance and efficiency of these requirements and would generate better outcomes for consumers. On these grounds, the Option 1b has been chosen as the preferred option by the EBA.

General comments and Answer to the Question

The BSG answer to the question put in the consultation paper is No.

The BSG welcomes EBA's approach (Option 1b) as we consider that this approach will provide advantages for all parties involved: first, for consumers (in this case, borrowers), as it is very important for them to have access to free, simple, and similar complaints handling procedures and forms for all financial services and related activities. At the same time, it will not put an additional burden on the NCAs and it seems to be also desirable for firms.

The BSG also agrees on point 11 of the Rationale, considering that this approach will allow stakeholders to have more time to prepare for the implementation of the requirements. This is also important because consumers should have access, as soon as possible, to more efficient procedures which could help them to be better protected from a potential abusive behavior of credit servicers.