

## Supervisory benchmark No. 1/2024

### Requirements for a non-performing credit servicer's governance system pursuant to Section 11 of Act No. 84/2024 Coll., on the non-performing credit market

#### 1. Relevant legislation

##### Regulation

- Act No. 84/2024 Coll., on the non-performing credit market (hereinafter the “**Act**”),
- Act No. 89/2012 Coll., the Civil Code (hereinafter the “**NCC**”),
- Act No. 253/2008 Coll., on certain measures against money laundering and terrorist financing (hereinafter the “**AMLA**”),
- Act No. 634/1992 Coll., on consumer protection (hereinafter the “**CPA**”),
- Regulation No. 86/2024 Coll., on the implementation of the Act on the Non-Performing Credit Market (hereinafter the “**Regulation**”)
- and others.

##### Provisions

- In particular Section 6, Section 11, Section 13, Section 14 and Section 24 of the Act,
- Section 21(5) of the AMLA,
- Section 2986 of the NCC,
- Section 2(1)(t) of the CPA
- and others.

##### Others

- Supervisory benchmark of the Czech National Bank (hereinafter the “**CNB**”) No. 2/2023, on the performance of customer due diligence through the transaction monitoring system,
- Supervisory benchmark of the CNB No. 2/2016, effective complaint-handling procedure for credit institutions,
- Official Information of the CNB of 18 August 2010, on the aggressive commercial practice of charging for consumer complaints identified by sellers as unjustified,
- European Banking Authority (hereinafter the “**EBA**”) Guidelines on arrears and foreclosure,
- EBA Guidelines on management of non-performing and forborne exposures,
- European Central Bank (hereinafter the “**ECB**”) Guidance to banks on non-performing loans,
- Guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors
- and others.

#### 2. General

Pursuant to Section 11(1) of the Act, a non-performing credit servicer (hereinafter a “**Servicer**”) is required to apply a governance system appropriate from the point of view of proper administration

of the non-performing credit. The governance system must be proportionate to the nature, scale and complexity of the activities of the Servicer and must ensure the sound and smooth management of the non-performing credit, the securing of the borrower's rights and compliance with the lender's rights and obligations arising from the non-performing loan agreement.

The rules and procedures in question must always relate at least to activities pursuant to the Act.

The rules and procedures pursuant to Section 11 of the Act are aimed primarily at providing rules for dealing with borrowers, protecting borrowers, and prerequisites for supervision by the CNB and inspections by the competent authorities. In addition, to ensure compliance with the rules for the protection of borrowers and the protection of personal data, appropriate governance systems, internal control mechanisms, and appropriate procedures for the registration and handling of complaints to be supervised by the CNB should be put in place. In addition, the Servicer should have appropriate procedures in place to combat money laundering and terrorist financing and to ensure compliance with legislation regulating the non-performing credit agreement and the borrower's and lender's rights deriving therefrom, and with Regulation (EU) 2016/679<sup>1</sup>.

The individual sub-rules must form a coherent, comprehensible, clear and non-contradictory whole.

The rules and procedures must respect the requirements of the relevant EBA and ECB guidelines, i.e. including

- the Guidelines on arrears and foreclosure<sup>2</sup>,
- EBA Guidelines on management of non-performing and forborne exposures<sup>3</sup>, or
- ECB Guidance to banks on non-performing loans<sup>4</sup>.

### 3. Governance system pursuant to Section 11(2) of the Act

#### a) sound administrative and accounting procedures [Section 11(2)(a) of the Act and Annex 4 to the Regulation]

- (1) The obligation to apply proper administrative procedures is the obligation to reflect the rules and procedures pursuant to Section 11 of the Act in the internal regulations of the Servicer and to proceed in accordance with these rules in the performance of activities.

The mere transposition of the text of the legislation into an internal regulation cannot be considered compliance with this requirement. The rules and procedures of the Servicer must

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<sup>1</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

<sup>2</sup> <https://www.cnb.cz/cs/dohled-financni-trh/legislativni-zakladna/obecne-pokyny-evropskych-organu-dohledu/Sdeleni-CNB-o-obecných-pokynech-k-prodlení-a-realizaci-zastavy/>

<sup>3</sup> <https://www.cnb.cz/cs/dohled-financni-trh/legislativni-zakladna/obecne-pokyny-evropskych-organu-dohledu/Sdeleni-CNB-o-obecných-pokynech-EBA-k-rizeni-nevykonných-expozic-a-expozic-s-ulevou/>

<sup>4</sup> [https://www.bankingsupervision.europa.eu/ecb/pub/pdf/guidance\\_on\\_npl.en.pdf?b2b48eefa9972f0ca983c8b164b859ac](https://www.bankingsupervision.europa.eu/ecb/pub/pdf/guidance_on_npl.en.pdf?b2b48eefa9972f0ca983c8b164b859ac)

specify how the requirements of the legislation will be achieved through its internal procedures.

- (2) The Servicer must put in place procedures to ensure that persons involved in the servicing of a non-performing credit within the meaning of Section 2(k) of the Act, and other persons working for the Servicer, are aware of their obligations arising from the Act, other legislation and the relevant internal regulations.
- (3) As part of the general administrative procedures, the Servicer must adopt organisational rules, i.e. a document defining the basic concepts of internal organisation and management, the organisational structure, the scope of activities and tasks of individual organisational units, and the relationships between them, and the specific powers and responsibilities of persons. The organisational structure must be transparent, unambiguous, consistent, functional and effective, and must ensure information flows, including the provision of feedback, and links to all management and organisational levels of the Servicer.
- (4) Within the organisational structure, the Servicer must define incompatible functions and prevent the emergence of potential conflicts of interest.

The performance of internal control functions is always incompatible with the performance of activities in the inspected organisational units, in particular with the performance of activities by employees; the internal control function means the function of a member of the supervisory body, the function of continuous control of compliance with obligations arising from the Act and other legislation (compliance), as well as the internal audit and risk management functions, if established.

- (5) The Servicer must ensure the substitutability of employees and, where applicable, other persons entrusted by the Servicer with the servicing of the non-performing credit, so as to ensure proper and smooth servicing of the non-performing credit (Section 11(1) of the Act), in particular to prevent a breach of obligations towards the borrower (e.g. failure to comply with an information obligation, complaint-procedure obligations, etc.).
- (6) The Servicer must determine rules for the selection of persons to be entrusted with the servicing of a non-performing credit to ensure the continuity of the activity.
- (7) The Servicer must put in place procedures to ensure
  - the identification of risks to which it is exposed during the activities of non-performing credit servicer and other related risks, and
  - the mitigation of such risks, including the determination of their acceptable level with an explanation for each identified risk, and the implementation of effective measures to mitigate the risks identified in relation to entrusting another person with the servicing of the non-performing credit.
- (8) The aim of the administrative procedures is also to ensure that the individual processes are properly documented (audit trail) so that their progress can always be verified retrospectively and so that the CNB can properly conduct its supervision. It must be possible to trace and reconstruct decision-making processes, as well as control and other significant activities, including related competences and powers and internal rules, including the competences and powers, composition and functioning of bodies and committees (if established) of the Servicer and the competences, powers and activities of their members. It must always be possible to

identify, including retrospectively, the specific person who was responsible for fulfilling an obligation and to verify that they were authorised to carry out the activity and acted in accordance with the rules and procedures laid down.

(9) In addition, as part of sound administrative procedures, the Servicer must regulate through internal regulations:

- *the rules for the adoption or amendment of internal regulations,*
- *the archiving and shredding rules,* including rules for documenting correspondence with the borrower and the credit purchaser, records of the credit purchaser's instructions relating to the servicing of a non-performing credit, non-performing credit servicing agreements, agreements on entrusting another person with the servicing of a non-performing credit, and instructions given to such person, and complaints handling; the Servicer must ensure that documents are stored for the period stipulated by the Act (Section 14 of the Act)
- *rules governing authorisation to approve and sign documents* within the scope of activities pursuant to the Act (signature rules),
- *rules for documenting external and internal communication,* in particular keeping records of meetings of statutory and supervisory bodies and any advisory bodies, records of managerial decisions, records of internal reports, etc.,
- *rules of conduct for employees and, where applicable, other persons entrusted by the Servicer with the servicing of a non-performing credit and with borrowers* (Section 11(2)(d) of the Act),
- *rules for the fulfilment of the information obligation vis-à-vis the CNB* (e.g. Sections 8, 13, 15 and 17 of the Act) and the fulfilment of other information obligations laid down by legislation, including the obligation to file relevant documents with the Commercial Register in a proper and timely manner.

(10) Accounting procedures must comply with the general rules laid down by legislation and the specific requirements arising from the Act.

(11) The rules on accounting procedures must be designed to ensure, in particular:

- sound accounting practices for accounting cases relating to the activities of the Servicer and a description of the method of recognition of assets and liabilities arising from the activities of the Servicer on the balance sheet and expenses and revenues relating to the performance of the activities of the Servicer in the profit and loss account
- the proper maintenance of records of serviced non-performing credits to ensure compliance with laid down by the Act and contractual documentation
- the proper verification and evaluation of the adequacy and effectiveness of the procedures and rules in place and their updating accordingly.

**b) internal control system (Section 11(2)(b) of the Act and Annex 4 to the Regulation)**

(1) The Servicer must regulate the rules for the performance of control activities by means of an internal regulation to ensure

- the conformity of the internal rules with the legislation in force,
  - the consistency of the internal rules, and
  - the compliance of all activities and processes with current legislation and internal regulations.
- (2) The rules for the regular and continuous control of compliance with obligations arising from the Act, other legislation and internal rules must
- (a) designate staff, organisational units or bodies responsible for
- control of compliance with obligations arising from legislation and internal rules,
  - ensuring the preparation and submission of a concrete draft measure to remedy any identified deficiencies in a timely manner, and
  - the timely adoption of corrective measures,
- and must determine that such staff, organisational units and bodies have an appropriate degree of independence from the organisational units, persons and bodies that are the subjects of such control;
- (b) define the individual areas of screening, their significance and the risks arising from their breach, in particular the individual obligations pursuant to Section 11 of the Act. The screening must include verification of whether all the conditions for granting a licence to operate pursuant to Section 6 of the Act are consistently met.
- (3) The rules must also determine:
- the procedures for verifying compliance with obligations arising from legal and internal regulations at all levels, including the definition of the method of carrying out inspections and their frequency,
  - the principles for informing staff, organisational units and bodies responsible for remedying any deficiencies identified,
  - the principles for ensuring such remedies and evaluating their effectiveness,
  - the principles for receiving information on breaches of legal obligations during the activities of the Servicer,
  - the procedures for inspecting branches, if established, including an overview of remote and on-site inspections and information on how often they are carried out and how they are ensured,
  - the procedures for group internal control where the Servicer is a person controlled by another regulated institution, and
  - the procedures for controlling the activities of a person entrusted by the Servicer to service a non-performing credit.
- (4) These rules must also include keeping documentation of individual cases of breaches of legal and other regulations, as well as the corrective measures taken.

**c) rules for compliance with obligations related to combating money laundering and terrorist financing [Section 11(2)(c) of the Act]**

- (1) A Servicer has an obligation pursuant to Section 11(2)(c) to apply the rules of compliance with obligations related to combating money laundering and terrorist financing, in particular to reflect the rules necessary to meet the requirements of the AMLA in its internal regulations and to comply with these rules in its procedures.
- (2) In connection with its obligations arising from the AMLA, a Servicer must adjust its system of internal principles, procedures and control measures to fulfil the obligations laid down in the AMLA, including the requisites pursuant to Section 21(5) of the AMLA. The details are laid down in Regulation No. 67/2018 Coll., on certain requirements for the system of internal principles, procedures and control measures against money laundering and terrorist financing. A Servicer must continuously update its system of internal principles for complying with the obligations set out in the AMLA pursuant to Section 21(2) of the AMLA. The CNB also refers to Supervisory benchmark<sup>5</sup> No. 2/2023 of 3 July 2023, which, although it primarily applies to credit institutions, can be appropriately and proportionately applied to other financial market entities in proportion to their size and the structure of the products and services provided.
- (3) A Servicer must also regulate the responsibilities and powers of the Servicer's employees and organisational units in this area by means of an internal regulation, including the appointment of a contact person pursuant to Section 22 of the AMLA and the introduction and application of mandatory training of its employees pursuant to Section 23 of the AMLA.

**d) rules of conduct with borrowers [Section 11(2)(d) of the Act]**

- (1) A Servicer must lay down internal rules of conduct with borrowers ensuring compliance with the rules for protecting borrowers and compliance with information obligations to borrowers pursuant to Sections 25, 26, 27 and 29 of the Act. For details on the rules of conduct towards borrowers, see Supervisory benchmark No. 3/2016, requirements for non-bank consumer credit providers pursuant to Section 15 of Act No. 257/2016 Coll., on consumer credit, part 3(h).
- (2) A Servicer must ensure that the recovery of amounts due is in compliance with the legal regulations governing the enforcement of contractual obligations, consumer protection, borrower rights and criminal law. For details on the rules for debt collection, see Supervisory benchmark No. 3/2016, requirements non-bank consumer credit providers pursuant to Section 15 of Act No. 257/2016 Coll., on consumer credit, part 3(i).
- (3) The rules must be set in such a way that the level of protection of borrowers, as the weaker party, is not reduced.
- (4) The rules must be set in such a way that the communication is comprehensible for borrowers.
- (5) At the same time, it must be ensured that the information provided is not unclear, untrue, misleading or deceptive, i.e. it does not allow or intentionally cause its misinterpretation by

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<sup>5</sup> [https://www.cnb.cz/export/sites/cnb/cs/dohled-financni-trh/.galleries/vykon\\_dohledu/dohledove\\_benchmarky/download/dohledovy\\_benchmark\\_2023\\_02.pdf](https://www.cnb.cz/export/sites/cnb/cs/dohled-financni-trh/.galleries/vykon_dohledu/dohledove_benchmarky/download/dohledovy_benchmark_2023_02.pdf)

the borrower.

- (6) In addition, honest, fair and qualified dealings between the Servicer and the borrower must be ensured. A Servicer must always deal with a borrower in good faith.
- (7) The rules must also be set up in such a way as to ensure that the borrower's financial situation is taken into account and, if necessary, that contact is mediated with an operator of a free debt-counselling service as part of a voluntary service pursuant to legislation governing voluntary services, or social services pursuant to legislation governing social services.
- (8) Furthermore, it must be ensured that communication with a borrower cannot:
  - be intrusively harassing within the meaning of Section 2986 of the NCC, or
  - exert pressure or undue influence within the meaning of Section 2(1)(t) of the CPA.

e) **system for handling borrower complaints and claims [Section 11(2)(e) of the Act and Annex 4 to the Regulation]**

- (1) A Servicer must regulate through internal regulations the rules for handling borrower complaints and claims filed against the Servicer in connection with its activities and against a credit purchaser, which the Servicer handles on behalf of the credit purchaser within the meaning of Section 2(k)(3) of the Act.
- (2) The rules for handling borrower complaints and claims must include a *complaints procedure* accessible to borrowers whose credits are serviced by the Servicer.
- (3) The rules must be set in such a way that complaints and claims can be submitted as economically as possible, respectively without unnecessary administrative and technical obstacles.
- (4) The handling of complaints or claims must not be subject to charges<sup>6</sup>.
- (5) The rules must define the method of keeping conclusive records of all submitted claims and complaints and the method of their resolution, including the date of receipt and date of resolution of the claim or complaint, as well as the date of submission of information about the outcome of the resolution of their claim or complaint to the borrower.
- (6) The rules must unambiguously specify the employee, organisational unit or body that will be in charge of the agenda of borrowers' complaints and claims, including the rules for representation, and when and how a borrower will be informed about the settlement of their complaint and claim.
- (7) The system for handling complaints and claims must be set up in such a way that the complaint or claim can be objectively, and independently of the activities against which the complaint or claim is directed, evaluated and a decision on it can be made within the set period.
- (8) At the same time, it must be ensured that the employee, organisational unit or body in charge of continuous monitoring of compliance with legal regulations is kept informed about settled

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<sup>6</sup> In this regard, see Official Information of the CNB of 18 August 2010, on the aggressive commercial practice of charging for consumer complaints identified by sellers as unjustified.  
[https://www.cnb.cz/export/sites/cnb/cs/legislativa/galleries/Vestnik-CNB/2010/v\\_2010\\_14\\_21610170.pdf](https://www.cnb.cz/export/sites/cnb/cs/legislativa/galleries/Vestnik-CNB/2010/v_2010_14_21610170.pdf)

claims and complaints.

- (9) The Servicer should ensure that its internal regulations comply with the Guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors<sup>7</sup>. The Servicer must also take into account Supervisory benchmark of the CNB No. 2/2016, effective complaint-handling procedure for credit institutions, in its internal regulations<sup>8</sup>.

**Note:**

For the sake of completeness, the CNB states that it assesses the content and adequacy of the presented procedures and rules in the context of the procedure for granting a licence to operate as a servicer from the perspective of the nature, scope and complexity of the servicer's activities, as determined from the documents submitted in the application. The purpose of the assessment of the procedures and rules is not to approve the compliance of the specific procedures with the individual substantive provisions of the Act, but to determine whether the applicant meets the prerequisites laid down by the Act for the granting of a licence to carry out a regulated activity.

The subject of the CNB's subsequent supervision is the monitoring of compliance with the specific obligations laid down by the Act for servicers. The procedures and rules contained in the application cannot be considered definitive, as they are based on projected estimates, plans and envisaged strategies, reflecting the market segments and ideal types of borrowers that the applicant intends to target in its future business activities. The procedures and rules that will subsequently be monitored by the CNB after a licence has been issued and operation commenced, must therefore correspond not only to the actual and current practice of the Servicer, but also to the CNB's approach to supervision in the individual areas of non-performing credit servicing applied at the time.

Date: 26 April 2024

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<sup>7</sup> <https://www.cnb.cz/cs/dohled-financni-trh/legislativni-zakladna/obecne-pokyny-evropskych-organu-dohledu/Sdeleni-CNB-k-vyrizovani-stiznosti-pro-odvetvi-cennych-papiru-ESMA-a-bankovnictvi-EBA-00002/>

<sup>8</sup> [https://www.cnb.cz/export/sites/cnb/cs/dohled-financni-trh/.galleries/vykon\\_dohledu/dohledove\\_benchmarky/download/dohledovy\\_benchmark\\_2016\\_02.pdf](https://www.cnb.cz/export/sites/cnb/cs/dohled-financni-trh/.galleries/vykon_dohledu/dohledove_benchmarky/download/dohledovy_benchmark_2016_02.pdf)