

Single Rulebook Q&A

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| Question ID | 2021_6130 |
| Status | Final Q&A |
| Legal act | Directive 2013/36/EU (CRD) |
| Topic | Credit risk |
| Article | 74 |
| Paragraph | 1 |
| Subparagraph | - |
| COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations | EBA/GL/2020/06 - Guidelines on loan origination and monitoring |
| Article/Paragraph | Sections 4, 5 and 8 |
| Date of submission | 02/08/2021 |
| Published as Final Q&A | 07/01/2022 |
| Disclose name of institution / entity | Yes |
| Name of institution / submitter | Ministry of Finance |
| Country of incorporation / residence | Estonia |
| Type of submitter | Other |
| Subject matter | Scope of application of EBA guidelines on loan origination and monitoring |
| Question | Are sections 4, 5 and 8 of the EBA guidelines on loan origination and monitoring not applicable to agreements referred to in Article 2(2)(h) of Directive 2008/48/EU, while all other parts of the guidelines are still applicable to those agreements? |
| Background on the question | We have understood that the aim of the EBA Guidelines on loan origination and monitoring is to: specify the internal governance arrangements, processes and mechanisms, as laid down in Article 74(1) of Directive 2013/36/EU; specify internal governance, and requirements on credit and counterparty risk, as laid down in Article 79 of Directive 2013/36/EU; specify how to assess the creditworthiness of consumers and use consumer information laid down in Articles 18 and 20 of Directive 2014/17/EU and Article 8 of Directive 2008/48/EC on consumer credits. Our |

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| | <p>concern covers the scope of application with regard to credit agreements defined in Article 2(2)(h) of Directive 2008/48/EU on credit agreements for consumers, which are concluded with investment firms as defined in Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments or with credit institutions as defined in Article 4 of Directive 2006/48/EC for the purposes of allowing an investor to carry out a transaction relating to one or more of the instruments listed in Section C of Annex I to Directive 2004/39/EC, where the investment firm or credit institution granting the credit is involved in such transaction.</p> |
| Final answer | <p>The guidelines in their entirety apply to institutions as defined in point 3 of Article 4(1) of Regulation (EU) No 575/2013 (CRR) in accordance with paragraph 6 of the Guidelines, which means credit institutions authorised under Article 8 of Directive 2013/36/EU (CRD) or undertakings as referred to in Article 8a(3) of that Directive. The latter concern investment firms, which qualify as credit institutions for CRD and CRR purposes in accordance with Article 4 (1)(1)(b) of CRR.</p> <p>In addition, Section 5 of the Guidelines (Loan origination procedures), excluding paragraph 93, applies to:</p> <ul style="list-style-type: none"> • creditors as defined in Article 4(2) of Directive 2014/17/EU (Mortgage Credit Directive, MCD), and • creditors as defined in Article 3(b) of Directive 2008/48/EC (the Consumer Credit Directive, CDD), <p>and only if the loan/credit agreement falls under the scope of MCD and CCD respectively, as set out in paragraph 6 of the Guidelines. As set out in paragraph 10 of the Guidelines competent authorities may also choose to apply Sections 6 and 7 to creditors that fall under the scope of MCD and CCD and that are not credit institutions.</p> <p>Therefore, in case of an undertaking, that is not an institution, and that is creditor of a consumer credit agreement not falling under CCD or MCD scope, the guidelines do not apply.</p> |
| Link | <p>https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2021_6130</p> |