



BANKING STAKEHOLDER GROUP

CONSULTATION ON EBA/CP/2014/42 ON
DRAFT GUIDELINES ON CREDITWORTHINESS ASSESSMENT UNDER
DIRECTIVE 2014/17/EU

General Comments and Replies to Questions

BY THE EBA BANKING STAKEHOLDER GROUP

London, 7th February, 2015

Foreword

The EBA Banking Stakeholder Group (BSG) welcomes the opportunity to comment on the Consultation Paper EBA/CP/2014/42 Draft Guidelines on creditworthiness assessment under Directive 2014/17/EU.

This response has been prepared on the basis of comments circulated and shared among the BSG members and the BSG's Technical Working Group on Recovery and Resolution. This response outlines the general comments by the BSG and gives specifications regarding some of the Provisions of the Guidelines.

The Directive 2014/17/EU on credit agreements for consumer lending related to residential immovable property (MCD) was adopted on February 28th 2014. Member States are required to transpose the Directive into national law by 21 March 2016. The MCD aims to develop a more transparent market while at the same time providing a high level of consumer protection by promoting sustainable lending and borrowing as well as financial inclusion.

The MCD establishes under Articles 18 that before concluding a credit agreement, a thorough assessment of the client's creditworthiness has to be made by the creditor in order to verify that the customer has the ability to meet his/her obligations under the credit agreement. This assessment has to take into account a certain number of factors which are specified under the present Guidelines. Article 20 (1) requires the creditor to carry out the assessment on the basis of information on the consumer's income and expenses and other financial and economic circumstances which are necessary, sufficient and proportionate.

The present Guidelines specify the two Articles of the MCD and are based on the FSB Provisions for Sound Residential Mortgage Underwriting Practices issued in April 2012 and on the Opinion of the EBA on Good Practices for the Treatment of Borrowers in Mortgage Payment Difficulties dated June 2013.

The Guidelines are issued pursuant to Article 16 of the EBA Regulation (EU) 1093/2010 and the scope of the Guidelines is stated under Article 4 (2) as being the "competent authorities"

Replies to Questions

Question 1: Do you agree with the proposed Guidelines? If not, outline why you disagree and how the Guidelines could be improved. Please respond separately to each of the seven Guidelines.

For several reasons BSG welcomes the initiative of the EBA to convert into Guidelines those parts of the EBA Opinion which deal with credit assessment into Guidelines:

- 1) The Guidelines have a broader meaning than the Opinion: the Opinion of the EBA addresses the more specific issue of good practices for the treatment of borrowers with payment difficulties, whereas the Guidelines address the more general issue of credit risk assessment as such.
- 2) The Guidelines give additional detail on the provisions enumerated in Article 18 and 20 of the MCG.
- 3) The Guidelines are based on good practices which are already in place in a great number of jurisdictions.

However, BSG would like to draw the attention of the EBA to some points in the Guidelines which may be difficult to comply with:

- 1) Provisions 1.2 and 1.3 state that the consumer's income has to be verified by 'sources that are independent of the consumer' (1. 2) and by a 'third party verification documenting such income' (1.3). These criteria need to be specified. The current formulation does not make clear which source of information will be accepted as being 'independent' or a 'third party verification'. To meet practical demands the receipt of a copy of a pay slip or a declaration of in-come tax should be seen as sufficient in this respect.
- 2) Provision 3 should also take into account that the consumer might intentionally provide the creditor with wrong or euphemistic information to get a more generous credit line.
- 3) In Provision 4.2 "The creditor should establish sound processes to assess

the consumer’s ability to meet obligations under the credit agreement; review these processes at regular intervals; and maintain up-to-date records of those procedures.”

There may be leeway for a misunderstanding in the formulation of this provision:

If it means that the ***review of the creditworthiness of the borrower*** is recommended at “regular intervals”, this may be problematic for the following reasons:

- i) Firstly, it may be delicate to ask a customer to update credit information such as income, etc. every year. The information required for a credit to buy immovable property is usually heavy and complete. It is not common use to require such type of information on a regular basis and might harm the consumer relationship.
- ii) Secondly, the update of information on a regular (for example yearly) basis for thousands of mortgage credits is a burden to the credit institution. It requires manpower for the analysis of the documents, as well as storage space and will be a burden to the back office organization.
- iii) Thirdly, this requirement goes beyond the requirements of the MCD. In this case, BSG feels that this requirement (4.2.) is not proportionate to the goal the Guidelines aim to achieve.

If it means that ***processes*** should be reviewed on a regular basis, BSG agrees with the requirement and suggests to reformulate the provision more precisely.

4) In Provision 4.3. the creditor is required to take into account relevant factors such as other servicing obligations and evidence of delinquency. BSG would like to outline the difficulties in obtaining this kind of information. These difficulties are in two very distinct registers.

- i) In the case of other “**servicing obligations**”, BSG would like to

emphasise that this type of information is very relevant and important in order to determine the creditworthiness of a borrower. However, in some countries no common register for consumer indebtedness exists (e.g. France). The only possibility for banks to receive this information is by self-declaration of the borrower. Information provided by self-declaration is obviously potentially subject to fraud. Therefore, the question of common registers for private debt might be raised in this context. This is also an important issue when treating the problem of over-indebtedness.

- ii) In the case of “**evidence of delinquency**”, the issue is different. Firstly, the requirement is not part of the MCD. Secondly, the question is how this evidence is to be given. In some countries, bank employees are required to prove that they have not committed a delinquency by providing an extract from the official record of criminal conviction. However, requiring that type of information from a consumer is not compatible with data protection and is discriminating.

Therefore, BSG highly recommends that this requirement is withdrawn.

- 5) Provision 6.1. is redundant with Provision 4.4. concerning the item “reduced income of retirement”. The factors enumerated thereafter (increase in benchmark interest rates, negative amortization, balloon payments or deferred payments) could be added under Provision 4.3 as they refer to the structure of the credit.

Question 2: Are there any additional requirements that you would suggest adding to the Guidelines? If so, outline the reason(s) for each proposed additional requirement.

- 1) The purpose of Directive 2014/17/EU is to develop the internal market and to achieve a high level of consumer protection. If the Directive should have an effect on consumer protection, the issue of who takes responsibility and of sanctioning is of great importance.

In some legislations, if it has been found that the credit decision has been based on a poor decision by the credit institution, the cost burden should be borne by the institution.

- 2) Provision 1.1. should also include a verification of expenses, as quoted under Article 20.1. of the MCD.
- 3) Provision 2.2. on documentation and retention of information should also include expenses. In this case, copies of account extracts should be sufficient in this respect.

Submitted on behalf of the EBA Banking Stakeholder Group

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