



The Consumer Voice in Europe

EBA Consultation Draft Guidelines on arrears and foreclosure under the Mortgage Credit Directive

BEUC RESPONSE

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Background

BEUC welcomes the opportunity to comment on the Consultation Paper 2014/43 on Draft Guidelines on arrears and foreclosure. The draft guidelines provide detail on how financial institutions should give effect to the relevant Mortgage Credit Directive (MCD) provisions on arrears and foreclosure (Article 28), and thus contribute to the EBA's objective of achieving a convergence of supervisory practices for the Directives that fall into the EBA's scope of action. The draft guidelines aim to ensure that the MCD provisions will be implemented and supervised consistently across the 28 EU Member States, and support the transposition of the MCD.

General comments

BEUC considers that the guidelines have the merit to set out the minimum requirements and measures to be implemented by creditors. However, as they are not very detailed, especially when compared with the codes adopted by national authorities (see for example Portugal, UK, and Ireland), we have doubts as regards their effectiveness.

As a very important principle, BEUC considers essential that the mechanisms created to deal with arrears do not lead to a situation more unfavorable to the consumer than the existing one. On the contrary, BEUC proposes that EBA should introduce solutions to ensure that consumers are effectively protected.

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 for each of the Guidelines.

BEUC generally agrees with the proposed guidelines, but has some comments, proposals and remarks which could contribute to a better form and substance of those guidelines – please see our reply to Question 2.

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. Establishment of policies and procedures

1.1 The creditor should establish procedures to detect early indications of consumers going into payment difficulties.

1.2 The creditor should establish policies and procedures for the effective handling of and engagement with consumers in payment difficulties.

1.3 The creditor should provide adequate training for staff dealing with consumers in payment difficulties.

1.4 The creditor should review these policies and procedures regularly.

BEUC supports the above requirements, but considers that the guidelines should go further.

As we are in a specific context of an extended period of historically low interest rates in all Member States, and because changes in exchange rates for loans in foreign currency are unpredictable (see the recent dramatic rise of Swiss franc), all creditors should be requested to take action to identify customers susceptible to arrears and have appropriate strategies to treat them fairly, in particular:

- if indexes used in all variable rate mortgage loans rise, and
- if exchange rates of foreign currency loans rise.

As regards foreign currency loans, as it is mentioned in Article 23 (4) of the MCD, Member States shall ensure that the creditors warn the consumers on a regular basis, but at least where the value of the total amount payable by the consumer which remains outstanding or of the regular instalments varies by more than 20% from what it would be if the exchange rate between the currency of the credit agreement and the currency of the Member State applicable at the time of the conclusion of the credit agreement were applied.

Creditors should develop information relating to impairment and a performance tracking system to proactively segment their pre-arrears population. They should consider which borrowers are most likely to be affected by potential rate rises, for example, those who have experienced payment problems in the past or those with a high debt-to-income ratio, and consider deploying proactive strategies to engage them at the earliest moment possible.

Creditors should put in place tools to detect and act upon 'early warning signs' such as borrowers consolidating debt or failing to meet all of their financial commitments. This would allow them to develop effective early engagement strategies and offer proactive solutions or money advices which increase the chance of better outcomes for both customers and creditors.

We propose that a common definition of alerts be introduced that might provide for situations of risk of failure, as it exists in Portugal with the Action Plan for the Risk of Failure (PARI).

Senior management should have the duty to promote cultures in arrears management functions which focus on delivering outcomes aligned with the best interests of customers. Management need to provide leadership and direction to create an environment that enables their staff to make informed judgments, and take decisions that reflect the specific personal and financial circumstances of individual borrowers. They must ensure that decisions around forbearance or repossession are suitable given the specific personal and financial circumstances of

borrowers - dealing sensitively with borrowers who may have particular vulnerabilities. Decisions should take account of a borrower's likely long-term ability to repay their arrears, while respecting data protection legislation and consumer privacy.

Points 1.2 and 1.3 - The following text should be added at the end of the sentence: "*.... or expected payment difficulties*".

2. Engagement with the consumer

2.1 When a consumer goes into payment difficulties, the creditor should work with the consumer to establish why the difficulties have arisen and for the creditor to take appropriate steps.

2.2 The creditor should conduct meetings with the consumer in relation to their payment difficulties in privacy having regard to data protection legislation and not disclosing personal information to a third party without a consumer's consent.

2.3 The creditor, as well as any agents acting on behalf of the creditor, should maintain a level of contact and communication with a consumer in payment difficulties that is proportionate to the information requirements, and not excessive.

BEUC supports the above requirements but considers that they should go further.

Household customers who warn credit institutions about their risk of default, due, for example, to being unemployed or ill, should have a right to receive from the creditor a document informing them about their rights and duties. The creditor should also formally recognize in writing that he has received such a warning from the customer. .

Household customers in pre-arrears or arrears on the payment of their credit installments should receive information, advice and assistance from the entities in charge of debt advice. Recourse by the household customer to such entity should be free of charge.

In the meetings conducted by creditors, which need to be organized in a private room/space, consumers should also have the right to be assisted by relatives, lawyers, representatives of consumer organisations, etc.

Creditors should engage sensitively with borrowers who have specific needs or circumstances which are likely to limit their ability to engage effectively, for example, borrowers who lost their job, divorced, those dealing with bereavement or terminal illness, or those with physical and mental health issues (this is not an exhaustive list). These circumstances are not always consistently identified or appropriately probed by front-office staff, even when they are explicitly referred to by borrowers.

It is very important to be sure that fundamental rights as human dignity, privacy, safety, health etc. are respected by creditors and any other agents acting on behalf of creditors. Debt enforcement should respect the privacy of the debtors and not share any information with friends/neighbors/relatives/colleagues. There are many examples in practice of consumers being harassed by representatives of creditors, especially by employees working for debt collectors. It would be very important to include into the guidelines, at the end of point 2.3, a clear mention to discourage such practices.

3. Provision of information and assistance to the consumer

3.1 The creditor should have a consumer engagement policy in place. This should ensure that they provide adequate information, for example, through websites and written materials, and support for consumers in, or concerned about, payment difficulties.

3.2 The creditor should communicate clearly and in plain language.

3.3 The creditor should provide support and, at least, the following information to consumers in payment difficulties:

- a) the number of payments either missed or only paid in part;
- b) the total sum of the payment shortfall;
- c) the charges incurred as a result of the payment shortfall;
- d) the importance of the consumer co-operating with the creditor to resolve the situation.

3.4 In cases where the consumer's payment difficulties persist, the creditor should provide the following information to the consumer:

- a) information regarding the consequences of missing payments (e.g. costs, default interest rate, possible loss of property, etc.); and
- b) information about available government/public schemes or support.

BEUC supports the above requirements, but recommends that they should go further.

One of the most important challenges for consumers is to understand the very technical language used by bankers, both in contracts and in meetings. Creditors should take measures to be sure that the information provided is clear and well understood by all categories of consumers.

Consumer organisations have reported cases where the creditor was unwilling to switch direct debit payment dates to suit borrowers' circumstances, for example to facilitate prioritising of secured versus unsecured payments or to reflect the timing of salary payments; errors in manual 'workarounds' resulting in incorrect information being recorded on case files, unnecessary delays to case management; poor quality record-keeping and limited system performance, restricting staffs' access to full case details and requiring borrowers to constantly re-explain sensitive circumstances or provide information on multiple occasions.

As regards fees and charges, charging practices should be fair and only reflect the additional resources required to administer the cases, on which such charges should be based.

4. Resolution process

4.1 The creditor should take into account the individual circumstances of the consumer, the consumer's interests and rights and his/her ability to repay when deciding on which steps/forbearance measures to take. Forbearance measures consist of concessions towards a consumer facing, or about to face, difficulties in meeting his/her financial commitments.

Concessions to the consumer include:

1. a total or partial refinancing of a credit agreement; and/or
2. a modification of the previous terms and conditions of a credit agreement, which may include amongst others:
 - a) extend the term of the mortgage;
 - b) change the type of the mortgage;
 - c) defer payment of all or part of the instalment repayment for a period;
 - d) change the interest rate;
 - e) offer a payment holiday.

BEUC supports the above requirements which need to be more detailed.

Borrowers in arrears on obligations under their credit agreements should have a right to enter into a settlement procedure that should apply to all types of mortgage credits, which should not depend on compliance with any conditions for access, nor specifically requested by the borrower.

Borrowers' should have a right to receive a document informing them about their rights and duties under the settlement procedure. Following the assessment of the borrower' creditworthiness, the creditor should present one or more restructuring proposals deemed adequate to the borrower' financial situation.

The borrower should be granted a series of guarantees. Among these, the creditors should be prohibited from terminating credit agreements, bringing legal proceedings against household customers with a view to redeeming credits or assigning the said credits to third parties.

Borrowers with difficulties in paying housing credit instalments may request credit institutions to renegotiate the loan's financial conditions with a view to reducing the debt burden.

In case of renegotiation, credit institutions cannot increase the charges on credit agreements for the purchase or construction of owner-occupied homes, if such renegotiation has resulted in particular from a change in the credit holder due to divorce, legal separation, dissolution of a life partnership or death of either one of the spouses.

Household customers in arrears on credit agreements for owner-occupied homes who are in a particularly difficult economic situation should, on request, benefit from an extraordinary regime which could include the adoption of exceptional measures, which may lead to a partial or full cancellation of the debt. Such borrowers should benefit from a series of guarantees, notably the prohibition of credit institutions from foreclosing the mortgage.

In case the creditors have not acted in line with the principles of "responsible lending" as provided by the Directive, the borrowers should have the right to be exempted, partly or even in full, of their debt.

Lenders should be also encouraged to include in their mortgage contracts a clause allowing the borrower to modify the amount of his monthly repayment; this clause could provide for a minimum monthly payment below which it would not be possible to go down, and eventually a maximum monthly payment (to be used in case of increase of income - relevant in particular for independent workers who have irregular income). Once a year, the borrower could inform his bank of his choice to lower or increase monthly payments, which would allow him to more easily manage decrease of income due to divorce, jobless for instance, or increase of his expenses.

5. Documentation of dealings with the consumer and retention of records

5.1 The creditor should document the reasons why the option(s) offered to the consumer are appropriate for his/her individual circumstances and should make and retain adequate records of its dealings with the consumer in payment difficulties for a reasonable period of time.

BEUC supports the above requirements.

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