

Eurofinas Response to the European Banking Authority's Draft Guidelines on Arrears and Foreclosure

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 five Guidelines.

General remark

Eurofinas fully supports measures to encourage creditors to exercise reasonable forbearance before foreclosure proceedings are initiated. In addition to these particular obligations for creditors, we feel that the Guidelines should also include a requirement setting out the borrower's obligation to cooperate with the creditor.

As a general remark, we would find it helpful if the Guidelines further clarify the concept of "payment difficulties". It is currently not clear to us whether such difficulties relate to a certain credit agreement or to payment difficulties in general.

Specific remarks

Guideline 2: Engagement with the consumer

(2.2) This Guideline may prove problematic in case the consumer may not want to cooperate with the creditor. We therefore suggest the following wording "When the consumer goes into payment difficulties, the creditor should take reasonable steps to work with the consumer to establish why difficulties have arisen". As an alternative, other means such as phone calls or web communication should be considered as valid.

The reference to data protection legislation in this guideline gives the impression that consent is always necessary, even, for example, in the case of an intermediary communicating payment default information to credit bureaux. It should be clarified that the reference to consent relates to personal information such as the causes of default.

Guideline 3: Provision of information and assistance to the consumer

(3.1-3) Eurofinas would like to point out that this Guideline introduces additional requirements to article 28 of the MCD. In principle, we fully support the provision of information on the consequences of payment difficulties and resolutions. However, we also

emphasise that personal information may also commonly be disclosed by third parties, such as charity organisations which may be able to offer advice on debt management.

- (3.4) We would find it helpful if this Guideline is more specific as to the actual signposting needed for consumers in difficulty (e.g. debt advice agencies rather than general schemes to encourage house buyers).

Guideline 4: Resolution process

- (4.1) Outside the judicial framework, concessions given to consumers are at the entire discretion of lending institutions. We believe that this Guideline suggests otherwise.

It should clearly be stated that the concessions mentioned are only examples and that when forbearance is judged to be inappropriate/has been exhausted, the creditor has the right to foreclose.

Guideline 5: Documentation of dealings with the consumer and retention of records

- (5.1) This guideline goes further than the requirements laid down in article 28 of the MCD, while such stricter requirements are not necessary to achieve the objective of article 28 MCD. Furthermore, Eurofinas points out that EBA's proposal may not be consistent with "level 1" regulation.

Contact persons

Alexandre Giraud
Senior Legal Adviser
+32 2 778 05 64

a.giraud@eurofinas.org

Nadia Hazeveld
Junior Adviser
+32 2 778 05 72

n.hazeveld@eurofinas.org

Eurofinas is entered into the European Transparency Register of Interest Representatives with ID n° 83211441580-56