BUNDESVERBAND DEUTSCHER
LEASING-UNTERNEHMEN

BDL Markgrafenstraße 19 10969 Berlin Germany

EBA
DEFENSE 4 – EUROPLAZA
20 Avenue André Prothin
CS 30154
92927 Paris La Défense CEDEX

Contact:

Dr. Matthias Pytlik
pytlik@leasingverband.de
Fon +49(0)30-20 63 37-21
Fax +49(0)30-20 63 37-30

Berlin, 27th of September, 2019

Comments by the German Leasing Association (BDL) on the consultative document "Draft Guidelines on loan origination and monitoring", 19 June 2019 (EBA/CP/2019/04)

Dear ladies and gentlemen,

thank you very much for the opportunity to comment on EBA/CP/2019/04. The German Leasing Association (BDL) represents the interests of the leasing industry in Germany, which, with a new business volume of around EUR 70 billion in 2018, realizes around a quarter of all equipment investments and more than half of all externally financed equipment investments in Germany. The German leasing industry is thus making a substantial contribution to the financing and investment supply of German SMEs in particular.

If the Guidelines are applied in their present or in a similar form to leasing companies in Germany, there is a threat of serious restrictions on the supply of credit, especially for small and medium-sized enterprises.[1] These restrictions are entirely inappropriate because the lending practices of German leasing companies follow at all times established standards that ensure a solid supply of credit. Extremely low default rates, even from a long-term perspective and across complete economic cycles, provide sound empirical evidence. In addition, the NPL sector in Germany is of secondary importance in a European or international comparison and almost meaningless for the leasing industry.

However, the Guidelines now provide highly granular guidance on the structure of lending and monitoring, which should also be implemented within a very short period of time. The requirements go far beyond the currently applicable regulatory framework and violate fundamental principles on the basis of which it has been possible in the past to ensure sound lending practice and monitoring in the German leasing industry.

[1] Despite the fundamental differences, the term "credit" is also used in the following to refer to leasing agreements.

Subsidiarity

The established standards of lending and credit monitoring practice are built on the interaction between lenders and borrowers under the given economic and regulatory conditions. They thus reflect the special features of the national credit markets. If regulation is harmonized down to the last detail without taking national peculiarities into account, the complex balance in lending practice is in danger of being disturbed, with negative consequences for all market participants.

In order to promote the adequacy of national regulatory standards, granular standards should therefore not be imposed at European level. Instead, framework conditions should be laid down and the differentiated design should be left to the national supervisory authorities. The present guidelines, however, violate the subsidiarity principle, as the regulation of detailed standards is de facto sought instead of the specification of framework conditions.

The negative consequences for leasing in Europe are particularly serious, as the national leasing markets are fundamentally different in nature, design and development.[2] Moreover, despite the large differences, there is no need for additional regulation ("... *no regulatory intervention is required at the EU level*."[3]). Nevertheless, the present guidelines threaten to apply uniform and highly granular standards to leasing markets as well. This would again burden the German leasing market and further accelerate the concentration process. In mirror image, this also applies to the small and medium-sized companies in Germany, which, like the leasing industry, is unique in Europe.

<u>Due to principle of subsidiarity we therefore suggest the clarification in chapter 2 that leasing companies do not fall within the scope of the Guidelines.</u>

Proportionality

In accordance with the principle of proportionality, appropriate implementation should be promoted both in terms of the size, nature and complexity of the organization (No. 12) and in terms of the size, nature and complexity of the loan agreement (No. 13). However, the granularity of the requirements leaves little room for differentiated and proportional implementation.

Instead, the guidelines are based on the technical and organizational requirements of large banks. The business model of small institutions, on the other hand, is discriminated against. Since the leasing sector in Germany is characterized by medium-sized companies, there is a risk of disproportionate burdens which will further intensify the existing consolidation pressure and lead to the departure of predominantly medium-sized leasing companies.

---

[2] See EBA Report on Other Financial intermediaries and regulatory perimeter issues, p. 27 et seq.
[3] See EBA Report on Other Financial intermediaries and regulatory perimeter issues, p. 8.

In terms of lending practice, too, the requirements meet above all the standards to be met by large and/or complex loans. On the other hand, low-volume and/or low-risk loans, especially for small and medium-sized customers, are discriminated against. Due to the great importance of SMEs in Germany, disproportionate effects can also be expected here.

The imminent tightening of standards for granting and monitoring loans is associated with considerable implementation costs and will lead to a permanent increase in the cost of loans. The increase will weigh on all segments of the credit market, although the disproportionate burden in certain size and risk classes may lead to fundamental restrictions in the supply of credit (credit crunch). In addition to loans to SMEs, freelancers, the self-employed and start-ups are also particularly affected.

In order to take adequate account of the proportionality principle, we see starting points at 3 levels:

1. Principle orientation and method freedom

Principle orientation and freedom of methods are regarded as indispensable prerequisites for implementing the principle of proportionality. A corresponding reference in connection with the references to the principle of proportionality in No. 12 and No. 13 should therefore be made and taken into account in the subsequent chapters. We have summarized concrete references to central points in the Annex.

In addition to the specific notes, the schematic summary of the requirements in Annex 1-3 of the Guidelines also stands in the way of proportional implementation by supervisors, auditors and as part of the internal control process. The specification of detailed lists in the form of Annex 1-3 should therefore be dispensed with.

2. Distinction between risk-relevant and non-risk-relevant lending business

In addition to the notes in the appendix, which are suitable for promoting proportionality in the aforementioned aspects, we suggest the fundamental distinction between risk-relevant and non-risk-relevant lending business. The differentiation should be risk-oriented and based on individual criteria of materiality. For operationalization, simplified lending decision processes for the non-risk area should be linked to quantifiable barriers such as total exposure.

3. Limitations of scope

Even if (1) and (2) are fully taken into account, they Guidelines are not suitable for providing an appropriate framework for implementation in leasing. On average, leasing companies are much smaller than banks, leasing is much less risky than lending business and leasing is primarily anchored in the real economy. The lessor acquires the investment object and makes it available to the lessee for a usage fee for a limited period. The lessor remains the owner of the asset for the entire term of the lease. Leasing is therefore a form of investment and not primarily financing. Supervision of leasing companies should therefore be fundamentally different from supervision of banks.

On the basis of the principle of proportionality as well, we therefore propose that leasing companies do not fall within the scope of the guidelines and suggest the corresponding clarification in Chapter 2.

We urge you to take our comments into account, as otherwise we expect considerable disadvantages for the financial markets in Germany and Europe, without these disadvantages being offset by appropriate advantages in terms of financial market stability.

If you have any questions or require additional information, please do not hesitate to contact us at any time and we look forward to continuing our constructive dialogue with you.

Yours sincerely

German Leasing Association

M. Pytlik

Horst Fittler
Managing Director

Dr Matthias Pytlik
Head of Department Business Administration and Finance

Annex

Chapter 4 (Governance requirements for credit granting and monitoring)

- Instead of formulating the requirements for credit processes as minimum requirements in No. 35 ("*at least*"), they should be linked to the principle of proportionality with reference to No. 12 and No. 13. This also applies to the credit granting criteria set out in No. 35d. In addition, in order to promote principle-based and proportional lending, the listing of a strictly prescribed list of criteria in the form of Annex 1 should be dispensed with.

- The consideration of automated credit decision processes in No. 35g is basically to be welcomed, since automated decision processes are necessary against the background of digitization and process-optimization. In this context, too, a distinction must be made between risk-relevant and non-risk-relevant business and should be based on business specific criteria of materiality.

- The requirements for credit appetite, culture, strategy, policy and processes are too detailed and do not allow proportional implementation. This is associated with the threat of excessive documentation and reporting effort, which is inappropriate for SMEs with simply structured credit commitments. Integration into the overall business and risk strategy should be possible and sufficient within the framework of a proportional business organization.

- Section 4.3.1 ("*Anti-money laundering and counter-terrorist financing policies and procedures*") of the draft stipulates that all third parties associated with the loan must be identified. This is an extension that even the EU Money Laundering Directive does not provide for. From the point of view of money laundering prevention, it is not necessary to restrict the number of contracting parties, (fictitious) beneficial owners and persons appearing.

  Anti-money laundering legislation is systematically outside the scope of this Guideline anyway and should be reserved for the Anti-Money Laundering Directive. This shall also apply to the provision for determining the legitimate source of the funds used by the customer to service the credit. A corresponding analysis of the origin of payments is practically impossible if the funds are received via the customer's original business account. In addition, contrary to the current draft, the current Money Laundering Directive does not prescribe to ascertain the origin of the funds in general, but rather, depending on the risk, only for those customers for whom there are high due diligence requirements. The extension of the identification obligation, possibly indicated by the draft, e.g. also to guarantors, is inappropriate, since in this case no funds flow or only material securities (pledged objects) are provided and therefore there is no money laundering risk.

We therefore encourage the deletion of the money laundering requirements under Section 4.3.1.

- The requirements in Section 4.3.3 ("*technology-enabled innovation*") are highly vague and promote uncertainty in implementation, auditing and regulatory supervision.

- The requirements in Section 4.3.4 ("*green lending*") represent a anticipation of current legislation. While the effort to make the Guidelines "*future proof*" is welcome, priority should be given to a consistent and coordinated approach.

- The qualification requirements for employees in the credit sector in accordance with Section 4.6 are dispensable, as they are adequately covered by higher-level requirements on proper business organization.

- The requirements for remuneration in 4.7 are regulated by separate standards. Additional specifications are therefore not necessary at this point.

Chapter 5 (Loan origination procedures)

- The information requirements vis-à-vis connected clients pursuant to No. 89 are regulated by separate standards on a national implementation level. In order not to affect the consistency of the provisions, additional requirements within the framework of these guidelines should be waived and No. 89 deleted.

- The special information requirements in connection with lending to business customers (No. 93), which are formulated as minimum requirements ("*at least*"), are so comprehensive and detailed that it is no longer possible to implement them appropriately. The effort involved in collecting and processing the information threatens to become so high that the segment of small and medium-sized customers and/or low credit volumes can no longer be served at reasonable costs.

  Irrespective of the size of the lender, the requirements of No. 93 cannot sometimes be met because access to the required information is not granted or the information is not available in the required form.

  A credit crunch or at least significantly higher costs in this segment are the immediate consequences. The reference to *"at least"* should therefore be deleted and replaced by a reference to the principle of proportionality in accordance with No. 12 and 13.

  In addition, the distinction between risk-relevant and non-risk-relevant business should also be introduced in connection with the collection of information, whereby the distinction should be made due to business specific criteria of materiality.

- The comments on No. 93 also apply to the specification of the information requirements in No. 94. The corresponding Annex 2 should be omitted, as the list form also stands in the way of a proportional implementation.

- It remains unclear why the application of the general requirements for leasing is explicitly emphasized in No. 123. Unless it can be concluded from this that all other requirements do not apply to leasing, the second sentence in point 123 should be deleted.

- The criteria formulated as minimum requirements ("*at least*") for the credit assessment of business customers in No. 126 and 127 are associated with an expense that is not appropriate for SMEs and low-risk lending business. Due to the definition as minimum requirements, proportionality in accordance with No. 12 and No. 13 cannot be implemented, so that these business segments are discriminated against.

- The explanations in the previous section apply to No. 131 et seq. (*Analysis of the borrower's financial position*) and 142 et seq. (*Sensitivity analysis in creditworthiness assessment*), whereby in particular the extensive requirements for sensitivity analyses for both idiosyncratic and market-driven risks in non-risk-relevant business are by far excessive. Small-scale credit business is not feasible with the required processing effort.

Chapter 6 (Pricing)

- No. 187 contains specific information on price calculation and No. 188 on integration into risk-adjusted corporate management, with reference to existing models (EVA, RORAC, RAROC). The reference to proportionality in relation to credit exposure is to be welcomed. However, there is no reference to proportionality in relation to internal requirements.

  In addition, the reference to leasing transactions in No. 188 is misleading and should be deleted.

Chapter 7 (Valuation of immovable and movable property)

- The requirement pursuant to No. 194 and No. 201 that immovable and movable assets be valued by an independent expert is a task that can hardly be accomplished, or only at a disproportionately high expense, especially for medium-sized institutions. Ensuring a qualified valuation should be sufficient without linking this to the function of an independent expert. In addition, the requirements for experts in accordance with Section 7.3 are superfluous and may be deleted.

  In principle, statistically sound assessment methods should also be permitted, taking into account the principle of proportionality. The limitation to "*advanced*" models in No. 201 should therefore be removed.

Chapter 8 (Monitoring framework)

- Following the requirements for monitoring credit risk, a complete, reliable and up-to-date overview (No. 226) should be possible on an individual loan basis (No. 234) at all times. In addition, monitoring is to be continuous (No. 240), whereby neither the extent of the risks entered into nor the company-specific requirements are taken into account. This "maximum requirement" presupposes a corresponding IT infrastructure, which should provide the necessary information largely without manual intervention possibilities (No. 229a).

  Instead of placing the highest requirements on the design of credit risk monitoring systems, design options should be opened up in line with the principle of proportionality. A clear reference in No. 226 appears necessary. Otherwise, it will hardly be possible to meet the requirements.