



*European Association of Co-operative Banks
Groupement Européen des Banques Coopératives
Europäische Vereinigung der Genossenschaftsbanken*

EACB response to EBA Consultation Paper: draft Guidelines on “Creditworthiness Assessment”

12 February 2015

The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks’ business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%.

For further details, please visit www.eacb.coop

The voice of 3,700 local and retail banks, 56 million members, 215 million customers

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Introductions

The EACB welcomes the opportunity to participate in the EBA consultation process on "Creditworthiness Assessment".

Mortgage lending is at the very core of co-operative banking business. A sound and solid creditworthiness assessment is part of the individualized approach to the credit granting process that co-operative banks are committed to.

EACB has thus carefully reviewed the consultation document with its members and would like to formulate a number of observations. Some of these are relating to the set of proposed guidelines as a whole ("general comments") and some are answers to the specific questions raised.

General comments

Legal requirements already in place & Co-operative banks' individualised approach to the Creditworthiness Assessment

The obligation for the assessment of candidate borrowers' creditworthiness is already enshrined at the level of banking supervisory legislation, as well as at the level of more specified legislation (i.e. the Mortgage Credit Directive- MCD)¹.

In addition to the legal requirements to assess creditworthiness imposed on all creditors by the adopted Mortgage Credit Directive, co-operative banks use their proximity to the clients, often being also members, to carefully analyse the financial situation of each client.

Also, it should not be forgotten that – in many cases - the mortgages extended by banks are funded by the savings attracted and that those banks thus lend their clients money. It is therefore in the interest of banks to ensure that the borrower will be able to repay the loan given.

Principles based approach vs. a more prescriptive perspective

The European Association of Co-operative Banks (EACB) has welcomed the principles-based approach to the creditworthiness assessment as set out in the Mortgage Credit Directive (2014), as it allows Member States and individual banks to take into account the specificities of their respective markets.

EACB also welcomes the fact that the EBA Guidelines seem less prescriptive in nature compared to the 2013 Opinion whilst acknowledging that the 2013 Opinion will remain to exist next to the Guidelines. It notes that the Guidelines intend to complement/ further specify the requirements set out in the MCD.

EACB however wishes to emphasise that the flexible and principles- based approach to the creditworthiness assessment as laid down in the MCD shall not be overridden by the more descriptive nature of the EBA Guidelines. All the more because there does not seem to be a clear or precise mandate given to the EBA in this context (not specified in neither Article 18 nor Article 20(1) MCD).

We finally wish to highlight that proportionality is key: successful processes for establishing the creditworthiness of a consumer - and achieving the objectives the MCD - as developed at the local level should thus be respected.

¹ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 Text with EEA relevance, 28.2.2014, OJEU L 60/34-85.



Q1: 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 seven Guidelines.

Guideline 1

- Guideline 1.1: when requiring the creditor to take into account “any variability” in the consumer’s prospect to meet his/her obligations, it is important to remember that –unless the consumer is able to provide such information- a creditor can reasonably not be expected to know how a particular consumer’s situation evolves over time; as such, he will have to base himself on the situation/ information provided at the moment of granting the credit.
- Guideline 1.1: The latter also implies that the lender should be able to define and assess the notion of “income history” according to its own risk policies; e.g. his knowledge of the client (known vs new client) and the amount borrowed – as it directly impacts the consumer’s prospect to meet his/her obligation.

EBA draft Guideline	EACB suggestion
1.1 The creditor should make reasonable enquiries and take reasonable steps to verify a consumer’s prospect to meet his/her obligation under the credit agreement including the consumer’s underlying income capacity, the consumer’s income history and any variability over time.	1.1 The creditor should make reasonable enquiries and take reasonable steps to verify a consumer’s prospect to meet his/her obligation under the credit agreement including the consumer’s underlying income capacity, and the consumer’s income history and any variability over time.

- Guideline 1.2: We understand “sources that are independent of the consumer” to be sources that are independent (e.g. a pay slip, a tax form) but that are provided **by** the consumer. Should the Guideline however imply that the creditor should approach the independent sources (e.g. tax authorities, employers) itself, the EACB would be very much concerned, both from an operational and a data protection- point of view, as these “independent sources” are not necessarily in a position (i.e. lack of legal ground) to transfer the relevant data to the borrower. As such, it would propose the following amendment:

EBA draft Guideline	EACB suggestion
1.2 The creditor should use necessary, sufficient and proportionate information, that can be evidenced and that is provided by sources that are independent of the consumer.	1.2 The creditor should use necessary, sufficient and proportionate information; that can be evidenced. and that is provided by sources that are independent of the consumer.

- Guideline 1.3: In line with our concerns expressed above, “third party verification” seems a very time consuming concept to apply in practice if it implies that the creditor itself should proactively search for such third party verification. Therefore, we would propose the below amendment.



EBA draft Guideline	EACB suggestion
1.3 In the case of consumers that are self-employed or have seasonal or other irregular income, the creditor should make reasonable enquiries and take reasonable steps to verify additional information that is related to the consumer's ability to meet his/her obligations under the credit agreement, including profit capacity and third party verification documenting such income.	1.3 In the case of consumers that are self-employed or have seasonal or other irregular income, the creditor should make reasonable enquiries and take reasonable steps to verify additional information that is related to the consumer's ability to meet his/her obligations under the credit agreement, including profit capacity and third party verification documenting such income.

Guideline 3

- Guideline 3.1: seems to shift the responsibility of misrepresentation of information by the consumer to the creditor → Whereas a creditor can take responsibility for the way it represents certain information, no lay out can prevent a consumer from willingly providing the creditor with falsified information. In addition, the MCD and the ESIS already set out in a detailed way what and how information is to be provided to the consumer willing to engage in a mortgage contract.

EBA draft Guideline	EACB suggestion
3.1 To reliably carry out creditworthiness assessments, the creditor should design loan documentation in a way that helps to identify and to prevent misrepresentation of information by the consumer, the creditor, or a credit intermediary.	3.1 To reliably carry out creditworthiness assessments, the creditor should design loan documentation in a way that helps to identify and to prevent misrepresentation of information by the consumer, the creditor, or a credit intermediary.

Guideline 4

- Guideline 4.1: "Undue hardship" seems a vague principle to apply in practice. When is a hardship undue? Also, a creditor cannot [solely] be held responsible for a consumer's situation of over indebtedness. As we know and as several studies have shown, macro-economic factors and "accidents of life" are the main driver of this phenomenon.²

EBA draft Guideline	EACB suggestion
4.1 The creditor should assess the consumer's ability to meet his/her obligations under the credit agreement without causing the consumer undue hardship and over-indebtedness, while taking into account data protection rules	4.1 The creditor should assess the consumer's ability to meet his/her obligations under the credit agreement without causing the consumer undue hardship and over-indebtedness, while taking into account data protection rules

² Civic Consulting study (2014) as commissioned by the COM on "The over indebtedness of European households" (page 92):
http://ec.europa.eu/consumers/financial_services/reference_studies_documents/docs/part_1_synthesis_of_findings_en.pdf



that may apply in the relevant jurisdiction.	that may apply in the relevant jurisdiction.
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- Guideline 4.3: It is not possible to take into account all directly relevant taxes and insurances, since not all of this information is necessarily known to the creditor at the moment of the creditworthiness assessment. We also feel that the very substance of Guideline 4.3 is already covered for by Guideline 4.1.

EBA draft Guideline	EACB suggestion
4.3 The creditor should take into account relevant factors that could influence the ability of the consumer to meet obligations under the credit agreement without including undue hardship and over-indebtedness. The factors may include other servicing obligations, their interest rates, and the outstanding principal on such debt; evidence of delinquency; as well as directly relevant taxes and insurance.	4.3 The creditor should take into account relevant factors that could influence the ability of the consumer to meet obligations under the credit agreement without including undue hardship and over-indebtedness. The factors may include other servicing obligations, their interest rates, and the outstanding principal on such debt; evidence of delinquency; as well as directly relevant taxes and insurance.

- Guideline 4.4: Whilst a creditor can make an assumption of the consumer's situation past "normal retirement age" it will always be based on available factual information (pension age) and figures, not taking into account the specific situation of that borrower- which is not known given that it lies in the future- let alone any political decisions that might influence pension age/ fiscal implications thereof etc.
 Furthermore, we feel the Guideline is too rigid and does not take into account what the consumer himself/herself wants, which could also be: selling the house upon retirement to move to a smaller house or even abroad.
 We thus question the actual value this Guideline can bring, and consider that the broader Guideline 4.1 would again suffice.

EBA draft Guideline	EACB suggestion
4.4 If the loan term extends past normal retirement age, the creditor should take appropriate account of the adequacy of the consumer's likely income and ability to continue to meet obligations under the credit agreement in retirement.	4.4 If the loan term extends past normal retirement age, the creditor should take appropriate account of the adequacy of the consumer's likely income and ability to continue to meet obligations under the credit agreement in retirement.

Guideline 5

- Guideline 5.1: creditors do not have access to information which would enable them to evaluate the "living expenses of the consumer" and obtaining such information would require an intrusion in their client's privacy which does not seem proportionate.

EBA draft Guideline	EACB suggestion
5.1 When assessing the consumer's ability to meet obligations under the credit	5.1 When assessing the consumer's ability to meet obligations under the credit



agreement, the creditor should make reasonable allowances for committed and other non-discretionary expenditures, such as the consumer's actual obligations, including appropriate substantiation and consideration of the living expenses of the consumer.	agreement, the creditor should make reasonable allowances for committed and other non-discretionary expenditures, such as the consumer's actual obligations; including appropriate substantiation and consideration of the living expenses of the consumer.
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Guideline 6

- Guideline 6: Again, a creditor cannot predict how a particular consumer's situation will evolve over time. What seems relevant, though, is to know the changes of interest rates in case of variable interest rate- mortgages. The Mortgage Credit Directive and its ESIS (European Standardised Information Sheet) already foresee in the provision of information regarding the latter.

EBA draft Guideline	EACB suggestion
6.1 When assessing the consumer's ability to meet obligations under the credit agreement, the creditor should make prudent allowances for potential negative scenarios in the future, including for example, a reduced income in retirement; an increase in benchmark interest rates in the case of variable rate mortgages; negative amortisation; balloon payments, or deferred payments of principal or interest	6.1 When assessing the consumer's ability to meet obligations under the credit agreement, the creditor should make prudent allowances for potential negative scenarios in the future, including for example, a reduced income in retirement; an increase in benchmark interest rates in the case of variable rate mortgages; negative amortisation; balloon payments, or deferred payments of principal or interest

Guideline 7

- Guideline 7: The risk assessment at [target] group level seems to be of little value, given that the risk profile of a loan typically depends on the individual circumstances of a borrower; a loan that might pose a higher risk for one borrower because of their circumstances may not for another because of a different set of circumstances.
 What is important is complete and comprehensive information and adequate explanations to the candidate borrower of the features of different loans. It should be recalled that specific loan types with particular features, such as foreign currency loans and variable interest rate loans, are extensively addressed in the MCD and it is our view that no further action is required in this respect.

EBA draft Guideline	EACB suggestion
7.1 The creditor should identify groups of loans with a higher risk profile, and should take this into account when assessing consumers' creditworthiness.	7.1 The creditor should identify groups of loans with a higher risk profile, and should take this into account when assessing consumers' creditworthiness.



Q2: Are there any additional requirements that you would suggest adding to the Guidelines? If so, outline the reason(s) for each proposed additional requirement.

It would be important to also include in the draft guidelines requirements relating to 'responsible borrowing', which would oblige borrowers to provide the lender with complete and correct information on their financial situation and personal circumstances in the context of the credit application process.

Contact:

The EACB trusts that its comments will be taken into account.

For further information or questions on this paper, please contact:

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