



## European Banking Industry Committee

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European Banking Federation (EBF) • European Savings Banks Group (ESBG) • European Association of Cooperative Banks (EACB)  
European Mortgage Federation (EMF) • European Federation of Building Societies (EFBS)  
European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)  
European Association of Public Banks (EAPB)

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Brussels, 24 April 2018

Re: Creditworthiness assessments under the Consumer Credit Directive

Dear Mr. Mazeika,

As the two-year anniversary of the implementation of the Mortgage Credit Directive approaches and based on our experience of transposition of that Directive as well as the elaboration of the EBA Guidelines on Creditworthiness Assessment for Mortgage Credit, we would like to share with you some market observations which we believe could be of use in the context of the European Commission's current work on creditworthiness assessments in the field of the Consumer Credit Directive. In this respect, we would like to take this opportunity to reiterate EBIC's ongoing commitment to constructively contribute to the European Commission's work in relation to action 9 of the Action Plan on Consumer Financial Services:

## 1. Proportionality

In the context of the ambition of the European Commission to develop common creditworthiness assessment principles for lending to consumers, we believe it is very important that any work takes into account the specific nature and characteristics of the products concerned. Consumer loans are typically of short duration and relatively low value, and must be distinguished from other types of loans such as mortgage credit. In accordance with the principle of proportionality, the assessment should reflect the size of the loan. The proportionality principle should also apply to the information required and take into account the characteristics of retail lending. We believe that any principles should also be sufficiently flexible to adapt to the specificities and frameworks of the local markets and the digital economy that is developing. It is important to recall that any type of intervention at EU level should remain necessary to achieve the general European objectives of the Treaties and not go beyond what can be sufficiently achieved by the Member States, taking into account the recent implementation of the EU legislations by the Member States on the matter.

## 2. Use of Data & Data minimisation

### ▪ *Data Minimisation*

Linked to the proportionality point above, creditworthiness assessments must of course respect applicable data protection legislation, including the principle of data minimisation. It follows that the use of data should be adequate and relevant for the purpose at hand.

At the same time, in a changing environment where data can be better analysed, the use of data that the customer has provided to the entity should be considered as an added value for customers and for financial institutions in order to conduct appropriate assessments, with a view to (1) avoiding the granting of loans to those who will have difficulties to repay and therefore limiting the risk of over-indebtedness and (2) actually facilitate financial inclusion and the building of a financial track record, for example for those who do not have conventional income sources but can repay a loan. In view of the diversity of consumers and products, flexibility in designing appropriate creditworthiness checks is essential.

### ▪ *Creditworthiness Assessment*

The following important considerations in respect of creditworthiness assessment emerged during the implementation of the MCD: (1) In order to prevent misconceptions at national level it should be clearly emphasised in any future debate on creditworthiness assessment guidelines that the assessment of income should be based on borrowers' income (e.g. where the borrower is a couple). This would be in line with the EBA Guidelines on Creditworthiness Assessment and (2) lenders should be free to determine exactly what elements, beyond borrowers' income, they take into account in order to assess the creditworthiness of the borrowers.

An additional consideration which was a central point of discussion in the context of the MCD is the ability of the lender to assess the creditworthiness of the borrower over the lifetime of the loan and to take account of unexpected 'life events'. Even in the case of consumer credits which typically have a shorter duration than mortgage credits, – (although not always e.g. in some countries, home improvement loans are long duration consumer credits only) –, realistically, the lender can only assess the ability of the borrower to repay the loan at

the time of origination of that loan and cannot predict how the borrower's personal situation, in terms of employment, illness etc., may evolve over time and impact on their repayment ability.

These would be important elements to consider in the development of potential common creditworthiness assessment principles for lending to consumers.

- *Data sources*

Whilst we appreciate the reasoning behind the general tendency to encourage lenders in general to base their creditworthiness assessments on the widest range of sources available, it is important that they remain free to decide upon suitable systems and relevance of factors based on their own experience and expertise in judging the weight of these factors or information: information provided by the borrower him/herself, scoring and analytics based on both internal and external data, for example provided by credit bureaux, ..

In accordance with a recent ruling of the European Court of Justice:

*“The Consumer Credit Directive does not contain an exhaustive list of the information with which the creditor must assess the consumer’s creditworthiness, nor does it specify whether that information must be scrutinised and in what way that should be done. Rather, the wording of Article 8(1) of Directive 2008/48, read in the light of recital 26 in its preamble, affords the creditor a margin of discretion for the purposes of determining whether or not the information at its disposal is sufficient to demonstrate the consumer’s creditworthiness and whether it must check that information against other evidence.”<sup>1</sup>*

We very much hope that these considerations will be of use at the current time and remain at your disposal to discuss any further issues. In fact, we would like to take the opportunity to highlight that these are only a small number of high-level observations at this stage; EBIC has several other insights which we believe could be of relevance to the European Commission's work. With this in mind and given the potential implications for our respective sectors, we would welcome the opportunity of a formal consultation of the industry by the European Commission on any future guidance in this area.

Yours sincerely,



Chris de Noose  
EBIC Chair

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<sup>1</sup> CA Consumer Finance SA v Ingrid Bakkaus and others (C-449/13) [2014] EU:C:2014:2464, para. 36.