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Position paper on the EBA Consultation Paper
Draft Guidelines on loan origination and monitoring
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I. General observations:

The German Bausparkassen grant loans responsibly on the basis of existing legal and regulatory requirements. This is also shown by the sustainably low NPL ratios of Bausparkassen financing. Under Bauspar contracts, a prior saving process must be successfully completed before the subsequent Bauspar loan is claimed. It is precisely for this reason that default rates for Bausparkassen loans are lower than for other housing loans, since, during this prior saving phase, Bauspar savers demonstrate their willingness and ability to forgo consumption and to make regular monthly (savings) deposits over a number of years before possibly claiming a Bauspar loan. In addition, Bauspar financing offers Bauspar savers a high degree of planning security through the long fixed-interest period until full repayment and the option to make early repayment without early repayment fee.

In so far as the requirements of the draft Guidelines are maintained unchanged, this would lead to clear obstructions with respect to borrowing for both consumers and the German Bausparkassen. In addition to extensive information requirements, bureaucratic counselling interviews and prolonged processing times, the significantly increased effort involved in analysis and processing could have a detrimental impact on the terms and conditions for customers, without justification in terms of the risk content of the credit transaction.

In our opinion, a large number of the planned Guidelines are too far-reaching. In particular, they fail to give sufficient consideration to either the nature and scale or the risk content and complexity of the transactions. Blanket application – especially to the focused, small-scale credit business of the German Bausparkassen – is not appropriate.

Although the principle of proportionality is described in the Background, this is not reflected in the sometimes rigid specifications. Ultimately, each individual requirement would have to be interpreted by the respective Bausparkasse against the background of proportionality and reasons would have to be presented. Nevertheless, it could not be ruled out that the arguments in favour of making use of necessary simplifications would not be accepted by the supervisor or external auditors. In particular, the individual regulations in Section 5 are very narrowly formulated and often provide no clear indication that the principle of proportionality is to be applied. On the contrary, few individual regulations make explicit reference to this principle (e.g. in points 86, 144, 155), which gives the impression that the principle of proportionality is not applicable for all other regulations. This is of great importance especially for the Bauspar sector with its low-risk credit business.

At present, there is no scope for interpretation especially of the requirements which are to be defined as minimum requirements ("at least") – proportionate application would be ruled out in practice. In our view, it must be clearly explained in the Guidelines that they do not lay down any minimum requirements, but only describe possible options by way of example, allowing credit institutions scope for decision-making under the principle of proportionality concerning choice and implementation.

We consider it essential to integrate or supplement specific opening clauses and materiality aspects in the text of the Guidelines. To this end, concepts allowing scope (such as in point 85: "sufficiently comprehensive view") should be integrated in the entire text of the Guidelines. In our view, the concrete structure of the individual requirements should be left at the discretion of the institutions, subject to a proportion of risk relevance and risk diversification generally stipulated by the supervisor. This would allow both retail business and risk-relevant business to be processed equally appropriately within the institution.

In general, we recommend significant streamlining of the Guidelines. Excessively detailed requirements and the Annexes should be deleted. The EBA should assume less the role of a risk controller of a bank and dispense with concrete, detailed specifications especially in Section 5. It would be desirable if the EBA, as supervisory authority, were to confine itself to a few abstract specifications which would give credit institutions sufficient scope. If the list of data, indicators, etc. is to be retained, these must at least be identified as examples.

Against the background of the review currently under way of the Consumer Credit Directive (CCD) and the Directive on credit agreements relating to residential immovable property (MCD), the (future) provisions of the Guidelines should also be coordinated in terms of both time and content with the future amendments to the CCD and the MCD in order to avoid double implementation costs for credit institutions.

We consider the proposed date of application (30 June 2020) to be unrealistic. To ensure appropriate implementation, deferment of at least 18 months is necessary.

We wish to enter into a few points in more detail below:

1. Proportionality

The Consultation Paper assumes in the Background, points 13 and 14, that the principle of proportionality applies for the specifications set out in the Consultation Paper, although with the restriction arising from point 15 that this does not apply to consumer protection.

This cannot be retained for the following reasons, since this view is inconsistent with current EU law.

The creditworthiness assessment is particularly burdensome for the Bausparkassen in spite of the particularly low default rates in Bauspar financing. It must be pointed out that the provisions on the creditworthiness assessment, in the opinion of the ECJ, have a third-party protective effect and undertakings must prove compliance with these consumer protection provisions, see ECJ (Fourth Chamber) judgment of 18 December 2014 – C-449/13 (CA Consumer Finance SA v Bakkaus and others).

On the basis of this and in conjunction with the chosen wording in the individual sections of the Consultation Paper, the planned provisions assume the character of minimum standards so that to this extent there is at most a kind of upwards “proportionality” to a higher level of protection. In our view, this completely undermines the principle of proportionality.

Fundamentally, the principle of proportionality has already been explicitly mentioned since the Lisbon Treaty in Article 5 (4) TEU and is also recognised in the Treaty on the Functioning of the EU (TFEU). It can be interpreted as a general principle of EU law, especially in the context of the legality of the restrictions of fundamental freedoms, as a kind of “limitation of the statutory exceptions”, see for instance ECJ (Grand Chamber) judgment of 1 July 2014 – C-573/12 (Ålands Vindkraft AB v Energimyndigheten), paragraph 76 on Article 34 TFEU; ECJ (Grand Chamber), judgment of 8 June 2010 - C-58/08, Vodafone, paragraph 51; Streinz/M. Schröder, 3rd edition 2018, TFEU Article 114 paragraphs 63-66; Grabitz/Hilf/ Nettesheim/Bast, 67th EL June 2019, TEU Article 5 paragraphs 66-68.

With regard to the provisions of European law relevant here, the principle of proportionality is also based on recital 22 of the MCD. This states that, with regard to the specificities of credit agreements for consumers relating to residential immovable property, a differentiated approach is justified. There is therefore no basis for equal treatment of all consumer loans, irrespective of their basis under European law (CCD or MCD).

Finally, a mandatory differentiation also arises in relation to the difference between Article 8 CCD on the one hand and Articles 18 and 20 MCD, on the other. The MCD regulations already give rise to a gradation at the level of the Directives, also see recital 22: “In this respect, the provisions on the creditworthiness assessment should be strengthened in comparison to consumer credit...”. This must be taken into account accordingly in the Guidelines.

Considering the circumstance that, according to the presentation in the Consultation Paper, the provisions apply equally for loans under the CCD and for loans under the MCD, this gives rise to a particular burden for the Bauspar sector with its special collective business model. This model is characterised by small-scale, low-risk credit business confined to the financing of residential property. The effects of the Consultation Paper are particularly serious in the field of small-scale modernisation loans of up to EUR 30 000.

Small-scale modernisation loans, as are granted a thousand times over in the Bauspar sector, serve for example for energy-related refurbishment or the age-appropriate conversion of existing buildings. In the event of implementation of the EBA requirements, this supply of loans could possibly be limited in future on the market because there would no longer be an appropriate cost-benefit ratio for the Bausparkassen due to the additional process costs involved in approving such loans.

2. Temporal scope

a) Deadline

The date of the entry into force of the planned Guidelines is set as the fixed date of 30 June 2020, see Background, point 16 of the Consultation Paper.

With reservation as to the question of whether individual provisions can continue to exist at all, this would in any case be disproportionate in so far as, on closer inspection, it is e.g. concerning Section 5 not simply a matter of updating 6 existing Guidelines, but the emergence of 102 very detailed regulations from them. These would also have to be implemented where appropriate in the institutions, with the corresponding technical support. The principle of proportionality is also expressed in the granting of transitional periods, also see ECJ (Second Chamber) judgment of 4 May 2016 – C-547/14 (Philip Morris).

There is a need to postpone the date of application by at least 18 months to ensure appropriate implementation.

b) Continued effect

In the Background, point 16, second sentence of the Consultation Paper and in Section 2, point 10, it is stated that Section 5 of the planned Guidelines is also to apply to existing loans where “terms are renegotiated”. Instead of this, the application of Section 5 should be confined here, for legal certainty and legal clarity, to credit agreements newly concluded after the application date and to credits where there is a significant increase in the total amount of credit after the application date (see Article 8(2) CCD and Article 18(6) MCD).

In any case, wording should be chosen which does not give the impression that Section 5 could relate to any form of contractual amendment of credits granted before the application date. When a credit agreement is concluded, a credit amount is made available by the lender for the entire term of the credit on the basis of the creditworthiness assessment. In this respect, the borrower receives a right of use of the capital for the duration of the credit agreement. The retrospective effect mentioned with respect to credit agreements already concluded should therefore in any case be dispensed with if there is no significant change in the right of use of the capital, assigned on the conclusion of the credit agreement, to which the granting of credit relates.

In particular, “interest rate extensions” in the case of artificial instalment financing or internal debt rescheduling must be excluded from the scope.

For example, it must remain permissible for a Bausparkasse, on granting an advance loan, to extend the creditworthiness assessment over the entire Bauspar prefinancing (advance loan and subsequent Bauspar loan) and therefore already to be able to approve the subsequent Bauspar loan after the corresponding creditworthiness assessment.[1] This is also in the consumer’s interest, since the consumer relies on not having to repay the credit amount in full in one instalment at the time of a mere interest rate extension or an internal debt rescheduling and on the financing continuing as planned.

Changes in the collateral of the credit agreement or any other changes which do not alter, or only insignificantly, the right of use of capital already granted on conclusion of the contract should be irrelevant. In this respect, the relevant circumstances have already been taken into account in the granting of the credit so the regulations in the Guidelines would also interfere in the respective existing contractual relationship with the consumer. Finally, a new creditworthiness assessment should not be necessary in any case as long as the financing takes place within the planned framework and the planned process was the subject of the creditworthiness assessment which had already taken place.

[1] For example, a Bausparkasse grants Bauspar prefinancing in the form of a credit relating to residential immovable property pursuant to the MCD of EUR 50,000. A Bauspar contract with a Bauspar amount also of EUR 50,000 – consisting of Bauspar credit balance still to be saved of EUR 20,000 and a subsequent Bauspar loan of EUR 30,000 – is used to redeem the advance loan amounting to EUR 50,000. On conclusion of the advance loan, the creditworthiness assessment is extended to cover the entire Bauspar prefinancing of EUR 50,000 and subsequent Bauspar loan of EUR 30,000, so when the subsequent Bauspar loan is granted, no separate creditworthiness assessment takes place.

3. Definitions/demarcations (Section 2, point 17)

a) Commercial real estate

With regard to mixed use properties (residential and commercial), the demarcation criteria set out in the Consultation Paper should not be in a stepwise relationship ("it should be considered as different properties […] whenever it is feasible to make such breakdown; otherwise, the property can be classified according to its dominant use"), but at least be formulated as alternatives. The planned separation into two properties could be feasible – possibly with considerable effort – but is usually in any case not practicable so a breakdown according to living area seems preferable for practitioners.

b) Consumer

The consumer is defined in Article 3 of the CCD; the MCD refers to this definition in Article 4. The EBA has no regulatory competence for more far-reaching inclusion of commercial loans, even if it is assumed that the EBA Regulation should provide for a basis for regulations relating to the CCD and MCD as of 30 January 2020. We therefore suggest deletion of the section on commercial loans.

c) Residential real estate loan

The definition of the residential real estate loan in the Consultation Paper is based on different criteria than defined according to the scope in Article 3 MCD. Against the background of harmonisation of the European requirements, a definition corresponding to the MCD should therefore be chosen for the scope of the planned Guidelines.

4. Annexes 1 and 2 to the Consultation Paper

The list of credit granting criteria (Annex 1) and the information which of necessity must be collected for a credit assessment (Annex 2) should be optional. In combination with the individual regulatory sections, the lists are presented so far as minimum standards, which is disproportionate. We propose that these lists should be formulated explicitly as optional and by way of example. If a lender selects one or more pieces of information or criteria from the list, further criteria or documents mentioned may be added if this appears necessary in the individual case. If it were to be necessary in the individual case, a lender would request further information.

II. Observations on the individual questions:

1. What are the respondents' views on the scope of application of the draft guidelines?

The planned EBA Guidelines largely address issues which are also already the subject of existing EBA Guidelines. It is therefore of vital importance that these Guidelines are implemented appropriately and consistently and are integrated in the existing legal frameworks. This is all the more necessary as the European Commission is considering a legislative review of the existing EU legislation covering loans which fall within the scope of these Guidelines (in particular the CCD and the MCD).

In fact, in many cases, contrary to the principle of proportionality, the Guidelines lay down requirements which the banks should adopt "at least" or "at a minimum". Whereas the use of "should" or "could" brings flexibility, the requirements are so far more prescriptive than we consider appropriate. Furthermore, further clarifications are needed concerning the proportionality principle set out in point 14, i.e. the definition of "in a manner that is comprehensive and proportionate to the size, nature and complexity of the credit facility" (also see reply to Question 9 below).

2. Do you see any significant obstacles to the implementation of the guidelines by the application date and if so, what are they?

As a result of the requirements formulated by the Guidelines, there is a need to adapt the internal IT processes, for example. The adaptation and implementation would take considerably longer than six months. An extension of the implementation period or an introductory phase is essential to be able to implement the criteria satisfactorily. This would take account of a comprehensive impact assessment for the primary business processes, sound decision-making on necessary changes in several business areas and the ensuing transposition into internal guidelines.

In the case of cross-border business, there must be clarity concerning the local implementation/conformity, which considerably prolongs the time needed for implementation. For example, in Spain the MCD was transposed only this year.

In addition, the implementation of internal guidelines and procedures requires a sufficient amount of time. The scope of the Guidelines is formulated too broadly and if all specifications are to be implemented, considerably more time will be needed. If the final requirements of these Guidelines are published only by the end of the year, it will not be possible to prepare for timely implementation, i.e. budgeting for 2020, the definition of IT specifications. Against this background, a significant postponement of the implementation deadline is necessary. If the final Guidelines are still published in 2019, postponement of at least 18 months would be needed.

If Section 5 of the creditworthiness assessment is not streamlined significantly or if the institutions are not given considerably more scope for implementation by dispensing with the specification of minimum requirements, an even more significant postponement of the implementation deadline would be necessary here, since additional data fields and new processes would necessitate large-scale IT implementation.

3. What are the respondents' views on whether the requirements set in the draft guidelines are future proof, in particular in relation to technology enabled innovation (Section 4.3.2) and environmental factors and green lending (Section 4.3.3)?

Digitisation makes it easier to take out small and often short-term loans. This gives rise to the need to ensure consumer protection, a level playing field and the same supervision for all lenders. It is important for it to be possible to apply for, provide and process consumer loans through digital channels. However, all digital innovations have an impact on existing requirements and also on the requirements laid down in the draft Guidelines. This gives rise to considerable effort in the review of all existing guidelines and processes and the associated requirements.

Although sustainability factors play an increasingly important role in the credit sector and credit institutions are at the stage of incorporating various newly identified risks, it is not appropriate to include ESG factors in these Guidelines. When lending to private individuals, it is disproportionate and in practice at many points simply not possible to take corresponding factors into account.

Furthermore, the corresponding taxonomy in various regulatory texts at European level has not yet been explicitly clarified. This results in both regulatory authorities and sector associations still being unable to make any reliable pronouncements on the extent to which ESG factors should be taken into account in the credit granting process.

We also propose subdividing the section in the Guidelines into environmental factors (risk) and green lending (market).

4. What are the respondents' views on the requirements for credit risk policies and procedures (Section 4.3)?

At first glance, the requirements laid down in the Guidelines are already covered by existing provisions (CCD, MCD and Capital Requirements Directive). On the other hand, the requirements concerning the inclusion of ESG factors are new and all guidelines have to be amended and adapted to allow for them. In fact, however, there should be no need to include ESG factors in the credit risk policy and procedures (see reply to Question 3).

5. What are the respondents' views on the requirements for governance for credit granting and monitoring (Section 4)?

- No comments -

6. What are the respondent's views on how the guidelines capture the role of the risk management function in credit granting process?

- No comments -

7. What are the respondents' views on the requirements for collection of information and documentation for the purposes of creditworthiness assessment (Section 5.1)?

a) General observations on the creditworthiness assessment in the case of plurality of borrowers and on the "single customer view", see points 85, 100, 126 *et seq.*)

We refer to the discussions held during the EBA public hearing of 20 September 2019 on the creditworthiness assessment in the case of plurality of borrowers.

From EBA's answers and explanations on 20 September 2019, we learnt that the EBA too assumes that the income and financial position of pluralities of persons are taken into account in the context of the creditworthiness assessment. We urgently request an unambiguous and explicit clarification on this subject in the EBA Guidelines. Such a clarification is particularly necessary, since the Guidelines assume a "single customer view" at several points, which could be understood as an argument against the necessary consideration of the joint, overall financial position in the case of plurality of borrowers.

Such a clarification could read as follows in point 85 (supplement shown in bold print):

"Institutions and creditors should have a sufficiently comprehensive view of the borrower's financial position, including an accurate and up-to-date comprehensive view of all the borrower's credit commitments ("single customer view"). If several persons are borrowers, creditors should take into account the total financial position of all these persons jointly and severally liable for the obligations under the loan agreement ("joint customer view").

Furthermore, we request the use of the concept of the "single or joint customer view", defined in the supplemented point 85, in the rest of the text too, instead of the concept of the "single customer view" (in points 100, 126(f) and 234).

Although at the public hearing on 20 September 2019 the EBA too advocated taking into account the income and financial position of pluralities of persons in the context of the creditworthiness assessment, we should like to provide a brief justification below of the need for this overall view in the case of plurality of borrowers.

In practice, financing for spouses and civil partners is the most frequent case for consumer loans with a plurality of borrowers. Often spouses or civil partners can only afford property financing if both of them contribute capital and are also jointly prepared, considering their income and financial position, to assume the commitments under the loan for the property which they own or which they jointly inhabit. It is in the interests of consumers that the conclusion of a consumer loan agreement can also occur if the possibility to service the capital exists only by taking into account the income and financial position of all persons jointly and severally liable for the obligations under the loan agreement.

Precisely in the case of young families, it is consistent with the joint financial planning of the spouses that loss of income of one of the partners, for example as a result of time spent bringing up children or on further training, is compensated for by the income of the other partner. The temporary reduction in income of both partners resulting from parental leave is becoming increasingly frequent as the proportion of fathers claiming parental leave is rising continually. If for example spouses intend to take parental leave alternately, a continuous family income is ensured even though the spouse on parental leave temporarily has only a smaller income. Focusing solely on the individual temporarily falling income of one spouse would unjustifiably call into question the creditworthiness of both spouses and jeopardise the granting of a loan, especially to young families, due to excessive requirements regarding the creditworthiness assessment.

In particular if there are already joint commitments (e.g. on the basis of existing joint and several financing by the spouses or civil partners), splitting the joint expenditure for the purpose of two separate creditworthiness assessments would be impractical.

The CRR is also based on the uniform consideration of several borrowers. According to Article 4(39)(b) CRR, the lender is obliged to form a borrower unit, in connection with the disclosure of the economic circumstances, if individual borrowers are so interconnected that, if one of these customers were to experience financial problems the other or all of the others would also be likely to encounter funding or repayment difficulties. It follows from this that, under the above-mentioned conditions, cohabiting persons and support communities, for instance of spouses or civil partners, are to be considered as a unit. It would be contradictory if the lender were obliged to form a borrower unit for disclosure of the economic circumstances but were prevented from considering these borrowers as a unit for the creditworthiness assessment.

For the reasons set out above, it is in keeping with both the legal specifications of the Guidelines and the interests of the parties to a loan agreement if, in the case of a plurality of borrowers, the income and financial position of all persons is taken into account. This also applies where only one person is a borrower, but a further person living in the borrower’s household is jointly and severally liable for the repayment commitments under the loan agreement.

b) Observations on individual points of Section 5.1

Point 83

According to the principle of proportionality and according to the different regulations in Article 8 CCD on the one hand and Articles 18 and 20 MCD, on the other, this regulation should apply only to credits related to residential immovable property under the MCD, but not to consumer credit under the CCD.

Point 85

According to the principle of proportionality and according to the different regulations in Article 8 CCD on the one hand and Articles 18 and 20 MCD, on the other, this regulation should apply only to credits related to residential immovable property under the MCD, but not to consumer credit under the CCD.

For example, in the case of consumer credit under the CCD – and, in accordance with the principle of proportionality, also in the case of small-scale credits related to residential property under the MCD – it should suffice to consider only existing monthly instalments, but not the amount of the underlying commitment. Where appropriate, the previous payment behaviour could also suffice as a basis.

Furthermore, in addition to the definition of the "single customer view", a definition of the "joint customer view" should be included, see above under point a).

Point 87

There is no need for a separate assessment of guarantees from financial institutions or insurance undertakings with a view to their supervision. The same applies in the case of guarantees from the public authorities. This should be clarified.

Point 88

The provision that "*any*" information should be verified is in contradiction with the principle of proportionality. It should be made clear that the verifications should be carried out "*where appropriate*" and therefore be risk-dependent or event-driven (e.g. in the case of suspicion of fraud) or that only "appropriate" verifications are to be carried out.

The need for enquiries to third parties (e.g. employer and public authorities) should be deleted. In any case, it should be clarified that these enquires are not mandatory, but information provided by the borrower himself is sufficient.

In the case of enquires to third parties, an enquiry by the credit institution should not necessarily be linked to the express "permission" of the borrower but can take place in compliance with the requirements under data protection law and especially under the General Data Protection Regulation (Regulation (EU) 2016/679).

Point 91

Point 91 should not be formulated as a minimum requirement ("at least"), but – in any case in relation to the information under points b, c, d and f – as a collection of information by way of example. With regard to the information under points b, c, d and f, it should also be clarified that this does not apply for consumer credit pursuant to the CCD.

Point 92

Annex 2 should not be formulated as a minimum requirement, but as a set of optional examples. It should be made clear that the lender has discretion here. In addition, according to the principle of proportionality and according to the different regulations in Article 8 CCD on the one hand and Articles 18 and 20 MCD, on the other, Annex 2 should apply only to credits related to residential immovable property under the MCD, but not to consumer credit under the CCD.

Furthermore, in Annex 2, point 11 should be supplemented:

"Data from credit registers or credit information bureaux, covering at least the information on financial liabilities and – where available – arrears in payment".

The background is that SCHUFA in Germany provides no information on arrears in payment of a consumer for as long as the claims have not become due.

8. What are the respondents' views on the requirements for assessment of borrower's creditworthiness (Section 5.2)?

a) Clarification of the headings

If the regulations on commercial lending are not deleted in full (see above under I. 3. b), the following headings should be specified as follows, for reasons of clarity, so that it is obvious that these regulations do not apply to consumer credit (the proposed additions are shown in bold print):

*"5.2.6 Commercial real estate lending **to professionals**"*

*"5.2.8 Project and infrastructure finance **to professionals**"*

b) Comments on individual points of Section 5.2

Point 96

The regulation in point 96 should be deleted as this Guideline goes beyond Article 18 MCD and has no basis in the Directive or in other EU law.

Point 98

Credit to consumers under the CCD should be exempted from this regulation. The current regulation does not take account of the mandatory differentiation in Article 8 CCD and Articles 18 and 20 MCD.

In the case of credits related to residential immovable property under the MCD too, this regulation should apply only if the principle of proportionality is taken into account, which is not clear from the present wording ("at a minimum").

In addition, the concept of "disposable income" is not clear. It should be specified whether this refers to real income or to income after deduction of liabilities.

Points 99-100

The parameters referred to in point 99 should at most be optional/serve as examples. The current rigid parameters precisely do not guarantee that the view of the borrower is complete since the creditworthiness assessment requires an overall view of the potential borrower. Credit institutions should determine valid metrics and parameters themselves (e.g. in the context of statistical analyses on the selectivity of metrics, as for instance in a scoring procedure).

In point 100, in addition to the definition of the "single customer view", a reference to the "joint customer view" should be included (see under point II. 7. a) above).

Point 101

Credit institutions should verify the risks mentioned and “stress test scenarios” relating to the customer only if they are aware of concrete indications to do so. Such indications may arise from the financing structure or from the personal and economic circumstances of the potential borrower.

Point 112

This regulation should be deleted. It is contrary to the principle of proportionality and leads to far too far-reaching documentation obligations in which the borrower risk is transferred to the lender.

Points 113-114

It should be clarified that here potential risks are formulated only by way of example.

Point 116

The last phrase (“including the borrower`s ability to keep up repayments without a significant adverse impact on their overall financial situation”) must be deleted, as ultimately every loan has an impact on the borrower’s overall financial situation.

9. What are the respondents’ views on the scope of the asset classes and products covered in loan origination procedures (Section 5)?

a) General comments

Since some of the guidelines in Section 5 are based on guidelines which so far have been applicable only to credits related to residential immovable property under the MCD, we wish to emphasise the need for risk-based approaches and a differentiation between credits related to residential immovable property under the MCD and credit to consumers under the CCD. Credits related to residential immovable property under the MCD and credit to consumers under the CCD differ significantly in terms of duration, amount and risks, including for overindebtedness and for the loss of the home possibly serving as collateral. Recital 22 of the MCD therefore correctly assumes different requirements for the creditworthiness assessment between these types of credit, see under point I. 1. above.

b) Comments on individual points of Section 5.3

Point 180

The extension of the documentation obligations is contrary to the principle of proportionality for credit to consumers under the CCD. These requirements should be confined to credits related to residential immovable property under the MCD.

Points 181 and 182

The term “or decline” should be deleted, as a rejection is not usually submitted to the credit decision-making body.

Point 184

We consider that the requirement of a time limit for the credit decision is not in line with practice. A fixed, purely temporal criterion is very difficult to apply in practice. There may be a discrepancy between the times of conclusion of the credit commitment or the conclusion of the credit agreement and the drawdown of the credit funds. In our view, it is sufficient for appropriate account to be taken of negative findings arising in the period between credit decision and credit commitment. We therefore request deletion of this regulation.

10. What are the respondents' views on the requirements for loan pricing (Section 6)?

Such a comprehensive pricing framework poses major development and implementation challenges especially for small institutions. Even though fundamentally the principle of proportionality applies in Section 6, we consider the pricing requirements to be too comprehensive and an interference in the product design of the institutions.

11. What are the respondents' views on the requirements for valuation of immovable and movable property collateral (Section 7)?

a) General comments

In Section 7, the specifications for the valuation of collateral in the case of non-performing exposures pursuant to the EBA Guidelines on management of non-performing and forborne exposures (EBA/GL/2018/06) are in many cases also transferred to the valuation of collateral in the case of exposures which are not non-performing. For instance, comprehensive requirements are laid down regarding the initial valuation and revaluation of the collateral which extend far beyond the current provisions and therefore fail to take sufficient account of the principle of proportionality referred to in points 12 to 14.

In order to place greater emphasis on this principle, in our opinion a possibility would be to draw a distinction for the purposes of the valuation of collateral between risk-relevant and non-risk-relevant lending business, as is proven practice for example in Germany. No concrete limits are specified as to the amount. Rather each institution makes the distinction on its own responsibility and taking risk aspects into account.

In any case, the Guidelines should take into account the fact that there is a less risky lending business, such as the retail residential lending. The same requirements should not be applied to the valuation of collateral as to loans with a high-risk content.

b) Comments on individual points of Section 7

Point 193

In order to streamline the Guidelines as a whole and to make them clearer, we consider that giving examples could be dispensed with at various points where this is not necessary for illustration. This is the case, for example, in point 193, where reference is made to the European Group of Valuers'

Associations (TEGoVA) European Valuation Standards or the Royal Institute of Chartered Surveyors (RICS) standards, as mentioning these examples creates no added value.

From our point of view, it would therefore suffice to state that the property collateral is to be valued in accordance with applicable international, European and national standards.

Point 194

Point 194 provides that (in principle) all collateral is to be assessed by an independent qualified internal or external valuer.

It should be clarified here that exceptions to this principle must also be possible. It should be left at the discretion of the institution to dispense with a valuation in individual cases if it is not absolutely necessary. This could be the case, for example, if the borrower provides more collateral than is necessary to secure the loan in question. In this case, only the valuation of the collateral required to secure the loan is necessary.

In addition, the concept of "valuer" is introduced in point 194 which is then used many times, whilst the requirements concerning the valuer are specified in points 222 *et seq*.

Although it arises from point 194 that the valuer can be an independent qualified internal or external valuer, it should nevertheless be clarified at this point that the valuer needs (only) meet the requirements of points 222 *et seq*.; but the valuer does not have to be "certified".

Point 195

Point 195, first sentence, takes the principle of proportionality into account by providing that institutions should set policies and procedures specifying the approaches to be used by the valuer for different types of immovable property collateral, ensuring that such approaches are prudent and proportionate to the type and potential values of the collateral and in relation to the credit agreements.

By stating in point 195, second sentence, that desktop or drive-by valuation may be used only in the cases of valuing or revaluing collateral that is of similar design, specifications and characteristics to the ones already valued or re-valued by a valuer, e.g. similar apartments in the same apartment block, the approach followed in the first sentence of taking the principle of proportionality into account is already undermined.

This does not seem justified especially in the low-risk retail business of private mortgage lending, as can be seen not least in the predominantly small-scale lending business of the Bausparkassen, where the valuation or revaluation is regularly carried out "from the desk", without this having increased the significantly low default rates for decades.

In our view, point 195, second sentence, should therefore be deleted without replacement.

If this approach is not followed, in any case corresponding simplifications would have to be provided for the particularly low-risk retail business of private housing loans. Depending on the size, nature and complexity and the risk content, institution-specific *de minimis* limits should be made possible in order to keep the time and cost required for collateral valuation in standard business within reasonable limits.

Point 196

It becomes clear from point 196 that the draft Guidelines do not draw a sharp distinction between valuation of the property and valuation of the collateral.

In Germany, for example, the valuers value the property, for which collateral is then provided (for example a land charge (*Grundschuld*)). The value of the property assessed by the valuer is used as a basis for the provision of collateral. Accordingly, the expert opinion on the value of the property also does not address the legal enforceability of the land charge as collateral.

In this respect, the regulation in point 196 also appears alien, according to which in the case of significant deterioration in the repayment capacity of the borrower, an assessment in terms of the liquidity and enforceability of the collateral including time to recovery should be carried out by the institution. Such a regulation may be logical in the case of non-performing loans, but not in the case of less risky loans.

The regulation contained in point 196 should therefore be deleted. Retaining the regulation also appears unnecessary for consumer protection reasons, since a large number of other regulations already exist for this field.

If this request is not complied with, the regulation should at least be modified taking into account the principle of proportionality.

Point 197

According to point 197, where institutions use external valuers, they should establish a panel of accepted valuers.

In our view, it should first be clarified that this refers merely to a list or compilation of valuers kept by the institution and not a panel within the meaning of a body.

Even if only a corresponding list or compilation of accepted valuers is kept, the purpose pursued by the regulation in point 197 is met and the quality and independence of the valuers are guaranteed.

Point 207

Point 207 (d) provides that institutions should set policies and procedures specifying the approach and the frequency of monitoring of immovable property collateral. These policies and procedures are to account for the value of the property, e.g. in gross carrying amount and LTV ratio.

We consider it to be a disproportionate requirement to use the gross carrying amount and the LTV ratio in the context of setting the policies and procedures as a yardstick for the frequency of monitoring of immovable property collateral.

We therefore request that the indication of these examples is dispensed with in point 207 (d).

Point 208

The regulations provided for in point 208 a) to c) on the frequency of monitoring the value of the immovable property collateral go significantly beyond the requirements provided for in Article 208 (3) CRR. Article 208 (3) CRR makes adequate provision for the frequency of monitoring.

In addition, the institutions already have corresponding guidelines concerning the substance of the regulations under Article 208(3) CRR so there is no need for the concrete examples provided for under points a) to c).

Point 208 a) to c) should therefore be deleted.

Points 211 and 212

In our view, Article 208 (3) CRR already contains sufficient provisions for monitoring the values of the immovable property collateral.

In our opinion, points 211 and 212 should be deleted without replacement.

Point 213

Point 213 provides for strict provisions in the event of revaluation of immovable property collateral necessary pursuant to Article 208 (3) CRR.

As already explained in point 195, sufficient consideration should be given to the principle of proportionality in the context of revaluation of immovable property collateral too.

Point 213 should therefore be deleted without replacement or in any case corresponding simplifications should be made for the particularly low-risk retail business of private housing loans to the effect that an internal inspection can be dispensed with in further cases than those explicitly mentioned.

Point 214

Point 214 requires institutions to ensure adequate rotation of valuers.

Even though the underlying idea of ensuring the independence of valuers is understandable, this requirement appears disproportionate. The required rotation is not feasible at acceptable expense especially for small and medium-sized institutions. If other or external valuers have to be called in, the costs for drawing up the valuation would rise significantly. Ultimately this could lead to small-scale property loans no longer being offered due to the associated costs or to the costs being transferred to the borrower. Such a development is not in the interests of either the banking supervisor or the consumer.

In our view, the regulation in point 214 should therefore be deleted without replacement.

If this request is not met, point 214 should be supplemented to the effect that a rotation of valuers is not mandatory in the case of low-risk transactions.

Point 224

According to point 224, institutions should assess the performance of the valuers on an ongoing basis and, as part of such assessments, also look at the concentration of valuations performed and fees paid to specific valuers.

In our view, assessing the performance of the valuers is not possible, especially as an expert opinion is an assessment related to a particular date. Furthermore, assessing the performance of the valuers is also not necessary as corresponding review mechanisms are in place in any case due to the existence of internal and external audits.

The regulation in point 224 should therefore be deleted without replacement.

Point 225

In order to avoid conflicts of interest, institutions should ensure that valuers who are going to carry out the actual appraisal of a given property and their first-degree relatives meet the requirements set out in point 225.

There is no doubt that such conflicts of interest must be ruled out. Nevertheless, institutions could not legally “ensure” the requirements set out in point 225.

Furthermore, potential conflicts of interest cannot be ruled out in the future.

Finally, there are already corresponding regulations now in national law that ensure that such conflicts of interest are ruled out so there is no need for such a detailed regulation.

12. What are the respondents’ views on the proposed requirements on monitoring framework (Section 8)?

Firstly, for an IRBA institution for private property financing, the requirements on credit risk monitoring are largely already met (for example, automatic order for payment system, automatic scoring procedure, etc.).

However, according to point 246, institutions should also, where appropriate, periodically update relevant financial information on the borrower and reassess creditworthiness to recognise the early warning signs of declining credit quality.

In our view, this goes far too far, as even in the case of larger credit amounts, it is generally disproportionate to ask customers regularly for data, i.e. without good reason which would indicate a particular risk. It is also disproportionate that, after a corresponding creditworthiness assessment (relating to the entire term of the credit), all customers should be written to, documents requested and then evaluated (new scoring).

It is sufficient if, on the basis of the known data, ongoing behaviour scoring relating to the current commitment is undertaken. This would also be included in the risk provisioning. As long as the customer makes payments irreproachably, no consequences under contract law could be inferred from the findings in any case.

The Guidelines emphasise the importance of monitoring qualitative factors. We find that such qualitative information is naturally more difficult to automate. It should therefore be clarified in the

Guidelines that the aim of the automation is directed more towards the monitoring of credit and financial indicators than towards qualitative information.