

Eurofinas/Leaseurope response to the EBA consultations on (1) the Suitability Assessment of Members of the Management Board and Key Function Holders and on (2) Internal Governance

Eurofinas and Leaseurope, the voices of consumer credit and leasing at European level, welcome the opportunity to respond to the European Banking Authority's consultation on the Suitability Assessment of Members of the Management Board and Key Function Holders, as well as the consultation on Internal Governance

In Europe, leasing and consumer credit firms either can be banks, bank-owned subsidiaries, independent firms or the financing arms of manufacturing companies (known as captive companies). When they are banks or belong to a banking group, leasing and consumer credit companies are required to apply EU prudential regulation, either directly at legal entity level or through the inclusion of their activities in the requirements that are applied to the group at consolidated level. Also, depending on the Member State, EU prudential regulation may be applied to financial institutions. The EBA guidelines at hand are therefore not only likely to apply to our member credit institutions, as well as their subsidiaries, but also to non-bank, members.

It is important to stress that the major share of the leasing and consumer credit industry is owned by banking groups. Leasing and consumer credit entities themselves are not deposit taking institutions¹. **As these firms do not receive repayable funds from the public they do not pose a threat to depositors.** Added to which, unlike other finance products, for loans and leases to consumers and businesses, the risk lies with the finance company rather than the consumer.

Whether bank-owned, captive or independent, European consumer credit, asset finance and leasing organisations rely heavily on the banking sector to fund their operations. With all European credit institutions required to apply European prudential regulations, **the exposures that banks are able to take on in relation to consumer credit, asset finance and leasing providers are limited in size and closely monitored.**

Leasing and consumer credit providers have specialist expertise, perform prudent collateral valuation and have in-depth knowledge of their customers with which they manage the risks that are part of their business. It is worth stressing that the specialised nature of consumer credit firms and lessors means that they have a unique understanding of their clients and asset markets and are able to track the level of risk they are exposed to very carefully.

¹ Unless they have made the decision to opt for a banking license precisely in order to be able to take deposits, in which case they are subject to Basel standards through the EU legislation as any other bank. However, deposit taking providers remain the exception in most EU countries.

In 2015, the leasing firms represented through **Leaseurope's membership helped European businesses invest in assets worth more than 315 billion EUR**, reaching 755 billion EUR of outstandings at the end of the year². Leasing is used by more European SMEs than any individual category of traditional bank lending taken altogether (around 40% of all European SMEs make use of leasing which is more than any other individual form of lending)³ and is also extremely popular amongst larger corporates⁴. It is also extremely useful to support the public sector (e.g. leasing to schools, hospitals, etc.).

In 2015, consumer credit providers that are members of **Eurofinas helped support European consumption by making more than 423 billion EUR goods, services, home improvements and private vehicles available to individuals**, reaching 981 billion EUR of outstandings at the end of the year⁵. Consumer lending is procyclical and is highly positively correlated with households' disposable income⁶. By providing access to finance to individuals and households, consumer credit supports the social and economic well-being of millions of consumers across Europe.

General observations

Eurofinas and Leaseurope support the work of the EBA on the suitability of members of the management body and internal governance of institutions. We agree that recruitment policies of credit institutions should be consistent with and promote sound and effective risk management. They should also not encourage risk-taking that exceeds the level of tolerated risk of these institutions. Ultimately, members of the management body have a key role in ensuring that the institution adheres to its risk strategy, complies with regulatory and other legislative requirements and has robust governance arrangements in place. This falls within the wider objective of firms to establish a strong risk culture. We agree with the EBA that risks should be taken within a well-defined framework for the institutions' risk strategy and appetite.

We share the view of the EBA that the internal governance and suitability requirements laid down in the Capital Requirements Directive (CRD) must be applied in a manner and to the extent that is appropriate to the institutions' size, internal organisation and the nature, scope and complexity of their activities.

Application of the principle of proportionality is extremely important. Smaller organisations should not be treated the same way as large systemically important financial institutions. Firms that are only involved in low-risk activities, such as consumer credit, asset finance and leasing transactions, should also not be subject to the same requirements as institutions involved in investment type of activities that, due to their very nature, can impact the sector in its entirety.

² Leaseurope 2015 Annual Statistical Enquiry

³ Oxford Economics, *The Use of Leasing Amongst European SMEs*, 2015; Eurostat, *Access to Finance Statistics*, 2011; International Finance Corporation *Leasing in Development: Guidelines for Emerging Economies*, 2009; European Investment Fund *The importance of leasing for SME finance*, 2012; and UEAPME, *UEAPME Newsflash*, 2012

⁴ European Central Bank, *Survey on the Access to Finance of Small and Medium-Sized Enterprises in the Euro Area*, April 2013

⁵ Eurofinas 2015 Annual Statistical Enquiry

⁶ Eurofinas, *Consumer Credit, Helping European Households Finance their Tomorrow*, 2015

EBA Guidelines on suitability

Specific observations

ECB Guidelines

The ECB is currently consulting stakeholders on a draft Guide on the same topic. Given that the ECB is a competent authority that must comply with the EBA Guidelines, the ECB draft Guide on fit and proper assessments essentially functions as an interpretation and elaboration of the EBA Guidelines on suitability. In this respect, we very much value the close cooperation between the two institutions.

Rather than starting to consult only *following* the release of the final EBA guidelines, the ECB released its draft Guide at the same time as the ECB with an earlier deadline to respond. Although we appreciate that this matter must be addressed first and foremost with the ECB, in order to ensure consistency of rules and legal certainty for supervised institutions, we ask the EBA to urge the ECB to hold off finalising the draft Guide until after the release of the final EBA guidelines.

Rights of appointees

We are concerned that the Guidelines do not cover rights of appointees, such as the right to be heard and the right to a statement of reasons. We believe that the EBA cannot rely on national administrative law and that the EBA in its supervisory capacity must promote consistent standards and treatment of appointees across the Union. We therefore ask the EBA to include in its Guidelines the rights guaranteed by the EBA on p.25 of its draft Guide on Fit and Proper. In addition, we urge the EBA to guarantee confidentiality and non-publicity of the assessment process and final decision.

Answers to the consultation questions:

Question 2: Are the subject matter, scope and definitions sufficiently clear?

The scope of application of the Guidelines is not sufficiently clear. We ask the EBA to clarify that those institutions that fall within the scope are (1) credit institutions and (2) financial institutions at consolidated level, as confirmed by the EBA at their hearing on 5 January.

Question 4: Do you agree with this approach to the proportionality principle and consider that it will help in the practical implementation of the guidelines? Which aspects are not practical and the reasons why?

We strongly agree with the EBA that the principle of proportionality applies throughout the assessment process, ensuring a differentiated approach to the assessment procedure or the application of suitability criteria, where assessment will come down to an individual analysis and supervisory judgement by the national competent authority.

We welcome the detailed criteria set by the EBA draft Guidelines. Application of the principle of proportionality is extremely important. Smaller organisations should not be treated the same way as large systemically important financial institutions.

The EBA also provides that significant institutions should have more sophisticated policies and processes, while in particular small and less complex institutions may implement simpler policies and processes. In this respect, it would be helpful to receive more specific information or examples from the ECB of such “simpler policies and process”. For now, the EBA only sets out that only significant institutions are obliged to create a nomination committee, will be subject to a suitability assessment for their heads of internal control functions and the Chief Financial Officer, and can be asked to forward their appointees to the relevant supervisor for an interview.

The draft Guidelines list “type of clients” as a criterion to be taken into account for the purpose of the application of the principle of proportionality. In addition to a clarification as to what exactly the EBA means with “type of clients”, we would also welcome more details as to which type of clients would call for more proportionality. We stress that retail clients and SMEs should be afforded the highest level of proportionality.

Question 12: Are the guidelines with regard to the timing (ex ante) of the competent authority’s assessment process appropriate and sufficiently clear?

We would like to draw the EBA’s attention to the especially disproportionately detrimental and anti-competitive impact this would have on smaller firms. In this respect, we highlight also that transition from the current *ex post* to *ex ante* assessments is neither required nor mandated by the Capital Requirements Directive IV.

If the EBA does decide to introduce a system of *ex ante* assessment by default, we insist that the ECB and national supervisors shall give all decisions in writing as soon as they have made a final decision. Without such guarantee, many – if not all – institutions would end up having to wait for the entire four months until they know whether their appointee has been approved or not. In practice, this means that these institutions may have to keep on board additional applicants to ensure that the General Assembly will still be able to choose another candidate in case of a negative decision. This becomes even more problematic where *ex ante* assessment periods are extended by supervisors. In all cases, smaller firms will be affected the most.

Question 13: Which other costs or impediments and benefits would be caused by an ex ante assessment by the competent authority?

During its hearing on Friday 13 January, the ECB mentioned that *ex ante* assessment can have different applications in different countries – either that the candidate cannot be appointed, or occupy the relevant position, until the final decision of the relevant supervisor. This is only one of many examples that confirms that because of the differing legal corporate governance frameworks, the introduction of *ex-ante* assessment cannot have a neutral impact across the EU.

Another example would be a national framework where the term of office of Board members is limited (e.g. to one year), and where shareholders elect the Board members at the General Assembly. *Ex ante* assessments would in such a case be virtually impossible to implement. This is the case in Sweden.

EBA Guidelines on internal governance

Answers to the consultation questions

Question 5: Are the guidelines in Title III regarding the principle of proportionality appropriate and sufficiently clear?

We strongly agree with the EBA that internal governance arrangements must be consistent with the individual risk profile and business model of the institution, so that the objectives of the regulatory requirements and of these guidelines are effectively achieved.

We welcome the detailed criteria set by the EBA draft Guidelines. Application of the principle of proportionality is extremely important. Smaller organisations should not be treated the same way as large systemically important financial institutions.

In addition, the draft Guidelines list “type of clients (e.g. retail, institutional, small businesses, public entity)” as a criterion to be taken into account for the purpose of the application of the principle of proportionality. We would also welcome more details as to which type of clients would call for more proportionality. We stress that retail clients and SMEs should be afforded the highest level of proportionality.

Question 6: Are the guidelines in Title IV regarding the internal control framework appropriate and sufficiently clear?

The EBA Guidelines require institutions to put in place a well-documented new product approval policy (NPAP) which addresses the development of new markets, products and services and significant changes to existing ones. Eurofinas and Leaseurope urge the EBA to clarify the implementation of this new policy and how this connects with, or can be distinguished from, Product Oversight and Governance Arrangements

In addition, we ask the EBA to confirm that the draft Guidelines allow for smaller institutions to have joint functions (such a joint committee for risk management and compliance), as clarified by the EBA at the public hearing on 5 January.

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