

Eurofinas/Leaseurope response to the ECB Consultation on the Draft guide to fit and proper assessments

Eurofinas and Leaseurope, the voices of consumer credit and leasing at European level, welcome the opportunity to respond to the European Central Bank's (ECB) Consultation on the Draft guide to fit and proper assessments.

The membership of our two Federations covers institutions specialised in one or more of the following activities:

- Lending to consumers, for instance via personal loans, credit cards or lease/hire purchase agreements
- Leasing to businesses of all asset types, including machinery and industrial equipment, ICT and others assets
- Motor finance, granted to individuals or businesses, either in the form of loans or leases

The consumer credit, asset finance and leasing markets have developed to respond to business investment and consumption needs as well as to accompany the development of local industrial production and distribution. The types of institutions represented by the Federations include specialised banks, bank-owned subsidiaries, the financing arms of manufacturers as well as other, independently-owned institutions.

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 year¹. 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)² and is also extremely popular amongst larger corporates³. It is also extremely useful to support the public sector (e.g. leasing to schools, hospitals, etc.).

¹ Leaseurope 2015 Annual Statistical Enquiry

² 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

³ European Central Bank, *Survey on the Access to Finance of Small and Medium-Sized Enterprises in the Euro Area*, April 2013

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 year⁴. Consumer lending is procyclical and is highly positively correlated with households' disposable income⁵. 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 ECB on the suitability of members of the management body of significant credit 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.

We share the view of the ECB that the suitability requirements laid down in the Capital Requirements Directive (CRD) and thus the EBA Guidelines and ECB Guide, 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.

EBA Guidelines on suitability

The EBA is currently consulting stakeholders on draft Guidelines 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.

In our view, the appropriate procedure in such cases, would be for the ECB to start consulting only *following* the release of the final EBA guidelines. Unfortunately, this is not what happened: the ECB released its draft Guide at the same time as the ECB with an earlier deadline to respond. In order to ensure consistency of rules and legal certainty for supervised institutions, we now ask the ECB to hold off finalising the draft Guide until after the release of the final EBA guidelines.

⁴ Eurofinas 2015 Annual Statistical Enquiry

⁵ Eurofinas, *Consumer Credit, Helping European Households Finance their Tomorrow*, 2015

Proportionality

We strongly agree with the ECB that the principle of proportionality applies throughout the whole fit and proper process, ensuring a differentiated approach to the assessment procedure or the application of suitability criteria. Therefore, in all cases the assessment will come down to an individual analysis and supervisory judgement.

In its draft Guidelines, the EBA sets detailed criteria for the principle of proportionality. 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. 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.

***Ex ante* assessment**

Although we appreciate that it is the EBA which is driving the change of *ex post* to *ex ante* assessment of the members of the management body by relevant supervisors, we would still like to take this opportunity to draw the ECB’s attention to the especially disproportionately detrimental and anti-competitive impact this would have on smaller firms.

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.

During the 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.

Rights of appointees

Although we welcome the ECB's inclusion of rights of appointees in its draft Guide, we urge the ECB to guarantee confidentiality and non-publicity of the assessment process and final decision.

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