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Association Belge des sociétés de Recouvrement
BVI vzw
Belgische Vereniging van Inkasso-ondernemingen

Proposal Comments

EBA consultation on draft Guidelines on the assessment of adequate knowledge and experience of the management or administrative organ of credit servicers as a whole

ABR-BVI (Association Belge des sociétés de Recouvrement – Belgische Vereniging van Inkasso-ondernemingen) is the only Belgian national professional association of DCAs (Debt Collection Agencies) in our domain; it groups the main collection agencies operating in Belgium. All members are professionals within the sector, who have been selected on the basis of the trust that they emit every day through the quality of their work. They meet strict requirements in terms of structure, liquidity and solvency, and comply with a strict code of conduct.

Customers (creditors) come from all kinds of trade and industry and represent a wide range of companies, both in terms of sectors and size. Our members assist them both in the recovery of claims against consumers and in the recovery of commercial debts (claims against companies), as well as through debt purchases of NPLs (banking).
The association is a member of FENCA (Federation of European National Collection Associations).

In the context of Directive (EU) 2021/2167, the ABR-BVI welcomes the development of Guidelines on the assessment of adequate knowledge and experience of the management or administrative organ of credit servicers as a whole by the European Banking Authority (EBA). Furthermore, we share the EBA's approach to develop the Guideline criteria based on the principle of proportionality and prior experience of the management organ. However, based on our

practical insights as an association representing many players active in the domain of NPLs (both as credit purchaser, as well as credit servicer), ABR-BVI is interested in providing our perspective on the proposed criteria to ensure their feasibility and transparency. In the following, we present our comments on the proposed Guideline.

Q1: IS THE SECTION ON SUBJECT MATTER, SCOPE, DEFINITIONS AND IMPLEMENTATION APPROPRIATE AND SUFFICIENTLY CLEAR?

Yes.

Q2: IS THE SECTION ON PROPORTIONALITY APPROPRIATE AND SUFFICIENTLY CLEAR?

1. General: While we understand and generally agree to applying the principle of proportionality, we are concerned that this approach will make the requirements intransparent for the single credit servicer when trying to obtain a license. In addition, we did not find any explicit indication on how the mentioned criteria should influence the requirements. One can, of course, assume that e.g. a low volume of serviced credits could lower the bar in relation to the requirements, but it is not mentioned explicitly and in our view not implicitly clear for all criteria. Furthermore, even if a servicer merely services a relatively small number of credits, fair and transparent treatment of borrowers as well as governance requirements must be ensured. We thus think that the principle of proportionality cannot apply to all of the requirements.

2. Please find feedback on the **specific criteria** listed in point 13. as follows:

a) We do not believe **criterion a)** (credit servicer's balance sheet) to be a relevant criterion for this purpose: In our understanding credit servicers' regulation is based strongly on the fact that credit servicers get in contact fairly and transparently with defaulting (consumer) borrowers, among those also vulnerable borrowers. In this context, we understand that the volume of credits serviced (criterion b) might be a relevant criterion. The size of the balance sheet does not necessarily coincide with the number of borrowers the credit servicer has under management: If a credit servicer were at the same time credit purchaser or invested in other assets, its balance sheet might be much higher than a pure credit servicer's balance sheet even if the latter services X times more NPLs. In conclusion, we recommend to delete criterion a).

b) Regarding **criterion b)**, our general concerns apply (i.e. all borrowers must be treated fairly, governance must be in place etc. even if only a low number of credits are being serviced by a given credit servicer). Furthermore, we recommend that the criterion be specified: We suggest to use the commonly used term "assets under management (AUM)" and specify whether it should refer to volume (= number) of cases or volume (= open balance of credits) in a given currency. Also, such figure would need a reference point, e.g. year end of the previous business year.

c) We are not sure how to interpret **criterion c)**. Credit servicers do not deal with performing credits, but merely work on collecting outstanding amounts on NPLs which are essentially open claims stemming from credit agreements. There might be a different level of complexity also between such claims where we would find indicators helpful so that local regulators have a common approach of measuring complexity regarding NPL claims.

d) We do not think that **criterion d)** (legal form of the credit servicer) should be a relevant criterion unless the criterion refers to (corporate law) knowledge which is specifically necessary when being established in a relevant legal form. If this would not be specifically linked, we do not think that the outcome will be fair and lead to the principle of proportionality being applied.

e) As for point d) above, we do not believe that the fact that a credit servicer may belong to a group of companies (**criterion e)**) should make a difference in the treatment and if it did, we would not be sure in which direction or sense the difference would be taken into account. If a credit servicer belonged to a group of companies, this might mean that the basic governance level is already very high based on group guidelines etc. However, this does not have to be the case, especially if the group of companies is mainly active in a field of business which is not related to credit servicing. We strongly recommend to delete this criterion as the outcome could also be that expansion of groups of companies into other Member States is hindered simply based on higher requirements requested from any company belonging to a group of companies even if e.g. such company in the beginning does not even have relevant assets under management.

f) Unless specifically referring to knowledge in relation to the obligations of a listed company (**criterion f)**), we are not sure why this should be a decisive criterion for the requirements regarding a credit servicer's management.
g) We do understand **criterion g** (cross border activities) but again, we believe there should be a clear link between the potentially raised requirements to the specific business of providing cross border servicing.
h) We find **criterion h)** very broadly worded which makes it difficult for a credit servicer to judge beforehand whether it will fall under a potentially higher level of requirements than its competitors.

Based on our evaluation, **we consider b), c), g) and h) as most suitable criteria** for assessing the knowledge and experience of credit servicers' management organs in the intended proportionate manner. However, we strongly recommend to further specify these criteria to make them better applicable in practice and thus ensure fair and transparent conditions for different credit servicers.

Q3: IS THE SECTION 2 ON THE SUITABILITY ASSESSMENT BY CREDIT SERVICERS APPROPRIATE AND SUFFICIENTLY CLEAR?

1. **Addition to 17. b):** clarification that this would also apply to cases in which in the reasonable opinion of the shareholder the need for replacement of a member arises based on misconduct of such member.
2. **Point 20. typo:** "a credit servicer should … its" or "credit servicers should… their"?
3. Relating to **point 23.**, we strongly recommend to leave the assessment process in the responsibility of the relevant credit servicer itself. If the competent authorities need to assess every single member, this may paralyze the credit servicers during this process. Thus, we would opt to either delete point 23. Or replace it with a wording along the lines of: "The process for assessment of candidates shall be exclusively carried out by the credit servicers or their supervisory bodies, respectively. The process for the assessments can be audited by the competent authorities." This is also in line with point 41. "Credit servicers should perform an assessment using their own appropriate methodology in line with the criteria set out in these Guidelines and document the results."

Q4: ARE THE SECTIONS 3 AND 4 ON THE INDIVIDUAL AND COLLECTIVE CRITERIA FOR THE ASSESSMENT OF MEMBERS OF THE MANAGEMENT OR ADMINISTRATIVE ORGAN APPROPRIATE AND SUFFICIENTLY CLEAR?

1. **General:** To enable credit servicers with companies in different Member States to complement locally available competences with competences from e.g. a member of the management body with a different nationality (and language competences), there should be an option in all member states to conduct the assessment process in English.
2. **Point 29.** refers to the "financial services" sector which in our understanding comprises inter alia banks. We deem it of utmost importance to emphasize in the Guidelines that the criteria applying to banks and financial institutions cannot be merely transferred to credit servicers by the local regulator, but that the requirements must be suitable to credit servicers whose business model comprises much less risk with a view to different parameters: Two major aspects of the core business of banks are (i) the granting / restructuring of loans, including to consumers and (ii) holding monies, including of consumers, in trust for the account holders on bank accounts. Credit servicers, on the other hand, aim to collect monies on claims stemming from loans, but do not grant or restructure loans. Furthermore, credit servicers do not hold monies in trust for consumers and other account holders, but may only hold in trust monies standing to the credit of credit purchasers if the credit purchaser wishes for the credit servicer to accept and hold borrower funds (and insofar as the local implementation of the NPL Directive foresees this possibility) provided that credit purchasers are knowledgeable investors who have the power to agree on suitable terms with the credit servicer.
3. **Point 31. a)** refers to: "banking and financial markets in particular with regard to risk management, credit risk and loan origination". When looking at credit servicers whose scope of work does not contain loan origination and who explicitly only work on non-performing loans, i.e. on claims where in 100% of the cases the risk of default has already occurred, we believe that the above-mentioned criteria should not form part of the requirements posed on credit servicers' management members.

4. **Points 31. d), e), f), g) and h)** (sequestration, insolvency and bankruptcy procedures, contractual law, accounting and auditing, AML/CFT obligations, data protection requirements) are parameters which we believe are indeed of relevance also for credit servicers. However, we recommend to clarify that the necessary level of knowledge would not have to be that of a professional in that field, but a basic understanding of such areas which – in connection with advice from experts – will lead to the member being able to take informed decisions regarding topics relating to such areas. Each of the mentioned areas, for example insolvency law, are broad (legal) fields which often require the knowledge of experts who focus on one of these topics in their entire professional career to be able to reach relevant knowledge and experience.
5. Where **point 36. a)** refers to "fraud detection and prevention in the context of credit risk management", we wish to reiterate that the scope of work of credit servicers does not encompass loan origination and that credit servicers explicitly only work on non-performing loans, i.e. on claims where the bank should have detected fraud cases at loan origination or during the term of the loan agreement before termination based on default. Therefore, we believe that these criteria should not form part of the requirements posed on credit servicers' management members.
6. Regarding **point 36. e)**, we wish to point out that, as for e.g. legal fields, this can only reasonably refer to basic knowledge which – in connection with advice from experts – will lead to the management body being able to take informed decisions regarding topics relating to such areas.
7. The collective knowledge described **in point 37.** should be lightened, e.g. "the members can seek advice from nominated experts in the group not being explicit member of the management body to take decisions in specific areas. To avoid a potential conflict of interest, the advice should not be received by the credit servicer itself but e.g. from a holding function or external advisors".

Q5: ARE THE SECTIONS 5 AND 6 ON THE INDIVIDUAL AND COLLECTIVE ASSESSMENT OF MEMBERS OF THE MANAGEMENT OR ADMINISTRATIVE ORGAN APPROPRIATE AND SUFFICIENTLY CLEAR?

Yes.

Q6: IS SECTION 7 ON CORRECTIVE MEASURES APPROPRIATE AND SUFFICIENTLY CLEAR?

Yes.

Q7: IS SECTION 8 ON THE ASSESSMENT BY COMPETENT AUTHORITIES APPROPRIATE AND SUFFICIENTLY CLEAR?

Yes. In the interest of harmonisation, we believe that it would be helpful that communication with competent authorities could officially – in addition to local language – also be conducted in English in each Member State.