

EBA/CP/2023/07

Comments on “EBA Guidelines on the assessment of adequate knowledge and experience of the management or administrative organ of credit servicers, as a whole, under Directive (EU) 2021/2167”

The Federal Association of Loan Purchase and Servicing ('Bundesvereinigung Kreditankauf und Servicing' or BKS) is based in Berlin and since 2007 represents the interests of buyers, servicers and various other specialised investors involved in the purchase and servicing of non-performing loans (NPL) from credit originators in Germany.

We would like to take this opportunity to provide feedback and response to the Draft Guidelines.

BKS supports, basically, the key objective of the introduction of the Guidelines to lay down a common and consistent approach across all European Member States and to ensure that each credit servicer, as a whole, has adequate knowledge and experience to conduct its business in a competent and responsible manner, according to the activity to be carried out.

We consider, however, that with respect to the requirements for the qualification of the management or administrative organ the scope of qualification should be more accurately aligned with the relevant business model or the main activity of an institution. Moreover, the Guidelines specify common criteria, to assess the collective adequate knowledge and experience of the management or administrative organ, on the basis of the individual knowledge and experience of the members of these organs. In case of larger group structures with complex layers of management hierarchy this could lead to misinterpretation, and inconsistent application regarding the number of individuals who should fulfil the knowledge and experience standards within scope of the Guidelines requirements.

Q1: Is the section on subject matter, scope, definitions and implementation appropriate and sufficiently clear?

We believe that the section on subject matter, scope, definitions, and implementation could benefit from more specific definitions, particularly those relating to the 'Management or administrative organ' and 'Administrative or management organ in its supervisory function'. Clear identification of the individuals intended to fall within the scope of the Guidelines is crucial to prevent inconsistent application across different credit servicers and/or competent authorities.

Furthermore, in terms of the competent supervisory authorities, the drafted terms should be clearer in order to avoid national dual supervision. For instance, in Germany the debt collection agencies are supervised at the moment by the Federal Office of Justice. By contrast, a qualification assessment as defined in the Directive would suggest supervision by BaFin.

Q2: Is the section on proportionality appropriate and sufficiently clear?

While the draft Guidelines note that a proportionate approach should be taken based on several factors relevant to the size and nature of the business, we consider that more context or guidance is required. As it stands, there is significant scope for interpretation by individual credit servicers, which could lead to inconsistent application of standards and potential competitive disadvantages. We suggest that the Guidelines should provide more detailed guidance on the relative measures that would be appropriate in each case, eventually through the inclusion of certain thresholds and associated basic requirements.

Q3: Is the section 2 on the suitability assessment by credit servicers appropriate and sufficiently clear?

In the section on the suitability assessment by credit servicers, we suggest that the definition of the requirements should take into account the dedicated business purpose of debt collection. Unlike banks, credit servicers primarily deal with debt collection, which implies a different weighting of reputational risk. The Guidelines should reflect this difference and provide specific guidance for credit servicers.

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?

We believe that the individual and collective criteria for the assessment of members of the management or administrative organ should take into account additional qualifications based on different country-specific authorisation requirements. This would ensure that the assessment process is aligned with the specific legal and regulatory context of each EU Member State.

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?

Please see our response to Q4.

Q6: Is section 7 on corrective measures appropriate and sufficiently clear?

We consider sections 7 on corrective measures appropriate and sufficiently clear.

Q7: Is section 8 on the assessment by competent authorities appropriate and sufficiently clear?

Please see our response to Q1.