Financial Market
Development Foundation

Warsaw, 2019/09/26

Financial Market Development Foundation position on draft guidelines on loan origination and monitoring

Following the public consultation process initiated by the European Banking Authority (EBA) on the draft guidelines on loan origination and monitoring, I would like to present below the position of the Financial Market Development Foundation on this document.

First of all, I would like to point out that the Financial Market Development Foundation (hereinafter: the Foundation) is an organisation representing the interests of non-bank lenders granting consumer loans on the Polish market. We represent the entities whose market share in the Polish non-bank consumer credit market exceeds 60%. Importantly, the entities of the industry represented by the Foundation do not meet the definition of a 'credit institution' within the meaning of Article 4(1)(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (hereinafter: the CRR Regulation), according to which a credit institution means: *'an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account.'* Entities whose interests are represented by the Foundation are financial institutions within the meaning of Article 4(1)(26) of the CRR Regulation, i.e. they carry out activities consisting in granting loans from their own resources. Thus, these entities do not pose systemic risk resulting from granting loans from funds entrusted by depositors.

In the draft guidelines, EBA indicates that the basis for their formulation is the European Council Action Plan on tackling the high level of non-performing exposures (hereinafter referred to as the 'Action Plan'). In the opinion of the Foundation, the fact that the Action Plan is aimed at counteracting the materialization of systemic risk in the form of liquidity and solvency problems caused by inadequate credit risk management by credit institutions is not insignificant. In its Action Plan, the European Council refers explicitly to the issue of systemic risk and the need to ensure adequate credit risk management by the European banking sector. In the draft guidelines, however, the EBA goes beyond the mandate of the Action Plan and touches upon areas not only affecting the stability and security of the European banking sector, but also concerning the protection of consumer interests. Moreover, the scope of the Guidelines has been extended beyond the area of credit institutions and also covers

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consumer lenders - non-credit institutions, i.e. non deposit-taking creditors, to whom Section 5 of the Guidelines would apply.

In the opinion of the Foundation, the scope of the guidelines defined in this way raises a number of concerns:

1. EBA does not take into account the fact that there are different actors in the European market which grant consumer credit and which are not credit institutions and that the laws of the Member States provide for different regulatory regimes for these actors. While Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (hereinafter 'the MCD') laid down rules for the supervision of the activities of lenders providing credit secured on residential property, including the appointment of competent supervisory authorities under the auspices of the EBA and rules on cross-border provision of services, Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (hereinafter CCD) does not provide for harmonisation in this respect. According to Article 3b of the CCD, a creditor means a natural or legal person who grants or promises to grant credit in the course of his trade, business or profession. With regard to the supervision of creditors' activities, the CCD contains only residual regulations in Article 20, which states: *'Member States shall ensure that creditors are supervised by a body or authority independent from financial institutions, or regulated. This shall be without prejudice to Directive 2006/48/EC.'* The CCD does not require this supervision to be carried out by supervisors acting under the auspices of the EBA, nor does it indicate the nature of the supervision. For example, in Poland the catalogue of institutions authorised to grant consumer credit within the meaning of the CCD has been limited to banks, credit unions and loan institutions. Banks and credit unions, as deposit collectors, are subject to prudential supervision by the Polish Financial Supervision Authority. On the other hand, activities carried out by loan institutions are regulated activities in the sense that entities that meet specific organizational and financial requirements that have been entered in the register kept by the Polish Financial Supervision Authority are authorized to perform them. However, given that loan institutions do not generate systemic risk, their activities are not subject to prudential supervision, i.e. the PFSA does not have the power to issue recommendations related to this activity.

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It should be borne in mind that different categories of consumer creditors target different target groups. Banks generally grant loans of higher amounts, with longer maturities, to people with higher credit scoring. On the other hand, loan institutions provide financing to persons with a lower credit rating or who, due to e.g. a lack of a regular source of income, are unable to obtain credit from the banking sector. Loans granted by loan institutions are characterized by lower amounts than bank loans and shorter maturities.

With this in mind, we would like to point out that, in the Foundation's opinion, the EBA draft guidelines lacked an approach aimed at adapting the guidelines to different groups of lenders. In our view, a 'one fits all' approach and, in addition, the construction of guidelines to focus on the activities of the banking sector and to address systemic risk are not appropriate and do not take into account the specificities of the consumer credit market. Moreover, as indicated by EBA on page 7 of the draft guidelines*: 'The requirements to assess the creditworthiness and verification of consumer information are developed in accordance with Articles 18 and 20 of Directive 2014/17/EU (MCD).'* It should be borne in mind that the MCD regulates the granting of high-value, long-term loans secured on residential property, i.e. loans which on the one hand place a heavy burden on the potential borrower and on the other hand pose a high systemic risk, as highlighted by the recent financial crisis. The EBA has thus taken as a starting point for guidelines for the assessment of consumers' creditworthiness high value loans secured by real estate collateral. In the Foundation's view, this is not the correct approach as the specificity of credits granted under the CCD is completely different and the mechanisms and procedures for assessing customers' creditworthiness should be different for them.

2. When formulating detailed recommendations for consumer credit providers within the meaning of the CCD, EBA does not take into account that the CCD review process is currently underway, in which the European Commission is, among other things, reviewing the rules on the assessment of consumer creditworthiness. The results of the review will be published in the fourth quarter of this year. The review of the directive will most likely result in its revision. In the Foundation's view, the EBA's action on guidelines for CCD lenders should be considered premature. It should be borne in mind that the adaptation process of entities providing services in the field of granting consumer loans to the new regulations is time and cost consuming. However, it may turn out that the EBA guidelines will not be compatible with the provisions of the amended CCD Directive, which would mean that further costs and effort would have to be incurred to adapt to the changed requirements. The Foundation calls for a temporary resignation by the EBA from the formulation

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of guidelines in relation to CCD lenders and the possible addition of these entities to the scope of the guidelines after the adoption of the amended CCD Directive.

3. Irrespective of the above, the Foundation points out that in its opinion the guidelines contained in the draft are too detailed and may turn out to be too restrictive, in particular for entities which do not generate systemic risk. With reference to the guidelines in Section 5 and Annex 2, it should be pointed out that they completely ignore the fact that a EUR 200 loan does not require the same creditworthiness assessment approach as a EUR 75 000 loan. In the Foundation's view, the guidelines on the scope of the information required for a credit decision should be differentiated according to the amount of credit granted or credits up to a certain amount (e.g. EUR 5 000) provided by non-depository entities should be excluded from the scope of the guidelines. In our view the process of creditworthiness assessment in the case of low amount credits (up to the certain amount) should be based more on the consumer's statement than on the data obtained from public registers or other external sources. Our evidence shows that consumer's statement is more significant and more accurate in case of these credits and generate less costs. If there is no differentiation among various groups of products and creditors the proposed guidelines may result in an excessive increase in the cost of credit activity that is not justified either by the protection of consumer interests or by the reduction of systemic risk. A number of data listed in Annex 2 may be difficult for lenders to obtain - examples include proof of residence at a particular address, information on the structure of income received (broken down by basic income, bonuses, overtime), credit registers data covering at least information on liabilities and arrears in payments. I would like to point out that there is no free credit register in Poland - there are commercial databases on interbank liabilities and databases recording arrears in payments. Using each of these databases for the purposes of implementing the guidelines would mean a significant increase in operating costs, but it should be borne in mind that the lack of information about the consumer in a given database does not mean that the consumer has no liabilities or late payments - he may have such that have not been reported to the databases. Thus, even if the creditor exercises due diligence, it may not be possible to comply with the recommendation referred to in point 85 of the guidelines: *'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).'* The same applies to the fulfilment of the requirements of point 88 of the draft guidelines. However, the draft guidelines in paragraph 90 require proof of the information and data on which the decision to grant the loan was based, including the actions taken and the assessments made. In the opinion of the

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Foundation, it is not clear what kind of activities the EBA means by 'documenting.' With short-term, low-value loans, in particular those granted via electronic channels, it is a practice to make credit decisions based on income information provided by the consumer. It is therefore doubtful whether, in the light of points 88 and 90, for such loans the creditor will have to verify the consumer's statement of income and document this process accordingly. If this is the intention of the European Banking Authority, it should be emphasised that the guidelines will lead to a change in the business models of some entities and to the elimination of certain loan products from the market, which, in the opinion of the Foundation, is not justified either by the Action Plan or by the protection of consumers' interests.

4. In the draft guidelines, the EBA has adopted an extremely ambitious timetable - the publication of the final version by the end of 2019 and the entry into force of the guidelines as of June 2020 was assumed. In the opinion of the Foundation, the implementation of the guidelines by financial institutions in accordance with the proposed schedule is not feasible for objective reasons. The process of implementing the guidelines will mean changes in procedures and processes, as well as the need to adapt IT systems, which is a long-term process. It should be borne in mind that only after the publication of the final version of the guidelines, will financial institutions start analysing and implementing them. The period between the publication of the guidelines and their entry into force should therefore be long enough to allow adaptation processes to be carried out without exposing financial institutions to the negative consequences of national supervisory authorities. Bearing in mind the scope and substance of the issues to be regulated at the level of the guidelines, we call for a minimum period of 18 months between their publication and their entry into force. We also like to stress that in our view the final guidelines and the final deadline for their implementation should take into account the results of the CCD review.

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