EBA draft Guidelines
on loan originating and monitoring
draft MEDEF response

Presentation of the MEDEF :

Medef is the largest business organisation in France, representing more than 173 000 companies - among which 95% are SMEs. Medef's mission is to promote and to represent the interests of French companies vis-a-vis decision makers, and to develop entrepreneurship in a changing world. Medef works with all the actors of civil society and gives particular attention to the challenges of creating jobs and economic growth.

Medef is an active member of BusinessEurope.

As a whole, the MEDEF consider that the EBA's proposed Guidelines (GL) are too prescriptively worded, in a way that would not allow a flexible and risk sensitive implementation according to the proportionality principle as regards to product types, lending channels, amount of borrowing…

As they are drafted, the EBA's draft Guidelines appear as standardized ("one size fits all") whatever the nature and amount of credits originated and to be comprehensively and strictly implemented by all European institutions, disregarding proportionality principle. We understand that it is not the objective of the EBA, which we strongly agree on since otherwise it would drastically raise the cost of credit and would create financial exclusion. As a consequence, it is clear that financial exclusion will have negative impact on automotive industry and lead to a decrease of the sale of cars across Europe, at the time when the automotive industry is already under pressure.

The full application of the draft Guidelines to the described activities will inevitably lead to a fewer lenders offering their products in key consumer and SME segments, resulting in reduced competition, diminished access and ultimately greater financial exclusion. As such, it would undermine the European Commission's economic strategic goals (growth and employment) without achieving additional consumer protection.

As the voice of commerce and manufacturers, the MEDEF would like to express the preoccupations of its members regarding the impact of the guidelines on the demand side. Access to finance is key to support the activity of entire sectors. As they are drafted, the Guidelines do not seem to allow any flexibility in the credit granting process. Yet, small consumer loans with short maturities distributed at points of sale, cannot possibly refer to the same requirements as those concerning large amount credits in project finance.

EBA expressed the fact that the requirements are to be understood as examples of requirements, allowing institutions to use only part of it depending on the context, or other equivalently efficient parameters and processes, as there is no point to issue universal requirements that would fit all types of lending and institutions in Europe. We strongly agree with this principle.

For instance, we notice a high use of the term “at least” or similar (eg: “should” interpreted as mandatory), which can be read as contradictory with any proportional application of the Guidelines. Using a wording such as “for example” and “where relevant” and “or equivalent” to introduce the requirements would probably ease a reasonable application of the proportionality principle.

2. Subject matter, scope and definitions

Q1 **What are the respondents’ views on the scope of application of the draft guidelines?**

The MEDEF understands EBA references to its previous publications in the field of the 2014/17 Mortgage Credit Directive (MCD), and to the recent review of the European Supervisory Authorities that brings also, through an extension of the EBA activities to consumer protection, the 2008/48 Consumer Credit Directive (CCD) into its scope of action.

MCD and CCD are currently under evaluation. It is very probable that those directives will be revised by the European Commission in the coming months and it seems that the proposed GL should not anticipate these revisions, otherwise there would be a risk that the EBA regulation ends up inadequate to new legislative dispositions.

We also wish to underline that Guidelines are level 3 documentation supposed to respect the scopes defined by levels 1 and 2 legislative texts which is not the case of the current draft which goes further than level 1 dispositions regarding the scope for instance.

More generally, many of the requirements proposed in the Guidelines are not compatible with large scale, small amounts and short-term credit origination (ex. consumer credits originated at points of sale or online in partnership with goods and services distributors, small lease tickets originated via vendor programmes and factoring programmes, both for SME’s). In many cases, the very existence of the distribution channel would be at risk. It is the case for example of point of sale credit which characteristics (low amounts, high cost of acquisition) make it very vulnerable to any increase of administrative costs.

3. Implementation

Q2 **Do you see any significant obstacles to the implementation of the guidelines by the application date and if so, what are they?**

The MEDEF estimates that the proposed date of implementation – 30th June 2020 – is too close as regards to:

- The current evaluation processes of Consumer Credit Directive dated 2008 and Mortgage Credit Directive, which would lead to legislative initiatives not expected before end of 2020 at the best;
- The potential impacts induced by the proposed GL in terms of information system, professional training and business organisation within the institutions. Indeed, the implementation of such guidelines will induce the training of all the dealer network and all the front office and back office of all credit institution for automotive industry.

4. Governance requirements for credit granting and monitoring

Q3 **What are the respondents' views on whether the requirements set in the draft guidelines are future proof, in particular in relation to technology enabled innovation (Section 4.3.~~2~~3) and environmental factors and green lending (Section 4.3.~~3~~4)?**
Q4 **What are the respondents' views on the requirements for credit risk policies and procedures (Section 4.3)?**
Q5 **What are the respondents' views on the requirements for governance for credit granting and monitoring (Section 4)?**
Q6 **What are the respondent's views on how the guidelines capture the role of the risk management function in credit granting process?**

As they are drafted, the EBA's draft Guidelines appear as standardized ("one size fits all") whatever the nature and amount of credits originated and as to be comprehensively and strictly implemented by all European institutions, disregarding proportionality principle. We understand that it is not the objective of the EBA, which we strongly agree on since otherwise it would drastically raise the cost of credit and would create financial exclusion as they are too much risk adverse.

The full application of the draft Guidelines to the described activities will inevitably lead to a fewer lenders offering their products in key consumer and SME segments, resulting in reduced competition, diminished access and ultimately greater financial exclusion. As such, it would undermine the European Commission's economic strategic goals (growth and employment) without achieving additional consumer protection.

As the voice of commerce and manufacturers, the MEDEF would like to express the preoccupations of its members regarding the impact of the guidelines on the demand side. Access to finance is key to support the activity of entire sectors. As they are drafted, the Guidelines do not seem to allow any flexibility in the credit granting process. Yet, small consumer loans with short maturities distributed at points of sale, cannot possibly refer to the same requirements as those concerning large amount credits in project finance.

5. Loan origination procedures

Q7 **What are the respondents' views on the requirements for collection of information and documentation for the purposes of creditworthiness assessment (Section 5.1)?**
Q8 **What are the respondents' views on the requirements for assessment of borrower's creditworthiness (Section 5.2)?**

We consider that the reference to proportionality in introduction to the GL is too light and general. EBA expressed the fact that the Guidelines are to be understood as examples of requirements, allowing institutions to use part of it depending on the context, or other equivalently efficient parameters and processes, as there is no point to issue universal requirements that would fit all types of lending and institutions in Europe. We strongly agree with this principle. For instance, small consumer loans with short maturities distributed at point of sales, as well as small factoring tickets and small amount leases, cannot possibly refer to the same requirements as those concerning large amount credits in project finance.

For instance, we notice a high use of the term "at least" or similar (eg : "should" interpreted as mandatory), which can be read as contradictory with any proportional application of the Guidelines. Using a wording such as "for example" and "where relevant" and "or equivalent" to introduce the requirements would probably ease a reasonable application of the proportionality principle.

The MEDEF wishes the EBA to consider the following points referring to different sections of Title "5. Loan origination procedures".

⇨ **Collection of information and documentation**

§88 à §90 - The wording should be clarified to determine more precisely what means for the creditor "the documentation of information". We estimate that it cannot be considered as an obligation for the creditor to collect systematically documents testifying the borrower's declarative information. Such a requirement would not be compatible with small amounts lending business models such as consumer credit at points of sale or online for example. In addition, it would be overpassing the Consumer credit directive requirements, and some member states level 1 legislative texts: in France for instance, a level 1 law has introduced a threshold of 3 000€ for the collecting of documentation justifying borrower's declarative information.
From an operational point of view, it would not be compatible with small ticket vendor lease to professionals either.

§91 to 94 and Annex 2 – The requirements concerning the collection of information for consumer credit activity seems to be far beyond what is currently admitted - and practiced - in application of the Consumer Credit Directive. Besides, the collection of some required personal data would have to be challenged against the background of the GDPR.
It would be technically impossible to collect some of the required data on a large-scale consumer credit activity. As such, it is not flexible enough and would eventually prevent institutions from adapting their creditworthiness assessment to distribution channels (at points of sale, online...) which require fluid and fast processes in response to « on site / on time » demands of clients who want to buy goods or services.
Consumer credit worthiness assessment requires flexibility. Prudential framework is necessary but should be proportionate and adequate to the scale and finality of the operation.

Annex 2 referred to in §91 to 94 – Annex 2 requirements are much too restrictive, as associated with the term "at least". For some large-scale / small amounts, and globally for credit activities including a corporate intermediary, a strict application of the listed data requirements in Annex 2 would severely challenge current involved institutions' scoring models, sometimes technology-enabled, despite the fact that they have proved their efficiency.

⇨ **Assessment of borrower's creditworthiness**

Requirements for lending to consumers

§99 – The MEDEF estimates that a strict application of this requirement would be much too prescriptive and would lead to regressive results if implemented as such. The section should be supressed or the term "where appropriate" should be more precisely developed.
A strict application of the listed metrics and parameters would severely challenge current involved institutions' scoring models, sometimes technology-enabled, despite they have proved their efficiency.

Such a strict application would represent disproportionate costs in comparison to the benefits in terms of cost of risk reduction that could be expected.
This too standardised and formal requirements would create a rigid creditworthiness framework detrimental to more risk sensitive existing processes. The proposed metrics and parameters would finally become factors of credit exclusion as they could become "standards" for indebtment ratios.

Requirements for lending to professionals

§131 à 135 et § 138 à 141 (SME specific) + Annexe 3 - We insist on the importance of an explicit rewording to better express the flexibility, adaptability – as long as an equivalent level of risk management efficiency is guaranteed - of the requirements listed in Chapter 5.
Otherwise, the MEDEF estimates that imposing to refer to a list of metrics to analyse a professional borrower's financial position, especially considering SMEs, is over-prescriptive and regressive.
The requirement to « consider at least » some of the metrics listed, such as "cash conversion cycles", "cash flow generation", "projected capital expenditure"… is not compatible with credit granting processes of some small amounts and short-term credit activities. It would have disproportionate impacts on the organisation and tools on which these activities currently rely, often at least partially automatized and technology-enabled, that have long been developed and have proved their efficiency. It would represent a step backward to less risk sensitive credit granting analyses, for a disproportionate cost in terms of HR and IT for credit institutions, and would carry a high risk of credit exclusion for corporates.

Q9 **What are the respondents' views on the scope of the asset classes and products covered in loan origination procedures (Section 5)?**

A "one size fits all" approach for procedures covering loan origination (creditworthiness assessment and collection of information) is not relevant. Prudential requirement in loan origination procedures cannot be the same for large scale, small amount and short-term credits or leases as for a large amount project finance operation.

7. Valuation of immovable and movable property

Q11 **What are the respondents' views on the requirements for valuation of immovable and movable property collateral (Section 7)?**

§ 191 à 200 – Concerning valuation of immovable property, the MEDEF considers that the proposed requirements regarding independent / external valuation of the properties are far over-prescriptive. They would considerably raise the cost of credit and would finally lead to credit exclusion.

§ 201 – The MEDEF considers that the organisational requirements related to independence of valuers are over-prescriptive and would raise the cost of credit.

8. Monitoring framework

Q12 **What are the respondents' views on the proposed requirements on monitoring framework (Section 8)?**

As they are drafted, the EBA's draft Guidelines appear as standardized ("one size fits all") whatever the nature and amount of credits originated and as to be comprehensively and strictly implemented by all European institutions, disregarding proportionality principle. We understand that it is not the objective of the EBA, which we strongly agree on since otherwise it would drastically raise the cost of credit and would create financial exclusion.

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For instance, we notice a high use of the term "at least" or similar (eg : "should" interpreted as mandatory), which can be read as contradictory with any proportional application of the Guidelines. Using a wording such as "for example" and "where relevant" and "or equivalent" to introduce the requirements would probably ease a reasonable application of the proportionality principle.

§ 238 - The requirement to collect and monitor qualitative information on the borrowers (such as quality of management, company's pricing power, cost structure, etc.) is too detailed and prescriptive. We understand that it could be relevant for large amount project/investment finance regarding large corporates, but it is not suitable with some "large scale/ small amount/ short term" credit activities.
We insist on the importance of an explicit rewording to better express the flexibility, adaptability, proportionality – as long as an equivalent level of risk management efficiency is guaranteed - of the requirements listed in Chapters 8.