**CREDIT AGRICOLE comments on EBA’s draft guidelines on loan origination and monitoring**

CREDIT AGRICOLE acknowledges the relevance of defining best practices in terms of loan origination and monitoring in all Member States for both consumers and industry. CREDIT AGRICOLE therefore welcomes the opportunity to comment on EBA’s draft guidelines on loan origination and monitoring.

Please note that we have set out general comments here. We have also participate in the different consultation responses of associations and federations (such as EACB, EBF, AFME, FBF and ASF), and propose some amendments.

As set out in the EU Action plan on NPLs, the EBA has received a mandate from the European Council to “issue detailed guidelines on banks’ loan origination, monitoring and internal governance which could in particular address issues such as transparency and borrower affordability assessment”. These guidelines should aim to avoid the accumulation of excessive non-performing exposures while maintaining access to credit without additional costs, excessive administrative burdens or complexification of the customer experience.

The purpose of EBA guidelines is to provide interpretation of regulations and directives and promote harmonisation of supervisory practices.

Indeed, the European Parliament, in article 16 of its legislative resolution of 16 April 2019 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), stated that: “the Authority shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law, issue guidelines…” Furthermore, in a decision issued June 24 2013, the Board of Appeal of European Authorities recalls that these acts “help the interpretation of the scope of the provisions” of European legislation.

CREDIT AGRICOLE considers that the proposed guidelines go beyond existing regulations and are too prescriptive. If too prescriptive, the guidelines may reduce employees’ skills and expertise in credit granting by favouring a more automated decision process. This may also lead to credit exclusion for higher risk borrowers or more complex or specific projects.

Level 1 legislation should be fully respected. An alignment with existing or upcoming regulations, which define scope, requirements, terms and definitions, is necessary. In particular, regarding the measures related to consumer protection, the EBA Guidelines should only consider the scope provided for under both the CCD and the MCD. For example, the CCD aims to ensure a full consumer protection framework for consumer credits between 200 EUR and 75000 EUR. For lower and higher amounts of credits, EU-MEPs and Member States have considered that the application of the legal requirements would be over-prescriptive and disproportionate regarding their risk profile. It is therefore necessary that the EBA guidelines do not go beyond this scope.

In addition, the inclusion of formal independence criteria regarding internal governance is not in line with Level 1 regulation as CRD only foresees independence of mind and conflict of interests. On top of that, the list of criteria in § 63 and especially § 63.b.ii. is not realistic.

The concept of affiliated parties as considered in the draft guidelines is too wide and vague. We ask the EBA to stick to the CRD definition (parents, children, and spouses).

The guidelines are not designed to preempt future legislation. European Commission’s consultations have just closed or are to be launched soon, regarding e.g. CCD, MCD, DMFS and GDPR (data minimisation principle). To get into some topics is clearly premature. For example, it would be relevant to wait for the impact assessment results before standardising consumer credits’ creditworthiness assessment. If such a standardisation is implemented, we fear that it excludes some categories of consumers. We keen to support atypical or fragile clients that we have known well for years and trust. Moreover, the will to apply mortgage rules for creditworthiness assessment to consumer credits is not justified as the risks are not the same. This would disturb the financing of consumption which is a core driver of European growth.

Furthermore, work is under way on an EU green taxonomy while the draft guidelines foresee requirements on “green lending” and out of any existing legislation.

Therefore, EBA should not anticipate the results of democratic debates between the European Commission, the Council and the Parliament. On top of that, banks cannot afford to completely review several times their internal practices and IT systems over such a short period of time because of guidelines then because of a revision of directives. Banks must already implement many new regulations that require heavy IT developments. They will have to prepare for Basel IV.

The proposed implementation date (30 June 2020) is not feasible. A more realistic implementation delay is needed: at least four years.

The guidelines would also require more flexibility and impact sensitivity according to the proportionality principle. The recital 11b of the European Parliament legislative resolution of 16 April 2019 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), the European Parliament provides that: “The measures EBA adopts …should not exceed what is necessary to achieve the objectives of this Regulation or the acts referred to in Article 1(2) and should take duly into account nature, scale and complexity of risks, business practices, business models and size of financial sector operators and markets.”

We call for a revision of §12 as we believe that should not be taken into account “First, … the size, nature and complexity of the institutions” as stated in the draft guidelines. The size of the institution has indeed very little to do with the level of risks. We believe that the risks and especially the nature, complexity and size of the credit facility should be “first” taken into consideration. We support the « same activities/ same risks/ same rules » principle, with the exception of reporting and disclosures which may be adapted. We ask EBA to copy-paste all the proportionality criteria described in the EBA guidelines on internal governance.

Moreover, §15 should be removed. Indeed, regarding the creditworthiness assessment, the EBA’s standardised (“one size fits all”) approach whatever the nature and amount of credits originated would likely raise the cost of credit and surely create financial exclusion.

Creditworthiness assessment is the core activity and expertise of credit institutions. The main purpose of a creditor is to manage the credit risk and to have the loans properly repaid. Therefore, all the information and documentation gathered to assess the customer’s creditworthiness should be proportionate.

The EBA tends to align the treatment of vanilla transactions with that of more complex or structured transactions (for example consumer credit rules with mortgage credit rules and non-retail practices with specialized lending). The guidelines should leave room for better customisation of requirements and listing criteria, which are not intended to be applied systematically nor all together. We fear that some consumers will have no other choice but shadow banking, ending with no European protection at all. In particular, §92 should be revised as it reads that “ For the purposes of the collection and verification of information, institutions and creditors should at least consider collecting the information and data as set out in Annex 2. “At least” or “as a minimum” indicates a requirement that guidelines cannot ask for. Some of these new requirements are added to the EU legislation in a very granular, impracticable and often irrelevant way. For instance, the requirements set out in Annex should be presented as examples to consider where appropriate.

The requirement to have a “single customer view” on risk data that banks have on their clients is impossible to comply with regarding the GDPR principles (data minimization) and the prohibition of positive credit database or register in some member States. For example in France, such a credit register is forbiden by the French constitution.

The sensibility analysis requirements are too far reaching especially regarding unsecured consumers loans and SMEs loans.

The assessment of collateral via external valuers, especially if a systematic rotation is mandatory, regardless of the amount of credit requested, would be extremely costly.

Some flexibility is also needed in order to take into account the costs/benefits of the requirements. For example, the credit analysis should go along with the bank’s risk appetite. The guidelines should not induce an extreme risk aversion for banks.

Remuneration cannot either be linked to the long-term quality of the loan as macro-economic context, unemployment, disease, divorce or other life accidents cannot be predicted. Besides, such a requirement is absolutely inapplicable for credits with short duration and small amounts. Under Labor law in most Member States, employees should be incentivised by quantifiable and measurable objectives. A deferred premium linked to the long-term risk is not acceptable.

Regarding pricing, the EBA guidelines should clearly state that they do not prescribe any specific pricing strategies, as these remain business decisions of the institutions. We understand it is the EBA’s intention. It should therefore be clearly mentioned in the text.

Finally, in order to ensure legal certainty, the guidelines should only apply, by principle, to newly originated loans.