



*European Association of Co-operative Banks
Groupement Européen des Banques Coopératives
Europäische Vereinigung der Genossenschaftsbanken*

EACB Response to EBA Consultation Paper: draft Guidelines on Arrears and Foreclosure

12 February 2015

The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%.

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The voice of 3,700 local and retail banks, 56 million members, 215 million customers

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Introduction

The European Association of Co-operative Banks (EACB) welcomes the opportunity to participate in the EBA consultation process on “Arrears and Foreclosure”.

Mortgage lending is at the very core of co-operative banking business. When it comes to the treatment of borrowers in arrears, the EACB is of the opinion that prevention is the best cure. We thus believe that a good relationship between creditor and consumer is the best guarantee for establishing at an early stage that consumers are going into “payment difficulties” and for establishing an effective co-operation based on trust.

EACB has carefully reviewed the consultation document with its members and would like to formulate a number of observations. Some of these are relating to the set of proposed guidelines as a whole (“general comments”) and some are answers to the specific questions raised.

Q1: Do you agree with the proposed Guidelines? If not, outline why you disagree and how the Guidelines could be improved.

General comments

The European Association of Co-operative Banks (EACB) takes note of the EBA Guidelines on Arrears and Foreclosure with great interest.

It welcomes the fact that the Guidelines are also applicable to non-credit institutions offering mortgage products, so as to ensure a level-playing field among providers and a sound consumer protection- regime for consumers.

The EACB has however a number of comments on the proposed Guidelines.

The Guidelines intend to set out in greater detail how financial institutions should give effect to Article 28 MCD on “arrears and foreclosure”. The latter Article does however not specifically refer to such Guidelines, or to an EBA mandate to further work out this issue. The EACB thus looks with a close eye on where the Guidelines would become overly prescriptive or where they would seem to go well beyond what has been established within the MCD.

Our detailed comments can be found as per the below.

Guideline 1

- Guideline 1- General: It is not entirely clear what is meant by payment difficulties i.e. is it a situation where the borrower is already paying late (arrears) or are we talking about the situation where the borrower keeps paying but this reflects on his life (e.g. he becomes indebted elsewhere, for example he is not paying his utility bills). Even if the approach is to be broader than arrears, ‘payment difficulties’ should also be defined to ensure certainty.
- Guideline 1.1: Creditors having to establish procedures to detect early indicators of consumers going into payment difficulties could be problematic from a data protection- point of view as it could be interpreted as “profiling” and we understand that the forthcoming Data Protection Regulation might allow data subjects to object against this (see Article 19/ 20 of proposed General Data



Protection Regulation)¹,. Moreover, we believe that a good relationship between creditor and consumer is the best guarantee for establishing at an early stage that consumers are going into "payment difficulties". For an effective co-operation based on trust, we thus propose that also the consumer him/herself timely inform the creditor that problems have arisen.

EBA draft Guideline	EACB suggestion
1.1 The creditor should establish procedures to detect early indicators of consumers going into payment difficulties.	1.1 The creditor should establish procedures to detect early indicators of consumers going into payment difficulties. 1.1 The consumer shall timely inform the creditor of "payment difficulties" that have arisen.

Guideline 3

- Guidelines 3.1-3.4: These guidelines introduce new obligations at both procedural and information level that are not contained within the MCD and do not appear to reflect the aim of Art. 28 of the Directive. This is not to say lenders do not already have such engagement policies in place/ do not provide for support or information. To the contrary, they often provide assistance in financial difficulties on the basis of personal contact and an individual plan. It should however be made clear that the creditor cannot take upon itself the role of "debt advisor", for which good solutions exist at the local public level. Indeed, the means "to get there" seem not in proportion to the goal pursued. As such, the EACB would propose to delete the below guidelines in their entirety.

EBA draft Guideline	EACB suggestion
3.1 The creditor should have a consumer engagement policy in place. This should ensure that they provide adequate information, for example, through websites and written materials, and support for consumers in, or concerned about, payment difficulties.	3.1 The creditor should have a consumer engagement policy in place. This should ensure that they provide adequate information, for example, through websites and written materials, and support for consumers in, or concerned about, payment difficulties.
3.2 The creditor should communicate clearly and in plain language.	3.2 The creditor should communicate clearly and in plain language.
3.3 The creditor should provide support and, at least, the following information to consumers in payment difficulties: a) the number of payments either missed or only paid in part; b) the total sum of the payment shortfall; c) the charges incurred as a result of the payment shortfall; d) the importance of the consumer co-operating with the creditor to resolve the situation.	3.3 The creditor should provide support and, at least, the following information to consumers in payment difficulties: a) the number of payments either missed or only paid in part; b) the total sum of the payment shortfall; c) the charges incurred as a result of the payment shortfall; d) the importance of the consumer co-operating with the creditor to resolve the situation.
3.4 In cases where the consumer's payment difficulties persist, the creditor	3.4 In cases where the consumer's payment difficulties persist, the creditor

¹ http://ec.europa.eu/justice/data-protection/document/review2012/com_2012_11_en.pdf



<p>should provide the following information to the consumer:</p> <p>a) information regarding the consequences of missing payments (e.g. costs, default interest rate, possible loss of property, etc.); and</p> <p>b) information about available government/ public schemes for support.</p>	<p>should provide the following information to the consumer:</p> <p>a) information regarding the consequences of missing payments (e.g. costs, default interest rate, possible loss of property, etc.); and</p> <p>b) information about available government/ public schemes for support.</p>
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Guideline 4

- Guideline 4.1: Following the MCD (art. 28(1)), Member States are to encourage creditors to adopt measures to exercise “reasonable forbearance” before foreclosure proceedings are initiated and in fact, many co-operative banks are already doing so. The way Guideline 4.1 is drafted, however, seems to impose an *obligation* on the creditor to agree with concessions to the consumer. This could result in moral hazard on the side of the consumer as they can expect concessions to be granted in any case. Also, it would have an impact on the overall risk policy of the creditor, possibly leading to an increase of costs for mortgage loans across the board. Last but not least, the options as provided for may also cause problems with tax reduction of mortgage payments/interest & the compensation to be paid to the creditor for changing the interest rate, and possibly deteriorate the difficulties of the consumer in meeting his/her financial commitments. It is thus important that the creditor remains free in deciding on which steps/forbearance measures to take, taking into account the interests both of the consumer and of the creditor, as well as the causes of the financial difficulties and the role the consumer himself/herself has played.
- In addition, it should be clarified whether the refinancing arrangements as described (e.g. deferred payment/ payment holiday) in this Guideline are subject to Consumer Credit regulation or not (linked to the exemptions under Art. 2 (2)(j) CCD or Art. 3 (2)(f) MCD). The conditions of the original credit contract continue for the extended period of use, this includes of course the payment of interest. If these arrangements, which are often declared only for a short time, are indeed subject to Consumer Credit legislation, the solution of the problem would take a longer period of time (fulfilment with information requirements).

EBA draft Guideline	EACB suggestion
<p>4.1 The creditor should take into account the individual circumstances of the consumer, the consumer’s interests and rights and his/her ability to repay when deciding on which steps/forbearance measures to take. Forbearance measures consist of concessions towards a consumer facing, or about to face, difficulties in meeting his/ her financial commitments. Concessions to the consumer include:</p>	<p>4.1 The creditor is encouraged to should take into account the individual circumstances of the consumer, the consumer’s interests and rights and his/her ability to repay when deciding on if, and if so, which steps/forbearance measures to take. Forbearance measures can consist of concessions towards a consumer facing, or about to face, difficulties in meeting his/ her financial commitments. Concessions to the consumer could include:</p>



- Guideline 4.1.1: Refinancing a loan in arrears could result in the creditor being accused of “abusive assistance” (i.e. notion used in France, for example, in commercial collective actions)/ irresponsible lending if the client is still not able to repay its loan. A creditor should thus be given full discretion in deciding whether to go for this option or not.

Guideline 5

- Guideline 5: Whether or not a given option considered for a given consumer was appropriate or not is likely to give rise to debate as there is an element of subjectivity in it. We would therefore not support the first part of the guideline and propose to delete it. In addition, it should be possible to apply the guideline in an appropriate manner (e.g. not record every telephone conversation held with the consumer) as otherwise, the guideline would create unnecessary red tape/ administrative burden hampering the process of finding a speedy and non-bureaucratic solution for the consumer.

EBA draft Guideline	EACB suggestion
5.1 The creditor should document the reasons why the option(s) offered to the consumer are appropriate for his/her individual circumstances and should make and retain adequate records of its dealings with the consumer in payment difficulties for a reasonable period of time.	5.1 The creditor should document the reasons why the option(s) offered to the consumer are appropriate for his/her individual circumstances and should make and retain adequate records of its dealings with the consumer in payment difficulties for a reasonable period of time.

Q2: Are there any additional requirements that you would suggest adding to the Guidelines? If so, outline the reason(s) for each proposed additional amendment.

Co- operative banks have various systems and processes in place to deal with consumers in payment difficulties.

What is of key importance for successful co-operation and effective problem-solving is that the consumer itself signals in time that problems have arisen. The EACB feels such provision on responsible borrowing is lacking from current Guidelines (see also our suggestion for Guideline 1.1).

Also, and moving to the next stage, a requirement setting out the borrower’s obligation to co-operate with the lender should be included. If the consumer is unwilling to co-operate, the lender should be permitted to move on to the next step of the forbearance/foreclosure process.

Contact:

The EACB trusts that its comments will be taken into account.

For further information or questions on this paper, please contact:

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