German Banking Industry Committee

Die Deutsche Kreditwirtschaft

Comments

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" EBA/CP/2023/07

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Contact:
Dr Christian Drefahl
Phone: +49 228 509-424
Email: c.drefahl@bvr.de

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Coordinator:
National Association of German Cooperative Banks
Schellingstraße 4 | 10785 Berlin | Germany
Phone: +49 30 2021-0
Fax: +49 30 2021-1900
www.die-deutsche-kreditwirtschaft.de

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General Remarks

Previously authorised and registered debt collection agencies (DCAs) should be regulated separately in the sense of grandfathering arrangements so that their business does not have to be continued on an ad hoc basis because of the qualification assessment.

Qualification should be linked to the scope of their business. It may be the case that credit servicing is only a by-product with little relevance. The scope of qualification should therefore be aligned with the relevant business model. It does not appear to be expedient if the same standards are imposed on a credit servicer as on the executive board of a bank.

In terms of supervisory law, a standardised structure should be established. At present, the DCAs are supervised by the Federal Office of Justice. By contrast, a qualification assessment as defined in the Directive would suggest supervision by BaFin. Dual supervision is not practicable and should be avoided.

In addition, a group-based arrangement should be included so that in the case of group processes/control, these can be included in the assessment of qualifications.

Questions regarding the 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

Question 1:
Is the section on subject matter, scope, definitions and implementation appropriate and sufficiently clear?

No answer

Question 2:
Is the section on proportionality appropriate and sufficiently clear?

We consider the level of detail of the guidance on proportionality to be too open to interpretation, even if some aspects of the general remarks are addressed here.

From the GBIC's point of view, specifying the content in greater detail or adapting the regulatory text on proportionality would be desirable. In section 13(e) under "Application of the proportionality principle", there is a relatively abstract reference to whether or not the credit servicer is part of a group subject to Directive 2013/36/EU (CRD IV) on a consolidated basis. There is no explicit mention of the extent to which proportionality should apply here (e.g. in the sense of an opening clause).

If this wording were to be interpreted narrowly, consolidated companies could not, in cases of doubt, expect relief within the meaning of the Directive referred to, which would be counterproductive as they are already subject to the CRD IV regime – including with regard to the consolidated supervision defined there.

The outsourcing solutions within a group of institutions described in this point are standard practice at the institutions, e.g. when outsourcing problem loan processing. This sort of outsourcing essentially happens so as to leverage cost advantages or to offer own services to third parties. We are therefore proposing that credit servicers that are members of a group of institutions under Directive 2013/36/EU should not only be subject to the application of the proportionality principle, but should also be exempted from the application of the Directive by analogy with section 7, as they are already covered by consolidated supervision under CRD IV.

In addition, the references to outsourcing must be specified with regard to the details and scope of the outsourced/purchased services. Either an equivalent approach to BaFin's outsourcing requirements, etc. should be used, or a general relevance should only be defined for core credit services (DCA engages another DCA to collect receivables).

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Question 3:
Is the section 2 on the suitability assessment by credit servicers appropriate and sufficiently clear?

The definition of the requirements referred to here can be based on the requirements for executive boards of banks. However, as there is an entirely different business purpose (i.e. debt collection), this should continue to be incorporated. This also means, for example, that the reputational risk between banks and credit servicers has a completely different weighting.

Question 4:
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?

The qualifications referred to (section 29: ...banking and finance, economics,…) do not take into account the additional qualifications within the meaning of debt collection agency authorisation under the German Legal Services Act. The aspect of country-specific authorisation requirements should be incorporated or referred to here in general. This would leave greater scope for country-specific implementation, as different rules on debt collection apply in the individual EU Member States.

Question 5:
Are the sections 5 and 6 on the individual and collective assessment of members of the management or administrative organ appropriate and sufficiently clear?

The same comments apply here as for Q4.

Question 6:
Is section 7 on corrective measures appropriate and sufficiently clear?

Grandfathering arrangements should be incorporated here for existing service providers, as it is not possible to ensure that the requirements are met in advance.

Question 7:
Is section 8 on the assessment by competent authorities appropriate and sufficiently clear?

We wish to refer again here to the differing supervisory risk (see above). We would be in favour, as an ad hoc solution, of cutting back the requirements from sections 3 and 4 in the Directive and elevating them more strongly at the national level. Sections 3 and 4 should only apply to companies that do cross-border business in the EU.