

# Single Rulebook Q&A

<b>Question ID</b>	2021_6130
<b>Status</b>	Final Q&A
<b>Legal act</b>	Directive 2013/36/EU (CRD)
<b>Topic</b>	Credit risk
<b>Article</b>	74
<b>Paragraph</b>	1
<b>Subparagraph</b>	-
<b>COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations</b>	EBA/GL/2020/06 - Guidelines on loan origination and monitoring
<b>Article/Paragraph</b>	Sections 4, 5 and 8
<b>Date of submission</b>	02/08/2021
<b>Published as Final Q&amp;A</b>	07/01/2022
<b>Disclose name of institution / entity</b>	Yes
<b>Name of institution / submitter</b>	Ministry of Finance
<b>Country of incorporation / residence</b>	Estonia
<b>Type of submitter</b>	Other
<b>Subject matter</b>	Scope of application of EBA guidelines on loan origination and monitoring
<b>Question</b>	Are sections 4, 5 and 8 of the EBA guidelines on loan origination and monitoring not applicable to agreements referred to in Article 2(2)( h) of Directive 2008/48/EU, while all other parts of the guidelines are still applicable to those agreements?
<b>Background on the question</b>	We have understood that the aim of the EBA Guidelines on loan origination and monitoring is to: specify the internal governance arrangements, processes and mechanisms, as laid down in Article 74(1) of Directive 2013/36/EU; specify internal governance, and requirements on credit and counterparty risk, as laid down in Article 79 of Directive 2013/36/EU; specify how to assess the creditworthiness of consumers and use consumer information laid down in Articles 18 and 20 of Directive 2014/17/EU and Article 8 of Directive 2008/48/EC on consumer credits. Our

	<p>concern covers the scope of application with regard to credit agreements defined in Article 2(2)(h) of Directive 2008/48/EU on credit agreements for consumers, which are concluded with investment firms as defined in Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments or with credit institutions as defined in Article 4 of Directive 2006/48/EC for the purposes of allowing an investor to carry out a transaction relating to one or more of the instruments listed in Section C of Annex I to Directive 2004/39/EC, where the investment firm or credit institution granting the credit is involved in such transaction.</p>
<b>EBA answer</b>	<p>The guidelines in their entirety apply to institutions as defined in point 3 of Article 4(1) of Regulation (EU) No 575/2013 (CRR) in accordance with paragraph 6 of the Guidelines, which means credit institutions authorised under Article 8 of Directive 2013/36/EU (CRD) or undertakings as referred to in Article 8a(3) of that Directive. The latter concern investment firms, which qualify as credit institutions for CRD and CRR purposes in accordance with Article 4 (1)(1)(b) of CRR.</p> <p>In addition, Section 5 of the Guidelines (Loan origination procedures), excluding paragraph 93, applies to:</p> <ul style="list-style-type: none"> <li>• creditors as defined in Article 4(2) of Directive 2014/17/EU (Mortgage Credit Directive, MCD), and</li> <li>• creditors as defined in Article 3(b) of Directive 2008/48/EC (the Consumer Credit Directive, CDD),</li> </ul> <p>and only if the loan/credit agreement falls under the scope of MCD and CCD respectively, as set out in paragraph 6 of the Guidelines. As set out in paragraph 10 of the Guidelines competent authorities may also choose to apply Sections 6 and 7 to creditors that fall under the scope of MCD and CCD and that are not credit institutions.</p> <p>Therefore, in case of an undertaking, that is not an institution, and that is creditor of a consumer credit agreement not falling under CCD or MCD scope, the guidelines do not apply.</p>
<b>Link</b>	<p><a href="https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2021_6130">https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2021_6130</a></p>