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The Danish Financial Supervisory Authority's and the Danish Consumer Ombudsman's **Guidelines on creditworthiness assessment**

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Guidelines on creditworthiness assessment

Background

Since 2010, creditors have been obliged to assess the creditworthiness of consumers before lending, and the creditworthiness assessment obligation was extended to cover more credit types in 2019.

In recent years, the Danish Financial Supervisory Authority and the Danish Consumer Ombudsman have ascertained that several creditors on the Danish credit market have failed to comply with their obligation to assess the creditworthiness of consumers before lending.[1] In the past year, the bailiff's courts have also issued a number of orders[2] regarding the failure of creditors to perform the statutory assessment of the consumer's creditworthiness before lending.

In response to this, the Danish Financial Supervisory Authority and the Danish Consumer Ombudsman have issued these guidelines, reflecting the Danish Financial Supervisory Authority's and the Danish Consumer Ombudsman's interpretation of the applicable law.

There has been a consultation procedure for the guidelines, which have been adjusted within the statutory framework based on the consultation opinions submitted[3].

Purpose

The purpose of the guidelines is to help creditors comply with the obligation imposed on them under section 7 c of the Danish Credit Agreements Act (Kreditaftaleloven) and section 9 of the Danish Act on Consumer Credit Undertakings (Lov om forbrugslånsvirksomheder) so that irresponsible lending can be avoided.

To meet the demand for guidelines on how creditworthiness assessment processes can comply with the statutory requirements, the guidelines contain a detailed review of how the obligation to assess consumers' creditworthiness can be fulfilled. The guidelines also contain a number of practical instructions.

The guidelines do not require all creditors to use one specific method for performing creditworthiness assessments. Nor do the guidelines exclude that credit may be granted to consumers with low disposable income if the creditor has assessed, based on sufficient information, that the financial situation of the consumer in question means that the consumer will be able to pay interest, fees and instalments on the new credit.

How to read the guidelines

When the term 'must' is used in the guidelines, this means that there are requirements for the creditworthiness assessment with which the creditor must comply, unless the creditor

1 The Danish Financial Supervisory Authority has conducted reviews of the creditworthiness assessments performed by banks and consumer credit undertakings and has issued enforcement notices to several credit institutions. In addition, the Danish Consumer Ombudsman has found in more than 220 consumer credit cases that the creditors have not performed the statutory creditworthiness assessments, which led to over-indebtedness of the consumer.

2 Nine orders have been made by the bailiff's courts in Aalborg, Esbjerg, Glostrup and Odense, respectively.

3 From AutoBranchen Danmark, DAFINA, Danske Advokater (the Association of Danish Law Firms), Dansk Ejendomskredit, Dansk Erhverv (the Danish Chamber of Commerce), Dansk Kredit Råd, Dansk Industri (the Confederation of Danish Industry), DK Kapital A/S, Finans Danmark (Finance Denmark), Finans & Leasing (Finance and Leasing, The Association of Danish Finance Houses), Forbrugerrådet TÆNK (the Danish Consumer Council), FDM – Forenede Danske Motorejere, Klarna Bank AB, Optikerforeningen, Skatteministeriet (the Danish Ministry of Taxation) (including Skattestyrelsen (the Danish Tax Agency) and Gældsstyrelsen (the Danish Debt Collection Agency)), Tandlægeforeningen, 3C Retail A/S/Facit Bank A/S, PØR – Financial Service Advisor, by Erik Fraas, PengeProfilen A/S.

can document that the creditworthiness assessment has been performed in another way that meets the statutory requirements.

When the term 'should' is used, this refers to how the obligation to perform a creditworthiness assessment may be complied with.

Legal basis

Creditors' obligation to assess the creditworthiness of consumers on the basis of sufficient information before they grant credit or significantly increase amounts of credit follows from section 7 c(1) and (2) of the Danish Credit Agreements Act[4], implementing Article 8 of the Directive on credit agreements for consumers[5]:

"**7 c.-(1)** Before the conclusion of the credit agreement, the creditor must assess the consumer's creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant databases.
(2) If the creditor and the consumer agree to change the total amount of credit after the conclusion of the credit agreement, the creditor must update the financial information at his disposal concerning the consumer. Before any substantial increase in the total amount of credit, the creditor must reassess the creditworthiness of the consumer.
[...]"

It follows from the explanatory notes[6] to section 7 c(1) of the Danish Credit Agreements Act that the assessment of consumers' creditworthiness must be performed to assess whether the consumer will be able to pay the agreed instalments on the amount of credit and not to assess the creditor's risk of loss.

The explanatory notes also expressly state that the creditor will always be obliged to obtain sufficient information, which, at the creditor's discretion, may be obtained from the consumer and on the basis of a consultation of the relevant databases, for example with credit reference agencies.

If the creditor obtains the information from the consumer, it follows from the case law of the Court of Justice of the European Union that mere unsupported declarations made by the consumer may not, in themselves, be sufficient if they are not accompanied by supporting evidence[7].

The obligation to assess the creditworthiness of consumers before creditors grant credits with insignificant charges repayable within three months, or credit in the form of an overdraft facility, follows from section 9(1) and (2) of the Danish Act on Consumer Credit Undertakings[8]:

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4 Danish Consolidation Act no. 817 of 6 August 2019 on Credit Agreements

5 Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC. Article 8 has been interpreted by the Court of Justice of the European Union in its judgment of 18 December 2014 in case C-449/13 CA Consumer Finance. It also follows from the case law of the Court of Justice of the European Union in case C-679/18 (OPR-Finance) that national courts have an obligation to examine, of their own motion (ex officio), whether the creditor has performed the statutory creditworthiness assessment.

6 Bill for Act to amend the Danish Credit Agreements Act and the Danish Marketing Practices Act (Lov om markedsføring) (amendment required to implement the Directive on credit agreements for consumers), tabled on 16 December 2009, Folketingstidende (the Official Report of Plenary Proceedings) 2009-2010, A, L 91, as tabled, page 51: "The provision entails that the creditor will always be obliged to obtain sufficient information and perform an assessment of the consumer's creditworthiness on the basis thereof. At the creditor's discretion, the information may be obtained from the consumer and on the basis of a consultation of the relevant databases, for example with credit rating agencies.
The provision must be regarded in correlation with the overall objective of the Directive on credit agreements for consumers to increase consumer protection. Therefore, the assessment of the consumer's creditworthiness must be performed with a view to ensuring that the consumer will be able to pay the agreed instalments on the amount of credit based on the consumer's financial situation and by means of, for example, current income, loan conversion or realisation of assets and not with a view to assessing the creditor's risk of loss. [...]"

7 See paragraph 37 of the judgment of the Court of Justice of the European Union of 18 December 2014 in case C-449/13 CA Consumer Finance.

8 Danish Act no. 450 of 24 April 2019 on Consumer Credit Undertakings.

"**9.-(1)** If a credit agreement is not covered by section 7 c of the Danish Credit Agreements Act, a consumer credit undertaking must, before the conclusion of the credit agreement, assess the consumer's creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant databases.
(2) If the consumer credit undertaking and the consumer agree to change the total amount of credit after the conclusion of the credit agreement, the consumer credit undertaking must update the financial information at its disposal concerning the consumer. Before any substantial increase in the total amount of credit, the consumer credit undertaking must reassess the creditworthiness of the consumer.
[...]"

Scope

The guidelines have the same scope as section 7 c of the Danish Credit Agreements Act, cf. sections 1 and 3 of the Danish Credit Agreements Act, and section 9 of the Danish Act on Consumer Credit Undertakings, cf. section 1 of this Act. The guidelines consequently apply to, for example, loans, overdraft facilities, charge cards, loans with retention of title (ejendomsforbehold), credits with insignificant charges repayable within three months and to credit in the form of overdrafts.

In the guidelines, the term 'credit' or 'credits' is used as an umbrella term for all types of financing options and facilities offered to consumers and covered by the Danish Credit Agreements Act or the Danish Act on Consumer Credit Undertakings.

The guidelines also apply if the credit is granted by a creditor who is not a business operator if the agreement has been concluded or arranged for the creditor by a credit intermediary.

Both domestic and foreign creditors who offer credit to Danish consumers must comply with section 7 c of the Danish Credit Agreements Act and section 9 of the Danish Act on Consumer Credit Undertakings. The provisions cannot be derogated from by applying a choice-of-law clause[9].

General comments on responsible lending

Before the conclusion of the credit agreement and before the parties agree to any significant increase in the total amount of credit, the creditor must perform a creditworthiness assessment, irrespective of the size of the credit and the monthly payments[10].

The creditworthiness assessment must always be based on the individual consumer's financial situation[11].

Creditors cannot assess whether the individual consumer can be expected to be able to pay the agreed interest, fees and instalments on the credit based on the consumer's financial situation without having sufficient information about the consumer's income, expenses and debt.

At the creditor's discretion, the sufficient information about the consumer's income, expenses and debt may be obtained from the consumer and on the basis of a consultation of the relevant databases, for example with credit reference agencies.

However, mere unsupported declarations made by consumers may not, in themselves, be sufficient information which can form the basis for the creditor's creditworthiness assessment[12].

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9 See Article 5 on certain consumer agreements in the Convention of 1980 on the law applicable to contractual obligations (the Rome Convention). (Official Journal of the European Union no. C 027 of 26 January 1998, pp. 0034-0046).

10 When the Directive on credit agreements for consumers was to be implemented in Danish law in 2010 through an amendment of the Danish Credit Agreements Act, it was, agreed that section 7 c inter alia would be applicable to all loans regardless of their size, cf. Bill on Act to amend the Danish Credit Agreements Act and the Danish Marketing Practices Act, tabled by the Minister of Justice on 16 December 2009 – 2009/LSF 91, section 4.3.3. of the general notes.

11 The purpose of a creditworthiness assessment is to protect the consumer and not to assess the creditor's risk of loss. This follows from the explanatory notes to section 7 c, which are reproduced in the section on the legal basis.

12 The judgment of the Court of Justice of the European Union of 18 December 2014 in case C-449/13 CA Consumer Finance, paragraph 37.

Information about the loan applicant's household and personal situation

To acquire the necessary overview of the consumer's financial situation, the creditor must obtain information about the consumer's household and personal situation. This may include marital status and number of children living at home, if any, as well as their age.

Information about and documentation of the loan applicant's income

When calculating the consumer's disposable income, the consumer's net income should be used. The net income is the consumer's income with deduction of taxes, labour market contributions, special pension contributions, Labour Market Supplementary Pension Scheme (ATP) contributions, labour market pension contributions, contributions to early retirement scheme etc. Income includes family allowance and rent allowance, rental income and return on assets etc.

Income should be calculated as the average for a sufficient number of months[13] to avoid that the creditor's creditworthiness assessment is based on months in which, for example, holiday pay or overtime pay is disbursed.

If the information is obtained in the form of a mere declaration[14], it must be documented, for example, via eSKAT (electronic taxation data) or a copy of pay slips.

If the latest income data in, for example, eSKAT shows signs of a decrease in income or a loss of income, the calculation of the disposable income should be based on the new lower income, unless there is information that the decrease in income is only temporary[15].

Future income increase known at the time of the loan application may also be included in the creditworthiness assessment[16]. Information about other financial circumstances may also be included in the creditworthiness assessment[17].

Where credit is granted to one person, the income of a cohabitant or spouse may, as a general rule, not be included in the assessment[18].

Information about and documentation of the loan applicant's debt situation

The creditor must obtain sufficient information about the consumer's debt and evidence of the debt in the event of mere declarations[19]. Debt incurred before the latest tax assessment notice may be documented via eSKAT/a copy of the latest tax assessment notice. The creditor must examine whether debt has been incurred after the preparation of the latest tax assessment notice. This may be done by obtaining information from the consumer and it may be documented by, for example, a copy of credit agreements or a copy of the personal tax folder and by use of, for example, KreditStatus (private Danish credit reference agency) or Debitor Registret (private Danish credit reference agency).

If the consumer has loans with others, such as a mortgage loan taken out together with the consumer's spouse or cohabitant, the creditor should be aware that the tax assessment notice only states the consumer's share of the debt (typically half), but that the consumer's interest and instalment payments on the joint debt may well exceed the interest and instalments payable for the consumer's share of the debt, for example in case of a married couple where one spouse contributes more to their joint finances than the other.

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13 For example the latest income data for the maximum number of preceding months that can be retrieved in eSKAT.

14 See paragraphs 36 and 39 of the judgment of the Court of Justice of the European Union of 18 December 2014 in case C-449/13 CA Consumer Finance. A mere declaration may, for example, be if the consumer has filled in a budget form on the creditor's website where no documents are attached as evidence of the information.

15 For example if the consumer is on maternity/paternity leave or if the consumer has been unemployed, but now has a new job.

16 For example if a student is approaching the completion of his or her studies and may be expected to obtain employment, with a resulting change in his or her income situation.

17 This may, for example, be information about an inheritance, the disbursement of child savings or an easily sellable shareholding.

18 As the spouse or cohabitant is not liable for the consumer's debt, unless joint and several liability has been agreed.

19 The judgment of the Court of Justice of the European Union of 18 December 2014 in case C-449/13 CA Consumer Finance.

If the consumer has taken out loans with foreign companies or has debt to public authorities, this is not always stated in the tax assessment notice.

If the tax assessment notice is used as evidence, the creditor should be aware that interest expenses due are only shown in the tax assessment notice if the consumer has paid interest expenses due for previous income years regarding the same debt.

The creditor should also be aware that there are many interest expenses for debt to public authorities which are not deductible and therefore do not appear in the tax assessment notice.

If the tax assessment notice shows withheld tax or debt to public authorities, or if the Land Register/Register of Motor Vehicles shows that execution has been levied, for example for debt to public authorities, the creditor must examine the size of the debt.

Debt to public authorities may, for example, be documented by the consumer sending a copy of the debt statement from the Danish Debt Collection Agency.

If, for example, the information obtained for use in the creditworthiness assessment shows that the consumer is registered as a bad debtor in RKI, is in arrears on debt to public authorities or if execution has been levied on the consumer's home, the consumer will, as a general rule, not be creditworthy, unless the purpose of the granting of further credit is to improve the consumer's financial situation. This may, for example, be the granting of a loan conversion which creates more leeway in the consumer's finances and where, by agreement with the consumer, the creditor uses the proceeds to pay off further specified expensive debt or to finance a motor vehicle necessary for the consumer to hold on to his or her job.

Information about and documentation of the loan applicant's expenses

The creditor must obtain sufficient information about the consumer's actual fixed expenses and evidence of the expenses if the consumer has provided mere declarations[20].

Evidence of current fixed expenses may, for example, be obtained from external or own registers, from the consumer him/herself in the form of, for example, a statement from Betalingsservice (a private provider of payment services), from bank accounts or the like.

If evidence is provided in the form of bank transaction data, the creditor must ensure that the data provides an adequate picture of the consumer's finances. For example, the creditor should be aware of whether the consumer has provided access to all relevant accounts.

If the consumer states that he or she has higher expenses than those shown in the documented information, the creditor must use the consumer's own information as a basis for the creditworthiness assessment.

20 Judgment of the Court of Justice of the European Union of 18 December 2014 in case C-449/13 CA Consumer Finance.

Fixed expenses comprise:

- Expenses for main residence and holiday home such as mortgage loans, property tax, landowner's association fee, joint expenses, heating, water, electricity, rent/housing fee and property insurance premiums. In addition, an amount must be allocated for maintenance of the home unless this is not relevant.
- Transport expenses such as car loan, weight tax on motor vehicle, insurance, petrol, car service, FDM/Falck and bus/train pass.
- Expenses for credit facilities (including for the new credit facility) and for other debt.
- Personal expenses such as a private pension scheme, group life insurance policies and other insurance policies, TV licence, antenna association/broadband, telephone, union dues, unemployment fund, alimony and child support, child institutions and other fixed expenses.

The disposable income can be calculated by deducting the actual fixed expenses from the consumer's income. The disposable income must cover the consumer's variable expenses:

- Household (food, beverages, shoes and clothes etc.)
- Leisure activities
- Newspapers, books and magazines
- Entertainment and gifts
- Holidays
- Other personal expenses, including smoking, hairdresser, medicine etc.
- Maintenance of durable consumer goods (replacement of mobile phone, PC, freezer, bicycles etc.)
- Savings
- Unforeseen expenses.

If the credit is applied for by one person, only this person's income can be used as the basis for the creditworthiness assessment. If the consumer is married or cohabiting, the creditor cannot simply assume that the expenses are paid equally by the consumer and his or her spouse/cohabitant. The creditor must either assume that the consumer pays all expenses or obtain information about the share of the joint expenses that the consumer actually pays and thus also about the consumer's proportionate share of the disposable income.

It is individual how large a disposable income a person/family needs. The creditor must assess that the disposable income is sufficient for the consumer to be able to pay interest, fees and instalments on the credit on time. As a benchmark for the size of the disposable income, the creditor should apply the rates set out in the Executive Order on Debt Rescheduling (*Gældssaneringsbekendtgørelse*) in force at any given time[21].

If the disposable income is below the rate for the disposable income in the Executive Order on Debt Rescheduling, the creditor may grant the credit if, based on sufficient information about the consumer's financial situation, the creditor assesses that the consumer will be able to pay the interest, fees and instalments on the credit on time.

Correspondingly, there will be consumers for whom a disposable income corresponding to the rates set out in the Executive Order on Debt Rescheduling in force at any given time will not be sufficient for the consumer to be able to pay the agreed interest, fees and instalments on the credit on time, and the credit should therefore not be granted. The creditor is responsible for assessing whether the consumer's disposable income is sufficiently high to avoid irresponsible credit granting.

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21 In 2021, a person has a modest standard of living if his or her disposable income is: DKK 6,720/month [approx. 887.00 EUR per month] for a single person and DKK 11,400/month [approx. 1,505.00 EUR per month] for a couple plus an additional amount for any children, cf. Executive Order no. 1363 of 19 December 2008 on Debt Rescheduling, cf. Executive Order no. 1850 of 7 December 2020 to amend the Executive Order on Debt Rescheduling.

Prerequisites when calculating expenses of the credit applied for:

1. If the interest rate and/or expenses for the new loan is/are variable, the consumer's finances must be able to tolerate a certain increase in the interest rate and/or expenses. The creditor must assess whether the consumer will still be able to repay the loan if there is a suitable[22] interest rate increase.
2. If the credit agreement contains several options, the calculation must be based on the scenario with the highest payment.
3. If the credit is in the form of an overdraft facility, the consumer's finances must be able to tolerate that the amounts drawn on the overdraft facility are repaid within a reasonable time, unless otherwise agreed.
4. The calculation must be based on the consumer using the overdraft facility to the maximum limit.
5. If the credit is in the form of a loan for an indefinite term under which amounts are released in instalments up to a specific balance and interest is charged on the balance, the creditor must base the creditworthiness assessment on the consumer being able to use the maximum balance immediately and being obliged to repay the balance within a reasonable period of time.
6. In the event of a loan for an indefinite term, the term should be fixed at five years, annuity loan.

Prerequisites for already raised debt for use in the creditworthiness assessment

1. If the consumer has an interest-only mortgage loan, the creditor must take into account in the creditworthiness assessment that the consumer must be able to afford paying instalments on the loan when the interest-only period expires.
2. Evidence of the term to maturity of the debt should be obtained, for example from the Register of Motor Vehicles and the Land Register. If the creditor does not obtain evidence of the term to maturity of the debt, the creditor must calculate an estimated term to maturity based on the date on which the debt was incurred. The following standard prerequisites may be used in the calculation. Below, the time that has passed since the debt was incurred has been deducted from the term to maturity, see Table 1:

Table 1: **Estimated term to maturity from the date of incurrence**

Loan type	Maturity in years	Repayment form
Overdraft facility	5	Annuity loan
Car loan	7	Annuity loan
Mortgage loan	30	Annuity loan
Consumer loan	5	Annuity loan
Tax debt and student debt	10	Annuity loan

Example:
The creditor can see in the consumer's personal tax information or KreditStatus that the consumer has a consumer loan that was taken out in August 2019, and the creditor can see in the Land Register that the consumer's mortgage loan was taken out in April 2015. In connection with an assessment of the consumer's creditworthiness in October 2021, the creditor must base the creditworthiness assessment on the consumer loan having a term to maturity of 2 years and 10 months and on the mortgage loan having a term to maturity of 23 years and 6 months.

22 What must be regarded as a suitable interest rate increase will depend on a specific assessment, which includes the terms and conditions on interest laid down in the credit agreement. It can be mentioned as an example that, in accordance with section 8(6) of the Danish Credit Agreements Act, creditors who are not approved banks, mortgage credit institutions or credit institutions may only agree in the consumer credit agreement that the interest rate will vary fully or partly in line with the discount rate of Danmarks Nationalbank (the Danish central bank) or similar conditions beyond the creditor's control. In connection with the granting of loans, the creditor must therefore assess that the consumer's finances can tolerate suitable interest rate increases resulting from an increase in the discount rate of Danmarks Nationalbank or similar conditions beyond the creditor's control.