

Banks are pressured by Finanstilsynets new guidelines on creditworthiness assessments



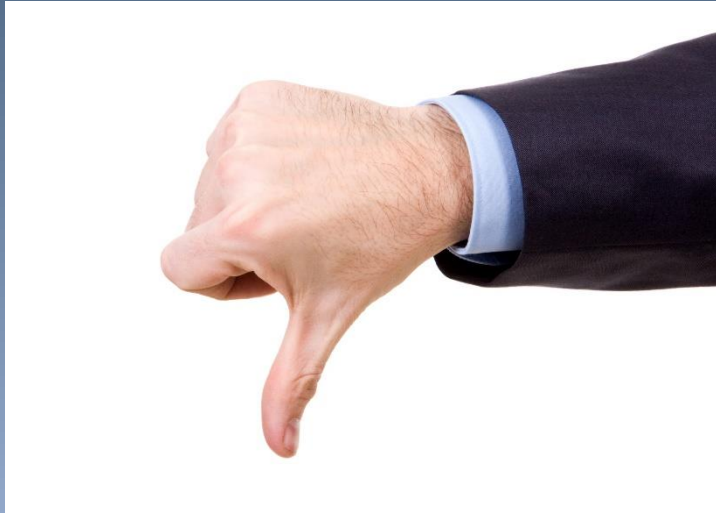
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Agenda

- Why are we extremely concerned about the draft guidelines?
- Willingness/ability to pay – is it/should it be two totally separate worlds?
- New benchmark on borrower's available amount – why is it a problem?
- Do we have sufficient access to relevant information in DK?

Extremely concerned...



- Many new demands on creditor without good reason and no legal basis – e.g. 12 months salary slip, high benchmark on borrowers' available amount.
- Extremely detailed requirement on documented information without proportionality
- Creditor's right to make assumptions/estimates is - unlawfully - set under rule
- Impact will be a) decline of up to 1/3 of loans and/or b) massive administrative burdens
- Based on 166 old cases – 800,000 new loans every year F&L
- Remember APRC/Total cost ceiling 25%/100% + license of consumer credit companies 2019
- Will also cover private leasing of cars L 32 a tax-minister
- No real involvement of private organisations

Willingness/ability...



The Danish Consumerombudsmand only recognizes individual, economic information on the borrower to fulfill the CWA task.

- In some way right... ability to pay is important
- But also wrong... will to pay is also relevant

When assessing if the duty to comply with CWA (KAL § 7 c) is fulfilled one cannot totally refuse the relevance of creditor's experience of different general signs on the probability of repayment such as debt factor, statistical information, general knowledge of behavior, general low level of NPL etc.

Especially seen in combination with creditor's right to make a judgement/proportionality this is key when looking at the total effort.

Willingness/ability...

Can you ever reach total certainty on the borrower's ability to repay the loan?— or will it after all in the end (only) be a judgement?

The authorities' view seems clearly to be the first.

There must be a reasonable balance

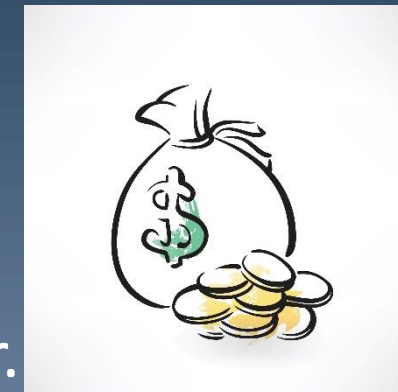
CCD art. 8 is rather elastic – one shall strike for a EU-wide level field of interpretation

FSA/COM discard sources of law that legitimate proportionality and estimate eg H&M High Court decision Sweden og practice from "Pengeinstitutankenævnet"

Bad CWA or accidents of life when things go wrong?

The borrower is the best and first to know his economy and most importantly dreams and decisions for the future.

New benchmark...



6,720 DKK in available amount as benchmark for a single borrower.

Is there a legal basis in CCD art. 8 or Danish implementation? No!

Originates from Danish rules on debt restructuring.

1/3 of citizens do not have that amount. Too low salary? Too high protection when restructuring debt?

“Can be ignored by documentation and judgement on borrower’s variable expenses”. But...

Is a lower available amount sufficient? What does that mean exactly?

Most people use all their available amount. Does that mean borrowers are not allowed to change behavior? How much?

New benchmark...

- Creates an unjustified presumption that a loan when available amount is below 6,720 DKK is a no go.
- And creates an extreme amount of administrative burdens/costs.
- Documentation on borrowers' variable expenses – how detailed should it be and can that be allowed vis-a-vis GDPR?
- The concept of proportionality and creditor's right to make a judgement is in fact completely gone!

Access to relevant information in DK

- No full covering debt register – “only” KreditStatus – and very restricted access compared to UC Sweden due to GDPR e.g. only areas exceeding 1,000 DKK.
- No access to declaration of insolvency given in bailif’s court
- No access to private wage withholding as seen in Sweden/Norway → less focus on good credit culture
- No access to ROFUS – a register, where gambling addicts can exclude themselves from gambling
- No help from relevant authorities to create access
“Not our job”



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Regulation on consumer financing in Norway over the past years



Tom Slungaard

Legal Director of the Association of
Norwegian Finance Houses

Before and now

- Not so long ago ...
 - the financial institutions decided who should be granted a credit
 - the financial institutions decided the content of the creditworthiness assessment
 - Now ...
 - the financial institutions are committed to more, detailed regulations
 - consumer protection is an important element in almost all new regulation
-
- Emergence of compliance



Current Norwegian financial regulation – an overview

The Financial **Institutions** Act of 2015

(Finansforetaksloven av 2015-04-10)

- This act primarily regulates the relations between public authorities and financial institutions
 - Purpose: Contribute to financial stability
- The act is passed by the Parliament and is managed by the **Ministry of Finance**, which in recent years has given detailed regulations* on:
 - Interest rate buffer
 - Debt factor
 - Maximum repayment period on consumer credits
 - *From 2021-01-01 materialised in «Forskrift om finansforetakens utlånspraksis (utlånsforskriften)»

The Financial **Contracts** Act of 1999

(Finansavtaleloven av 1999-06-25)

- (To be replaced by a new act 2022-01-01, due to the implementation of 5 EU-Directives)
- This act primarily regulates the relations between the financial institutions and their customers
 - Purpose: Consumer protection, proper creditworthiness assessments, etc.
- The act is passed by the Parliament and is managed by the **Ministry of Justice**, which probably wants to give detailed regulations on:
 - Interest rate buffer
 - Debt factor
 - Maximum repayment period on consumer credits

Consumer stress tests according to the new lending regulations from the Ministry of Finance 2021-01-01

1. Interest rate buffer / Betjeningsevne:

- Credit can only be granted if the consumer can manage an immediate 5 percentage points increase in borrowing rates on all his debt
 - Mortgages, consumer credits, car loans, student loans etc.
 - Fixed-rate loans can be taken into account for the fixed-rate period
- (Applies to new mortgages and consumer credits, but not when granting secured car loans)

2. Debt factor / Gjeldsgrad:

- The customers total debt can not exceed 5 times his annual income
- (Applies to new mortgages and consumer credits, but not when granting secured car loans)

3. Max. repayment period / Krav til avdrag og løpetid:

- The repayment period can not exceed 5 years
 - Repayment loans / credit limits are subject to monthly installments
 - Reg. credits: The installment is 1/60 of deducted credit
- (Applies to unsecured loans / credits only)

• Flexibility:

- Financial institutions can deviate from the regulation for until 5 % of the amount of consumer credits

• Documentation:

- Financial institutions must be able to prove that the stress tests are performed according to regulation
- Information can be collected from the debt information companies or from the customer

• Duration of the regulation:

- Temporary, until the end of 2024
- Mid-term-evaluation Q4 2022

• Effects of the regulation(?):

- Total amount of consumer credits were reduced by ca. 15 % in 2020
 - Due to corona or the access to debt information services from fall 2019?

Future expectations on consumer credit regulation

Concrete expectations:

- Short-term:
 - EBAs guidelines on loan origination and monitoring will come into effect 2021-06-30
 - Guidelines or binding regulation?
 - The new Financial Contracts Act will (probably) come into effect 2022-01-01
 - Increased consumer protection; including duties reg information, guiding, explanation
 - Secured car loans will be subject to more detailed regulation
- Medium-term:
 - Leasing will be subject to regulation
 - Adjustments due to the completed EU-evaluation of the Consumer Credit Directive

General expectations:

- More regulation
 - From EU, Norwegian parliament, Ministries, Financial Supervisory Authority, Consumer authorities, etc.

