

# Eurofinas response to the European Commission consultation on the application of Directive 2005/29/EC on Unfair Commercial Practices

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### **ABOUT EUROFINAS**

Eurofinas, the European Federation of Finance House Associations, is the voice of the specialised consumer credit providers in the EU. As a Federation, Eurofinas brings together associations throughout Europe that represent finance houses, specialised banks, captive finance companies of car, equipment, etc. manufacturers and universal banks. The scope of products covered by Eurofinas members includes all forms of consumer credit products such as personal loans, linked credit, credit cards and store cards. Consumer credit facilitates access to assets and services as diverse as cars, furniture, electronic appliances, education etc. It is estimated that together Eurofinas members financed over 324 billion euros worth of new loans during 2010 with outstandings reaching 824 billion Euros at the end of the year.

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## EC consultation on the application of Directive 2005/29/EC

### Introductory remarks

Eurofinas welcomes the opportunity to respond to the European Commission questionnaire for stakeholders on the application of Directive 2005/29/EC on Unfair Commercial Practices.

Eurofinas sees transparent and fair commercial practices as key in building long-term confidence relationships between retail financial services institutions and consumers. We acknowledge the importance of appropriate regulation of commercial practices.

Eurofinas would like to take this opportunity to provide the European Commission with information on the steps taken by the industry regarding self-regulation and dispute resolution (question 16 (a)-(c) of the stakeholder questionnaire) and with some relevant examples. We remain at the Commission's disposal to answer any questions or to provide further information.

### 1. Codes of conduct

Responsible lending is a guiding principle for the specialised consumer credit providers that Eurofinas represents. A key aspect to lending responsibly is to ensure that the credit provider's actions are geared towards long-term client relationships.

To achieve this, a consistent, balanced and safe business environment should be promoted, where both consumers and credit providers' interests are taken into account.

A high number of Eurofinas members have in recent years developed and implemented codes of good practice. You will find a comprehensive overview of some of these self-regulatory codes of good practice that have been implemented by Eurofinas members in various European countries in our publication on national codes of conduct for consumer lending.<sup>1</sup>

These codes set out guidance and general principles by which member lending institutions should operate and establish the standards of behaviour which are expected from them. These codes help to promote a consistent, balanced and safe business environment where both consumers and credit providers' interests are taken into account. These codes provide flexible frameworks that come in addition to the regulatory provisions in force.

#### The role of self-regulatory bodies in the enforcement of and compliance with codes of conduct

As an example, in the **United Kingdom** compliance with the Finance and Leasing Association (FLA) Lending Code<sup>2</sup> is independently monitored by the FLA Lending Code Group, comprising a majority of public interest members.

As a condition of membership, Members are required to complete an annual compliance statement. They are also subject to Compliance Visits from the FLA Compliance Manager and Chairman of the Lending Code

<sup>1</sup> Available at: <http://www.eurofinas.org/uploads/documents/reports/CodesConduct.pdf>

Please note that Eurofinas Norwegian member Finansieringsselskapenes Förening also has a code of conduct in place, the "Etiske regler", as adopted on 15 May 1991. The code can be consulted online at <http://medlem.info.no> – Etiske regler. The key objective is that finance companies shall conduct their business in a responsible manner and in accordance to the laws, regulations, guidelines, etc. provided by public authorities. They shall exercise good business practices both in relation to competing institutions and to customers. Specifically in relation to customers:

- o Terms and conditions shall be clear and straightforward
- o A creditworthiness assessment shall be carried out to ensure that the applicant has the ability to repay
- o If a customer finds himself in financial difficulty due to extraordinary circumstances, the credit provider shall strive to make new payment arrangements.
- o Complaint inquiries shall be handled quickly and at the appropriate level of the company

<sup>2</sup> Available at: [http://www.fla.org.uk/consumers/The\\_Lending\\_Code](http://www.fla.org.uk/consumers/The_Lending_Code)

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Group. A separate and independent Disciplinary Panel deals with matters arising from non-compliance with the Code.

Additionally, the FLA provides a free complaints scheme for customers of its members. Complaints are reviewed by an internal complaints team which ensures that members have adhered to the Code in their dealings with consumers. In 2010 the scheme dealt with over 1,700 cases.

The annual compliance statement, the visits and the complaints scheme are important in the identification of any breaches of the Code. Any issues around compliance are reported to the Lending Code Group which recommends action to be taken. Ultimately, a member can also be reported to the Disciplinary Panel which can recommend the expulsion of a member from the FLA. The number of breaches identified via the Statements, the visits and the complaints is relatively low. The FLA considers that this represents a good level of compliance.

In the Netherlands, as a further example, adherence to the Vereniging van Financieringsondernemingen in Nederland (VFN) Code of Conduct is assessed by means of a self assessment. Structural non-adherence to the VFN code of conduct leads to ending the membership. The decision to end membership is taken by the VFN board and can only be overruled by the General Assembly.

Enforcement and compliance to the VFN Code of Conduct are considered to be very effective. Effectiveness is positively reinforced by the Dutch Financial Authority (AFM). The AFM considers the VFN code of conduct to be an adequate implementation of the open standards in Dutch Law.

The existence of these codes and the strict adherence thereto are testament to the commitment of the consumer credit industry to sound lending practices and safe credit markets.

We therefore strongly believe that the industry across the European Union has the necessary self-regulatory mechanisms in place to ensure fair commercial practices.

In our opinion, the European Commission should welcome and support self-regulatory initiatives, such as those undertaken by Eurofinas members. We also believe that any future regulatory framework on unfair commercial practices should take into account these self-regulatory initiatives and the added value they provide.

## 2. Addressing consumer complaints: Internal Complaints Mechanisms and Alternative Dispute Resolution Mechanisms

Should a consumer complaint nevertheless arise, the industry has the necessary mechanisms in place in order to effectively deal with these complaints and to ensure that these complaints are resolved fairly and effectively.

On the one hand consumers have access to internal complaints mechanisms (customer services) of their consumer credit provider. These departments will assist consumers to addressing their complaint and ensuring that any issues that arose are resolved.

On the other hand, consumers also have access to alternative dispute resolution (ADR) mechanisms. Efficient means for resolving disputes and obtaining compensation promote consumer and business confidence in the market and improve market performance. This is why Eurofinas fully supports the use of efficient alternative means to resolve disputes and obtain compensation. Moreover, the flexibility of ADR schemes offers advantages of a tailored and targeted approach to settling disputes more promptly.

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In the field of consumer credit, a major step towards a high level of consumer protection across the EU was achieved with the adoption of Directive 2008/48/EC on credit agreements for consumers (the Consumer Credit Directive – CCD)<sup>3</sup>. The CCD is a sector specific legislation that takes into account the particularities of the consumer credit lending sector. Article 24 of the CCD provides that “*Member States shall ensure that adequate and effective out-of-court dispute resolution procedures for the settlement of consumer disputes concerning credit agreements are put in place, using existing bodies where appropriate*”. Additionally, “*Member States shall encourage those bodies to cooperate in order to also resolve cross-border disputes concerning credit agreements*”.

It is our understanding that in practice different approaches have been taken by the Member States in the implementation of this provision.

The CCD was applicable as of 11 June 2010. Though a small number of Member States are late to transpose the Directive, what is key is that all European countries have/will soon have an ADR system in place for consumer credit agreements.

### ADR schemes in consumer credit

Across the European Union, a variety of ADR schemes and mechanisms are in place which can settle disputes concerning consumer credit agreements.

In **France**, the Association Française des Sociétés Financières (ASF) set up its own ADR scheme: “Le médiateur de l’ASF”. This scheme was set up in 1995 and covers almost all ASF members. Banks and specialized lenders can also have their own Ombudsman. In this case they do not have to join the ASF or similar scheme set up by the French Banking Federation in order to fulfill their legal obligation to join an ADR scheme. Other examples are schemes set up by Eurofinas members in the **United Kingdom** by the FLA and in **Norway** by the Finansieringsselskapenes Förening; the Finansklagenemnda.<sup>4</sup>

It is our understanding that in other Member States specific bodies have been set up to deal solely with complaints regarding all financial products, aside from general ADR schemes dealing with complaints in a broad range of sectors or those dealing solely with consumer credit. Examples include the Financial Ombudsman Service in the **United Kingdom** and Kifid (het financiële klachteninstituut)<sup>5</sup> in **the Netherlands**.

Should any measures or steps regarding ADR be taken within the context of the review of the UCPD, Eurofinas stresses the need to ensure consistency with the ongoing initiative on ADR undertaken by the Commission.

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<sup>3</sup> See Directive 2008/48/EC on credit agreements for consumers, OJEU L133/66

<sup>4</sup> More information available at: [www.finkn.no](http://www.finkn.no).

<sup>5</sup> More information available at: [www.kifid.nl](http://www.kifid.nl).