

Eurofinas' observations on the European Commission's Communication and Report on the Application of the Unfair Commercial Practices Directive

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.

The Federation would like to take this opportunity to share our observations on the European Commission's Communication and Report on the Application of the Unfair Commercial Practices Directive (UCPD),¹ as well as the conclusions of the Civic Consulting study on the application of this Directive to financial services.²

1) Consumer Credit Industry

Our remarks should be seen within the context of the specificities of the industry that Eurofinas represents.

The provision of consumer credit is governed at European level by the Consumer Credit Directive (CCD).³ The CCD covers all aspects of the consumer credit lending transaction, such as: standard information to be included in consumer credit advertising, pre-contractual information to be provided to applicant borrowers via the Standard European Consumer Credit Information Sheet (SECCI), specific information related to the borrowing rate to be provided to consumers and calculation of the annual percentage rate of charge (APRC).

The European regulatory framework for consumer credit agreements was designed to: i) ensure that all European consumers enjoy a high and equivalent level of protection and ii) facilitate the emergence of a well-functioning Internal Market in consumer credit. This framework has inevitably influenced business practice and consumers legal rights and comes in addition to any specific national rules that may exist in this field.

In addition to the CCD, the sale of consumer credit, as is noted in the Civic Consulting study,⁴ is also governed by the UCPD.

¹ *Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of the Unfair Commercial Practices Directive – Achieving a high level of consumer protection, Building trust in the Internal Market, 14.3.2013, COM(2013) 138 final and Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee, First Report on the application of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, 14.3.2013, COM(2013) 139 final.*

² *European Commission – DG Justice, « Study on the application of Directive 2005/29/EC on Unfair Commercial Practices in the EU », Part 1 – Synthesis Report, Final Report, Conducted by Civic Consulting.*

³ *Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers, 22.5.2008, OJEU L 133/66.*

⁴ *Civic Consulting Study, p. 22 et al.*
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2) Review of the UCPD

In particular, Eurofinas welcomes the Commission's conclusion not to amend the UCPD, but to focus on enforcement of the rules in place.

The UCPD rules had to be implemented by the Member States by 12 June 2007 and have therefore only been in place for a limited period of time, as is acknowledged by the Commission.⁵

This also applies for the CCD, which had to be transposed by the Member States by 11 June 2010. Many Member States were late in transposing the Directive into their national regulatory frameworks. The transposition of the CCD was also often conducted under a very short timeframe, leaving lending institutions with little time to comply with the requirements.

Therefore, both bodies of law are relatively new and may still be subject to differing interpretations. An appropriate period of time is needed before a conclusive assessment of the application of such rules can be made.

Within this context we also acknowledge, as was concluded in the Civic Consulting study⁶ as well as the Commission's Report,⁷ that Article 3(9) of the UCPD can be a valuable tool for national regulators to address certain market issues. Article 3(9) of the UCPD provides that the Member States may retain or impose more restrictive or prescriptive requirements in the area of financial services. Many Member States have made use of this possibility.⁸

3) Enforcement – concrete next steps

In the Communication, the Commission announces that it will take the following steps:⁹

- Establish regular thematic workshops between national enforcers and organise training for enforcers and the judiciary;
- Strengthen the efficiency of the CPC-Network and continue to promote coordinated enforcement actions ("sweeps");
- Assist Member States in ensuring an effective application of the Directive by further developing the Guidance document and sharing best practices with Member States;
- Develop enforcement indicators, in cooperation with the Member States, specific to the application of the Unfair Commercial Practices Directive, which will detect shortcomings and failures that require further investigative and/or corrective action.

The Commission would thereby focus on a number of sectors, including financial services.

I. Sweeps

Eurofinas would like to remark that in 2011/2012, under the auspices of the Commission, an enforcement sweep was carried out with regard to consumer credit. This initiative was in particular aimed at checking the proper implementation of the CCD with regard to consumer credit providers' websites.

The types of failures, such as a lack of information on the APRC, observed in the sweep action, closely mirror the types of unfair commercial practices described in the Civic Consulting study. This could partly be attributed to the time period – it is our understanding that both were conducted at the same time. It is worth reiterating that, at this time, both the rules of the CCD and UCPD had only recently been put in place at national level.

⁵ *Communication*, p 9.

⁶ *Civic Consulting Study*, p 13.

⁷ *Report*, pg 26.

⁸ *Civic Consulting Study*, p. 38 et al.

⁹ *Communication*, p. 8.



Eurofinas welcomed this type of exercise as we consider the consistent implementation of the Directive as being of critical importance to consumers and credit providers alike. Compliance with the CCD's provisions as well as other pieces of EU consumer legislation goes hand in hand with increased consumer confidence. The European consumer credit industry is committed to cooperate with the European Commission and national enforcement authorities.

This commitment has also been demonstrated, given that 75% of all sites covered by the sweep were compliant at the end of 2012.

II. Development of the Guidance document and Enforcement Indicators

Eurofinas understands that the Guidance document is considered to be a useful tool and that an update thereof could be a valuable next step.

With regard to the enforcement indicators, which would detect shortcomings and failures that require further investigative and/or corrective action, it is unclear what the status of such a document would be. Caution also has to be applied, as indicators risk becoming hard and static rules.

For both documents, it is imperative that stakeholders are consulted by the Commission as it develops these texts.

4) Specific comments on the findings of the Civic Consulting study

I. Duty of advice

The Civic Consulting study notes on page 75 that "It seems to be generally acknowledged in academic writing that financial literacy of the average consumer is not yet sufficient, and EU legislation has reacted to that by introducing sector-specific pre-contractual obligations that go beyond the mere provision of information. One example is the duty to give advice from Article 5 (6) of the Consumer Credit Directive 2008/48/EC."

Eurofinas would like to point out that the Consumer Credit Directive in general, and Article 5(6) specifically, does not include a duty to give advice. Article 5 of the CCD contains the obligation to provide information and adequate explanations to the consumer, in order to place the consumer in a position enabling him to assess whether the proposed credit is adapted to his needs. This is inherently different from advice, which is a personal recommendation and a distinct service.

This distinction has been recognised by the European Commission in a number of other areas, such as the Commission's Proposal for a revised Insurance Mediation Directive¹⁰ and the Proposal for a Directive on Credit Agreement Relating to Residential Property.¹¹

II. Financial Literacy

The Civic Consulting study finds that "the financial literacy of the average consumer is not yet sufficient".¹²

Here Eurofinas would like to remark that industry efforts, in addition to efforts in this field by competent authorities and government policies, can be extremely valuable. This was also recognised in the Commission's Consumer Agenda.¹³

¹⁰ Proposal for a Directive of the European Parliament and of the Council on insurance mediation, 3.7.2012, COM(2012) 360 final

¹¹ Proposal for a Directive of the European Parliament and of the Council on credit agreements relating to residential property, 31.3.2011, COM(2011) 142 final

¹² Civic Consulting study, p. 75.

¹³ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, A European Consumer Agenda – Boosting confidence and growth, 22.5.2013, COM(2012) 225 final, p. 9.



An overview of the initiatives taken by Eurofinas members in this field can be found in the Eurofinas Financial Education Publication.¹⁴

III. Universal Access to Services

The Civic Consulting study also concludes that:¹⁵

“Access to essential services, or services of general interest, has been subject to sector specific EU legislation in areas such as electricity and gas supply, telecommunications services and postal services, where special rules related to access to these services (under the concept of universal service) and to the protection of particularly vulnerable consumers have been introduced. In contrast, such specific rules do not exist yet in the areas of financial services and immovable property, and it should be open to the Member States to afford specific protection to consumers that are vulnerable due to problems in obtaining access on the basis of the free market.”

Eurofinas would like to refer to the European Commission’s work on basic payment accounts. Eurofinas supports the European Commission’s objectives to combat financial exclusion and enable consumers to participate fully in the Internal Market.

However, there is a substantial difference between ensuring access to basic payment accounts compared to credit, overdraft facilities, credit and store cards. These require an assessment of the creditworthiness of the consumer. These products are therefore far more complex than a basic payment account and respond to more sophisticated consumer needs.

Furthermore, there is no “right to credit”. The decision *whether or not* to grant a credit to an applicant borrower is, and should remain, a business decision of the lending institution.

IV. Codes of Conduct

Whilst the Civic Consulting study identifies some issues regarding codes of conduct, Eurofinas would like to reiterate the value of such tools.

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.¹⁶

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 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 can provide.

¹⁴ Available here: http://www.eurofinas.org/uploads/documents/reports/EUROFINAS_FinanEduc_2012_WEB.pdf

¹⁵ Civic Consulting study, p. 12.

¹⁶ Eurofinas Brochure on national codes of conduct for consumer lending, 2012, available upon request from a.giraud@eurofinas.org



V. Alternative Dispute Resolution

With regard to Alternative Dispute Resolution (ADR), the Civic Consulting study finds that “the role of alternative dispute resolution varies greatly from one Member State to the next. While ADR plays an important role in countries such as Belgium, the United Kingdom, the Nordic countries, the Netherlands and Spain, its importance is more limited in other countries such as Germany.”¹⁷

The Directive and Regulation on ADR and ODR (Online Dispute Resolution) have recently been adopted¹⁸. Eurofinas supports the aims of these initiatives and welcomes the adoption thereof.

¹⁷ *Civic Consulting study*, p. 36.

¹⁸ *Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and Regulation of the European Parliament and of the Council on online dispute resolution for consumer disputes, to be published in the OJEU.*