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Finansieringsselskapenes Forening

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Deres ref.
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Vår ref.
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20. mai 2011

HØRING – FORSLAG TIL EU-DIREKTIV OM KREDITTAVTALER I FORBINDELSE MED FAST EIENDOM

Vi viser til departementets brev av 7.4.2011 med henvisning til forslag til Europaparlaments- og rådsdirektiv om kredittavtaler i forbindelse med fast eiendom til boligformål (COM (2011) 142 final).

Finansieringsselskapenes Forening har arbeidet med dette forslaget gjennom vår søsterorganisasjon Eurofinas i Brussel. Til departementets orientering oversendes kopi av det brev Eurofinas den 13.4.2011 sendte Kommisjonen vedrørende forslaget.

Fra norsk side har det særlig vært fremført som utfordrende dersom man innenfor feltet kredittavtaler får to fullharmoniseringsdirektiver med til dels ulike løsninger avhengig av låneformålet. På flere områder avviker forslaget fra EU-dir 2008/48 - CCD.

Et særtrekk ved direktivforslaget er også at det regulerer kredittformidlere i større grad enn det man tidligere er vant til – se særlig art 6, art 10 og kapittel 9. Kredittformidlere er definert svært vidt og omfatter alle typer agenter uansett om disse er bundet til en kredittyster eller opptrer på vegne av flere, om dette er heltidsbeskjeftigelse eller om det er en sidevirksomhet i tilknytning til salg av varer. Forslagene er primært av offentligrettslig karakter. I Norge har man stort sett – bortsett fra kap 4 i finansieringsvirksomhetsloven som har liten praktisk betydning – valgt å regulere disse som agenter gjennom ulike rundskriv til kredittysterne (jf Finanstilsynets Rundskriv nr 16/2009). Vi kan heller ikke se at Banklovkommisjonen i sin siste utredning har gått særlig inn på dette feltet. Dersom de forslag som foreligger blir endelige, vil vi tro at denne del av direktivet vil være en utfordring å få implementert i Norge, særlig dersom regelverket skal få virkning for andre kreditter enn til boligformål. Forhandlerkanalen er svært dominerende for mindre forbrukskreditter og antallet kredittformidlere løper her opp i tusentall.

Med vennlig hilsen
FINANSIERINGSSKAPENES FORENING


Jan Fr. Haraldsen
Dir

Vedlegg

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Brussels, 13 April 2011

Re: Commission's proposal for a Directive on credit agreements relating to residential property

Dear Mr. XXX,

Eurofinas, the voice of consumer credit providers at European level notes the publication of the European Commission's proposal for a Directive on credit agreements relating to residential property.

The Commission's proposal provides a good basis to further discuss the issues at stake in a European context. However, the Federation would like to draw your attention to a number of key concerns for the industry that Eurofinas represents.

1. In the recital of its proposal, the Commission refers to the financial crisis and an alleged consumers' loss of confidence in lending markets. **Eurofinas firmly believes that mortgage lending in Europe should be clearly distinguished from the financial crisis which was generated by US subprime lending.** The recent financial turbulences did not originate via the provision of retail credit in Europe. Any links between the worldwide financial crisis and the provision of retail credit in Europe would not only be wrong but absolutely misleading.

We recognise that in a small number of Member States ill-suited products may have been offered to consumers in the past. Yet, national authorities have already made the adequate regulatory adjustments.

2. Consumer lending in general is vital to European economy and growth. Eurofinas therefore believes that, when conducting its reflection on the Commission's proposal, the Parliament should bear in mind that regulatory changes come at a cost. **It is therefore paramount that the regulatory proposals are proportionate to clearly identified objectives.** Failure to achieve this, could stifle overall economic recovery.

3. One of the overriding requirements of a profitable and successful credit business is that lenders provide finance to borrowers who can repay a loan with interest. Responsible lending is therefore key to ensuring a sustainable credit market across Europe. The regulatory framework should therefore achieve a balance between consumer protection and operational lending market reality.

In this context, the European Parliament and the Council of Ministers adopted in April 2008 a Directive on credit agreements for consumers (the CCD). It would be premature to draw any conclusions regarding the impact of the CCD on national markets as the Directive has just been transposed by (most of) the Member States and its full effect is therefore yet to be felt. However, it is clear that its implementation will ensure sound lending practices at European level in the field of consumer credit.

We recognise that the core framework of the Directive on credit agreements relating to residential property follows the structure of the CCD. We share the Commission's view that there are specificities of mortgage lending which justify a differentiated approach for several aspects of the lending transaction.

You will find below a number of further technical comments on a selected number of provisions of the Directive's proposal. We hope that you will be able to take these observations into account.

I would be pleased to answer any question you may have on these elements; alternatively, feel free to contact Eurofinas' legal advisers Alexandre Giraud (a.giraud@eurofinas.org - tel: 0032 2 778 05 64) or Olivia Fabry (o.fabry@eurofinas.org – tel 0032 2 778 05 72)

For your information, please note that I have sent this letter to some other MEPs.

Yours sincerely

XXX

Tanguy van de Werve
Director General

Eurofinas strongly believes that a number of the Commission's proposals require modifications and/or clarifications as follows:

Creditworthiness assessment - Chapter 5/Article 14

We agree with the Commission's proposal that before the conclusion of the credit agreement, a thorough assessment of the consumer's creditworthiness should be conducted by the creditor.

Duty to deny credit

However, the proposal for a Directive introduces an obligation to deny a credit in the event of a negative creditworthiness assessment. It is worth highlighting here that the creditworthiness assessment is only one of the elements taken into account in the decision to grant a loan. Other aspects are taken into consideration such as the type of loan, the borrowers' circumstances, existing collateral etc.

Eurofinas believes that the obligation to deny credit based only on the negative outcome of a narrow creditworthiness assessment could exclude different categories of borrowers such as, for example, a 25 year old professional who might have a limited income but a long-term earning capacity.

A key element is that every credit or loan application involves a certain level of risk to the lender, irrespective of "quality" of the potential borrower. Lenders are not obliged to accept any application. There is no "good" or "bad" borrower. Therefore, applications may be assessed differently by different lenders with the result that one lender may accept an application while another lender may not. An obligation to deny a credit would not fit banking practices operational reality.

Manual review of the assessment

Article 14 2 (f) provides that where a decision to reject an application for credit is based on an automated decision or a systematic method such as credit scoring systems, a consumer should have the opportunity to request that the decision be reviewed manually.

Eurofinas fails to understand the objective of this provision.

When considering credit applications, most lenders in developed economies use computer-based credit scoring systems. These systems have been judged by regulators in many countries as being beneficial to consumers, lenders and to the economy. The World Bank in particular supports their use.

To evaluate creditworthiness as objectively and accurately as possible, credit scoring systems carefully and precisely gather and use information about the customer from a variety of sources.

Requesting lenders to review their decision manually would not only create a disproportionate administrative burden on lending institutions but would bring no added-value to consumers. The quality of the evaluation of applicant borrowers' creditworthiness does not depend on whether the evaluation is done manually or through automated methods. Selection criteria are the same in both cases.

Minimum competence requirements – Chapter 2/Articles 5 & 6

We support the views that creditors and/or credit intermediaries act honestly, fairly and professionally and that they possess an appropriate level of knowledge and competence in relation to the offering or granting of credit agreements.

However, we believe that the following elements should be taken into account:

- In light of the diversity in categories of employees and levels of responsibility, **lending institutions are best placed to establish and implement professional requirements.**
- Staff members of a lending institution work under the responsibility of their managers. It would be of no added value to introduce redundant requirements both for persons within the management of creditors and other staff members.
- It should be made very clear that credit intermediaries acting in an advisory capacity and who do not act under the full responsibility of lenders, are to be distinguished from direct staff members.
- For obvious reasons of efficiency and responsibility, staff members and intermediaries acting under the full responsibility of lending institutions are already well trained by their internal supervisors. Trainings are reviewed in light of regulatory changes and market developments.

Early repayment – Chapter 8/Article 18

The proposal for a Directive provides that a consumer shall have a statutory or contractual right to discharge his obligations under a credit agreement prior to its expiry.

In line with the Consumer Credit Directive, Eurofinas believes that in the event of early repayment of credit, lending institutions should be entitled to fair and objectively justified compensation.

As it stands, the proposal for a Directive only mentions that Member States may provide creditors for such compensation. It is therefore unsure that it will be provided by all Member States. We firmly believe that changes are required to ensure legal certainty for lending institutions.

Delegated Acts – Chapter 10/Article 26 to 28

Article 26 to 28 provide the Commission with powers to adopt delegated acts for an indeterminate period of time on the following points: minimum competence requirements, standard information to be included in advertising, pre-contractual information, information requirements concerning credit intermediaries, database access, creditworthiness assessment.

We appreciate that these provisions are in line with Article 290 of the Treaty. However, we believe that due to local characteristics of mortgage credit markets further technical potential guidance should be addressed through standard comitology procedure and involve representatives of national regulators.

In all cases, we believe that in light of the subsidiarity principle, minimum competence requirements and creditworthiness assessment should be left out of the scope of future technical standards.

Transposition of the Directive – Chapter 10/Article 30

The transposition of the Directive into Member States legislation will bring substantial modifications to lenders current business practices. As a consequence, lenders will have to adapt their processes and pre-contractual information to the new legal framework. A particular burden for lenders will be the adaptation of their IT systems. Such a process takes time and is resource-intensive. **We estimate that lenders will need a minimum of 12 months after national provisions are adopted in order to implement the Directive's technical provisions.**

In this context, Eurofinas calls for the inclusion of a transitional period of 12 months between the transposition of the Directive at national level and its formal implementation by lending institutions.