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European Banking Authority

To:

Brussels, XX 2012

Re:

Dear Mr. XX,

Eurofinas, the voice of consumer credit providers at European level, sees consumer confidence as a precursor for successful lending and borrowing transactions. Following the discussions that took place at the EBA day on consumer protection on 25 October 2012 in London (UK), we wish to reiterate our position and clarify key issues for the consumer credit industry.

1. Consumer Credit Transactions

We support the objective of the European Banking Authority to promote transparency, simplicity and fairness in the market for consumer financial products and services across Europe. As the European authoritative reference on consumer credit, Eurofinas is willing to contribute in a constructive manner to this work. We are available to provide you with feedback on regulatory and market practices as well as participate in any event you may be willing to organise in the future.

In the field of consumer credit, a high number of national and European regulations are currently in force. Some of these have been implemented very recently and/or are currently being reviewed by the relevant authorities. Against this backdrop, **we take the view that a potential further intervention dedicated to the consumer credit sector is not desirable and could contradict the ongoing work.**

1.1 The Consumer Credit Directive

A major step towards a high level of consumer protection across the EU was achieved in the area of consumer credit with the adoption of the Consumer Credit Directive (CCD)¹. The CCD was adopted on 23

¹ See Directive 2008/48/EC on Consumer Credit Agreements, OJEU L 133/66 of 22 May 2008



April 2008 after more than six years of intense discussions amongst all interested parties. This European legislation covers all aspects of the consumer credit lending transaction.

The CCD 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. The transposition of this Directive into Member States legislation brought substantial modifications to lenders' business practices. As a consequence, lenders adapted their processes, advertising and marketing materials, information documents, staff training and IT systems to the new legal framework.

Eurofinas takes the view that, while the Directive has undoubtedly increased consumer protection across Europe (with the introduction of comprehensive disclosures and new consumer rights), its positive impact on the development of cross-border trade remains insignificant.

This was very recently confirmed by the 10th special Eurobarometer on Retail Financial Services which reports that over nine in ten European citizens say they purchased all of their financial products and services within their own country². Only 3% of respondents say they would ever consider purchasing a credit card in a foreign EU country and 2% would ever consider purchasing a personal loan abroad. The market is mainly composed of independent consumer credit firms with local activities. A limited number of consumer credit lending institutions have a pan-European business. The latter is however principally carried-out through mergers/acquisitions and the establishment of branches or subsidiaries in other EU countries.

In line with Article 27 CCD, the European Commission is currently assessing the effect of a number of regulatory choices referred to in the Directive such as its scope, standard information to be included in advertising, pre-contractual information and early repayment. The findings of the Commission's assessment will be made known to the European Parliament and the Council in June 2013. Relevant adjustments may be proposed to remove discrepancies between local regulatory frameworks or reflect market changes.

In this context, Eurofinas agrees with the European Parliament that priority should be given to the correct implementation and enforcement of the CCD provisions rather than the adoption of a new legislative framework³.

1.2 The Unfair Commercial Practices Directive

As regards commercial practices, it is also worth highlighting that the Directive concerning unfair business-to-consumer commercial practices (UCPD) fully covers the consumer credit sector⁴.

We see transparent and fair commercial practices as key in building long-term confidence relationships between retail financial services institutions and consumers. Eurofinas acknowledged the importance of appropriate regulation of commercial practices and regularly contributed to the European Commission's work on the subject matter. The UCPD is currently being reviewed by the European Commission who should soon release a specific report on the application of the UCPD to the financial services sector.

We firmly believe that, in the context of the UCPD review, particular attention should be provided to existing industry codes of conduct and out-of-court dispute settlement.

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.

² See "Eurobarometer 373 on Retail Financial Services", February 2012

³ See European Parliament, Motion for a Resolution on the Transposition of the Consumer Credit Directive, November 2012, available [here](#). See also, Birgit Collin Langen, *CCD Review – European Parliament adopts report in November*, Consumer Credit Bulletin Europe n°5, Autumn 2012 available [here](#).

⁴ See Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market, OJEU L 149/22 of 11 June 2005



A high number of Eurofinas members have in recent years developed and implemented codes of good practice⁵. 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 and should therefore be taken into account when discussing market practices.

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.

1.3 Recommendations

We strongly believe that a key priority should be to ensure proper compliance with and due enforcement of both the CCD and the UCPD provisions, which taken together, provide a comprehensive and robust European regulatory framework for consumer credit transactions. We would fail to understand the added-value of any further initiative before the existing legislation has been properly reviewed.

Should discrepancies be identified by the European Commission and adjustments to the existing legislation required, Eurofinas believes that any future adjustment of the existing legislation should be subject to a detailed impact assessment and cost-benefit analysis. All stakeholders should be invited to contribute to this assessment as well as react to its findings. This assessment should be undertaken carefully, keeping in mind that market characteristics remain divergent across EU Member States and that specific technical provisions may need to be adjusted in certain cases.

2. Over-indebtedness

2.1 Scope and Methodology

Eurofinas does not oppose, in principle, a reflection at European level on the causes and consequences of households' over-indebtedness. However, we firmly believe that **the scope of such an initiative considerably exceeds the regulatory treatment of any type of lending transactions and should therefore not be associated to any specific existing legislation.**

This is because households' over-indebtedness has to do with all forms of debts (i.e. not only related to credit) and is also intrinsically linked to wider macroeconomic (e.g. unemployment levels, wage levels etc.) and social (e.g. changes in personal circumstances) factors as well as the existence of personal bankruptcy regimes/insolvency proceedings. This was unanimously recognised by all panelists at the EBA day on consumer protection. Consumer indebtedness and over-indebtedness should not be considered exclusively at the micro-level but also in terms of the impact they will have on economic growth.

⁵ See Eurofinas, *Brochure on national codes of conduct for consumer lending*, 2012 Edition, available [here](#)



It is also worth mentioning that there is currently no single EU-wide definition of over-indebtedness. We take the view that further potential exchange of views on this topic would therefore require preliminary in depth discussions on the best methodology/benchmarks.

2.1 Recommendations

As mentioned at the EBA day on consumer protection, **we agree that EBA could play a role in the area of over-indebtedness by monitoring trends in relation to over-indebtedness (causes, prevention and cure) and exchange of best practices.** We believe that, in this context, compliance with existing regulation, supervisory structures and financial education are potential fields of work for the EBA.

The European Commission is due to publish two studies on over-indebtedness in 2013. **We call on the EBA to wait for the findings of these studies to be released before any initiative is taken in this field.** In general, we believe that coordination with the European Commission is key to avoid duplication of work and potential contradictions.

3. General contribution of stakeholders

Exchange of best practices and better regulation should be at the heart of any initiative, notably the need to identify a problem and demonstrate why there is a need for a pan-European coordination/solution. As we have seen in the area of consumer credit, national regulators have already introduced specific rules where they have identified peculiarities in national markets.

We would welcome the possibility to formally contribute to initiatives taken by the EBA and regularly meet to exchange views on ongoing work. In particular, we would be most interested in discussing EBA's various guidelines and the potential initiative in the field of product oversight.

I remain at your disposal, to further discuss these topics. Alternatively feel free to contact Eurofinas Senior Legal Adviser Alexandre Giraud (a.giraud@eurofinas.org - tel: + 32 2 778 05 64).

Yours sincerely,

Tanguy van de Werve
Director General