

Joint Committee of the European Supervisory Authorities
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Brussels, 7 February 2014

Re: Eurofinas response to the Joint Committee of the European Supervisory Authorities' consultation paper on draft guidelines for complaints-handling for the securities and banking sectors (JC complaints-handling CP 2013-03)

Dear Sir/Madam,

Eurofinas welcomes the opportunity to respond to the *Joint Committee of the European Supervisory Authorities'* (the Joint Committee) public consultation on *draft guidelines for complaints-handling for the securities and banking sectors*.

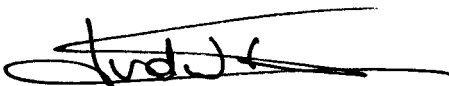
As a Federation, Eurofinas brings together associations throughout Europe that represent finance houses, universal banks, specialised banks and captive finance companies of car or equipment manufacturers.

The products sold by the companies represented at European level by Eurofinas include 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, education, furniture, electronic appliances, etc. It is estimated that together the Eurofinas members financed over 312 billion Euros worth of new loans during 2012 with outstandings reaching 828 billion euros at the end of the year.

You will find below our response to the consultation. We remain at the disposal of the Joint Committee for further discussion or input on the issue of complaints-handling.

I would be pleased to answer any question you may have; alternatively, feel free to contact Eurofinas' Legal Adviser Isak Bengtzboe (i.bengtzbøe@eurofinas.org , T: +32 2 778 05 73).

Yours sincerely,



Tanguy van de Werve
Director General

1. Introductory observations

Eurofinas supports the efforts of ESMA and EBA to promote transparency, simplicity and fairness in the securities and banking markets across Europe.

We welcome the initiative of the Joint Committee to produce European guidelines on complaints-handling for the securities and banking sectors. We see efficient internal complaints-handling as a key tool to promote consumer confidence. It is also an essential mechanism for providers to keep track of customers' expectations, adjust business processes and improve market performance. We therefore agree that complaints should be handled transparently, fairly and that procedures should be easily accessible for customers.

1.1 Legal status of the guidelines

Like other stakeholders, we consider the legal status of the proposed guidelines to be unclear. Though we appreciate that the issuance of such guidelines is in line with the Joint Committee's founding Regulation, the impact of a "comply or explain" procedure remains uncertain and makes it difficult for the industry to foresee the exact implications of the proposed text.

1.2 Scope of application

Consumer credit providers across Europe encompass a diversity of organisations of different legal nature (i.e. specialised banks, finance houses) and with various operational characteristics (independent companies, subsidiaries of banks, captive finance companies of car manufacturers).

The proposed guidelines would only apply to credit institutions (as defined in Art. 4(1) of the Capital Requirements Regulation), payment institutions and electronic money institutions (as defined in Art. 4(4) of the Payment Services Directive and Art. 2(1) of the E-Money Directive respectively)¹. The scope of application of the guidelines would therefore be restricted on the basis of a classification primarily used for prudential purposes.

It is worth recalling that European consumer protection standards in the field of retail lending apply to all types of firms. What matters in this area is the actual activities of a lender/finance company not its legal status. By restricting the scope of the guidelines, we are concerned that the proposed supervisory convergence will add complexity for market operators rather than streamline business procedures and compliance.

1.3 Existing measures

We believe that enhanced consumer protection can be best achieved by empowering consumers in such a way that they know - and therefore can exercise - their rights. Hence it is important to provide consumers with timely and adequate information on existing complaints-handling and dispute resolution mechanisms.

The provision of consumer credit is governed by a comprehensive set of legislative measures at European level. It notably includes:

- i) the Consumer Credit Directive (CCD)²,
- ii) the Unfair Commercial Practices Directive (UCPD)³,
- iii) the Unfair Contract Terms Directive (UCTD)⁴,

¹ Joint Committee Consultation Paper on draft guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors, JC-CP-2013-03, p. 6

² 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

³ 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, 11.6.2005, OJEU L 149/22

- iv) the Directive on the Distance Marketing of Financial Services (DMFS)⁵, and
- v) the Directive on Alternative Dispute Resolution for Consumer Disputes (ADR)⁶.

This legislation provides extremely valuable standards for both market operators and consumers and should therefore be taken into account when promoting greater convergence in supervisory approaches at European level.

In addition to the existing legislation, a large number of Eurofinas member associations have developed and implemented self-regulatory codes of conduct⁷. 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 in many different areas including the handling of complaints⁸. We take the view that a reference to such existing industry standards should be included in the guidelines.

1.4 Proportionality

We agree with the format of the draft guidelines. We believe that high-level principles can best achieve the goals set out by the Joint Committee to enhance consumer protection while providing businesses with the required flexibility.

We further believe that it is key to ensure that a complaints-handling regime is proportionate and takes into account the nature and size of a banking or financial institution. This is crucial to encompass the diverse types of market operators and distribution models/channels. Many finance companies, payment institutions or electronic money institutions are small or local financial institutions. We think the concept of proportionality should be emphasised in the guidelines or accompanying background note.

1.5 Eligibility

We take the view that the definition of complaint suggested by the Joint Committee is too wide. As currently defined, a complaint would include any statement of dissatisfaction addressed to a firm. As is recognised for alternative dispute resolution mechanisms in the ADR⁹, we believe that procedural rules that allow rejecting frivolous or vexatious complaints should be permitted in order to avoid unjustified costs and administrative burden.

⁴ Council Directive 93/13/EEC on unfair terms in consumer contracts, 21.4.1993, OJEU 95/29

⁵ Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services, 9.10.2002, L 271/16

⁶ Directive 2013/11 EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes, 18.6.2013, OJEU L 165/63

⁷ Eurofinas brochure on national codes of conduct for consumer lending, 2012, available upon request from a.valette@eurofinas.org

⁸ *Ibid.*, See for example, the codes of conduct developed by Eurofinas members in Poland, Portugal, Sweden or the United Kingdom

⁹ Article 5, Directive 2013/11 EU, *op.cit.*

2. Responses to the consultation

Question 1: *Do you agree that complaints-handling is an opportunity for further supervisory convergence? Please also state the reasons for your answer.*

As mentioned above, Eurofinas welcomes the initiative by the Joint Committee in relation to complaints-handling in the securities and banking sectors.

We think it is important to ensure consistency between the banking, investment and insurance sectors on this topic. Unless justified by specific product characteristics, we support the development of high-level guidelines applicable to all sectors. This will contribute to increase consumer empowerment.

We also support supervisory convergence across Europe on this topic. However, this should remain on the basis of joint high-level principles and should not compromise existing local initiatives taken by firms or group of firms in this field.

As stated earlier, Eurofinas further supports efficient, transparent and fair internal complaints-handling for all types of firms irrespective of legal status or local supervisory characteristics.

Question 2: *Please comment on each of the guidelines, clearly indicating the number of the guideline (there are 7 guidelines) to which your comments relate.*

Guideline 1

A key aspect of responsible lending is to ensure that the credit providers' actions are geared towards long-term client relationships. Responding to customer demand is at the heart of the consumer credit industry business model. Complaints-handling plays a vital role in this.

Complaints should be dealt with quickly and effectively, each of them should be treated individually, and consumers should be properly informed of their rights.

We believe that the endorsement by senior management of a complaints management policy is a meaningful step. It will help emphasise the importance of the policy within the company and reinforce existing processes. Firms should however be provided with a high degree of discretion to develop effective internal complaints-handling processes.

Guideline 2

As stated above, we believe that a complaints management function is a key tool to promote consumer confidence. The precise set-up of such a function should be left to the discretion of market operators. This will ensure that local market characteristics, the size of firms as well as the variety of distribution channels are taken into account.

Guidelines 3 & 4

Eurofinas agrees that complaints should be recorded internally. However, we warn against the introduction of disproportionate requirements for complaints reporting and tracking. This is particularly important for small-sized finance companies. In this context, it is important that regular reporting to the local competent authority or ombudsman is restricted to relevant and useable data on the basis of an agreed classification.

Rules on complaints eligibility can guarantee that the reporting is not impaired by frivolous, on-going or incomplete complaints. Sharing of best practices amongst market players should be encouraged.

Guideline 5

We agree that firms should analyse complaints-handling data to ensure that they identify and address recurring issues. As stated above, it already forms an integral part of consumer credit providers' efforts to ensure the highest level of customer satisfaction. It also allows firms to better understand their customers and to adapt their products as well as their procedures.

We would however oppose a mandatory requirement to set up a dedicated department for complaints-handling. The exact processes and set-up should be left to the discretion of the firms. They are best placed to identify the most suitable structures and procedures for efficient complaints management.

Guideline 6

Eurofinas acknowledges the importance for firms to provide consumers with relevant and comprehensible information on complaints-handling procedures. Such information is necessary for consumers to make use of their rights, and can help avoid costly and unnecessary litigation procedures.

Information on complaints-handling procedures can be included in contractual documents as well as displayed on firms' websites. However, it is far more efficient to provide consumers with up-to-date information at the right time. Hence, provision of information on request or when acknowledging receipt of the complaint is indeed far more effective.

Guideline 7

Consumers should receive easily understandable, carefully considered and substantiated responses on their issued complaints. Disputes can often be resolved by providing clear and understandable explanations in the event of a conflict or dissatisfaction.

While it is the firms' responsibility to provide simple ways to file complaints, they cannot be held responsible for irrelevant or incomplete complaints.

Complaints may take different forms. Some of them may require in-depth investigations. It is important that firms are provided with sufficient flexibility to respond adequately to complainants. Specific time limits may therefore not always be fixed in advance.

We agree that consumers should be informed of the availability of an alternative dispute resolution mechanism. In the field of retail lending, this is already required by the CCD and the soon-to-be published Mortgage Credit Directive¹⁰. In a cross-border context, we reiterate our support of the work of FIN-NET, the financial dispute resolution network of national out-of-court complaint schemes in Europe.

Question 3: *Do you agree with the analysis of the cost and benefit impact of the proposals?*

The cost impact of the proposal is difficult to assess. We understand that most consumer finance companies have a dedicated structure/procedure in place for complaints management/resolution. Also national guidelines already exist in our sector in many countries.

¹⁰ See for example Article 24 and Annex II, Directive 2008/48/EC, *op.cit.*