



## European Banking Industry Committee

---

European Banking Federation (EBF) • European Savings Banks Group (ESBG) • European Association of Cooperative Banks (EACB) European Mortgage Federation (EMF) • European Federation of Building Societies (EFBS)  
European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)  
European Association of Public Banks (EAPB)

Commissioner David BYRNE  
European Commissioner Health  
and Consumer Protection  
European Commission,  
B 1049 Brussels

Brussels, 19 October 2004

### **Re: Implementation of the Code of Conduct for Home Loans**

Dear Commissioner Byrne,

We should like to follow-up on our provisional response from the end of June to your letter dated 10th May, in which you conveyed your concerns about the implementation of the Code of Conduct.

As we emphasised in our June letter, the industry believes that the uptake of the Code, encompassing over 3.800 credit institutions, which represent significant national market shares, is encouraging. Although recent enlargement has clearly altered the balance between implementing and non-implementing Member States (MS), the level and quality of implementation in the 13 MS have widely improved since the September 2002 deadline. Indeed, in addition to general improvements in the applying countries, the French market started to implement in September 2003, while application of the ESIS in the UK market will begin this month.

Concerning the new Member States, EBIC (European Banking Industry Committee) members have and are still undertaking efforts to present the Code to their new members in order to achieve their adhesion to the initiative. So far, positive reactions have been received from the Estonian Banking industry, which intends to implement the Code from mid 2005 onwards. The Hungarian, the Polish and the Latvian banking sector are currently debating this issue internally. Others are awaiting the outcome of the Forum Group on Mortgage Credit, as well as a clear signal from the Commission.

In view of the huge amount of resources, which national industries have put into the initiative, EBIC should like to reiterate its strong and continued commitment to the Code of Conduct.

Concerning the difficulties which you raised in your letter, i.e. the level of implementation and the lack of certain timing for the ESIS (European Standardized Information Sheet), we are now in a position to respond more precisely:

- **Further improvement of the level of implementation**

On this question, EBIC would like to emphasise the efforts and resources, which have been put into the Code of Conduct at both European and national level. As a result, the level and quality of implementation in the 13 adhering MS is much more satisfactory today than it was at the end of 2002. We would therefore welcome a new independent Commission Study to assess the current state of play before any decision is taken concerning the Code's future, providing that the Industry is consulted on the choice of consultant before the appointment is made. For its part, the Banking Industry is currently making the necessary preparations to conduct a second progress report.

We would however like to emphasise that recent declarations by the Commission undermine the efforts made by the banking industry to improve the situation for the benefit of its clients. The fact that the Commission has publicly implied that the future of the Code is uncertain has been a cause of significant concern in all MS but particularly in the new MS and does not facilitate the promotion of the Code. Indeed, the former 13 MS would be willing to commit themselves to further efforts and expenses provided that there is a guarantee that the Code is not at risk. In the same vein, the new MS show significant interest in the Code but are reluctant to allocate important resources to a project, the future of which is being officially questioned.

EBIC would therefore like to reiterate the request already made in its previous letter and invites the Commission to send to the New MS a similar letter as the one sent to the 15 MS in 2001, endorsing the EU recommendation dated 5 March 2001 and inviting them to comply with the terms of the Code of Conduct. EBIC believes that this is not only the adequate official step vis-à-vis the New MS but also the necessary positive signal, which will allow the industry to achieve the necessary complete adhesion to the Code. This would also satisfy consistency requirements, according to which, the new MS would be subject to the same procedure and a realistic timetable for implementation as the 15 MS back in 2001.

After internal consultation and discussion and based on experience so far, EBIC members fear that it will become very difficult for them to recommend that national industries, especially in the New MS, devote significant resources to a project, the existence of which is publicly questioned by the Commission. We therefore require a clear and positive signal from your services that will allow us to achieve our aim.

Based on a confirmation from the Commission that the Code of Conduct will be maintained until another formal review is conducted after two years, the industry has agreed to fix a calendar of meetings with its members in the different MS, especially in the new ones, to further promote the Code of Conduct and to help the national industries to implement it as quickly as possible.

- **Timing for handing over the ESIS**

The industry acknowledges the concern raised by the Commission concerning the lack of a precise timing for the handing over of the ESIS. In this respect, we would like to recap that the preliminary recommendation of the Forum Group on Mortgage Credit on this question is that the ESIS needs to be handed over at a stage which facilitates use and comparison of the ESIS information. This means that both consumers and industry representatives agree that the real issue is that consumers are given the ESIS information in time to shop around.

As announced in our previous letter, EBIC has carried out a thorough examination of the national loan-granting processes with a view to determining whether or not it is possible to identify a timing, which would be appropriate to the national legislation in all of the MS.

So far, the results of our survey reveal the following:

- Loan-granting processes differ from MS to MS. Two main models have however been clearly identified. One is where the ESIS is provided as a binding offer and therefore, at an advanced stage of the pre-contractual period. The other model is where the ESIS is provided as a non-binding offer at an earlier time. In any case, both models involve the provision of the ESIS during the precontractual stage and allow time for comparison and reflection.
- The ESIS is a personalized offer which precisely indicates the terms and conditions of a credit offer based on a number of pieces of concrete information provided by the consumer, i.e. exact amount required, maturity, choice of collateral and insurance.
- In many MS such as B, FR, IRL, the NL and AUT, the ESIS is (generally) merged or handed over with the binding offer. In such cases, consumers will have a reflection period, which allows shopping around in order to compare offers. This period varies from one MS to another, i.e. 10 days in France, 2 to 4 weeks in Belgium and Austria or 5 to 6 weeks in the Netherlands. This loan-process model clearly adds significant value for consumers. Indeed, consumers are able to compare offers using a document, which aids comparison and which benefits from the same binding force as the binding offer. The bank is bound by the ESIS information and the customer is free to continue to shop around. He can obtain the loan under the conditions stated in both the ESIS and the offer during the time allowed by the cooling-off period, even if market conditions have changed between the handing-over of the ESIS and the date on which the contract is concluded.
- In MS where the ESIS is provided at an early stage (before a separate binding offer is provided) such as in Sweden, Finland or Luxembourg, the lender provides a non-binding offer based on the information available at the time the ESIS is produced. This loan-process model implies that lenders will have to

adapt certain variable elements of the ESIS offer, i.e. nominal rate, APRC according to the market fluctuations.

- In some Member States i.e. Germany, a combination of the two loan-processing models is used, depending on a specific request from the customer.
- As a general remark, the main obstacle to issuing the ESIS earlier than the offer is the non-availability of the consumer's personal details, which are necessary for the issuing of the ESIS. Indeed, the offer is generally issued as soon as the consumer's personal details have been communicated to the lender, which is therefore also the earliest stage at which it is possible to issue the ESIS. Moreover, loan products are long term products, which structurally cannot be treated in the same way as other retail products. Loan products are and should (in the best interest of the consumer) be personalised. In this context, both banking institutions and consumers have a vested interest in the ESIS being handed over at a stage, which is useful for the consumer i.e. when he is seriously interested and therefore willing to provide data that enables the financing institution to make a personalised offer.
- Another remark was that setting exactly the same stage for handing over the ESIS, which is too early, would not follow the approach of the new Basel II requirements, which provide banks with incentives to establish a cautious and detailed risk assessment before the fixing of the interest rate.

Based on the survey's results, EBIC's conclusion is that the loan-granting processes in MS, although different, do allow the ESIS to be handed over to the consumer in time for shopping around, even when the ESIS is given together with the offer. Furthermore, the diversity described above confirms the need for flexibility in the way the ESIS is disclosed in the MS, as long as there is still time for shopping around.

As our internal consultation procedures are continuing, this is still an intermediary report but we believe that this provides a preliminary answer to your query.

In the meantime, the Forum Group on Mortgage Credit is about to disclose its final report, and we hope the Commission will take on board experts' recommendations, more specifically those on self-regulation.

We are looking forward to discussing these issues with you, your services and your colleagues from DG Markt at your earliest convenience.

Yours sincerely,



Ian Mullen  
EBIC Chairman

Copy: Commissioner Frits Bolkestein.



Alberto Costantini  
Chairman EBIC Working Group Mortgage Credit