



European Banking Industry Committee

European Banking Federation (FBE) – 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)

European Agreement on a Voluntary Code of Conduct on Pre-contractual information for Home Loans

Second Progress Report¹ on Implementation in the European Union

by the

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- ◆ European Banking Federation (FBE)
 - ◆ European Savings Banks Group (ESBG)
 - ◆ European Association of Cooperative Banks (EACB)
 - ◆ European Mortgage Federation (EMF)
 - ◆ European Federation of Building Societies (EFBS)
 - ◆ Eurofinas/Leaseurope
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¹ See 1st Progress Report on Code of Conduct dated March 2003



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Introduction

1. Coverage of the Report

This document is a joint Report presented together by the European Industry Associations, which signed the Code of Conduct i.e. the European Mortgage Federation, the European Banking Federation, the European Savings Banks Group, the European Association of Cooperative Banks, the European Federation of Building Societies and Eurofinas. The information gathered therefore encompasses EU mortgage lenders covering approximately 100% of the mortgage market at EU level.

2. Procedure according to the Home Loan Agreement

On 5th March 2001, the European Industry Associations and the European Consumers' Organisations signed the Agreement on a Voluntary Code of Conduct on Home Loans, which aims at improving and harmonising the pre-contractual information to be disclosed to consumers looking for a Home Loan (i.e. a mortgage / secured credit for housing purposes) in the EU. This Agreement was endorsed in EU regulation through a Commission Recommendation². Both the Agreement on the Code of Conduct and the Commission Recommendation provide for a number of procedures aimed at ensuring effective, timely and satisfactory implementation of the Code of Conduct, as well as a monitoring of the timing, level of take up and efficiency.

2.1 The procedure started with a two-step implementation procedure of the Code and a set timeframe:

Registration: Credit institutions, which decide to adhere, must first signal their intention to do so by registering in the specific Code of Conduct Register³ created and managed by the Commission. For credit institutions that were members of the European Industry Associations when the Code was signed, the deadline for registration was 30th September 2001.

Implementation: Credit institutions, which have registered with the Commission, have one year from the date of registration to effectively implement the Code. Credit institutions that were members of the contracting European Industry Associations at the time of signature were therefore expected to implement by 30th September 2002.

² Brussels, 1 March 2001, C (2001) 477 final.

³ http://www.europa.eu.int/comm/internal_market/en/finances/lending/index.htm



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European Association of Public Banks (EAPB)

2.2 The second step of the procedure consisted of a report on the level of implementation by the contracting European Industry Associations and the Commission. According to Art. 7.1 and 7.4 of the Agreement and Art. 6 of the Recommendation, the Commission was to monitor the uptake and effectiveness of the Code and review its operation throughout the EU Member States two years after the adoption of its Recommendation endorsing the Code i.e. by March 2003.

To this end, the Commission relied on both the Industry's First Annual Progress Report, presented at the beginning of 2003, and its own monitoring results i.e. the external Study carried out by IFF in Hamburg, appointed by the Commission in February 2003. The Report by the Consultant results from the Commission's monitoring obligation stipulated by Art. 7.

The Industry's First Annual Progress Report comprised the extent of registration and implementation by EU credit institutions, the coverage given to the Code in the different Member States, the types of loans it encompasses and the various ways, in which it is published. The Report concluded that the results at the end of 2002 were satisfactory. More than 3600 credit institutions in the EU and Norway had signaled their adherence to the Code, equating to some 95-100% of the national market in a majority of Member States, and the large majority of registered institutions had implemented the Agreement. Despite these results, the Industry did acknowledge that there was some room for improvement, notably in respect of the UK, France and Spain. Positively, since the publication of the first industry report in March 2003, the situation has changed with both French and UK credit institutions implementing the Code. In Spain, the draft regulation designed to enforce the Code and resolve the problem of incompatibility between the Code and the national legislation is still outstanding.

On the other hand, the Consultant's Report, which was published in August 2003, proved to be extremely negative in its conclusions and reported an extremely low level of implementation of the Code. The Industry was however concerned by the results and in its response to the Report (Annex I), submitted to the Commission on 1 November 2003, the Industry signatories reiterated their commitment to the Code and highlighted their misgivings with regards to the Consultant's conclusions and in particular his methodology. The current Annual Progress Report explores this issue and the findings are summarized in Section II below.

2.3 The third step of the procedure consisted of an assessment of the implementation of the Code by the Commission, taking into consideration the Consultant's Report, the Industry's Progress Report and comments received from the Consumers' Organisations.



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The Commission also announced that the Forum Group on Mortgage Credit would be given the task of examining the issue of pre-contractual information and delivering a set of recommendations. In December 2004, the Forum Group duly published its Report, together with 48 recommendations. Positively, both Industry and Consumer representatives felt that the European Standardised Information Sheet was an extremely useful tool for the provision of information and should be encouraged by the Commission.

In May 2004, DG Sanco Commissioner Byrne urged the Industry to action and invited the signatory Associations to develop a common position on the timeframe for handing over the European Standardised Information Sheet (ESIS) to consumers. He also requested information on training schemes and audit plans. In October 2004, EBIC sent a detailed letter (Annex II) answering Commissioner Byrne's questions on its implementation. The Industry explained that the ESIS is handed over in time for consumers to shop around, although not at a harmonised predetermined time in the loan granting process. The current Progress Report investigates this issue and the questions on staff training and a compliance board. Section V below summarises the Industry Association's findings.

In its letter, the Industry also reiterated its conviction in the Code. Indeed, the Industry remains totally committed to the Agreement according to its current status. Huge resources have been invested in the Code and the Industry is determined to improve the level of implementation further. Positively, credit institutions in a number of New Member States, the Czech Republic, Estonia, Cyprus, Hungary and Malta have already adhered to the Code and credit institutions in Estonia, Cyprus and Malta are already implementing the Agreement. Polish credit institutions have however, in the absence of a clear signal from the Commission concerning the future of the Code, signalled a reluctance to make the necessary investments in order for them to comply with the provisions of the Agreement. The Industry has, on a number of occasions, requested that the Commission send a letter, similar to the one sent to the EU15 inviting them to adhere to the Code back in 2001, to the New Member States. Indeed, Commission backing is vital to the satisfactory functioning of the Agreement.

Based on experience and discussion with stakeholders, consumers' organisations and the Commission, the industry is also ready to review and improve the content of the Code if deemed necessary. In this respect, the Industry would also welcome a new external study to be launched by the Commission, provided the methodologies can be explained and discussed beforehand with the stakeholders.



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Positively, the Commission has recently indicated to the Industry that they would grant the Code some more time in order for it to prove its efficiency. Further to this reassurance as to the Code's future as well as to the Industry's commitment, EBIC Member Associations decided to publish their second Progress Report on Implementation.

I. Take-up of the Code: Wide coverage in 19 Member States & Norway⁴

Adhesion to and implementation of the Code is impressive in 19 Member States and Norway. Moreover, credit institutions in five New Member States, the Czech Republic, Estonia, Cyprus, Hungary and Malta have adhered to the Code and credit institutions in Estonia, Cyprus and Malta are already implementing the Agreement. What is more, on joining the EMF in 2004, the Federation's Romanian Member, Domenia Credit, implemented the ESIS. Based on the statistics at the end of June 2005, the level of adhesion and implementation is as follows:

- § **Belgium:** 27 credit institutions⁵ have adhered to and implemented the Code, representing 90% of the national market.
- § **Czech Republic:** All 6 members of the EFBS have decided to adhere to and implement the Code.
- § **Denmark:** All Danish mortgage banks (6) have adhered to and implemented the Code. Together, they cover 94% of the national market.
- § **Germany:** A very large number of members of the National Associations⁶ have adhered to and implemented the Code.
- § **Estonia:** All members of the national association (6 credit institutions) have adhered to the Code and implemented from 1 October 2005. Together, these institutions represent 99% of the national market.
- § **Greece:** 21 credit institutions have adhered to and implemented the Code, representing 95% of the national market.
- § **Spain:** No Spanish lender has so far adhered to the Code. Consumers are however considered to be very well protected due to the existing national rules on transparency and consumer protection. Spanish lenders are waiting for the government to harmonise existing national rules with the European Code on home loans in order to assure coherency. Once this harmonisation is in place, all lenders are expected to adhere immediately.

⁴ See Tables 1.1 and 1.2 below

⁵ For the 1st Progress Report, the number was 35. Since 2002, however, a number of mergers have taken place in the Belgian market and other financial institutions have ceased their activities, explaining the new figure of 27 banks/financial institutions.

⁶Verband Deutscher Pfandbriefbanken (vdp), Bundesverband deutscher Banken (BdB), Deutscher Sparkassen- und Giroverband (DSGV), Bundesverband der Volks- und Raiffeisenbanken (BVR), Verband der Privaten Bausparkassen (VdpB), Landesbausparkassen (LBS).



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European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
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- § **France: 42 credit institutions** have adhered to the Code and 40 credit institutions have implemented. Adhering institutions represent 40% of the national market, while implementing institutions represent 30%.
- § **Ireland: 12 credit institutions** have adhered to and implemented the Code, representing more than 99% of the national market.
- § **Italy: 512 credit institutions** have adhered to and implemented the Code. Together, they cover 96% of the national market.
- § **Cyprus: 9 credit institutions** have adhered to and implement the Code. Their total national market share is not known.
- § **Luxembourg: 15 credit institutions** have adhered to and implement the Code, covering more than 90% of the national market.
- § **Hungary:** No specific information as yet.
- § **Malta:** No specific information as yet.
- § **The Netherlands: 124 credit institutions** have adhered to and implemented the Code. Together, they cover 99% of the national market.
- § **Austria: Almost all members of the national associations** have adhered to and implemented the Code.
- § **Portugal: 21⁷ credit institutions** have adhered to and implemented the Code. Together, they represent 95.4% of the national market (this figure also includes consumer credit, as no separate figures are available).
- § **Finland: 334 credit institutions** have adhered to and implemented the Code. Together, they cover 99% of the national market.
- § **Sweden: 85 credit institutions** have adhered to and implemented the Code. Together, they cover 90% of the national market.
- § **UK: 142 credit institutions (all of the CML's members)** have adhered to and implemented the Code. Together, they cover 98% of the national market.
- § **Norway: 10⁸ credit institutions** have adhered to and implemented the Code, representing approximately 7% of the total number of banks (150, of which 130 are savings banks (all savings banks provide the ESIS at the request of the consumer) granting home loans in Norway, amounting to 40% of the market share in the country.

Depending on the country, the source of the figures above is either the national statistics provided by the National Authority (National Bank, national body responsible for statistics) and/or the statistics or estimates from the national trade associations.

⁷ Based on 2002 figures.

⁸ Based on 2002 figures.



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European Association of Public Banks (EAPB)

Considering that, in general, the level of adhesion and implementation throughout the Member States is between 90 and 100% (excluding the particular cases of France and Spain), not much further adhesion or implementation is expected (see point 1.3 in the tables below). The exceptions are Belgium, Germany, Hungary and Portugal, who anticipate a small number of additional adhesions. Provided that the regulation resolving the problem of incompatibility between the Code and the national legislation is adopted, adhesion and implementation will also begin in Spain.

In terms of the results of the survey published by the IFF Consultant in June 2003, **7 Member States (BE; DK; DE (all associations); GR; IE; IT and AT (EFBS))** have been able to investigate problems raised by the Consultant in his report.

While there are a number of explanations for the discrepancy between the IFF figures and the figures produced by the Industry, the key points underlined by the Industry are as follows:

- § **The Consultant failed to understand or take into account national specificities.** This is particularly the case for Denmark, which was completely excluded from the Report. Despite countless explanations beforehand from Realkreditrådet, the Consultant failed to appreciate that to obtain a loan offer and therefore an ESIS in Denmark, the consumer must own a property, which can be mortgaged. The Consultant's Interviewers obviously did not.
- § **The Study was based on the incorrect assumption that the General Information and the ESIS should be handed out during the first or second meeting with the client.** Credit institutions are not obliged to and do not provide the full pre-contractual information (General and ESIS) at the first contact in order to avoid information overload and also because in order to be able to provide an ESIS, a lender requires personal information from the borrower, which it would not have at this stage. However, if the Consultant's interviewer did not receive the full set of pre-contractual information at the first contact, this was interpreted as a failure or as incomplete information.
- § **There was an imbalance in the assessment of formal and material errors.** While formal irregularities are unfortunate, they are not by nature essential, and yet in the Consultant's report, they were weighted in the same way as material errors.
- § **On a general basis, the Survey was carried out too soon after the deadline for implementation.** As such, more time was required for the measures taken by credit institutions e.g. staff training, modification of IT systems etc. to fully take effect. Similar problems would have been encountered by any new procedure, be it of a strictly commercial, regulatory or self-regulatory nature.



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European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
European Association of Public Banks (EAPB)

The adhering institutions in 10 Member States (BE; DK; DE; EE; GR; FR; IT; CY; SW and NO) publicise their application of the Code. In 4 Member States (LUX; AT; PT and FI), publication of application of the Code depends on individual institutions (see Table 1.5). Application of the Code is generally publicised via the websites of the credit institutions, through the press and in brochures.

The adhering institutions in 17 Member States make copies of the Code available in their premises on a general basis. Depending on the country and the institution, copies of the Code are either made available permanently via the institution’s website, in branches or are handed out on request.

II. Code’s coverage

The Report also examines whether mortgage withdrawal loans⁹, non-secured housing loans and secured loans with the mixed purpose of housing and consumption are offered in the Member States and, if so, whether they are covered by the Code.

§ **Mortgage withdrawal loans are offered in 16 Member States and Norway¹⁰: Belgium (rare), Denmark, Germany, Estonia, Greece, Spain, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden, the UK and Norway.**

- **In 9 of the 16 countries where they are offered, depending on the institution, mortgage withdrawal loans are covered by the Code of Conduct: Denmark, Germany, Ireland, Austria, Portugal, Finland, Sweden, the UK and Norway.**

§ **Non-secured housing loans are offered in 8 Member States¹¹: Belgium (rare), Germany, France, Luxembourg, Austria, Portugal, Finland and the UK**

- **In 6 of the 8 Member States where they are offered, depending on the institution, non-secured housing loans are covered by the Code of Conduct: Germany, France, Luxembourg, Austria, Portugal and Finland.**

§ **Secured loans with the mixed purpose of housing and consumption are offered in 15 Member States¹²: Belgium (rare), Denmark, Germany, Estonia, Spain, Ireland, Italy, Cyprus, the Netherlands, Austria, Portugal, Finland, Sweden, the UK and Norway.**

⁹ Mortgage withdrawal loans are secured loans taken out for consumer purposes.

¹⁰ Not all kinds of credit institutions in these countries offer Mortgage Withdrawal Loans

¹¹ Not all kinds of credit institutions in these countries offer non secured loans

¹² Not all kinds of credit institutions in these countries offer secured mixed loans



European Banking Industry Committee

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European Association of Public Banks (EAPB)

- **In 12 of the 15 Member States where they are offered, depending on the institution, secured mixed loans are covered by the Code of Conduct: Belgium (only if the housing purpose is predominant); Denmark, Germany, Estonia, Ireland, Italy, the Netherlands, Austria, Portugal, Finland, Sweden and the UK (provided the whole loan is secured on the property).**

13 Member States (DK; DE (vdp, BDB, DSGVO, BVR); GR; ES; FR; IE; IT; CY (differing views); NL; AUT (ESBG only); PT; SW and the UK) would support the formal extension of the Code of Conduct to include mortgage withdrawal loans.

Considering the importance of intermediaries in the loan-granting process, **13 Member States (BE; DK; DE (vdp, BDB, DSGVO and BVR); EE; GR; ES; IE; IT; CY (differing views); LUX; NL; PT and the UK) would support a proposal to extend the application of the Code to cover credit intermediaries.**

III. Staff Training

In 13 Member States (BE; DK; DE; GR; FR; IT; CY; LUX; AT; PT; FI; SW and the UK), financial institutions have provided their staff with training activities on how to implement the Code. In many cases, training has taken the form of workshops or seminars. Other financial institutions have circulated appropriate written instructions. National trade associations have disclosed informative and explicative communications of the content of the Code to their members, while others have offered training through the Intranets of each of their members.

IV. Difficulties Encountered

It has been/still is necessary to amend the text of the European Standardised Information Sheet (ESIS) in only 3 Member States: Denmark, Spain and the UK.

- § **In Denmark, for practical reasons, the Consumer Credit Act, which implements the Consumer Credit Directive, is worked into the Code of Conduct so that banks are not required to give the same information twice.**
- § **The Spanish regulation is, substantially, very similar to the Code, but different in formal aspects. Therefore, it is necessary to adapt the national law to the formal requirements of the Code.**



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European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
European Association of Public Banks (EAPB)

§ In the UK, the Financial Services Authority (FSA) requires lenders to provide customers with a “Key Facts Illustration”, the format of which is strictly prescribed. The FSA considers that the KFI meets the requirements of the ESIS, albeit in a different format.

In Norway, some aspects of the Code do not correspond with the national legislation. As such, banks have asked for the necessary regulatory changes in order to put in line the existing information regime with the ESIS. That said, for the time-being at least, the Code remains in its original form.

While no amendment of the ESIS was necessary in Belgium, Belgian lenders do however make certain precisions to the ESIS in order to reflect national specificities. These precisions relate in particular to the nominal rate, the APRC, fixed-term loans, internal complaints schemes and the obligation to domicile bank account and salary with lender.

Other Member States, notably France and Ireland, have noted confusion from consumers as a result of overlaps between the ESIS and the ‘offre préalable’ in France and the ESIS and the loan offer cover sheet in Ireland.

It has been/still is necessary to amend national legislation to allow institutions to comply with the Code in only 2 Member States: Spain and the UK.

§ In Spain, a regulation to enforce the Code and resolve the problem of incompatibility between the Code and the national legislation is required.

§ UK: the prescribed KFI does not make inclusion of an amortisation table mandatory. In order to make the KFI fully compliant with the Code of Conduct, the FSA would therefore need to make inclusion of an amortisation table compulsory. It is unlikely that the FSA will do this, since its own consumer research indicated that such tables were not useful to UK consumers.

The Code’s provisions, or part of them (ESIS), were integrated into the national legislation of 4 Member States: Greece (indirectly); Spain; Italy and the UK.

§ Spain: The Code’s provisions will be transposed with a higher level of protection.

§ Italy: Banks, which have adopted the Code, are not obliged to comply with the Italian regulation on Pre-contractual Information.

§ UK: The Code of Conduct was originally based on the UK’s Mortgage Code, which goes well beyond the provisions of the Code of Conduct. All the provisions of the Mortgage Code have now been translated into the UK’s statutory regime. As such, any UK lender which used to



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European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
European Association of Public Banks (EAPB)

comply with the Mortgage Code, and which must now comply with the UK's statutory regime, is complying with and exceeding the requirements of the Code of Conduct.

The current Progress Report also examines the stage of the loan granting process at which credit institutions hand over the ESIS to the consumer:

In 10 Member States (BE ($\pm 30\%$); DK; DE (in the case of a binding offer); ES; FR; IE; NL; AT; PT and SW), the ESIS is handed over to the consumer together with the loan offer.

In 6 Member States (BE ($\pm 70\%$); GR; IT; LUX; AT; FI and the UK), the ESIS is handed out to the customer at the personalised contact stage, during which the candidate borrower's details and needs are identified.

In Norway and Estonia, the ESIS is only handed out to the consumer on request.

The timeframe, during which the consumer can 'shop around', varies from country to country and depends on whether the offer is legally binding or not (for more information, see EBIC letter to Commissioner Byrne dated 19 October 2004):

- § In Spain and Sweden, the consumer has up to 2 weeks to shop around.
- § In France, the consumer can shop around for up to 30 days.
- § In Belgium, the offer has to legally provide for a reflection period, which varies between 1 and 2 months depending on the lender.
- § In the Netherlands and Austria, the consumer has up to six weeks.
- § In Portugal, the consumer has up to 60 days.
- § In Denmark, the consumer has up to six months.
- § In Germany, Estonia, Cyprus, Ireland, Italy, Finland and the UK, the consumer has an unlimited period of time to shop around.

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European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
European Association of Public Banks (EAPB)

I. Take-up of the Code

1.1 How many banks and financial institutions have adhered to and implemented the Code in your country?

Country	Adhered to Code	Implemented Code
Belgium	27 ¹³	27 (see footnote 2)
Czech Republic	All 6 members of the EFBS are currently in the process of adhering to the Code.	-
Denmark	6 (all mortgage banks)	6 (all mortgage banks)
Germany	A very large number of members of the National Associations ¹⁴ , which amounts to a wide majority of credit institutions granting Home Loans. <ul style="list-style-type: none"> ○ vdp: 100% of its members ○ BDB: vast majority of its members ○ DSGVO: more than 80% of its members ○ BVR: 841 ○ VdpB, LBS: 27 (100% of its members) 	A very large number of members of the National Associations, which amounts to a wide majority of credit institutions granting Home Loans. <ul style="list-style-type: none"> ○ vdp: 100% of its members ○ BDB: vast majority of its members ○ DSGVO: more than 80% of its members ○ BVR: 841 ○ VdpB, LBS: 27 (100% of its members)
Estonia	6 (100% of its members)	6 (100% of its members)
Greece	21	21
Spain	-	-
France	42	40
Ireland	12	12
Italy	512	512
Cyprus	9	9

¹³ For the 1st progress report, the number was 35. Since 2002, however, a number of mergers have taken place in the Belgian market and other financial institutions have ceased their activities, explaining the new figure of 27 banks/financial institutions.

¹⁴ Verband Deutscher Hypothekenbanken (vdp), Bundesverband deutscher Banken (BdB), Deutscher Sparkassen- und Giroverband (DSGV), Bundesverband der Volks- und Raiffeisenbanken (BVR), Verband der Privaten Bausparkassen (VdpB), Landesbausparkassen (LBS).

European Banking Industry Committee

European Banking Federation (FBE) – 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)

Luxembourg	15	15
The Netherlands	124	124
Austria	<p>Almost all members of the European Associations, which amounts to a wide majority of credit institutions granting Home Loans.</p> <ul style="list-style-type: none"> ○ FBE: majority of its members ○ ESBG: 100% ○ EACB: 100% ○ EFBS: 100% ○ EAPB: 100% 	<p>Almost all members of the European Associations, which amounts to a wide majority of credit institutions granting Home Loans.</p> <ul style="list-style-type: none"> ○ FBE: majority of its members ○ ESBG: 100% ○ EACB: 100% ○ EFBS: 100% ○ EAPB: 100%
Portugal	21¹⁵	21
Finland	334	334
Sweden	85	85
UK	142 (all CML members)	142 (all CML members)
Norway	10	10

1.2 What is the total market share in home loans of those institutions which have adhered to or implemented the Code in your country?

Country	Adhered to the Code	Implemented Code
Belgium	90% +	90% +
Denmark	94%	94%
Germany	<ul style="list-style-type: none"> ○ vdp: 20% (100% of members) ○ BDB: 16% ○ VdpB, LBS: 29% ○ DSGVO (including Landesbanken) = approx. 35% 	<ul style="list-style-type: none"> ○ vdp: 20% (100% of members) ○ BDB: 16% ○ Vdpb, LBS: 29%
Estonia	99%	99%
Greece	95%	95%
Spain	-	-

¹⁵ Based on 2002 figures.



European Banking Industry Committee

European Banking Federation (FBE) – 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)

France	FBF: 40%, of which 17% are Savings Banks & Crédit Foncier	FBF: 30%
Ireland	99%+	99%+
Italy	96%	96%
Luxembourg	90%+	90%+
The Netherlands	99%	99%
Austria	80%	90%
Portugal	95.4% ¹⁶ (including consumer credit because no separate figures are available)	95.4%
Finland	99%	99%
Sweden	90%	90%
UK	98%	98%
Norway	40%	40%

Please explain which statistical or other source you have used to establish these figures and, if need be, how you have calculated them:

- § **Belgium:** Total Amount of Outstanding Mortgage Credits (“gross lending”) (Banque Nationale de Belgique & Union Professionnelle du Crédit)
- § **Denmark:** These figures are based on counts among the members of Realkreditrådet, the Bankers Association and the official figures from the Danish National Bank.
- § **Estonia:** Statistics from the national central bank
- § **Germany:** Deutsche Bundesbank, Banking Statistics February 2005, VDP Statistics, VdpB and LBS statistics, statistics from the German Institute for Economic Research (DIW).
- § **France:** Data provided by the adhering institutions.
- § **Greece:** The information used to calculate this figure has been drawn up from publications of the Bank of Greece.
- § **Ireland:** All members of Irish Mortgage Council have implemented and adhered to the Code. We estimate that IMC member institutions account for over 99% of residential mortgage lending in the Republic of Ireland.

¹⁶ Based on 2002 figures.

European Banking Industry Committee

European Banking Federation (FBE) –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)

- § **Italy:** The total market share of Italian banks, which have adhered to the Code, has been calculated on the basis of ABI internal statistics on banking activity in the mortgage credit.
- § **Luxembourg:** Estimation (no figures available)
- § **The Netherlands:** Nearly all Dutch banks and other mortgage lenders adhere to the (Dutch) Hypothecair Financiers and subscribe to the Code of Conduct for Home Loans.
- § **Austria:** Monthly report by the Austrian National Bank
- § **Finland:** Via the sampling method.
- § **UK:** Calculation of market share based on total value of mortgage advances outstanding

1.3 During 2005 or 2006, do you expect?

Country (% market share of implementing institutions)	New Adherents	New Implementations
Belgium	Yes	Yes
Czech Republic	Yes	Yes
Denmark (94%)	No	No
Germany	Yes: DSGVO, BVR No: vdp, BDB, VdpB, LBS	Yes: DSGVO, BVR No: vdp, BDB, VdpB, LBS
Estonia (99%)	No	No
Greece (95%)	No	No
Spain ¹⁷	Yes	Yes
France	No	No
Ireland (99%+)	No	No
Italy (96%)	No	No
Cyprus	No	No
Luxembourg (90%+)	No	No
The Netherlands (99%)	No	No
Austria	No (all associations)	No (all associations)
Portugal	FBE: Yes, 1 member	FBE: Yes, 1 member
Finland (99%)	No	No
Sweden (90%)	No	No
UK (98%)	No	No
Norway	No	No

¹⁷ Provided that the regulation resolving the problem of incompatibility between the Code and the national legislation is adopted.

European Banking Industry Committee

European Banking Federation (FBE) –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)

Hungary	Yes	-
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What market shares would these institutions represent? %

	New Adherents	New Implementations
Belgium	Negligible (would only concern small institutions)	Negligible (would only concern small institutions)
Czech Republic	Data not available	Data not available
Denmark	N/A	N/A
Germany	Data not available	Data not available
Estonia	N/A	N/A
Greece	N/A	N/A
Spain¹⁸	90-100%	90-100%
France	N/A	N/A
Ireland	N/A	N/A
Italy	N/A	N/A
Cyprus	N/A	N/A
Luxembourg	N/A	N/A
Hungary	12%	
The Netherlands	N/A	N/A
Austria	N/A	N/A
Portugal	Data not available	Data not available
Finland	N/A	N/A
Sweden	N/A	N/A
UK	N/A	N/A
Norway	N/A	N/A

1.4 According to the IFF Study¹⁹ on 30 September 2002, the situation was the following:

Country	General Info Given (%)	General Info given complete and correct
Belgium	94.3	

^{18 18} Provided that the regulation resolving the problem of incompatibility between the Code and the national legislation is adopted.

¹⁹ See IFF (Institut für Finanzdienstleistungen e.V.) Final Report dated 17 June 2003

European Banking Industry Committee

European Banking Federation (FBE) – 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)

Luxembourg		6.5%
Denmark		
Germany	54.6	
Greece	73.5	
Ireland	80.8	
Italy	4.3	
The Netherlands	68.6	
Austria	34.5	
Portugal	73.5	
Sweden	60.7	
Finland	100	

Country	ESIS Given (%)	ESIS complete and correct
Belgium	57.1	5%
Luxembourg		
Denmark		
Germany	54.3	
Greece	41.2	
Ireland	92.3	
Italy	21.3	
The Netherlands	94.1	
Austria	24.1	
Portugal	100	
Sweden	42.9	
Finland	100	

§ Has your national delegation been able to investigate problems encountered by national Credit Institutions which were surveyed by the IFF Consultant?

Country	Yes/No
Belgium	Yes
Denmark	Yes
Germany	Yes
Estonia	N/A
Greece	Yes
Spain	N/A

European Banking Federation (FBE) –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)

France	French institutions were excluded from the survey
Ireland	Yes
Italy	<ul style="list-style-type: none"> o Yes: EMF o No: EACB
Cyprus	N/A
Luxembourg	No
The Netherlands	No
Austria	<ul style="list-style-type: none"> o Yes: EFBS o No: ESBG, EACB, EAPB
Portugal	No
Finland	100% adherence and implementation
Sweden	No
UK	N/A

How can we explain the discrepancy between IFF figures and the figures produced by the Industry?

On a general basis and as indicated earlier, it is felt that the IFF Study was carried out too soon after deadline for implementation of the Code of Conduct. The measures taken by credit institutions to implement the Code would not yet have come into effect. Similar problems would have been encountered with any new procedure, be it of strictly commercial, regulatory or self-regulatory nature.

§ **Belgium:** The report did not take into consideration areas, where Belgium goes beyond the scope of the Code. A further inconsistency was the assessment of Belgium and Luxembourg together – the approaches to implementation may have been totally different and yet the two were examined together. It also appears from the assessment that the Consultant failed to understand or indeed take into consideration the specificities of the Belgian system.

§ **Denmark:** The consultant was obviously not able to grasp an understanding of the Danish mortgage system. As a consequence, it excluded Denmark, of which all of the 6 mortgage banks do apply the Code thoroughly, from its survey. To summarise the situation, no Danish mortgage lender would ever consider granting a mortgage loan in the absence of the concrete reference to a property to be mortgaged. So if, as was the case, no information is given about the property to be mortgaged and there is therefore no possibility of valuing this property, there will never be any kind of follow-up on the lender's side, which is the reason no personalised offer was ever made. This had been explained by Realkreditrådet beforehand, but

European Banking Federation (FBE) –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)

apparently with no effect. The consultant didn't use test personnel based in Denmark in possession of concrete information on a property. This problem was only resolved at the last minute by using the Danish Consumer Councils Test Panel in order to get the material. However, this was considered a breach of the anonymity of the test, and therefore Denmark didn't "count". The ESIS comes along with the loan offer, because there is no earlier stage at which the ESIS can be handed over. Moreover, if the consumer cannot meet the requirements to get a loan offer he/she cannot get the ESIS either. There have been discussions with the consultant about whether this discriminates consumers, and the industry maintains that this is not the case unless it is seen as a discriminate condition that the borrower must own a property in order to obtain a mortgage loan. Technically it is, but a legitimate one. Finally it must be mentioned, that it is free and not-binding to obtain a loan offer. It is often seen, that several loan offers with different loan types are obtained for the same property – from more than one bank.

§ Germany:

- The so-called mystery shopping method has not always led to representative results. In many member states the consultants did not give any information about the property to be mortgaged nor about their financial situation and the credit institutions were therefore not in a position to make a personalised offer in form of the ESIS.
- This study is based on the erroneous working hypothesis that the general information and the European Standardized Information Sheet (ESIS) would always have to be handed out during the first or second contact. The requirements of the Code do not warrant such an interpretation. Such a kind of interpretation is equally unwarranted from the point of view of the consumer, since it also fails to take account of the different routes for entering into contractual negotiations and therefore also the different consumer interests.
- The extremely low percentage score on the correct provision of the general information and concerning the personalized information sheet are not a true reflection of the reality and are most likely the result of a broad-brush statistical presentation. After all, formal irregularities are admittedly unfortunate, yet they are not essential by nature, nevertheless, in terms of statistics, they are obviously counted indiscriminately with the same priority as material errors.

Following the IFF study, ZKA (German Association of Credit Institutions) sent a letter to DG Sanco to highlight that the implementation period, before the first monitoring survey, was too short to allow satisfactory results. The mystery shopping survey was also not suitable to monitor whether the ESIS are been given as depending on the bank's policy, this info may be given at the second or third meeting with the consumer. The ZKA letter also mentions the lack of distinction between more formalist shortfalls detected in the IFF report, for example, an



European Banking Industry Committee

European Banking Federation (FBE) –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)

address or contact detail missing, and substantial shortfalls, for instance, when consumers are not informed via the ESIS about the right of withdrawal.

- **France:** When the Consultant's survey was conducted, France was not included in its scope because at that stage no credit institution had adhered to the Code.
- § **Greece:** The Hellenic Banks Association believes that the discrepancy between the IFF figures and the figures produced by the industry can be explained mainly by the fact that different criteria were used for the evaluation of the application of the Code. For example, according to IFF one of the elements of the Code with which institutions are required to comply is the indication of "name, address and telephone number for internal complaint scheme". According to IFF the percentage of banks operating in Greece which did not comply with this requirement was 57,1%. However, according to oral instructions received, it was sufficient to indicate the name, address and telephone number of the Banking Ombudsman. In any case, the Hellenic Banks Association's members have already corrected this and will inform the European Commission to this effect. Moreover, according to IFF Report, the indication that a copy of the Code is available in the institution was another requirement with which banks operating in Greece did not comply. However, the Association believes that this indication is not necessary providing that a copy of the Code is available at the branches of the banks operating in Greece with the logo of each bank. So, someone could reasonably assume that the Code is applied by the bank. In any case, HBA would like to confirm the intention of its members to apply the Code in a correct way; for this purpose it would be useful to clarify certain requirements of the Code in order to be sure that its implementation corresponds to the expectations of the European Commission.
- § **Ireland:** The Irish Mortgage Council is aware of a number of procedural aspects relating to the carrying out of the survey which would have added to the picture of less than full compliance. IMC drafted detailed comments regarding deficiencies in the Consultant's report at the time of its publication.
- § **Italy:** As to General Information, most of the banks have supplemented the information sheets called for by Italian regulations on transparency, which are posted in all bank branches. The fact that no specific document has been drafted (nor is one specifically called for by the Code) probably led those conducting the survey to consider that the information was not available to customers. The Code does not clearly specify at which stage of the precontractual phase the bank must give the ESIS to the customer and, above all, whether the customer must ask for it or whether the bank must produce it on its own initiative. In practice, Italian banks, in order to avoid producing a copy of the ESIS whenever a customer should ask for general information on mortgages, generally only make it available at customer's request, or when it is clear that the customer has a sufficiently clear idea of the type of product he is interested in. It follows that



European Banking Industry Committee

European Banking Federation (FBE) –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)

there might have been instances in which the ESIS was not given to the interviewers for this reason.

§ **The Netherlands:** The IFF Survey was purely formal and not material.

§ **Finland:** No problems were encountered.

1.5 Do the adhering institutions in your country publicise their application of the Code?

Country	Yes/No
Belgium	Yes
Denmark	Yes
Germany	Yes
Estonia	Yes
Greece	Yes
Spain	-
France	Yes
Ireland	No
Italy	Yes
Cyprus	Yes
Luxembourg	Yes: 1 institution No: 14 institutions
The Netherlands	No
Austria	<ul style="list-style-type: none"> ○ Yes: FBE (depending on individual institution), EACB, EFBS ○ No: ESBG, EAPB
Portugal	Yes: 10 institutions No: 1 institution
Finland	<ul style="list-style-type: none"> ○ Yes: ESBG ○ No: FBE, EACB
Sweden	Yes
UK	No
Norway	Yes

By which means:

§ **Belgium:** Generally in the “prospectus” (document provided for by the Belgian law on Mortgage Credit) and on the websites of individual credit institutions.

European Banking Industry Committee

European Banking Federation (FBE) –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)

- § **Denmark:** A brochure has been produced by Realkreditrådet. It is available in banks and on their websites.
- § **Germany:** Via the annual reports of the institutions, through the internet, individual contracts and by circulating the Code to partner banks. Members of the vdp, the VdpB and the LBS hand out a general information brochure. Member institutes also communicate their adherence to the Code via their own websites, via flyers and brochures within the bank office or at the intermediary and by informing their costumers by general means such as own brochures, letters, journals, posters etc.
- § **Estonia:** Via press releases, through the websites of the national association and its members and through information notices in all branches.
- § **France:** Via their websites, through press releases and stickers. Some institutions have not yet published their adhesion as a result of the delay in the process.
- § **Greece:** Via the internet (in the website of the majority of our members) and brochures on stands easily accessible by the public, at each branch.
- § **Italy:** Italian Banks publicise the adherence of Industry to the Code of Conduct through mass media (television and press) or during conferences on mortgage credit. Generally, individual banks publicise the adoption of the Code on their websites and through posters or stickers within the branches. In some cases, banks have sent a specific communication to their clients.
- § **Cyprus:** In a booklet.
- § **Luxembourg:** Via its website.
- § **The Netherlands:** The Code is available on the website of the Dutch Banks Association.
- § **Portugal:** In the press, via their websites and in their branches.
- § **Austria:** Via their websites.
- § **Finland:** ESBG - The press has been informed.
- § **Sweden:** Via their websites and in branches.

1.6 Are adhering institutions making copies of the Code of Conduct available in their premises on a general basis?

Country	Yes/No
Belgium	Yes
Denmark	Yes
Germany	Yes
Estonia	Yes
Greece	Yes
Spain	See comments
France	Yes

European Banking Industry Committee

European Banking Federation (FBE) – 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)

Ireland	Yes
Italy	Yes
Cyprus	Yes
Luxembourg	Yes
The Netherlands	Yes
Austria	Yes
Portugal	Yes
Finland	Yes
Sweden	Yes
UK	Yes
Norway	Yes

If yes, how do you/your members make copies of the Code available?

Country	Permanently via a website	In branches	A paper copy is handed out on request	Other
Belgium	Yes	Yes	Yes	
Denmark	Yes	Yes	Yes	
Germany	Yes: vdp, BVR (partly), VdpB, LBS	Yes: vdp, BDB, BVR (partly), VdpB, LBS	Yes (all Associations)	
Estonia	Yes		Yes	
Greece	Yes: for the majority of members	Yes (on easily recognisable stands)	Yes	
Spain	-	-	-	
France	Yes	Yes	Yes	
Ireland	Yes	Yes	Yes	
Italy	Yes	Yes	Yes: EMF	
Cyprus	Yes (via the national association)	Yes	Yes	
Luxembourg		Yes (1 institution)	Yes	
The Netherlands	Yes	Yes	Yes	
Austria	Yes: EFBS	Yes: EFBS	Yes: all associations	



European Banking Industry Committee

European Banking Federation (FBE) – 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)

Portugal	Yes	Yes	Yes	
Finland	Yes: FBE	-	Yes: ESBG, FBE	
Sweden	Yes	Yes	Yes	
UK	Yes	-	Yes	
Norway	-	-	-	

Comments:

- § **Denmark:** See comments for 1.5
- § **Estonia:** Copies of the Code are available on request: bank employees print them from the web - either from the national association's site or from their own.
- § **Spain:** Spanish lenders have not yet adhered to the Code and as such do not make copies of the Code available. Lenders do however make copies of the relevant information prescribed in the national law available.
- § **France:** The situation varies from one institution to another. All methods are used in varying proportions, the most common way being the provision of the Code on demand.
- § **Ireland:** The IMC understands that each of the above practices exists and that different lenders take different approaches.
- § **The Netherlands:** The Code is available on request.
- § **Sweden:** The Swedish Bankers Association has produced a brochure in accordance with the Code with general information on the home loans market.
- § **UK:** Copies are available on request: lenders are able to print them from the web – either the CML's site or their own.

II. Code Coverage

The wording of the Code concerning its scope is as follows: "A "home loan" is a credit to a consumer for the purchase or transformation of the private immovable property he owns or aims to acquire, secured either by a mortgage on immovable property or by a surety commonly used in a Member State for that purpose".

2.1. Are the following types of loans offered and covered by the Code in your country:

	Mortgage withdrawal loans		Non-secured housing loans		Loans with mixed purpose of housing and consumption	
	Offered	Covered	Offered	Covered	Offered	Covered
Belgium	Yes (rare)	No	Yes (rare)	No	Yes (rare)	No

European Banking Industry Committee

European Banking Federation (FBE) – 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)

Denmark	Yes	Yes	No	No	Yes	Yes
Germany	Yes: vdp, BDB, DSGVO, BVR (rare) No: VdpB, LBS	Yes: vdp, BDB, DSGVO, BVR	Yes: vdp, BDB, DSGVO, BVR No: VdpB, LBS	Yes: vdp, BDB, DSGVO, BVR	Yes: vdp, BDB, DSGVO, BVR No: VdpB, LBS	Yes: vdp, BDB, DSGVO, BVR
Estonia	Yes	No	No	No	Yes	Yes
Greece	Yes	No	No	-	No	-
Spain	Yes: EMF No: ESBG	-	No: EMF, ESBG	-	Yes: EMF, ESBG	-
France	No		Yes	Yes	No	
Ireland	Yes	Yes	No	-	Yes	Yes
Italy	Yes	No (see comment)	No	-	Yes	Yes
Cyprus	No	-	-	-	Yes	-
Luxembourg	Yes	No	Yes (1 institution)	Yes (1 institution)	No	No
The Netherlands	Yes	No	No	-	Yes	Yes
Austria	Yes: FBE, ESBG, EACB	Yes: FBE, ESBG No: EACB	Yes: FBE, ESBG, EACB (rare), EFBS	Yes: FBE, EACB No: ESBG	Yes: FBE, ESBG, EACB	Yes: FBE, ESBG, EACB (partly)
Portugal	Yes (7 institutions)	Yes (3 institutions)	Yes (1 institution)	Yes (1 institution)	Yes (7 institutions)	Yes (3 institutions)
Finland	Yes: ESBG, EACB	Yes: ESBG No: EACB	Yes: FBE No: ESBG, EACB	Yes: FBE No: ESBG, EACB	Yes: ESBG, EACB	Yes: ESBG No: EACB
Sweden	Yes	Yes	-	-	Yes	Yes
UK	Yes	Yes	Yes	No	Yes	Yes
Norway	Yes	Yes	No	-	Yes	Yes

Comments:

§ **Belgium:** Mixed loans are covered by the Code (and the law on mortgage loans) only if the purpose of housing is predominant and the loan is secured. Otherwise the loan will be covered by the consumer credit law just like the other types of loans mentioned.

European Banking Federation (FBE) –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)

- § **Denmark:** There is no legal access to make distinctions between loan purposes in Denmark. Therefore the definition of loans covered by the Code of Conduct quite simple that it is secured by a mortgage on a property that is legally defined as a home. Danish mortgage banks thus – in reality - do offer mortgage withdrawal loans – but they cannot be distinguished from other loans.
- § **Estonia:** In practice, there are no non-secured housing loans in Estonia.
- § **France:** Non secured loans are offered and could probably be covered by the Code.
- § **Germany:** The full range of products mentioned is not offered by all credit institutions.
 - **EACB:** In the case of non-secured home-loans, which are rare in Germany, the credit institute is to be informed about the specific usage because otherwise the code will not be applicable. A specific investigation of the purpose of use will not be carried out.
- § **Italy:** In Italy, mortgage withdrawal loans are not specifically excluded from the scope of application of the Code of Conduct. However, most of the banks interviewed do not apply the Code to this type of loans.
- § **Finland:** In practice, there are no non-secured housing loans in Finland
- § **Sweden:** The Code is applied differently by different institutions. Mortgage withdrawal loans and loans with a mixed purpose are offered by some institutions but not by others.
- § **UK:** Loans with a mixed purpose are covered provided the whole loan is secured on the borrower's property. Unsecured loans are not covered. They are regulated by the Office of Fair Trading via the Consumer Credit Act 1974.

2.2 Would you support extending the scope of the Code of Conduct to include them?

Country	Yes/No
Belgium	No
Denmark	Yes
Germany	<ul style="list-style-type: none"> ○ Yes: vdp, BDB, DSGVO, BVR ○ No: VdpB, LBS
Estonia	No
Greece	Yes
Spain	Yes
France	Yes
Ireland	Yes
Italy	Yes
Cyprus	Differing views
Luxembourg	N/A

European Banking Federation (FBE) –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)

The Netherlands	Yes
Austria	<ul style="list-style-type: none"> ○ Yes: ESBG ○ No: FBE, EACB, EFBS, EAPB
Portugal	<p>Yes: 10 institutions</p> <p>No: 1 institution</p>
Finland	No
Sweden	Yes
UK	Yes
Norway	No

Comments:

- § **Belgium:** As long as the scope of the Belgian consumer credit law (CCL) is not amended. Indeed, while the very strict provisions of the CCL are for the time applicable, the fact that the mortgage withdrawal loans would be covered by the Code would mean that in addition the institution would have to respect complementary rules as there is the application of the European Standardised Information Sheet. This would become impracticable.
- § **Denmark:** Yes, as described above this is already the case in Denmark due to national regulation.
- § **Estonia:** If non-secured housing loans were introduced in Estonia, these should be covered by the Code of Conduct.
- § **Germany:**
 - **vdp:** In Germany, mortgage withdrawal loans, while not representing a significant market share, fall within the scope of the Code of Conduct.
 - **VdpB, LBS** - This kind of credit is usually sold in Great Britain, Ireland and the Netherlands. For most of the continental jurisdictions there is no need to change the scope of this Code. In any case, any extension of scope of the Code requires the support of the consumer representatives. This Code covers Home Loans .i.e. credit agreement for housing purposes. Mortgage withdrawal loans are not for housing purposes. The clear distinction between the purpose of the loan will be contradicted by such an amendment. The need for a distinction based on the purpose is important due to the fact that home loans are secured by collateral. The value of the collateral and the credit are equivalent; the value of mortgage withdrawal loans is not equivalent due to the consumption. This different risk profile requires an adequate legal treatment by the distinction of the loan due to its purpose.
- § **Ireland:** Mortgage withdrawal loans are already covered by the Code of Conduct in Ireland.
- § **Italy:** The Italian Banking Association (ABI) is in favour of a wide use of self-regulation in the mortgage lending field.

European Banking Industry Committee

European Banking Federation (FBE) –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)

- § **The Netherlands:** The mortgage lender does not know the purpose of the credit in all cases. By extending the scope to all credits secured by a mortgage on a house, there would be an objective criterion.
- § **UK:** Mortgage withdrawal loans are already covered under the UK’s statutory mortgage regulation.

2.3 Would you support a proposal to extend the application of the Code to cover credit intermediaries?

Country	Yes/No
Belgium	See comment
Denmark	Yes
Germany	§ Yes: vdp, BDB, DSGVO, BVR § No: VdpB, LBS
Estonia	Yes
Greece	Yes
Spain	Yes
France	No: FBF
Ireland	Yes
Italy	Yes: EMF
Cyprus	Differing views
Luxembourg	Yes
The Netherlands	Yes
Austria	No: FBE, EACB, EFBS, EAPB
Portugal	Yes: 10 institutions No: 1 institution
Finland	No
Sweden	No
UK	Yes
Norway	-

Comments:

- § **Belgium:** The idea in itself i.e. a code covering intermediaries seems plausible. Nevertheless, it should add some value. Indeed in Belgium,
 - when the intermediary operates with two or more mortgage institutions who have adhered to the Code and implement it, and

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European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
European Association of Public Banks (EAPB)

- when, more precisely, the intermediary hands over the “mortgage credit prospectus” (gathering all of the general information requirements) of the mortgage institution(s) and, in due time, the ESIS prepared by the mortgage institution(s), the intermediary already respects the provisions of the Code.

As such, while there are no specific complementary rules of for example due precontractual practices in handling the file of the future borrower, there would be no direct advantage in Belgium in extending the application of the Code to cover intermediaries. On the other hand, if it were to occur, extension of the Code to cover intermediaries should also involve the constitution of a register specific to intermediaries, which would concretise their commitment.

§ **Denmark:** If they are authorised to issue loan offers; otherwise it is probably not possible or relevant.

§ **Germany:**

- **vdp:** vdp members would support the extension of the application of the Code to cover credit intermediaries as this would assure a level-playing field for the whole credit industry.
- **VdpB, LBS:** There is no need for an extension of the Code of Conduct for intermediaries. Intermediaries need to sign the Code, if they intend to adhere to the Code. Furthermore, intermediaries are already bound by the credit institution for whom they distribute the respective loans. Only for independent brokers, which are most common in Great Britain and Ireland, would it make sense to request an explicit extension of the scope of Code of Conduct.

§ **Estonia:** There should be equal treatment and a level-playing field for the whole credit industry.

§ **Greece:** However the adoption of the Code of Conduct by intermediaries requires further technical elaboration, especially regarding the control of its application. In Greece, the role of credit intermediaries is, for the time being, limited to the provision of information and they are not involved in the lending procedure.

§ **Spain:** This will increase transparency and the harmonisation of the mortgage credit process.

§ **France:** Intermediaries are not directly concerned because they play a role at a very early stage in the lending process.

§ **Ireland:** However the Irish Mortgage Council would not be in a position to encourage the application of Code provisions by intermediaries. There is no single representative body for mortgage intermediaries in Ireland. The only practical means of extending to this sector may therefore be through the intervention of the national authorities. Borrowers would currently receive an ESIS regardless of whether they transact via a mortgage intermediary. Any documentation provided by the intermediary in respect of specific mortgage lenders' products would be compliant.

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European Association of Public Banks (EAPB)

- § **The Netherlands:** In the Netherlands, the mortgage lender has a duty to ensure that a credit intermediary complies with the Code.
- § **Portugal:** for reasons of transparency, the goal should be to cover all agents in the market
- § **Finland:** Credit intermediaries do not exist in Finland.
- § **Sweden:** Credit intermediaries do not exist in Sweden.
- § **UK:** Credit intermediaries are already covered by the UK's statutory mortgage regulation.

III. Staff training

3. Have you/your members provided your staff with training activities on how to implement the Code?

Country	Yes/No
Belgium	Yes
Denmark	Yes
Germany	Yes
Estonia	No (see comments)
Greece	Yes
Spain	See comments
France	Yes: FBF No: ESBG
Ireland	No
Italy	Yes
Cyprus	Yes
Luxembourg	Yes
The Netherlands	No
Austria	Yes
Portugal	Yes: 11 institutions No: 1 institution
Finland	Yes
Sweden	Yes
UK	See comments
Norway	No

Comments:

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European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
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- § **Belgium:** Circular letters of the professional association (UPC) - Study day organised by the professional association – VADEMECUM of the professional association (chapter on the Code).
- § **Denmark:** On a general level. The staff already has considerable experience drawn from the Danish implementation of the Consumer Credit Directive.
- § **Germany:**
 - **vdp:** Training activities include for example seminars, workshops and internal briefings and compendiums.
 - **VdpB, LBS:** The application of the Code with the obligation to hand out the general information as well as the ESIS is part of the training of any intermediary and bank employee which they need to undertake before selling any product to the consumer. Most of the members of the VdpB and LBS even integrated the process of handing out the ESIS within their IT process. This means that it is not possible to continue the sales process with the customer before printing and handing out the ESIS.
- § **Estonia:** The Code is clear and complete. Some round table discussions have taken place. Banks have given appropriate written instructions to the branch network on how to implement the Code.
- § **Spain:** Staff have not been trained on the Code, but rather on the applicable national law.
- § **France:** The ESIS is automatically produced in an IT programme simultaneously with the 'offre préalable'. Both documents are then printed and handed over together to the consumer.
- § **Ireland:** Compliance with the Code primarily related to the updating of the marketing information and the revision of systems and processes to provide for the issuance of the ESIS.
- § **Italy:** Generally, Italian banks have given appropriate written instructions to the branch network on how to implement the Code. Federcasse has predisposed and disclosed informative and explicative draft/communications of the content of the code. In the last two years it has been taken care moreover to inform or prevent the banks on the developments of the implementation of the code. It has been predisposed the pamphlet for the customer.
- § **Cyprus:** The majority of banks offer training.
- § **Portugal:** Training has been mainly carried out through the Intranet of each member. Some members have provided training on a continuous basis.
- § **UK:** All staff has been trained on the new UK regulatory regime, which incorporates the Code of Conduct.

IV. Difficulties encountered

4.1 Was it necessary to amend the text of the European Standardised Information Sheet (ESIS) because of domestic rules which are mandatory?

Country	Yes/No
Belgium	No
Denmark	Yes
Germany	No
Estonia	No
Greece	No
Spain	Yes
France	No
Ireland	No
Italy	No
Cyprus	No
Luxembourg	No
The Netherlands	No
Austria	No
Portugal	No
Finland	No
Sweden	No
UK	Yes
Norway	No

Comments:

- § **Belgium:** Concerning Belgian mortgage credit legislation, the ESIS does not really present any problems. The ESIS model has therefore not been modified. That said, to reflect Belgian specificities, Belgian companies either make certain precisions in the right-hand column regarding the nominal rate, the APRC, fixed-term loans, internal complaints schemes and the obligation to domicile bank account and salary with lender, or express their reply in such a way as to ensure that the Belgian specificity is taken into consideration.
- § **Denmark:** For practical reasons, the consumer Credit Act, implementing The Consumer Credit Directive, is worked into the Code of Conduct, in order that the banks do not have to give the same information twice.

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European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
European Association of Public Banks (EAPB)

- § **Spain:** The Spanish regulation is, substantially, very similar to Code, but different in formal aspects. Therefore, it is necessary to adapt the national law to the formal requirements of the Code.
- § **France:** Legally, there have been no problems but in practice, there has been some confusion amongst consumers, as they also receive the 'offre préalable', which is very similar to the ESIS.
- § **Ireland:** Domestic rules were not amended. However, there is a high degree of overlap between the ESIS and the loan offer cover sheet provided for under the Irish Consumer Credit Act, 1995. Both are supplied at this point as separate documents in the prescribed format. The information required in the ESIS has a large area of overlap with the standardised information which must be included on the front page of an agreement for a housing loan under Section 129 of the Consumer Credit Act, 1995. In practice, the agreement for a housing loan is in fact the letter of offer. As the ESIS is also issued at the same time as the letter of offer, this results in the lender having to issue two separate versions of standardised information, which although similar, are not identical. This results in a situation which is confusing rather than informative for consumers. The mortgage lending industry in Ireland made repeated representations to the Authorities, requesting that this requirement in the Consumer Credit Act be amended such that compliance with the Code would suffice. However, this request was not acceded to, and the situation as outlined above persists. Given the significant efforts made by the industry to comply with the Code, this response is most disappointing. In addition to the Code, Irish mortgage lenders must comply with Part IX of the Consumer Credit Act, which includes a range of pre-contractual information requirements, which are over and above those set out in the Code
- § **UK:** The Financial Services Authority's Mortgage Conduct of Business (MCOB) rules require UK lenders and mortgage intermediaries to provide customers with a "Key Facts Illustration" before an application is made for a particular mortgage loan. The format of this KFI is strictly prescribed: however, the FSA has always been aware of the ESIS, and considers the KFI to meet the requirements of the ESIS, albeit its format is slightly different.

4.2 Does legislation in your country need to be amended to allow institutions to comply with the Code?

Country	Yes/No
Belgium	No
Denmark	No
Germany	No
Estonia	No



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European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
European Association of Public Banks (EAPB)

Greece	No
Spain	Yes
France	No
Ireland	No
Italy	No
Cyprus	No
Luxembourg	No
The Netherlands	No
Austria	No
Portugal	No
Finland	No
Sweden	No
UK	Yes
Norway	No

Comments:

§ **Belgium:** See 4.1

§ **Spain:** See 4.1

§ **France:** No, but each bank has decided that the ESIS and the 'offre préalable' be merged in order to end the confusion for consumers and decrease handling costs for banks.

§ **Ireland:** Not as such, but it could assist in reducing information overlap (see 4.1)

§ **UK:** Strictly speaking, yes: the prescribed KFI does not make inclusion of an amortisation table mandatory. In order to make the KFI fully compliant with the Code of Conduct, the FSA would therefore need to make inclusion of an amortisation table compulsory. We believe it is unlikely to do this, since its own consumer research indicated that such tables were not useful to UK consumers.

4.3 Were the Code's provisions or part of them (ESIS) integrated into your national legislation?

Country	Yes/No
Belgium	No
Denmark	No
Germany	No
Estonia	No
Greece	Yes, indirectly
Spain	Yes

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European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
European Association of Public Banks (EAPB)

France	No
Ireland	No
Italy	Yes
Cyprus	-
Luxembourg	No
The Netherlands	No
Austria	No
Portugal	No
Finland	No
Sweden	No
UK	Yes
Norway	No

Comments:

- § **Belgium:** The Code's provisions are to be respected complementarily but voluntarily. As such, they are not considered to be a public order complementary to Belgian mortgage credit legislation and thus were not integrated in this law. The Belgian control authority, the "Commission bancaire, financière et des assurances", does not investigate whether or not mortgage lenders comply with the terms of the Code. In case of dispute, the civil law judges can consider that an institution does not respect the Code.
- § **Estonia:** There was no need for integration; the provisions of the Code are in conformity with the Law.
- § **Spain:** The Code's provisions will be transposed with a higher level of protection.
- § **Ireland:** No, despite requests from the industry.
- § **Italy:** Banks, which have adopted the Code, are not obliged to comply with the Italian regulation on pre-contractual information.
- § **The Netherlands:** The European Code of Conduct is integrated into the national Code.
- § **Portugal:** The Bank of Portugal issued an internal regulation to deal expressly with the Code.
- § **UK:** The Code of Conduct was originally based on the UK's Mortgage Code, which goes well beyond the provisions of the Code of Conduct. All the provisions of the Mortgage Code have now been translated into the UK's statutory regime: it remains the case, therefore, that any UK lender which used to comply with our Mortgage Code, and which must now comply with the UK's statutory regime, is complying with and exceeding the requirements of the Code of Conduct.

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European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
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4.4 In your country, at which stage of the loan granting process do the credit institutions hand over the ESIS to the consumer on a general basis? How long before the conclusion of the contract would that leave the consumer for shopping around?

§ **Belgium:**

- **Step 1:** 1st contact and general / marketing information or advertising

This step coincides, in principle, with disclosure of the Code of Conduct's general information. Lenders' basic brochure / "prospectus" available at the branch is explained orally and/or handed to the interested customer. It is possible that the candidate borrower makes this step by means of internet, including the consultation of the Code of conduct (and the ESIS model).

- **Step 2:** Personalised contact and identification of candidate borrower details and needs

In about 60 % of the cases (also major lenders): drafting and disclosure of the ESIS (ESIS is not binding). Lenders then give the candidate borrower the opportunity to examine (at home) the ESIS and to return or not afterwards to the lender to complete the credit demand. In this case, the credit demand becomes the next step. The candidate borrower completes a credit demand (requests an offer).

In the case of some (also major) lenders (about 10 % of the cases), it is immediately after the reception by them of the demand (thus in a third step) that they are able to draft the ESIS on the basis of the data in the demand and that this ESIS is (immediately) disclosed to the candidate borrower.

- **Step 3:** Loan processing (internal procedure)
- **Step 4:** Bank issues and sends an offer based on personalised information provided under step 2. In about 30 % of the cases (also major lenders) : deadline for ESIS disclosure (sent with the offer). The offer is binding for the lender

Remarks:

Obstacles, both legal and technical, including costs, which prevent Belgian credit institutions from disclosing the ESIS at step 2 (personalised contact):

(Reasons for disclosure in Belgium of the ESIS in step 4)

1. For reasons of procedure and programming;
2. When the credit institution works with independent intermediaries it is impossible to release the ESIS at an earlier stage.

Once the offer has been handed over, the consumer benefits from a legally-prescribed reflection period (the length is not specified in law). This reflection period varies between 1 and 2 months depending on the lender. The consumer can use his ESIS to shop around right up until the end of this period, when the lender must receive agreement on the offer.



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European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
European Association of Public Banks (EAPB)

- § **Denmark:** The ESIS comes along with the loan offer leaving the consumer with a 6 month option on the loan that leaves a fair opportunity to shop around and obtain comparable offers.
- § **Germany:** There are two techniques for granting a loan in Germany. According to the first technique, the consumer is given an (non-binding) invitation to make an offer and according to this approach, it may be possible to hand over the ESIS together with the invitation and subsequently before the offer. With the second technique, the offer is binding and the ESIS is given together with the binding offer, so as to avoid an overload of documents being issued to the consumer. In any case, both models involve the provision of the ESIS during the precontractual stage and allow time for comparison and reflection. In both cases, the consumer is not forced to conclude a loan contract.
- § **Estonia:** The ESIS is available upon request, at any time, without binding obligations on either the customer or the bank.
- § **Greece:** The ESIS is available upon request, at any time, without binding obligations on behalf of the customer or the Bank. Some of the Hellenic Banks Association's members provide the ESIS at the second stage of the lending procedure, i.e. at the second visit of the client to the Bank.
- § **Spain:** When the consumer requests a mortgage loan, the lender will hand out the information brochure free of charge. A written offer shall contain a list of (additional) elements and be signed by the lender. The offer will be valid for at least 10 working days.
- § **France:** No agreement has been reached at national level but as a rule, the ESIS is handed over together with the "offre préalable" and the consumer has then a 10-day reflection period before signing the credit contract. Furthermore, the bank has to maintain its credit offer over a 30-day period; therefore, the consumer has a further 20-day period to make his decision and sign the contract if he wishes.
- § **Ireland:** The ESIS is generally provided with the letter of offer. The letter of offer is not binding until signed and returned and therefore the borrower has as much time as he / she would require to shop around. We are totally opposed to a requirement to issue the ESIS at an earlier stage. Its provision with the letter of offer means the lender is able to ensure its provision. Letter of offers issue when a loan application has been underwritten. It would be misleading to provide an ESIS before underwriting has taken place as comparing loans which may or may not be offered by lenders is hardly of assistance to a consumer.
- § **Italy:** Italian banks hand over the ESIS at customer's request, or when it is clear that the customer has a sufficiently clear idea of the type of product he is interested in. However, it leaves time to the client for shopping around.
- § **Cyprus:** The ESIS is usually handed over at the initial (pre-contractual) stage before submitting the loan application. There are no time constraints.

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European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
European Association of Public Banks (EAPB)

- § **Luxembourg:** The ESIS is usually handed over during the first meeting when the consumer requests a housing loan, or on request.
- § **The Netherlands:** On a general basis, the ESIS is incorporated in the written offer. The consumer generally has up to six weeks to accept or to refuse the offer.
- § **Austria:**
 - **FBE:** In general, the ESIS is handed over during a first counselling interview, when the relevant client data is available.
 - **ESBG:** The ESIS is merged with the offer and thus gives the ESIS a binding status. This is a useful and valuable system for the consumer, who is still able to shop around.
 - **EACB:**
 - **Raiffeisenbanken:** The ESIS is handed over together with the offer. How long the consumer can shop around depends on how long the bank is bound to the offer. The binding-time depends on the bank: 2-6 weeks.
 - **Volksbanken:** The ESIS is handed out when the consumer expresses seriously their financing aim in a counselling interview.
- § **Portugal:** A range of practices exists, however, the general trend is to hand over the ESIS to the client when a simulation is prepared based on the query presented by the client. The average time of validity is 30 to 60 days.
- § **Finland:** The ESIS is handed over when the consumer requests the credit. The consumer has as much time as he/she wants to shop around.
- § **Sweden:** This varies to some extent between the institutions. Normally, the ESIS is handed over when the loan offer is made. The consumer would then have one or two weeks to shop around. This period can be extended.
- § **UK:** The FSA's rules require the KFI to be provided before the customer applies for a particular mortgage. The customer can take as long as he wishes to decide whether or not to apply – obtaining a KFI does not commit him to making an application. He therefore has every opportunity to shop around and obtain other KFIs from other lenders.
- § **Norway:** While no savings banks have adhered to the Code, the Norwegian Savings Banks have incorporated the ESIS, which is handed out upon request.

4.4 General assessment and suggestions

- § **France:** Flexibility is necessary, in which case the timing for handing over the ESIS should remain as it stands in order to allow lenders to adapt their national mandatory rules. A different (binding) timing for handing over the ESIS might lead some banks to withdraw their adhesion to the Code.



European Banking Industry Committee

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European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
European Association of Public Banks (EAPB)

§ **Greece:** It should be absolutely clear what the requirements of the Code are in order to implement it in the same way in all the member states.

§ **Ireland:**

- The Commission should be asked to publish the responses which Member States made in respect of Article 4 of the Recommendation.
- Given the resources which the industry has invested in the Code, the Commission should be asked to liaise more closely with the authorities in Member States to address issues which have arisen in relation to national legislative requirements.
- The requirement to produce amortisation tables should be reviewed as it is a complex process, resulting in potentially misleading information.

§ **Italy:** The level of correct implementation of the Code is certainly much higher than that was surveyed in the study commissioned by the European Commission.

§ **Luxembourg:** The ESIS certainly fulfils the needs, for which it is designed. However, experience has shown that neither the Code, nor even the ESIS, are of interest to consumers.

V. Reactions from Consumers and consumers' organisations:

§ **Belgium:** In its editorial published in November 2004 in Budget & Droits, the Belgian Consumers Association, Test-Achats, request a Directive, which according to them, is the only way to favour harmonisation of the mortgage market. Moreover, according to the Consumer Association, such a directive should regulate more than just the provision of information. They suggest that a directive should consolidate those clauses in the different pieces of national legislation, which are favourable to consumers.

§ **Denmark:** The Danish Consumers Council has approved of the Code of Conduct, and supported it i.e. with co-signature when we had to write to the Commission to explain why the iff-report was at fault in Denmark. They have signalled that they opted for more regulation, but they have approved on the Code of Conduct.

§ **Germany:** Many consumers are rejecting additional information and are usually not willing to read the information offered to them. There are often complaints about information overload. Many consumers see the ESIS as superfluous because the information contained is already in the draft contract or discussed before concluding the contract.

§ **Estonia:** The Consumer Protection Board has expressed its satisfaction with the Code. There has been no particular reaction from consumers themselves.

§ **Greece:** Reactions have been positive.

§ **Spain:** Consumers seem not to worry about the non-implementation of the Code because the existing national rules go further than, what is provided in the Code.



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European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
European Association of Public Banks (EAPB)

- § **France:** In general terms, French consumer associations are not in favour of self-regulation; for the specific sector of mortgage credit. Consumers are protected by binding rules on 'preliminary legal offer' (offre légale préalable) covering the content of the ESIS.
 - § **Ireland:**
 - Some confusion regarding the duplication of information provided as noted under item 5.1.
 - Some level of queries re the accuracy of amortisation tables provided, beyond the initial period.
 - § **Cyprus:** Reactions are generally positive because the information is provided before obtaining the loan.
 - § **Norway:** No reaction. The Code is unknown and consumer organisations are not interested.
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European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
European Association of Public Banks (EAPB)

List of Abbreviations contained in the Report

APRC -	Annual Percentage Rate of Charge
BdB -	Bundesverband deutscher Banken
BVR -	Bundesverband der Volks- und Raiffeisenbanken
CML -	Council of Mortgage Lenders
DSGV -	Deutscher Sparkassen- und Giroverband
EACB -	European Association of Cooperative Banks
EFBS -	European Federation of Building Societies
EMF -	European Mortgage Federation
ESBG -	European Savings Banks Group
ESIS -	European Standardised Information Sheet
FBF -	Fédération Bancaire Française
FSA -	Financial Services Authority
FBE -	European Banking Federation
IFF -	Institut für Finanzdienstleistungen
KFI -	Key Facts Illustration
LBS -	Landesbausparkassen
UPC -	Union Professionnelle du Crédit
vdp -	Verband Deutscher Pfandbriefbanken
VdpB -	Verband der Privaten Bausparkassen