

7 November 2003

Implementation of the code of conduct on harmonised information to be made available to consumers concerning "home loans" – the IFF Report

Dear Commissioner,

I am writing to you on behalf of BEUC, the European Consumers Organisation. BEUC is a federation of 36 national consumer organisations in 26 European countries as regards the IFF Report on the implementation of the Voluntary Code of Conduct on Pre-Contractual Information for Home Loans.

As you know, the guidelines were agreed in the form of a Voluntary Code of Conduct between the EU mortgage-lending industry and consumer groups. A deadline of 30th September 2002 was agreed by the industry for compliance with the provisions of the code.

In terms of the work, time and expertise invested by BEUC (and industry representatives) in negotiating this code the results are negligible and deeply disappointing. The only good result to come from it is a clear lesson in what not to do for the future.

A significant number of lending institutions do not even claim to comply with the code. For some of them it is said that more time is needed, although their representatives had agreed on the deadline set.

An unknown number of lending institutions are not members of the relevant industry federations and are not therefore in principle committed to the code – although their customers/consumers are presumably as much in need of better information than anyone else.

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Of those who claimed to comply with the code, a minuscule 5% actually did so. 95 % of those claiming to comply actually did not do so.

- For their sake we hope that they have not made claims of compliance in their advertising - given the terms of the Misleading Advertising Directive.
- These institutions cannot reasonably claim shortness of time as an alibi. If they could not meet the agreed deadline they should have said they needed more time and not claimed compliance.
- We believe the compliance rate would have been much higher (even to 100% we would hope) if the requirements of the code had been binding. This current experience gives reason to suppose that lending institutions would give more care and attention to complying with

binding measures than they do to complying with a voluntary code, albeit one negotiated on their behalf and with their agreement.

- In some member states there are binding measures that cover or go farther than the provisions of the code. In these countries, the level of compliance with the code tended to be relatively higher than elsewhere. This was due, we believe, to the relevant national law and not to any greater commitment to the code in the countries concerned. We cannot give much credit to institutions that “voluntarily” meet the standards of a code when they are required by law to meet equivalent or higher standards. Clearly, the best way of ensuring compliance with a “voluntary” code is to make it mandatory.
- Even in cases of compliance it is doubtful if consumers are receiving the necessary information in circumstances and at a time when they can readily “shop around” and compare one personalised offer with another.

It is worth recalling the process by which the code was agreed. Negotiations with up to eight industry associations took place over three years. They absorbed a considerable proportion of the limited resources of time, personnel and expertise on the consumer side. Progress at times was painfully slow, partly because of the (legitimate) need of the European industry associations to consult their national federations (which also had to consult their individual members). The precise phrasing and meaning of different provisions of the draft code was at times exhaustively discussed. There were good and positive relationships between the negotiators. The Commission representatives intervened frequently and actively in the negotiations, and behind the scenes, to promote agreement.

Agreement was reached and sealed in a well publicised ceremony in March 2001 in the presence of the Commissioner. The Commission then issued a Recommendation endorsing the agreement and the Code of Conduct and inviting the Member States and all lenders offering home loans in the EU to comply with its terms no later than 30 September 2002.

From the outset the negotiations covered only the provision of information at a certain stage to potential homebuyers. We agreed to this limitation for these negotiations but have always pointed out that many other changes are needed to provide better protection to consumers and to create a single market in home-loans. Given the limited scope of the negotiations the actual outcome is even more disappointing. An attempt to improve consumer protection by way of a code of practice has not succeeded in meeting even the very limited goals set.

Non-compliance with the Code of Practice automatically implies non-compliance with the Commission recommendation supporting the Code. In the proposal for a directive on consumer credit in September 2002 the Commission excluded most mortgages covered by the recommendation. The Commission also explicitly pointed to the agreement on the code as the reason for excluding most mortgages from the scope of the directive. This decision was wrong ab initio because the recommendation and code were intended to deal only with a limited range of consumer concerns about mortgages. Given the level of non-compliance in addressing even these limited concerns there is even less excuse for excluding most mortgages from the scope of the consumer credit directive.

In pressing for negotiations on a code, and in response to some skepticism on our part, the Commission said: 'If the Commission concludes from its monitoring of the implementation of the Code that compliance is unsatisfactory or that insufficient numbers of mortgage lenders have signed up to the Code, it may consider proposing binding legal instruments.' Now is the time for the Commission to honour that commitment.

For our part we have done all that we can do or could reasonably be expected to do to try to improve the level of consumer protection in the mortgage market by way of a code or voluntary agreement. We acknowledge also the considerable commitment made by the European industry federations to this effort. The Commission also played an active part in the process, going far beyond the role of "ring holder". All parties tried their best over a long time with little or no positive results, even in terms of the limited goals set for the project. We conclude from this that voluntary agreements or codes of practice are not the way to improve consumer protection or create a single market in home loans. Certainly, BEUC will not participate further in any such exercise.

The (failed) experiment of negotiating an EU wide code on certain limited aspects of home loans also carries wider lessons in relation to current discussions on new forms of regulation. The Commission and others frequently cited the negotiations on a voluntary code as a shining example of the consumer-industry dialogue and as a new and potentially more fruitful form of regulation. Insofar as the dialogue process itself was concerned there was a strong commitment all round to the process and very good relationships between the parties. Given the "good wind" that drove the process the failure in terms of outcomes must be due to the inherent problems in the voluntary process itself. Nonetheless many voices still continue to promote the apparent merits of a voluntary approach for which there is no credible evidence. Worse still, they choose to ignore or try to explain away clear evidence to the contrary, such as the experience of the negotiations on home loans.

Yours sincerely,

Jim Murray
Director

Dominique Forest
Economic Advisor

PS: I enclose for information copies of comments by our Belgian member Test-Achats on the subject.

Cc Commission services
Bank industry and associations