European Association of Co-operative Banks
Groupement Européen des Banques Coopératives
Europäische Vereinigung der Genossenschaftsbanken

EACB response to the European Commission's Consultation on Responsible Lending and Borrowing in the EU

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The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4.200 locally operating banks and 63.000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 160 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 50 million members and 750.000 employees and have a total average market share of about 20%.

For further details, please visit www.eurocoopbanks.coop

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels
Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149
www.eurocoopbanks.coop • e-mail : secretariat@eurocoopbanks.coop

General Remarks

EACB sincerely welcomes the initiative of the European Commission to carry out a public Consultation on 'Responsible Lending and Borrowing in the EU'.

Ensuring effective responsible lending represents a crucial issue for co-operative banks. The notion of responsible lending is enshrined in the very core of the co-operative governance model, in which members (or shareholder members) are both proprietors and customers. Owned by members/customers, the primary mission of co-operative banks is to offer their members/customers the best service against the best price as opposed to maximising profit for their shareholders. Their members being also their customers, co-operative banks are well placed to gather comprehensive on their customers and their needs. Moreover, the superior precautions of these socially committed banks are rooted in the particular context of offering a loan to a shareholder, which is an improved guarantee of quality

Inherent to the nature of their mission, co-operative banks have developed large decentralized networks and high degree of local presence, allowing them to establish specific *intuitu personae* relationships with their customers, based on *trust* and *proximity*.

Furthermore, the loan making decision is fundamentally decentralized in the co-operative banking modus operandi: this enhances the banks' knowledge of the quality and price of the market.

This specific governance model based on solidarity and responsibility therefore brings a pragmatic contribution to responsible lending practices. In the current economic crisis, they have proven that responsible lending practices, proximity banking and intuitu-personae relations are essential and have helped them – to a certain extent of course - maintain their resilience.

The EACB believes that a lot of lessons should be learned from the crisis and is of the opinion that the situation may be further improved in some specific areas responding to the need for increased transparency and confidence: Clarification of the credit intermediaries' status in the EU; appropriate information to consumers; credit histories in case of cross-border lending; clarification of existing responsible lending practices in the EU (as conducted by some recent initiatives in the industry).

However regarding the specific issue of responsible lending and borrowing, the EACB is of the opinion that there is no need to legislate, and this for several reasons.

Firstly, there are no sufficient examples in all EU Member States of a widespread problem linked to irresponsible lending behaviour[1] similar to that exhibited by the subprime crisis in the United States. Indeed, the crisis in the EU is a liquidity and confidence crisis. It is in no way a mortgage market crisis, nor a dysfunction of European mortgage markets driven by irresponsible lending. There are major differences between practices in the EU

[1] As stated in the European Commission note to the ECOFIN meeting on 12 September 2008 (Survey on national provisions on responsible lending (see in Annex)

and in the US. There are structural/systemic differences, in that traditionally, EU lenders use a mix of funding techniques including a) savings deposits (~60%), b) covered bonds (~17%) and c) securitization (~10%) in order to fund their loans[2]. This means that an important part of the risk remains on the lenders' balance-sheets, thereby incentivizing responsible lending. Moreover, the securitization of extremely risky mortgage credits (sub-prime credits) was primarily designed and practiced in the US.

Practice at EU retail level differs largely from that in the US, and this is evidenced by a DG MARKT Study[3]. Most importantly, it is EU-wide practice to grant loans based on the assessment of the prospective borrower's capacity to repay their loan based on their income, and not based primarily on the enforcement of the collateral (notwithstanding the fact that the existence of and the possibility to use the collateral is key in the mortgage credit process, and has a strong influence on the value of the collateral itself, the capital requirements, and the interest rate lenders can offer prospective borrowers).

As such, considering that in the EU, the crisis was in no way related to irresponsible lending practices and the granting of "toxic loans", there is clearly no reason to change well-functioning EU practices as a response to failings in the US system.

The EACB is aware of the Commission's concern for putting safeguards in place as a preventive strategy for the future. We believe that the Commission is rightly placing the policy focus on reforms in areas such as supervision, credit ratings agencies etc. However, we fail to see the need to intervene in the area of retail banking policy.

The European Commission should refrain from proposing an element of prescription which would introduce costs without offering any commensurate benefit to either the consumer or the industry. Any comprehensive legislative framework of regulation should seek to promote orderly markets and provide consumer protection without frustrating market competition or innovation.

For all of the above reasons, we therefore conclude that when approaching the issue of responsible lending and borrowing, great care should be taken not to attempt to introduce an EU solution to a US problem. In the absence of a clear demonstration of irresponsible lending at EU level proven by an impact assessment, any legislative measure would be contrary to the Commission's Better Regulation standards. Furthermore, the question of the necessity of further regulation in this field would need to be assessed in the context of the implementation of the Financial Services Action Plan as a whole.

Moreover, the EACB believes that the Commission's analysis of outstanding issues with regard to responsible lending and borrowing should be correlated with the extensive regulatory reforms undertaken in response to the crisis. Especially, the Commission should consider the substantial amendments of prudential rules recently adopted (the so-called "CRD 2") or currently discussed (the so-called "CRD 3" and "CRD 4"). These

[2] EMF figures
[3] Keynote Speech of Mr. Jorgen Holmquist, EMF conference 2008:
http://ec.europa.eu/internal_market/speeches/docs/2008/081121-mortgage-federation_en.pdf

reinforced prudential rules aim to contain risk-taking and to ensure appropriate risk-management at all financial institutions in the EU. They implicitly require that banks adopt responsible lending practices and undertake a thorough scrutiny of borrowers' creditworthiness.

The EACB understands the Commission's objective to ensure a high degree of professionalism in the credit mediation activity, and would support a pan-European framework for those independent intermediaries i.e. third parties that are not contractually linked with one or several credit providers (untied intermediaries).

Moreover as regards to consumer credit, the Directive is not yet implemented in all Member States and it appears inappropriate to open discussions again in this field. Furthermore, the Commission's approach seems to be inconsistent with the aim of the Consumer Credit Directive. The Directive excludes mortgage credit from the scope of application recognising the deep differences between the two markets (mortgage and consumer credit) that are completely different in terms of duration, conditions, refinancing, the use of collateral, etc. Therefore, information requirements and other measures have to be carefully targeted based on the type of product and service granted by the lenders.

Nowadays financial and economic turmoil has caused lenders to adopt a more cautious approach in lending, while the Commission and national authorities have criticized banks for the lack of lending. The introduction of unjustified rules and burdens could generate undesirable effects on the cost and availability of credit in the European mortgage market. Lenders will be very careful in their lending policies in case legislative measures on responsible lending are introduced, which will consequently lead to a decrease in lending.

Question 1: Do you have evidence of misleading or unfair advertising or marketing practices with regard to mortgage and consumer credit?

We have no evidence of misleading or unfair advertising or marketing practices with regard to credits mortgage and/or consumer credit.

The Consumer Credit Directive explicitly addresses the information to be presented in advertising of consumer credit, and the provisions of the Unfair Commercial Practices Directive provide similar requirements with regards to the advertising and marketing of mortgage credit.

Furthermore, the Unfair Commercial Practices Directive (UCP) contains a minimum harmonisation clause in relation to financial services which allows Member States to maintain or adopt stricter and more detailed rules to protect consumers, where necessary, for example, with regard to information requirements. Moreover, the Directive's black list of banned commercial practices across the EU and its provisions prohibiting misleading information, omitting information and aggressive practices, is sufficiently detailed and exhaustive to effectively prevent the existence of misleading or

unfair advertising and/or marketing practices. Other provisions prohibit misleading information, omitting information, and aggressive practices.

Furthermore, the APRC is the EU generic tool of comparison for consumers in the field of consumer and mortgage credits. This tool applies to consumer credits as well as to mortgage credits.

Question 2: What are your views on the development of risk guidelines?

The EACB wishes to emphasize that in its opinion, there are numerous measures and requirements that are already in force and which play a similarly efficient role in alerting potential borrowers to the risk that may be involved in the credit purchase, allowing them to better assess the product suitability.

Amongst these, the following are worth mentioning: At the EU level, the content and format of the information to be provided to customers of consumer credit are set out in detail in the Consumer Credit Directive which prescribes the use of the Standard European Consumer Credit Information (Annex II of the Directive). In the area of mortgage credit, the European Standardised Information Sheet for Mortgage Credit (ESIS) forms part of the Code of Conduct for Home Loans. Both are contributing to a large degree of standardisation of pre-contractual information for consumer and mortgage credit respectively.

In addition, the format and content of the ESIS are currently being revised, involving extensive testing with consumers to ensure that it presents only the most useful and relevant information in a way that is easy for borrowers to understand. The Commission is also currently examining the costs and benefits of certain policy options regarding the ESIS, including extending its scope of application to credit intermediaries, and making its provision legally binding, rather than a self-regulatory commitment under a code of conduct. In this context the EACB prefers the maintenance of the Code of Conduct for Home Loans as a self-regulation instrument.

Moreover, it is obvious that the respective information (risks, advantage/disadvantage) are part of the conversation with the client before choosing a suitable product.

Furthermore, the EACB is of the strong opinion that it would be more valuable to focus enhanced attention to the crucial aspect of financial education in this area. Indeed, pre-contractual information cannot systematically compensate the existing deficits in consumers' financial literacy, because of the obvious looming danger of generating a counter-productive information overload. In this respect, the initiatives of the European Commission in the field of consumer education are strongly encouraged and welcome.

In any case, the EACB wishes to stress that the development of risk guidelines, if such an approach were ever to be adopted, should be strictly undertaken at national level, taking into account the numerous disparities existing throughout the EU.

Question 3: In your view, are there certain (categories of) credit products that are inherently unsuitable for sale to retail borrowers? Would you welcome a set of standardised or certified credit products to be offered to consumers?

The EACB is of the firm opinion that there are no categories of credit products that are 'inherently' unsuitable for sale to retail borrowers. There are some standardised products on the market as far as they are useful for all market participants. However, there should be no obligation to implement them via binding legislation or authorization through supervisors.

EACB members would strongly advise against product and services standardization, especially via binding legislation, as it would likely lead to market distortions, and hamper innovation. It should be left to the banks to design banking products in response to customer needs and to reflect the economic realities of the market. Only if the existing diversity of various financial products is ensured can the consumer be guaranteed freedom of choice. Standardization by legislative action would inexorably lead to inflexibility and inefficiency, because it would make it impossible to go on catering to customers' individual needs and would definitely hamper product innovation and competition at large.

Moreover, standardization and potentially certification lead to additional red tape burdens, driving up the costs of these products – costs which eventually will have to be borne by the consumer. To date, as far as we know, the experience with certified credit products at a national level has revealed a negative track record. For instance, due to a lack of interest, one certified mortgage credit product in the UK had to be taken off the market after its launch

In this sense, and in line with the better regulation principles, regulations should only be pursued where there is evidence of clear and concrete benefits for citizens and industry alike and a strong economic rationale. Policies must be based on solid economic evidence and be subject to thorough impact assessments and only if cross-border activity can be improved. The assessment of appropriate solutions must be made on a case-by-case basis, depending on the specifics of the market and problems identified. .

Question 4: Do you consider that mortgage lenders and credit intermediaries should always perform creditworthiness and/or suitability assessments before granting consumer and mortgage loans?

The EACB wishes to highlight that credit institutions already always perform creditworthiness assessments before granting consumer credit and mortgage loans. Indeed, all credit institutions are obliged by virtue of Article 123 of the Capital Requirements Directive to:

> *"have in place sound, effective and complete strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that they consider adequate to cover the nature and level of the risks to which they are or might be exposed."*

This means that there is a strong link between risk and capital, and that credit institutions are already required to develop and use sound risk management techniques in monitoring and measuring the risks to which they expose themselves.

Furthermore, CEBS has developed "Guidelines on the Application of the Supervisory Review Process under Pillar 2" setting out the standards which credit institutions are to apply. A key component of these guidelines relates to the internal capital adequacy assessment process (ICAAP) which elaborates on the principle contained in Article 123 CRD.

The guidelines on ICAAP provide that a credit institution's process for assessing its capital adequacy relative to its risk profile must form an integral part of the institution's management processes. This is designed to enable an ongoing assessment of the risks inherent in the activities of the institution. Crucially, the ICAAP must be risk-based and encompass all the material risks to which the institution is exposed. Furthermore, credit institutions are required to review their ICAAP as often as is necessary to ensure that risks are adequately covered.

Extensive principles and guidelines relating to risk management also exist at national level, for example in Germany the "MaRisk" (Minimum Requirements for Risk Management). Regulation 97-02 of 21 February 1997 in France on internal control of credit institutions is also worth mentionning.

The detailed banking provisions outlined above require complex and integrated processes to be established and used by all credit institutions in the conduct of their business. These processes must also be assessed and approved by the relevant supervisory authorities. EACB members consider that these provisions are indeed sufficient to ensure responsible lending by credit institutions and that the introduction of additional requirements to assess creditworthiness is not necessary.

Furthermore, it is clearly in the interests of credit institutions themselves to lend in a responsible manner. During the assessment of the creditworthiness, banks have to rely on the completeness and correctness of the disclosures made by the borrower. In this context, it would be helpful if the borrower were obligated to provide complete and correct information.

With regard to the concept of "creditworthiness" or "suitability" assessments, we would like to point out that the performance of such assessments should not be interpreted as implying that the financial product concerned is suited to the individual needs and wishes of the consumer. Some elements of consumer credit and mortgage products will depend on the personal preference of the consumer himself/herself, for example whether a fixed or a variable interest rate is chosen. Similarly, there is a limit to the role of the credit provider when providing information on or advising on credit products. By way of example, it cannot be considered to be the role of the mortgage provider to make statements on whether or not it is opportune for a particular consumer to be purchasing a certain residential property at a given moment in time.

Furthermore, a product suitability assessment may only provide a momentary glimpse of the current situation and it can only be conducted on the basis of the information shared by the consumer concerning their momentary personal and financial situation. Whenever the consumer's personal situation changes over time, a product which may previously have been deemed suitable may suddenly appear inappropriate. Once the borrowing

decision has been made, any potential liability on the part of banks arising from the product choice should absolutely be avoided. In the final analysis it is consumers themselves who make an informed decision after due consideration of their personal conditions. Like with any other purchasing decision for economic products, particularly the assessment of the pros and potentially the cons of the credit product needs to be left to consumers' discretion. Of course, banks will be available with supporting advice services. In fact, this is already the case today.

In the Consultation Paper dated 15th of June 2009, the Commission points out that a lender may opt to provide a risky loan (i.e. without a sufficient assessment of the borrower's creditworthiness) because the credit is sufficiently collateralised by real estate which has been furnished as collateral or because the lender can transfer the credit risk by issuing residential mortgage backed securities (RMBS) or even sell the portfolio (cf. page 7 f.). In our view, this is out of step with the reality of standard market practices of co-operative banks.

Usually, loans are held to maturity by banks on their balance sheets; when seen in relation to the total outstanding volume, credit securitisations play but a subordinate role. Hence, banks generally only grant loans if they take it that these will be duly paid back within the contractual term to maturity. Generally, co-operative banks are keen on long-term customer relations. This standard market practice is reflected in low default rates for residential property loans also during times of crisis. Indeed, it should be emphasized that the overwhelming majority of such defaults arise out of unforeseen changes in the circumstances of the borrower at a later date, for example due to unemployment, illness or divorce.

For banks, realisation of the real estate is time-consuming, costly and encumbered by the uncertainty that the sales revenue might not be sufficient for loan redemption. Furthermore, the preconditions for realising a collateral have been specified in greater detail to the benefit of the consumer by European law. What is more, due to the envisaged amendments to the legal requirements for such securitisation transactions, a complete transfer of credit risks within the framework of RMBS will henceforth no longer be possible because banks shall have to pay a deductible of 5% of the securitised loans. This means that one of the prime drivers for approving risky loans, or, moreover, for lending without an assessment of the borrower's creditworthiness, will no longer exist

For mortgage credit, what are your views on the criteria to be used in assessing suitability, such as loan-to-income or loan-to-value ratios?

The CEBS guidelines on ICAAP emphasize that each credit institution is responsible for the definition and development of its own ICAAP. Furthermore, the ICAAP is tailored to the institution's own circumstances and needs, which may include its business model, risk policy and operating environment. Institutions therefore have a necessary and appropriate level of flexibility to determine and manage the methods used for the credit lending decision. These are embedded in the processes of the credit institution and cannot be viewed in isolation.

In view of the above, we consider that it would be neither appropriate nor practicable to impose specific and harmonized European criteria for such assessments.

Question 5: How should the lender or credit intermediary demonstrate or document the adequacy of the creditworthiness and suitability assessment?

We would like to underline that Article 123 CRD strongly implies that full documentation is required. Indeed, the nature and level of the risks to which a credit institution is exposed cannot be adequately assessed without such information. This is confirmed by the ICAAP guidelines which expressly provide that: “institutions should have a documented process for assessing risks”.

Accordingly, an assessment of the creditworthiness of a (potential) borrower is already always documented by the institution. The documentation may include information obtained from the borrower (loan application etc.) as well as the result of checks with credit registers and credit bureaus. Furthermore, if the borrower has had previous dealings with the credit institution, internal records containing personal data and past behaviour will also be available for use.

Furthermore, we object to a European wide statutory regime for information that needs to be obtained from the customer and documented by the institutions as per the Markets in Financial Instruments Directive (MiFID) because this would result in considerable extra costs for banks that would eventually have to be borne by consumers. As far as the credit sector is concerned, we feel that such a provision is not fit for purpose. The “suitability assessment” which is required under MiFID is geared towards transactions in financial instruments and is not suitable for loans. This is also demonstrated by the derogations under the Consumer Credit Directive (CCD), which were adopted in the wake of MiFID. Hence, within the scope of the CCD it is left to the discretion of Member States to “… take appropriate measures to promote responsible practices during all phases of the credit relationship, taking into account the specific features of their credit market. (…) The Member States' authorities could also give appropriate instructions and guidelines to creditors…“ (cf. CCD 2008/48/EC, Recital 26). There should be an analogue regime for the field of mortgage lending.

For the above reasons, EACB members do not consider it appropriate to introduce further requirements on credit institutions.

Question 6: Do you think that these advice standards would be appropriate in an EU context? Are there others that should be considered? What would be the most appropriate means to introduce and enforce the application of advice standards? Please explain.

The EACB believes a clear distinction has to be made between information and advice, and that anything beyond information should remain optional.

Indeed, providing information and providing advice constitute two distinct services. “Information" is defined as a description of a given product, either in general terms or in a more specific way. In face to face situations between consumers and banks information does contain certain elements of explanation and clarification.

"Advice", on the contrary, should remain a separate, and cannot be standardized, since it is and inherently "tailor-made" service (recommendation of one or more financial

products), delivered on a case-by-case basis and within the framework of an intuitu personae relationship. If provided, it should be on request.

Moreover, since the principle of "advice" as a regulated financial service is included in the MiFID, any future legislative measure should avoid creating inconsistencies in legal terminology in this respect.

In any case, banks already comply with a certain level of assistance or advice standards stipulated by banking supervisory and civil law or case law. Banks make sure that customers are well informed and aware of alternative solutions.

The members of the EACB believe that quality and accuracy of information, not quantity, enable customers to make an informed decision. Indeed, an excessive level of regulation regarding information does not facilitate comprehension, whilst it increases regulatory and bureaucratic constraints for banks, which, *in fine*, does not benefit the customer.

Moreover, the risk of liability for banks increases with the implementation of advice standards, as the possibility arises that clients who could not pay back their loans would try to sue the bank to minimize their obligations from the credit contract.

The EACB also wishes to emphasize that information requirements are not imposed exclusively on the lender; they also constitute a legal obligation for the consumer. The Commission might grant more magnitude to the generally acknowledged European law concept of the “responsible consumer”[4], who is considered to be “averagely informed” as well as “aware and rational” and is capable of playing his role as an “active fellow-citizen” responsibly and reasonably in a business-oriented situation. More specifically, the consumer should indeed be considered to be not only “reasonably well-informed” but also “observant and circumspect” and able to perform his role “as an active market citizen” in an economic and sensible manner on his own responsibility. This definition was shaped by rulings of the European Court of Justice (ECJ), which for example, gears the use of bans on misleading behaviour to the “presumed expectations” of an “average consumer who is reasonably well-informed and reasonably observant and circumspect” in order to avoid excessive restrictions.

This is also why education and empowering citizens to make the right choice is key, as to make appropriate choices, consumers must be given the necessary skills and knowledge.

Question 7: Apart from a focus on financial education, are there any measures that could be taken to encourage responsible borrowing?

As the counterbalance to responsible lending, the EACB supports the Commission’s view that consumers generally need to embrace a number of actions in their dealings with their lenders. In particular, EACB members approve the following key consumer actions:

[4] This constant case law can be found in: ECJ Commission v. Germany [1987] ECR 1227, § 35 ff; Cassis de Dijon [1979] ECR 649 § 13; Van der Veldt [1994] ECR I-3537, § 19; Case Pall Corp [1990], ECR I-4827; Case C - 1315/92, Clinique [1994], ECR I – 317; Case C - 470/93, Mars, [1995], ECR I - 1923 Case C-373/90, Procureur de la République v X [1992], ECR I-131; Case C-210/96 Gut Springenheide [1998], ECR I-4657, paragraphs 31 and 32

- Taking time to read documents before they sign them;
- Be honest and divulge all relevant information when applying for credit;
- Read and reflect on communications recieved from their lender;
- Inform their lender(s) of changing circumstances/hardship.

Furthermore – regardless of how exactly and precisely questions are formulated to the consumer – banks will regularly not be in a position to cover each and every case which may impair the capacity of the consumer to meet his/her contractual obligations. In order to ensure that the lending decision is taken under due consideration of the consumer's actual income situation and encumbrances, the consumer must therefore be duty-bound to proactively co-operate and disclose information. Whilst not limited to, the latter applies particularly to potential encumbrances.

The consumers can be encouraged to make a personal simulation test before making a final loan agreement with the lender. One tool for this is calculators on the banks' web sites with which it is possible to try different options for monthly installments, loan periods and (higher) interest rates.

In our view, significant progress in the field of risk awareness amongst consumers can only be achieved by enhancing consumer know-how with regard to financial matters (financial education). We therefore decidedly welcome the initiatives by the European Commission in this field. However, in line with the subsidiarity principle, national governments are primarily called upon to act in this sphere.

In this field, co-operative banks are able to ensure close, long-term relationships with their clients/members, based on proximity and trust. They therefore currently already offer financial education trainings for their clients and members, specifically tailored to their precise needs. Most co-operative banks' activities go far beyond delivering financial services as such, and also extend to facilitating all kinds of education, training, social and cultural events, etc. They also support the principle of seminars and workshops organized between consumers and financial providers. Moreover, the annual general members' meetings organized by co-operative banks at the local level also serve to further educate their members.

Additionally, as already mentioned above, the EACB wishes to underline that consumer education and financial literacy belong to the Member States scope of competence, in line with the subsidiarity principle.

The EACB nevertheless believes the European Commission should promote the inclusion of financial literacy in basic school education all over Europe.

EACB members however do not feel it would be useful to develop supplementary legislative measures in the area of financial literacy.

Question 8: Do you consider that the scope of the definition of Credit Intermediary as set out in the Consumer Credit Directive could also be applied to the mediation of credit not covered by that directive? Would it be appropriate to differentiate between full-time credit intermediaries and persons who offer credit intermediation on an incidental basis? Please explain why (not).

The EACB considers that three categories of credit intermediaries should be distinguished:
- Tied agents, controlled and supervised by the lender
- Those who act as credit intermediaries in an ancillary capacity and who only give information about credits offered by the lenders,
- Independent brokers.

We would support a consistent pan-European framework for the regulation of untied credit intermediaries only. Indeed, the first two categories of credit intermediaries are subject to the corresponding due diligence requirements, and the bank completely assumes the responsibilities of the loan.

In our view, the differentiation between a full-time credit intermediary and persons who offer credit intermediation on an occasional basis is not necessary. Both variants need to be subject to the corresponding due diligence requirements. Potentially, a lighter regime might make sense for credit intermediaries if and when they demonstrate to have sufficient knowledge in the field of banking or, moreover, a banking licence.

Question 9: Do you think policymakers should make distinctions between credit intermediaries in terms of the products they sell (mortgage, consumer credit, 'point of sale' credit)? Should credit intermediaries be treated differently in terms of the status of their relationship with lenders (tied versus untied intermediaries)? Please explain your answer.

From our point of view, a distinction in terms of products is not necessary. Credit intermediaries should have to meet the same stringent requirements as the actual creditor. After all, this is the only way for safeguarding high quality consumer advice.

Credit intermediaries for whom their principal – i.e. banks, insurance companies, building societies etc. – is already liable (tied intermediaries and intermediaries who only work for one single firm) should be treated in a different way than (untied) credit intermediaries who are not backed by a liable financial services firm that would have to shoulder the liability risk in the event of a potential claim.

Question 10: Could you give examples of cases of misconduct, mis-selling or any other instances of consumer detriment linked to credit intermediaries in your country?

The EACB has no examples of cases of misconduct, mis-selling or other instances of consumer detriment linked to credit intermediaries.

Question 11: Does the regulatory patchwork for credit intermediaries present a problem, in your view?

No, to date potentially heterogeneous rules and regulations in Member States have not proven detrimental during the involvement of credit intermediaries based in other EU Member States. "Untied credit intermediation" is the only area where measures might be adopted (regarding for instance their inclusion in a database, contractual responsibility, professional insurance, supervision, transparency in the commissions, liability funds, educational and professional qualifications) so as to safeguard a level playing field on an equal ground with those financial service providers who are already covered by prudential supervision.

However, frequent changes in various legal fields affecting credit intermediaries (e.g. Consumer Credit Directive or tax rules) present a problem.

Question 12: What would be the most appropriate way to address potential conflicts of interest, particularly with regard to fee/ bonus/ commission structures? Should any measures in this regard apply to bank client-facing staff as well as intermediaries?

APRC is the tool of comparison for consumers. Other types of information about the bonus or commission are not helpful in the customer's decision-making process in the area of credits.

Moreover, the EACB is of the opinion that untied credit intermediaries cannot be remunerated by the bank and the client. They should only be remunerated by the client, as otherwise there can be no guarantee as to their neutrality and to the fact that they effectively advise the client towards to best offer.

On the contrary, no measures should be taken regarding bank employees, as they are under the responsibility and control of the lender, who is the object of supervision.

Question 13: What are your views on the registration and supervision of credit intermediaries?

As regards the registration and supervision of credit intermediaries, we consider that a differentiation must be made between tied intermediaries on the one hand and independent intermediaries on the other.

The contractual relationship between a tied intermediary and a credit institution means that the credit institution is responsible for the activities of the tied intermediary. The intermediary is therefore subject to the rules of registration and supervision which apply to the credit institution itself. For this reason, we consider that credit intermediaries tied to credit institutions are already adequately regulated with respect to registration and supervision. Accordingly, we do not see that there would be any additional benefits in imposing further registration and supervisory requirements on intermediaries which are tied to credit institutions.

With regard to independent intermediaries, EACB members consider that the principle "same business, same risks, same rules" should apply. Given that independent intermediaries, tied intermediaries and credit institutions all offer credit agreements and conclude credit agreements with consumers, we consider that independent intermediaries should be subject to the same rules of registration, supervision as credit institutions.

Question 14: What are your views on prudential and professional requirements for credit intermediaries (such as minimum capital, profession indemnity insurance, educational or professional qualifications)?

We consider that all credit intermediaries – whether tied or independent – should be subject to minimum prudential and professional requirements. This would help contribute to the establishment of a level playing field across the EU as well as ensure a certain quality of service provision which, in turn, could enhance consumer confidence in the credit intermediation sector.

However, when developing prudential and professional requirements for credit intermediaries, it must be borne in mind that intermediaries tied to credit institutions are already subject to the requirements imposed by the credit institution responsible. For example, credit institutions often require adherence to codes of conduct and/or the attainment of minimum qualifications by both their employees and their tied intermediaries.

By way of contrast, independent intermediaries in many Member States are free to operate without having to adhere to any specific prudential or professional standards. In line with the principle "same business, same risks, same rules", minimum standards equivalent to those applicable to tied intermediaries would be welcomed for independent intermediaries.

The need for the introduction of professional requirements is therefore clearly much greater in the case of independent intermediaries than in the case of tied intermediaries. We consider that this should be reflected in the applicability of the standards to be developed.

Question 15: How do you think the activities of credit intermediaries could be brought within existing complaints and out-of-court redress mechanisms?

The EACB supports the above mentioned proposal, as the promotion of efficient alternative dispute resolution instruments should be actively pursued

Co-operative banks, due to their large networks and high degree of local presence, manage to establish specific contacts with their customers. Many customers of co-operative banks have also chosen to become members of their co-operative banks, and engage in close and long-standing relationships. This implies a specific attitude towards customers, regarding information and advice, but also concerning the resolution of disputes. Mediation, in the co-operative banking spirit, is therefore widespread in daily practice, and tailor-made to the specific needs of local clients. Proximity between local banks and retail customers thus represents a strong asset for customers.

In the EACB's view, the existing Alternative Dispute Resolution (ADR) schemes (e.g.: ombudsman procedure) offer fairly efficient and beneficial mediation for consumers. In this context, FIN-NET, which is based on a closer co-operation among national bodies and offers consumers assistance in cross-border conflicts, is regarded as a positive initiative in order to strengthen consumer confidence. Hence, the activities of credit intermediaries could be brought within these existing complaints and out-of-court redress mechanisms.

Additionally for intermediaries who work for banks or subsidiaries thereof or intermediaries who are contractually bound (tied), potential complaints are already being handled by the respective banks' or their subsidiaries' competent dispute resolution boards. Untied credit intermediaries should be duty-bound to install corresponding dispute resolution mechanisms (potentially run by their associations).

Contact:

The EACB trusts that its comments will be taken into account. For further information or questions on this paper, please contact:

Mr Hervé GUIDER, General Manager (h.guider@eurocoopbanks.coop)
Mrs. Marieke van Berkel, Head of Unit (m.vanberkel@eurocoopbanks.coop)
Ms. Valérie LORGÉ, Adviser (v.lorge@eurocoopbanks.coop)