The Director General

Bundesministerium der Justiz
Frau Bundesministerin Brigitte Zypries
Mohrenstraße 37
10117 Berlin

poststelle@bmj.bund.de

6 February 2007

Dear Frau Bundesministerin Zypries,

Re: Modified proposal for a Directive of the European Parliament and of the Council on credit agreements for consumers: German Presidency Questionnaire of 4th of January 2007

Eurofinas, the European Federation of Finance House Associations, hereby would like to express its views on the above-mentioned document.

The distribution of the different types of credit for consumers is the core activity of our members. The Commission's modified proposal for a Directive on credit agreements for consumers (CCD) is therefore of particular significance to us since it has a direct impact on our membership.

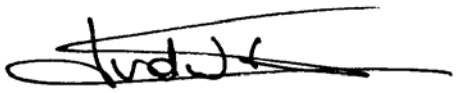
We welcome the progress that has been made by the Commission in moving towards a more workable text. Nevertheless, we believe that the text dated 14 November 2006 raises particular concerns. In our view, the proposal, which is the subject of the questionnaire, would damage the efficient functioning of credit markets, thereby harming the interests of both consumers and national economies. It also seems to us that, contrary to the Commission's original proposal of October 2005, full harmonisation is no longer the target of the ongoing legislative process.

As far as the questionnaire of 4th of January is concerned, we are deeply worried by the absence of any reference therein to the issue of 'linked credit agreements'. Given the important number of credits distributed at the point of sale, and the very damaging effect the current proposal would have on the same, we urge you to address this issue at Working Party level as a matter of urgency.

Finally, we feel that the questionnaire should also have addressed the issue of 'responsible lending'.

An analysis of the draft text dated 14 November 2006 (document 15176/06 CONSOM 111), together with our response to the questionnaire, is provided below. We hope you will find this helpful.

Yours sincerely,



Tanguy van de Werve

Cc: Messrs. P. Horne (horne-pe@bmj.bund.de) and K-H. Oehler (oehler-ka@bmj.bund.de).

About Eurofinas:

Eurofinas is the main voice of the consumer credit industry at European level. It currently represents 15 National Associations, in turn bringing together more than 1,150 finance and credit institutions. Together, Eurofinas' members financed over 352 billion euros worth of new loans during 2005, with outstandings reaching above 600 billion euros at the end of 2005. Companies represented by Eurofinas employ some 69,500 individuals.

Consumer credit providers may be of several natures and our members' members can be grouped into the categories below. Around 90% of the companies represented through Eurofinas are specialised lenders, falling into the first three categories:

- Finance houses: specialised consumer credit providers without a banking licence;
- Captive companies: parent companies of these companies are manufacturers (e.g. car manufacturers). Captives may or may not have a banking licence;
- Specialised banks: institutions with a banking licence but an activity limited to consumer credit or/and mortgage lending; and
- Universal banks: banks providing all kinds of products: retail, corporate, etc., including consumer credit.

I. NEW CONCERNS

Our members' views on the Commission's modified proposal for a CCD of 7 October 2005 were reflected in an EBIC (European Banking Industry Committee[1]) position paper dated 2 May 2006. A copy of that position is available at:
http://www.eubic.org/Position%20papers/CCD_EBIC_Position_May%2006.pdf

The draft text dated 14 November 2006 raises new concerns. These are set out below:

- The threshold above which loans are excluded from the scope of the Directive was increased from €50,000 to €100,000.

- The lower threshold was modified from €300 to €200.

- The definition of 'credit intermediary' became very broad, unintentionally (we believe) catching simple suppliers. The word 'habitually' (in the Commission's version) was simply dropped. Articles 5 and 6 do not apply to suppliers; yet if the wider definition in the proposal is adopted, and a Directive on 'Credit Intermediaries' is, as predicted, proposed, suppliers will need to be taken outside the scope of that Directive.

- The basis for the definition of the annual percentage rate of charge ('APRC') calculation (Article 18) has been widened considerably. Whereas the Commission's modified proposal included costs linked to the credit handling and that of connected services such as insurances in so far as they are compulsory, the new text encompasses all costs, including taxes, fees, notary costs, etc.

- The obligation to check the consumer's creditworthiness is based on an assessment of information provided by the consumer and consultation of a database, where appropriate (Article 7-a). This Article does not change the practical steps used by credit providers in order to avoid defaults of payment. Yet, by making the checks a legal requirement, the problem of the burden of proof is raised. This will require keeping detailed records of both the information provided by the consumer and the elements taken out of the database consultation. This is unnecessarily burdensome.

- In case of credit refusal, Article 8-2 makes it compulsory to disclose the results of any database consultation, including that of the credit provider. This will result in the latter having to inform and also explain the proceedings to the consumer even when the consumer did not explicitly ask for it. This will not be useful in most instances and will bring about additional costs. In the Commission's version, this information was to be given by the credit provider upon request only.

[1] A member of Eurofinas chairs the EBIC Working Group on Consumer Credit.

- The period during which the right of withdrawal may be exercised is maintained at 14 days, with no exception. This is much more restrictive than the current situation in many Member States. Also, we continue to doubt the necessity of introducing such a general right of withdrawal.

- As indicated in the above-mentioned EBIC position, the definition of linked credit agreements is much too broad. On top of this, Article 14 in the draft text of 14 November 2006 confirms a right to pursue remedies with the lender in case where the buyer would have sued the seller without success. This would apply to all types of linked credit agreements, in ways to be determined by each Member State.

  This comes very close to introducing a 'joint and several liability' regime, which we firmly oppose. We are therefore extremely concerned that the related issues of 'linked credit agreements' and 'joint and several liability' regimes are not addressed in the questionnaire of the German Presidency. Indeed, these are essential issues for the credit industry. The proposed text, as it currently stands, would have severe negative consequences on the availability and price of credits distributed at the point of sale.

- A large number of articles and recitals directly conflict with, and undermine, the 'full harmonization' principle which is the main *raison d'être* of the Directive. This is the case e.g. for recitals 9, 13-a, 14, 15, 16, 20, 22 and 25. More particularly:

  - Article 3-f gives a broad definition of the 'total cost of credit', the elements of which are distinct from one Member State to another. As a consequence, APRC calculations based on that definition will no longer be comparable with one another.
  - Article 5-5 on the 'duty to advise'.
  - Article 13-7 regulating features of the right of withdrawal mechanism (at which moment the execution of the contract can start).
  - Article 14-2 on the joint and several liability.
  - Article 14-3 leaves it up to the Member States to extend the joint and several liability principle to all credits.
  - Article 15-2 referring to the implementation modalities of early repayment.
  - Article 22 on sanctions.

II. THE "ADDED VALUE" ISSUE

A. Objective of the Directive

The objective of the Directive is clear: providing, in a number of key areas, a fully harmonized EU regulatory framework in order to facilitate the development of a well-functioning internal market in consumer credit.

The draft text dated 14 November 2006 clearly goes against this objective.

The development of a more transparent and efficient European credit market is vital to promote the development of cross-border activities. The market should offer a sufficient degree of consumer protection to ensure consumer confidence. In moving away from the full harmonization approach, even in 'key' areas, the proposal would favour permanent and increasingly diverging national regulations, which would constitute a barrier to the creation of an authentic internal market.

In addition, an efficient market and a good level of consumer protection suppose that:

- Operators manage (down) their costs.
- A diversity of credit products are on offer.
- Credit access is made available to as large a number of consumers as possible, while avoiding over-indebtedness.

B. Impact assessment

Several of the concerns mentioned above are likely, if they remain, to increase costs and risks for lenders, so undermining the objectives of the Directive. In line with the Better Regulation commitment of the EU Institutions, it would be appropriate to wait for the results of EP IMCO's commissioned impact assessment to be available.

C. What is currently happening across Member States?

Few lenders grant credit cross-border (by which we mean 'cross-border' loans from lenders in one State to customers in another; the process the Commission hoped its Directive would promote). If they would, they would risk destroying their businesses. This is because a cross-border loan presents a lender with two major unknown factors:

- How do I assess risk on this person? (*'I have no performance statistics on other debtors in this other Member State. Credit reference data alone is not enough'*).

- How do I recover this loan if the debtor refuses to pay? (*'I do not know how, in this other Member State, court recovery works, how much it costs or how effective it is. The widespread use of wage assignment in some Member States and its complete absence in others show just how different these systems can be.'*).

Any lender that ignores these unknown factors is jeopardizing its business.

No sensible creditor would grant credit without first knowing the answers to these questions. Unless being confident of attracting a sufficiently large number of new customers, no sensible lender would spend the time and money on trying to get those answers.

This is why scale entry is the only approach that makes commercial sense. This is also why scale-entry is already widely-used, but cross-border lending is not.

Scale entry, which is disregarded by the Directive, aims at targeting a specific national market and achieving a critical mass of customers there. In effect -via a subsidiary, branch or joint venture- the lender sets up a second base in another Member State. Scale entry is about winning a critical mass of customers.

The revenue stream the lender hopes to receive makes it worthwhile paying to have these two questions answered.

There are also other advantages with scale entry. For example, having local staff means you can trade in the local language. It also helps you better understand the local culture.

D. Is a new focus on scale entry the way forward?

Scale entry offers solutions to the problems of the current text, whilst achieving the same objective. The Commission aims at achieving increased competition through cross-border lending. Scale entry has the same competitive effects, and therefore benefits consumers in the same way. From a competition viewpoint, it makes little difference whether a new entrant supplies its credit cross-border or from within the home market of the consumer.

Scale entry is already happening.

III. INDIVIDUAL PROVISIONS

A. Exemptions

It is vitally important that credit products can compete on a non-discriminatory basis. The creation of exemptions has the capability of distorting markets. Therefore exemptions should be permitted only in properly justified cases.

In this respect we certainly share the Presidency's view that: '*The justification of the exemptions and restrictions must be examined in detail in each case. If certain forms of consumer credit are wrongly exempted from requirements contained in the directive, this may well lead to a reduction in consumer protection and a distortion of competition.'*

However, having analysed the text, we believe that the proposed exemptions should, in majority, be maintained; as should the 'light regimes'. Credits with a duration of less than three months should be excluded even if they are not 'free of charge'. Overdrafts should benefit from a 'light regime' as they are comparable to a simple payment facility.

That said, we have some reservations about the favourable treatment of credit unions under Article 2-4. In certain Member States (e.g. Poland) these entities act like commercial institutions. Consumers using their services need to be protected just as well as those using the services of commercial providers. Only those institutions acting in genuine public interest ought to be excluded from the scope of the Directive. To achieve this we would propose using the phrases 'significantly lower interest rates' in Article 2-2(k) and 'significantly lower' in Article 2-4(v).

B. Definition of the credit contract

It is crucial that the terminology used in the Directive be accurate and certain in order to avoid any differences of interpretation. Concepts must be used in a coherent manner throughout the entire text.

C. Protection against hasty decisions

We believe that the text already (over-)protects the consumer in this regard. To further increase the level of protection would go against the proper functioning of the market and in particular would be detrimental to consumers' interests. This is the outcome of combined detailed provisions on pre-contractual information, the signing of a very long list of prescribed contractual terms and the provisions related to both the right of withdrawal and the early repayment mechanisms.

These mechanisms, from the consumer viewpoint, overlap each other to some extent as they have a target in common: offering the consumer an early right to walk away from the contract.

The right of withdrawal is calculated upon a 14 day time period with no exception.

The early repayment treatment should be the same in all Member States. The consumer should be allowed to make an early repayment subject to the lender receiving appropriate compensation.