

# Response to the Consultation on the Report of the Expert Group on Credit Histories

August 2009

**Eurofinas Response to the  
Consultation on the EGCH Report**



DG Internal Market and Services, Unit H3  
European Commission

By email: [markt-egch@ec.europa.eu](mailto:markt-egch@ec.europa.eu)

Brussels, 31 August 2009

Dear Sir/Madam,

**Re: Consultation on the Report of the Expert Group on Credit Histories (EGCH)**

Please find herewith Eurofinas' response to the consultation on the report of the EGCH. The response complements the Eurofinas Preliminary Position on Credit Histories.

As seen in the table below, we globally agree with the recommendations of the EGCH.

Recommendation	Agree	Partly agree	Disagree	Neither agree nor disagree
1	√			
2	√			
3	√			
4	√			
5	√			
6	√			
7	√			
8	√			
9	√			
10	√			
11	√			
12	√			
13		√		
14				√
15				√
16	√			
17	√			
18	√			
19		√		
20	√			
21			√	
22	√			

In addition we stress that there is no need to distinguish between different types of lender when it comes to analysing ways to facilitate the access to, and exchange of, credit data.

It is important to ensure that all lenders are able to access and exchange consumers' credit data - a point particularly significant to the specialised lenders that Eurofinas represents which may have little internal data on applicant borrowers.

I stay at your disposal to answer any question you may have on our position below; alternatively feel free to contact my colleague Ravi Bhatiani ([r.bhatiani@eurofinas.org](mailto:r.bhatiani@eurofinas.org) - tel: 02 778 0562).

Yours sincerely,

Tanguy van de Werve  
Director General



## **ABOUT EUROFINAS**

**Eurofinas, the European Federation of Finance House Associations, is the main voice of the specialised consumer credit industry at European level.** It currently represents 16 Member Associations, in turn bringing together more than 1,000 finance houses, captive companies, specialised and universal banks. Together, these consumer credit providers financed over 400 billion euros worth of new loans during 2008, with outstandings reaching 745 billion euros at the end of the year. Companies represented through Eurofinas employ some 90 000 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 focused on consumer credit or/and mortgage lending; and
- Universal banks: banks providing all kinds of products retail, corporate, etc., including consumer credit.



## 1. Do you agree with the report's conclusions and recommendations?

### Recommendation 1

Eurofinas agrees that there is **no justification for the establishment of a single pan-European retail credit register. We oppose the creation of such a database as a disproportionate response to the current issues for which *measured* solutions are more appropriate, some of which (i.e. cross border access models) are laid out within the EGCH report.**

A pan-EU database would lead to problems of *inter alia* securing the data contained therein. Also, the costs of securing such data would be very high.

Furthermore, as any such pan-EU database would, arguably, be a public database, innovation would be stifled and lenders therefore prevented from using the many added value products currently provided by private credit bureaux, some of which give a clear consumer benefit, such as fraud prevention products.

There is also a risk that such a database could result in less credit data availability for many lenders than is currently the case – this would adversely affect the ability of a lender to assess the creditworthiness of an applicant borrower.

### Recommendation 2

Notwithstanding the comments below, **Eurofinas agrees that it should be left to each individual lender to decide which access model offers the most convenient and cost-effective solution** in light of (i) the current low volume of cross-border credit database consultations and (ii) its own situation.

#### Access models

##### The report portability model

Eurofinas does not favour the report portability access model due to the risk of fraud associated thereto. This model is open to abuse as an ill-intended applicant borrower may alter the data in between receiving the credit history and presenting it to the lender.

A further difficulty therein can be if the data supplied is in a different language and/or uses differently defined terms which the lender may not be aware of.

##### The right-of-access model

The right-of-access model may be appropriate in certain situations where a lender needs to access a credit database but cannot due to the restrictive access conditions of the credit database.

**The report portability and the right of access models may not adapt well to the principle of reciprocity however.**

##### The indirect access model

The indirect access model may offer a convenient solution for lenders who:

- only rarely need to consult a foreign credit database; and/or
- do not have the resources to directly access a foreign credit database and interpret the data contained therein.



Eurofinas agrees with the EGCH suggestion that this model **may be the most suitable** for use as a first step in facilitating the cross-border access to, and exchange of, credit data considering the current low levels of cross-border lending.

### **The direct access model**

The direct access model may be suitable for lenders making (or planning to make) a high volume of cross-border credit database consultations, which can justify the infrastructure costs of joining the foreign credit database. Nevertheless, it may be difficult for a lender in country A to comply with:

- the legislation in country B regarding data access; and
- some of the formal rules of the credit database in country B (e.g. as regards the updating frequency of the repayment history and data retention periods).

### **Recommendation 3**

Eurofinas agrees with the recommendation and acknowledges that the Data Protection Directive 95/46/EC (DPD) has been interpreted differently across the EU 27.

Particular differences exist in the interpretations of the:

- ‘authorised purposes’ of using credit data; and
- ‘authorised actors’ for exchanging credit data.

### **Amending the DPD**

Eurofinas believes that reviewing the DPD with a view to *fully* harmonising the ability of all lenders and credit bureaux/registers to access and exchange credit data would facilitate the cross-border access to, and exchange of credit histories.

The review process should be transparent and allow for the expression of stakeholder views in line with the Better Regulation agenda.

The current DG Justice, Freedom and Security consultation on the *Legal Framework for the Fundamental Right to Protection of Personal Data* is a welcome step in this process.

### **Article 29 Working Party**

Article 29 of the DPD established a Working Party on the *Protection of Individuals with regard to the Processing of Personal Data*.

Included in its mandate is the provision of expert opinion from Member State level to the Commission on questions of data protection.

Accordingly, as a means to further develop the data protection elements of the cross-border access to, and exchange of, credit histories from a national perspective, Eurofinas calls upon the Article 29 Working Party to add the issue of cross-border **credit** data access and exchange to its agenda and to hold a preliminary consultation with all interested stakeholders.

### **Recommendation 4**

Eurofinas supports the recommendation that the Commission should organise a roundtable discussion on credit data, identity theft and anti-money laundering rules with the relevant national authorities.



## Identity theft

**Fraud data** is a major issue for the specialised lenders that Eurofinas represents.

Both credit data and fraud data are necessary for lenders to grant loans responsibly. Responsible lending includes not only the creditworthiness assessment of an applicant borrower but also understanding the likelihood of a fraudulent application **and the prevention of frauds such as identity theft.**

Moreover, the sharing of fraud related data is necessary to protect the consumer. Once a consumer's identity becomes compromised or is stolen, it is in his or her interest that consumer credit providers prevent the use of this identity by fraudsters in loan applications.

**Eurofinas has previously organised a 'Discussion Day' on the issue. This concluded that little data existed for lenders' use in identifying and combating such fraud and fraudsters.** Moreover, the participants noted that the fraud data which is available does not exist in any homogenous and comparable forms.

The Eurofinas 'Discussion Day' also highlighted the need for a common definition of identity theft at EU level; a new penal legislation which deems identity theft in the sphere of financial services to be a criminal offence in all Member States; and EU wide statistical data on the issue.

## Anti-money laundering

Anti-money laundering requirements pose particular difficulties for lenders granting loans cross-border.

This is because *'situations where the customer has not been physically present for identification purposes'* are classified as higher risk transactions under the Third Anti-money Laundering Directive and its implementing measures (2005/60/EC and 2006/70/EC). This results in more stringent customer due diligence (CDD) obligations being placed upon lenders in a cross-border (e.g. distance) transaction.

This can result in a lender needing to see (amongst others) an official copy of the passport of a consumer, proof of the address of a consumer and/or a copy of the ID card of a consumer<sup>1</sup>.

For a consumer, the production of these documents is burdensome as it would often mean sending the documents (or official copies thereof including possibly notarised versions) to the relevant lender in another country. Such obligations can result in consumers finding it more convenient to visit their local lender<sup>2</sup>.

If official data such as the passport number of a consumer is already contained within their credit database entry, the customer due diligence process may become less burdensome for both consumers and lenders thereby increasing the current low volumes of cross-border loans.

Also, increasing the availability and use of electronic signatures could help alleviate some of the administrative burden for both the consumer and lender when fulfilling the enhanced CDD obligations needed to conduct a loan transaction at a distance.

## Recommendation 5

Eurofinas agrees that the use of credit data must comply with the national rules of the country where the data was collected.

That being said (as noted in the Eurofinas response to Recommendation 3 above), the DPD has been interpreted differently across the EU 27.

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<sup>1</sup> This is a generic list only; specific requirements vary between countries and can be stricter (source: Eurofinas member survey on customer due diligence requirements under the Third Anti-money Laundering Directive).

<sup>2</sup> The cost of notarising the relevant documentation in order to create official copies may even outweigh any potential savings made by a consumer choosing a financial service provided by a lender located in another country.



This fact is also recognised in Recommendation 5 by the EGCH through its reference to ‘*national differences regarding authorised purposes or actors*’.

Such differences prevent the smooth processing of credit data and the free movement of such data.

## **Recommendation 6**

Eurofinas fully supports Recommendation 6 and agrees that the term ‘non-discriminatory access’ as used in the Consumer Credit Directive (2008/48/EC) should be interpreted as meaning that **foreign lenders should be able to access domestic credit databases on the same terms as domestic lenders**.<sup>3</sup>

Eurofinas notes that some lenders currently face unjustifiable difficulties<sup>4</sup> accessing some databases and therefore calls on the CCD Transposition Working Group set up by DG Sanco to make sure that this interpretation is applied consistently across Member States.

## **Recommendation 7**

Eurofinas agrees with Recommendation 7.

### **Sound lending practices**

Facilitated cross-border access to, and exchange of, credit data throughout the credit lifecycle and after the expiry of the credit agreement contributes to the sound lending practices used by consumer credit providers.

### **Portfolio management**<sup>5</sup>

One such lending practice is portfolio management. Lenders need to understand the repayment behaviour of their customers over the credit lifecycle, and after the expiry of the credit agreement, for reasons related to managing their loan portfolios.

For example, repayment behaviour needs to be compared against a lenders own expectations for its loan portfolio in order to assess the portfolio performance.

Additionally, credit data access throughout the credit lifecycle allows lenders to quickly research the causes of any changes in repayment patterns (such as growing delinquency).

Such access will also place lenders in a better position to respond quickly to changes in repayment behaviour and to anticipate a rise (or fall) in levels of bad debt.

Credit data access after the expiry of the credit agreement will aid lenders in managing cases of delinquency and developing their future underwriting strategies (e.g. by refining creditworthiness assessments and scorecards) and optimizing the effectiveness of their collections’ operations.

## **Recommendation 8**

Eurofinas supports Recommendation 8 but adds that credit data access must also be non-discriminatory (as defined in Recommendation 6) for legitimate creditors providing mortgage credit and creditors providing consumer credit not covered by the CCD.

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<sup>3</sup> Such access should be based on reciprocal arrangements. See our comments under recommendations 9-12.

<sup>4</sup> For a concrete example of such a situation please see p12 of the [Eurofinas Preliminary Position on Credit Histories](#).

<sup>5</sup> p139 Principles and practice of consumer credit risk management, 2<sup>nd</sup> edition, Institute of Financial Services.



Additionally, Eurofinas disagrees with the position of BEUC which states that cross-border access to credit data should strictly be limited to 'credit institutions'. This is because not all European lenders are classified as 'credit institutions' under the Capital Requirements Directive 2006/48/EC.

### **Extending database access**

It is important for the Commission to ensure that **all lenders** (including those providing consumer credit not covered by the CCD) are able to access and exchange consumers' credit data in a cross-border context.

This point is of particular significance to the specialised lenders that Eurofinas represents.

For example, data access is key when distributing a credit at the point of sale or over the internet where there is no direct and/or face to face contact between the applicant borrower and the lender. In such situations, the applicant borrower may not have a pre-existing relationship with the lender.

**This contrasts with banks** which may have longstanding relationships with their clients and hence rich internal data thereon (including a history of recent banking transactions such as standing orders and direct debit lists as well as data on savings).

### **Recommendation 9**

Eurofinas agrees that reciprocity is a **key principle when it comes to accessing credit databases**.

Reciprocity aims at ensuring both data quality and data quantity.

Reciprocity is of particular importance as it prevents lenders from taking a 'free ride' on the efforts of other lenders, who have previously contributed their credit data to the database. In view of such previous contributions, database access must be made conditional upon lenders providing the database with their own credit data on the loan granted to the relevant borrower.

### **Recommendation 10**

A lender who does not supply any credit data to its local credit register(s) could prevent other lenders (both 'local' and 'foreign') from getting complete information on an applicant borrower.

Hence Eurofinas supports the principle that a foreign lender should be able to access an applicant borrower's home credit register only if this lender provides its own national credit register with the relevant data.

### **Recommendation 11**

As discussed within the Eurofinas Preliminary Position on Access to Credit Histories different models of reciprocity exist. These have evolved to suit the different (mostly national) requirements for credit data access and exchange.

For example, certain reciprocity models used at national level (which are adapted to the **high levels** of credit database consultations received at that level) involve the reciprocal transfer of large volumes of credit data contained within a lender's loan portfolio.

**With the current low levels of cross-border** credit database consultations the transfer of such large volumes of data in a cross-border context is neither manageable nor necessary.

**Eurofinas therefore agrees with the EGCH that** a form of limited reciprocity (i.e. a foreign creditor accessing an applicant borrower's data in a credit database should only report back data on that particular individual) could be used as a first step to ensure data quality in cross-border exchanges of credit data.



**This method of reciprocity will help to preserve the integrity of the credit data held on borrowers who have been granted a credit by a foreign lender, whilst not acting as a deterrent to making cross-border database consultations.**

## **Recommendation 12**

Eurofinas supports the recommendation that the reciprocity principle be interpreted as implying that creditors, when accessing a foreign credit register, **would obtain the same type of data as they provide**. Access to, and exchange of, negative data (at the very least) is essential for most lenders to assess a credit application made by a consumer.

It has also been argued that access to, and exchange of, positive data allows lenders to make a more complete assessment of a borrower's ability to repay a loan.

*Although no unanimity on the subject matter exists, anecdotal and empirical evidence suggests that the use of positive credit data in credit scoring allows lenders to significantly reduce default rates and/or increase lending volumes<sup>6</sup>.*

Moreover, the techniques used to capture positive credit data are generally more sophisticated (and more expensive) than those used to capture negative credit data. Thus it would be inequitable for lenders only providing negative data to have (cross-border) access to the richer data provided by other lenders contributing positive as well as negative credit data.

## **Recommendation 13**

### **Right of access**

Eurofinas recognises that a data subject (in this case the consumer) has a right of access to their data under Article 12 of the DPD.

### **Data quality**

Eurofinas supports data access for consumers not least because it contributes to data quality.

For the reasons listed in Recommendation 16 below, Eurofinas is in favour of initiatives that can help to improve data quality taking into account the impact in terms of costs and benefits of such initiatives.

### **Fraud detection**

A further benefit of a consumer accessing their credit data lies in fraud detection.

A consumer's right of access is of benefit in detecting anomalies in his/her credit data. Such anomalies need to be highlighted to investigate whether a genuine error or a potential fraud is the cause.

### **Appropriate contribution**

Eurofinas supports the recommendation of most experts in the EGCH that an appropriate contribution by the consumer should be requested for database access.

What is more, it is clear from Article 12(a) of the DPD that an appropriate contribution can be requested from consumers<sup>7</sup> for such access.

The provision of data held within a database has a cost.

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<sup>6</sup> p14 Credit Bureau Knowledge Guide *International Finance Corporation (World Bank Group) 2006* (report available [here](#)).

<sup>7</sup> Or, to use the wording of the DPD 'data subjects'.



Thus if credit databases are forced to give consumers access to their credit data 'free of charge', any administrative costs incurred would likely be borne by the lenders who consult the credit data.

Ultimately, lenders would recover any extra expenditure by passing these costs to consumers through (*inter alia*) product fees and/or interest rate adjustments.

In countries (such as the UK) where an appropriate contribution<sup>8</sup> is usually paid by a consumer for accessing their credit data, Eurofinas notes that no decline in the number of consumers consulting their data has been recorded.

### **Fraud deterrence**

In addition it should also be recognised that requesting an appropriate (not for profit) contribution by consumers for data access is critical in deterring fraudsters from obtaining high volumes of consumers' credit data.

If, as **some** experts recommend, access upon request should be unlimited and free of charge then consumers **would face an increased risk of frauds** (e.g. 'account takeover') with its attendant detrimental consequences.

### **Recommendations 14-15**

No comments.

### **Recommendation 16**

Eurofinas wholeheartedly supports, in principle, measures aimed at controlling data quality.

**Data quality is of paramount importance;** only good quality data can be used effectively.

For consumers, inaccurate data can lead to a denial of credit or to worse credit terms.

For lenders, inaccurate data can lead to (*inter alia*) an incorrect credit decision, errors in fraud detection and problems in collections effectiveness (e.g. an incorrect name or address may prevent any reminders for payment from being delivered to the borrower).

### **General principles of data quality**

There are three key aspects in ensuring data quality<sup>9</sup>:

- *Consistency*, which requires that in every newly created record within a credit database, each data field within that record is completed;
- *Accuracy*, which requires that the transcription of data items are all correct (e.g. inputting correct spelling of names/addresses and ensuring dates of birth are correct). Lenders should aim to ensure that when a customer supplies information, such as on a proposal form, that information is truthfully supplied;
- *Age*, which reflects the fact that certain data fields can become outdated quickly (such as a data subject's level of outstanding payments). It is important to keep such data fields up to date, as they could have a material effect in any creditworthiness assessment<sup>10</sup>.

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<sup>8</sup> Circa £2 in the UK.

<sup>9</sup> p17 Principles and practice of consumer credit risk management, 2<sup>nd</sup> edition, Institute of Financial Services.

<sup>10</sup> *Ibid* [FN9] above.



## **Data quality in cross-border exchanges**

To help to ensure data quality, the EGCH recommends that for cross-border data exchanges, adequate co-operation should be in place.

Eurofinas notes that such co-operation already exists.

In particular, data quality in cross-border credit data exchanges is one of the key requirements that credit bureaux adhere to when subscribing to the Cross Border Data Exchange Agreement (CBDE) developed by ACCIS and used in the indirect database access model.

## **Recommendation 17**

Eurofinas supports the recommendation that the credit data industry develops practical solutions that would assist creditors and consumers in understanding foreign credit reports.

Such solutions would promote more efficient credit data exchanges as currently problems can exist where, due to national differences (e.g. in legislation, customs) the data obtained from credit databases across the EU is not uniform. In particular, data content within credit databases can vary and differences of language can add to the difficulty.

Eurofinas notes that in order to reduce such difficulties, credit bureaux could provide appropriate practical solutions/services as an added value product.

## **Recommendation 18**

Eurofinas agrees with handling the problem of data holders' identification at EU level, in cooperation with national Data Protection Authorities.

Eurofinas agrees with the EGCH that any solution must take into account the impact, in terms of costs, benefits and data protection, of any proposal.

## **The problem of identification**

'Data holders' (in this case consumers) frequently need to be identified by more than just a name to ensure that the data set is that of the consumer and *vice versa* that the consumer matches the data set.

The identification of a consumer can however be problematic in cases where a data set needs to be identified by additional information (such as a date of birth, ID card n°, tax n° etc.). This would be typical in cases where two consumers have the same name.

The provision of a unique identifier (such as a passport or national insurance number) in a consumer's credit history may (in certain cases) ease such identification problems within credit databases.

## **Recommendation 19 (see also below response to Q.5)**

### **Concepts and definitions used**

Many different concepts and definitions are used throughout the EU.

This does little to facilitate the cross-border access to, and exchange of, credit data.

Therefore in relation to the concepts and definitions used (e.g. bad debt, arrears, loan types) we agree that a set of common meanings could be useful to help consumers and lenders understand foreign credit reports.



However, it would be *more appropriate* for this issue to be dealt with under Recommendation 17, 'the credit data industry develops practical solutions that would assist creditors and consumers in understanding foreign credit reports'.

### **Data retention periods**

Eurofinas also supports the convergence of data retention periods, which would facilitate compliance with 'foreign' legislation pertaining to the cross-border access to, and exchange of, credit data.

The costs and benefits of any future convergence should be taken into consideration before any solution is implemented.

### **Recommendation 20**

Eurofinas supports Recommendation 20.

Increasing consumer financial education through the dissemination of information on the role of credit databases can contribute to responsible borrowing.

Eurofinas notes that on all ACCIS members' websites, consumers can find information regarding:

- the data content of that credit bureau; and
- data access for consumers.

Additionally, in some countries, credit bureaux, lenders and trade bodies have specific education programmes in order to help consumers understand and manage their own credit report. Examples of such programmes are described in a forthcoming Eurofinas e-publication on financial education<sup>11</sup>.

### **Recommendation 21**

Whilst Eurofinas supports in principle consumers having an easy way to obtain redress in a cross-border context for damage suffered, we strongly disagree with the broad scope of the recommendation.

The recommendation is not clear from whom, and under which circumstances, consumers should be able to obtain redress.

#### **'wrong credit data'**

In cases where credit data is incorrect, consumers have the right to access (and correct) their data as held in credit databases in accordance with Article 12(b) of the DPD.

Consequently, neither lenders nor credit databases can be held liable for damage suffered due to the refusal to grant a credit because of 'wrong' credit data.

In any case there is no right to credit; freedom of contract dictates that lenders can readily refuse to grant a credit irrespective of the credit data used.

#### **The provision of false credit data by an ill-intended consumer**

The situation can exist where a lender may have granted a credit based upon 'wrong' credit data supplied by an ill-intended consumer.

In such a scenario, it is unjust to punish a lender for the damage suffered to a consumer who has deliberately supplied 'wrong' credit data to a lender/credit database.

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<sup>11</sup> Expected publication date: October 2009.



In addition, Eurofinas believes that lenders suffering financial loss from 'wrong' credit data supplied by ill-intended consumers should be able to obtain redress from those consumers.

**'inappropriate use'**

Access to credit data should not be used for prospection purposes. Credit database access should be limited to the purpose of assessing the creditworthiness of an applicant borrower.

However, should data be used inappropriately, sanctions should be determined by the local regulator.

**'any other breach of their rights'**

The wording used in the recommendation is unclear.

If the wording refers to rights under the DPD then remedies are already provided for in the Directive.

If it does not, then the scope of the wording '*any other breach of their rights*' is unclear.

Such sweeping wording produces legal uncertainty which has a negative impact upon consumers through *inter alia* a lender's potential litigation costs being reflected in higher product costs.

**Recommendation 22**

Eurofinas agrees in principle that it should be easy for consumers to obtain information on their rights and redress mechanisms regarding the use of their credit data.

That being said, it must be clarified whether the rights in question refer to specific rights under the DPD or are broader in scope. This clarification would allow for stakeholders to address the issue in an appropriate manner.



## 2. What other suggestions/recommendations would you have?

### i) Foreword to the EGCH report

Eurofinas would like to point out that during the course of the EGCH discussions, the experts reached consensus on, and fully endorsed the content of, the EGCH report. We were disappointed therefore to see the disagreement of some experts recorded in the foreword thereof.

This sets a dangerous precedent for the work of future expert groups.

Had credit industry experts known in advance that consumer representatives in the group eventually would not endorse the final report then some of the recommendations would have been different (no compromise wording would have been sought).

### ii) Access to credit data for all lenders

Across the EU, there are many different types of lenders (or 'creditors' as used in the Consumer Credit Directive (2008/48/EC) and by the EGCH). Not all lenders are banks (or credit institutions), far from it.

Those different types of lenders access, and report their data to, credit databases.

There is therefore **no need to distinguish between different types of lenders** when it comes to analysing ways to facilitate the access to, and exchange of, credit data.

### **There are many different types of lenders. Each lender needs to be able to access credit databases.**

In 2001, 9% of the EU mortgage market was held by lenders who were not banks. This can include *public authorities*.

Some regional public authorities in Belgium for instance grant loans to low income people as part of their social housing programmes. When doing so, they consult the existing credit register and contribute their data to it. In their capacity as lenders dealing with the most vulnerable parts of society, access to credit databases is essential for these 'lending' public authorities (and indeed for all other lenders who need to know about these loans).

*Specialised consumer credit providers are also lenders*<sup>12</sup>. Like banks, with which they compete (to the benefit of consumers), most<sup>13</sup> specialised consumer credit providers require access to such databases in order to adequately assess an individual's ability to meet his/her obligations to repay the loan.

For consumer credit providers specialised in e-credit or Point of Sale finance, proper access to credit data is essential as they tend to have less internal data than high-street banks and may not have any face to face contact with the applicant borrower.

<sup>12</sup> In 2008, specialised consumer credit providers granted €373 billion worth of new loans (source: Eurofinas).

<sup>13</sup> Some providers of so-called 'home credit' use alternative credit scoring techniques such as weekly agent visits which provide them with up-to-date, first hand information on the circumstances of a customer.



### iii) Non-discriminatory access is also important at national level

Access to credit databases should be non-discriminatory for both:

- ‘foreign’ lenders active in national markets; and
- ‘domestic’ lenders active in national markets.

As acknowledged by DG Comp in its retail banking sector enquiry, non-discriminatory credit database access for domestic lenders in national markets is a basic ingredient for a competitive market<sup>14</sup>.

We note that in some EU Member States, certain lenders are not able to access the same credit databases as other domestic lenders. This is often due to the restrictive membership criteria of such databases. In those countries where certain lenders can only access negative credit data (or indeed only have access to positive credit data), the said lenders can be disadvantaged in comparison with lenders who have access to negative and positive credit databases or data from richer sources.

This issue is addressed in further detail within the [Eurofinas Preliminary Position on Credit Histories](#) which can be found as an attachment to this response.

### iv) No right to credit

Facilitated access to, and exchange of, credit data is set to improve consumers’ access to finance. Improving consumers’ access to finance is a means of (*inter alia*) stimulating consumer spending, which in turn benefits the wider economy. This can be particularly important in times of economic slowdown.

**There should not be however such a principle as a right to credit.** Even if a lender has facilitated access to the credit history of an applicant borrower, the former should still be in a position to refuse granting the credit<sup>15</sup>.

Importantly, a right to credit would prevent a lender from being able to exercise its freedom of contract.

Financial inclusion, such as a right to a basic bank account and other basic banking services, contributes to social cohesion and is necessary for economic well being (for example, in some countries, a bank account is needed in order to be employed). Nevertheless, access to basic banking services does not include a right to credit.

Establishing a right to credit would be contrary to the principles of responsible lending and responsible borrowing.

In particular, a right to credit would:

- prevent lenders from lending responsibly;
- encourage borrowers to take on loans they cannot afford to repay, which could lead to their over-indebtedness; and
- lead to a higher cost of credit for all borrowers.

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<sup>14</sup> DG Comp sector enquiry on retail banking (p31 SEC(2007) 106).

<sup>15</sup> The decision whether or not to grant a credit to an applicant borrower is, and should remain, a business decision regardless of the outcome of any database consultation.



#### **v) Debt databases**

We support the establishment of so-called debt databases where possible and proportionate to do so.

**Debt databases have proved useful for carrying out credit risk assessments** in countries in which they exist.

This is the case provided that the lender has the capacity to interpret and use the information contained in the debt database.

Credit risk can be assessed more thoroughly when historical repayment data from other sources, in addition to loan repayments, can be consulted.

**A further advantage in having debt databases is the ability to better understand the source of consumers' over-indebtedness.** We note that in some countries, such as Belgium, an important percentage of over-indebted people have not taken out a single loan... Rather this over-indebtedness arises from debt owed to telecoms and utility companies, tax authorities and health care providers. It is therefore no coincidence that in Belgium, the UPC<sup>16</sup> has asked the Belgian credit register to include both telecoms and utility companies data within its scope<sup>17</sup>.

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<sup>16</sup> *Union Professionnelle du Cr dit (UPC) is the trade association representing the private credit sector in Belgium for both consumer credit and mortgage credit. Its Members represent more than 96% of the Belgian consumer credit market and about 90% of the Belgian mortgage market.*

<sup>17</sup> *In the Netherlands (BKR) and in Germany (SCHUFA), unpaid telecoms bills are already recorded in the respective credit bureaux.*



### **3. Would you suggest any other data access model for cross-border data exchanges?**

The database access models outlined in the report of the EGCH and evaluated in the Eurofinas Preliminary Position on Access to Credit Histories are generally accepted as being usable in a cross-border context.

**We note however the existence of an alternative solution.**

A well known lender in the UK has **recently developed a premium product specifically to improve ease of access to credit** for migrants and other individuals who wish to be granted a credit abroad and who have little or no local credit history.

This particular service allows a client to set up a local bank account before he/she relocates and ‘to take their current credit rating with them’.

This is made possible thanks to the lender’s global network of subsidiaries, which allows for an instant credit history transfer between countries. The ease of transferring the required credit data facilitates access to credit without the usual waiting period needed to establish a local credit history.

This is a **good example of a market led solution** to consumer demands and a response to existing difficulties.



## **4. What rights should the data holder enjoy in a cross-border context, in particular regarding access to or data correction?**

### **Right of access**

See Eurofinas' response to Recommendation 13.

### **Right to rectification**

As stated in our response to Recommendation 16 Eurofinas wholeheartedly supports, in principle, measures aimed at controlling data quality.

It is clear that the rectification of inaccurate data contributes to data quality.

Thus, in situations where consumers have accessed their credit data and found it to be incorrect, a consumer should be able to rectify that data.

We note that a right to rectification of incorrect or inaccurate data is already laid down in Article 12(b) of the DPD.

## **What could help the holder exercise these rights and seek redress in case of breach?**

### **Access to information**

Consumers need to be made aware about the rights conferred upon them by the DPD in order to obtain the benefit thereof.

Thus **access to information** on the '*data holders*' rights set down in the DPD **is key**.

This information should be easily obtainable, and should include some explanation on the various redress mechanisms available in case a consumer's credit data is wrong.

Relevant information campaigns supported by the European Commission would therefore be of value.

Eurofinas notes that conferences such as the 19-20 May 2009 conference organised by the European Commission entitled *Personal Data, More Use More Protection* are useful reference points for all parties interested in the rights and obligations stemming from the DPD.

### **Access to justice**

Access to justice will help consumers to seek redress in case of a breach of their rights guaranteed by the DPD.

However, justice served through the courts can be an expensive and time consuming process for all parties involved.

Improving access to justice through the development of an ADR system which addresses the specific concerns raised by the cross-border access to, and exchange of, credit data would thus be more effective.

A self-regulatory ADR system would offer consumers a quick, uncomplicated, easily-accessible and cheap means of redress by avoiding the complexities and delays of a judicial process.



## **Damages**

The cause of any damage suffered by a consumer should be proven through the presence of a causal link between the damage suffered and the actions of a lender/credit database.

We therefore oppose any automatic payment of damages to consumers *triggered* by the mere presence of 'wrong' data.



## 5. The expert group recommends a greater convergence of the content of credit databases. For which aspects should this convergence be achieved?

A distinction should be drawn between the harmonisation of data types (i.e. positive and negative data) and the harmonisation of definitions and concepts.

### Data types

Eurofinas warns against any future harmonisation of data types (in terms of the imposition of a regime of negative, positive, or both data types).

**That said, any such harmonisation of data types**, which would be very complex, **should not result in less credit data availability for lenders than is currently the case**. The availability of less credit data would be unacceptable to lenders as it would negatively impact upon their ability to make thorough creditworthiness assessments.

Furthermore, lenders have already established risk assessment procedures and business models that are adapted to the data types **currently in existence** in each particular country.

In this context it is inappropriate to blind oneself to the complexities of the problem by suggesting solutions that reduce the issue to a lowest common denominator.

### Data definitions and concepts<sup>18</sup>

A greater convergence of data concepts and definitions is of greater utility than the harmonisation of data types.

**A pragmatic way to overcome differences** in data concepts and definitions is for the credit data industry to develop practical solutions that would assist creditors and consumers in understanding foreign credit reports.

As stated in our response to Recommendation 19, any such service could be provided by credit bureaux as an added value service to lenders.

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<sup>18</sup> See also Eurofinas' response to recommendations 17 & 19.



**6. What solution would you suggest in order to solve, in a cross-border context, the identification problems described in the report?**

The utility of a unique identifier held within data sets (such as the addition of a passport number) has already been discussed in our responses to Recommendations 4 and 18.

We agree with the EGCH that any solution must take into account the impact, in terms of costs, benefits and data protection, of any proposal.