

Mr D. Staudenmayer
Head of Unit, DG Sanco
European Commission

By email: Dirk.Staudenmayer@ec.europa.eu

Brussels, 7 April 2009

Re: Eurofinas comments on the final reports on the legal and economic impact of Directive 2002/65/EC concerning the distance marketing of consumer financial services

Dear Mr Staudenmayer,

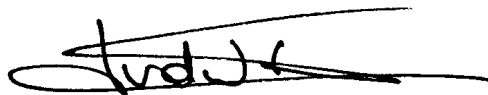
Please find below Eurofinas comments on the above-mentioned reports submitted to DG Sanco earlier this year.

In our comments we stress that anti-money laundering legislation makes it particularly difficult for providers of consumer financial services to conclude distance contracts for such services.

Also we voice our opposition to the suggested creation of a pan European credit referencing system. As acknowledged by the Expert Group on Credit Histories set up by DG Markt, there is no business case for setting up any such pan European database.

I stay at your disposal to answer any question you may have on our comments below; alternatively feel free to contact my colleague Ravi Bhatiani (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 2007, with outstandings reaching 713 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.

Eurofinas, the voice of specialised consumer credit providers at European level, hereby would like to comment on the recent reports submitted to DG Sanco on the legal and economic impact of Directive 2002/65/EC on the Distance Marketing of Consumer Financial Services (“the Reports”).

1. Eurofinas agrees with the Reports’ findings that, despite the Distance Marketing Directive, current business volumes for the distance marketing of consumer financial services remain low.
2. However, we do note the growing trend in e-commerce¹. E-commerce offers the potential to increase the distance marketing of consumer financial services. The internet has enabled specialised consumer credit providers to develop online applications on their websites along with partnerships with retailers/motor dealers that allow consumers to apply for a consumer credit directly on a lender’s website or on the website of the supplier of the good/service.
3. That being said, a number of obstacles to the cross-border provision of retail financial services still exist, such as (inter alia) language/cultural differences, lack of harmonisation in Member State legislation and uncertainties over cross-border debt recovery. Continued efforts should be made to remove such existing obstacles, where possible.

Anti-money laundering legislation

4. Another, more tangible, obstacle is the customer due diligence (CDD) provisions which stem from the Third Anti-money Laundering Directive (Directive 2005/60/EC) and its implementing measures (Commission Directive 2006/70/EC).
5. The above-mentioned legislation makes it particularly difficult for providers of consumer financial services to conclude distance contracts for such services.

¹ We note that 32% of individuals aged 16-74 in the EU bought or ordered goods or services for private use over the internet at least once in the last 12 months (source : Eurostat). Further, we recognise the fact that one third of EU citizens indicate that they would consider buying a product or a service from another Member State via the internet because it is better or cheaper (source: *Commission staff working document, Report on cross-border e-commerce in the EU Feb 09 (SEC(2009) 283 final)*). We also note that the number of people shopping on the internet has grown steadily, from 20% in 2004 to 26% in 2006 and 30% in 2007 (source: Eurostat).

6. 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. This results in more stringent CDD obligations being placed upon the provider of consumer financial services in a distance marketing transaction.
7. This can mean that a provider of consumer financial services needs 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 consumer².
8. For a consumer, the production of these documents is burdensome as it would often mean sending the documents (or official copies i.e. notarised versions) to the relevant provider of cross-border consumer financial services in another country. This process is time consuming and inconvenient for the consumer who may find it more convenient to visit a local provider of consumer financial services³.
9. **Increasing the availability and use of electronic signatures could help alleviate some of the administrative burden for both the consumer and provider when fulfilling the enhanced CDD measures needed to conduct the distance marketing of consumer financial services.**

Absence of a pan European credit referencing system

10. Eurofinas is surprised to read the unsubstantiated claim by Civic Consulting that the lack of a pan European credit referencing system is a *main barrier* to the cross-border supply of credit products⁴. This claim does not reflect the current market reality.
11. While some initiatives may help promote the distance marketing of financial services, we see no justification for the establishment of a pan European credit referencing system. We strongly oppose this as a disproportionate response to the current issues for which measured solutions are far more appropriate.

² 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).

³ 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 in another country.

⁴ p79-80 *Analysis of the economic impact of Directive 2002/65/EC concerning the distance marketing of consumer financial services on the conclusion of cross-border contracts for financial services between suppliers and consumers within the Internal Market* submitted to DG Sanco by Civic Consulting (Main Barrier : 6 Absence of a pan-European credit referencing system).

12. As any such system would, arguably, be a public database, innovation would be stifled and providers of consumer financial services therefore prevented from using the many added value products currently provided by private credit bureaux, such as fraud prevention products.
13. There is also a risk that such a database could result in less credit data availability for many credit providers than is currently the case.
14. Further, a pan European credit referencing system would lead to problems of securing the data contained therein. In addition, the costs of, *inter alia*, securing such data would be very high.
15. **We note that DG Markt has set up an Expert Group on Credit Histories which addresses such issues. The Expert Group's draft report acknowledges (at the time of writing) that there is no business case for a pan European database⁵.**
16. The non-discriminatory access to existing credit databases is of greater importance than the creation of a pan European credit referencing system. We therefore call on DG Sanco to ensure the proper transposition of Article 9(1) of the Consumer Credit Directive (2008/48/EC)⁶.

⁵ Eurofinas will submit its position on the work of the Expert Group on Credit Histories in due course.

⁶ Article 9(1) of the Consumer Credit Directive states: *Each Member State shall in the case of cross-border credit ensure access for creditors from other Member States to databases used in that Member State for assessing the creditworthiness of consumers. **The conditions for access shall be non-discriminatory.***