

European Commission  
Directorate General Justice

To: [JUST-CIVIL-COOP@ec.europa.eu](mailto:JUST-CIVIL-COOP@ec.europa.eu)

Brussels, 21 June 2012

Re: *Eurofinas response to the European Commission's consultation on the future of European Insolvency Law*

Sir/Madam,

You will find below Eurofinas' response to the European Commission's consultation on the future of European Insolvency Law.

Eurofinas welcomes the opportunity to respond to the consultation.

You will find below a number of observations on the issues raised by the Commission in the consultation document. In particular, we draw your attention to ongoing Commission work on over-indebtedness and we renew our call for the European Commission to finalise its work on the transparency of debtors' assets. The availability of the information on debtors' assets and the ability to act swiftly, where there is the possibility of assets being moved cross-border, are of paramount importance to the European consumer credit industry.

I stay at your disposal to answer any question you may have on our response below; alternatively feel free to contact my colleague Anke Delava ([a.delava@eurofinas.org](mailto:a.delava@eurofinas.org) - tel: 02 778 0573).

Yours sincerely,

Tanguy van de Werve  
*Director General*

*Eurofinas is entered into the European Transparency Register of Interest Representatives with ID N° 83211441580-56*



## 1. ABOUT EUROFINAS

Eurofinas, the European Federation of Finance House Associations, is the voice of the specialised consumer credit providers in the EU.

As a Federation, Eurofinas brings together associations throughout Europe that represent finance houses, universal banks, specialised banks and captive finance companies of car, equipment, etc. manufacturers. The scope of products covered by Eurofinas members includes all forms of consumer credit products such as personal loans, linked credit, credit cards and store cards. Consumer credit facilitates access to assets and services as diverse as cars, education, furniture, electronic appliances, etc. It is estimated that together Eurofinas members financed over 329 billion Euros worth of new loans during 2011 with outstandings reaching 821 billion Euros at the end of the year. Companies represented through Eurofinas employ some 93,000 individuals.

As a stakeholder, Eurofinas welcomes the opportunity to respond to a number questions addressed within the European Commission's consultation on the future of European Insolvency Law. These preliminary observations do not prejudice the position of the Federation on other and further aspects of the European Commission's work in this area.

## 2. BACKGROUND

In the past, the Federation has closely followed the topics of accessibility to information on debtors' assets, responding to the 2008 European Commission's "Green Paper on the enforcement of judgments in the European Union: the transparency of debtors' assets".

Eurofinas would like to highlight that access to information on debtor's whereabouts and financial situation is an issue of paramount importance for European finance companies. The lack of accessibility to or availability of information on debtors' assets strongly hampers domestic as well as cross-border debt recovery.

Against this background, we would like to draw your attention to a number of elements which are important for the consumer credit industry.

## 3. SCOPE OF THE INSOLVENCY REGULATION

The European Commission notes that in recent years, new procedures for dealing with over-indebtedness of private individuals and self-employed persons have been put in place in many countries. Most of these schemes are not covered by the Insolvency Regulation<sup>1</sup> because they do not fulfill the Regulation's conditions for insolvency proceedings as the debtor, depending on national procedure, maintains full control over its assets and not all Member States provide for the appointment of an insolvency practitioner. Moreover, some of the Insolvency Regulation's provisions are not adapted to deal with "private bankruptcy". The European Commission is therefore assessing the possibility for the Insolvency Regulation to be made applicable to over-indebted private individuals and self-employed persons.

Eurofinas notes that the European Commission's DG SANCO and DG MARKT (through the Financial Services User Group) have recently commissioned work on the topic of over-indebtedness. Eurofinas therefore urges the Commission to take due account of the findings of this research before re-evaluating the need to extend the scope of the Insolvency Regulation. It is also important to recall that there is neither a common definition of "over-indebtedness", nor one single concept of "private bankruptcy" at this stage.

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<sup>1</sup> Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.



#### 4. RIGHTS IN REM

The European Commission notes that the opening of insolvency proceedings in one Member State does not affect creditors with security interests in moveable or immoveable property (rights *in rem*) located in another Member State. Rights *in rem* continue to be governed by the law of the State where the property is situated. This rule protects the value of security interests in property, thereby enabling companies and individuals to obtain credit under conditions which could not be offered without this kind of guarantee. However, the rule has been criticised for causing a somewhat imbalanced situation between the interests of secured creditors and other creditors because it may in certain situations protect secured creditors not only from the effects of a foreign insolvency law but also from the effects of their domestic law. The European Commission is therefore wondering if the provision on rights *in rem* operates satisfactorily in practice and how it should be amended.

Eurofinas member companies provide a variety of different kinds of loans, the majority of which are granted to individuals. These loans can be divided into the following broad categories: personal loans, motor finance, store/credit cards and credit at the point of sale. The principal objective of consumer loans is to finance the acquisition of goods, services and vehicles.

The amount borrowed is usually limited, and products are often linked to local affinity partnerships. In 2011, Eurofinas members granted new loans worth €329 billion. Eurofinas would like to remark that substantial part of the Eurofinas business consists of secured lending transactions. These are usually secured on assets, such as vehicles.

Those consumer credit providers which finance goods such as vehicles have a crucial interest in having security interests in the vehicle in question, should the debtor fail to meet his/her obligation to repay the loan. In addition, in some Member States, car financing providers keep the motor vehicle registration certificate (when the car is financed) with the purpose of increasing their security.

This for the following two reasons:

- The vehicle is the main, and very often the only, form of security the credit provider has for the loan;
- Due to the characteristics of vehicles: they are moveable (also cross-border) and tradable. Vehicles can also be the subject of fraudulent activities.

Using the vehicle as loan security is important in the context of the risk management and also helps to manage the costs of that risk.

In this context we also refer to recital 11 of the Insolvency Regulation which provides that: *“This Regulation acknowledges the fact that as a result of widely differing substantive laws it is not practical to introduce insolvency proceedings with universal scope in the entire Community. The application without exception of the law of the State of the opening of proceedings would, against this background, frequently lead to difficulties. This applies, for example, to the widely differing laws on security interests to be found in the Community. Furthermore, the preferential rights enjoyed by some creditors in the insolvency proceedings are, in some cases, completely different. This Regulation should take account of this in two different ways. On the one hand, provision should be made for special rules on applicable law in the case of significant rights and legal relationships (e.g. rights in rem and contracts of employment). [...]”*

Eurofinas does not feel that there is any evidence that the underlying reasons for this differentiated treatment within the Regulation have changed, i.e. the substantive laws of the Member States on rights *in rem* still differ substantially. Therefore we do not, at this stage, see the need to alter the applicable law rules of the Insolvency Regulation with regard to rights *in rem*.

We also warn against any changes to the substantive laws of the Member States which may alter the rights of secured creditors or the priorities of secured creditors. Having this security interest is crucial for consumer credit providers and many others. Lenders grant loans at the conditions they do taking into account security interests, amongst other factors. Being able to undertake secured lending decreases the risk taken by lending institutions.



## 5. ACCESS TO INSOLVENCY REGISTERS

As noted by the Commission, the good functioning of cross-border insolvency proceedings relies on the exchange of information.

Eurofinas welcomes, in principle, all initiatives that aim to increase the availability of information and improve creditors' access to existing national registers (commercial, population, social security and tax registers) on a reciprocal basis. We would not therefore oppose the creation of an EU register for insolvency cases, provided that the industry is consulted on this matter in due course.

We strongly believe that access to such data supports responsible lending. We also wish to recall that the Capital Requirements Directive<sup>2</sup> and the Consumer Credit Directive<sup>3</sup> already require lenders to assess creditworthiness of the potential consumer. Access to information on the opening of insolvency proceedings against an individual in another Member State is therefore valuable to determine the creditworthiness of this applicant borrower. This furthers the aim of consumer credit providers to act as responsible lenders and helps prevent over-indebtedness of consumers.

In addition to the above, we would like to take this opportunity to renew our call for the European Commission to finalise its work on the transparency of debtors' assets. The availability of the information on debtors' assets and the ability to act swiftly, where there is the possibility of assets being moved cross-border, are of paramount importance to the European consumer credit industry. The lack of accessibility to or availability of information on debtors' assets strongly hampers domestic as well as cross-border debt recovery, ultimately affecting lenders' risk management, including recovery rates. This is of particular importance for the cross-border asset and debt recovery of those lenders financing moveable equipment such as vehicles which can easily be stolen, hidden or moved from one Member State to another.

## 6. DIFFERENCES IN NATIONAL INSOLVENCY LAWS

Regarding the harmonisation of substantive insolvency laws across the Member States, Eurofinas urges the Commission to carefully assess and evaluate the need and added value of such harmonisation. National procedures addressing, for example, the over-indebtedness of individuals are often tailored to take into account specificities of the national markets, which an EU-wide substantive insolvency law may not be able to do. Therefore any such evaluation of future harmonisation should be limited to corporate insolvency.

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<sup>2</sup> Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast).

<sup>3</sup> Directive 2008/48/EC of the European Parliament and of the Council of 23 April on credit agreements for consumers and repealing Council Directive 87/102/EEC.