

European Commission
Directorate General for Justice, Freedom and Security
Unit C1 – Civil Justice
B- 1049 Brussels
JLS-coop-jud-civil@ec.europa.eu

Brussels, 30 September 2008

Re: Response to the European Commission's Green Paper on the enforcement of judgments in the European Union: the transparency of debtors' assets

Dear Sir/Madam,

Please find below Eurofinas and Leaseurope joint response to the European Commission's initiative on how to improve debtors' assets transparency in the European Union.

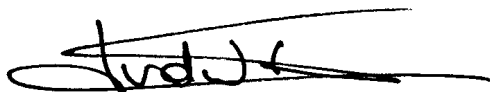
Access to information on the whereabouts and financial situation of a debtor is an issue of great importance to European finance and leasing companies. Even more so in a gloomy economic environment, when default rates tend to increase.

Eurofinas and Leaseurope strongly favour the drawing up of a Manual of National Enforcement Laws and Practices.

Also we support in principle all initiatives that aim at increasing information availability and improving creditors' access to existing national registers on a reciprocal basis. We support in particular the introduction of a European Assets Declaration.

I stay at your disposal to answer any question you may have on our comments below; alternatively feel free to contact my colleagues Jacqueline Mills (j.mills@leaseurope.org - tel 02 778 05 66) or Alexandre Giraud (a.giraud@eurofinas.org - tel: 02 778 0564)

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 limited to consumer credit or/and mortgage lending; and
- Universal banks: banks providing all kinds of products retail, corporate, etc., including consumer credit.

About Leaseurope

Leaseurope is the voice of leasing and automotive rental in Europe. As a Federation, Leaseurope brings together associations throughout Europe that represent either the leasing, long term and/or short term automotive rental industries. The scope of products covered by Leaseurope's members' ranges from hire purchase and finance leases to operating leases of all asset types (automotive, equipment and real estate) and also includes the rental of cars, vans and trucks.

It is estimated that Leaseurope represents approximately 93% of the European leasing market. In 2007, 340 billion euros of new leasing volumes were granted by the firms represented through Leaseurope's members (a 13% increase compared to 2006), contributing to financing just under 20% of European investment. Moreover, these firms are responsible for the leasing and rental of around 17 million vehicles throughout Europe.

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Eurofinas and Leaseurope welcome the European Commission's initiative on how to improve debtors' assets transparency in the European Union.

1. As preliminary remarks, Eurofinas and Leaseurope would like to:
 - 1.1. Highlight that access to information on debtor's whereabouts and financial situation is an issue of paramount importance for European finance and leasing companies. 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.
 - 1.2. Stress the need for adequate access to information on debtor's assets which is reinforced in the context of a less favourable economic climate when default rates tend to increase.
 - 1.3. Draw attention to the particular importance of cross-border asset and debt recovery for lenders financing moveable equipment such as vehicles which can easily be stolen, hidden or moved from one Member State to another. For example, more than 907.112 vehicles were reported stolen across EU27 in 2006. More than 30% were never recovered¹.
 - 1.4. Emphasize the fact that lessors and other types of asset finance providers (e.g. hire purchase providers) to businesses and consumers remain the owners of the assets they lease/finance and that it is therefore very important for these assets to be identified as such. Equally, it is important for these lessors/financiers to be able to identify and recover these assets both in cases where the contract comes to term without incident as well as in cases of breach of contract. Consequently, these assets should be indicated separately from a debtor's owned assets within any debtor asset declaration.
 - 1.5. Recall that the absence of coordination regarding debtors' assets transparency, attachment of bank accounts and other asset related data in the European Union partially explains the relatively low development of a true cross-border finance business.

¹ See Europol stolen vehicles statistics, 2007

2. Against this background, Eurofinas and Leaseurope:

2.1. **Strongly support the drawing up of a Manual of National Enforcement Laws and Practices.** Until there is clarification and or/coordination on how to recuperate assets on cross-border basis, a manual of national enforcement laws and practices is essential and any debtor asset information system on its own is likely to be insufficient.

Such a manual should be a practical guide on how to enforce a cross-border debt in each Member State. It should deal with the following issues:

- How a creditor should go about locating a debtor's assets?
- At what point can a lender enforce a debt – including any time restrictions?
- What enforcement options are available?
- Where do you start the process (e.g. local courts)?
- How long does the process take (on average)?
- Approximate cost of bringing an enforcement action (e.g. court fees)
- Do the procedures differ according to the size of the debt?
- How is the debt finally enforced?

2.2. **Take the view that there should be greater coordination and cooperation between enforcement authorities in order to assist cross-border creditors.** Cross-border creditors should turn to their national authority, which would carry out the actual search on their behalf. This is because individual creditors may not have enough expertise (case-based experience) on how to handle asset recovery in other Member States.

2.3. **Welcome, in principle, all initiatives that aim to increase the availability of information (e.g. facilitated access to financial statements) and improve creditors' access to existing national registers (commercial, population, social security and tax registers) on a reciprocal basis.** The Commission should however be aware of the high fragmentation that currently exists when it comes to national registers. A first step in the process must be a stock taking exercise of existing registers and their content.

Any initiative in this field will have to *i)* respect the differences in the extent of local registers, *ii)* respect data protection rules *iii)* be done on a reciprocal basis, and, *iv)* aimed towards increased centralisation.

Our members have highlighted the following sources of information has having proved useful in identifying debtor's whereabouts or assets:

- Bank accounts registration
- Vehicles Registration
- Driving Licenses

- Tax declarations
- Land and Mortgage registrations
- Notary acts
- Declarations made by the debtor when applying for a credit
- Judicial decisions

2.4. **Favour the creation of European level registers, even though we recognize this would be a very long term goal.** The creation of a European wide automotive register could be a step in this direction. We caution however that the creation of such registers will bring about burdensome requirements for those who will be required to participate in their creation.

2.5. **Support in principle the introduction of a European Assets Declaration** provided that:

- There will be no overlapping of National and European declaration;
- The consultation of the declaration will only be possible at an appropriate point in time and only made available to identified applicants;
- It will create no additional liability for lenders;
- Declarations are made available via a unique platform to avoid creditors having to consult all local databases in question;
- Debtors from different Member States will be treated equally;
- The consultation of the declaration is only made available to the identified applicants and,
- There will be sanctions in case of incorrect/fraudulent statements.

In addition, the exact elements to be declared by the debtor, the means of ensuring the efficiency of enforcement procedures, the duration of the declaration's validity as well as the means of verification and potential updates of the information contained in the declaration shall be determined.