



## European Banking Industry Committee

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European Banking Federation (EBF) • European Savings Banks Group (ESBG) • European Association of Cooperative Banks (EACB)  
European Mortgage Federation (EMF) • European Federation of Building Societies (EFBS)  
European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)  
European Association of Public Banks (EAPB)

Dr. Dirk STAUDENMAYER  
DG Health and Consumer Protection  
European Commission  
1049 Brussels

Brussels, 8 September 2004

Dear Dr. Staudenmayer,

### **Re: Suitability of introducing ESIS in the Consumer Credit Directive**

You will recall that when we last met, we undertook to return to you with views around the suitability of the European Standardised Information Sheet (ESIS) as a model for pre-contractual information in the Consumer Credit Directive. The principle of introducing ESIS in the directive merits further in-depth discussion by EBIC members. EBIC is at variance on the issue. The banking industry is not yet in a position to take a clear stand on such an initiative. As long as the Commission has not further developed its views in greater detail, it will not be feasible to accurately assess the impact and repercussions the ESIS will have on consumer credit. Discussion of the matter would need to remain within the general framework of the revision of the proposal on consumer credit.

Clearly, there can be transparency benefits to rationalising or consolidating pre-contractual information that are in the interests of both the lender and the consumer, provided that it replaces or merges information in Member States, and we recognize that easier comparison of products both at national and European levels, could further competition and might encourage consumers to consider cross border credit alternatives. Moreover, the principle of introducing ESIS in the new Consumer Credit Directive still needs to be thoroughly discussed by EBIC members.

Wider benefits might also be that adopting the same model as the Code of Conduct on home loans would not only strengthen the concept of early information provision/ shopping around to compare credit offers but as a secondary benefit, also improve consumer awareness of the existing ESIS for home loans. Our preliminary findings do however suggest that there are a number of areas of concern that would need further clarification before ESIS could be considered in the context of CCD.

- **ESIS to include all pre-contractual information requirements and be uniform throughout all Member States:** A uniform ESIS should encapsulate all pre-contractual information within the CCD as well as additional mandatory pre-contractual requirements from other EU legislation which impact credit agreements. It might also be advisable to include any advice requirements in ESIS. Ensuring ESIS is the only pre-contract type document to be given to customers will

remove possible conflict between ESIS and existing regulation, thus facilitating effective cross border comparison.

- **ESIS content should be well defined and restricted to core information elements:** There is evidence in a number of member states that existing pre contractual information provision (e.g. a prospectus document in Belgium/ the Netherlands) is seldom considered fully. Empirical arguments suggest that concise information is likely to be better received by consumers - more information does not necessarily mean better information on which borrowers can base their decisions. We would therefore see value in further researching the cost/ benefit of ESIS in a consumer credit environment.
- **Option to provide an advance copy of the agreement itself:** Retaining the provision that enables lenders to deliver pre-contractual information by supplying a draft contract/ credit agreement at the pre-contractual stage is an important alternative which should be retained. Indeed, there is a body of support for a further option; the amalgamation of ESIS as an integral part of the consumer credit contract/ agreement itself.

Equally, our findings have identified a number of concerns that suggest a single pre contractual information sheet could not be applied equally to consumer and home investment-type credit products, without leading to greater bureaucracy and formality.

- **Need to tailor the level of information:** lenders should be allowed to tailor the level of information that they provide (subject to certain parameters) according to the requirements of the markets in which they operate – effectively an extension of your proposal to include a lighter touch regime for inter alia overdrafts and low value loans. One example would be the increasing use of an info box (also known as honesty box or Schumer box) in certain product ranges, with a degree of prescribed information supplemented by additional contractual information, as necessary.
- **Mortgage Equity Withdrawal:** Credit for consumption stands apart from credit for house purchase for a number of reasons (relative amounts, terms, provision of security etc.). Lenders operate in a far more commoditized environment (also a pre requisite for further cross border trade) and this has a lesser need for bespoke pre contractual information, which layers in costs that are ultimately borne by the consumer. To include mortgage equity withdrawal (MEW) in the Consumer Credit Directive would therefore create a tension in information provision: Other types of mortgage products would be illustrated by a full ESIS document (under the European Code of Conduct on Home Loans) whereas MEW would be shown in a format that is potentially a derivative version of ESIS or be subject to two separate ESIS (ESIS of the CCD and of the European Code of Conduct on Home Loans).
- **Determining the exact time to hand out the ESIS:** We feel timing of distribution will vary with differing circumstances and types of products (i.e. standardized or individual negotiable products). The ultimate aim of providing the ESIS early enough to give consumers a chance to consider the offer before them should be measured against the need to maintain certain flexibility to adapt to the changing circumstances (another reason to support the provision of ESIS with the credit offer, if an advance copy is not provided). A point of sale environment offers a different opportunity for reflection than, say, a distance contract – both of which are types of credit governed by the directive. Thus the provision of a lengthy information sheet in the former will

not necessarily be as well received as the latter, again pointing to a requirement for flexibility, going forward.

- **ESIS could hamper product innovation:** It has been suggested that the ESIS model could hamper product innovation, although timescales for reply have precluded further research in this area.
- **ESIS should not lead to standardised offerings:** The diversity of credit products and of the praxis of each credit institution is wide. Banks should not be forced to alter their products and/or their contracts in order to observe such a harmonisation exercise.
- **Compliance must be robust:** Governance issues around compliance must be sufficiently robust to pick up all those who provide consumers with pre contractual information, such as credit intermediaries, and ask that you take this into consideration as your thoughts evolve.
- **Multi-channel marketing environment:** We recommend that to 'future-proof' the directive, the commission accommodates a multi channel marketing environment where consumers may enter discussions in one medium and conclude them in another. Thus pre contractual information must be deliverable through electronic channels, for instance e-mail, internet banking and websites as well as more traditional vehicles, such as via the post, over the telephone or face to face.

I do apologise for writing at such length, but as you will note, there is much to be considered in the detail behind your suggestion. To sum up, it is evident that to adopt ESIS formally as a pre-contractual information model would require a number of significant variations from its initial form to accommodate the heterogeneity of the consumer credit market, and we would be happy to work with you on these issues as you refine your modified proposal.

Please contact me if you have any queries or would like to discuss our findings in greater detail.

Yours sincerely,



Ian Mullen  
EBIC Chairman



Eric Leenders  
EBIC CCD WP Vice Chairman

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