

## TABLE OF CONTENTS

### CONFERENCE REPORTS.....1

Seminar consumer credit directive

Financial Services: Does home country control work?

### NEWS .....8

Banking secrecy

Overindebtedness in the UK

Blacklists harmonisation

Contractual obligations debate

### NOTE TO RESEARCHERS.....10

Call for papers in the area of consumer credit

EUI Conference

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## CONFERENCE REPORTS

### Report on ECRI Seminar on the consumer credit directive”, 27 November 2002, by Amparo San José Riestra

The objective of the seminar was to analyse different aspects of the consumer credit directive (CCD) and to present a realistic view on how consumer credit is being carried out and what are the potential problems associated with the directive in its present form.

Four main topics were treated: the philosophy behind the CCD by Professor Filotto of the University of Rome; the economics of consumer credit and risk management by Rosa Maria Gelpi, Cetelem; financial privacy protection by Nicola Jentzsch of the JFK Institute; and overindebtedness and the CCD by Amparo San José, CEPS-ECRI. This article summarises the main points.

In his presentation **Professor Filotto** criticised the underlying philosophy of the directive, which in his view pictures a world where irresponsible and abusive lenders take advantage of defenseless and unprotected consumers.

## The CCD philosophy

“It’s a tough world out there; there is violence, terrorism, evil, drugs and prostitution, but, worse of all, the contemporary world is infested by aggressive and irresponsible credit pushers taking advantage of harmless and naive consumers.



Some questions have to be answered:

1. Are credit providers so pushy, immoral and irresponsible?
2. Are consumers so naive and harmless?
3. And if so are the envisaged provisions effective?

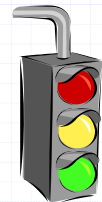
He argued however, that irresponsible lending is not possible in economic terms. The lender has no incentive to lend money if he/she suspects that the borrower has no intention or the capability to repay. The only lenders for whom defaulting might be beneficial are usurers, but this kind of lending represents a problem on its own and should not be treated within the framework of mainstream credit. As in medicine, if the remedy is too strong or disproportionate to the illness, it might have serious secondary effects on the patient; that is, in this case, it can limit good and healthy credit.

## ...making lenders responsible

The application of the general good principle justifies the limitation of the sale of a specific item (e.g. tobacco) or its ban (drugs); in other cases limits to personal freedom have to be established to protect the individual and/or the society (speed limits).

Is this the case with credit? In economic terms this is absurd because the lender has no incentive whatsoever in an irresponsible behavior; the sanction is automatic

***The only one who has an incentive in no repayment is the usurer but this has to be banned, not limited***



An effective notion of responsibility in the area of credit should work in both directions, the lenders should provide adequate, relevant and understandable information on the conditions and the cost of the loan to the borrower, who reciprocally should provide the lender with accurate and truthful information on his/her finances and ability and willingness to repay.

According to Mr. Filotto, only the provision of precise and necessary information is useful, not overloading the customer with all kind of information.

Ms. Gelpi, Cetelem, insisted on the concept of responsible lending. The figures on the margins and profitability of consumer credit lenders demonstrate that responsible lending is a necessity for lenders and not a choice. Operating margins in the industry are in the area of 1.62% with provisions for default loans around 1.91%. The remaining elements of the income statement of a consumer credit company represent expenses that are difficult to alter, such as interest expenses and operating expenses.

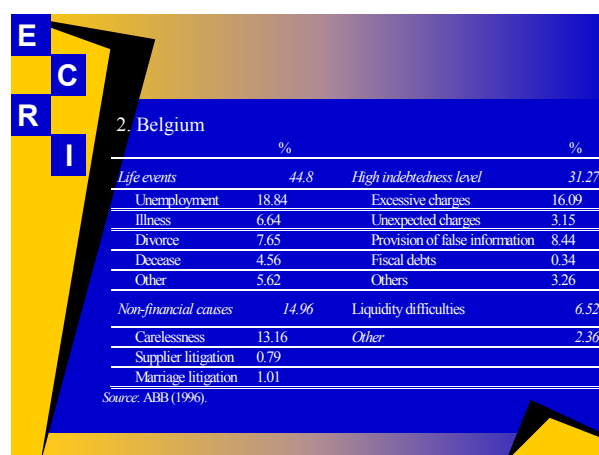
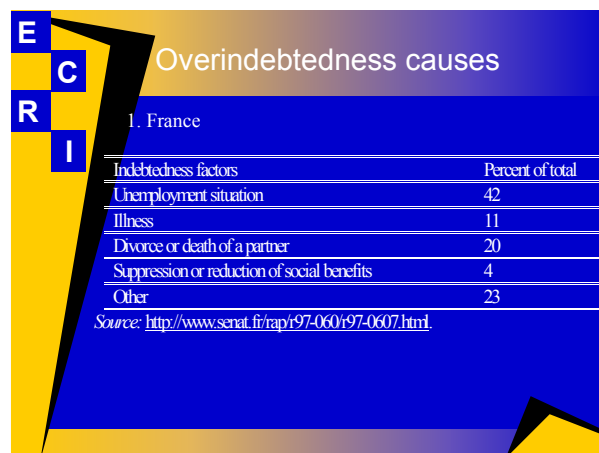
**Income statement of a credit institution specialised in commercial credit**  
September 2002

Interest income	11,22 %
Interest expenses	- 3,90 %
Net interest income	7,32 %
Other net income (commissions, equities, banking operations)	+ 0,73 %
Net banking income	8,05 %
Operating expenses	- 4,52 %
Net additions to allowances for Credit risk	- 1,91 %
<b>Operating profit</b>	<b>1,62 %</b>

Therefore, any deviation from the 1.91% default rate will endanger the profitability of the company. Once again, the most interested party in keeping non-payment incidents to a minimum is the lender.

The proposed directive does not recognise this economic reality and assumes that lenders are making economically irrational choices by lending irresponsibly.

**The presentation of Ms. San José** was based on the results she reported on an ECRI report published in September 2002 on the role of credit bureaus. The report highlights the absence of any relationship between the type of information collected and indebtedness levels of EU member states. The report also concludes that there is no sufficient statistical evidence to estimate accurately the level of overindebtedness in the EU. The few statistics and studies available suggest that the main reason an individual becomes overindebted is due to a major life event that impacts the economy of a household or an individual, such as unemployment, divorce or death of a partner.



The concept of responsible lending imbedded in the directive assumes that the use of credit bureaus leads to a perfect assessment of the capability of repayment of households. The information collected in credit bureaus however, even positive information, only relates to the outstanding credit held by that person, not to his ability to repay, i.e. income or financial wealth.

Moreover, as pointed out, credit bureaus cannot foresee if situations that seem to be key factors of overindebtedness, such as unemployment or divorce arise.

As a consequence, Ms. San José warned that the expectation implicit in the directive that credit bureaus can serve as effective instruments to combat overindebtedness will not be realized.

The research of **Ms. Jentzsch** on financial privacy regimes in Europe compares the level of protection in countries such as Germany, France and the UK with the US. It shows that the introduction of the EU data protection directive has raised EU standards above those of the US for those countries has registered lower than the US.

Results from tests carried out in the four countries studied challenge intuitive results for data protection and information exchange within the countries and cross-border effects (as seen in figure below). For instance, more severe data protection regulation facilitates information allocation within countries, whereas the relationship is inverse for cross-country tests.

**Privacy Regulation in Credit Markets**

III. Economic Effects of Data Protection in Consumer Credit Markets

Statistical tests and results (I): *Individual countries*

- \* ↑FPI ⇔ Information Allocation ↑
- \* Information Allocation ⇔ Credit Risk

Statistical tests and results (II): *Cross-country*

- \* ↑FPI ⇔ Information Allocation ↓
- \* Information Allocation ⇔ Credit Risk ↑

CI ↑  
CCGDP ↑

Nicola Jentzsch, John F. Kennedy Institute, Freie Universität Berlin 11

Ms. Jentzsch concludes with the following points:

**Privacy Regulation in Credit Markets**

IV. Conclusion

- \* Higher FPI reduces information allocation but also reduces credit risk
- \* Convergence of data protection regimes
- \* Implementation important
- \* Information flows less an obstacle
- \* Mobility of European consumer?
- \* Demand for cross-border credit?

Nicola Jentzsch, John F. Kennedy Institute, Freie Universität Berlin 12

*The report on which the presentation was based will be published by ECRI in February.*

Issues raised during the debate:

Mr. Joachim Wuermeling, rapporteur of the Legal Affairs and Internal Market Committee of the EP for the proposal announced that the first reading at the European Parliament could be expected after summer 2003. That schedule will facilitate give member states adequate time to react to the proposal. At this stage the Parliament is in a “listening mode” which will conclude with a public hearing during the months of April / May.

Ms. Beres, rapporteur for the Economic and Monetary affairs Committee of the EP, added that she was particularly concerned by the issue of information and believed that “an excess of information does not kill information”. She argued that the concept of responsible lending and the use of credit bureaus in this context should be very carefully studied.

Further to the issue of information to be provided, Mr. Wuermeling agreed with the majority of the participants that information is only the first step in the communication process and that the consumer should be given all the information that is relevant, not all the information that is available.

Ms. Jentzsch pointed to the slowness which with member states are transposing the data protection directive into national law and its interaction with certain provisions of the consumer credit directive (regarding credit bureaus and the use of the information provided by the borrower).

Mr. Wuermeling stated that he would alert the members of the Legal Committee of the possible conflict emerging from the application of the two directives to the field of consumer credit.

**Report on the FIDE Conference on Financial Services in the Era of the Euro and E-commerce: Does home country control work?, London, October 2002, by Professor Marc Dasse**

1. Three vexing issues

1.1 *Where is a financial service provided?*

This issue is of crucial importance in determining whether or not a financial service falls within the jurisdiction of the country of the provider of the service or of the country of the purchaser of the service. <sup>(1)</sup>

The Commission's Communication of 1998 tried to address this issue in order to give some legal certainty to the market. It took the view that, as a rule, banking services are provided in the country where the bank is established. This approach greatly reduces the risk of conflict between the rules justified by the general good in force in the country of the provider of the service and the rules justified by the general good in force in the country of the purchaser of the service.

Indeed, if the purchaser of the cross-border banking service is deemed, as a rule, to access the national market of the foreign EU bank providing such service, no conflict between the two different sets of national rules can arise.

To make a crude parallel with the free movement of goods, one can give the following example:

If a German tourist travels to Dijon in the summer, sits down at the terrace of a café and orders a "Cassis de Dijon" (a French drink), no one has ever suggested that the French café owner should refuse to serve him on the grounds that under German law (as it then was), it is forbidden to sell Cassis de Dijon to a German resident for his own good (because..... its alcoholic content is too low by German legal standards).

1.2 *The precise limits of the general good concept remain more hazy than ever*

Indeed, the developments in that field over the last few years put at risk the credibility of the whole exercise. A typical example is the prohibition on French banks to pay interest on current account credit balances. Obviously, it is hard to justify such a prohibition on the ground of consumer protection.

At the time when the then Second Banking Directive came into force, at the beginning of the 1990s, the

French subsidiary of Barclays Bank announced in the wake of the "1992 Single Market Initiative" that it was going to offer current accounts paying an interest on credit balances to French residents.

The French authorities swiftly reacted. The matter was investigated by the Commission which eventually decided that the French prohibition was justified by French monetary policy requirements.... which remained a national prerogative since there was no European currency. The French line of argument was, in substance, that if banks were allowed to pay interest on credit balances of current accounts, they would make less profit and therefore, in order to maintain their overall profitability, would have to increase the debit interest charged to commercial borrowers. This would in turn harm the profitability of French industry and commerce.

Yet, 10 years later, the prohibition is still in force even though we now have a European currency for all countries belonging to the Eurosystem, including France, and even though the Governor of the Bank of France will be the first to acknowledge that monetary policy nowadays is no longer a national prerogative but a prerogative of the European Central Bank.

In this respect, the discussion of the national reports brought to light the following:

Whereas French law prior to the move to the Euro only prohibited paying remuneration on current accounts denominated in French francs, it did not apply to current accounts denominated in foreign currencies. Deutschmark (DM) accounts, for example, were accordingly excluded from the prohibition.

After the move to the euro, the question was put to the French authorities whether the ban previously applicable to French franc-denominated accounts only, would in the future also apply to accounts denominated in "foreign" currencies that had joined the Euro (such as the DM). The answer was a clear yes. Thus, the scope of the ban has expanded, rather than receded.

1.3 *The tax obstacles to the provision of financial services on a cross-border basis remain as vigorous as ever.*

If a private individual wishes to borrow from a bank established in another member state, he is still required, in a number of countries, to withhold around 15-25% of the amount of the debit interest payable to the foreign EU bank and pay this over to his national

tax authorities. Obviously, under such conditions, it is unrealistic to expect cross-border lending to expand at the retail level.

2. The position of third-country institutions and the impact of the General Agreement on Trade in Services (GATS)

2.1 Characteristically, only the Swiss national report has addressed in a significant way the issue of financial services provided within the Community by credit institutions headquartered outside the Community. It must be borne in mind that these institutions may provide financial services in the Community either from a base outside the Community or by way of a branch established within the borders of the Community.

In this context, one must also bear in mind that branches of third-country institutions based within the Community are not subject to most banking directives. Indeed, banking directives are enacted to facilitate the freedom of establishment and the freedom to provide services of credit institutions headquartered in the Community. Third-country institutions having a branch in the Community cannot avail themselves of the freedom to provide services or to establish themselves in another member state pursuant to the provisions of the Treaty.

Yet, does one really expect that the branch, say of a major Swiss bank in London, will only open accounts to customers who are residents in the UK?

2.2 In this connection, it is also characteristic to note that very little reference was made in the national reports to the impact of the General Agreement on Trade in Services (GATS) on the position of third-country institutions operating by way of a branch in individual member states. Yet, these rules are of paramount importance when it comes to the right of a resident of a member state to “purchase abroad” banking services, at least if such purchase is made with a bank established in a country bound by the “Memorandum of Understanding” entered into by all member states with most major industrial countries.

Namely, under the Memorandum of Understanding, most banking services are liberalised with respect to the “purchase abroad” thereof. Purchase abroad is defined by the Memorandum of Understanding as the right for a resident of a country bound by the Memorandum to purchase a banking service in another country bound by the Memorandum without having to travel there. <sup>(2)</sup>

3. Transfer of banking supervision to the European level? Is it desirable?

Clearly there is as yet no consensus on this issue.

3.1 The possibility of a conflict of interest between the National Central Banks (NCBs) as “lenders of last resort” on the one hand, and as supervisors of ailing credit institutions on the other is certainly an issue that cannot easily be ignored.

3.2 So too is the issue whether the statutory independence (or should one say lack of political accountability?) of NCBs (at least for those which form part of the Eurosystem) with respect to the conduct of monetary policy should also extend tomorrow to their possible role as banking supervisors. If they fail to do their job properly, who will pay for the damage?

This is not a purely theoretical issue. Witness the cases currently pending before the Court of Justice <sup>(3)</sup> where the European Central Bank (ECB) and the European Investment Bank (EIB) claim, in substance, that they should be outside the scope of investigation of OLAF (Community anti-fraud unit) because it would be a threat to their independence. See also the opinion of Advocate General Jacobs stating bluntly that neither the ECB nor the EIB are above Community law.

3.3 The clear trend towards financial conglomerates encompassing both credit institutions and insurance institutions appears to stand increasingly in the way of a transfer of banking supervision to the ECB and NCB's. Namely, whereas the enabling clause of the Maastricht Treaty makes it possible to transfer supervision of credit institutions to the ECB and to NCBs without the need to revise the Treaty, the Treaty itself specifically excludes insurance companies from the scope of this provision. In other words, a revision of the Maastricht Treaty would be necessary to achieve that goal. Who is politically prepared to open that Pandora box?

Footnotes

1. See, among others, Marc Dassel, “Where is a Financial Service Provided?”, *Butterworth Journal of International Banking and Financial Law (JIBL)*, October 2001.
2. See, among others, M Dassel, Article referred to Footnote 1 above.
3. Cases C11/00 and C15/00 and the Opinion of Advocate General Jacobs dated 3 October 2002.

*The Congress is a bi-annual meeting of the International Federation for European Law (FIDE). It brings together national associations of European law and serves as a forum for the study and development of the European law.*

## **NEWS**

### **Overindebtedness in the UK, report to the Dti**

A recent report has found that overindebtedness in Britain is not substantially different compared to the situation a decade ago. The survey carried out by Professor Elaine Kempson focuses on the consumer credit market in the UK, the type of indebtedness of British individuals, the growth of consumer credit, the state and reasons of overindebtedness and practices of irresponsible lending and borrowing. The main conclusions are as follows:

- Most users of credit had only one or two credit commitments, owed modest amounts and were paying less than one tenth of their gross income on credit repayments. However, a small number of households were heavy credit users: with five or more current commitments and owing £10,000 or more.
- Compared with 1989, there are four times as many households that have credit facilities they do not use (28% compared to 7%). Therefore, the large increase in consumer borrowing is not due to a larger proportion of the population owing money. It is, however, partly accounted for by money owed on credit cards that will be repaid in full when the statement is received, as there are now many more credit cards in circulation. Nearly a quarter of the outstanding balance on credit cards is settled in full each month. Most of the increase is due to people who now owe larger sums than was the case in 1989.
- Regarding financial difficulties, from people's subjective assessments, it appears that the overall number of households in difficulty is relatively stable. In total, 6% said that they had had financial difficulties, but not at present (though a quarter of these still have in fact accounts in arrears), another 6 percent has financial difficulties at present. Loss of income was the main reason for arrears and financial difficulties for nearly half of the households affected. The most-cited events were redundancy, quitting work due to ill-health and drop in wages. Over-commitment was a reason cited by 10% of individuals in arrears or financial difficulties.

- Signs of irresponsible lending were found in particular in the practice of automatic increases in credit limits. There was evidence of a relationship between an increase in credit limits and financial difficulties. Households that were in financial difficulties at the time of the interview were more likely to have had an increase in the limit on their credit cards in the past 12 months than other cardholders. Indeed, some credit-risk managers in credit card companies have acknowledged that they raise limits in the knowledge that the highest-risk customers are also the ones that need and will use the increase. Other practices and products considered risky, especially when they are made available to individuals already in financial difficulties, are the offers to transfer credit card balances, reducing the minimum payment on credit cards and credit card cheques.
- The report points out that responsible credit depends on responsible borrowing as much as on responsible lending. In this respect, it also finds consumer practices that are risky. Consumers in financial difficulties, for example, often resort to re-financing of debts. This is only a short-term solution and is not adequate for households continuously in difficulties, which should seek the counsel of money advice services. Consumers can often anticipate that they will have financial difficulties to repay the loan but nevertheless pursue new credit agreements. Impulsive spending and unplanned purchases on credit are also common practices of irresponsible borrowing.

The author concludes that high levels of credit are problematic for a only small number of people into the UK, but a greater number is potentially at risk in a economic downturn. A mixed solution, reducing practices of irresponsible lending and educating consumers, needs to be found.

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### **THE COMMISSION PUSHES FOR FURTHER HARMONISATION OF BORROWERS' BLACKLISTS**

According to the Commission, a blacklist consists of the "collection and dissemination of specific information relating to a specific group of persons, which is compiled to specific criteria according to the kind of blacklist in question, which generally implies adverse and prejudicial effects for the individuals included thereon and which may discriminate against a group of people by barring them access to a specific service or harming their reputation".

Records of debt are considered as blacklists and allowed within the legal framework of member states. Some are regulated within the framework of Directive 95/46/EC and others, within commercial or financial regulations.

The Commission distinguishes between records that are styled to show solvency and credit information and those intended to provide information on the breach of monetary obligations. The first type would be the so-called positive registries and the latter, negative registries. The Commission pays special attention to negative files, although recognising their role in the preservation and stability of the financial system. In order to safeguard data subjects' legitimate rights, it recommends the following requirements are met:

- Data in the file must remain unpaid.
- Information has to be accurate and up-to-date.
- A limitation on the time for which negative data remain on these files.
- Notification to the subject of his/her inclusion in the file.
- Access to data and correction if it contains errors.
- Notification of application of scoring methods.

In this paper the Commission does not treat white information, if it is clear that it does not constitute a blacklist. It should not be forgotten that the existence of white information affects individuals' right to privacy in a similar way to black registries. Moreover, the Commission overlooks the reality of white information, mentioning "creditors' files" as opposed to "joint-files" (black information). In practice, white lists are also joint lists, since in most of the cases, they are shared by all creditors in the economy.

The Commission emphasises the case for having uniform harmonised criteria for the operation of blacklists. Maximum harmonisation in this area should go towards eliminating the different criteria which exist at present in most member states to facilitate the work of economic operators within the framework of the competition law, in line with Directive 95/46/EC.

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### **Commission consultation on the law applicable to contractual obligations (Rome I)**

The European Commission initiated this debate in order to assess the adequacy of converting the convention into a EU law instrument and is taking the

opportunity to modernise the convention with the publication of the a green paper for discussion.

Contract law has not been harmonised at European level and remains in the sphere of international private law, with reference to the laws of each state, but judicial cooperation is moving very fast. The Rome Convention of 1980 establishes standards on the law applicable to contractual obligations (Official Journal C 27, 26.01.1998, p. 34).

The Rome Convention determines whose law is applicable to financial services contracts. In the present form of the Convention, parties are free to choose the law governing their contract and, if they do not, the law applicable will be the one of the state to which the contract has the closest connection. It is presumed that it will be the law of the state where the service provider is established. In order to protect consumers' rights if parties to the contract did not choose a law, the law of the country of habitual residence of the consumer governs the whole contract.

In the context of e-financial services, the convention has a relevant role to play and the sector will be largely impacted by changes in its provision.

For more information on contractual law and to send contributions to the debate visit:

[http://europa.eu.int/comm/justice\\_home/unit/civil\\_en.htm](http://europa.eu.int/comm/justice_home/unit/civil_en.htm)

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### **"Banking secrecy & tax package", by Alfredo Sousa**

The EU has repeatedly shown interest in adopting measures to tackle harmful tax competition and to eliminate some tax distortions. Accordingly, the European Council adopted in December 1997 a "**tax package**" consisting of three legislative proposals: a Directive on savings tax, a Code of Conduct for business taxation and a Directive on interest and royalties. The initiative, however, still remains largely unachieved.

At EU level, taxation means unanimity. And unanimity results in complicated political negotiations. Despite the Feira Council (June 2000) having reached a political agreement and set the end 2002 as a deadline for the adoption of the "tax package", progress has been made.

### **Will 2003 bring new hopes?**

Focusing on the savings tax, the most controversial measure of the Package. The key question can be summarised in two words: *banking secrecy*. In fact,

under the scope of the coming Directive, each member state is expected automatically to provide information to tax authorities of other members states concerning any interest paid to individual savers resident abroad in the EU. The problem is that some member states have cultivated a reputation for being very *discret* about their clients, thereby attracting cross-border investments of savings.

As expected, some member states are reluctant to exchange information on the savings located inside their banks with the rest of the EU. Belgium, Luxembourg and Austria were even able to negotiate a transition period of seven years, in exchange for applying withholding tax instead of providing information.

Those member states have conditioned their final agreement to the EU's capacity to negotiate "equivalent measures" applicable to the US, Switzerland, Liechtenstein, Monaco, Andora and San Marino. In other words, if the EU is able to impose its own rules on banking secrecy mainly in the US and Switzerland, then Austria, Luxembourg and Belgium will agree to the tax package".

In December 2002, at the last ECOFIN meeting, Commissioner Frits Bolkestein presented a progress report on the current negotiations. So far, Switzerland has accepted to apply a withholding tax to EU residents' savings placed in its territory (15% from 2004, 20% from 2007 and 35% from 2010) and also accepted to share the revenue with EU tax authorities (75% for the EU and 25% for Switzerland). The Swiss would disclose information However only upon demand in the case of "*tax fraud and the like*" through administrative and judicial procedures, to which the EU strongly disagrees.

Regarding the United States, the report describes the US as being in favour of an exchange of information system, which is already in place through bilateral agreements with many other countries, including all the member states of the EU. The US is currently considering extending the scope of the information exchanged with those countries.

With the others key countries (Liechtenstein, Monaco, Andora and San Marino), a proposition was made to apply withholding taxes as "equivalent measures", even if some details are still to be discussed. The European Commission considers that it is reasonable to expect a final agreement with those countries if negotiations are successfully concluded with Switzerland.

Confirming the Danish Presidency forecast, the last ECOFIN meeting (21 January) reached a important political agreement on the tax package and committed

itself to formally adopt it before the European Council scheduled for March 2003.

Under this unexpected agreement,

- 12 member states will implement automatic exchange of information as from 1st of January 2004, the date of implementation of the Directive, and the agreements with third countries as well as with the dependent or associated territories;
- Belgium, Austria and Luxembourg will be able to apply a transitional period of withholding taxes (15% from 2004, 25% from 2007 and 35% from 2010) and share the revenue with the country of residence (handing over 75% and keeping 25%). After 2010, those member states will implement exchange of information only :
  - **if and when** the EU reaches an agreement, by unanimity, with key third countries, including Switzerland to exchange information upon request as defined by the 2002 OECD Agreement;
  - **if and when** the US is committed to exchange information on request as defined by the same OECD Agreement.

With this political agreement, three main conclusions can already be drawn :

1. Member states confirmed, at least until 2010, the co-existence of the two main concepts: exchange of information and withholding taxes. And for the future, which means after 2010, the exchange of information will be the rule, even if qualified by many conditions.
2. Since the tax level is particularly high (up to 35%), the prejudice will be mainly against "small investors". In fact, the other investors will simply find another place to located their savings.
3. Belgium, Luxembourg and Austria are able to keep their banking secrecy, at least as long as Switzerland wants to keep it too.

And in any case, the last decision at EU level, scheduled for March 2003, will be taken not only on the basis of the Commission report presenting the outcome of the negotiations with *key* countries mentioned, but also based on the discussions of the UK and the Netherlands with their dependent and associated territories. In this context, the EU will be back in touch with Switzerland to end the pending negotiations.

The European Court of Justice has also pronounced its opinion regarding the global controversy on banking secrecy. Recently (case C-153/00, 10.12.02), the ECJ was requested to respond to a preliminary ruling on the compatibility of Belgian and Luxembourg laws concerning banking secrecy. Further to a criminal investigation on financial and tax offences, Belgian judicial authorities have addressed some questions to

a bank employee working in Luxembourg. For a couple of years, the employee has allegedly collected money from Belgian clients and took it to Luxembourg, but also coupons pertaining to negotiable securities to Luxembourg on behalf of Belgian clients. During the judicial investigation, the employee has refused to on grounds of professional secrecy under Luxembourg law.

The legal background of the case is simple : Belgian law provides that the breach of a professional secrecy is a criminal offence, but it does not apply to the banking sector. In contrast, the Luxembourg law also refers to criminal sanctions for breach of professional secrecy, but it applies even to the banking sector.

In fact, employees of banks established in Luxembourg which exercise their right to provide services freely in the territory of another member state in which the refusal to give evidence is a criminal offence (as in Belgium) are faced with the dilemma of necessarily having to breach either the laws of the host member state or the Luxembourg provisions on banking secrecy. As the ECJ said, "the conflict of laws also results in unequal treatment of banks and their clients according to their nationality and place of establishment".

Faces with this situation, characterised by a difference in the laws on banking secrecy, one considered to be an impediment to the collection of evidence and the other a barrier to the free movement of services, the Belgian judge to address a preliminary question to the ECJ, before ruling.

The ECJ didn't help to resolve the dispute. However, on formal grounds, the ECJ refused to take a position on the banking secrecy controversy at this moment in the negotiations. The ECJ has therefore argued its incompetence to give opinions on hypothetical questions, considering that this question has no factual or legal basis. As the Luxembourg courts have not yet ruled on extra-territoriality of the banking secrecy law, several interpretations remain still possible. Moreover, the ECJ asserted that the Belgian jurisdiction had not explained why the opinion of the ECJ is necessary to resolve the pending dispute.

In these circumstances, and further to the recent political agreement reached by the ECOFIN, savings clients will have one year to adapt themselves to the new context of transparency and taxation!

## NOTES TO RESEARCHERS

### Open call for papers in the area of consumer credit

ECRI would like to invite scholars to submit proposals for papers on one of the following issues:

- We would especially welcome research oriented towards analysing **the impact of the proposal for a new consumer credit Directive**. Reports might cover one or several of the following: the novel concept of *responsible lending*, the inclusion of *joint and several liability* between distributors and creditors and issues concerning the *maximum harmonisation* approach of this proposed Directive amongst others.

Other topics can relate to:

- **Consumer indebtedness in an international perspective.** International differences in consumer indebtedness are wide. The legislation on consumer bankruptcy is a recent phenomenon in the EU countries as compared to the US where discharge of debt has been an established principle of bankruptcy law since the late 19<sup>th</sup> century. In the 1990s', several EU countries adopted legislation concerning consumer debt adjustment to protect indebted consumers, including the provision of debt counselling services in addition to court proceedings. Would EU legislation on consumer indebtedness ease consumer credit or would it make business conditions impossible?
- **Consumer credit in Central and Eastern European countries (CEECs):** What is the competitive environment for consumer credit in the CEECs?
- **The performance of cross-border retail payments and consumer credit:** The deregulation and international integration of financial markets combined with technical innovations have increased the volume of national and international payments. Central banks have been less concerned about retail payment systems since these are not essential to the implementation

of monetary policy, and the associated systemic risk is generally small. The execution of cross-border retail payments should nevertheless be consistent with the single-market goal. Would the cross-border provision of consumer credit be enhanced by improved cross-border retail services?

The studies will be published as ECRI research papers, after scrutiny by the ECRI Scientific Committee.

Indicative fee per study: 5,000 euro

Appropriate length: 15,000 words

Proposals should be sent with a brief curriculum vitae of the author to:

Amparo San José, ECRI Research Fellow  
Centre for European Policy Studies  
e-mail [info@ecri.be](mailto:info@ecri.be)

### EUI conference

On May 13-14th, a workshop will take place at the European University Institute, titled *The Economics of Consumer Credit: European experience and lessons from the US*.

The workshop's aim is to summarise some of the research that has been done on consumer credit (at the Finance and Consumption programme in Florence at the European University Institute) over the last few years, and also to discuss what is and isn't known about consumer credit in the US and in Europe. The aim is to commission around 7 or 8 presentations on various aspects of consumer credit, which would then be published in a single edited volume.

The institute has already received several contributions, but is willing to consider additional submissions; please send them to the address [charles.grant@iue.it](mailto:charles.grant@iue.it) for appraisal.

If you would like to attend, please contact Charles Grant at the above address for further details.



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