

dti

Consumer Credit Law

**Summary of responses to the Department
of Trade and Industry's consultation on a
proposed European Consumer Credit
Directive**

June 2005

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dti

The DTI drives our ambition of 'prosperity for all' by working to create the best environment for business success in the UK. We help people and companies become more productive by promoting enterprise, innovation and creativity.

We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

A CONSULTATION ON A PROPOSED EUROPEAN CONSUMER CREDIT DIRECTIVE

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Ministerial Foreword

In February this year the Department of Trade and Industry published a consultation paper on the European Commission's revised proposal for a Consumer Credit Directive. The Commission had revised its earlier 2002 proposal in light of the Opinion of the European Parliament following its First Reading and following discussions with interested parties. Because the Commission had not made a revised text available, but had instead indicated its revisions in the form of comments on the European Parliament's Amendments, the consultation paper was accompanied by an unofficial consolidated text setting out DTI's understanding of the Commission's revised proposal.

The consultation period closed on 22 April and we received a total of 47 responses. I am very grateful to everyone who took the time to give us their views. I know that this has required considerable time and effort.

The European Commission is now expected to table a further amended text imminently. In these circumstances it would not be sensible to refine the Government's position on the proposed Directive in advance of the further amended text and for this reason we are not publishing a Government response to the outcome of the consultation at this stage, although we are, of course, considering the comments we have received very carefully.

Instead, we are publishing a detailed summary of the responses received to the consultation without delay with a view to setting out how these have been taken into account in our revised position on the amended text of the Directive once this appears. At the same time, we will update you on the further amendments which the Commission makes to its proposal and take your views on these and on our proposed revised negotiating position.

Gerry Sutcliffe MP
Minister for Employment Relations and Consumer Affairs
Department of Trade and Industry

Introduction

Breakdown of Responses

1. A total of 47 responses were received representing 51 organisations (excluding individual membership of associations). These comprised:
 - Industry - 35
 - Consumer groups - 5
 - Trading Standards/ Enforcers/ Regulators - 8
 - Legal - 3

Executive summary

2. Whilst there was a considerable degree of support for the aims and objectives of the proposed Directive, there was concern that, as drafted, it could impose burdens on business and introduce inflexibility on the one hand while at the same time reducing consumer protection on the other. Some businesses said that it would have little positive impact on the development of a single market, whose emergence depended more on other factors, which were being addressed by other means. Some of the consumer lobby was concerned that the Directive concentrated too much on the front end (information, transparency etc) rather than on matters arising during the life of an agreement and, for example, extortionate credit.
3. In many areas there was strong support for the UK position as set out in the Consultation Document. The majority of respondents supported the UK Government position that the regulation of consumer credit must be proportionate and that this could best be delivered through targeted, rather than purely maximum harmonisation, although there were mixed views on which areas should be subject to maximum and which minimum harmonisation. Most agreed with the proposed UK line on the inadvisability of the responsible lending requirement and the duty to advise. There was strong support for the Government position to seek to exclude all secured lending and there was general support for the exclusion of Credit Unions from the scope of the directive and for the proposed position on database access and the APR. The majority of respondents felt that maximum harmonisation of the APR would be essential to protect consumers and enable them to make meaningful comparisons.
4. Most respondents agreed with the UK line that Article 15 concerning unfair contract terms was unnecessary. There was also strong support for the UK position in relation to the Chapter on “Performance of a Surety Agreement” and a near-unanimous view that Article 22 concerning open-end credit agreements was unnecessary.
5. There was firm support for the UK position on the assignment of rights, subject to the issue of securitisation being resolved, and there was strong support for the UK position as set out in the consultation document in relation to Joint and Several Liability, and cheque cashing. There was overwhelming agreement that

intermediaries should be required to divulge whether they were independent brokers, but less clear views on whether the instances when a credit intermediary can charge a fee should be limited. Nearly all of those who responded agreed that the proposed provisions on the notice period for cancellation of credit would cause difficulties for lenders and could increase fraud and most respondents agreed with the proposition in the consultation paper that a minimum harmonisation approach should be adopted to default and enforceability.

6. However, there were also a number of concerns expressed in relation to the Directive and the UK position in a number of areas. A range of concerns were raised about the definitions in the proposed directive. There did not appear to be a great deal of support for a light touch regime for credit agreements aimed at refinancing the existing debts of a consumer, and there was clear concern that debt consolidation specialists should be subject to full regulatory requirements.
7. Most respondents supported the proposition that the UK should support a 14-day cancellation period but argued for the inclusion of specific provisions on repayment and the return of goods. There was some concern about the cost implications of traders having to accept returned goods unless there was provision for compensation although there was a consumer/regulatory view that a 14 day unconditional withdrawal provision would be a step forward in terms of consumer protection.
8. In other areas, there was no clear consensus. Although there was general agreement that the proposals concerning information required in advertisements would not assist the development of a cross-broader market, there was a difference of view on what the core requirements should be and whether maximum harmonisation, minimum harmonisation or mutual recognition would be the best way forward in each case. All parties appeared to agree that only key or important information should be included in Contractual Information, but there were differences of view with regard to the kind of information which this comprised. There was disagreement about the level of harmonisation that should be applied to early settlement, but support for the recently updated rules.
9. There were mixed views on whether the Chapter on Registration, Status and Control of Creditors and Credit Intermediaries would be strong enough to protect consumers in an Internal Market, but there was strong support for ensuring that the UK licensing regime is maintained. There were also diverse views on passporting, with a slight preference for introducing a fitness test and passporting for creditors and credit intermediaries.
10. Finally, little new information was forthcoming on costs and benefits; a number of respondents preferred to wait for the Commission's revised proposal before commenting further.

Detailed summary of responses by question

CHAPTER 1: AIM, DEFINITIONS, AND SCOPE

Question 1: Do you have any concerns arising from any of the other definitions in this Article?

11. Of those who responded to this question, four businesses and three enforcers had no concerns with the definitions other than those set out in the consultation document. Whereas one consumer group made the general point that there was a lack of flexibility in fixing these definitions which could mean the legislation would be unable to deal with product and market developments in the future.
12. The following comments were made about specific definitions:

Creditor

13. One consumer group was concerned that the definition of creditor is limited to granting credit in the course of business. They pointed out that a ‘loan exchange’ has been developed in the UK where the agreements may be classed as non commercial and so not covered in the Directive, which they did not think was entirely appropriate.

Credit intermediary

14. Eight industry responses and one enforcer argued that the definition of credit intermediaries is too wide, as it would bring into scope affinity groups and co-branding partners who do not actively provide credit but introduce consumers to credit providers.
15. In addition to our concerns, four industry groups expressed strong concerns that the definition of credit intermediaries would include mail-order catalogue agents/ home shopping agents, which should be excluded from the definition of ‘credit intermediary’. One response in particular, felt that it would be disproportionate to fix them with certain primary liabilities and to subject them to a full licensing regime. Moreover, one business argued that the wide definition would create potential licensing issues for OFT. One enforcer shared DTI concerns that the definition does not distinguish pay-as-you-go arrangements from credit that is repayable in instalments, and a consumer group argued that the definition of intermediaries should be extended to include debt collection and credit repair businesses. A business representative expressed concern that because the definition of credit intermediary and acting as a credit intermediary used the phrase “undertaking other preparatory work for such agreements, or concluding credit agreements” this could potentially include activities not normally associated with credit brokerage such as work undertaken by an advertising or marketing agency, and that there was no reason the Directive should impose obligations on these types of firms.

Acting as a credit intermediary

16. One lawyer argued that the definition of acting as a credit intermediary was unnecessary as its content is already comprised in the definition of “credit intermediary”, and because the term does not appear in the draft Directive.

Total amount of credit

17. One legal response suggested that it was not clear why the words “ceiling or sum” are needed and why the word ‘total’ would not suffice. They also felt that the expression “likely to be agreed” lacks precision.

Credit agreement

18. One business was concerned that the reference to providing credit for “remuneration” in the definition of credit agreement could create a loophole which could be exploited when the creditor artificially inflates the price of the goods to make a margin, and then provides the credit ‘free’ to exempt themselves from the directive. A further industry response considered that payment for insurance via monthly instalments might not be excluded, which would make such arrangements less attractive to consumers. An enforcer expressed concern that credit agreements in relation to payments for items such as home delivered milk and newspapers may be caught by the definition.

Consumer

19. One enforcer, two consumer organisations and a business response feared that the definition of consumer would exclude small business persons, the self-employed and unincorporated small businesses from the scope of the Directive, which might require protection as they are not necessarily more knowledgeable about consumer credit than individuals. The enforcer underlines that it may also exclude individuals who purchase goods on credit for professional/ business use. One business expressed concerns about when a natural person is “acting for purposes which can be regarded as outside his trade or profession” and the uncertainty about what this means.

Total cost of credit to the consumer

20. Two business responses noted that costs payable to persons other than to the creditor on completion are excluded, but that there is a reference to “notary” and it is not clear what might constitute notary fees or whether this would include any legal work undertaken by a solicitor or licensed conveyancer on behalf of the creditor. Another business response argued that the definition should be extended to include conveyancing fees and include a situation where the conveyancer acts for the lender. One business representative noted that the total charge for credit excludes fees not known to the creditor, and that this is a reduction in consumer protection compared to the position under the CCA regulations. An enforcer argued that the total charge for credit should include tax and other charges to reflect the true price of the credit and allow consumers to shop for the best deal.

Linked transactions

21. Two business representatives and a legal response endorsed the UK call for more clearly defined terms in relation to linked transactions which do not correspond to UK law. An enforcer had wider concerns about linked credit agreement than we expressed in the consultation. They felt that something similar to s. 19 of the CCA was necessary to for anti-avoidance.

Question 2: What do you think is the appropriate level of harmonisation for the Directive? Why?

22. The majority of respondents supported the UK Government position that the regulation of consumer credit must be proportionate and this can best be delivered through targeted, rather than maximum harmonisation. Of those who responded to this question five enforcers, two lawyers, thirteen business groups and three consumer groups supported this approach. However, they did so for a number of reasons.

23. Among those who agreed with the UK position, there was general consensus that the Directive should not lead to a reduction in consumer protection in the UK, in particular as two enforcers argued that the UK has one of the best consumer credit regimes in the EU. One business felt that where possible the current UK legislation should be taken as the appropriate level. Two business groups thought that this was the best approach given that the proposal would not achieve an internal market, so we therefore need to limit the damage to UK consumers of reduced consumer protection.

24. Several respondents also expressed concern that a maximum harmonisation approach would be too rigid and stifle innovation. In particular, a consumer group supported targeted harmonisation only to the extent that it was preferable to maximum harmonisation. They felt that minimum harmonisation would not give enough consumer protection in Europe, but maximum harmonisation would be too rigid. A maximum harmonisation directive with a high level of prescription and a low level of content would be inflexible, and unable to adapt to changing credit products and insufficient in scope to adequately protect consumers. They felt that another approach to regulation was needed.

Minimum harmonisation

25. One industry response supported minimum harmonisation, although they felt that in theory the proposal should be subject to maximum harmonisation, as they did not want to weaken UK protections. Another business group supported minimum harmonisation due to the extent of the cultural differences with regard to credit within Member States. A business organisation felt that it should be minimum, because maximum harmonisation would damage the UK market, and any delays in obtaining credit would damage the sale of goods. Two consumer groups felt that only minimum harmonisation was appropriate, as Member States need to be able to ensure a level of consumer protection which is appropriate to their markets. This would also leave flexibility, and the possibility to future-proof legislation.

26. One enforcer argued for a high level of minimum harmonisation as they felt that if the level was appropriate, most Member States would not need to go further. However, they acknowledged the need to counter specific examples of detriment in the market, and so felt that Member States should be able to retain or introduce additional measures, if necessary.

Maximum harmonisation

27. Two business groups supported maximum harmonisation, phased where necessary, to allow for divergences in certain markets. They did not want to see legislation laid down apart from that contained in the Directive. A further business did not give a clear answer but did not feel that maximum harmonisation is the answer given that EU credit markets are at many stages of development, maturity, complexity and size. A level playing field is essential, but UK business should not be subject to higher compliance costs than EU lenders operating in the UK.

28. Generally, several respondents expressed concern that it was not clear from the Directive what the impact would be on areas excluded from the scope, or subject to the light touch regime. If the proposal was subject to maximum harmonisation, would Member States be able to go further than the provisions contained in the Directive? This had an important impact on their support for the proposal.

Question 3: If you support a targeted harmonisation approach, which areas do you think should be subject to maximum harmonisation, which minimum?

29. Of those who responded to this question, six businesses agreed with the UK position to support maximum harmonisation in areas where it is necessary to remove genuine barriers to cross-border lending, such as access to data, calculation of the APR and information requirements, and that in areas of consumer protection, minimum harmonisation should be set at a high level.

30. Support was expressed for maximum harmonisation in the following areas:

- Areas of consumer protection - 1 business & 1 enforcer
- APR calculation – 4 business, 2 enforcer, 2 consumer
- Information requirements – 3 business
- Access to data – 4 business, 2 enforcer, 2 consumer
- Comparative pricing – 1 business
- Interest calculation – 1 business
- Cross-border lending – 1 business
- Scope – 1 business
- Linked transactions – 2 business
- Advertising – 2 business
- Contractual information – 1 business, 1 consumer
- Licensing requirements – 1 consumer

31. There was support for minimum harmonisation in the following areas:
- Areas that simply add bureaucratic costs or place a burden on business - 1 business & 1 enforcer.
 - Joint and Several liability – 3 enforcers
 - Non-standard lending i.e. equity release – 1 business
 - Linked transactions – 1 business
 - Surety agreements – 1 business
 - Pre-contract information – 1 enforcer
 - Right of withdrawal – 1 enforcer
 - Termination – 1 enforcer
 - Advertising – 1 business

Question 4: Do you agree with the proposed UK Government position with regard to the various scope and specific requirement issues – if not, what would you amend and why?

32. The following respondents agreed with the DTI position.

- 7 businesses
- 3 enforcers
- 1 lawyer

33. Support was expressed for the DTI position on scope in the following areas:

- Exclusion of secured lending - 12 businesses, 1 enforcer and 2 consumer groups.
- Light touch regime for overdrafts – 5 businesses and 1 enforcer.
- Remove upper financial limit of Euro 100,000 - 1 enforcer and 1 consumer group.
- Exclusion for credit unions – 1 enforcer and 1 consumer group
- Retain £50 lower limit in the UK, or enable Member States to regulate agreements under Euro 300. 3 consumer groups. 2 business groups also supported the UK position on loans under Euro 300, although one only if the provisions on responsible lending and duty to advise were deleted. One business supported the Euro 300 limit if the UK could regulate for agreements under this amount.

34. There was opposition to the UK position in the following areas:

- Do not support removal of the Euro 100,000 limit. 3 businesses did not support removing the limit, and 1 argued that we should retain £25,000 limit in UK law. 1 business felt that there should be no domestic legislation above this limit, 1 business felt that the limit should be higher, 2 businesses would not support this limit if mortgages are not excluded and 1 business felt that the Euro 100,000 limit in this Directive is more acceptable than removing the limit in domestic legislation.
- Do not support the exclusion for overdrafts – 1 business
- Do not support DTI position on reducing the Euro 300 lower limit. 1 enforcer felt that it was too low, 1 business supported a Euro 300 limit and 2 businesses felt that the lower limit should be higher, one felt it should be Euro 800 and the other Euro 500.
- Agreements without interest should be excluded from the scope – 1 business.
- Pawn shops should be included within the scope – 1 consumer group and 1 business.

- Second charge mortgages should be included – 2 consumer groups. A further consumer group argued that secured lending should be included in the Directive until the £25,000 limit has been removed from domestic legislation.
- Concerned about secured lending and possibility of lower standards than those set out in the Directive – 1 enforcer.
- There should be no exclusion for interest-free retail credit - 1 Business.
- Financial limits – 1 business argued that they should be same in all Member States, and there should be no further regulation.
- The exclusion for interest-free lending should be the same whether for 3 or 12 months and regardless of the number of payments - 1 business.
- Should not exclude credit agreements for refinancing to avoid legal problems – 1 enforcer.
- Must not be extended to include business lending – 1 business group.

35. This article also raised several concerns about drafting, including;

- The consultation document expressed concern with the definition of hire purchase. These concerns were reflected by 6 businesses, 1 enforcer and 1 consumer group. Four of these businesses expressed concern that the definition of hire purchase in other Member States may put the UK at a competitive disadvantage. One business felt that there should not be an exclusion for certain HP agreements.
- One business argued that the definition of personal development loans needed further clarification, as the current definition was too broad.
- An enforcer was concerned about the general get out offered by loans “not offered to the public generally”.
- One consumer group had concerns that the ability of Member States to regulate agreements outside the scope or subject to the ‘light touch’ regime was not clear from the drafting.

CHAPTER II: INFORMATION AND PRACTICE PRELIMINARY TO FORMATION OF AGREEMENT

Question 5: will Article 5 as drafted assist the development of a cross-border market and consumer protection for credit by making credit advertisements more transparent?

36. The great majority of respondents did not believe that the detailed rules governing advertising of credit set out in the proposal would assist the development of a cross-border market and some suggested that introducing harmonised requirements in this area would have little positive impact given the many underlying commercial reasons for which they believed a cross-border market in credit was unlikely to develop. There were concerns that requiring full information in the case of all advertisements would discourage signposting or "banner" advertisements which were valuable in making consumers aware of the range of credit providers and products and enabled new entrants to the market to establish themselves.
37. However, one consumer body supported the inclusion of the information prescribed in the proposal, casting doubt on the extent to which it would make advertisements unduly complicated or could stifle competition and innovation. It called for additional information about bundled products and a ban on including add-on products, such as insurance, unless the cost was indicated both with and without the add-on products. A local trading standards department believed that the proposals would increase transparency and enable consumers to identify the most appropriate credit product, thereby encouraging competition. One trade association and a lender thought that the proposals probably would increase transparency but considered this to be outweighed by the disadvantages.
38. Copy advertisers were concerned that the requirements could deter local advertising (due to additional expense) and, unless their defence was strengthened, could even expose publishers to prosecution for non-compliance.
39. Some in the industry suggested that an APR should only be required where the cost of credit was mentioned in an advertisement. In advertisements covering a range of products it might be difficult to determine which of a range of APRs should be given. One lender said that a mandatory APR would not help since it would change according to the length of the loan. An industry body thought that all advertising should clearly state the amount to be repaid by the consumer (subject to interest-rate changes) in order to aid transparency. Others preferred typical to absolute pricing (there was some support for the UK typical APR approach, although one bank thought that the success of the UK 66% rule had yet to be established). A consumer body saw a potential role for repayment scenarios on the grounds that consumers did not readily understand APRs, but a local trading standards authority and a bank believed that the use of representative examples was open to abuse and could obscure information.

40. A number of respondents, including a trade association, a regulator, a bank and a legal body wanted to see clear specific minimum requirements providing for readily comparable core information. The trade association believed that this would prevent advertisers circumventing the rules.

Question 6: Do you think that a principled approach based on mutual recognition would be appropriate for advertising? If so, what key information do you think should be included in all credit advertising?

41. The majority of respondents preferred either maximum harmonisation -- to ensure consistency -- or minimum harmonisation of key information together with the flexibility for Member States to go further. Only seven respondents clearly supported a principled approach and it was not clear that all these also supported mutual recognition.
42. Those who supported maximum harmonisation were, with the exception of two regulatory bodies, all from industry. They emphasised the need for meaningful comparators -- ideally at least the APR or typical APR calculated on a standardised basis -- to be displayed in a consistent manner. For the most part they preferred the approach already adopted in the UK. It was pointed out that anything less than maximum harmonisation could influence the workings of any emerging cross-border market. In some cases maximum harmonisation would only be supported if the information requirements were not excessive and/or were on the lines of existing UK requirements
43. Those who supported minimum harmonisation were clear that the minimum standards would have to be of a reasonably high level. A regulatory body suggested that a high level of minimum harmonisation might lead on to full harmonisation in the future. A bank thought that limited additional national requirements should be allowed to reflect non-harmonised legal considerations (tax, criminal law, obscenity laws etc) and favoured a fundamental provision that all advertising must be clear, fair and not misleading.
44. Those who supported a principled approach appeared to view this in much the same way as those promoting minimum harmonisation -- ie as a means of ensuring that the UK could maintain its existing approach either for consumer protection purposes or to avoid further confusion resulting from changing the UK's regulatory regime. One industry respondent pointed out that the UK regulations had evolved over time in a "mature" market. A regulatory body said that any minimum standards would need to be of a reasonably high standard to protect consumers.
45. One trade association pointed to recent experience regarding sales promotion as evidence that mutual recognition did not work in practice. A consumer body questioned how mutual recognition would work in the case of Internet advertising. A regulatory body raised the issue of Home State regulation, expressing concern that

consumers could be disadvantaged by it -- especially as there was no requirement to make clear which Member State's regulation applied.

46. The key information proposed by respondents to that part of the question included:

- the typical APR calculated on a standardised basis (preferably incorporating the UK's 66% rule);
- rules for displaying the APR;
- registered address and, in one case, a registration number or statement that the advertiser is regulated;
- the total charge for credit;
- the total amount payable together with the cash price of goods/services;
- the frequency, number and amount of repayments;
- the amount of any advance payment or deposit;
- need for/description of security
- information on the amount and term that an APR was based on
- amount of loan;
- total cost of interest;
- total charge for credit;
- repayment terms.

47. Some respondents simply referred to the existing UK requirements as the appropriate standard. A building society said that all fees and costs should be displayed in order to avoid low typical APRs which transform into higher actual APRs when applied. One consumer body suggested that the minimum standard should be the inclusion of all information required by Article 4 together with the additional information on bundled products and requirement for separate pricing set out in answer to question 5.

Question 7: Do you agree with the position on pre-contractual information (responsible lending)?

48. All but seven respondents agreed with the position on responsible lending set out in the consultation paper -- particularly the need for clearer definition. This included three trading standards organisations. There was concern from the industry at the potential need for lenders to judge whether theoretical standards had been met: without legal certainty the stability of the market could be undermined and ultimately the ability of business to offer products to consumers. One industry association thought this could cause serious damage to the UK economy and, ultimately, contribute to financial exclusion. One bank did not believe that there was a need to standardise the way in which lenders went about assessing creditworthiness. Two industry respondents preferred the UK's "unfair relationships" approach.

49. A couple of industry respondents pointed to the need for responsible borrowing on the part of consumers. One industry association pointed out that credit checks were not appropriate where a guarantee or indemnity existed and another that in the case of

"payday advances" there was no advantage to consumers even in providing pre-contract information.

50. Only two of the respondents who supported the principle of responsible lending were from industry. One of these agreed with the reasons given in the consultation paper for rejecting the details of the directive's approach and suggested instead a concept of injudicious lending, possibly combined with promotion of awareness of consumer rights in this area. The other industry respondent believed that consumers had a right to expect a lender to comply with the responsible lending principle, but thought it should be more clearly defined. Given that responsible lending was about good practice, this respondent thought that it might be better to deal with it through voluntary codes of practice -- possibly a European version of the Banking Code.
51. The other respondents in favour of a responsible lending principle/requirement comprised two enforcement and three consumer bodies. One of the enforcement bodies thought that the reasonable steps which lenders should be required to take in order to lend responsibly should depend upon the nature and amount of credit involved and the circumstances of the borrower: hence, it would not be necessary to conduct credit checks in all cases. Member States could define precise rules in this area. The other enforcement body believed that the provision should extend to requiring evidence from the consumer rather than merely consulting a database. It thought that "significant" credit increases should be defined in terms of the size of repayments rather than merely the size of the sum borrowed. One of the consumer bodies pointed to significant evidence of the need for responsible lending to avoid indebtedness. In its view responsible lending encompassed more than creditworthiness. Another consumer body said that ability to repay should be taken into account alongside existing credit commitments: at the very least there should be a statutory requirement for lenders to share positive credit data. A third consumer body did not believe that precontractual information requirements were sufficient as consumers did not always understand the information or recognise key issues. The development of summary boxes in the United Kingdom had helped and should be considered in the European context.

Question 8: Do you agree with the position on precontractual information and in particular the reference to "in good time"?

52. The great majority of respondents did not comment on the detail of the pre-contractual information requirements in the Directive. However, some industry representatives argued that amortisation tables, and information on registration fees, taxes etc should not be included and one trade association saw no advantage to consumers in providing precontractual information at all. An association representing mail-order traders pointed out that the requirements did not work for the mail-order business, where advertisements were simply an invitation to treat: mail-order traders could only provide credit information once a consumer had put in an order (from which, of course, he or she could withdraw under the distance selling provisions). A

mail-order company said that precontractual information was published in its catalogues. A consumer body argued for the adoption of summary boxes.

53. The main issue which attracted attention was the requirement to provide information "in good time". A number of both consumer and industry respondents agreed that the requirement was a step forward for consumer protection, but argued that it needed to be more clearly defined (in one case there was concern that non-compliance with a vague concept could automatically undermine the enforceability of a credit contract). Other respondents preferred the wording in the Consumer Credit Act that information should be provided "before the agreement is made" (one arguing that any specific timeframe could cause delay to the consumer -- a view which was not shared by a legal body, which believed that a set period was required for clarity).
54. However, there was a body of opinion, largely amongst industry respondents, but also including at least one trading standards organisation, that requiring provision of pre-contractual information "in good time" in all cases could be a retrograde step, imposing an unnecessary burden on businesses and inconveniencing consumers (particularly in the case of online credit agreements, which are, in any case, protected by the Distance Marketing Directive) unless they were able to waive the right. Some of these argued that the meaning of "in good time" would have to be adapted according to individual lending products; in practice it could be a matter of the borrower deciding how long they required. It was not clear what the requirement would mean in a face-to-face situation. It was also pointed out that in the case of credit card agreements, a consumer could simply change his mind by not using the credit card. One trade association suggested that a requirement to provide precontractual information in good time could skew the market in favour of credit cards and a lender thought that it might discourage consumers from shopping around. A couple of respondents thought that it could duplicate the right of withdrawal provision.
55. One consumer body and a trading standards department, however, supported the phrase "in good time" as a means of giving consumers a sufficient period to take advice.
56. One regulatory body argued for a high level of minimum harmonisation in this field based on host state principles. It believed that the "in good time" requirement should apply in all cases, irrespective of whether or not there was a cooling off period. However, it recognised that the definition of in good time could vary depending upon circumstances and the products involved. It suggested that Member States could go beyond the minimum requirements and recommended that these should include a clear concise description of the principal features of a product and be supported by the "balance" requirement which applies in advertising as well as rules on prominence and the information taken "together as a whole".
57. On the other hand a bank called for the preservation of the existing differentiation between face-to-face and distance contracts. One lender believed that some

agreements (for example, home credit agreements) concluded face-to-face already had a right of cancellation and concluded that any arrangements would need to fit with the Distance Marketing Directive's requirements.

Question 9: Do you agree with the position on a duty to advise?

58. Only four respondents disagreed: two consumer organisations and two trading standards organisations.
59. Those who agreed with the line taken in the consultation paper included companies, industry representative bodies and regulatory/enforcement bodies including three trading standards organisations. These felt that a duty to advise would be inappropriate, intrusive ("consumers don't like divulging the purpose of a loan" and "the majority of customers do not want or need advice") and could lead to delays and additional costs as well as market distortions (in particular constraining the availability of unrestricted running account credit and giving an unfair advantage to lenders with a limited/single product range). It was felt that the objective could better be met by ensuring that adequate information was provided and appropriate credit checks undertaken to assess a borrower's suitability for credit. There was a view that intermediaries and agents should be excluded from the requirement given their often relative lack of expertise. One bank was concerned at the implications of the duty to advise for on-line channels which would require sophisticated systems. An industry association was concerned at the disproportionate impact on smaller loans and the possibility that larger or illegal loans would be encouraged. Another bank believed that it would be impossible to implement the requirement in the case of credit transactions conducted by post and was concerned that it might undermine the advances made with regard to the introduction of the Summary Box.
60. Some in the industry suggested that a fallback position should be to remove the reference to advantages/disadvantages, the purpose of credit and the requirement to consider all types of lending products. One bank suggested that a duty to assist would be better; another that the duty to advise should apply only where advice was requested and offered.
61. A regulatory body suggested that a prohibition on the selling of unsuitable products together with a requirement that where advice is offered it should be suitable advice and a general duty of care would be a better option (although a legal body thought that a duty of care would go too far). A consumer organisation which supported the duty to advise thought that lenders should be placed under a duty to ensure that products were suitable for the borrower's needs (as in the case of secured lending under FSA rules).

Question 10: Do the extra requirements of Article 6 (new) (concerning overdrafts) cause lenders and borrowers any difficulties?

62. Less than half of respondents replied to this question and those that did for the most part fell into three camps: banks, who saw potential difficulties; regulatory/enforcement bodies, which thought that the requirements would be of benefit to consumers (particularly where overdrafts competed directly with other forms of credit); and other industry respondents, who thought that banks should be required to give the same standard information for current-account overdrafts as would be required for other forms of credit.
63. Those industry respondents who believed that the extra requirements would cause difficulties were particularly concerned about the requirement to provide an APR for overdrafts: in their view this could prove costly, would be of limited usefulness and would be misleading, since in practice customers were generally more interested in the package of benefits associated with the overdraft (fees were generally listed separately from the interest rate where credit was bundled with other services). One bank (which could accept the requirements other than the APR) said that it would be impossible to calculate the APR in a consistent manner across different types of accounts even within one firm. In order to fit all circumstances the level of information would have to be unwieldy. The industry also argued that information should not be required "before the agreement".
64. One regulatory body suggested that, where overdrafts competed directly with other forms of credit, they should be regulated in the same way but with modifications (for example with regard to documentation). It believed that an APR could be calculated on the basis of the assumptions which would apply to running account credit.
65. One lender and an industry organisation said that the proposed requirements would be largely in line with existing UK legislation and would reflect its members' existing practice.

Question 11: Do you agree with the approach to credit unions?

66. Less than half of all respondents replied to this question and of these all but one agreed with the proposition in the consultation paper that ideally credit unions should be exempted from the directive's requirements, but that otherwise a light touch regime might be acceptable. Comments made included:
- credit unions had no impact on intra-Community trade;
 - they were regulated by the FSA;
 - the full requirements of the proposed directive would have a detrimental impact on small and medium-sized credit unions;
 - and credit unions played an important role in the social economy of Northern Ireland.

67. However, a regulatory body, a consumer body and an industry association all pointed to the need for flexibility in case credit unions became more commercial. The regulatory body suggested that any exemption should be limited to ensure that credit unions could not extend their activities into commercial lending. The consumer body thought that as credit unions developed and became more commercial they should eventually be treated in the same way as other lenders and the industry association believed that the position would change if *national* credit unions were permitted.
68. The only respondent which thought that credit unions should be subject to the full requirements of the proposed directive was a finance company which argued that consumers should be subject to the same level of protection regardless of the lending organisation and pointed out that most members of the Consumer Credit Association and pawnbrokers also only offered purely local services.

Question 12: Do you have any comments on how the proposal contained in Article 7 (credit agreements aimed at refinancing the existing debts of a consumer) can be amended so that the consumer clearly benefits and is not exposed to exploitation?

69. Again, just under half of all respondents replied to this question. There was general agreement that caution needed to be exercised here. There were mixed views on whether to allow an exemption at all: some local trading standards authorities favoured the opportunity to give lenders a more flexible regime provided that the consumer did not suffer any detriment; others did not believe that an exclusion was in the best interests of consumers and thought that the full level of protection should be available in the event of refinancing. A significant proportion of industry respondents thought that exemptions could lead to market distortions -- especially taken alongside the responsible lending/duty to advise requirements (and if these were removed they argued there would be less justification for the exemption). One industry association believed that the combination of a duty to advise and responsible lending would actively discourage lenders from rescheduling loans and push them in the direction of debt recovery. A consumer body pointed out that sometimes advice was needed rather than a new financial product and did not want the Directive simply to encourage the latter. A regulatory body wanted the UK to maintain the current position for clarity and to ensure that a category of loans did not become unregulated.
70. Most respondents agreed that agencies specialising in debt consolidation should not be exempted from the requirements of the directive and one lender suggested that debt consolidation specialists needed closer regulation. A trading standards organisation said that debt consolidation arrangements had featured prominently in the worst cases of misselling. An industry association said that debt consolidation specialists should be precluded altogether from concluding contracts which would disadvantage the customer and that variable interest rates should not be allowed for such transactions. It believed that the lender should have to demonstrate in writing that any new credit terms were no less favourable than the original terms. A trading standards department referred to the sometimes intimidatory collection tactics which might be employed by refinancing companies and questioned whether some kind of

capping system was necessary as well as a way of making such organisations' trading practices more transparent. A number of respondents agreed with the proposal in the consultation paper that the exemption should only apply to the original lender.

71. Some respondents called for more precise definition of the concept of consumers not being put "in a worse position" and a building society called for definition of "legal proceedings". One finance company pointed out that sometimes lower payments would be in the best interests of a consumer even if this meant higher overall costs in the long-term. On the other hand a consumer body and a local trading standards department suggested that tight regulation was needed because consumers were often unable to discriminate between short-term high rate debt and the lower rate applied to a long-term secured loan even though the latter might be considerably more expensive in the long run.
72. An industry association suggested that changes from the original terms and conditions should be made clear where an agreement was modified. Another thought that, in the case of refinancing, the information requirements should extend below the minimum threshold to much smaller loans, which are granted to more vulnerable consumers. A legal body suggested that this was an area in which creditors should have to advise consumers to avoid misleading them into onerous agreements.

CHAPTER III: DATABASE ACCESS

Question 13: Do you agree with the UK position on databases?

73. The following supported the UK position in relation to access to data:

- 10 businesses
- 6 enforcers
- 1 lawyer
- 1 consumer group

74. The rest of the responses also largely supported this article. Several respondents raised concerns as follows:

- There was some confusion over which databases are being referred to which needs to be clarified. One business argued that we must clarify that it is referring to CRAs. Another business thought that it should not only be the Credit Reference Agency Databases but should also be public databases. This was supported by another industry representative who argued that the article should apply to any relevant database. A further business argued that it needs to give examples of the databases to be included and that these should include positive and negative data, marketing data, address verification & voters' roll data.
- A business expressed concern that it could disadvantage UK due to the level of information which we keep on our databases.
- Three businesses argued that it is essential to ensure reciprocal access to comparable data across Member States. This was reflected by a further two businesses who had concerns about predatory lending, and the need for controls to prevent abuse.
- UK concerns about the ability of the lender to give full results of a credit check were reflected by 3 businesses. There was further concern that this article might open up a lenders decision criteria to other lenders, and that firms might incorrectly explain information supplied by the CRA to the lender.
- The level and type of information being held created some concerns. A business felt that there was a need for further clarification of the levels of data being shared and differences in the data stored in different Member States. Another business felt that the Directive must ensure that a minimum level of information should be prescribed to ensure uniformity of information among Member States. A consumer group favoured CRA's holding positive and negative data, which should be available to lenders. Another consumer group shared this view, and felt that lenders should be obliged to share full and positive information to create a more accurate picture of the consumer. However, one business emphasised that the Directive should not prescribe the type of information to be held on the database. Another business argued that they did not want provisions on the type of information to be held on databases to be too restrictive.
- In terms of consent, one consumer group argued that there is a need to ensure that consumers understand what financial information they are consenting to disclosure, and a business raised concerns that the consent clauses may identify particular institutions to which data can be provided, and this may be a problem cross-border. According to one business response, a fundamental principle currently is that the

consumer consents to the accessing of the various databases, and need to be careful not to replace this with a legal right of lenders to access such information without consent.

- One business asked how a contractually based relationship subject to data protection could be made the subject of compulsion?

Question 14: We would like to know of any concerns you may have arising out of this Article, including any concerns about the costs of implementation.

75. Three businesses and one consumer group shared the UK position to support the requirement in Article 8 to inform consumers and guarantors of the result of any consultation immediately and without charge only insofar as it requires lenders to give immediately and free of charge, a “yes or no” decision to an application for credit.
76. Three further businesses agreed but felt lenders should not be required to give further information, rather the consumer should be able to go to the CRA and pay a small fee for a copy of their file.
77. A number of respondents suggested that further clarity was needed on what was meant by the “result” of a consultation. One lawyer was not convinced that all the concerns set out in the consultation document were justified as a matter of law. They suggested that it was not a duty to provide details of information on the basis of which that result was reached. One business also felt that if it was interpreted appropriately then it is no higher than the existing provisions under UK law.
78. Three businesses felt that Article 8(2) should be deleted along with the references in Article 6 and Article 10, since access to database information is covered under the Data Protection Directive (Data Subject Access Requests). If this Article and the references are not deleted, then the businesses argued that it would lead to substantial cost implications if it was interpreted that a credit file should be provided at each application.
79. One business argued that a company’s lending criteria should not be made known to the consumer. However, according to this business if the creditor must show the file then there should be an equitable charge. Another business shared the concerns about the charge, and pointed out that the current £2 charge in the UK does not cover the costs of providing the consumer with the file.
80. On the other hand, one consumer group supported consumers being able to access their credit record free of charge, although they felt that it was not clear that the Directive would achieve this. An enforcer also felt that as the £2 fee would not currently cover the cost of giving the consumer the information in their credit record, the fee should be scrapped. A further enforcer argued that the consumer should be informed free of charge, on request whether a database check was made and given the

contact details of the CRA but he should be informed without request if the credit is refused or offered at less favourable terms.

81. Responses from business set out a number of further concerns with this Article, as drafted.

- One business expressed concern about the impact the word ‘immediately’ could have on distance sales.
- One business was concerned about the ability of a salesperson acting as a credit intermediary to give a meaningful response. Better to give a yes or no, and inform them where to get further information.
- Two business groups pointed out that it could be dangerous for representatives to tell a customer in a face to face situation if they have been declined credit. One business felt that the word ‘immediately’ should therefore be removed, the other felt that Article 8 (2) should be deleted.
- One business argued that the Article implies that the guarantor can have access to the debtor’s report and vice versa.
- A business also pointed out that there are occasions such as suspicion of criminal activity where it would not be appropriate to give the underlying reason for declining the credit.
- One business argued that the implication of the use of the word “result of a consultation” could result in a reduction of innovation taking place in credit scoring. Instead, should amend so that the consumer is informed of the result of the application for credit with reasons if the application is declined.

CHAPTER IV: FORMATION AND SURETY AGREEMENTS

Question 15: would lenders have systems difficulties in providing the personalised information currently required by the draft Directive (Article 10)?

82. Considerably less than half of all respondents replied to this question and of these all but four took the view that at least some of the additional requirements in the Directive would cause difficulties for lenders. Those who disagreed were a trading standards department (which, nevertheless, thought the additional information unnecessary) and a trading standards association, a legal organisation and a bank.
83. Reasons given for opposing additional requirements in the draft Directive were:
- significant programming and training costs in providing tailored amortisation tables with particular cost implications for smaller lenders and a probable need for an adequate development period;
 - doubtful benefit of such tables to consumers and lack of demand for them;
 - potential for information overload;
 - impracticability of providing amortisation tables in the case of home shopping/home credit;
 - inappropriateness of including a name and address in the case of home shopping/home credit agents;
 - it would make low value loans uneconomic, thereby reducing consumer choice;
 - amortisation tables would only work in the case of inflexible loans;
 - added delay;
 - requirements of UK legislation were sufficient (and preferable) and further changes would constitute an unnecessary burden.
84. The legal organisation thought that existing UK legislation meant that lenders would virtually have to comply with the additional requirements already. It suggested that information on complaint procedures could be in a standard format.
85. A trading standards authority said that it would not want to see a reduction in the UK's requirements for examples to be given and a consumer body supported the proposal to include information about dispute resolution within the body of the credit agreement, since consumers were more likely to keep a copy of the agreement than a separate leaflet.
86. Some in the industry agreed that information on complaints procedures should be included in a separate document and suggested that amortisation tables should only be made available on request.
87. One industry association agreed with DTI's view that fixed-rate and variable rate loans should be subject to equal information requirements.

Question 16: Please provide any specific comments you might have on these extra items of information that the Directive proposes should be included in credit agreements.

88. Twenty-one respondents replied to this question. Only three of these (two consumer bodies and a joint reply from two trading standards authorities) supported the additional requirements. Those who opposed the additional requirements were all industry respondents apart from one legal organisation, a local trading standards authority and a regulator. Two industry representative organisations opposed the provision of information on unfair contract terms even in a separate leaflet. One of these also opposed the requirement for information on termination procedures and the results of a credit search.

89. Those who opposed the additional requirements made the following comments:

- the proposed wording of the Article appeared to require non-essential information;
- consumers are in danger of suffering information overload from over complex agreements;
- additional information tended to be advantageous to the lender, putting the responsibility on the consumer to read the relevant bits;
- there was a need to research what consumers actually read;
- it would not benefit consumers either in terms of transparency or protection from unfair lending (more effective to enshrine rights within a compliance regime than to communicate them to consumers) ;
- the consumer's rights regarding provision of precontractual information and cancellation were more important;
- there was a danger of moving towards a requirement for disclosure of implied terms, which could make agreements unwieldy and confusing;
- it would be difficult to prove that a lender had provided additional information in leaflets.

90. One bank specifically supported the proposal in the consultation paper that only "key" or "relevant" information about the conditions governing drawdown of credit should have to be included. Another suggested that if consumers' rights were to be summarised, this could better be achieved through a "welcome pack" or within a Banking Code communication.

91. One industry body believed that an exhaustive list might prevent courts from reaching appropriate decisions in view of all the circumstances. One trade association suggested that more consumer education was needed.

92. A bank pointed to the lack of clarity regarding the meaning of "conditions" governing drawdown and "minimum information concerning Unfair Terms rights". It believed that the requirement to "receive" a copy of the agreement should be to "serve" a copy.

93. Those who supported the additional requirements made the following comments:

- the extra requirements would aid transparency to the benefit of consumers;
- a statement of consumer rights implicit in a credit contract would be a useful safeguard;
- the additional requirements were at least as integral to an agreement as the scope for benefiting from tax relief;
- no distinction should be made between with/without capital amortisation with regard to information required in the agreement.

94. One consumer body thought that unfair contract terms procedures should be included in the agreement whilst a trading standards department thought that it could best be provided in a separate leaflet.

Question 17: Do you agree that the UK should argue for the inclusion of all the above [i.e. existing UK] information requirements in the Directive?

95. All but one of those who responded to this question (total 27) agreed, or largely agreed, with the proposition on the grounds that the information benefited consumers (transparency) and provided for level playing fields. The single exception (a trade association) agreed with the principle of transparency but not with the proposed approach, on the grounds that UK legislation already required too much and too complex information. Four other industry respondents (including a cross-industry response) did not support existing requirements in the UK with regard to headings, tax relief and payment allocation. One of these (a bank) only supported the requirements insofar as they were applicable to a given product (for example, it did not consider that information on advance payments would be relevant in the case of credit cards).

Question 18: Do you agree with the UK position on the right of withdrawal?

96. Most of those who responded to this question (25 out of 29) agreed wholly or to some extent with the UK position set out in the consultation paper: ie to support a 14-day cancellation period, but to argue for the inclusion of a specific provision making repayment a precondition of cancellation and ensuring that goods are returned or paid for by alternative means. Only three respondents (a regulator, a trading standards department and a consumer body) disagreed.

97. A cross industry response ideally wanted an option for the consumer to waive the right of withdrawal or for compensation to be paid to cover the cost of depreciation of goods. It did not believe that return of goods could be an alternative to repayment in all circumstances, given the inability of some traders to handle used goods (this view was supported by a number of individual lenders). A right to return goods would effectively require the lender to become party to an arrangement allowing their return. Two trading standards authorities wanted an exemption for face-to-face credit agreements concluded at dealers' premises in order to allow immediate possession of

goods and to avoid a financial burden on business. Another trading standards organisation suggested that the wording in the Distance Selling Regulations concerning the return of goods should be used and that cancellation should be accompanied by a requirement to repay money owed (a view shared by a credit industry association and a bank).

98. The retail motor industry had serious concerns regarding the return of motor vehicles, which it said would have huge cost implications given the impact of previous ownership on the value of a car: its response suggested that it would invariably need to withhold delivery for 14 days. A direct marketing association thought that goods should have to be returned in a resalable condition and that the supplier should have the right to charge a reasonable cost of rental where returned goods did not meet this requirement. Another industry body thought that a right of cancellation of agreements made on trade premises might reduce consumer choice and skew the market towards running account credit. In its view (shared by another industry association) any right of withdrawal should be confined to the credit agreement, and consumers should be required to pay for goods/services in order to withdraw from an associated credit agreement. A lender thought that in some cases it would be legally impossible to separate a credit agreement from the supply of goods, thereby making it difficult to allow withdrawal from one part of the contract and not the other.
99. One industry body thought that a 14 day cancellation period would be too long and would lead to increased costs; it preferred the existing five-day period and wanted a requirement for the customer to return goods *in good condition*; it did not, however, support the requirement for consumers to repay as a condition of cancellation of an agreement.
100. The regulator who disagreed with the line proposed in the consultation paper thought that the right of withdrawal should apply to all credit agreements including secured loans where there had been no pre-contract consideration and to distance contracts insofar as it would provide additional protection. It believed that the right of withdrawal should also extend to any linked insurance. In its view the consumer should be entitled to return goods under hire purchase or conditional sales agreements where credit was integral to a purchase and to cancel a supply contract not fully completed at the consumer's request before exercise of the right to withdrawal. It suggested that credit should not be advanced before the end of the cooling off period unless the consumer expressly asked for it. In its view repayment should not be a precondition of cancellation.
101. The consumer body thought that a common time period for withdrawal across all credit agreements would improve consumer protection and guard against hard sells. It thought that any difficulties in the retail credit sector could be overcome by improved training of staff selling credit products and, in the HP sector, through appropriate adaptations such as a requirement for a cancellation deposit or the development of cancellation insurance products. These views were supported by the trading standards department, which believed that there was considerable evidence

that consumers only realised the inappropriateness of a credit agreement once they had properly examined it away from the pressure of the sales environment. It believed that it would be possible for businesses to deal with returned goods, for example by means of a charge for "hire".

102. A bank thought that clarity would be required as to when an agreement had been concluded (in the UK this meant when both parties had accepted it). One finance company thought that the whole area of voluntary terminations should be revisited.

CHAPTER V: ANNUAL PERCENTAGE RATE OF CHARGE AND BORROWING RATE

Question 19: Do you agree with our policy to seek maximum harmonisation on the subject of APR on the basis of the policy suggestions outlined?

103. The majority of respondents to this question supported the UK position, these were 13 businesses, 3 enforcers, 1 lawyer and 4 consumer groups. Maximum harmonisation for APRs was considered essential to protect consumers, and enable them to make meaningful comparisons.
104. However, a number of points were made about the Article by those who supported the UK position and those who did not.
105. There was disagreement over whether an APR should be required for overdrafts. Two businesses supported the UK position subject to the introduction of APRs on overdrafts. A business group and an enforcer argued that if APRs are introduced for overdrafts then similar assumptions to credit cards should be used to calculate the APR. However, three business groups argued that an APR for overdrafts would be misleading as overdrafts and current accounts are one product and should not be separated.
106. One business organisation argued that the APR does not serve as a useful means of helping consumers to make an informed choice on credit card products, as the APR is distorted by fees. This business argued that instead the effective annual rate of interest should be shown together with a separate list of fees and charges, in a summary box, for example. Failing that, the minimum amount of credit on which the APR is based should reflect the individual product in question. This business also felt that the CCD was correct in stating that a constant capital balance should be assumed for open-end credit arrangements.
107. There was support for the recent UK regulations in this area, in particular two businesses argued that they would want to see the EU requirements mirroring those adopted in the UK in the agreement regulations, whereas a business group and a consumer group argued that they should mirror the recent CCA advertising regulations. However, one business supported maximum harmonisation but felt that a range of rates is not more confusing than a typical APR.
108. A business agreed that the method of calculation of the APR should be clearly set out and harmonised. However, they argued that the limitations of the APR should be noted separately, in particular with regard to the distortion for small sum, short term credit agreements.
109. One business agreed, but did not support provision that the duration of the agreement should be based on the terms of the contract, as they felt that banks would make the length of the agreement very long to show an artificially low APR.

110. A business supported the UK position that APRs on running account credit should be based on the 'go-to' rate rather than a blended rate. However, another business did not support the UK position on the typical APR, and would prefer the use of the actual APR.
111. An enforcer argued that the APR should be based on rational assumptions and include all mandatory charges so that loan comparisons are made on true cost comparisons. They also argued that the assumptions for the APR also need to deal with conditional rates, introductory rates, fees, interest only and cash back. Further, a mechanism needs to be established at EU level to update the APR to reflect product innovation.
112. An enforcer argued for further clarification that only interest calculated on the basis of the APR may be charged on the repayment amount for the agreements cancelled within the first 14 days.

Question 20: Given that we aim to retain the current provisions relating to the calculation of APRs for HP transactions, are there any difficulties associated with this proposal and if so what are they?

113. Two enforcers, one lawyer and a business felt that there were no difficulties associated with the proposal calculate the APR for each of the dates on which the purchase would be exercisable. On the other hand, six businesses and an enforcer raised concerns in response to this question.
114. Two businesses questioned whether there is any evidence that there are agreements with the option to purchase exercisable on a number of dates, and argued that it seems to be over complex for no purpose. These and another business felt that documenting several APRs on a single HP document which will be pre-printed or pre-formatted will be very difficult, and that additional training and programming will be needed.
115. Three businesses expressed concern about which APR would be used to calculate early settlement if there were multiple APRs. One of these businesses also argued that where the residual value of the goods cannot be determined, the APR will look ridiculously high and not representative.
116. There was also concern from two businesses that when calculating an APR based on each option, if you offer an open sales option, in which customers can return the vehicle at any point, it would mean they have to supply a daily APR over the length of the contract which is meaningless to the consumer and time consuming and costly to the lender.

117. For one enforcer, the residual value of the financed goods is fundamental to the contract, so this should be estimated. However, they agree if this did not happen the proposition of a zero amount is sensible.

Question 21: Do you agree with our policy to resist the requirement that the new APR and amortisation table must be given when borrowing rates are varied?

118. There was strong agreement with our policy to resist the requirement that the new APR and amortisation table must be given when borrowing rates are varied. Sixteen businesses, five enforcers, one legal response and one consumer group agreed with the UK position. Several of these respondents felt that these requirements should be firmly resisted.

119. However, one enforcer felt that the borrowing rate should only vary within parameters set by an external index or consumers should be able to withdraw without penalty. They also felt that consumers should be notified individually of rate increases and the consequent implications for repayments.

CHAPTER VI: UNFAIR TERMS

Question 22: Do you support the inclusion of these terms in the Unfair Contract Terms legislation? If so, why?

120. 27 respondents replied to this question; 21 of these agreed with the proposition in the consultation paper that Article 15 should be deleted on the grounds that the unfair terms legislation already provided consumers with adequate protection; four respondents disagreed, arguing that there was value in adding the specific terms to the unfair contract terms legislation and two did not have a firm view.
121. The 21 responses in agreement with the line proposed in the consultation paper included a number of trading standards authorities, two consumer organisations and a legal body in addition to a number of lenders and industry associations. One trading standards response pointed to the need to avoid duplication and the risk of differences of interpretation, and an industry association suggested that it would be better to amend Article 12 to mirror Regulations 4 and 5 of the UK Total Charge for Credit Regulations in order to avoid the problems created by the fact that the Unfair Contract Terms Directive was enforced differently in Member States and did not apply to individually negotiated terms. A bank pointed out that there could be circumstances in which cash security might be required to cover a credit card limit (secured credit cards were already used in the US and allowed non-prime consumers to establish credit histories and to obtain credit cards); in its view the rate of interest on a deposit was a pricing decision best left to the market.
122. A legal body (which had no firm view) questioned whether consumers could in practice easily rely on the more general provisions set out in the Unfair Terms legislation.

CHAPTER VII: PERFORMANCE OF A CREDIT AGREEMENT

Question 23: Would you prefer to see maximum or minimum harmonisation in this area? Why?

123. Three businesses supported the UK approach to this article, but did not state what level of harmonisation they would support in this area.
124. Minimum harmonisation was supported by three enforcers, three businesses, one lawyer and one consumer group. Of those who supported minimum harmonisation, one enforcer and two businesses supported this level of harmonisation because they felt that the consumer credit rules work well and that they do not want them changed. A further business agreed that they wanted to see an indemnity based on actuarial principles and a deferment period, and as they did not feel that other Member States would support this they would prefer minimum harmonisation. Another business suggested that all the Directive needs to do is to state that Member States should make proper provision to ensure that the consumers received the appropriate benefit for early repayment.
125. Two enforcers, two businesses and two consumer groups supported maximum harmonisation in this area. Two of the enforcers and one of the consumer groups argued that maximum harmonisation should be based on the current UK requirements on early settlement. Another business agreed but felt that a deferment period should be permitted rather than mandated.
126. The business representative argued for maximum harmonisation with the Article as currently drafted which would allow Member States to determine specific actuarial methodology. However, they also wanted to see a deferment period for loans under one year, and argued that otherwise lenders may withdraw from the sector as it will not be profitable. One business agreed that the equitable reduction must be fair and objective and based on actuarial principles. However, they argued that maximum harmonisation should apply only to the reference to actuarial principles.
127. A consumer group argued that as early settlement is closely connected to the explicit price, a maximum harmonisation approach would appear to be reasonable but they felt that the extra month's deferment allowed under UK law is uncompetitive and a penalty if the amount which accrues to the creditor is higher than the fair and objective indemnity set out in this Article.
128. Other respondents made the following comments. One business argued that it is not clear that minimum harmonisation would allow the UK to have a deferment period unless this was expressly set out in the directive, since this would be less protection, so would urge the UK to press for a system identical to the UK new regulations. Given the time and cost to comply with the new early settlement regulations, three businesses argued that they would want to see the new rules on early repayment retained, and would support an approach which allowed this.

129. Two businesses argued that the article offers a workable approach, which would allow different ways of meeting the costs but said that they would support the introduction of a deferment period, and support our position for loans under one year.

Question 24: Do you agree with our position on assignment of rights?

130. The UK position was broadly supported, of those who responded nine businesses, four enforcers, two lawyers and one consumer group supported the UK.

131. One enforcer argued that the creditor should have the same rights against the assignee as he enjoyed previously against the creditor, and that it is essential that where they are assigned, the consumer is informed in writing.

132. However, there were a number of respondents who did not support the UK position and this was mainly due to the issue of securitisation. Six businesses and a response from a law firm raised the issue of securitisation. They argued that if the consumer continues to deal with the same entity, there is no reason to inform them of assignment of rights, as it would lead to huge administrative problems and would confuse and alarm consumers. There is a need for lenders to trade securities freely and not affect the relationship between originators and their customers. Two businesses argued that a narrow carve out for securitisation would prevent innovation through special purpose vehicles, and so there needs to be an explicit reference to Special Purpose vehicles in the Directive.

Question 25: Do you support our policy to maintain current UK law and retain the provisions contained in the 1987 Directive?

133. There was overwhelming support for the UK approach in this area. Of those who responded eleven businesses, six enforcers, one lawyer and a consumer group supported the UK position. In particular, two enforcers said that they do not have evidence of detriment arising from cheque cashing which would support this ban and one enforcer argued that the delayed presentation of personal cheques should be protected. One business argued that it would probably be against human rights for the directive to close down the pay day lending industry. Another business failed to see the rationale in the proposal, as the delayed presentation of a personal cheque is an alternative to an overdraft, and it is regulated. Several respondents also pointed out that cheques are not post-dated, but the presentation is delayed.

134. One business suggested that there was a need to make sure that insurance policies linked to endowment mortgages are not captured by mistake.

135. One consumer group supported the ban on securing debts through bills of exchange, as they argued that these loans often put borrowers' property at risk of possession from default. This group also had concerns about the high interest rates

charged by the cheque cashing industry, and although they did not support a ban on the industry, they would support further regulation.

Question 26: Would you support our approach of maintaining joint and several liability as set out in the UK?

136. The majority of respondents supported the UK position, thirteen businesses, six enforcers, 1 lawyer and four consumer groups. Some of these responses supported the maintenance of Joint and Several Liability very strongly. They argued that it is essential that it is maintained as an important consumer protection, and that any reduction would be extremely detrimental. Several of these respondents supported minimum harmonisation as a pragmatic approach which allows Member States to introduce increased consumer protection in this area, if they so wish. However, one business did say that it would support measures to clarify lenders' liability overseas, and argued that should be limited to the value of the transactions.
137. Three business groups did not support the UK approach. They argued that they would support maximum harmonisation in this area to avoid market distortions, or they would support an article similar to UK provisions on Joint and Several Liability but with credit card liability limited to the transaction value and not extended to consequential damages. They also did not agree with the provision that if a consumer withdraws from the sale of goods they can withdraw from the credit agreement, as this would mean the cancellation of store cards.
138. One legal response argued that we should seek to avoid confusion with the definition of "linked transactions" in UK law.

Question 27: Do you agree with a minimum harmonisation approach in this area?

139. The majority of respondents agreed with a minimum harmonisation approach in this area which would allow the UK to maintain current provisions on Joint and Several Liability. These respondents were 15 businesses, 5 enforcers, 1 lawyer and 1 consumer group. One of these enforcers supported minimum harmonisation, although ideally they would like the provisions in the UK to be reflected in the Directive.
140. However, 3 business responses and an enforcer did not agree with minimum harmonisation in this area and wanted to see a maximum harmonisation approach. Two of the business groups who would prefer to see maximum harmonisation, felt that if minimum is retained then the provisions in the UK must only extend to Member States borders. One enforcer argued that they would prefer maximum harmonisation to give consumers reassurance when purchasing cross-border but only based on retaining S75 of the CCA.
141. One of the consumer groups who responded argued that there should be common European rights in relation to S75, but that failing this, then we should maintain UK protections. They also argued that it is unfair that S75 protections in the UK do not

apply to credit card cheques. One enforcer argued for a lower limit than £100 in the UK especially for distance selling, and the need to reverse high court ruling on transactions taking place abroad.

CHAPTER VIII: SPECIFIC CREDIT AGREEMENTS

Question 28: Is there any need for Article 22 (“open-end credit agreements”)? If so, in what circumstances should it be retained?

142. Of the 25 respondents to this question only one (a regulator) thought that there might be a need for the Article -- on the grounds that it might be necessary in the wider EU context. Nevertheless, the regulator agreed that the consumer should be able to terminate an agreement with immediate effect and a lender should only have to give 30 days notice.

143. Most of those who thought there was no need for the article simply said so, but a number of respondents backed this up with further comment as follows:

- the principle of stopping credit by demanding repayment is central to responsible lending and preventing indebtedness;
- "long duration" would need defining;
- there was a contradiction between the second paragraph of the Article regarding fixed term agreements and the title of the Article, which referred to "open-end" agreements;
- these matters would be more appropriate for domestic legislation;
- it would represent a retrograde step in comparison with existing UK legislation;
- unclear what "open-end credit agreement" actually means;
- even once the right to draw down had been terminated, the very existence of a technically "live" credit agreement could create problems for individuals seeking credit elsewhere.

CHAPTER IX: PERFORMANCE OF A SURETY AGREEMENT

Question 29: In view of the differences between the Article and UK law do you agree we should seek minimum harmonisation?

144. There was strong support for the UK position in relation to this Article and our position to seek minimum harmonisation. 11 businesses, 5 enforcers and 1 lawyer supported the position set out in the consultation document. Of those who supported the UK position, there was strong support for minimum harmonisation, given the complexity of this area. A business pointed out that UK law has proven “fit for purpose” and so further legislation would be superfluous.
145. However, one enforcer, three businesses and a consumer group did not agree with minimum harmonisation. Two of these businesses and one consumer group questioned how minimum harmonisation for this article would allow the UK to retain our provisions, as arguably the UK rules are less protective.
146. Most respondents agreed that there are a number of problems with the article. At least two businesses pointed out that three years is arbitrary in the case of fixed term lending, and inappropriate for open-end credit, and that restricting these guarantees would seriously damage the flow of credit to groups such as the socially excluded. Another business felt that we should oppose those elements of the Directive which conflict with or go beyond UK legislation. In particular, limiting to 3 years guarantees for open end credit which has practical and cost implications. On the other hand, a consumer group argued that we should limit the guarantor’s liability with respect to time, although they recognised that 3 years may be problematic. This group also felt that it would be reasonable to limit potential liability of the guarantor to the original amount of credit and arrears.
147. Three businesses felt that it would be unacceptable for banks to be restrained from action against the guarantor until 3 months after the default period as it would be better for all parties to reach a speedy and reasonable agreement, and the three months would allow unscrupulous guarantors time to dispose of assets.

CHAPTER X: NON-PERFORMANCE OF A CREDIT AGREEMENT

Question 30: Are there any problems with applying this requirement (concerning default notices and enforceability) to running account credit?

148. Only 15 respondents replied to this question and only one of these (a consumer body) thought that there should be no difficulties in applying the provisions set out in Article 24. Industry respondents made the following points:

- creditors must be able to manage their risk and deal with dishonest customers;
- having to provide evidence could frustrate successful prosecution in the case of fraud;
- these provisions could contravene money-laundering requirements;
- no objection to advising customers of the justification for termination of the drawdown facility *after* the event;
- any restriction on the ability of a lender to prevent further drawings on running account credit would ultimately have a cost implication for responsible customers;
- the need to block credit may also arise due to material default on other accounts held by the customer with the credit provider;
- lenders should not have to justify a decision to suspend drawdown -- this would restrict contractual freedom unnecessarily;
- the test for withdrawing a credit facility should be "reasonable grounds" rather than "justification";
- an alternative approach would be to allow creditors to suspend drawdown rights provided this was included as a contractual condition in the agreement;
- the Unfair Terms legislation already provided sufficient protection.

149. A cross industry response also pointed to the need for care in interpreting "disproportionate measures" to avoid interfering with the normal procedures of secured lenders; otherwise the availability of loan finance could ultimately be limited and more expensive.

150. Two trading standards departments also supported the view that a default notice should not be needed before further drawings on credit could be blocked (partly on the grounds that this would impose an unnecessary burden on business). Another trading standards department supported the proposed provisions on disproportionate measures (while recognising that these needed clarification) and on a reasonable time period to be given to consumers before demand for immediate payment could be made in the event of a default. It suggested that consumers should be notified before suspension of credit except where there were reasonable grounds to suspect fraud. A legal body recognised the need to deal with consumers who abused credit cards, but suggested that there should be a provision requiring creditors to give notice forthwith upon blocking credit.

Question 31: Do you agree that a minimum harmonisation approach to default and enforceability is appropriate?

151. 19 out of 22 respondents agreed with the proposal that a minimum harmonisation approach to default and enforceability would be appropriate. Many of these agreed with the reasoning set out in the consultation paper. Additional comments were made as follows:

- a high level of harmonisation would be necessary (albeit "minimum") as this was a key area of consumer protection;
- it would need to be clear which parts of Article 24 would be subject to minimum harmonisation;
- minimum harmonisation could improve flexibility and cater for differing legal systems and attitudes to credit;
- as drafted could only accept Article 24(1)(d) and (2).

152. A consumer body did not favour minimum harmonisation and a trade association was not sure that the UK's objectives could be achieved through minimum harmonisation, since this could offer a lower level of protection to consumers.

Question 32: Do you think that Article 25 provides adequate regulation for unauthorised overdrafts?

153. Few of the 20 respondents who answered this question were happy with the provisions set out in Article 25. On the industry side only two companies, one trade association and an industry standards association thought they were reasonable and, even then, the trade association thought that the word "significant" in relation to increases in credit limits was too subjective (a view shared by other industry respondents) and needed to be expressed as a percentage. The same trade association thought that a new credit agreement should not be required when increasing the credit limit for an over-limit borrower.

154. Other industry respondents made the following comments:

- In the case of cheque encashment the calculation of an APR taking account of all charges could lead to interest rates of up to 4000% and would not enable consumers to make meaningful comparisons with other products;
- immediate moves to enforce a debt should be allowed to prevent overindebtedness;
- there should be no legal requirement to grant unsolicited credit rather than levy default charges: this might not always be in the interests of the lender or the borrower;
- in the case of an unauthorised overdraft a new credit limit would only be possible if the customer accepted it;
- unclear what would happen if a creditor refused to sign a new agreement;
- unclear what would happen to the original agreement;

- Article 25(2) would legitimise unauthorised drawings;
- the meaning of "where necessary" in relation to the provision of a new credit agreement is unclear;
- "significant overrunning" needs defining.

155. A number of trading standards authorities, a regulator, a legal body and a consumer body supported the requirements in Article 25. Another consumer body thought that the requirements should also apply to unauthorised overdrafts, which it saw as a significant source of consumer complaints and a cause of spiralling indebtedness, and one of the trading standards authorities said that the potential costs of unauthorised overdrafts needed to be explained to consumers in full and in advance. A third consumer body believed that debtors with unauthorised borrowing should be given time to discuss matters -- perhaps a month in which to make payments.

CHAPTER XI: REGISTRATION, STATUS AND CONTROL OF CREDITORS AND CREDIT INTERMEDIARIES

Question 33: Do you think that this Article is strong enough to protect consumers in an open Internal Market? Or, do you think that such light requirements will upset the balance of competition and level of consumer protection?

156. Eight businesses, one enforcer and one legal response felt that the Article would be strong enough to protect consumers in an open internal market. There was considerable support for the current UK regime. A business argued that this Article would be sufficient if the OFT was given appropriate level of resource and powers to effectively police the Internal Market. A further business, agreed that it would allow the UK system to continue and develop where necessary, and felt that other Member States should implement their own supervisory systems in order to address individual needs in each market.
157. On the other hand, one legal response agreed that the Article was strong enough as they did not feel that it is very likely that a consumer would apply for credit in another Member State, and so we should not impose further requirements on other Member States. A business felt that it was sufficient as, if the regulation of credit intermediaries is too heavy then they may cease to operate, thereby reducing competition and choice in the market.
158. In contrast, several respondents did not feel that the Article was strong enough and thought that it would upset the balance of competition and the level of consumer protection. These were 5 enforcers, 8 businesses and 2 consumer groups.
159. As above, there was support for the UK licensing regime but one enforcer and four businesses felt that the UK should press for a similar model throughout Europe, which is proportionate and risk-based. The businesses also argued that if groups such as home shopping agents had to be licensed it would damage the viability of these industries. Another business argued that if mail order agents remain in the definition then the level of regulation should be very low.
160. A consumer group agreed that, as drafted, the Article would allow the UK to maintain its provisions, but was concerned that licensing schemes in other Member States may not be as robust in terms of consumer protection as in the UK. As the Article is silent on what supervision would mean and how it would be enforced, they did not feel it was clear whether regulators in the UK be able to take action against firms from other Member States who are lending in the UK. The group felt that the Directive should not encourage or reward lower standards of industry practice.
161. One enforcement agency supported the continuation of the UK system and feared that the proposed Article may not be strong enough. A consumer group shared this concern and argued that it would clearly reduce the level of protection for UK consumers and should be resisted. An enforcer felt that Member States who

categorise regulation as a priority are likely to be disadvantaged. Instead, they argued that core standards should be set and rigorously maintained to prevent lenders from unscrupulous practice.

162. One business argued that the proposed Consumer Credit Bill would give OFT significant powers of investigation, enforcement and access. If this was not reflected in other Member States, there would be no level playing field and consumers' rights would be less protected elsewhere. They felt that the Directive needs to be clearer about the role and powers of the national regulators and reinforce processes for co-ordination of both policy and enforcement.
163. One enforcer argued that this Article is not strong enough to protect consumers or fair dealing businesses. As credit services can be complex and confusing, detailed regulation is necessary. Therefore creditors need to be registered in their home state, but Member States should have discretion not to register intermediaries. All firms operating cross-border should be registered in the host state or operate on the basis of a 'passport' which should require a high level of authorisation. The Directive should stipulate the content of the passport including a fitness test. Member States should be free to impose additional requirements on those registered or supervised within the jurisdiction, and to extend the requirements to other credit businesses.

Question 34: Would it be more appropriate to introduce a passporting system similar to the banking Directives, where creditors or intermediaries would have to fulfil passporting provisions demonstrating that they are 'fit' before they lend cross-border?

164. There was support for the introduction of a passporting system from four enforcers, seven businesses, one lawyer and two consumer groups. In particular, one enforcer felt that such arrangements were prudent to prevent creditors who were unable to obtain a license within the UK from setting up elsewhere in order to circumvent UK licensing provisions and then trading in the UK.
165. A passporting system would be more appropriate than applying for a license under internal laws of each Member State, according to two businesses and one consumer group. One of these businesses argued that it would be essential to avoid regulatory approval or authorisation requirements from each home state regulator. The businesses also felt that it must be proportionate and cost effective and account could be taken of other banking licensing requirements to reduce duplication. Three further businesses and another consumer group supported passporting in principle, but would want to see detailed proposals. One business would support passporting, but only if licensing and control systems are similar in Member States.
166. One business argued that it would support some form of "approval system" to allow consumers a reference point on which to identify prospective lenders. Any system would need to reflect different maturities and complexities of the EU market,

give consumers assurance, and not be so onerous that genuine new entrants were deterred.

167. An enforcer agreed that we need a passporting system which would require all cross-border traders to demonstrate that they are fit. They want a higher threshold for registration or authorisation, and higher standards for traders who can be identified as high risk. It will be necessary to have effective mechanisms in place to restrict or prohibit a business's ability to trade in another Member State if they are found to be unfit. In certain instances, the host state should be permitted to act against the trader to address the concerns.
168. Three businesses and one enforcer did not think that a passporting regime would be appropriate. One of the businesses argued that if an organisation is approved in its own Country that this should be sufficient to allow it to operate in the EU. Another agreed and felt that licensing authorities in each Member State should ensure that those providing creditor reach acceptable minimum standards of conduct and competence. Finally a business argued that there was no justification for adding another layer of bureaucracy to the system. It would be more useful to divert the resource to the enforcement bodies. The enforcer felt that any perceived benefit from passporting appeared to be disproportionate to the cost involved.
169. Five businesses and one consumer group did not indicate whether they felt it would be appropriate to introduce a passporting system, but made the following comments. One business felt that the need for a passporting system depends on the internal licensing regimes in each Member State. If other Member States have lighter provisions then a passporting system would be beneficial to consumers who would be able to be confident in a cross-border situation. But it would depend on how stringent the requirements are in the passporting system to evaluate fitness to lend.
170. Another business had mixed feelings. In theory, it felt that if a company is approved in its own Country then that should be sufficient to let it operate throughout the EU. But, in practice, matters might prove to be quite different. Three businesses argued that passporting is only viable if licensing and control systems in Member States are broadly similar.
171. The consumer group argued that rather than a passporting regime where it would be difficult to define the standard of fitness, and which may prove to be an undue administrative burden on consumer credit regulators, a single fitness regime set at a high standard will ultimately need to be achieved through close collaboration.

Question 35: Is there any reason why credit intermediaries should not be required to divulge whether they are an independent broker, or work with one or more clients?

172. Of those who responded to this question, there was overwhelming agreement that credit intermediaries should be required to divulge whether they are an independent

broker, or work with one or more clients. Fourteen businesses, two legal responses, five enforcers and 3 consumer groups agreed.

173. Of these, one enforcer felt that it was especially important given that there is a requirement to advise on the most appropriate credit product. Another business felt that intermediaries should have to disclose the nature and extent of the service offered, and any limitations. There were also several references to FSA rules which require this.
174. An enforcer argued that it is important for transparency as this is key information for consumers to assess the credibility of all the advice being given and permit them to judge suitability of credit arranged.
175. However, three businesses did not agree. Two businesses felt that requiring credit intermediaries to divulge such information would be unworkable if the definition of intermediaries included co-branded, home shop agents etc. Another felt that it was unworkable as it is unclear whether it only applies where the intermediary produces the adverts and documentation.

Question 36: Would you agree that the instances when a credit intermediary can charge a fee should be limited? If so, do you agree with the conditions above?

176. Four businesses, five enforcers, two consumer groups and a legal respondent agreed that the instances when a credit intermediary can charge a fee should be limited. One of the businesses agreed but only as long as this was not extended further, as they would not like to see commission included.
177. One enforcer agreed and felt that this Article was better than current UK rules. They agreed that fees should be stated in advertising and pre-contractual information and not included in credit agreements. This was supported by another enforcer who pointed out that there are circumstances where the exact fee payable may not be known on the conclusion of the agreement, so it may not be possible for the precise amount to be included in the agreement. The first enforcer also felt that it is unreasonable for the creditor to charge the consumer if they also receive a fee from the creditor, although this was not supported by another enforcer who felt that this would increase charges to debtors.
178. Two enforcers support limiting when fees can be charged for a credit agreement which is not concluded, one pointed out that this would be protection against fraudulent behaviour on the part of an intermediary. Another enforcer felt that the UK intention not to support the introduction of broker fees in credit agreements is disappointing. Unless fees are shown in credit agreements there is a risk that the fees will be omitted from the APR calculation and the APR will be understated, they felt.
179. Eight businesses did not support limiting when intermediaries can charge a fee. This was focused on the ability of the intermediary to charge both the broker and the

lender a fee, which five businesses thought was fundamental to some credit markets, and that there is nothing wrong with this practice provided the broker makes his status clear, any fees paid are fully transparent, and they are not excessive. A further business pointed out that MCOB has created a model which demonstrates that, provided the charging of commission is transparent and remains separate from the credit agreement, there is no reason to restrict market activity in this way.

180. There were the following further comments. One business felt that the rules should follow UK law and practice. Another business supported greater transparency in advertising and pre-contractual information for credit intermediaries. Finally, a business argued that it would be unworkable in the case of home credit and mail order agents if the fee has to be stated in the credit agreement, since fees can vary, but not clear that it would cover home credit agents and mail order.

SECTION C: REGULATORY IMPACT ASSESSMENT

Question 37: Do you agree with the assumptions, figures and impact assessments made in the RIA? If not, please provide as much supporting evidence as possible.

181. Only 12 respondents replied to this question and little new information was forthcoming. Two respondents (a building society and a combined response from two trading standards authorities) agreed with the assumptions set out in the RIA attached to the consultation paper and a cross industry response welcomed its findings.
182. A number of respondents including three trade associations and a bank preferred to wait for the Commission's revised proposal before commenting further. One of the trade associations felt it was already clear that the proposals would not reduce lenders' costs and that consumers would therefore face higher charges or reduced choice (a view supported by a finance company). The bank expressed support for Option 3 (qualified support for the directive, while securing significant amendments).
183. Other comments were as follows:
- The £136 million quoted for one-off compliance for secured lending was greatly understated and needed to be reviewed in the context of the actual cost incurred in preparation for FSMA legislation (a bank);
 - Oxera research had found that the original proposal would reduce UK GDP by 0.2% and UK spending by 0.6% (a cross industry response);
 - one lender referred to the cumulative cost of existing regulation and thought that greater attention should be paid to the responsibility of consumers;
 - there would be no benefits in terms of increased cross border trade and the focus of the RIA should therefore be on the potential damage to the UK economy and consumers' interests (a trade association);
 - account would need to be taken of the overlap between the impact of the Consumer Credit Bill and the Directive: figures provided concerning compliance with recent consumer credit legislation amounted to £11 million for project costs (a bank commenting on its internal costs).
184. A cross industry response called on the Commission to produce an impact assessment on its modified proposal.

ANNEX A: LIST OF RESPONDENTS

- 1 The Newspaper Society
- 2 JCB Finance Ltd
- 3 Council of Mortgages Lenders
- 4 Consumer and Trading Standards, Glasgow City Council
- 5 The Faculty of Advocates
- 6 British Vehicle Rental and Leasing Association
- 7 Experian
- 8 Britannia
- 9 British Cheque Cashers Association
- 10 National Newspapers Mail Order Protection Scheme / pdt solicitors
- 11 Institute of Credit Management
- 12 Southend on Sea borough Council and Essex County Council Trading Standards
- 13 Society of Chief Officers of Trading Standards in Scotland
- 14 Retail Motor Industry Federation
- 15 Association of British Credit Unions Limited
- 16 Bristol & West (Bank of Ireland UK Financial Services)
- 17 London Trading Standards Authorities
- 18 Cross Industry Group (CIG)
- 19 FLA
- 20 BBA & APACS
- 21 Mail Order Traders' Association
- 22 Cattles plc
- 23 Equifax
- 24 OFT
- 25 Allen & Overy
- 26 Lloyds TSB
- 27 Direct marketing Association
- 28 Law Society
- 29 UKCreditUnions ltd
- 30 Citizens Advice
- 31 Nationwide
- 32 National Consumer Federation
- 33 Birmingham City Council
- 34 Egg Banking plc
- 35 National Consumer Council
- 36 CBI
- 37 Paragon
- 38 Financial Services Consumer Panel
- 39 Consumer Credit Association
- 40 Barclays
- 41 General Consumer Council for Northern Ireland
- 42 Royal Bank of Scotland
- 43 Littlewoods & Shop Direct
- 44 West Bromwich Building Society
- 45 Association of British Insurers
- 46 The Finance Industry Standards Association
- 47 Which?