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**COMMISSION GREEN PAPER ON MORTGAGE CREDIT IN
THE EU
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I. PRESENTATION OF BBVA

Banco Bilbao Vizcaya Argentaria (BBVA) is a multinational financial services group based on people: 91,000 employees, 35 million customers and over 1 million shareholders – in 32 countries.

BBVA is very active in the mortgage market. In 2004, BBVA financed more than 120.000 homes, setting up 13.731 M€ worth of mortgages over the year. During this period, the number of transactions has increased, reaching a stock of 810.000 outstanding mortgage loans. For more information about BBVA, please visit www.bbva.com

II. INTRODUCTORY REMARKS

BBVA welcomes the Commission initiative to launch a public debate on such an important issue as the integration of European mortgage markets. These financial transactions are often the most important ones for households and also have a huge macroeconomic relevance.

There seems to be a consensus on the fact that further integration would bring substantial economic benefits to European economic growth. Nevertheless, national mortgage markets are very different for several reasons (social factors and different cultures, different funding systems and products, different consumer protection regimes, involvement of EU governments in housing markets, etc.). It is important though to be realistic: integration of European mortgage markets is a long term objective.

In this complex framework, BBVA believes that the best way to achieve effective integration is letting the market choose the best practices and products in Europe, providing however a certain degree of harmonisation and a common set of EU standards in specific areas which may need it, as it is the case for consumer protection.

III. CONSUMER PROTECTION

i. Information

- *Should the Code of Conduct be replaced by binding legislation or remain voluntary?*

BBVA considers that consumer protection and borrower confidence on credit institutions are essential in the context of mortgage loans, given that the purchase of a house is the largest purchase in a lifetime for most people. Therefore, BBVA fully supports the Code of Conduct on Pre-Contractual Information for Home Loans in the EU.

Although the European Commission has shown some concerns about the low implementation of the Code at national level, BBVA believes this instrument should remain voluntary, in order to provide the markets with the necessary flexibility and to enable banks to adapt to the evolutions of the markets.

Moreover, the implementation delays of the Code of Conduct are not due to a lack of will from the signatory Institutions, but in some Member States, like in Spain, to problems of coherence between the Code and national legislation. It could be the case that in some markets, the national codes go beyond the standards set up by the European Code of Conduct. In Member States which already have very protective provisions for consumer interests and where the implementation of the new Code has to be approved by the national Parliament, it is often difficult to get a less protective standard adopted.

In this context, we do not believe that replacing the Code by binding legislation would be the solution.

- *The Commission considers it fundamental that pre-contractual information is provided at a stage that enables the consumer to shop around and compare offers. Can such a common EU stage be identified, given the variations in Member States' traditions and legislations?*

In this regard, although BBVA considers adequate the level of information proposed by the Code of Conduct, we also think that **the obligation for the lender to give a binding offer to the consumer should be fully harmonised in all Member States**, in order to avoid asymmetric situations and competitive disadvantages vis-à-vis market providers, enabling a level playing field. This is the best proof the clients may shop around with full comfort, comparing offers, while keeping all mortgage finance providers on an equal footing.

- *What information should be given to consumers? A careful balance must be found between information deficiency and information overload.*

Consumers should be provided with a well balanced degree of information, in order to enable the borrowers to take informed decisions and avoid information overload. Quality of meaningful information must prevail over quantity.

- *Should an information provision regime apply only to lenders or to others such as brokers too? How can compliance with any such regime (binding/voluntary) be ensured?*

BBVA is in favour of applying an information provision regime. The same level playing field should be applied across the board to all market mortgage providers, included brokers or other intermediaries.

ii. Advice provisions

- *Should the provision of advice to the borrower be made compulsory or be a matter of choice?*
- *Should conditions be applied to any advice actually provided, whether under a duty or by choice (e.g. standards for the advice, sanctions for non-compliance, advance disclosure of fees, of the adviser's role and recording on durable medium)?*

BBVA opposes any measure making compulsory the provision of advice to the borrower. We would rather support self regulation and observation of best practices imposed by market peer pressure.

In general terms, banks provide the necessary and sufficient information for consumers so that they can make a reasoned and well balanced decision, and therefore they actually provide the necessary advice. We understand that each consumer is different and all clients do probably not need the same level of information, depending on their financial knowledge. Moreover, the capacity of consumers to take their own decisions once they have all the required information should not be underestimated, taking into account that making the provision of advice compulsory would have a negative impact on the product prices.

The Code of Conduct sets out the necessary and sufficient requirements to get well balanced information of the offers provided by market lenders. Further requirements would be counterproductive on product prices due to the additional risks and costs involved.

In this regard, room for value added services should be left to market providers.

iii. Early Repayment

- *Should early repayment be a legal right or a matter of choice? If it is to be a right, should it also be made possible for a consumer to waive this right? Under what conditions? Should this right be subject to a compensation in the form of fees?*
- *How should such fees (whether under a right or through contractual choice) be calculated? Should there be caps, as is the case in some Member States?*
- *How should the consumer be informed about early repayment? Is there scope for consumer education here?*

We are persuaded that enabling early repayment on mortgages fosters competition among market providers as well as enhances markets liquidity, driving additional benefits to consumers. Therefore, BBVA is of the opinion that early repayment must be a legal right. Consumers must have the possibility to exit a mortgage loan contract prematurely.

Nevertheless, this faculty can not be exempt of costs. Banks ought to be able to obtain a **full compensation** for all the costs and losses resulting from the consumer's early repayment (mismatch of the balance sheet, administrative costs, etc).

The early repayment right, whatever the method of calculation, as well as the compensation fees for creditors, in case of debtors enjoying this right, should be fully harmonised as a prerequisite "sine qua non" for the development of a more equal framework to foster cross-border transactions.

Concerning the waiving of the right of early repayment, it is illusory to question this possibility in some countries where, as in Spain, it is widely recognised. The existence of mortgage early repayment rights as well cannot be pleaded as an impossible obstacle to grant the rescheduling of mortgages in the markets. There are several examples of countries where bonds, certificates and securitization markets are top efficient, helping the development of mortgage loans market in high and sustained proportions and at very low rates, and where, at the same time, the early repayment right is widely recognized; on the other hand, there are some countries where this right is unknown or restricted and where the mortgage market is not very efficient.

Also, a full transparency and maximum harmonization of transactional costs would be welcome in order to have a full balanced EU benchmark.

The consumer must be informed about early repayment on a pre-contractual stage, by means of the European Standardised Information Sheet (ESIS)

iv. Annual Percentage Rate

- *What is the purpose of an APR? Information? Comparison? Both?*
- *Should there be an EU standard covering both the calculation method and the costs elements?*
- *If so, what kinds of cost elements should such an EU standard include?*
- *The Commission welcomes views on the merits of providing separately information on all costs not specified in the APR, and on the presentation of the effects of the APR in concrete terms such as the cost per month or the overall cost of the loan.*

BBVA considers that the purpose of an APR is of information, as well as comparison.

In order to enable the effective comparison of different mortgage loans, the Commission should consider the **full harmonisation and a narrow definition of the APR**, by means of the establishment of a set of principles covering the calculation method and the costs elements of this rate.

Such set of principles should include interest rates and all the concepts directly perceived by the lender (i.e. fees directly related to the mortgage loan, such as interests, administrative fees, charges associated with originating and closing a loan).

v. Usury rules and Interest Rate Variation

- *What are the implications of usury rules for market integration (including any relationship with products such as equity release and mortgage insurance)?*
- *Should this issue rather be examined in a broader, non-mortgage specific, context?*

BBVA is of the opinion that there is no need for legally enforceable caps on interest rates in the current modern mortgage market which enjoys the highest levels of transparency and competitiveness.

- *Do such restrictions hinder market integration?*

We reiterate the need to let the markets compete, and in this sense, self-regulation is the best way to foster market integration. Therefore, we are in favour of minimising the level of restrictions in this regard.

- *What impact can they have on the development of particular products such as equity release products?*

In this regard, we are in favour of minimising restrictions which hinder market product developments and at the end reduces liquidity and financial access for consumers. All the alternatives that enhance liquidity and provides better access for consumers to their future financial needs should be considered appropriately and we ought to take advantage of the flexibility provided by products such as “equity release”.

vi. Credit Contract

The Commission welcomes views on the merits of the standardisation of mortgage contracts, e.g. via a 26th regime instrument.

Basic standardisation of contract terms of mortgage loans at EU level would be welcome, in the interests of consumers. However, we are not full confident that the 26th regime would be the better way to meet this objective. We rather support the “classical” harmonisation for credit contracts which would put in place a clear common standard to be used by all the lenders and should foster mortgage markets integration and increase cross-border consumer confidence.

vii. Enforcement and Redress

- *Should the Commission consider imposing on Member States an obligation to ensure the existence of such alternative means of redress in the mortgage credit area?*
- *The Commission welcomes views on ways to reinforce the credibility of existing alternative redress systems, particularly in the mortgage credit area.*

BBVA supports the view of the Commission about the importance of having independent and efficient alternative means of redress, such as mediation or arbitration, for consumers, as for credit institutions.

Therefore, the European Commission should take into consideration the best practices in the European markets in this regard which better protect consumer and industry interests, avoiding unnecessary costs.

IV. LEGAL ISSUES

i. Applicable Law

The Green Paper on Mortgage Credit in the EU tackles the issue regarding the law applicable to mortgage credit contracts, but does not request the public opinion on this matter. Nevertheless, BBVA considers this is an important issue and takes the liberty of expressing its point of view on the issue at stake.

The Rome Convention establishes the freedom of choice principle, which means that parties can choose the law governing their contract. However, this freedom is restricted in some areas, like consumer protection. Furthermore, there is a lack of clarity about the applicability of this Convention in the context of mortgage credits, which creates a high level of legal uncertainty for credit providers, and constitutes a clear obstacle to cross-border integration.

Therefore, BBVA would encourage the establishment of a set of clear, specific and independent rules for cases involving conflict of laws in the field of mortgage loan contracts. This regime should allow the choice of the law applicable in the country where the credit institution is situated, with no unclear exceptions.

Nevertheless, to ensure that such a regime is not detrimental to consumers, the Commission could consider the establishment of European common standards (full harmonization of consumer rules) in order to guarantee an efficient consumer protection.

In the context of mortgage deeds, BBVA backs the application of the law of the country in which the property is situated.

ii. Client Credit-Worthiness

Following the same approach as for consumer credit, the Commission considers that the priority could be to ensure cross-border access to databases on a non-discriminatory basis. It welcomes comments on this.

Taking into consideration that client credit-worthiness assessment is a fundamental aspect for the risk management of credit institutions, as for the over-indebtedness, BBVA fully supports measures aiming at ensuring cross-border access to databases on a non-discriminatory basis.

iii. Property Valuation

- *What are the merits of a single EU standard, for both valuation processes and valuers?*
- *What are the merits of Commission action to ensure mutual recognition of national valuation standards?*

BBVA is in favour of mutual recognition of national standards on property valuation in order to facilitate market integration, but also thinks that having a targeted set of common principles at EU level would be beneficial to consumer confidence as well as to credit institutions risk management.

iv. Forced Sales Procedures

The Commission seeks views on the following gradual approach to encourage improvements in forced sales procedures: to first collect information on the cost and duration of these procedures in all Member States and their effectiveness in protecting the interests of all involved, then present it in a regularly updated “scoreboard” and, should this prove ineffective in the long run, consider putting forward more robust measures.

BBVA is aware of the different levels of effectiveness of forced procedures throughout Member States. Moreover, this issue constitutes an important obstacle to cross-border mortgage loans (in some countries, the average time to execute a mortgage is more than 5 years, while in others, it is 5 months). The efficiency of national forced sales procedures has a great impact on the evaluation of the risk associated to a concrete mortgage loan.

Therefore, BBVA supports the promotion by the Commission of improvements in the context of these procedures and the application of the best practices observed in EU Member States, which would have positive repercussions on final product prices.

v. Tax

The Commission seeks information on similar or other tax obstacles to the cross-border provision of mortgages, which are likely to infringe the freedoms provided for by EU law.

In principle, BBVA is in favour of no tax discrimination and of avoiding tax arbitrage which could hamper competition in the mortgage finance in the EU.

V. MORTGAGE COLLATERAL

i. Land Registers

Before making further assessments, the Commission would welcome input on all these issues.

The access to land registers is a fundamental issue in the context of real estate acquisitions. Having accurate, transparent and cross-border accessible land registers is a prerequisite for market integration and for the promotion of a level playing field for credit institutions. Therefore, BBVA fully supports the enhancement of cooperation between owners and controllers of registers through the EULIS project, and would also back the establishment of a set of EU standards aiming for guarantying an easy access to these registers.

ii. Euromortgage

The Commission invites views on the feasibility and desirability of the Euromortgage. It will, in any event, await the outcome of ongoing initiatives to inform its assessment of this issue.

The Euro-mortgage system(s) should help to erase all obstacles for the integration process of the European mortgage market and the development of cross-border activities. For this purpose, it is proposed a Euro-mortgage regulation that is:

- *Flexible*: Foreseeing not only one mortgage guaranty model but several, in order to be the market – and the consumer – who elects in every case which one better matches its requirements and contracting culture. To this end it is suggested that, together with the pattern of an abstract or not-accessoriness guaranty, the Euro-mortgage legal system accepts another or others mortgage models with a higher or lower accessoriness degree. The market today offers some examples: In Spain, along with accessoriness legal patterns there are also some almost abstract solutions which have allowed to wider the range of mortgage products offered to the consumer.

- *Useful*: If the Euro-mortgage intends to be useful as a development tool for cross-border engagements it should focus on the more demanded product (mortgage loans for real property purchase, and mortgage credit for consumers) and respect the framework of consumers rights guaranties. If it is not likewise, the Euro-mortgage will result in a lab design with no possibility of success due to the consumers' refusal to it.

Following the foresaid remarks, the Euro-mortgage must be considered as a mortgage credit legal system and not a mere mortgage model. This asks for a vision and regulation, in a totally harmonised way (up to the maximum), on all the basic aspects of the mortgage:

- Scope: Defining the kind of liabilities, presents or futures, which could be granted by the Euro-mortgage.
- Pre-contractual information for consumers.
- Product offer system, ruling whether the offer should be binding or not.

- Form and register, establishing a similar framework for all the EU.
- Efficacy of the guaranty, harmonising the systems of privileges and preferences, and deleting, if such a case, the still existing silent legal mortgages in some of the Member States.
- Full harmonisation of mortgage debtors' rights, mainly for early repayment and endorsement or subrogation of the mortgage creditor.
- Risk and insolvency information, ruling the set and working system of a negative and positive data similar for all the EU Members States.
- Real state appraisal, stating more equals criteria on appraisal and valuation of the guaranties.

- *Efficient*: The Euro-mortgage must be settled as a system of mortgage guaranties of easy execution, within a short term and with reasonable costs in every country.

VI. FUNDING OF MORTGAGE CREDIT

- *The Commission intends to create an ad hoc stakeholders working group to examine the need for and nature of action on the funding aspects (primary and secondary) of mortgage credit.*

BBVA agrees with the creation of an ad hoc stakeholders working group to examine the need for and nature of action on the funding aspects of mortgage credit, and invites the Commission to share the findings of the working group with all stakeholders before taking any initiative.

- *It is interested to assess to what extent a pan-European market in mortgage funding can be promoted by market led initiatives, e.g. on documentation standards and model definitions to be used in cross-border funding activities.*

Mortgage activities constitute more than a third of most credit portfolios of banks. Therefore, the improvement and integration of European funding markets would have huge benefits for primary and secondary markets, which would result in positive repercussions on consumers.

BBVA would welcome standards at EU level fostering intermediation, in order to boost liquidity and market effectiveness. Although this liquidity should be aligned with the plurality of products which further enhance the depth of the liquidity in the European mortgage market.

An important issue that should be tackled is the one concerning the transactional costs of mortgage transferability. Initiatives for reducing the costs in this field would also be well received.

In this respect, the Commission is interested to receive views on whether mortgage lending should necessarily be an activity which is restricted to credit institutions, or whether and under which conditions such activity could be performed by institutions which do not take deposits or repayable sums, and therefore do not fall within the scope of the EU definition of a credit institution and therefore of all related prudential rules.

BBVA does not oppose to the possibility for institutions which do not take deposits or repayable sums to offer mortgage loans. Nevertheless, to avoid any prejudice for consumers and to prevent distortions of competition, the Commission should ensure that all market players are subjected to the same conditions under an identical level playing field (“same business, same risk, same rule”).



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