

**BANCA INTESA RESPONSE TO THE GREEN PAPER
MORTGAGE CREDIT IN THE EU (COM 2005) 327 FINAL**

Banca Intesa is the holding company of the Intesa Group, one of the largest Italian banking groups. Through its subsidiaries, the Intesa Group is active in new Member States like Hungary, where Central-European International Bank-CIB is the fourth largest bank, and Slovakia, where Všeobecná úverová Banka-VUB is the second largest bank.

In the field of mortgage loans, Banca Intesa is a market leader in Italy in terms of volume of loans extended and is constantly tailoring its products to the evolving needs of its clients.

Banca Intesa is aware of the strategic importance and impact that mortgage lending plays on the economy and on the banking activity in general. Therefore, it welcomes the Commission's open and transparent consultation process on the Green Paper on Mortgage Credit in the EU and would like to submit the following comments.

GENERAL COMMENTS

Buying a mortgage loan is one of the most important decisions for the vast majority of households because of the substantial impact that loans have on households' finances and because of the duration of the contract. Moreover, loans are complex financial products *per se* and so are also the related arrangements.

Banca Intesa believes that in order to help clients make an informed decision, it is important that loan offerings become easily comparable. In our view, ESIS - the European Standardised Information Sheet is certainly a good step in this direction, since it allows a comparison of essential data and transparency on information. However, we believe that a further step should be taken and mandatory disclosure of all costs related to the loan, even those that are intrinsic to the product, should be included. Thus, only the costs which are mentioned in the European Standardised Information Sheet can be charged to customers and no other costs. In our view, this increased transparency would have the benefit of enhancing the trust of customers towards credit institutions and would constitute a level playing field for all actors in the value chain.

ANSWERS TO QUESTIONS

1. *Should the Code of Conduct be replaced by binding legislation or remain voluntary?*
2. *What information should be given to consumers? A careful balance must be found between information deficiency and information overload.*
3. *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?*
4. *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?*

1. According to Banca Intesa's experience, the Code of Conduct (henceforth the Code) is delivering good results in the Italian market, since it has increased its transparency. We do not believe that making the Code binding would radically change the current situation, since competition in this market segment is very tough and one of the key competition tools is full transparency on conditions. Therefore, the latter one is a market driven process and, in our view, there is no need to make transparency compulsory.

2. In Banca Intesa's view there should be full transparency on the key elements of the product, as mentioned in our General Comments. In addition, full disclosure on costs should be mandatory, so that only those mentioned in the ESIS can be charged by banks. Moreover, we do agree with the Commission that only essential and relevant information should be provided to clients, in order to help them making an informed choice. Therefore a careful balance should be made between information overload and information deficiency.

3. Banca Intesa supports the Commission's view that prospective customers should be provided with all relevant information that enable them to shop around and compare offers in the pre-contractual phase. Banca Intesa already applies this concept. In fact, we provide our prospective clients with terms and conditions of a loan, which are binding for our bank for a 6 month period (the so-called loan commitment) and with the ESIS. Our prospective customers are therefore in a position to examine and compare our offer before committing themselves with our bank.

4. In Banca Intesa view it is essential that such a transparent regime applies not only to banks but to all the intermediaries in the value chain, so that clients enjoy the same treatment irrespective of the distribution channel they have chosen.

5. *Should the provision of advice to the borrower be made compulsory or be a matter of choice?*

5. Banca Intesa is convinced that borrowers benefit from the provision of advice, as it empowers them to make informed decisions on an important issue such as the conditions of a mortgage loan. This is the reason why Banca Intesa already provides its clients with comprehensive advice on loans in general and on the loan which best

fits the financial profile of each client (this service is marketed under the name of “Intesa su misura”).

However, we are convinced that for the time being each credit institution should be left free to choose whether to provide such advice, according to its practice, its own liability policy and its whole marketing strategy. Furthermore, keeping the provision of banking advice as an activity independent from the actual provision of banking services would also be in line with the new Mifid provisions. In fact, Article 19 Mifid does not require to bundle the advice with the service. Hence Banca Intesa would prefer the provision of advice not to be made compulsory.

Early Repayment

6. *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 compensation in the form of fees?*
7. *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?*
8. *How should the consumer be informed about early repayment? Is there scope for consumer education here?*

6. Banca Intesa believes that early repayment should be provided by law and thus it should be considered as a right. Therefore, a customer should be enabled either to waive it or to exercise it. Compensation should be required only in the case of products with specific features, such as fixed interest rate loans, since in this case credit institutions are confronted with actual costs and not only with the loss of profits.

7. Early repayment fees should cover the effective costs incurred by a bank, thus no caps should be provided for.

8. Consumers should be informed about early repayment conditions in the loan contract. By the way the Italian law¹ already provides for the introduction of an all inclusive consideration for early-repayment, whose calculation formula has to be mentioned in the contract.

Annual Percentage Rate

9. *What is the purpose of an APR? Information? Comparison? Both?*
10. *Should there be an EU standard covering both the calculation method and the costs elements?*
11. *If so, what kinds of cost elements should such an EU standard include?*
12. *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.*

9. The role of APR (Annual Percentage Rate) is both to inform and to make comparisons possible. Moreover, Banca Intesa believes that that the APR should include all “mandatory” costs of the loan (e.g. interest rates) and all those which are

¹ Deliberation 9 February 2000 of Inter-Ministerial Committee for Credit and Saving

connected to the loan (e.g. insurance costs, semi-annual information, duplication of documents, etc).

10. Banca Intesa supports the idea of harmonizing both the calculation method and the costs elements, since this would ensure a full comparability of all mortgage loan offers.

11. In particular, the future harmonized rules should distinguish among costs pertaining to the lenders for the origination of the loans from those which are purely ancillary to the loan, such as notary expenses, registering of collateral, etc. Banca Intesa would like to underline the fact that currently there is full competition only on the origination side, while there is less on the side of ancillary services, since this very much depends on the different market structures in the Member states.

12. Banca Intesa strongly believes in the merit of providing information on all costs not mentioned in the APR, such as those mentioned in response to question number 9, since customers should be fully aware of the overall costs when buying a loan. Therefore, we also support the idea of presenting the costs per month.

Usury Rules and Interest Rate Variation

13. What are the implications of usury rules for market integration (including any relationship with products such as equity release and mortgage insurance)?

14. Should this issue rather be examined in a broader, non-mortgage specific, context?

13. Italy is one of the Member States which has a law governing usury. This law aims at prohibiting interest rates and fees for credits that are not in line with normal market prices. The law provides therefore for a cap on interest rates, set quarterly by a ministerial decree that can be levied on all types of credits, mortgage one included.

This law may have an impact on market integration for it could forbid banks from applying interest rates that reflect the level of creditworthiness of clients, thus preventing poorer customers from accessing the mortgage market. Moreover, these usury rules could also theoretically deter the entry in a market of a competitor offering higher interest rates than those set by ministerial decree.

However, in the Italian experience the introduction of usury thresholds has not prevented EU banks from entering the Italian market. In fact new entrants cannot offer rates above the usury thresholds, given that the latter would not be in line with the average of market interest rates². In turn, new players entering the market have offered more attractive interest rates than those offered by established banks in order to gain a market share. From this perspective Banca Intesa believes that the Italian usury law so far has not worked as a deterrent for market integration.

14. Since the Italian law applies to all kind of credits, the question should be raised within a broader context.

² According to the 21 September 2005 Decree of the Ministry of Economy on usury thresholds for the quarter October-December 2005 the average interest rates are 5.00% and 3.82% for fixed interest rate mortgages and floating rate mortgages respectively, whereas the usury thresholds are set at 7.50% and 5.73% for fixed interest rate mortgages and floating rate mortgages respectively. Therefore usury thresholds are 2.50% above the market average for fixed interest rate mortgages and 1.91% for floating interest rate ones.

15. Do such restrictions hinder market integration?

15. Banca Intesa does not believe that the imposition on interest rates compounds hinders market integration.

Credit Contract

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

16. Banca Intesa acknowledges that there is a debate originating from part of the industry concerning the definition of a 26th regime as a way forward for easing the provision of mortgage services at a cross border level. Banca Intesa has some reservations on the idea of creating from scratch a new European regime that would co-exist along with existing national rules.

A 26th regime could in the end resolve to be an additional set of rules that could give rise to a disparity of treatment of customers established in the same Member state and to regulatory arbitrage by credit institutions and customers, both of which we believe are not acceptable from a general point of view.

In any case, Banca Intesa believes that no European standard product should be provided for within the framework of a 26th regime. Banca Intesa does not support the creation of a standardised European mortgage product, which could be sold across borders. In our view, the market should not be hampered by any regulatory initiative as far as products are concerned, which should rest within the remit of banks.

Enforcement & Redress

17. 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?

18. The Commission welcomes views on ways to reinforce the credibility of existing alternative redress systems, particularly in the mortgage credit area.

17. Banca Intesa supports the idea of imposing alternative means of redress in the mortgage credit area, since this would represent a response to the current lengthy judiciary process, at least for some Member states.

18. Banca Intesa believes that the existing Banking Ombudsman could act as an alternative redress system, which at least for Italy, has proven to be effective. The credibility of the system can also be enhanced with information campaigns on such alternative dispute resolution systems.

III LEGAL ISSUES

Applicable Law

19. Provide for a specific regime for the law applicable to consumer mortgage credit contracts in the future Regulation. This could consist of aligning the law applicable to the mortgage credit contract with the law applicable to the collateral contract.

20. Continue to subject mortgage credit contracts to the general principles which, in the Rome Convention as it stands, would mean essentially that parties can freely decide on

the law applicable to their contract, subject to the application – under some conditions – of the mandatory rules of the consumer's country of residence.

21. Exclude the application to a consumer mortgage credit contract of the consumer's mandatory protection rules, provided that some conditions are met, for example that there is a high level of consumer protection in place at EU level.

19. 20. and 21. In relation to the choice of the applicable law to mortgage credit contracts entered into by parties of different jurisdictions, Banca Intesa supports the adoption of the second option for the following reasons:

- Consumer rights should not depend on the nationality of the bank with which they deal. This implies that all consumers resident in a Member States should be granted the same level of protection irrespective of the service provider;
- All consumers should be treated on an equal basis and thus there should not be any diversified treatment among them as far as their rights are concerned. In fact, such a diversified legal treatment could even be contrary to the principle of substantial equality and hence could violate the EU Treaty and the Italian Constitution; and
- The principle of *lex rei sitae* has proven to be an effective criteria to determine the law applicable to rights arising from or connected with real estate assets and should not be overruled.

Client Credit –Worthiness

22. 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.

22. Banca Intesa supports the Commission's proposal of ensuring cross-border non discriminatory access to databases.

Property Valuation

23. What are the merits of a single EU standard, for both valuation processes and valuers?

24. What are the merits of Commission action to ensure mutual recognition of national valuation standards?

23. Banca Intesa believes in the merit of having an EU standard for the valuation process and for the valuers. This would contribute to the lowering of the fees linked to the mortgage loan. However, it should be noted that currently national markets greatly differ and this should be considered as an ultimate goal to be achieved.

24. The merit of mutual recognition lies in the fact that national valuation standards are recognized across the border and they reflect the various features of national markets.

Euromortgage

25. *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.*

25. Banca Intesa has some major reservations on the introduction of the Euromortgage for the following reasons:

- The introduction of a Euromortgage, which would coexist with national mortgages, is likely to result in a discrimination among debtors according to the kind of mortgage they have granted to secure their obligations;
- Treating a mortgage as a right independent from an obligation will have a disruptive effect in a number of cases. In this respect, the Collateral Directive³ is a good example of the legal uncertainty brought by a Directive which imports in the legal system of all Member States a special rule on a matter related to commercial and civil law. In some Member States and in Italy in particular, because of the uncertainties flowing from the lack of coordination between the law implementing the Collateral Directive and the other national laws, the possibilities offered by the Directive have not been fully exploited in the current practice;
- The current ancillary relationship between secured obligations and mortgages has as a result that the value of mortgages in principle has to be proportionate to the one of secured obligations. This rule gives certainty to the debtors on the amount secured by the mortgage they have granted and hence on the amount which could be recovered by the secured creditors by enforcing the mortgage. It is clear that this link would fall in the case of a purely independent mortgage, and hence specific rules leading to the same debtors' certainty should be introduced;
- There should be specific foreclosure procedures linked to a Euromortgage. These procedures should provide for an assessment of the creditor's right to enforce a mortgage on a different basis from the actual debtor's default under the secured obligation. In this scenario, the debtor could be enforced on a merely objective basis, irrespective of any contractual default;
- Bankruptcy laws are likely to be updated in all Member States, in order to introduce clear rules redefining the status and features of preferred creditors;
- Real estate registers have proven a successful and unavoidable instrument to disclose to third parties the burdens, liens, charges and encumbrances on a given real estate asset. Contractual rules on the purchase of real estates depend and rely on the free transferability of the good and hence on the assessment of the mortgages and other encumbrances of the purchased real estate (and not of the seller). At least in all Countries based on the *Code de Napoléon* and in Germany third parties traditionally rely on public real estate registers.

³ Directive 2002/47/EC of 6 June 2002 on financial collateral arrangement,

FUNDING OF MORTGAGE CREDIT

26. 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.

27. 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.

26 and 27. Banca Intesa supports the Commission's idea to create an ad hoc stakeholders working group which should explore ways of creating a primary and secondary market for mortgage. Banca Intesa would like to seize the opportunity to express its strong interest in being part of this group, as a leader member of the Italian banking system and an active participant to the industry debate on regulation.

However, Banca Intesa would like to suggest that the establishment of an EU primary and secondary market for mortgage should be a market led initiative and should be a response of the needs of the market and not the other way round.

28. The Forum Group and other sources predict the growth of non-deposit based mortgage loan funding mechanisms. 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.

28. Banca Intesa believes that any decision of the European legislator to lift the restriction of mortgage activity to credit institutions and to extend it to other entities should be coupled with the principle "same business, same risks, same rules". In other words, since the risks incurred by a non deposit-taking entity engaging in mortgage loans would be in this respect the same as those of a credit institution, it follows that also the new entities should comply with all existing prudential regulation applied to banks. It is a question of level playing field.

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Brussels, 30 November 2005

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