



BARCLAYS PLC

**Response to the European Commission Green
Paper: Mortgage Credit in the EU
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1 Barclays Bank PLC: A key mortgage stakeholder in Europe

Barclays PLC is a UK-based international financial services group engaged primarily in banking, investment banking and investment management. In terms of assets employed, Barclays is one of the largest financial services groups in the UK.

Barclays has been involved in banking for over 300 years and operates in over 60 countries, including Ireland, Spain, Portugal, France, Italy, Germany. It has over 76,000 employees and 2900 branches worldwide.

Barclays has a considerable interest in the European residential markets. Whilst the core mortgage business is centred on UK lending, Barclays is also actively operating in the residential mortgage markets of France, Italy, Portugal and Spain.

UK- In the UK, Barclays is a key player in the mortgage market – with a secured residential book in excess of £60bn which represents approximately 7% of the UK residential mortgage stock and ranks Barclays as the 5th largest lender in the UK. Barclays employs some 1400 staff directly involved with mortgages across 1700 Barclays branches, 350 Woolwich branches, Barclays Premier banking (high net worth customers), 3 mortgage telephony contact centres, intermediary business managers dealing with the IFA/broker market, International Banking servicing high net worth foreign customers buying in the UK. A further 1600 staff work in mortgage origination and servicing. Operating under the brand of Woolwich mortgages, Barclays offers the market leading Openplan Offset mortgage which was awarded Offset Mortgage of the Year 2005 in the Financial Adviser awards.

France- Barclays has operated in France since 1918, providing comprehensive banking and wealth management services to affluent and international customers and is recognised in France as a leading affluent banking brand and product innovator. Barclays has over 50 branches in France, as well as 15 Barclays Finance centres and 4 centres for the mortgage broker business, Barclays Financement Immobilier (Barfimm.) Mortgage products include the innovative Openplan equivalent “Barclays One Two” as well as competitive variable and fixed mortgage rates. Barclays is currently the 6th largest specialised provider of wealth management services to the affluent sector and in the top 5 for the international customers. Barclays has approximately 1450 staff, of which 600 are customer facing.

Italy- Banca Woolwich is one of the leading mortgage specialists in Italy. It provides mortgage and insurance products for both residents and non-residents. Banca Woolwich’s growing client base is largely concentrated in 11 of Italy’s main cities where they have branches. Banca Woolwich’s network is also extended through 75 tied agents, 750 Gabetti Real Estate Agents, 40 Partner Banks and 350 dealers. Banca Woolwich is the 6th largest bank in terms of new lending and the 5th most recognised brand in the mortgage market.

Portugal- Barclays Portugal was founded in 1985 and provides a full range of banking services to large corporations, affluent individuals, small business and non-resident clients. It is perceived by people in Portugal as an international and specialist bank that caters largely for important clients. It is known for offering a personalised service, attractive mortgages and good investment products. It is the most well-known foreign bank in the country, and was recognised for offering the best quality of customer service in the Portuguese market in 2004. Barclays Portugal employs approximately 700 staff and has 63 branches. Barclays Portugal has a mortgage market share of 4.7%.



Spain - Barclays has had a presence in Spain since 1974 and is currently the 6th largest Spanish banking group by business volume and the 5th by number of branches. Barclays Spain has more than 500 branches, serving more than 500,000 customers and employing some 4000 staff. Barclays is the 6th largest private banking group in Spain, with over €17 billion of loans and advances and a mortgage market share of more than 2%.

Barclays Spain is perceived as a customer-oriented bank with a commercial model based in relationship management and exhaustive knowledge of its customers, and has a reputation for being competitive and delivering innovative products and high quality services. The acquisition of Banco Zaragozano in July 2003 was a step towards the Barclays strategic goal to increase its presence in commercial and retail banking within the European markets. The acquisition has consolidated Barclays' success within the Spanish financial market.

2 Executive Summary

Barclays welcomes the invitation from the Commission to respond to the Green Paper, and commends the consultative approach that the Commission is taking in considering whether intervention in the EU mortgage credit markets is required, and what form any action might take.

Mortgages are rightly recognised by the Commission as being a key component of the EU financial market and the EU economy. It is also important to recognise that while there is considerable potential for development of the mortgage markets in certain Member States, in others (such as the UK) the market is mature and well-developed, and therefore any measures to promote growth across the EU as a whole should be carefully formulated and designed not to prove detrimental to the more developed local mortgage markets (which, in the case of the UK, have been used as the model for some of the matters considered in the Green Paper, especially in relation to consumer protection measures).

The financial sector has become increasingly competitive, with national financial institutions seeking opportunities to develop globally rather than be constrained within the economic cycle and scale of a single country – financial institutions like Barclays are transcending national demarcation in order to establish themselves as global players.

With this in mind, the Commission should carefully consider the most effective means of achieving its objectives to enhance EU competitiveness, to foster a more efficient and competitive mortgage credit market, to remove the barriers to access to mortgages for many Europeans, and to promote the spread of product diversity and price benefits for European consumers. The financial institutions will act as the most effective catalyst for change in the European mortgage market – change which will take place more rapidly if the Commission concentrates on reducing the barriers to entry between Member States.

- **Cross-border lending** - There is little appetite for “cross-border” lending - integrating the mortgage markets should focus on allowing foreign lenders to enter local markets with as few obstacles as possible. The difference in attitudes to borrowing in different countries, together with local legal and financial infrastructures, will not change easily and it will be the lenders that will have to adapt to the market they are entering. These local differences are cultural, but can also be caused by different tax regimes, local legislation, housing regulations etc.
- **Barriers to accessing new consumer markets** -The key to integrating mortgage markets is to remove measures that provide protection to “indigenous” lenders. Because accessing new consumer markets relies on having the appropriate distribution network, the easiest way to enter a foreign market is often to purchase a local institution. The “parent” institution can then bring new products, funding, technology, processes and values to the new market through the new venture. This results in greater competition for the local institutions that may have to change their products and processes to maintain their competitive position.
- **Consumer benefit** - For consumers, this market-led change is likely to provide more competitive pricing, greater product choice and availability, and a wider extension of credit availability. Whilst this in itself presents certain risks for consumers, these are far outweighed by the benefits, and can be mitigated by adherence to agreed consumer protection measures such as the Voluntary Code of Conduct and European Standard Information Sheet (ESIS).

In summary, our responses on the four key components laid out in the Green Paper are:-

Consumer Protection

Consumer protection measures can serve as a legitimate policy objective. However they will not of themselves lead to development or integration of the mortgage market across Europe. That will only be achieved if the other major areas that act as barriers to market entry and development are addressed as a priority. In the UK, the FSA are due to undertake a review of the impact of mortgage regulation and whether it has delivered the benefits to consumers for which it was originally designed. We expect that the review will show that the move from self-regulation under a voluntary code of conduct (the Mortgage Code) to statutory mortgage regulation under the FSA, has delivered little material benefit to consumers. Consumers are now likely to have to spend longer in the buying process, receive more documentation to digest and pay more as lenders inevitably pass a proportion of the additional cost of regulation to the consumer. From our own experience, statutory regulation has not increased the levels of shopping around by consumers, and has resulted in the contraction of product offerings as it is difficult to make niche offerings fit the disclosure and compliance requirements. New and innovative products are more difficult to bring to market, as we are restricted by regulation which was not designed to accommodate products such as lenders' equity-share mortgages for first-time buyers.

- There is no evidence that increased consumer protection will bring about greater activity in the European mortgage market; it may in fact be counter-productive
- Greater emphasis should be placed on encouraging implementation and embedding of the Voluntary Code of Conduct and ESIS as a commonly agreed level of consumer information
- Early Repayment Fees and interest rate variation should be market-led subject to lenders observing the requirements for clear and transparent information for customers. Compulsory advice is not desirable for consumers or lenders

We would therefore urge the Commission to avoid introducing binding legislation on consumer protection but look to harness "...less intrusive, less costly alternatives that can achieve the same objectives..." (Charles McCreevy, Commissioner for Internal Markets and Services, 2005)

Legal Issues

- Applicable law, client-credit worthiness, valuation standards, forced sales procedures and taxation issues are all areas which in one way or another present barriers to lenders seeking to enter new markets.

Reducing the barriers to market entry is a pre-requisite and priority for advancing mortgage integration. We welcome further Commission investigation in these areas, to understand how any barriers can be reduced, preferably through working in partnership with Member States and also building on existing frameworks e.g. International Valuation Standards.

Mortgage Collateral

- Gaining access to land registers is another area where lenders may face barriers to entry into new markets and should therefore be examined across Europe as proposed by the Commission.
- Whilst the case for the Euromortgage is not conclusive, the concept warrants further analysis.

The Commission should undertake an in-depth investigation and monitoring before proposing further action in these areas in the absence of clear data.

Funding of Mortgage Credit

- Whilst the primary and secondary markets have become integrated to some extent already, there is potential for further development to improve market efficiency and reach.

We support the Commission's proposal to create a working group to examine the need for action on the funding aspects of mortgage credit, and to consider how it can support market-led initiatives in this area. We are keen to be included in the working group and will therefore submit a separate request to the Commission.

Prioritisation

The Commission needs to consider the appropriate priorities of any proposed action to ensure that the greatest benefit is achieved in a cost-effective manner. We would prioritise any action in the following order:-

- Measures to increase access to funding across Europe, using market-led initiatives should be first priority for the Commission
- Measures to reduce barriers to market entry and product development, such as the removal of usury rules and interest rate caps, will have a positive effect on some markets in Europe
- Measures to support common standards in legal issues and mortgage collateral should rank next in priority
- Measures to further protect consumers are likely to be least effective as a means to achieve greater integration of the European mortgage market.

The consideration of intervention into the EU mortgage market presents the Commission with an opportunity to foster good practice, to develop smart, cost-effective ways to deliver objectives and to steer the latent competitive forces in the market for the benefit of consumers, financial institutions and the economies of the EU. We are keen to support such an approach, believing that further legislation will not deliver the benefits as effectively in terms of time, cost and quality as co-working will achieve.

3 Response: I - Assessing the Case for Commission Action

The UK mortgage credit market represents approximately 26% of the EU15 market (EMF 2004). It is important that the Commission recognises that in developing a strategy for growing immature mortgage markets, it is also mindful of the potential risks to mature markets which represent a significant proportion of the EU mortgage market. Adverse consequences in these large, more mature markets as a result of Commission action may potentially outweigh the benefits to smaller, developing markets and the repercussions could ultimately stifle the markets which the Commission is seeking to invigorate.

Mortgage credit markets are complex value chains. It is therefore vital that any proposed action is thoroughly evaluated to understand the impacts on the value chain and to avoid any undesirable side-effects.

The effects of developing mortgage markets in Member States may have varying impacts, both positive and negative, if other key determinants such as housing supply, incomes and population demographic are not also carefully considered. For example, whilst the UK mortgage market has seen growth in total lending, household demographics have led to a shortage in supply, rapid inflation of house prices and increased mortgage debts relative to income for many consumers, and to owner-occupation moving out of reach for many first-time buyers.

In recognising that the EU mortgage credit markets are very diverse, the Commission must consider that varying approaches may be more appropriate than harmonising legislation.

The Commission is considering how to address some of the differences in the housing markets that present a barrier to effective integration, for example the cost and time required to realise the value of the mortgage collateral in the event of default (Italy is the prevalent example). Cultural factors must also be considered carefully. Barclays' experience of mortgage lending in Europe is that establishing a presence in the national market, understanding the cultural values, and knowing the dynamics of the market, are as important as price and product variety.

Cross-border activity is not a good measure of market integration given the preferred strategy of direct entry into local markets through new venture or acquisition unless cross-border activity includes the activity within member states of non-national financial institutions.

The report produced by London Economics is referred to in section 8 of this document. The benefits referred to are clearly afforded to certain Member States that have developing mortgage credit markets; however the benefits for more mature mortgage markets are unclear. Any Commission action should be tailored to the needs of individual economies in this respect.

The Commission shares the Forum Group's view that integration necessitates addressing consumer protection (consumer confidence under the Forum Group), legal issues, collateral issues and funding (finance under the Forum Group). However the fifth area of recommendations raised by the Forum Group, that is, distribution issues, is not considered. The Forum Group clearly indicated the importance of distribution channels in the local mortgage market and the barriers to entry. The Commission is urged to revisit these recommendations as a key driver for increasing competition and delivering associated benefits.

4 Response: II – Consumer Protection

4.1 Information

We recognise the importance of providing consumers with the appropriate level of information necessary to make an informed decision. We are also aware that consumers have differing personal requirements for information depending on a number of factors, which include their level of financial understanding, their previous experience of mortgage purchases or lack thereof, their socio-economic background, education, age and personal/cultural values. Across Europe, these cultural differences will be an important factor influencing information requirements of consumers, and therefore there should be flexibility to tailor the provision of information to the needs of the consumers in local markets.

The Code of Conduct has been implemented in the UK through FSA regulation with effect from 31 October 2004. This was a delay to the implementation which was unavoidable in order to synchronise with the statutory regulation of the industry. Whilst the Commission has expressed some dissatisfaction with the level of implementation of the Code of Conduct across Member States, insufficient time has been allowed before making a judgement on the implementation.

Q: Should the Code of Conduct be replaced by binding legislation or remain voluntary?

A: We would urge the Commission to reinforce efforts to implement the existing voluntary Code of Conduct (“the Code”) in individual Member States as appropriate to the level of implementation, rather than producing binding legislation. Binding regulation will be detrimental in terms of cost and resource in those Member States where the Code has been implemented already, either by voluntary compliance or through inclusion in statutory legislation as in the UK. In cost/benefit terms, binding legislation will be costly and is unlikely to deliver greater benefits than reinforcing the current Code. It is important to recognise that agreement to the Code is already in place, following extensive consultation with financial services providers and consumer groups – and has been implemented in full or in part by a majority of Member States, and therefore it would be more effective to apply efforts to achieve fuller implementation of the Code in those Member States where it is needed.

This would be in keeping with the Commission’s objective to use smarter, more innovative ways to achieve integration instead of introducing more regulation. This would also lead to more immediate results than following the legislative process. The Commission may wish to consider lender certification or “passports” for lenders who have implemented the Code, with the certifying body being the national regulator.

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

A: It is important that customers have sufficient information in order to make a fair and balanced assessment of different mortgages. However, it is important to maintain a balance so as not to overload consumers. We do not believe that a demand for cross-border shopping will be created through a single standard of pre-contractual information – the Commission should retain the ESIS in its present form and encourage the implementation efforts of Member States. The ESIS encapsulates the key information that consumers need in terms of the mortgage and associated costs. There may be scope for improving the standard of pre-contractual information in individual Member States; however this could be achieved without binding legislation. It is important to note that in the UK experience, the FSA has had to direct firms to reduce the length of the Key Facts Illustration (KFI) as being too long for consumers. The KFI is not being used as a tool for shopping around, as originally intended by the FSA. Similarly, the Italian “transparency” legislation is very prescriptive regarding disclosure requirements to consumers.

Q: 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?

A: The provision of pre-contractual information may enable the consumer to shop around and directly compare what different lenders have to offer. However in practice consumers in the UK are not using this detailed personalised information to shop around, but instead tend to use intermediaries and internet mortgage sourcing engines to select products before approaching the lender to obtain the pre-contractual information and proceed with the mortgage application. The pre-contractual information is serving the purpose of ensuring the consumer has the relevant information in writing before any decision to proceed to application. We think it serves little purpose to define at what stage this information should be given during the pre-contractual process as this will vary from state to state – provided that the consumer is able to request the information as early in the sales process as they wish, and before the customer is committed to make a mortgage application, i.e. so that consumers still have the option to withdraw from the sales process if the information provided is not satisfactory to them.

Q: 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?

A: Information provision should apply to any party playing a primary role in the sales process, both lenders and brokers/intermediaries alike. However the broker/intermediary can utilise the pre-contractual information produced by the lender rather than produce the information themselves, which would ensure that the product information is accurate and delivers cost-efficiencies for the broker/intermediary. The application of standards within individual Member States should fall under the jurisdiction of the appropriate regulator in each member state, who should authorise lenders and brokers/intermediaries.

4.2 Advice Provision and Credit Intermediation

Q: Should the provision of advice to the borrower be made compulsory or be a matter of choice?

A: Consumers have differing levels of need in respect of information and advice. Financially capable consumers should not be forced to take advice – this should be a matter of choice. Compulsory advice would lead to longer customer interviews and additional training and cost for lenders, which would ultimately be passed to consumers. Most consumers using telephony or internet channels do so in order to expedite the mortgage application and do not require advice. It is not clear how the provision of compulsory advice will aid the primary purpose of integration, or what risk compulsory advice would mitigate against. However, the lender/broker should clearly indicate to the consumer whether or not advice is available at the outset of discussions, so the consumer is clear about the basis of the relationship.

Q: 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)?

A: Under UK FSA regulation, this is fulfilled principally through the provision of the initial disclosure document, which sets out the level of service, fees for advice etc. The standards for advice provision are covered under FSA regulation. Such conditions are desirable where advice is being given, although consumers should have the option to opt out of taking advice.

4.3 Early Repayment

Q: 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?

A: We support early repayment as a legal right subject to the lender being able to levy appropriate exit fees to compensate for funding losses incurred as a result of the early repayment. It is difficult to see the benefit to consumers of waiving this right in terms of product pricing if Early Repayment Fees (ERFs) are commensurate with the risk.

Q: 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?

A: ERFs should be clear and transparent to the consumer. The method of calculation should also be clear and transparent; however given the variation in mortgage products it would be inappropriate to set standard methods of calculation for ERFs. We would support the removal of caps on ERFs. Capping of ERFs would lead to some lenders not being prepared to enter the market, or not offering mortgages to certain customer groups and thus both competition and choice would be affected. ERF levels should be set by competitive forces in the market rather than by legislation. Lenders should be able to set ERFs that are appropriate in offsetting the economic cost of breaking the mortgage contract.

Q: How should the consumer be informed about early repayment? Is there scope for consumer education here?

A: ERFs should be covered in any pre-contractual information and in the mortgage contract itself - local regulators should adjudicate over fair treatment of consumers within individual Member States. ERFs should be explained to consumers as part of the pre-contractual information process. ERFs should be quantifiable so that consumers understand the actual financial charge that would apply in the event of early repayment.

4.4 Annual Percentage Rate

Q: What is the purpose of an APR? Information? Comparison? Both?

A: The primary concern of a consumer entering a mortgage contract is the amount of the monthly repayments, and the total amount repayable. The APR is generally only used for the purpose of comparison with other mortgages. The APR serves little or no purpose for the consumer when quoted in isolation from other comparable alternative products.

Q: Should there be an EU standard covering both the calculation method and the cost elements?

A: This needs to be considered in step with the Consumer Credit Directive APR requirements. The APR is already well defined and adopted through Consumer Credit Act and FSA regulation in the UK and we would support maintaining this definition to avoid incurring considerable cost to change with little benefit to consumers.

Q: If so, what kinds of cost elements should such an EU standard include?

A: In order to reduce the impact of local differences in legal, land registration, and taxation costs on the APR calculation, the costs should relate only to the provision of the loan itself, but not incidental costs, e.g. stamp duty. We would advocate adhering to the narrow definition that already applies under UK legislation, including only those costs levied by the lender or incurred by the consumer for the purpose of the lender providing the finance. Given the limited amount of cross border lending the costs of harmonising definitions probably outweigh the benefits.

Q: 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.

A: This is already included in UK disclosure under the FSA regulation - as a principle we would support the view that customers should be aware of all costs relating to the transaction prior to entering an agreement. The Key Facts Illustration covers the monthly cost, the overall cost of the loan, and the amount repayable for every £ borrowed, which serve as useful comparisons for shopping around. These representations of cost are more easily comprehended by consumers than the APR itself. Accordingly, in the UK further regulation in this area is unnecessary.

4.5 Usury Rules and Interest Rate Variation

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

A: Our view is that interest rate caps are anti-competitive and will reduce consumer choice, and restrict access to finance to some consumer groups. It is unclear how caps could be operated across the Member States given the differences in local interest rates. Mortgage pricing should be determined by the free market – competition brings a downward pressure on price towards the prevailing local monetary interest rate. In Italy, for example, "usury" caps are calculated as 50% above the average lending rate of the banking system for each type of lending. In the case of mortgages this produces a cap which effectively restricts lenders from lending to certain categories of customers (e.g. sub prime). A relaxation of these rules would contribute to an expansion in the market.

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

The Commission should examine the application of usury rules in general in financial markets as a practice which restricts access to credit and constrains competition, thus hindering market growth.

Q: Do [interest rate variation caps & compound interest restrictions] hinder market integration?

A: Where caps and interest rate restrictions exist, this may hinder innovation and reduce consumer choice, e.g. in Italy. The removal of such caps would be one factor that would make entry to the market more attractive to lenders based outside the Member States in which the caps currently exist. However, it would be anti-competitive if local lenders remain subject to any caps, but "foreign" lenders were not.

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

A: Any price restrictions will tend to restrict rather than engender the development of new products such as equity release products or sub-prime lending. Whilst these are products that are more specialised and require due care in the sales process, there are other controls in place to protect consumers e.g. unfair terms in consumer contract legislation.

4.6 Credit Contract

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

A: Given the complexity/diversity of the underlying legal systems of the Member States, the consideration of a 26th regime is a longer term issue which has a far broader application than simply to mortgage contracts. We would not recommend the concept of a 26th regime as a vehicle to remove barriers, improve competition and promote integration. The Commission may wish to consider investigating what constituent elements should be present in a mortgage contract, rather than define the actual format itself.

4.7 Enforcement and Redress

Q: Should the Commission consider imposing on MS an obligation to ensure the existence of such alternative means of redress in the mortgage credit area?

A: From a UK perspective, an efficient independent means of redress exists in the form of the Financial Ombudsman Service (FOS). A similar service exists in Italy. Overarching the provision of alternative means of redress in individual member states, FIN-NET provides an out-of-court complaints network to help consumers resolve disputes when the service provider is established in an EU Member State other than that where the consumer lives. The network brings together more than 35 different national schemes that either cover financial services in particular (e.g. banking and insurance ombudsmen schemes) or handle consumer disputes in general (e.g. consumer complaint boards). In order to promote consumer confidence, “foreign” lenders wishing to lend in the UK would have to subscribe to FOS membership so that consumers have an independent means of redress in the local state. The Commission should examine carefully the existence/absence of such redress mechanisms across the Member States and whether these are effective, and whether greater consumer education about their availability and existence is required rather than imposing legislative obligations to provide such mechanisms, which will inevitably require definition.

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

A: See previous answer – the Commission may wish to consider the level of consumer education that exists regarding alternative means of redress, and encouraging Member States to direct their financial institutions to ensure that consumers are made aware of their availability. In the UK, the FOS is well established, and consumers are clearly provided with information regarding this alternative redress mechanism through the pre-sales process, the life of the mortgage loan and in the operation of complaints handling and arrears management.

5 Response: III – Legal Issues

5.1 *Applicable Law*

We agree with the Commission that there is no reason to depart from the principle that the law of the country in which the property is situated applies for the collateral, and that the mortgage contract is a matter of agreement between the lender and the consumer, subject to the application of the mandatory rules of the consumer's country of residence. This is appropriate given our view that true cross-border trade is likely to remain insignificant, and that market integration will be more effectively fostered through encouraging lenders to establish new operations in Member States – this has been the effective model for Barclays. The determination of the law applicable to contracts is a component of the revision process to the 1980 Rome Convention, and is therefore part of a broader review. Our view is that this will not materially influence market integration in the short/medium term in comparison to other measures.

5.2 *Client Credit Worthiness*

Q: 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.

A: There are differing models and levels of credit data across the EU. The Commission should follow Forum recommendations to collect information on existing databases and consider how to promote access and active participation in credit databases without requiring legislation. Given the disparity that exists today in both the availability of and access to credit data, lenders in Member States with good credit data facilities would be at a competitive disadvantage to those lenders who operate in Member States with less-developed and accessible credit data. This would apply particularly to the UK, which has well-developed credit reference agencies such as Experian and Equifax. Any external lender wishing to operate in the UK and wanting to use these databases would have to be subject to UK laws e.g. data protection legislation, provide reciprocal data and come under the scrutiny of the Office of the Information Commissioner. Similarly, the lack of positive databases (i.e. only negative data is held and thus an incomplete picture of individual consumer's credit history is available) protects "indigenous" lenders from foreign competition.

Given our view that cross-border lending is not the most effective means to promote competition and market integration, it is likely that the cost of establishing "cross-border" access would outweigh the benefits. The Commission should instead concentrate on the barriers to access to such data-bases for foreign lenders establishing themselves in new member states, rather than trading "cross-border".

5.3 *Property Valuation*

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

A: In the UK, Barclays operates a surveying and property management company, Ekins, which is an active member of the Royal Institute of Chartered Surveyors (RICS). Since the fourth edition of the RICS "Red Book" became effective in 1996, there have been significant developments in International & European Standards, published by the International Valuation Standards Committee (IVSC) and The European Group of Valuers Associations (TEGoVA) respectively. Both organisations, with support from the RICS, now publish comprehensive books of Standards which they regularly review.

The RICS is committed to the objective of securing a single set of core international valuations standards and supporting guidance to provide a common framework for valuers worldwide. It recognises that the ISVC, of which it is an active member, is the body best placed to achieve this objective. It also supports the role of the TEGoVA in developing and publishing standards that are specific to European legislation and regulation, within the overall international framework. Rather than permit members to use different sets of standards, it has decided that the best way is to adopt the International Valuation Standards wherever possible and integrate these into the RICS Standards.

The Commission should consider how it can best support and promote these valuation standards and principles. The Commission should also consider the underlying issue of legal redress for negligent valuations which is not addressed in the Green Paper. Valuation standards in some Member States are a major issue – for example in Italy. However it may be more effective if the national banks had greater involvement in setting standards in Member States like Italy in the context of compliance with Basel capital requirements.

Q: What are the merits of Commission action to ensure mutual recognition of national valuation standards?

A: We would support initiatives to promote the recognition of national valuation standards where those standards are equivalent to the international valuation standards referred to above. This is an area where the Commission can support and encourage adoption of internationally recognised valuation standards without the need for legislation.

5.4 Forced Sales Procedures

Q: 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.

A: The existence or absence of satisfactory forced-sale procedures is an important factor to lenders considering entering a new market. For example, forced sale procedures in Italy are a serious problem for lenders with the duration of the process being highly anomalous with the rest of Europe. However the delays are more attributable to inefficiencies in the legal process and it is difficult to see how these could be eliminated by EU legislation. The inefficiencies undoubtedly result in a higher cost of credit which is reflected in pricing. The Commission is considering an appropriate approach to the issue, given the differing complex legal systems across the Member States. We would therefore agree that forced-sales procedures should be monitored and assessed and “scored” to encourage improvements in those states where the procedures are lacking, with legislation being seen as a last resort.

5.5 Tax

Q: 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

A: In principle, we would support equal treatment of foreign and domestic lenders. This is more of an issue for true cross-border lending – the preferred model for Barclays and many other lenders is to establish operations in a member state and therefore be subject to the taxation laws of that member state. It is important to recognise that tax obstacles exist within Member States, for example, in Italy, credit institutions (i.e. registered banks) have a competitive advantage over finance companies through more favourable tax legislation which means that mortgage lending is almost entirely carried out through banks.

6 Response: IV – Mortgage Collateral

6.1 Land Registers

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

A: The UK has good provision of land registers and there is much activity in the UK by HM Land Registry in relation to the electronic registry of charges and e-conveyancing. However, it is recognised that many Member States do not operate a comparable level of land registration access, and we would support continued Commission involvement in promoting development of and access to such registers. This could be fostered by extending the EULIS project to all Member States.

6.2 Euromortgage

Q: 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.

A: This is a concept that has been under consideration for some time. Effectively the concept is to reduce the link between the mortgage collateral and the mortgage credit to enable mortgages to be created and transferred more easily. The application of a Euromortgage is dependant in part on the progress of the 26th regime, and how it would sit with the different legal systems of Member States. Greater efficiency in the land registration process may well reduce the advantages of a Euromortgage. Our view is that the Euromortgage requires significant detailed research to fully understand the implications.

7 Response: V – Funding of Mortgage Credit

Q: 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.

A: The capital markets are already highly active on an international basis, although we acknowledge that this does not apply to all jurisdictions where the development and availability of funding could have a marked impact on the local mortgage markets, and therefore we would support further investigation in this area by the Commission. From our perspective, the securitisation markets work well in giving access to funding for mortgage pools. Investors are experienced in assessing the different collateral characteristics, which to some extent will always differ given different market dynamics in each jurisdiction.

Q: 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

A: The market is already integrating, through cross border cooperation and consolidation. Funding of mortgage products is already becoming standardised. ING has shown that it is possible to compete for deposits in many countries, and the covered bond funding tool is being introduced across Europe. Securitisation is also a funding option across Europe. The main obstacle is how to technically fund mortgages cross-border. There are restrictions on funding foreign subsidiaries from the parent, and lending small amounts cross border has operational (servicing) implications.

Q: In this respect (growth of non-deposit based mortgage loan funding), the Commission is interested to receive views on whether mortgages 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

A: In the UK, lenders without retail deposit funding are already active, and it is our view that mortgage lending should not be restricted to deposit taking institutions. However the Commission needs to take a balanced view, as it is appropriate for the mortgage market to be funded by a variety of methods, and the approach should be to foster a stable level playing field which encourages development of the mortgage market, without promoting wholesale funding at the expense of retail funding. Our own experience of providing mortgages in Europe demonstrates that retail funded mortgages can be equally flexible with regard to development of a pan Europe mortgage market. The importance of fostering different sources of funding, and the need for strong financial institutions not wholly reliant on one source of funding, is exemplified by the experience of the UK mortgage market and the demise of the wholesale funded centralised mortgage lenders in the 1980's.

It is important, however, that any non-credit taking institutions in the mortgage market should be subject to the same requirements as the credit institutions to ensure a level playing field and not to create any potential for consumer detriment.

8 Comments: Annex I – Response to General Forum Group Recommendations

- (1) **Definition of cross-border lending** – The definition provided is still over-simplified, and does not distinguish between the consumer seeking mortgages across borders and the lender crossing borders to provide services. It also fails to address the potential for e-commerce and internet mortgages where actual borders are replaced by virtual borders. Cross-border lending is over-emphasised in the Paper, given that the most effective stimulant to mortgage markets is the establishment of new lenders in local markets, providing competition, access to funds and innovative products.
- (2) **Research on the costs and benefits of further integration** - The London Economics Report “The Costs and Benefits of Integration of EU Mortgage Markets” provides a useful high level view of a projected outcome of one hypothetical set of measures. This is a good foundation for further, more detailed investigation, constructive criticism and exploration of the relevant issues raised therein. This further detailed investigation is critical to assessing the benefits and also a greater examination of the potential threats/costs to mortgage markets, the latter being underdeveloped in the London Economics Report in favour of perceived benefits. The Report is based on a hypothetical set of measures and thus the benefits realised in the Report are subject to significant change, dependent on the measures selected. The Report has rightly identified, through consultation with lenders, that there is limited appetite for cross-border lending; however it continues to treat cross-border lending as an important factor in mortgage integration. In addition, the cost estimates, if based on the introduction of mortgage regulation in the UK, are almost certainly underestimated. The true cost of UK mortgage regulation has not yet been fully established but is thought to be considerably higher than initial estimates, and the ongoing costs are estimated to be significant.

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