

**Position from the Austrian Ministry of Finance and the Austrian
Ministry of Justice to the Commission's Green Paper on
"Mortgage Credit in the EU"**

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The Austrian Ministry of Finance and the Austrian Ministry of Justice endorse the opportunity of commenting on the Commission's Green Paper on Mortgage credit in the EU, taking into account the statements of the Austrian Financial Market Supervisory Authority and the Oesterreichische Nationalbank (OeNB) as the central bank of the Republic of Austria we would like to transmit the following general positions:

- The Ministry of Finance expresses its general reservation to the proposal of greater harmonization of the European mortgage market.
- We generally doubt the expedience to harmonize the law of obligations and the law of property with regards to mortgage credit law, whereas in all other areas, differences in the field of property law would continue to exist in the Member States.
- The Austrian land register law (Grundbuchsrecht) ensures a high degree of legal certainty which entails security for the lender as well as the borrower. From our point of view it therefore appears rather questionable if harmonized European provisions could guarantee a similar high standard.
- We consider the expectation that further legal harmonization would lead to fostered cross border mortgage lending business in the Single European Market as it is expressed in several Commission studies, rather unlikely to be achieved in reality. This especially due to a strong prevailing "home-country-bias" in the sphere of mortgaging.
- In line with the expressed negative approach of most MS to introduce a system of obligatory arbitration in the proposed Directive on certain aspects of mediation in civil and commercial matters, we also reject the idea to reinforce alternative redress systems in the mortgage credit area (Point 30).

- As regards the inclusion of arrangements for "data sharing between lenders" (point 36) we have to stress – in view of Article 75 of the Austrian Banking Act establishing a Central Credit Register administrated by Oesterreichische Nationalbank – that access to such databases shall only be given on the precondition of reciprocity rules.
- We particularly disapprove the Commission's attempt of creating the so called "Euromortgage", whose central aspect would be the weakening of the link between the mortgage collateral and the mortgage credit. Of primary concern is the necessity to maintain the principle of "accessoriness", which we above all consider as the most appropriate way of protecting debtors.
- With regard to the Commission's considerations on property valuation we want to emphasise that developments in the techniques of property evaluation are of a too dynamic nature as that they would allow for expedient regulation. We therefore explicitly oppose respective intentions to regulate valuation processes. However, in the field of land register records we would encourage the Commission to foster the EULIS (European Land Information Services) project.
- From the Austrian point of view mortgage credit and consumer protection rules should be separately dealt with, the way it is envisaged in the Commission proposal on the new Consumer Credit Directive. However, we consider it crucial to postpone regulations on mortgage credit as long as the new Consumer Credit Directive is not adopted and as long as first practical experiences of their economic effects have not been recorded.
- The establishment of a European wide market for refinancing mortgage credits through facilitation of cross border pooling of funding instruments can be fully supported from a supervisory point of view. However, we would ask/recommend the Commission to discuss the issue of refinancing not with exclusive reference to mortgage credit markets but in the context of Asset Backed Securities and Covered Bonds.

- The Commission's tendency to achieve standardisation by means of so called "26th regimes" can not be supported from our point of view. This in particular because a purely European regime could never be efficiently provided for in addition to the respective national regimes in the field of property and land register law. Furthermore, the establishment of a 26th regime would conflict with the European principle of subsidiarity stipulated for in Article 5 of the EC Treaty.