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Memorandum

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Comments to the Green paper on Mortgage Credit

General

We appreciate the objectives of the Commission work as regards mortgage credit to increase efficiency through better market completeness, product diversity and price convergence across the EU. It is important that measures taken to promote such a development take account of the general advantage of product differentiation and innovation, existing and future. Restrictions on permissible mortgage products should be avoided as much as possible. Consumers are in general to benefit from low barriers to entry. The level of consumer protection must at the same time remain high and in principle be equal to that existing for consumer credits.

It is also important that the Commission's work takes due regard to the significance of mortgage credits for housing in all MS and to in many ways well functioning national mortgage credit systems. Furthermore, regulatory measures must take account of the overall regulatory burden in the wake of the FSAP process affecting financial institutions as well as regulatory bodies. An evidence-based approach must apply if legislation is to be considered.

The business case for integration in these markets should be carefully examined including cost/benefit calculation for EU intervention. The preliminary assessment in the London Economics study indicates substantial economic benefits from a further integration and harmonisation of the mortgage market. This suggests that the benefit to housing consumers could be considerable through increased product availability and lower prices. However, the costs of harmonisation measures must also be considered. Moreover, the route to achieve such a harmonisation and its possible impact on the economy have not been thoroughly analysed. The fact that the housing markets are largely local markets, means that the markets for mortgage credit will presumably have a tendency to remain fairly locally oriented. Therefore, the greatest scope for efficiency gains will probably be

found at the funding side. Further analysis of the effectiveness of various harmonisation measures is thus warranted.

Other aspects that should be considered are the existing currency risks in the EU region and their impact on both supply and demand for cross-border mortgages.

On the four areas dealt with in the Green Paper we have the following comments.

Consumer protection issues

Relevant, adequate and comparable “information” is key to consumer confidence and to competitive mortgage credit markets. Given the importance of information a common information regime on a balanced level, should be strived for. It is still uncertain how this could be achieved and whether any rules should be binding or not. In any case legislation should not be excluded.

The level of information should not be lower than that stipulated in the consumer credit directive. Additional factors may be considered due to the relative complexity and significance of a mortgage credit contract (including currency risks).

Pre-contractual information should be provided. Identification of a common EU-stage may however be cumbersome and an unnecessary inflexible element.

As regards “advice” this term is more difficult to use in relation to mortgage credits as compared to investment decisions. However, due to the economic importance of mortgage credits for the individual household, an offer of a mortgage credit should always take account of the economic situation of the borrower including the repayment ability. To give advice on e.g. variable or fixed interest rate is a normal part of a client contact and often difficult to separate from informing. In the last resort it must be up to the borrower to decide. Adequate information of various options remains the key factor.

Furthermore, “early repayments” should be a legal right and be part of an information regime. A compensation fee should apply covering mainly the interest differences and preferably calculated in a model formula.

A common definition of an “annual percentage rate” would ensure proper information and enable comparisons. An EU standard should be strived for covering both calculation method and cost elements. The latter should at least consist of obligatory costs to pay to the creditor. A concrete example should be included to increase consumer understanding. As is noted by the Commission due account should be taken to the regime followed in the area of consumer credits including the method of calculation.

However, the total costs related to a mortgage credit, including e.g. land registration fees, is important to the borrower. Therefore, in order to be well-informed, a customer will need an overview of all relevant costs.

As regards “usury rules” our general view is that this issue should be of less significance in the mortgage field compared to e.g. consumer credits.

A standardisation of “credit contract” should not be strived for. An initiative regarding a 26th regime would need further consideration. In this context there are, besides all implications for related areas, such as property law and contract law, possible problems as regards regulatory arbitrage that need to be analysed.

Adequate “redress functions” are important and the Commission should consider to impose on the MS the existence of such functions . In Sweden the National Board for Consumer Complaint is an example of such an arrangement. The Board is occupied with consumer disputes by giving high quality, impartial decisions quick and cheap. Its main function is to resolve disputes between consumers and tradesmen/companies. The Board issues recommendations (not legally binding) for the purpose of settling disputes. The proceeding is in writing and free of charge.

In this context it should be emphasized the importance and requirement of making due examination of the borrowers capacity to take on and repay a loan.

Legal issues

We share the view of the Commission, that it is advisable and consistent to address all issues of applicable law, including the law applicable to mortgage credit contracts, within the context of the revision process in order to transform the Rome Convention into an EU Regulation.

On the issue of “client credit-worthiness” the Commission should as mentioned give priority to the work to ensure cross-border access to databases on a non-discriminatory basis taking due regard to data protection.

As for “property valuation” this is part of the risk management of the lending institute (and partly subject to market surveillance via rating institutions as well as public supervision). In general sufficiently high standards would primarily be ensured by the market.

From a consumer protection point of view a prudent valuation should ensure sufficient security for a loan, partly to avoid over- indebtedness. A single EU-standard seems difficult and less appropriate to achieve and not a necessary objective to enhance cross-border activity. Mutual recognition of national standards should preferably be strived for.

We believe that too large differences in “forced sales procedures” can be significant obstacles to cross-border mortgage credits. The Commission outline of strategy of work should be supported including the mentioned scoreboard which could be of value for lenders also in the more near future.

Mortgage collateral

“Land register” is a central area where the Commission work should support a development that such registers reflect all relevant charges affecting property ownership rights (no “hidden mortgages”) and that all relevant information is available to all parties.

We regard the EULIS as a fruitful project and the Commission should encourage all parties concerned to develop it further and preferably take over the funding role. Further financial support from the Commission would however be desirable.

We are hesitant to whether future exploration of a “euromortgage” instrument would be successful. A more effective way to develop the market will be to have full and direct information about the Member States’ legislation.

Funding of mortgage credit

We welcome the Commissions intention to create a stakeholder working group to examine the prerequisites for further actions regarding funding issues. This is an area where voluntary collaboration of market actors would be appropriate.

Our general view is that the current option of not applying prudential regulation on institutions that do not fall within the scope of the EU definition of a credit institution should remain (including for mortgage lending). We do not find compelling need for subjecting all institutions to heavy regulation if the risks of their business is less significant.

However, in a more distant future and if the volume of such non or less regulated businesses including mortgage lending should grow substantially, the question would arise whether also this activity should be under prudential rules for consumer protection reasons.

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