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POSITION OF THE SLOVAK REPUBLIC TO THE COMMISSION'S GREEN PAPER ON MORTGAGE CREDIT IN THE EU

Referring to the Commission's Green Paper on Mortgage Credit (hereinafter as the "green paper") as being submitted to the public consultation process on 19 July 2005, the Slovak Republic hereby gives the comments to the distinct but interrelated areas as being addressed by the Forum Group on Mortgage Credit.

This document was prepared in close cooperation of all interested parties at the process of the EU mortgage credit market integration; therefore the comments presented in this respect correspond with the views of them.

At the same time we would like to emphasise the fact that the comments concerned do not concentrate to the questions in its entire but concentrate to the issues as being perceived as a crucial from our point of view and will contribute to the process of the EU mortgage credit market integration as a whole having in mind different historically-rooted systems in each country and differences in the effectiveness of capital markets in various Member States.

Consideration of intervention in the EU mortgage credit markets is a key aspect of the Commission's commitment to the meeting the Lisbon objectives aimed at the enhancing EU competitiveness and capable of sustainable economic growth with more and better jobs and greater social cohesion. Moreover the Commission in its Green Paper on Financial Services Policy (2005-2010) has identified the retail financial services as area where further initiative might bring benefits to the European Economy as the retail financial market remain deeply fragmented. Mortgage credit is one area where further Commission intervention might be beneficial beside the New Legal Framework for Payment Services, Proposal of Directive on Consumer Credit, reflecting the high level of consumer protection rules.

Having said that the Slovak Republic really much welcomed the consultation process as being organised by the Commission in the field of mortgage credit market integration. We believe that the process will ensure that any further steps made by the Commission in this field would lead towards the removing of obstacles to mortgage market integration and the potential benefits of intervention will outweigh the anticipated costs of such intervention.

We are in favour of exclusion of all secured loans from the scope of the proposed new Consumer Credit Directive and support the introduction of a new EU regulation for mortgage credit. However we are supportive to the minimum harmonisation as regards the integration of mortgage credit markets in the EU instead of the full harmonisation. The maximum harmonisation is to be only welcomed as regards technical regulation such as composition of the Annual Percentage Rate Charge (APRC), standardisation of mortgage collateral rules (constitution, termination, realisation, real estate record, rank in the other of priority disclosed in the Public Register), standardisation of the valuation process, fore sale procedures in the cross-border context. Nevertheless we have reservation regarding the notion of integrating the mortgage credit markets by product harmonisation.

Consistency of a new EU regulation in the mortgage credit market within the existing and future financial market rules, such as Consumer Credit Directive, Directive on Data Protection, Electronic Signature Directive, Third money laundering Directive and the rules within the area of European Contract law should be highlighted.

The Slovak Republic introduces the answers to the partial issues as being stated in the Commission green paper as follows:

I. CONSUMER PROTECTION

a) Information

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

Slovak Republic shares the view that a high level of consumer confidence is of essential importance for establishing a successful cross-border mortgage credit market and therefore a high level of consumer protection must be guaranteed. It is crucial that the borrower will be provided with the appropriate level of information necessary to take an informed decision, in a manner and at the time when such information provision is most effective.

Minimum harmonisation of the consumer protection rules should serve as a good basis for the meet of the abovementioned aim allowing any space for the lenders/creditors. We recommend as much as possible to be in line with the European Standardised Information Sheet (ESIS) with the further specification its. The mortgage credit applicant should receive such information before the mortgage credit contract will be concluded and the comparison as well a final choose of product might be facilitated.

Pre-contractual information should be consist as a minimum from the information regarding a total amount borrowed, duration of the mortgage loan agreement, the precise designation of domestic real estate on which a relevant mortgage loan is granted, the level of the annual percentage rate of charge, the conditions of the early repayment at the client's initiative, detailed specification of other cost to be claimed from the client that are associated with the mortgage loan, the condition of the level of per annum percent interest rate adjustment, detailed specification of the type, method and the extent of securing the bank mortgage claims. It should be ensure that the lender will claim from the debtor only the payments of interest, charges and other costs that are clearly stated in the credit mortgage contract. On the other hand the mortgage credit contract may stipulate any further information as will be agreed between the both contractual parties.

As regards the intermediaries, yes we sharing the view that the providers and the intermediaries should follow the same rules. Third parties should be obliged to provide information according to the regime applied to the mortgage providers. It should be clearly stated in the upcoming legislation in the field of intermediaries as being dealt by the Commission that the ultimate responsibility for meeting those requirements shall remain with the institution which relies on the third party.

b) 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 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?

The right to early repayment should be stipulated directly in legislation where it should be explicitly stated that the consumer must not be deprived of the right in question. This information should be in line with the information that being provided to the client in the pre-contractual phase. Information about the way of calculation and set of the early repayment fee should be clearly indicated in the pre-contractual summary document using worked examples.

In addition, we propose the stipulating the right to early repayment of the whole or part of mortgage credit at the time of the end of interest rate fixation term that should be free of charge.

c) Annual Percentage Rate (APR)

- 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.

We consider the *APR* as a one of the main points for selecting a particular product. The Slovak Republic is supportive to the harmonisation of the basic and the method of calculation for the *APR* which should be have the effect to the information available as well as comparison a different competitive products. The *APR* should reflect the costs incurred by the lender and should be known or at least can be reliable estimate on their merits at the time of pre-contractual information being provided by the lender to the debtor/client.

d) 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?

Slovak Republic opposes the harmonisation of the upper limit for interest rates and their variation.

II. LEGAL ISSUES

a) Applicable law

- 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.
- 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.
- 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.

We share the view that the mortgage credit contract as well as the collateral contract should not be subject two different legal regimes. There should be a single legal regime that should be subject to the law of the country where the property is situated (*lex rei sitae*).

Taking into account prevailing different conditions in various Member States which could hinder mortgage market integration it should be of high priority to set of single EU standards for at least a real estate record, ranking as well as the procedures of using them.

b) 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.

We agree with the approach of the Commission. It is necessary to ensure cross-border access to database on a non-discriminatory basic and on the principle of reciprocity for the development of cross-border mortgage provision.

However we oppose the creation of common (central) database (positive or negative). In addition the right balance should be maintained as regards the guarantee data protection and the interest of the database users, to ensure the accuracy of the data stored in the database.

c) 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?

Having in mind the various valuation traditions in the Member States when the several international valuation regimes are being applied we are in favour of a single EU standard for valuation process. At same time we prefer the mutual recognition of valuers certificate.

In conclusion it would be necessary stress the fact of the missing a definition of mortgage credit under the scope of the Commission Green Paper on Mortgage Credit. It should be clearly defined in order to remove any doubts what European standard is referring to. Potential definition of mortgage credit could be as a credit that is secured by a real estate and serve for natural person purposes.