



Irish Mortgage Council

Internal Market Directorate General
Financial Institutions
European Commission
Ave de Cortenbergh 107
BE 1000, Brussels
Belgium

28th October 2005

Re: EC Green Paper on Mortgage Credit in the EU

Dear Sir or Madam,

The publication by the European Commission in July of its Green Paper on Mortgage Credit in the EU refers and I am writing to you to formally apprise you of the Irish mortgage lending industry's views in respect of the questions posed within the Green Paper.

I have attached at annex I a detailed set of comments in respect of the questions set out within the Green Paper. I am cognisant however both from our previous interactions with the Commission that you will be aware of many of the broad industry views on the issues at hand. Notwithstanding this however I hope that the perspective of the Irish mortgage lending industry provides some additional insight and it is in anticipation of this that I attach our detailed comments. I would note that we are forwarding these views to our Department of Finance with whom we have previously discussed the Green Paper.

The Irish mortgage market welcomes the possibility of greater European mortgage market integration. With UK, Danish, Belgian, Dutch and Irish owned institutions already offering mortgages in the Irish market the Irish market is, in effect, already a 'European' mortgage market. IMC is, however, strongly of the view that should the Commission determine that there is a case for action and should it proceed with measures aimed at achieving further market integration, such measures must stand a reasonable prospect of achieving said integration. IMC would be opposed to any course of action which would result in increased regulatory and or administrative burdens on lenders (with cost implications ultimately also for consumers), particularly where such impositions stand little or no chance of progressing the integration agenda. As an example, setting aside for a moment the type of cross border (merger and acquisition based) mortgage lending activity already alluded to, the efficiency, accessibility and transparency of property registers and credit reference data bases are an absolute prerequisite for any lender considering offering mortgages directly into another jurisdiction. As such, a failure to fully address such matters at the outset would render any other proposals meaningless. Furthermore should such issues be resolved, integration would still ultimately only be driven where there is a business imperative, both for the lender and the consumer, to do so. IMC would also express

its concern that any regulatory steps taken as a consequence of this initiative should not serve to hinder mortgage market development or restrict product availability either now or in the future.

With regard to the LECG report on the costs and benefits of EU Mortgage Market Integration we would reiterate our continued advocacy of the importance of regulatory impact analysis and welcome the LECG study in this context. While the report itself requires further interrogation it is our understanding that the benefits which it suggests are based on a set of assumptions regarding the manner in which integration would take place, that is, that product availability would not be diminished in any individual market and that restrictions would be lifted in various markets to permit the full range of product offerings. From our review of the LECG report to date we would share some of the concerns voiced elsewhere regarding the methodology employed by the consultants.

I hope that the ensuing commentary is useful and please do not hesitate to contact us should you wish to discuss any of the points raised in greater detail. We look forward to further engagement with the Commission in the context of the consultative process and you might, in this regard, advise us as to how we may request attendance at the oral hearings in December.

Thank you in advance for your consideration of our views.

Yours sincerely,

Eimer O'Rourke
Secretary

IMC Comments on the European Commission's Green Paper on Mortgage Credit in the EU

General Comment:

IMC welcomes the publication of the Green Paper. In commenting on a number of the questions posed by the paper we have responded on the basis that the questions raised would need to be addressed if direct cross border lending was to become commonplace. However, from an overall perspective, it should be noted that the resolution of such matters will not have a bearing on the integration of markets in the absence of a financial incentive for lender to offer or consumers to seek cross border mortgages. Additionally, in the absence of such developments, European lenders will continue to have the option of entering other European markets through mergers or acquisitions. This option has already led to the participation of Belgian, British, Danish and Dutch owned institutions in the Irish mortgage market.

Notwithstanding the current consultative process regarding mortgage market integration, the regulatory environment for mortgage lending continues to evolve in each member state. In Ireland, the Financial Regulator is currently working on a unified code of conduct for regulated entities which it anticipates coming into force in 2006. The code, which will include provisions relating to all aspects of mortgage lending, will add to the existing regulatory regime in the Irish context. The continued development of rules and regulations at local level poses a significant challenge for lenders in business and administrative terms but also to the market integration agenda as a whole.

I. The Case for Action

Given the financial imperatives for both consumers and lenders referred to above, without which market integration will have little impetus, IMC welcomes the cost / benefit considerations undertaken by the Commission and its recognition that such matters need to be fully taken into account before action is taken. IMC is continuing to consider the recently published LECG cost / benefit analysis report commissioned by the EC. While a full consideration of the basis of the report and conclusions at which it arrives will require further time it is our understanding that the considerable benefits to which the report refers are based on assumptions such as, for example, that existing legal restrictions which limit product availability in certain markets would be removed. While it was necessary for the consultants to assume a particular path to integration in order to carry out the report, all stakeholders will need to maintain cognisance, going forward, that the benefits to which this analysis refers relate to a specific approach to integration.

II. Consumer Protection

• Information

- ***Should the Code of Conduct be replaced by binding legislation or remain voluntary?***

Given the high level of application of the Code of Conduct in the Irish market we do not have a strong view on this question. The advantage of putting the Code and, more importantly, the ESIS on a statutory footing from an Irish perspective would be that in doing so the existing overlap between it and the existing Irish Consumer Credit Act, 1995 letter of offer could be addressed.

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

IMC supports the considered approach being adopted in this regard. Not only is information overload wasteful in terms of resources, it can also result in key information being becoming obscured and overlooked by the consumer. It is important that key product information relating to terms, costs and product features be clearly and concisely communicated to the consumer. Unnecessary or ill-considered overlap between local and European requirements must be marginalised.

- ***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?***

It is important that marketing information provide a means for consumers of shopping around. Additionally, the ESIS can be a valuable tool for comparative purposes. However in requiring that individualised information be provided at a point before the issuance of a letter of offer there is distinct potential to defeat the purpose – if the ESIS (or equivalent) with individualised information was required at the earliest or casual enquiry stage, the necessity for the lender to go through the detailed information acquisition, etc to put itself in a position to do so could well dissuade the customer from carrying out the same process elsewhere. IMC recognises the value of the ESIS in providing for comparability between mortgage products. Indeed the Commission's first report on the implementation of the Code of Conduct demonstrated Irish lenders' compliance with the voluntary code. However IMC is strongly of the view that it is appropriate to provide the ESIS at the letter of offer stage. It is not practical to provide a customer specific ESIS at any earlier point in the mortgage process as the requisite individualised information is not available. Furthermore IMC does not believe that it is in the best interests of a consumer to be provided with an ESIS before the loan application has been processed and the lender has taken an underwriting decision as to whether it is prepared to grant the mortgage. The provision of a letter of offer by a lender does not in any way bind the consumer and, as such, both the letter and the ESIS can be used for comparative purposes with ESIS's provided by other lenders.

In summary, IMC would be concerned by the prospect of the introduction of additional stages within the lending process that serve to add a bureaucratic layer to the mortgage application process, slow it down unnecessarily and marginalise the scope for shopping around by consumers (by obtaining informal quotes).

- ***Should an information provision regime apply only to lenders or to others such as brokers too? How can compliance with such regime (binding/voluntary) be ensured?***

An information provision regime will only be meaningful if it applies equally to all market participants, i.e. from the consumers perspective, the same information should be available regardless of the point of origination of their mortgage inquiry. The provision of mortgages (by lenders and intermediaries) should be restricted to regulated entities thus ensuring that all providers are subject to the same rules.

- **Advice Provision and Credit Intermediation**

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

Advice is a service which is required and requested by some consumers e.g. those who have had relatively limited experience of credit, but not by all. It is insulting to insist that a consumer who does not require advice, must nevertheless submit extensive details to the lender, in order that they can give him advice which he does not want or need. This injects unnecessary cost and delays into the process which is to the detriment of both lender and consumer. The lender's duty should more appropriately be limited to the provision of meaningful information, and he should not be required to recommend one product over another. If however, the customer seeks advice or the lender decides to offer advice, this service should of course be carried out to the highest standards.

- ***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 advisor's role and recording on a durable medium)?***

Where advice (as opposed to simply product information) is actually provided, IMC would concur that it should be of a standard. However, as noted above, IMC would have serious concerns regarding a duty to provide advice and the burdens that could accrue from the bureaucracy of administering such a regime.

- **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?***

Early mortgage repayment is already a legal right for Irish consumers (S.121 Consumer Credit Act, 1995). Compensation for the lender is only permitted in respect of fixed rate loans, during the fixed rate period. The basis for this redemption fee must be set out in advance.

- ***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?***

IMC opposes the imposition of statutory ceilings on redemption fees (relating to fixed rate mortgages). Price control is not favourable in any circumstances and lenders should be free to recover the costs of breakage as necessary, provided the basis for such recovery is provided in advance of the conclusion of the contract.

IMC is of the view that redemption fees should be permissible in respect of fixed rate loans (during the fixed rate period) provided that the basis for the calculation of those fees are presented to the consumer at or before the loan offer stage.

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

In the absence of harmonisation of early redemption rules, the consumer's right to prepayment or partial prepayment and any fees attaching thereto is summarised and incorporated in the ESIS.

- **Annual Percentage Rate**
 - ***What is the purpose of an APR? Information? Comparison? Both?***
IMC recognises that the comparability of cross border mortgages is dependent to an extent on the availability to consumers of a standardised APR calculation. However the limitations of the APR must be recognised, most notably, the assumptions which are necessary in its calculation in many instances. Ultimately the calculation will only be possible and meaningful if it is restricted to costs determined and imposed by the lender.
 - ***Should there be an EU standard covering both the calculation method and the costs elements?***
The standardisation of the calculation and basis of APR will assist in the comparability of the cost of mortgages.
 - ***If so, what kinds of cost elements should such an EU standard include?***
It is not considered appropriate for car dealers to incorporate the estimated use and cost of fuel, insurance and motor tax into the guide price of vehicles which they offer. Not only are such costs payable to other entities but they are unknown to the dealer when the vehicle is sold. Similarly, it makes little sense that a mortgage lender should attempt to quantify costs that are not within its control when calculating the APR. Furthermore, such costs which are outside the lender's control may vary greatly depending on the circumstances of the individual borrower or the property in question (e.g. life insurance, property insurance, etc).
 - ***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.***
Such costs are already referred to in the ESIS (and in the letter of offer required under the Irish Consumer Credit Act, 1995). However, as alluded to above, it is inappropriate to require a lender to quantify such costs where it does not have control over them. Furthermore, the assumptions which would be necessary to quantify such costs over the duration of the loan would undermine their accuracy and could ultimately be misleading to the consumer as a consequence.
- **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)?***
This is not an issue in the Irish market. However, IMC is of the view that mortgage lenders should be free to price their lending in accordance with the risk of the proposition. In increasingly integrated markets with growing competition, price control in any form should not be necessary. In the context of the provision of up front information regarding rates and the variability thereof coupled to a right of early repayment, and in the context of free market competition, such caps should not be required.
 - ***Should this issue rather be examined in a broader, non-mortgage specific, context?***
IMC does not have strong views on this issue.
 - ***Do such restrictions (interest rate caps) hinder market integration?***

While this is not a particular issue in the Irish market, it would, intuitively, appear possible that such restrictions could hinder market integration.

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

As alluded to above, lenders should be free to offer products at costs which are deemed appropriate to the risks involved. In a free market, other lenders will be free to offer more competitively priced products. Any limitations on such freedoms are likely to impact upon product availability.

- **Credit Contract**

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

The standardisation of mortgage deeds and contracts is currently being considered within the Irish market and the advantages of such standardisation are apparent to the market participants. Given the complexity of progressing this matter at a local level, IMC can see the merit of approaching this issue, from a pan-European perspective, via the concept of the 26th regime. However it remains unclear as to how such a regime would relate to existing local structures.

- **Enforcement & Redress**

- ***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?***

The alternative means of redress for consumers vis a vis financial services in the Irish market, the Ombudsman for Credit Institutions, has recently been put on a statutory footing. Mortgage lending falls within the Ombudsman's remit.

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

IMC is not in a position to comment on the effectiveness of alternate redress mechanisms in other member states. However there was general recognition in the Irish marketplace of the effectiveness of the non-statutory Ombudsman scheme. Despite having recently moved to a statutory footing, our understanding is that the operation of the scheme will run on similar basis with many of the same personnel involved.

III. Legal Issues

- **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.***

IMC concurs that this would constitute a necessary step in the integration of consumer credit and mortgage markets. The details of such access, from a practical perspective would, however, be a matter of primary concern for the operators of such databases.

- **Property Valuation**

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

It is our understanding that the approach to valuation is somewhat different in a number of member states where the private rental market is more developed and valuations are related to rental income. As such, any proposal to harmonise valuation standards would need to be considered in conjunction with the relevant industry bodies in member states. A standardised approach would have to be appropriate in the context of the varying housing market characteristics of member states.

- ***What are the merits of Commission action to ensure mutual recognition of national valuation standards?***

Given the alternative approaches to valuation, as alluded to above, it would seem to stand that mutual recognition of standards could be an appropriate means of approaching this issue.

- **Forced Sale Procedures**

- ***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.***

IMC concurs that the availability of such information would constitute a first step in this respect. However the efficiency with which lenders can enforce the loan collateral and the administration and cost of such enforcement will play a significant role in lenders' consideration of participation in a particular market and the pricing structures which are appropriate to that market. While the 'scoreboard' approach will improve information availability we do not envisage it having a significant impact towards harmonising the duration of enforcement procedures or the timeframes for same. While IMC recognises the politically sensitive nature of this subject we would highlight that slow and costly enforcement procedures constitute an inefficiency and a cost within the market and, ultimately, for consumers who do not default on their loans.

- **Tax**

- ***The Commission seeks information on similar (to those contained in Annex 1 to the Green Paper) or other tax obstacles to the cross-border provision of mortgages, which are likely to infringe the freedoms provided for by EU law.***

IMC is not aware of de facto tax obstacles to the provision of cross-border mortgages into Ireland. Tax relief on mortgage interest is available to borrowers regardless of the location of their lender. Although this relief is available to all borrowers, the administration of the relief 'at source' by lenders following a Government decision to move it to this basis in 1999/2000 (implemented in 2002) could potentially be considered a barrier or disincentive to entry to the Irish market by foreign lenders as without investment in the requisite technology to participate the relief available to their customers may be difficult to provide 'at source'. This issue was flagged by the industry when the transferral to the 'at source' basis was under consideration.

IV. Mortgage Collateral

- **Land Registers**

- ***Before making further assessments, the Commission would welcome input on all (sections 44, 45, 46) these issues.***

IMC supports the views of the Commission in these regards noting both the importance of such factors in terms of integration and the complexity of the issues which must be addressed. All of the stakeholders in the Irish market are supportive of the e-Conveyancing project which is underway and which should greatly assist in the efficiency, transparency and accuracy of Irish property registers. IMC supports the continued funding by the Commission of the EULIS project.

The centrality of these matters cannot, however, be discounted as lenders cannot enter other markets without absolute certainty regarding the security of their collateral. As highlighted at the outset, the accuracy and transparency of such registers is a prerequisite to pure cross border lending.

- **Euromortgage**

- ***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.***

IMC is involved in the ongoing European Mortgage Federation working group on the Euromortgage concept.

- V. **Funding of Mortgage Credit**

- ***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.***
- ***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.***

IMC supports the Commission's proposal in this respect.

- ***In this respect (growth of non-deposit based mortgage loan funding mechanisms), 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 what circumstances 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.***

Mortgage lending is not currently restricted to credit institutions in the Irish market. While the membership of IMC currently comprises credit institutions or subsidiaries thereof, IMC does not feel that there is a strong case for limiting mortgage lending to such entities. However IMC is strongly of the view that all lenders should be authorised and registered and should be regulated and subject to the same set of rules as other market participants.

Comments on Commission's response to Specific Forum Group Recommendations:

- (4) IMC particularly welcomes the decision taken by the Commission to consider all secured lending within the scope of this project and outside the proposal for a Directive on Consumer Credit.

- (5) IMC supports the Commission's position with respect to the necessity for consistency in regulation and the necessity to rationalise information requirements. With this in mind, IMC would highlight the necessity for local regulators to have regard to draft European requirements and regulations in their development of local regulatory frameworks.