

Svenska Bankföreningen

Swedish Bankers' Association

POSITION PAPER

31 October 2005

EU Commission

Mortgage Credits in the EU Green Paper by the EU-Commission

SUMMARY AND COMMENTARY

In a so-called Green Paper, the EU Commission ("EU-C") poses a number of questions regarding the level of ambition which the EU-C should have in relation to the development and harmonisation of the European Market for mortgages. The questions are based on the content of two reports ordered by the EU-C, the Forum Group's Report with 48 recommendations to the EU-C as well as a report from London Economics regarding costs and advantages of continued harmonisation.

The Swedish mortgage market is, in comparison to other markets, rational, simple in relation to the regulatory order, and cost effective. Therefore, it is fairly easy to answer the questions posed from the point of view of the Swedish circumstances. This applies, in particular, in relation to the question regarding consumer protection (information, advising, premature repayment and annual percentage rate, etc.), as well as what the EU-C calls "legal issues" regarding the control of the consumer's creditworthiness and forced sales procedures. More complicated is the position to be taken in relation to the questions regarding property valuation and the so-called "26th régime", i.e. the need for an international legal system which shall be parallel to the national regulatory system. This can become an issue, for example, where one wants to introduce a new pledging system for mortgages (Euromortgage). The Banking Association's position in this regard is more hesitant. A controversial question can also be whether companies other than credit institutions (according to the EU's

definition) shall be allowed to offer mortgages, which the Association does not agree with. The submission follows the format used in the Green Paper. The numbering of the questions is taken from a list created within the European Mortgage Federation.

CONSUMER PROTECTION

Information

Q1. Should the code of conduct for mortgage credit be replaced by binding legislation or remain voluntary?

Answer: Voluntary: it is important that the EU-C supports the introduction of the code in the new EU countries. It is not realistic to have a surveillance body at European level.

Q2. What information should be given to consumers?

Answer: That which is stated in the ESIS (European Standard Information Sheet), including a common formula for annual percentage rate.

Q3. As the consumer must be given the opportunity to compare different credit offers ("shop around"), can a precise time before the contract is concluded, to be applicable in all the countries, be stated when the ESIS is handed over?

Answer: No, though it can be stated "at the latest with the offer", although allowing the possibility for the consumer, where he or she so wishes, to compare different credit offers.

Advice

Q5. Should the provision of advice to borrowers be made compulsory or be voluntary?

Answer: The term "advice" should be limited to mean investment advice. (compare the Swedish Advice Act). In relation to mortgages, advice in this form will usually not take place. The obligation in these circumstances is to give information about the credit to enable the consumer to make a choice (compare CCD 5:5, October 2005). No duty to advise should be prescribed, nor an obligation to state a credit offer's advantages and disadvantages. Sanctions against "insufficient" information ought not to exist. The scope of the information should be as set out in the ESIS.

Early repayment

Q7. Should early repayment be a legal right or a matter of choice? Should it be possible to contract out any possible right?

Answer: The legal rights of the borrower shall not be waivable by contract (= Swedish law).

Q8. How should compensation for interest differences be calculated?

Answer: It should, in an equitable manner, compensate the creditor for the difference between the received income interest and the new income interest (= Swedish law for loans other than mortgages). The principle ought to be full compensation for the positive contract interests without "caps". For practical reasons, a model formula may be considered, however, it may not be constructed so that the creditor, at certain interest levels, becomes materially under-compensated or completely without compensation.

Q9. How should the consumer be informed about early repayment?

Answer: By receiving the mortgage code. No grounds for more extensive information.

Annual Percentage Rate (APR)

Q10- Q12 What is the purpose of an APR? Information? Comparison? Both?

Answer: The reason for the questions is that APR does not function as intended in relation to mortgages, i.e. as a means to compare different credit offers. Therefore, the consumers want an APR which provides information regarding the total costs for the credit. The Banking Association's opinion is that the original aim, comparison, shall be maintained and that the basis for this formula should only consist of obligatory costs which the consumer has to pay to the creditor. The formula ought to be the same for mortgages and other consumer credit and cover both calculation method and cost element.

Credit contract

Q18. Should mortgage contracts generally be standardised? In such case, through general harmonisation or through the "26th régime"?

Answer: General harmonisation ought not to be introduced except within limited areas such as APR and premature repayment. The 26th régime gives the parties the choice between a national system and a parallel, international

system with common rules for the entire EU (see below regarding Euromortgage). The Banking Association is doubtful as to the possibility of introducing such a concept, except on a long-term basis.

Redress

Q19. Should the Member States ensure that there are alternative means of redress for mortgage credit?

Answer: The EU-C's reason for the question is foremost different models for conciliation or mediation. In 2004, it suggested a Directive regarding aspects of mediation in civil disputes in general. From the Swedish point of view, there is no direct need to introduce a new dispute resolution model parallel to, for example, the National Board for Consumer Complaints.

LEGAL ISSUES

Customers' creditworthiness

Q21. Should the regulations at EU level be restricted to all Member States ensuring that all creditors have a non-discriminatory access to across border databases?

Answer: Yes, for now. This means that one does not take a position as to whether the credit databases should be public or private, centralised or decentralised, positive or negative.

Property valuation

Q22-
Q23 What are the merits of a single EU standard, for both valuation processes and surveyors? Should action be taken to ensure mutual recognition of national valuation standards (mutual recognition)?

Answer: It is probably not possible to establish a single EU standard to be applicable in all valuation situations. Such a standard would become too vague to be useful. Swedish creditors who operate in other countries probably use both the local standard and that which is applicable in Sweden. For now, it should be sufficient that the States ensure that the standards applicable nationally fulfil certain minimum requirements and a basis is thereby created for mutual recognition of such standards. In conjunction with valuations in Sweden, the creditors rely upon the market value (Market Value). The Swedish property surveyors' sector fulfils, according to the Banking Association's opinion, all too well the requirements set internationally.

Forced sales procedures

Q24. The Commission welcomes views on the following gradual approach to encourage improvements in forced sales procedures: first to collect information on the cost and duration of these procedures in all Member States and their effectiveness in the protection of interests of all involved. Thereafter, it is presented in a regularly updated "scoreboard". Should this prove ineffectual in the long run, consider pressing forward more robust measures.

Answer: A significant obstacle to cross-border financing of mortgages are the national differences in relation to forced sales procedures. The EU-C is aware of the difficulties in achieving, through binding EU rules, improvements within all aspects of such procedures. In light of the aforesaid, the proposed strategy is likely to be the only one possible. A "scoreboard" over foreign practice, etc. could, in addition, be of immediate value for creditors.

Tax

Q25. Is there information regarding taxes within Member States which constitute obstacles to cross-border access to mortgage credit?

Answer: Thus far, no examples have been put forward from the Swedish side.

Q26. Property register. Views on formation? Should the EULIS project be economically supported?

Answer: All costs should be registered so as to be applicable against third parties. No hidden rights to pledged security should be permitted. The EULIS project, as hitherto, should be financially supported by the Commission.

Euromortgage

Q27. Is the introduction of a Euromortgage system via the 26th regime desirable and feasible?

Answer: The EU-C awaits the initiatives taken by the market and the EMF in relation to this question. The draft Euromortgage system which has thus far been presented partly corresponds to the Swedish "non-accessible" pledge system and is therefore interesting. The objectives of the system are also lawful. However, significant legislative problems can be foreseen. The Banking

Association suggests that Sweden, for now, awaits the European development.

FUNDING OF MORTGAGE CREDIT

Q29. How can a pan-European market in mortgage funding be promoted by market-led initiatives, e.g. on documentation standards and model definitions to be used in cross-border funding activities?

Answer: The EU-C intends to create an *ad hoc* working group with relevant actors/experts to examine the need for, and nature of, action in relation to primary and secondary mortgage markets. The Banking Association believes that a Swedish expert should be included in such a working group.

Q30. Should the right to offer mortgage loans be restricted to credit institutions within the EU definition or should it be expanded to other institutions which do not require security or receive amounts subject to a repayment liability?

Answer: The right ought to be kept within traditional credit institutions, i.e. banks and other institutions which are subject to the same type of supervision as the banks. (This is not the case with, e.g. the new Swedish "deposit companies").

OTHER QUESTIONS

Equity Release Loans (ERL)

Q32. Should ERL be exempted from the new Consumer Credit Directive? How should ERL otherwise be regulated?

Answer: ERL means loans against pledged security which are used for consumption (not mortgages), including so-called senior loans, i.e. loans to older property owners which shall not be repaid during the borrower's lifetime. In Sweden, all such loans are covered by the Consumer Credit Act and this is likely to be the case even if a new consumer credit directive were to be introduced. At the same time, normal principles of rights to loan security are applicable to the legal relationship. Therefore, from a Swedish point of view managing the ERL is not a major problem. It is unrealistic to expand the mortgage code to also cover the ERL as it would require the consent of the consumer representative's (in Brussels), which will probably be withheld.

Applicable law

Q33. In the Green Paper, three possible solutions are stated to resolve the question regarding applicable law in relation to mortgage relationships:

1. Specific régime for deciding the applicable law for dispute resolutions based on mortgage credit contracts for consumers. It could result in applicable law for such contracts being adapted to the law applicable for placing security, in principle *lex rei sitae*.
2. Freedom to choose the applicable law in the contract (however showing that consumer protection provisions in the consumer's country of residence must be followed).
3. Mortgages for consumers be exempted under certain conditions from the rules regarding obligatory consumer protection with reference to the generally high consumer protection level within the EU.

Which solution should be chosen?

Answer: The third alternative probably results in mortgage credit contracts falling outside the Treaty of Rome (as amended), which is not realistic from a political point of view. The creditors are believed to prefer the second alternative, which gives the most freedom.

Definition of cross-border lending

Q34. Should the concept of cross-border lending be defined and in such a case should a narrow or wide definition be chosen?

Answer: The Forum Group believed that a definition should have three aims: (1) It would increase the understanding of cross-border lending and improve the preconditions for legislation. (2) It would constitute the basis for common statistics, possibly maintained by the ECB. (3) The development of the statistics would show in a clear manner that the objectives of the EU-C's contributions had been attained over time and thereby further increase the interest in cross-border lending. The EU-C is of the opinion that such lending exists as soon as a service is offered across borders, irrespective of whether this takes place directly from the loan provider in country A to a consumer in country B, or if it takes place via a branch, subsidiary or agent. However, the EU-C is hesitant as to the need for a common definition. The Banking Association shares this hesitance. The existing obstacles to cross-border lending ought to be tackled in different ways and a common definition could therefore result in an unnecessary constriction. There is no real need for statistics from a creditor's point of view.

LONDON ECONOMICS REPORT


By way of introduction, the most important conclusions in the LE Economics Report are reported. However, it is questionable whether the supporting documentation used by the investigators can produce such precise figures as those which have been put forward as support for a continued harmonisation of the mortgage market being worthwhile for all parties. However, it is hardly meaningful that we analyse the figures in more detail here. LE Economics do not identify any specific method for achieving such a harmonisation. However, it is stated that there are two possible ways for the EU to proceed:

1. Integration through harmonisation of consumer protection.
2. Integration through development of the secondary market and focusing on borrowing questions.

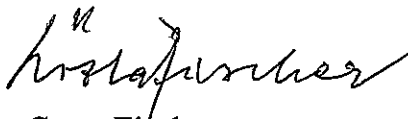
Which route should be chosen?

Answer: The consumer protection provisions in different countries already correspond to a significant extent and the standardisation continues through, *inter alia*, the EU. This can be meaningful for the interest in lending across borders, although the most important obstacles are thought to lie at another level, the lack of flexibility of national legislation, unwieldiness in the execution procedure, poor access to register information, etc. The EU-C ought to focus on eliminating these types of difficulties. Pure borrowing questions, such as the development of the Covered Bonds market or the market for Mortgaged Back Securities (securitisation), are probably best handled by the market itself.

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