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FEEDBACK ON COMMENTS RECEIVED ON REPORTS OF

MORTGAGE FUNDING EXPERT GROUP

AND

MORTGAGE INDUSTRY AND CONSUMERS EXPERT GROUP

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1. INTRODUCTION

In April 2006, the Commission established the Mortgage Funding Expert Group (MFEG) and the Mortgage Industry and Consumers Expert Group (MICEG).

The Mortgage Funding Expert Group was established to identify the barriers to integration for each of the funding models outlined in the Forum Group report, prioritise the barriers identified, and consider possible solutions. Experts were selected to ensure a balance between the different stakeholders involved in the funding process including originators, investors, ratings agencies and investment banks. Experts represented all funding techniques (covered bonds, mortgage-backed securities, deposits, etc.) and most EU mortgage markets. The Report of the Mortgage Funding Expert Group was published in December 2006. The Report concluded that although European mortgage funding markets are already relatively competitive and efficient, targeted measures at national or EU level could further improve their operation.

The Mortgage Industry and Consumer Expert Group ('Mortgage Dialogue') was established to explore to what extent common principles on four key consumer protection issues, namely: information, advice, early repayment and annual percentage rate (APR), could be agreed upon. Wherever possible, the discussions were to move beyond general principles and try to arrive at commonly acceptable standards. The mortgage lending industry was represented by the European Banking Industry Committee and consumers were represented by BEUC, Euro Coop and COFACE. The Report of the Mortgage Funding Expert Group was published in January 2007. Even though the participants did not come to definitive conclusions on how consumer protection measures could be harmonised, discussions were open, constructive and highly useful for the Commission.

On 17 January 2007, the European Commission launched a public consultation on the reports of the two expert groups.

This document is a summary of the contributions received. Its objective is to present an overview of the opinions expressed and arguments presented by stakeholders in their contributions. The views expressed in this report have not been adopted or in any way approved or endorsed by the Commission.

2. METHODOLOGY

This feedback statement covers the comments received on the reports of both expert groups. A high level analysis has been undertaken of contributions received. Not all contributors addressed all of the issues raised. Some concentrated on those areas that impact most directly on their sphere of interest while others focussed on more general remarks. In certain cases, the respondents commented in a general way on a particular topic without discussing all of the topics in that section. In these cases, where it is clear from the text that the contributor is addressing one or more of the issues or recommendations raised, we have included that contribution response in our consideration of that specific issue.

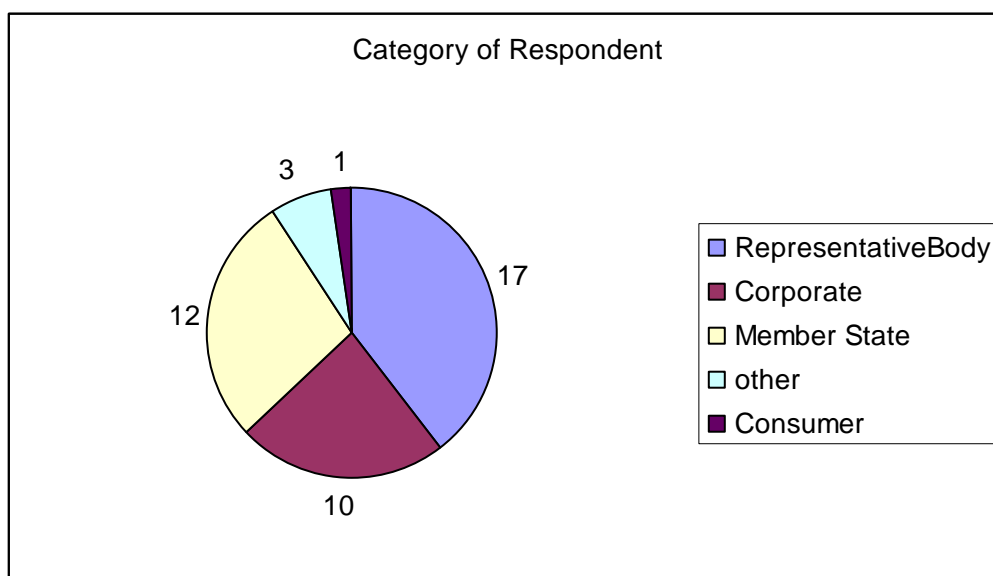
While the quantitative data is interesting, it is the comments and arguments presented that are most valuable for the Commission rather than a numerical breakdown of opinions.

The only clear area of overlap in the two reports was in relation to early repayment. The responses to this issue are combined in this feedback statement but the rest of the responses to the issues raised in the reports are dealt with separately.

3. RESPONSES

Forty-two written responses were received. Three responses dealt exclusively with the MICEG report, eleven considered the MFEG report only and the remainder addressed both reports. The European Consumers' organisation, BEUC did not comment on the MICEG except to say that its comments on each of the issues were reflected fairly in that Report.

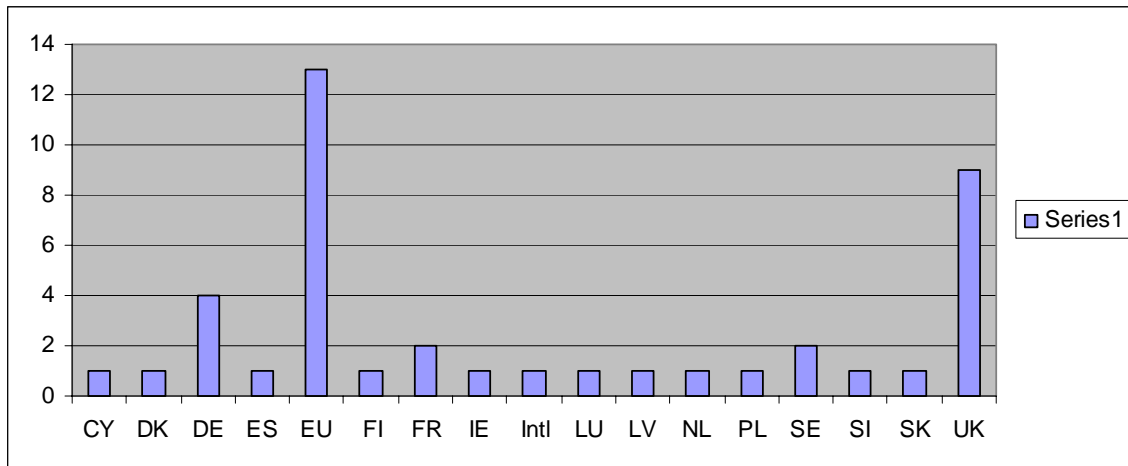
Graph 1: Contributions received by stakeholder category



In common with most public consultations, most contributions were received from representatives of the financial services sector and others with a vested interest in this market such as valuers and land registration bodies. All of the corporate bodies who responded were financial services providers. Of the 17 responses received from Member States, one came from a state consumer body and the remainder came from government of regulatory authorities. The three other contributions came from a trade union that represents employees of financial services providers, an EU body and one private individual. The consumer response came from BEUC, the European consumer representative body.

The numbers of respondents in each category who addressed a particular issue is given at the start of the feedback on that particular issue.

Graph 2: Contributions received by country of origin



Contributors to the consultation came from 15 different Member States, with the UK providing the largest number. Where only one contribution came from a particular country it tended to be from government or a regulator. Most contributions came from EU-wide representative groups with one from an international corporate body.

4. OVERVIEW

There was a widespread welcome for both reports. Many respondents expressed their appreciation of the work carried out by the members of the expert groups and commended the Commission on the decision to consider the important technical issue of funding for special attention. Industry representatives generally supported the recommendations of the MFEG and found the dialogue on the MICEG to be useful despite the fact it did not arrive at any definitive recommendations. Member States generally supported the recommendations of the MFEG but had reservations about the effectiveness of some. There were different views on some major issues such as the access of non-banks to mortgage credit markets. There was wide support from all except the consumer representatives, for the view that any initiatives should be market driven and legal responses should be kept to a minimum.

Issues were raised about the scope of the report with some Member States indicating that in their countries not all home loans were in the legal form of a mortgage and may be outside the scope of any initiatives if they are confined to mortgage credit. Two respondents expressed surprise that the Reports did not address the issue of applicable law.

5. EARLY REPAYMENT

Table 1: Numbers and source of comments

Member States	Consumers	Corporate bodies	Representative bodies	Other
9	1	6	5	1

Respondents from the industry generally supported the recommendations on early repayment in MFEG Report. They agreed that there is a cost to the lender when borrowers repay their mortgages early and that they should be entitled to compensation in these cases. They do not support a legal right to early repayment and there should be no cap on the compensation to which they feel they are entitled to in such cases. They argue that the absence of compensation would restrict product diversity particularly in the case of fixed rate mortgages, with some providers opting not to sell fixed rate mortgages. However, one bank did say that the consumer should have the legal right to repay a mortgage early and did not believe that this right represents an obstacle to an efficient mortgage market. At the same time, this respondent said that as early repayment imposes a cost, a lender should have the right to compensation.

There is no consensus among Member State contributors on this issue. Most respondents do not appear to be convinced of the merits of giving consumers a legal right to repay their mortgage early but that the facility to repay early should be made available to borrowers either as part of the contract or through market practice. Some other Member States, especially those where a legal right to early repayment already exists, strongly support it and do not believe that it has resulted in restricted product offerings. In some countries it has led to increased competition with some lenders not charging fees for early repayment in the interests of achieving a competitive advantage. Some Member States felt that a distinction should be made between fixed rate and variable rate mortgages with no compensation payable for early redemption of a variable rate loan.

There was a general agreement that where compensation is payable to the lender the compensation formula must be clearly established, transparent and easy for the consumer to understand.

The consumer representative body, BEUC, did not agree with the recommendations on early repayment in the MFEG Report.

6. MORTGAGE INDUSTRY AND CONSUMER EXPERT GROUP REPORT

6.1. Pre-contractual information

Table 2: Numbers and source of comments

Member States	Consumers	Corporate bodies	Representative bodies	Others
10	0	6	4	1

Industry is of the view that the Code of Conduct for Home Loans is the most efficient and flexible means of providing consistent and comparable pre-contractual information to consumers in both domestic and cross-border markets. It does not support the introduction of binding legislative rules which the consumer representatives put forward in the dialogue on this issue. Industry believes that the European Standardised Information Sheet (ESIS) is the most suitable instrument for informing consumers but is willing to consider modifications to it provided the any additional information improves consumers' ability to assess and compare different loan offerings and does not lead to information overload. It does not see any merit in establishing an EU wide compliance or monitoring board.

Most Member States support meaningful amendments to ESIS that will enhance the information that will allow consumers to assess and compare mortgage offers. There are mixed views on the on whether the Code of Conduct should be made legally binding but of those that did express a view a majority felt that a self regulatory approach would be preferable.

With regard to the timing of receipt of the information, there was general agreement that the consumer should be given the necessary pre-contractual information in sufficient time to compare offers and choose the most suitable one. There was no clear consensus on the timeframe for the handing over of the information by the lender but fourteen days was considered reasonable by many contributors. One Member State felt that a timeframe should not be expressed and a representative body felt that the timeframe should not be too short as, especially in the case of fixed rate loans, there was an increasing cost to the financial institution depending on the length of time permitted.

6.2. Advice

Table 3: Numbers and source of comments

Member States	Consumers	Corporate bodies	Representative bodies	Others
9	0	5	4	2

There was a broad consensus among the different categories that there should be no compulsory obligation on mortgage credit providers to advise clients with only two contributors dissenting from that view. One Member State suggested that the six principles set out in Report should be incorporated into European legislation in order to ensure consistency of protection for consumers.

6.3. Annual Percentage Rate of Charge (APRC)

Table 4: Numbers and source of comments

Member States	Consumers	Corporate bodies	Representative bodies	Others
6	0	6	5	2

There was a difference of opinion within the two key respondent categories about the merits of introducing a harmonised APRC for mortgage credit. Most Member States and some industry respondents felt that a harmonised APRC would render mortgage offers more comparable and gives consumers an opportunity to make a quick initial assessment of the different offers on the market. Those opposed to the harmonisation of the APRC felt that it was unnecessary due to the insignificant levels of cross-border activity in the mortgage market and the fact that growth in cross-border activity is likely to stem from suppliers entering domestic markets rather than consumers seeking lenders outside their local market.

Most respondents felt that the method of calculation of a harmonised APRC should only include those charges that are levied by the lender and should not include third party charges although some did favoured the inclusion of a broader cost base.

Some respondents expressed the view that caution should be applied when using an APRC. It should only be used to compare loans of a similar duration as other comparisons may be misleading. In addition, it may not give an indication of the best product for a client. An example was given where a mortgage with an associated insurance policy would have a higher APRC than one without the insurance element but could be more suitable for a particular client.

7. MORTGAGE FUNDING EXPERT GROUP (MFEG) REPORT

7.1. Vision

Industry almost unanimously welcomes the vision for the funding of mortgage markets as set out by the MFEG. The only area where there is a lack of unanimity is in relation to the participation of non-banks in the provision of mortgage credit.

There is a widespread welcome for the fact that MFEG believes that European mortgage markets are relatively efficient, but they agree that targeted market-based measures can improve them and lead to further integration. They all support the view that lenders should be free to choose the most appropriate funding strategy for their business and most believe any initiatives at EU level should not favour one form of funding over another. They agree that a European refinancing market that is complete, efficient and transparent and that will lead to increased competition, product diversity and better prices for borrowers can only be properly achieved by a deregulated market driven strategy.

Most industry respondents supported a non-discriminatory approach to market access that would allow all lenders, including non-credit institutions, to provide services in other Member States through the use of a 'passport'. Most believe that this should be done on a 'same business, same risks, same rules' basis under which non-banks would be subject to the same rules as banks when providing mortgage lending services. Some industry representatives, primarily those based in Germany, believe that only credit institutions should be allowed to provide mortgage credit. They argue that it would lead to substantial competitive disadvantage for banks because of their obligations under the EU Banking Directives. One industry representative raised the possibility that, arising from a European Court of Justice Interpretation of the definition of 'repayable funds from the public'¹, the provision of mortgage lending by a non-credit institution may be a breach of EU law.

Member State contributors shared the view of MFEG relating to the funding of mortgage credit providers. Most comments concentrated on the issue of the participation of non-banks in mortgage credit markets. On balance there was majority support to allow non-banks to supply services through the mechanism of a passport without the need for them to seek a banking licence with appropriate authorisation and regulatory requirements applying to them. France believed that this could only be achieved by also harmonising consumer protection laws across Europe to reassure consumers and to allow real comparability and genuine competition.

¹ C-366/97, Massimo Romanelli, Paolo Romanelli, 11.2.1999.

7.2. Primary market issues

7.2.1. Property valuation

Table 5: Numbers and source of comments

Member States	Consumers	Corporate bodies	Representative bodies	Other
5	1	4	7	0

There was general agreement across all categories of the need for common property valuation standards and principles across Europe together with the disclosure of valuation methods, although some felt that standardisation might be difficult to achieve. The only area of divergence related to how best to achieve a common valuation standard. Some supported market led solutions, while others agreed that an EU recommendation on mutual recognition would be the best method of achieving convergence. Only the consumer representative body, BEUC, felt that binding EU regulation in this area was required. The International Valuation Standards Committee recommended that the EU adopt the standards it has developed as the basis for improving transparency of the valuation process and there was some support from industry for this suggestion.

7.2.2. Land registration

Table 6: Numbers and source of comments

Member States	Consumers	Corporate bodies	Representative bodies	Other
9	0	6	8	1

There was support from all categories of respondents for the three recommendations of MFEG on land registration. There was full support for equal access to all land registers between domestic and cross-border lenders. Two contributors pointed out that there is already non-discriminatory access to the Swedish land register for domestic and cross-border inquirers. Many Member States indicated that work on the dematerialisation of land registers was underway which would facilitate this process but may take some time. One Member State respondent questioned the necessity for a centralised register as some countries structure their registers on a regional geographic basis which are easily accessible. The requirement to centralise them would entail significant costs which may outweigh the benefits of centralisation. There was also full support for the discontinuance of hidden mortgages and preferences, although it was pointed out that because a mortgage did not appear in a register did not necessarily mean that it was hidden, as the information may be publicly available through another source.

Again there was full support from all contributors for the recommendation that mortgage loan portfolios should be transferable to a new lender without the requirement to register a new mortgage deed for each loan in the portfolio and that the consent of the borrower should only be sought if the loan conditions changed to the borrower's disadvantage. Some Member States raised the issue of data and consumer protection and felt that the borrower should at least be entitled to be advised of the transfer. Reference was made to the recently established refinancing register in Germany as a means of achieving this goal.

7.2.3. Foreclosure

Table 7: Numbers and source of comments

Member States	Consumers	Corporate bodies	Representative bodies	Other
3	0	1	3	0

Industry representatives, who commented on this issue, supported the recommendation that the Commission study best practices, develop a scoreboard to encourage convergence to best practice, and set a maximum target for the duration of enforcement procedure. Member States had differing views. One said that any data gathering exercise should be cost effective and that any work undertaken by the Commission should not undermine the opportunity for borrowers and lenders to reach agreement without the need for repossession. Another Member State would welcome discussions on the scope for convergence but would not support a maximum duration for any forced sale process. A third Member State believes only a judge in the country where the property is located can decide on a forced sale.

7.2.4. Data protection

Table 8: Numbers and source of comments

Member States	Consumers	Corporate bodies	Representative bodies	Other
5	1	4	4	0

Industry fully supports the recommendations of MFEG on the basis that the free transfer of data is essential for the proper functioning and security of financial markets, although it does accept that safeguards need to be in place to protect consumers' identities.

Member States were of the view that any sharing of data must comply with existing data protection legislation and can only be shared within the constraints of the Data Protection Directive². They also believe that there should be no possibility of identifying individuals. The United Kingdom believes that the data sharing recommendation, which is currently in operation in that country, is compliant with the Directive, which it has fully implemented.

BEUC sees the recommendations as an attempt to water down data protection rules and does not support the recommendation. They say that Article 7 of the Data Protection Directive already provides for the sharing of data for the purposes of pursuing legitimate interests provided those interests are not overridden by interests of fundamental rights and freedoms of the individual concerned. They believe that this Article strikes an adequate balance between the needs of the mortgage industry and the rights of borrowers.

² Directive 95/46/EC.

7.3. Secondary market issues

7.3.1. Covered bonds

Table 9: Numbers and source of comments

Member States	Consumers	Corporate bodies	Representative bodies	Others
8	1	5	2	0

Industry respondents favoured the recommendations of the MFEG. They believe that a well functioning covered bond market already exists in Europe. The recommendations in the Report would enhance that market and encourage more international investors. One corporate body felt that the recommendations on the removal of limitations on types of assets qualifying as covered bond collateral should look beyond the acceptance of non-domestic mortgage loans and also lift restrictions such as loan to value limits.

BEUC has misgivings about the recommendations given by the Report on covered bonds. They argue that it should be prevented that covered bonds are affected by the insolvency of the issuer, namely to avoid the cashing of underlying securities.

Member States generally support the recommendation that those who do not yet have covered bond legislation in place should consider introducing it. They also support the proposal that non-domestic EU mortgage loans be accepted as eligible assets. However, there is not full support for the harmonisation of taxation treatment, with the United Kingdom and Ireland most opposed to it.

7.3.2. Residential Mortgage Backed Securities (RMBS)

Table 10: Numbers and source of comments

Member States	Consumers	Corporate bodies	Representative bodies	Others
8	1	3	3	0

Industry representatives are of the opinion that Member States should base their securitisation laws on the ten broad principles³ of the European Securitisation Forum (ESF) to facilitate the development of a more integrated single European market. The ESF has indicated that at least its first five principles should be adopted. Member States did not oppose the recommendation, but of the three who commented, two indicated that they did not have existing securitisation legislation and that it was not necessary in their jurisdiction.

There was also support for the recommendation that Member States be mindful of the implications of taxes on overall costs. One Member State felt that the discussion of taxation was inappropriate in this context and should not be raised in a non-tax group.

There were no objections to the recommendation for the introduction of the concept of a 'recognised securitisation Special Purpose Vehicle (SPV)' but one Member State indicated that it may require significant amendments to its existing tax legislation, while a corporate body said that care would need to be taken to ensure that it did not conflict with existing concepts of SPVs.

The proposal to amend the UCITS Directive⁴ to allow investment funds to invest up to 25% of their assets in AAA rated RMBS of a single RMBS issuer received a mixed response. Most industry respondents supported the recommendation but one disagreed because they are off-balance sheet financial products that are not subject to banking supervision. Another supported the recommendation and asked if other Directives needed to be examined to see if other restrictions apply. Member States also tended to support the recommendation, but one felt that the data used in the Report to support the recommendation was not accurate. This Member State asked that, if it was deemed acceptable to permit increased investment in RMBS, there would be no reason not to extend the limit to other AAA rated securities. Other Member States felt that one form of investment instrument should not be given preference over other forms of investment instruments.

³ The ten principles are:

1. Unrestricted asset eligibility
2. Flexibility of structures
3. Origination by banks and non-banks
4. Facilitation of third party and cross-border servicing of assets
5. Transparent disclosure and financial reporting
6. Flexibility of SPVs
7. Cross-border recognition of securitisation vehicles
8. Legal clarity of sale, transfer, asset isolation and insolvency/bankruptcy laws
9. More efficient foreclosure process
10. Tax neutrality and transparency.

⁴ Directive 85/611/EEC, 20.12.1985.

7.3.3. *Temporary warehousing facility*

No comments were received under this heading.

7.3.4. *Whole loan sale & third party credit enhancement*

Only two comments were received under these specific headings. One came from a corporate body, and the other from a Member State. The corporate body supported the recommendation of MFEG, while the Member State stated that a firm's choice of funding instruments and methods should be left to the n commercial judgement of the firm

7.4. **Investor issues**

Table 11: Numbers and source of comments

Member States	Consumers	Corporate bodies	Representative bodies	Other s
7	0	5	3	0

In responding to this section of the Report most contributors do not comment under all headings of the report but on one or two areas of interest to them. Where a contributor responded to one or more of the issues raised we have treated it, for numerical reporting purposes, as a contribution under the generic heading of 'investor issues'.

7.4.1. *Definitions*

There was unanimous view from those who responded that standardised definitions of the key terms used in secondary markets should be developed with most respondents agreeing that this process should be market led with support from the Commission to enhance its credibility.

7.4.2. *Consistency & transparency of reporting*

As with the recommendation on standardisation of definitions, there was unanimous agreement from those who responded on the necessity to develop consistent and transparent reporting requirements of covered bond pool information. One respondent advised that it would be important when developing such standards to have regard for international practice as the US Securities and Exchange Commission (SEC). The SEC requires a specific form of reporting and it is important that firms would not be in breach of SEC regulations if the reporting requirements were not compatible with those of the SEC.

7.4.3. *Repos*

No comments were received under this heading

7.4.4. Basel II

There was agreement from contributors that it is important that there is a consistent transposition and interpretation of the Capital Requirements Directive (CRD)⁵ in all Member States with some also agreeing with the recommendation that the Commission should provide guidance on its transposition. One Member State questioned this recommendation on the basis that the CRD Transposition Group exists to provide advice on the interpretation of the CRD rather than formal guidance.

There were differences of opinion within the categories on the recommendation that senior RMBS should be allowed to constitute 100% of the cover assets for covered bonds and the removal of the derogation past the 2010 CRD deadline. Two Member States indicated support for these recommendations while another rejected them on the basis that it would lead to a loss of transparency which would have negative implications for effective supervision. The representative bodies who commented suggested that an examination of the systemic consequences of this proposal would need to be undertaken before any such proposal is implemented.

7.4.5. Property indices

Those who commented on this issue supported the development of national house price indices. Some Member States indicated that these already exist in their countries.

7.4.6. Selling restrictions

Two contributions on this issue were received. Both came from Member States. One supported the recommendation while the other suggested that the reasons for the restrictions on the sale of securities should be examined before deciding to remove them.

⁵ The Capital Requirements Directive comprises Directive 2006/48/EC and Directive 2006/49/EC.