



LIETUVOS RESPUBLIKOS FINANSŲ MINISTERIJA
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Unit H3 - Retail Issues
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INFORMATION ON MORTGAGE CREDIT

With regard to the requested response to the questions raised in the working document discussed during the Government Expert Group on Mortgage Credit meeting on 31 May 2006, we are sending you these contributions.

2. CONSUMER PROTECTION

2.2.1. Information

✓ Consider and advise on the feasibility of defining the stage at which the ESIS should be provided to the consumer. Is this stage defined at the national level?

There are no available studies or researches on the efficiency of the ESIS in Lithuania.

✓ Access the relevance of the ESIS: are the studies or research available on the efficiency of the ESIS.

There are no requirements like the ESIS defined at the national level, there is only general requirement to provide full and prudent information to the customer.

✓ Assess whether all ESIS information fields are clear and understandable and discuss whether the structure could be improved.

Deliberate on what information could be added (or removed) from the ESIS to enhance its efficiency.

ESIS information fields are more or less clear, we would like to offer to add thereto confirmation of the lender that there are no any other additional recurrent costs and non-recurring costs except for the costs described in the ESIS. Likewise, we propose to delete Item 15 in the ESIS, which determines "the obligation to have bank account in the lender's office, where the earnings were to be transferred". The duty of the borrower is to ensure that the amount of money, necessary for payment of the credit share to be repaid, interest to be paid or other amounts, was accrued in the borrower's account in payment days in an adequate currency. The requirement to transfer the earnings for the consumer to the borrower's account limits the consumer's opportunity to freely choose the supplier of financial services and is not based on the necessity to ensure the performance of consumer's payment duty. In this case the consumer also suffers economic loss, as the transfer of the earnings is related to additional taxes subject to be paid by the consumer for money transfer and inclusion, therefore, economic interests of the consumer are violated. The

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problem would arise in such cases also when the consumer takes the credit from the other bank, the agreement of which also foresees the duty to transfer the earnings to the account of this bank.

- ✓ Consider whether the ESIS should be made binding or not.

This document by its nature is voluntary, advisable, therefore it will be complicated to ensure whether credit institutions follow the ESIS or not. Even if a credit institution does not follow the provisions of this document, there are no sanctions for not observing them. In our opinion, in case these provisions are incorporated into the national law, it would be obligatory to follow them. We think that the ESIS should be made binding on the side of the lender for the defined time period (30 days, etc.)

- ✓ Member States are therefore asked to contemplate what entities should be subject to the information provision regime for mortgages?

The procedure for information provision on mortgages might be established and applied to all: lenders, consumers, intermediaries, e.g., brokers, bank managers, etc.

2.2.2. Advice provision

- ✓ Explore the definition of and standards for provision of advice. Are there legal or self-regulatory obligation regarding the definition and standards in Member States?

There are no legal or self-regulatory obligations regarding the definition and standards of advice at the national level in Lithuania, there is only general requirement to provide full and prudent information to the customer. The provisions of Article 5 of the Republic of Lithuania Law on Consumer Protection lays down what kind of information shall be provided and in what way: "Consumers shall have the right to obtain full information on the goods or services they are buying or using. Every seller or service provider must provide complete information to customers. Information on goods and services and sale conditions thereof on the market must be correct, complete and transparent. It must be provided, while the consumer is acquiring or using the goods or service. This and other laws shall establish responsibility for provision of misleading information. All information concerning goods and services for consumers must be submitted in the state language, with the exception of instances, when the ways of using the goods and services are traditionally known." The definition of and standards for provision of advice are not regulated by the legal acts of the Republic of Lithuania.

- ✓ Consider whether the approach currently proposed in the Consumer Credit Directive should be applicable to mortgages.

Yes, we suppose some of regulations defined in the Consumer Credit Directive could be applicable to mortgages. In our opinion, the proposal provided in the Consumer Credit Directive concerning the advice provision would perfectly fit also to mortgage credits. The aim of advice is to provide the consumer with the possibility to compare offers submitted by credit institutions. However, in order the consumer was not misguided, the information should cover only the obligatory elements that are subject to be provided to the consumer; this information must be prepared in a way that the consumer knew all the aspects, which enabled him/her to make a completely free and information-based choice.

- ✓ Reflect on who should give advice: lenders, specialized advice providers; etc.

Advice could be given by employees of all credit institutions, who work with mortgage credits (e.g. managers), employees of mortgage credit intermediaries. But they must meet some qualification requirements, independency/dependency disclosing requirements. Employees should be trained for that purpose to provide consultations to consumers. As for advice on mortgage issues, they should be given by lenders who have adequate permits and are independent persons providing financial services, possessing legal qualification required by the legal acts and persons

certifying mortgage deals (notaries), as well as persons registering mortgage deals in the Register of Mortgage. In that way the consumer could receive timely, full and adequate consultation on mortgage issues in all stages of mortgage acquisition, approval and registration.

2.2.3. Early repayment (ERP)

✓ Clarify whether ERP is based on legal provisions in their country. In particular, Member States should specify whether the provisions are based on law or case-law. If such a right to ERP exists, is it possible for the consumer to waive this right? Under which conditions? Member States should advise on whether a legal right be established at the EU level and whether a waiver should be made possible.

Article 6(2) of the Republic of Lithuania Law on Mortgage Obligations and Mortgage Lending lays down that “the borrower shall have the right to repay the mortgage credit or its part prior to the set term under the conditions established by the agreement.” This provision establishes that all terms concerning the early repayment of the credit shall have to be envisaged in the agreement. The lender must foresee in the agreement that the consumer has the right to repay the credit prior to the set term, as well as there should be envisaged under what terms early credit repayment is performed, i.e., tax on early credit repayment, etc. The consumer is not obliged to use this right, most important that this right was envisaged in the agreement.

As Lithuanian legal acts envisage the right of the consumer to repay the credit earlier, the consumer has no right to disclaim the right of early credit repayment envisaged by the laws.

Likewise, we would support that as the EU credit market is expanding, competition is increasing, early repayment regulation should be at EU level. Harmonisation of early credit repayment with EU level will enable credit institutions to offer credits in other states, as well as ensure an adequately high consumer protection level disregarding in which EU state the credit agreement has been concluded. However, it is also important to ensure that regulation was flexible and did not pose additional obstacles for the single credit market.

✓ Explain (if such a right to ERP exists) whether the right is conditional or unconditional (i.e. it can be executed under any circumstances and at any time). Member States are asked to consider if a legal right were to be established at the EU level whether it should be conditional or unconditional.

As it has been mentioned above, the right of early credit repayment is contractual, this right might be implemented at EU level. We are of the opinion that ERP right could be conditional, i.e. there would be foreseen not only the right to meet consumer’s obligations in accordance with the credit agreement before the expiry of the term set in the agreement, but also there would be discussed the right to an adequate reduction of the total credit price.

✓ Describe whether, early repayment fees may be charged? If yes, how are these fees calculated and are there any caps on them? Member States are requested to discuss whether it is advisable and feasible to address ERP fees at the EU level.

The consumer – borrower is granted the right to repay the credit or part thereof prior to the term, however, banks limit this right by additional sanctions. Banks determine an additional requirement to the consumer to pay a tax amounting to certain percentage (0.5% - 3%) estimated of the early repaid credit or credit part amount. Establishment of sanctions for that the consumer implements one’s rights is already restriction of rights. Besides, banks state that it is “tax intended for covering bank losses related to credit termination.” Article 6.249 of the Civil Code of the Republic of Lithuania provides that “Damage shall include the amount of the loss or damage of property sustained by a person and the expenses incurred (direct damages) as well as the incomes of which he has been deprived, i.e. the incomes he would have received if unlawful actions had not been committed. Damage expressed in monetary terms shall constitute damages. <...>.” Part 1 of Article 6.123 of the Civil Code of the Republic of Lithuania provides that “An obligation shall be

extinguished by its proper performance.” Taxes established by banks for an early repaid credit may not be interpreted as sanction for inappropriate performance of the obligation or civil liability form, as the consumer in early repayment of the credit does not violate contractual obligations but implements one’s right.

However, taking into consideration that legal acts of the Republic of Lithuania do not regulate the rate and estimation of the tax on mortgage credit repayment, i.e. it is not prohibited to impose taxation on early credit repayment. Banks by imposing taxation on early credit repayment to residents should estimate factual losses incurred and banks should have the right to claim for reimbursement of losses by the customers. Losses should be established by the loss estimation formula prepared in advance.

Tax on early credit repayment might be regulated at EU level aiming at harmonisation of these provisions within all EU Member States. In such a case the consumer by taking mortgage credits in another country will be informed that he/she must reimburse the expenditure of the consumer in early credit repayment and will be aware of what kind of taxes he/she is to be paid.

2.2.4. Annual Percentage Rate (APR)

✓ Assess the merits of having a specific mortgage APR and in particular consider whether the APR proposed in the Consumer Credit Directive could also apply for mortgage credit.

The definition of the APR provided in the Consumer Directive is not established finally. In the draft proposal of the Consumer Credit Directive the APR was estimated by including all the expenditure determined by the lender. However, recent proposal of the Consumer Credit Directive after having included amendments suggested by EU countries provides with a new proposal establishing that in estimation of the total APR all the expenditure incurred by the consumer should be included. During the working group meetings Lithuania will aim at amending these provisions.

✓ Discuss which costs should be included and which costs should be excluded

APR should include all non-recurring and recurring costs that are set directly by the lender and the consumer cannot avoid these costs by choosing another service provider on his personal decision, i.e. there should be included taxes on the application for taking mortgage credit, mortgage forming taxes, administrative expenditure and expenditure for insurance should be clearly determined.

✓ Reflect on how the consumer can be made aware of the costs excluded from APR

In our opinion, the consumer has the right to be aware of all the taxes established by the lender when concluding the agreement with the consumer and which are known to the lender. The lender must inform the consumer even about those taxes that are not included in the estimation of the annual rate of the total credit price in case he/she is aware that such taxes exist and this expenditure will be incurred by the consumer when taking mortgage credit. We think that the consumer might be informed in writing.

3. CLIENT CREDIT-WORTHINESS

✓ Consider whether the approach currently being proposed in the Consumer Credit Directive would also be suitable for mortgage credit. In particular, how non-discriminatory access to credit information could concretely be ensured?

In the Consumer Credit Directive it is proposed to ensure the mutual access to the available private and public databases under non-discriminatory terms – this provision will help to reduce obstacles in providing international credits. As the issues related to data security have been discussed in Directive 95/46/EC, we suppose that the proposal for the Member States to ensure the possibility of accessing the databases would be acceptable also in providing mortgage credits. In

our opinion, credit institutions of the Member States regarding both consumer credit and mortgage credits might use the same databases. At present in Lithuania the information on the borrower is collected in the common database of the country, independently of the provided credit type. Data on the borrower is presented independently of whether a consumer credit or a home credit is extended. Personal data in the database is administered observing the Republic of Lithuania Law on Legal Protection of Personal Data. The borrower has the right to get information on oneself, which is stored in the database. The manager of the database is the Bank of Lithuania. The credit risks database might be used only by the banks or foreign bank offices registered in the Republic of Lithuania.

Legislation should ensure that participants from all Member States should have equal, not discriminatory rights to access credit information database in any Member State.

✓ Discuss the different options for facilitating cross-border access: legislation, memorandum of understanding, etc. Are there rules which hinder the negotiation of bilateral or multilateral agreements to facilitate the cross-border access? Member States are also asked to provide information on any bilateral or multilateral agreement what they are currently aware of this area.

The method currently proposed by the Consumer Directive would be also applicable to mortgage credit. In order to facilitate the interstate access to the databases, the memoranda of understanding should be most effective, as there are no rules preventing from negotiations on bilateral or multilateral agreements in order to simplify the interstate access to the databases.

There are no signed agreements with managers of Credit Registers in other countries regarding the use of the available database in Lithuania so far. Besides, we would like to note that in different countries the extent of data submitted into the databases, periodicity of data submission, procedure for updating are quite different. Taking into consideration that and in order to gather proper and reliable data on the client's creditworthiness, our proposal would be to establish the main data collection principles, i.e. what type of data should be collected, periodicity of their submission, etc.

4. PROPERTY VALUATION

✓ Whether their national valuation standards are in line with International Valuation Standards (IVS) and/or European Valuation Standards (EVS published by TEGoVA) or whether are material differences? For example, in some Member States, IVS have already been integrated into national valuation standards. If international standards would be applied, as some contributions to the Green Paper have proposed, would there any contradictions between the international standards used and national legal provisions?

The provision established in the Republic of Lithuania Law on Basics of Property and Business Valuation (Official Gazette, 1999, No. 52-1672) provides that the property valuer in property valuation follows the Methodology approved by the Government, harmonized with the International Valuation Standards. At present, the Property Valuation Methodology approved by Government of the Republic of Lithuania Resolution No. 244 of 14 January 1996 is valid. It is noteworthy that the National Property and Business Valuation Standards have been prepared, which have been approved by two professional organizations uniting property valuers and property valuation enterprises: the Lithuanian Association of Property Valuers and the Lithuanian Association of Property and Business Valuation Enterprises, however, these standards are only advisable.

✓ What possible solutions could be considered for the issue of valuation requirements? Legislation? Recommendations? Market initiatives? Other options?

The International Property Valuation Standards and the European Property Valuation Standards issued by the International Valuation Standards Committee and the European Group of Valuers Association TEGoVA establish the provision of harmonization of property valuation standards and methodologies within different countries, together acknowledging national legal

basis and peculiarities. In implementing the provisions of the aforementioned standards, the necessity to supplement many of the Articles of the Republic of Lithuania Law on Basics of Property and Business Valuation currently in force have arisen by binding to the concepts used in the aforementioned standards, requirements for education and professional experience of valuers etc., by giving great attention to the monitoring of the activities of the property valuation enterprises and property valuers, as well as aiming at punishing participants of valuation process, reducing the number of ungrounded valuations and improve the quality of valuation. For that purpose the proposal in the draft Law is to establish the Property Valuers Court of Honour, accountability of property valuers and property valuation enterprises to the institution monitoring their activities, the possibility for this institution to carry out activity checks of property valuers and property valuation enterprises, investigate disputes concerning the validity of property valuation report, etc. The draft Law amending the Republic of Lithuania Law on Basics of Property and Business Valuation has been prepared after the analysis of foreign standard documents regulating the activities of property and business valuation.

At present the draft Law amending the Law of the Republic of Lithuania on Basics of Property and Business Valuation is under revision.

We suppose legislation would be the best way for issue of valuation requirements.

✓ Valuers qualifications. The Green Paper consultation highlighted valuers qualification as a significant barrier to cross-border activity due to differences in the regulation of the profession in different Member States. In which Member States is the profession regulated and how? Are the professional qualifications for valuers available? If yes, what are they?

The requirements for property valuers' qualification are approved by Government of the Republic of Lithuania Resolution No. 1157 of 28 September 1998 and establish the following requirements for property valuers' background: assistant valuer must have at least special secondary education in the fields of business and administration or engineering, industry and construction; valuer must have at least post-secondary non-tertiary education in the fields of business and administration or engineering, industry and construction; senior valuer and expert valuer must have tertiary education. The following requirements for property valuers' professional experience have been established: a person willing to become an assistant valuer must have one-year experience in work related to property valuation laid down in item 5 of these requirements, if s/he has tertiary education, or two-year experience in work related to property valuation laid down in item 5 of these requirements, if s/he has special secondary or post-secondary non-tertiary education in the fields of business and administration or engineering, industry and construction; a person willing to become a valuer must have three-year practical experience in property valuation headed by a valuer, senior valuer or expert valuer, if s/he has tertiary education, or five-year practical experience in property valuation headed by by a valuer, senior valuer or expert valuer, if s/he has post secondary non-tertiary education in the fields of business and administration or engineering, industry and construction; a person willing to become a senior valuer must have five-year practical experience in property valuation in a certain field and has had evaluated at least 15 property objects in a certain field and has had prepared their valuation reports; a person willing to become an expert valuer must have six-year practical experience in property valuation in a certain field and be engaged in scientific or methodical work in the field of property valuation.

✓ What possible solution could be considered for the issue of valuers qualifications? Legislations? Recommendations? Market initiatives? Other options?

According to existing Rules on Issuing, Suspension and Cancellation of Property Valuer's Qualification Certificate approved in 2003, validity of the property valuer's Qualification Certificate is suspended, if during the past five years the property valuer did not improve his/her professional skills and following the written request/inquiry by the public institution Institute of Audit, Accounting and Property Valuation of Lithuania, does not submit the documents evidencing improvement of professional skills (certificates of institutions organising studies, continuous vocational training, upgrading courses). At present the elaborated draft Law Amending the

Republic of Lithuania Law on the Basics of Property and Business Valuation provides for recertification of property valuers every five years. The recertification of property valuers would be carried out following the Rules on Organising Qualifying Examination for Property Valuers and Issuing Certificates Indicating the Property Valuers' Qualification approved by the Ministry of Finance.

We suppose legislation would be the best issue of valuers qualifications.

✓ Whether there are any systems in place for monitoring the quality of valuation undertaken by a valuer?

According to the provisions of the Law on the Basics of Property and Business Valuation, state supervision over the activities performed by property valuers and property valuation companies is performed by the public institution Institute of Audit, Accounting and Property Valuation of Lithuania. According to the provisions of the aforementioned Law, all valuations are carried out by a company holding a certificate issued by this public institution granting a right to the company to value property and business. All responsibility for inadequate property valuation is assumed by the company, which has mandatory to take out liability insurance. Property valuation company is responsible for correctness of the valuation carried out, terms for its performance by the procedure prescribed by legal acts and the agreement between the company and the contractor, as well compensates to the contractor the damage incurred due to unduly fulfilled commitments. After compensation of damage, property valuation company has a right of regress against guilty employees who must compensate damage to the company in value and procedure prescribed by labour legislation. A property valuation company, with the exception of an institution authorised by the Government or city (region) administrations (mayors), must take out liability insurance. The Government sets a minimum liability insurance amount, taking into consideration income of the companies gained for property valuation, and property valuers' qualification. A property valuation report is deemed to be fair as long as it is not challenged by the procedure prescribed by laws. Disputes arisen with regard to property valuation are settled by agreement by the parties or by legal proceedings. At present the elaborated draft Law Amending the Republic of Lithuania Law on the Basics of Property and Business Valuation states that the aforementioned institute would settle disputes concerning validity of the property valuation report and carry out performance checks of property valuers and property valuation companies.

5. FORCED SALES PROCEDURES

✓ Whether they are willing to work with the Commissions in developing any scoreboard, for example, by providing information for publication.

We suppose it would be a good incentive to develop such a global scoreboard.

✓ If the Commission were to develop a scoreboard, what information should be included?

The developed scoreboard could include information about detailed foreclosure procedures, terms, legal institutions as well as who is responsible for decisions of one or other procedure in the foreclosure process.

✓ Whether there is a maximum limit for the duration of foreclosure procedures in your country.

There is no legal maximum limit for duration of foreclosure procedures; usually these procedures last from 12 to 18 months. The general term for credit claims is 10 years.

6. LAND REGISTERS

✓ Contribution to the Green Paper indicated that accessibility to mortgage/land registers varied considerably across Europe. Consequently, the Commission services would like to obtain further information as to the precise nature of the problems. In this respect, it would be useful to

know: who has the right to access the register (e.g. only persons who can prove a justified interest, anyone, etc.); whether the register is accessible on a cross-border basis; and finally, if register is accessible on a cross-border basis, whether the same conditions and rights apply as for nationals.

Access to the registers managed by the Central Mortgage Office, i.e. the Mortgage Register, Register of Property Seizure Acts, Register of Marriage Settlements and Register of Contracts may have only persons who can indicate a particular, justified, legal purpose to use the data. Currently, data of the registers are provided via internet, by mail, personally. On cross-border basis data of the registers managed by the Central Mortgage Office are not accessible yet. The Regulations of the registers managed by the Central Mortgage Office, approved by the resolutions of the Government of the Republic of Lithuania, embed a provision that register data are transferred to foreign states following the laws of the Republic of Lithuania, other legal acts and international agreements of the Republic of Lithuania, as well register data may be provided to international computer networks only in cases prescribed by laws of the Republic of Lithuania, other legal acts and international agreements of the Republic of Lithuania.

Data of the real estate cadaster and register may be provided in cases, when:

1) information is provided on the basis of the data of the central data bank, i.e. issuing documents in a format established (reference certificates for transactions, certificates, abstracts of title);

Information to national entities, on the basis of the data of the central data bank, is provided to data recipients under the agreements between the data supplier and the recipient (in case of multiple provision of data), where the purpose for use of data, terms and conditions as well manner is indicated or under the requests by data recipients (in case of one-time provision of data), where the purpose of data provision is indicated. Legal persons or branches of entities without legal status established in the EU Member States and natural persons are provided with data of the register in the same manner as legal and natural persons of the Republic of Lithuania.

2) the possibility is given to data recipients, having the right to receive register data of the central data bank, to receive data by using distant connection.

The right of national entities to use search of information on registration of immovable property is granted to persons who have signed the agreement on provision of data of the Real Estate Register via internet and the covenant on non-disclosure of data received from the Real Estate Register to third persons or, under agreements, to data recipients having a right to provide data received to third persons. It is envisaged that entities of foreign states participating in EULIS programme, will have a right to access the central data bank of the Real Estate Register under the same terms as national entities, i.e. after signing the agreement on provision of data between the institution responsible for management of the Real Estate Register and the institution of a relevant country responsible for management of the register.

✓ Some contributions reported difficulties in accessing data bases as the information required to access was not readily available. What information is therefore needed to order to access a registered property? What are the costs of accessing the register? Are there any difference between national and cross-border inquires?

Search in the central data bank of the Real Estate Register may be done by real estate indicators, property address, legal person's code and/or title. Therefore, in order to get information about property registered in the Real Estate Register from the central data bank, it is necessary to know one of the indicators indicated bellow:

- ✓ *Real estate indicator (record number of an immovable item in the register and/or an unique code);*
- ✓ *Real estate address;*
- ✓ *Legal person's code and/or title.*

The fee for use of data of the register by legal and natural persons is the following:

- ✓ *for one search in the data base – 1 litas;*
- ✓ *for visual review of one register, providing information from the central data bank to the data recipient's computer – 2 litas.*

The fee for use of data of the register by foreign entities will be the same as that imposed to national entities.

Data of registers managed by the Central Mortgage Office are provided for a fee the value of which is approved by the Government of the Republic of Lithuania Resolution No. 1159 of 17 July 2002. A value of a fee for data registration services rendered by the Central Mortgage Office and hypothecary divisions under local courts has also been approved by this Resolution:

- 1. Issue legally valid certificates confirming mortgage/pledge registration - 25 litas;*
- 2. Detailed information from the Mortgage Register - 18 litas;*
- 3. A summary of data from the Mortgage Register - 9 litas;*
- 4. Issue of a duplicate copy of a mortgage (pledge) bond - 25 litas;*
- 5. Issue of a certificate confirming registration of a property seizure act - 25 litas;*
- 6. Detailed information from the Register of Property Seizure Acts - 18 litas;*
- 7. A summary of documents of the Register of Property Seizure Acts - 9 litas;*
- 8. Detailed information from the Register of Property Seizure Acts integrated with a summary of documents of the Mortgage Register - 21 litas;*
- 9. A summary of documents of the Register of Property Seizure Acts integrated with a summary of documents of the Mortgage Register, - 12 litas;*
- 10. A short message on property seizure - 4 litas;*
- 11. Verbal confirmation by automated phone on property pledge and seizure - 1,5 litas per minute.*

✓ Several contributions to the Green Paper consultations noted that hidden charges should be abolished. It is therefore important to know in which countries these hidden charges exist. As such, are there any hidden charges/mortgages/preferences (charges that could affect property rights but are not reflected in the register) what would rank higher than any registered mortgage in your Member State? These hidden charges may be result of either State claims (e.g. taxation) or other claims (e.g. employee's right on the payment of salaries in the wake of an insolvency of the employer).

There are no such hidden chargers, as it was mentioned above, in Lithuania. Charges what could rank higher than any registered mortgage must be recognized by local court of justice if by mortgage agreement the principles of prudence, conscientiousness and justice were violated. Legal acts clearly regulate the payment of taxes, mortgage registration and exemptions applied. However, there could be a problem that persons avoiding to pay real estate taxes do not register the property or real rights in this property in the Real Estate Register, thus evading real estate tax. To solve this problem it would be necessary to amend the Civil Code of the Republic of Lithuania by providing for a mandatory registration of transactions. The problem of hidden charges could also exist also due to the fact that according to the provisions of the Civil Code the main requirement (loan) is guaranteed by mortgage, the interest earned on this requirement (loan) as well forfeit may be increased or the term for fulfilment of debt liability may be extended. Therefore, in each particular case, the rate of charges of a credit guaranteed by mortgage may be variable and increase irrespective of presence or absence of hidden charges.

✓ Responses to the Green Paper consultation indicated that one problem in relation to land registration is understanding fully the ranking of different land registers. The Commission services seek additional information on whether, apart from possible hidden charges, your country applies the principle for establishing the creditor's ranking "first registered, first in rank and priority". If not, what is the ranking based upon? How could this problem be addressed, for example, enhancing the transparency of the ranking by making information on ranking easy available?

The Civil Code of the Republic of Lithuania states that if the same real rights or the same item is acquired by several acquirers but only one of them registers that transaction, it shall be considered that the acquirer who has registered the transaction is vested with that item or with the real rights in that thing. If none of the acquirers registers the transaction, it shall be considered that

the acquirer who is the first to form that transaction is vested with the rights indicated above. If several persons register their property rights or real rights in the same item, the person who is the first to register that transaction shall be vested with these rights. In our opinion, legal acts of the Republic of Lithuania regulate clearly enough the establishment of the rights of precedence in real item or real rights vested under transactions. However, no mandatory registration of real item and real rights is instituted in Lithuania, therefore, the problem concerning the information on precedence may arise. If none of the acquirers which acquired the same real rights or the same item registers the transaction, it will be impossible to establish which one of them has the right of precedence. To solve this problem it would be necessary to amend the Civil Code by providing for a mandatory registration of transactions.

In Lithuania with regard to mortgage also the principle of categorisation creditors is applied, whereas according to the provisions of the Civil Code a subsequent pledge of the mortgaged item is allowed if the mortgage bond does not provide otherwise. Mortgage creditors are subdivided by priority with regard to satisfaction of claims, which is determined by dates of registration of the applications requesting the registration of mortgage in the Mortgage Division, though mortgage becomes valid from the moment of its registration in the Mortgage Register.

Providing data of the Mortgage Register by a particular item squeezed by mortgage, the abstracts of the Mortgage Register reflect the priority with regard to satisfaction the creditors' claims from funds received after sales of the item pledged (in case of recovery).

5. NON-DEPOSIT TAKING INSTITUTIONS

The Green Paper asked for input as to whether mortgage lending should necessarily be an activity which is restricted to credit institutions or whether and under what conditions 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.

The responses acknowledged that mortgage lending does not necessarily need to be funded via retail deposits but is also increasingly funded through alternative means. At the same time, contributions indicated that while mortgage lending by non-deposit takers should be encouraged, there should be a degree of regulation and supervision according to the activity rather than according to the person undertaking the activity.

Regarding the issue whether mortgage lending could be performed also by institutions which do not fall within the scope of the definition of a credit institution, we think that such institutions should not be granted the right to performed mortgage lending if the institutions would not be supervised as credit institutions. The expansion of the group of mortgage lending institutions would have a negative influence on mortgage bonds, as they would become not so safe, it would decrease trust in them and this would decrease the popularity of these bonds, and moreover, the conditions of competition would be violated.

- ✓ Does your Member State allow non-deposit takers to provide mortgage loans?

There are no direct restrictions for non-deposit takers to provide mortgage loans in Lithuania. However, the Republic of Lithuania Law on Companies prohibits legal persons that are not credit institutions to lend exceeding the own capital value.

- ✓ If yes, what regulatory and supervisory requirements is this under? For example, are there: capital requirements (are these the same or slightly different from the capital requirements for deposit takers?); conduct of business rules (consumer protection legislation, etc.)?

Legal persons performing mortgage lending (if provision of financial services forms the major part of their activities) are considered to be financial institutions and they are subject to the Law on Financial Institutions which stipulates certain requirements for participants of financial institutions, managers, internal control, risk limitation and etc. However, such financial institutions, with the exception of credit institutions, are not supervised, no special requirements (the same or similar as those set for credit institutions) are established for them.

✓ Are non-banks, for example, able to use capital markets funding (MBS or bonds)? Can, for example, non-deposits takers issue covered bonds and/or MBS?

In Lithuania non-credit institutions are not directly prohibited to borrow funds by issuing bonds. However, only credit institutions have the right to receive funds repayable from unprofessional market makers. According to the Law on Mortgage Bonds and Mortgage Lending, only credit institutions have the right to issue mortgage bonds.

Undersecretary of the Ministry

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