

**Study on the role  
and regulation of  
non-credit  
institutions in EU  
mortgage markets**

**Final report**

**European  
Commission**

**Internal Market and  
Services Directorate  
General**

**Prepared by**

**London Economics**

**19<sup>th</sup> September 2008**

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## **Executive Summary**

The European Commission Internal Market and Services Directorate General in December 2007 engaged London Economics to undertake a study on the role and regulation of non-credit institutions in EU residential mortgage markets.

The study forms part of the research identified in the EC White Paper on EU Mortgage Market Integration.<sup>1</sup>

The aims of the study are to:

- Inform the EC of the reasons and background for the different national approaches to the regulation and supervision of credit and non-credit institutions across the EU;
- Establish the scale and scope of non-credit institution activities in residential mortgage markets;
- Explore and establish the extent to which non-credit institutions are active on a cross-border basis;
- Identify the barriers faced by non-credit institutions in the cross-border provision of mortgage credit; and,
- Provide supporting information for the (future) evaluation of the need and benefits (costs) of EC interventions including a passporting scheme for cross-border mortgage provision by non-credit institutions.

In order to address these aims, London Economics has undertaken a detailed stocktaking exercise of the regulation and supervision of non-credit institutions in residential mortgage markets across the EU, and the market shares of these institutions as compared to those for credit institutions in the 27 Member States.

For the purpose of this study, the definition of credit institutions as provided in the EC Capital Requirements Directive 2006/48: "Credit institution means an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credit for its own account" is used.

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<sup>1</sup> SEC(2007) 807, 18.12.2007

Therefore, in this study, the definition of non-credit institution is; those undertakings active in the financial sector that are not registered as credit institutions according to domestic regulatory and supervisory frameworks.<sup>2</sup>

In turn, non-credit institutions are divided into two categories. These are:

- Non-credit institutions which are insurance companies and may also provide residential mortgage loans on a commercial basis; and,
- Non-credit institutions that are not insurance companies and provide residential mortgage loans on a commercial basis. These are called “Other Mortgage Lenders” (OMLs).

This report documents the findings from our survey of the 27 national financial regulators, the national industry associations in the Member States, and ten individual OMLs across seven Member States.<sup>3</sup>

### *Ability of OMLs to provide residential mortgage loans*

- In six Member States, institutions must be registered and authorised as credit institutions in order to provide residential mortgage loans. These are:
  - Austria
  - France
  - Germany (insurance companies are an exception)
  - Greece
  - Portugal, and
  - Slovakia

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<sup>2</sup> We elected, in consultation with the EC Internal Market and Services DG, to use the domestic definitions of non-credit institution. If we had defined non-credit institutions as an institution that does not take deposits or other repayable funds from the public, this definition may be too narrow because different Member States use different definitions of “other repayable funds from the public”. Further, the European Court of Justice has passed a judgement that “other repayable funds”, “refers not only to financial instruments which possess the intrinsic characteristic of repayability, but also to those which, although not possessing that characteristic, are the subject of a contractual agreement to repay the funds paid”, *Judgement of the 11<sup>th</sup> February 1999, Freedom to provide Services – Credit Institutions – Repayable funds*. This latter point was raised by the European Savings Bank Group.

<sup>3</sup> An interim report for this project was submitted to the EC in April 2008.

- One Member State, Poland, allows a special type of domestic OMLs, namely “Credit Unions” as defined in Polish Law, to provide residential mortgage loans but not foreign OMLs.
- Twenty Member States allow domestic and foreign OMLs to provide residential mortgage loans.
  - Of these twenty Member States:
    - Fourteen member States require that OMLs undertake some form of notification, registration or authorisation in order to provide residential mortgage loans. These are:
      - Belgium
      - Bulgaria
      - Hungary
      - Italy
      - Ireland
      - Lithuania
      - Luxembourg
      - Malta
      - Netherlands
      - Romania
      - Slovenia
      - Spain
      - Sweden
      - UK

- Six Member States do not require OMLs undertake any notification, registration or authorisation in order to provide residential mortgage loans. General consumer protection laws do apply in these Member States, but these apply to all forms of consumer credit provided by both credit and non-credit institutions. These are:
  - Cyprus
  - Czech Republic
  - Denmark
  - Estonia
  - Finland
  - Latvia

*Ability of insurance companies to provide residential mortgage loans*

- Fourteen Member States report that insurance companies can provide residential mortgages.
  - Of these fourteen Member States:
    - Eight Member States do not permit mortgage lending as part of the main business activity of insurance companies, but rather, insurance companies may issue mortgage loans as part of their asset management activities (as part of their technical reserves).<sup>4</sup> These are:
      - Cyprus
      - Czech Republic
      - Denmark
      - Estonia

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<sup>4</sup> Asset management activities refer to “technical reserves” which are the funds insurance companies set aside to cover future claims.

- Finland
- Germany
- Latvia
- Lithuania
- Six Member States permit insurance companies to provide mortgage loans as part of their main insurance business if they are registered and authorised to do so. These are:
  - Belgium
  - Hungary
  - Ireland
  - Netherlands
  - Sweden
  - UK

### *Funding mechanisms available to OMLs*

The funding mechanisms available to OMLs - in the twenty one Member States in which such institutions are allowed to provide mortgage loans - are limited in eleven Member States to own shareholder funds, and loans from credit institutions and “financial institutions”.<sup>5</sup> These Member States are:

- Bulgaria
- Cyprus
- Czech Republic
- Denmark
- Hungary

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<sup>5</sup> Financial institution means undertakings other than credit institutions, that carry on a defined set of activities which include, “lending including, inter alia: consumer credit, mortgage credit, factoring, with or without recourse, financing of commercial transactions (including forfeiting)” and exclude the “acceptance of deposits and other repayable funds” (as per the definition provided in EC Directive 2006/48).

- Italy
- Latvia
- Luxembourg
- Malta
- Romania
- Spain

Two Member States allow OMLs to use own shareholder funds, loans and general debt securities, but not covered mortgage bonds or mortgage backed securities.<sup>6</sup> These are:

- Finland
- Lithuania

Three Member States allow OMLs to use in addition mortgage backed securities and mortgage covered bonds. These are:

- Estonia
- Poland
- UK

In Belgium, there are no covered mortgage bonds because there is currently no covered bond law in Belgium, and therefore OMLs do not use such funding mechanism. OMLs can use shareholder funds, general debt securities, loans and mortgage backed securities.

In Ireland, Sweden and Slovenia OMLs can use shareholder funds, loans and mortgage backed securities but not general debt securities or covered mortgage bonds.

In the Netherlands, OMLs can use shareholder funds, general debt securities, loans and mortgage backed securities, but, at the present time, not covered mortgage bonds.

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<sup>6</sup> The definitions of the mortgage products mentioned in this study are provided in a Glossary in the appendix to this report.

***Market share of non-credit institutions in residential mortgage markets***

Information on the market shares of non-credit institutions, both OMLs and insurance companies, is limited. A number of Member States were unable to provide data on market shares because national statistics only report mortgage loans provided by credit institutions. Only fifteen of the twenty one Member States were able to either provide data or an informed estimate of the market shares of OMLs, and four Member States were able to provide details on the market shares of insurance companies.

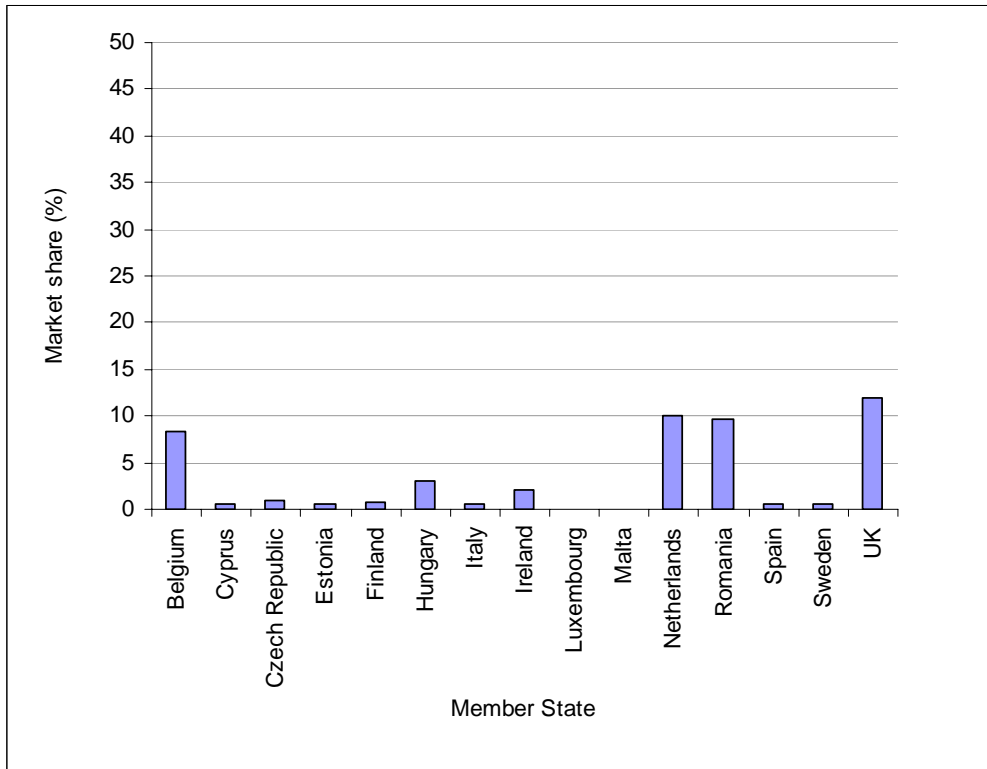
The market share of OMLs in the Member States' national mortgage markets is small to very small as compared to the market share of credit institutions.<sup>7</sup> Figure 1 shows the market shares for OMLs in the fifteen Member States which provided data or estimates.<sup>8</sup>

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<sup>7</sup> In the UK, the market share, defined by the Financial Services Authority as new residential mortgage loan advances in 2007, for credit institutions was 88% as compared to 12% for OMLs.

<sup>8</sup> The vertical scale in Figure 1 has a maximum of 50% market share. This is to improve the readability of the figure.

Figure 1: Market share of OMLs in national residential mortgage markets



Note: The market share for Belgium is for the year 2006. Hungary reported an estimate for 2006 (3%) and 2007 (4%). The UK reported a market share of 12% for 2006 and 2007. The Member States that reported OMLs as marginal players in the mortgage market are shown with a market share of 0.5%.

### *Survey of individual OMLs*

A survey of ten OMLs distributed across seven Member States - Belgium, Ireland, the Netherlands, Romania, Spain, Sweden and the UK - found that the main barriers to the cross-border provision of residential mortgage loans are:

- Differences in the regulatory frameworks, in particular regarding which activities are “regulated activities” and therefore require authorisation (a licence) across different Member States. This issue is also reported as important for credit institutions. Namely, respondents to the survey made the point that, while credit institutions can use the EU banking passport, the activities which are allowed under the passport in the different Member States varies.<sup>9</sup>
- Differences in how financial activities are regulated and supervised between different Member States, and therefore the risks and costs of training non-indigenous staff (located in the institution’s home Member State) to conform to the host State’s frameworks. This issue is again reported as important for credit institutions and non-credit institutions.
- Differences in the regulatory frameworks such as, the differences in the level of compulsory provisions for credit risk between Member States.<sup>10</sup> One example, as reported by a respondent to the individual OML survey, is between Spain, France and Greece. The Bank of Spain has established a “generic compulsory provision” of 0.6% of the loan on the day of signing regardless of the mortgage lenders’ loans in arrears. In France and Greece, this generic requirement does not exist and therefore the mortgage lender has greater flexibility in the pricing of their mortgage products and the risk they are willing to carry. This means, from the point of view of the respondent to the individual OML survey, that mortgage lenders need a larger margin in Spain as compared to France or Greece in order to be profitable.<sup>11</sup> These differences can lead to difficulties in the pricing of products across Member States, which in turn inhibits comparative market (profitability) assessments. Again this issue is reported as important for credit institutions as well.

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<sup>9</sup> For further discussion of this point see chapter 3.

<sup>10</sup> Compulsory provisions are also called loan loss provisions. They are an expense set-aside as an allowance for bad loans. The provisions are reflected in risk premiums that the bank charges its customers at the beginning of a loan. The income stemming from the risk premia should cover the expected losses resulting from problem loans.

<sup>11</sup> In France and Greece it is necessary for mortgage providers to be credit institutions. The individual OML that made this comment, provides residential mortgage loans in Spain, Portugal and Greece.

Overall, the survey of OMLs illustrates that gaining credit institutions status in the EU does not necessarily minimise the barriers to cross-border mortgage provision. The converse is also true; no OMLs surveyed indicated that the requirement to have credit institution status in itself was a barrier. Rather, it is the differences in the regulation and supervision of financial activities in each Member State that creates the barriers.

### *Conclusions*

- Twenty Member States allow domestic and foreign OMLs to provide residential mortgage loans.
- One Member State allows only domestic OMLs to provide residential mortgage loans.<sup>12</sup>
- Fourteen Member States allow insurance companies to provide residential mortgage loans.
- The regulatory and supervisory frameworks for mortgage lending by OMLs and insurance companies differs significantly across Member States.
- While the frameworks for OMLs differ, it is possible to broadly characterise these different approaches in the following way:
  - Member States that require all mortgage lenders to be credit institutions: the creation of a level playing field in the provision of mortgages is one of the main motivations for this approach.
  - Member States in which OMLs are marginal players in the national residential mortgage market: there is no regulation or supervision specifically for mortgage provision by such institutions as their importance is nil or marginal.
  - In Member States in which OMLs do play a role in the residential mortgage market: specific legislations for mortgage lending by OMLs has been introduced. These requirements are at a less intensive level as compared to credit institutions because OMLs do not take deposits and therefore the risks to the functioning of the financial system and to consumers is perceived to be low.

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<sup>12</sup> Poland, allows domestic “Credit Unions” to provide residential mortgage loans but not foreign OMLs.

- In the fourteen Member States which allow insurance companies to provide mortgage loans, six allow mortgage lending as part of the “main activities” of insurance companies, and eight allow mortgage lending only as part of their asset management activities.
  - Of the six Member States in which insurance companies can provide mortgage loans as part of their “main activities”, the regulatory and supervisory frameworks can be summarised as follows:
    - Two Member States, Belgium and Ireland, require insurance companies to be registered, authorised and supervised in the same way as OMLs if they undertake mortgage lending.
    - In the UK, insurance companies are not registered and authorised in the same way as OMLs, but the same conduct of business rules apply to insurance companies’ mortgage lending activity as to OMLs.
    - In the remaining three Member States Hungary, the Netherlands and Sweden the situation is as follows;
      - In Hungary and the Netherlands, the insurance licence allows insurance companies to provide mortgage loans.
      - In Sweden, the insurance licence does not automatically allow insurance companies to provide mortgage loans. In order to provide mortgage loans, insurance companies must notify the financial regulator that they intend to undertake a “financing operation” as defined in Swedish Law.
- The types of funding mechanisms available to OMLs differ across the Member States. The approaches can be summarised as follows:
  - Twelve Member States limit the funding mechanisms available to OMLs to own shareholder funds and loans. The motivations for these restrictions are:
    - Protection of consumers as non-credit institutions are not part of the deposit insurance schemes;

- Risk mitigation because OMLs are subject to lower prudential supervision requirements as compared to credit institutions;
  - Minimisation of barriers to entry because, if OMLs were able to use these additional funding mechanisms, more stringent prudential requirements would be necessary and these would create a barrier to entry and limit competition in the mortgage market.
- Two Member States allow OMLs to use, in addition to shareholder funds and loans, general debt securities issued via private placement. The motivation for allowing OMLs to use this additional mechanism is that informed purchasers have greater knowledge and experience in financial markets as compared to the general public, and therefore, informed purchasers can assess the risks associated with general debt securities. In turn, the ultimate risk to the functioning of the financial system is minimal.
  - Three Member States allow OMLs to use mortgage backed securities and covered mortgage bonds in addition to shareholder funds, loans and general debt securities. The motivation for allowing the use of mortgage backed securities is that because OMLs do not take deposits, the risk to the individual consumer and to the market from the use of such mechanisms is low.
  - Of the remaining four Member States,
    - Three allow OMLs to use shareholder funds, loans and mortgage backed securities but not general debt securities or mortgage covered bonds.<sup>13</sup>
    - One Member State allows OMLs to use shareholder funds, loans, general debt securities, and mortgage backed securities.

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<sup>13</sup> In one Member State, Belgium, OMLs are not prohibited from using mortgage covered bonds. But, there is currently no covered bond market due to the fact that there is no mortgage covered bonds law at the present in Belgium.

# 1 Introduction

This introductory chapter provides information on the scope of the study and the analytical framework employed by London Economics.

## 1.1 Geographic scope of the study

The study covers all European Union Member States in 2008. The financial regulators and the main mortgage and insurance industry associations have been contacted for the purposes of this study in each Member State.<sup>14</sup>

Ten non-credit institutions, distributed across the EU, have been surveyed for the purpose of investigating the main features of cross-border mortgage provision by such institutions.

## 1.2 Study framework

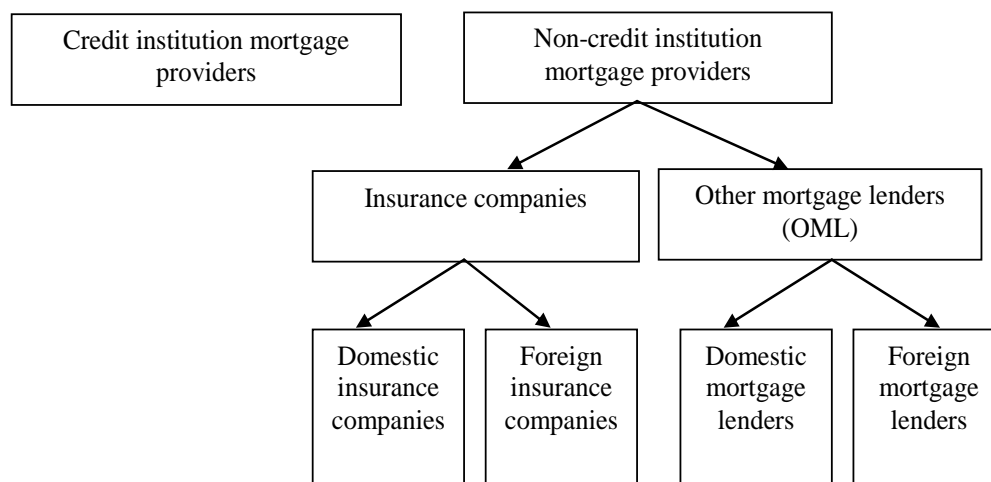
For the purpose of this study, non-credit institutions are defined as all institutions active in the financial sector that are not registered as credit institutions according to the domestic regulatory and supervisory frameworks, and which provide mortgage loans on a commercial basis.

The framework we employ is illustrated in Figure 2.

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<sup>14</sup> Not all Member States have a mortgage or insurance industry association. In these cases we contacted the banking association in the Member State. If there was no industry association, or the association responded that they do not represent non-credit institutions, then we gathered information from the financial regulator only.

**Figure 2: Framework employed by London Economics**



This study focuses on non-credit institutions that provide residential mortgage loans in EU Member States. These institutions can be:

- **Insurance companies** whose main business is the provision of insurance (including life insurance, life assurance or other forms of insurance such as building/house/shipping insurance), but which may also provide residential mortgages to either policy or non-policy holders. This group includes:
  - Domestic insurance companies: A company is a domestic company if it is active in country *A* and the company's headquarters is registered and authorised to undertake insurance business (according to national legal frameworks) in country *A*.
  - Foreign insurance companies: A company is a foreign company if it is active in country *A* and the company's headquarters is registered and authorised to undertake business in EU Member States other than country *A*.

- **Other mortgage lenders** (OMLs) that are not registered and authorised as insurance companies, but which can provide residential mortgage loans as part of their business. This group includes:
  - Domestic OMLs; and,
  - Foreign OMLs.

This framework is employed throughout the study, and our findings are presented using these delineations between different types of non-credit institutions providing residential mortgages.

### 1.3 Study objectives

The aims of the study are to:

- Inform the EC of the reasons and background for the different national approaches to the regulation and supervision of credit and non-credit institutions.
- Establish the scale and scope of non-credit institution activities in residential mortgage markets, and the extent to which these institutions are active on a cross-border basis.
- Explore the barriers faced by non-credit institutions in cross-border provision of mortgage credit.
- Provide supporting information for the (future) evaluation of the need and benefits (costs) of EC interventions such as a passporting scheme for cross-border mortgage provision by non-credit institutions.

## 1.4 Information gathering and validation

In order to collect the relevant information London Economics has developed three questionnaires:

1. A questionnaire to regulators to collect information on the regulatory and supervisory regime for mortgage lending and the market share of non-credit institutions in residential mortgage lending in the domestic economy.
2. A questionnaire to mortgage and banking associations to collect information on the cross-border provision of mortgages by non-credit institutions registered within the EU.
3. A questionnaire to selected OMLs to gather information on their interest in cross-border provision of residential mortgage loans and the barriers to cross-border provision faced by non-credit institutions in the EU.

### 1.4.1 Questionnaires to the financial regulators and industry associations

The questionnaires to regulators and associations were drafted and piloted by London Economics in January and early February 2008. These questionnaires were submitted for comment to the EC Internal Market and Services DG in late February 2008.

London Economics first contacted the financial regulators and industry associations in each country via e-mail. This first step allowed London Economics to identify the most appropriate divisions or units within each organisation, and the individuals that were in the best position to provide a response on behalf of the organisation. Once agreement had been reached that the organisation and individuals were able and willing to participate in the study, the questionnaire was then sent to the identified individuals. Gaining agreement from individual officers within each organisation maximised the probability that the questionnaire would be carefully considered and minimised the risk of the survey becoming 'lost' if it passed through the organisation with no one person (or two to three people as it transpired in most cases) responsible for its completion.

In all instances, the respondents were given the opportunity to receive the questions prior to completing the questionnaire over the phone with a representative from London Economics. This process allowed respondents to consider the questions, ask any clarifying questions and to collect any required information prior to undertaking the survey. The respondents often

elected to answer the questionnaire first and to then send the completed questionnaire to London Economics. We then discussed the respondents' answers with them in follow-up phone calls and e-mails.

Questionnaires were conducted in English except in cases where the respondents requested they be conducted in their own language. In such cases, London Economics translated the questionnaire into the respondents' native language and conducted all communications in their language.

### 1.4.2 Validation of the information collected

To ensure that i) information collected via the questionnaires is correct, and ii) our interpretations of the respondents' answers are accurate, we used the following process:

- Information collected in the questionnaires was first analysed and summarised by London Economics;
- At the same time, London Economics collected and reviewed the legislations that provide the legislative and regulatory frameworks for residential mortgage lending by non-credit institutions in the various Member States;
  - In any instances where the legislative and regulatory frameworks, or the provisions contained within, appeared to differ from the respondents' answers, we contacted the respondents to explore if our reading of the legal frameworks was robust, and why and how it differed from the respondent's answers.
- The above two sources of information were then combined, and a draft summary of the role and regulation of non-credit institutions in residential mortgage markets was completed for each Member State;
- These draft summaries were then sent to the respondents from the financial regulators in each Member State for review. Respondents were asked to make any necessary changes and comments to ensure that the summaries accurately represented the current legal frameworks for non-credit institution residential mortgage lending in the Member State;
- Respondents returned their comments by e-mail. All comments were incorporated into the summaries, and any points of clarification were followed up by London Economics either by phone call or e-mail.

### 1.4.3 Questionnaires to the individual OMLs

The questionnaire to the non-credit institutions was drafted and tested by London Economics in April 2008. This questionnaire was submitted for comment to the EC Internal Market and Services DG in late April 2008.

A proposed sample of non-credit institutions from across the EU was discussed with the EC Internal Market and Services DG in April 2008. The sample was reconsidered in light of the comments and requests made by the EC, and a second proposed sample was submitted for consideration in May 2008.

London Economics then contacted non-credit institutions across the EU by e-mail and phone and invited them to participate in the study.

It is important to note that the sector is currently in significant flux. Due to the increase in the cost of loans from other institutions in the financial sector and the decrease in securitisation opportunities internationally, many non-credit institutions active in the mortgage loans market are scaling back their activities, are being wound-up or are under review for sale to other companies.<sup>15</sup> Further, many of the non-credit institutions that are still operating are not providing new mortgage loans. As a result, the timing of the survey was not the most auspicious in that, i) some of the non-credit institutions do not know if they will continue operating into the future, and ii) the total value of mortgage loans in the past (say, over the period 2000 – 2007) is not a good indication of the expected future total value of loans by non-credit institutions. Despite this, some non-credit institutions were willing to discuss some of our questions, but most were not willing to provide information on the total value of their mortgage loans.

We contacted non-credit institutions that currently provide residential mortgages in the following seven Member States:

- Belgium
- Ireland
- the Netherlands
- Romania
- Spain

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<sup>15</sup> Credit institutions are also finding it more expensive to raise loans and more difficult to securitise their loans. Credit institutions, however, have access to a wider range of funding mechanisms as compared to OMLs, including deposits.

- Sweden, and,
- the UK

In addition we had planned to contact non-credit institutions in the following two Member States:

- Luxembourg, and,
- Malta

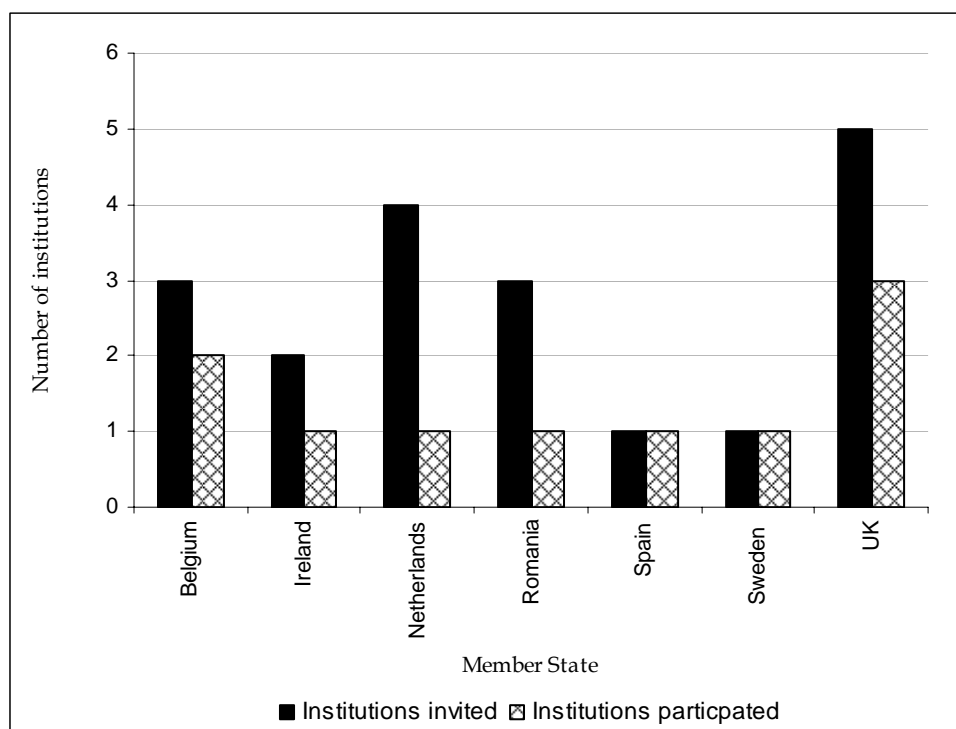
We were, however, informed by the relevant financial regulators that currently no such institutions provide residential mortgage loans in Luxembourg and Malta.<sup>16</sup>

In total we contacted 19 non-credit institutions that are currently providing residential mortgages in the seven Member States listed above. Ten of these institutions agreed to participate. The distribution of institutions invited and those that participated in our survey is shown in Figure 3.

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<sup>16</sup> In Luxembourg, one of the main reasons why non-credit institutions are not active in residential mortgage markets is because the Luxembourg mortgage market is “highly saturated by local banks” or credit institutions in the terminology used for this study (reported by the International Policy Department, of the Commission de Surveillance du Secteur Financier, June 2008). In Malta, there are non-credit institutions that are authorised to provide residential mortgage loans, but none are currently doing so (response to questionnaire, April 2008). The Malta Financial Services Authority reported that the legal frameworks for residential mortgage lending by non-credit institutions is set up in Malta and the role of such institutions is expected to grow in future years.

**Figure 3: Non-credit institutions: Distribution of invitees and participants in London Economics' questionnaire**



A slightly larger number of OMLs were contacted in the UK as compared to the six other Member States presented in Figure 3. This is because OMLs have a relatively larger market share in the UK as compared to the other twenty Member States in which OMLs can provide residential mortgages, and, therefore, there are more OMLs in the UK residential mortgage market. In addition, more OMLs in the UK had undertaken or considered undertaking cross-border provision of mortgages as compared to OMLs in other Member States.

Because of the commercial sensitivity of some of the information provided to us by these non-credit mortgage lenders, the names of the institutions that have participated in the study are not reported in the present report. In order for us to obtain relevant information from individual institutions, we have agreed with them that anonymity would be maintained. We do, however, label the institutions - Number 1 to 10 - in order to allow us to describe the firms and to discuss the motivation for including them in the study.

The questionnaire was conducted over the phone with senior representatives from the institutions.<sup>17</sup> In many instances, the questions were discussed with the CEO or deputy CEO of the organisation, or with senior officials in the strategic business development areas.

## 1.5 Structure of report

The remainder of this report is structured as follows:

- Chapter 2 reports the findings regarding the role and regulation of non-credit institutions in the residential mortgage market across the 27 EU Member States.
- Chapter 3 presents the findings from the survey of the ten individual OMLs.
- Chapter 4 provides conclusions on the regulatory and supervisory frameworks for non-credit institutions in regard to mortgage lending, and comments on how these may create barriers to the cross-border provision of mortgages by non-credit institutions.
- Chapters 5 to 31 are individual Member State chapters and these report detailed findings for each EU Member State.
- Annex 1 provides a glossary of terms used in the study.
- Annex 2 presents the publicly available lists of non-credit institutions.

A separate annex to this report reproduces the relevant parts of the regulations and legislations that provide the framework for mortgage provision by non-credit institutions in the EU.

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<sup>17</sup> The exception to this is an Irish non-credit institution that elected to answer the questionnaire electronically and send the response to London Economics.

## **1.6 Acknowledgements**

London Economics thanks all the respondents to our questionnaires for their time and contributions. We thank the DG Internal Market and Services for providing us with the contact details of members from the Government Expert Group on Mortgage Credit (GEGMC); the European Mortgage Federation for providing us with contact details of their members and representatives from their Legal Affairs Committee; EUROFINAS for contacting their members on our behalf; the European Securitisation Forum for providing us with the names of some of their members, and the European Banking Industry Committee (EBIC) with whom we met in May 2008 and had a detailed discussion of the issues and for the further feedback provided by members of this group.

## 2 Findings on the role and regulation of non-credit institutions

In this section a high level comparative analysis of the legal frameworks of non-credit institutions across the EU is presented. This includes:

- An overview of the Member States that permit and do not permit OMLs to provide residential mortgage loans;
- An overview of the Member States that permit and do not permit insurance companies to provide residential mortgage loans;
- A comparative summary of the regulatory and supervisory frameworks for mortgage lending by OMLs in the Member States in which such institutions can provide residential mortgages;
- Observations from the regulatory and supervisory frameworks for OMLs;
- A comparative summary of the regulatory and supervisory frameworks for mortgage lending by insurance companies in the Member States in which such institutions can provide residential mortgages;
- Observations from the regulatory and supervisory frameworks for insurance companies; and
- The funding mechanisms available to OMLs.

A detailed analysis of the legal framework in each Member State is provided in Chapters 5 to 31 for readers who are interested in the specific features of individual countries.

### 2.1 EU Member States where non-credit institutions are allowed to provide mortgage credit

In this section we provide an overview of the ability of non-credit institutions to provide residential mortgage loans in EU Member States.

The information presented is separated by OMLs (section 2.1.1) and insurance companies (section 2.1.3).

## 2.1.1 Other Mortgage Lenders (OMLs)

We first provide an overview of OMLs. In Table 1, we indicate for each Member State whether such non-credit institutions, either domestic or foreign, can provide residential mortgage loans.

Table 1: Ability of Other Mortgage Lenders to provide residential mortgage loans				
Member State	Yes OMLs can provide residential mortgage loans		No OMLs cannot provide residential mortgage loans	
	Domestic	Foreign	Domestic	Foreign
Austria			✓	✓
Belgium	✓	✓		
Bulgaria	✓	✓		
Cyprus	✓	✓		
Czech Republic	✓	✓		
Denmark	✓	✓		
Estonia	✓	✓		
Finland	✓	✓		
France			✓	✓
Germany			✓	✓
Greece <sup>a</sup>			✓	✓
Hungary	✓	✓		
Italy	✓	✓		
Ireland	✓	✓		
Latvia	✓	✓		
Lithuania	✓	✓		
Luxembourg	✓	✓		
Malta	✓	✓		
Netherlands	✓	✓		
Poland <sup>b</sup>	✓			✓
Portugal			✓	✓
Romania	✓	✓		
Slovakia <sup>c</sup>			✓	✓
Slovenia	✓	✓		
Spain <sup>d</sup>	✓	✓		
Sweden	✓	✓		
United Kingdom	✓	✓		

<sup>a</sup> In Greece, non-credit institutions (which are called “credit companies” in Greek law) have the “exclusive” purpose to provide consumer credit excluding mortgage loans.

<sup>b</sup> In Poland, the only non-credit institutions which can currently provide mortgage loans are called “Credit Unions” and are “non-credit cooperative institutions” which currently can provide mortgage loans to their members only. Foreign credit unions, we understand, cannot provide loans in Poland as they are not listed in the special legislation allowing Polish credit unions to provide mortgage loans to their members. Foreign credit unions must be registered and authorised as credit institutions in their home Member State in order to provide residential mortgage loans in Poland.

<sup>c</sup> Slovakia, the Act on Banks 2001 with updates to 2007, defines a “mortgage loan” as a “loan with maturity of at least 4 years and a maximum of 30 years secured by right of lien upon domestic real estate which is at least to the amount of 90% financed by the issue and sale of mortgage (covered) bonds by a Mortgage Bank”. Therefore, given the definition of a mortgage is linked directly to the funding mechanism, then only credit institutions authorised as “Mortgage Banks” in Slovakian law can provide mortgage loans. Interestingly, loans secured by right of lien on domestic real estate but not funded by mortgage (covered) bonds are not called mortgages in Slovakia.

<sup>d</sup> Spain has a special category of credit institution called “Financial Credit Entities” which provide residential mortgage loans. Such entities cannot accept deposits or repayable funds from the public. Therefore, within the meaning of “credit institution” in EC Credit Directive 2006/48, Financial Credit Entities would be considered non-credit institutions. Spain (also) allows other undertakings – those not registered and authorised as “official credit institutions” or “Financial Credit Entities” in Spanish law – to provide residential mortgage loans. There is no definition in Spanish law of such undertakings.

In **six** Member States, domestic and foreign OMLs are not allowed to provide residential mortgage loans as the national legal frameworks limit the provision of mortgage loans to credit institutions. These Member States are listed below together with the relevant legal framework, and the reported motivation for limiting the right to provide mortgage loans to credit institutions.

- Austria: The Austrian Banking and Austrian Financial Authority Act 1993 with amendments up to 2008, in Chapter 1, defines “the entering into money loan contracts and extension of money loans”, if done on a commercial basis, as a “banking activity” which can only be undertaken by “authorised credit institutions”. The motivation for this stipulation is the avoidance of duplication of regulation and supervision regimes for comparable business.<sup>18</sup>
- France: The French Monetary and Financial Code with updates to 30/02/06; article L311-1 defines “credit transactions” as a “banking transaction”, and article L511-1 provides that credit institutions are legal entities that undertake business transactions. Further, article L511-1 “prohibits” any other persons from undertaking such transactions on a regular basis. The French authorities did not provide details on the motivation for this limitation.
- Germany: The German Banking Act 2002 with amendments up to 2007 (Kreditwesengesetz (KWG)) stipulates that businesses involved in “the granting of money loans and acceptance credits (lending business)” are credit institutions (KWG § 1 chapter 1 number 2). An exception to this requirement is private insurance companies (see chapter 2.2.4 of this report). One of the motivations for this

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<sup>18</sup> The motivation is taken from the “position of the Austrian Ministry of Finance, the Austrian Ministry of Justice and the Austrian Ministry of Social Welfare to the Commission's Working Document for the Government Expert Group on Mortgage Credit”, 2006. Our contact in the Austrian Ministry of Finance verified this motivation.

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restriction is to ensure that prudential supervision is the same across mortgage lenders in Germany.

- Greece: Non-credit institutions are defined as “credit companies” in Greece. The main activity of credit companies, as set out in Chapter 1, paragraph 3 of the Governor’s Act 2485/31.1.2002, is to “grant loans or provide credit in any form to natural persons, so that the latter cover their consumer and personal needs”. This is interpreted by the Greek authorities as limiting non-credit institutions to the provision of consumer credit excluding mortgage loans. The motivation for this approach is that “credit companies” have the “exclusive purpose” of providing consumer credit such as personal loans.
- Portugal: The General Regulations on Credit Institutions and Financial Societies (RGIC), contained within Law 1/2008: The RGIC defines twelve different types of credit institution. These include “Financial Societies of Credit”, “Mortgage Credit Institutions” and “Financial Societies for Credit Acquisitions”. The RGIC also defines a type of institution called a “Financial Company”. According to the RGIC, a Financial Company may undertake lending, but not mortgage lending.
- Slovakia: The Slovakian Act on Banks 2001 with amendments to 2007, at article 68, defines a mortgage loan as a “loan with maturity of at least 4 years and a maximum of 30 years secured by right of lien upon domestic real estate which is at least to the amount of 90% financed by the issue and sale of mortgage (covered) bonds by a Mortgage Bank”. Therefore, given the definition of a mortgage is linked directly to the funding mechanism, only credit institutions authorised as “Mortgage Banks” in Slovakian Law can provide mortgage loans. Interestingly, loans secured by right of lien on domestic real estate but not funded by mortgage (covered) bonds are not called mortgages in Slovakia. Instead these would simply be called a “credit”.

The implication of this funding-specific definition of mortgages, is that, in Slovakian terminology, mortgages cannot be issued by any institutions other than credit institutions, but within the definition of a residential mortgage in EC Directive 2006/48, article 113, non-credit institutions could provide mortgage loans as the EC definition is not linked to funding mechanism type. (The EC definition can be found in the Glossary for this report)

In **one** Member State, Poland, a special type of domestic non-credit institution, namely “Credit Unions” as defined in Polish law, can provide mortgage loans to their members, but foreign credit unions currently

cannot.<sup>19</sup> This is because the legal framework in Poland allows institutions other than “banks” (credit institutions) to provide mortgage loans only if there is “special legislation” to allow such activities. For domestic credit unions, the Polish Credit Union Act states that Polish Credit Unions can provide mortgages to their members. Foreign Credit Unions must be authorised and registered as credit institutions in their home Member State in order to provide residential mortgage loans in Poland.

In **twenty** Member States domestic and foreign OMLs are permitted to provide residential mortgage loans. Chapter 2.2.1 of this report provides an overview of the legal frameworks that govern residential mortgage lending by such non-credit institutions.

### 2.1.2 Summary observations regarding OMLs

OMLs, both foreign and domestic, are allowed to provide residential mortgages in twenty of the twenty seven EU Member States. One Member State allows only domestic OMLs to provide residential mortgage loans.

Six Member States do not allow OMLs to provide residential mortgage loans, but instead require all mortgage lenders to be credit institutions within the meaning of EC Directive 2006/48.

### 2.1.3 Non-credit institutions that are insurance companies

In this section, we provide an overview of the legal frameworks governing the ability of non-credit institutions that are insurance companies to provide residential mortgage loans. In Table 2 we show, for each Member State, whether insurance companies, either domestic or foreign, can provide residential mortgage loans.

In Table 2, we do not distinguish between the provision of mortgages as a main activity of the insurance company and the provision of mortgages as an asset management activity by the insurance company: This is often an important distinction when considering if insurance companies can provide residential mortgages. In section 2.2.4, where we discuss the regulatory and supervisory frameworks for mortgage provision by insurance companies, we do make this distinction.

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<sup>19</sup> As mentioned previously, credit unions are the only non-credit institutions that can provide mortgage loans in Poland.

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Table 2: Ability of insurance companies to provide residential mortgage loans				
Member State	Yes Insurance companies can provide residential mortgage loans		No Insurance companies cannot provide residential mortgage loans	
	Domestic	Foreign	Domestic	Foreign
Austria			✓	✓
Belgium	✓	✓		
Bulgaria			✓	✓
Cyprus	✓	✓		
Czech Republic	✓	✓		
Denmark	✓	✓		
Estonia	✓	✓		
Finland	✓	✓		
France			✓	✓
Germany	✓	✓		
Greece *			✓	✓
Hungary	✓	✓		
Italy			✓	✓
Ireland	✓	✓		
Latvia	✓	✓		
Lithuania	✓	✓		
Luxembourg			✓	✓
Malta			✓	✓
Netherlands	✓	✓		
Poland			✓	✓
Portugal			✓	✓
Romania			✓	✓
Slovakia			✓	✓
Slovenia			✓	✓
Spain			✓	✓
Sweden	✓	✓		
United Kingdom	✓	✓		

In Greece, insurance companies may provide residential mortgage loans only to their employees.

From Table 2, we can observe that **fourteen** of the Member States allow insurance companies, domestic and foreign, to provide residential mortgage loans. The national legal frameworks that allow for this activity by such non-credit institutions are presented in section 2.2.4.

**Thirteen** Member States do not allow insurance companies, foreign and domestic, to provide residential mortgage loans.

### 2.1.4 Summary observations regarding insurance companies

Fourteen of the twenty seven EU Member States allow insurance companies to provide residential mortgage loans either as part of the main insurance business or as part of their asset management activities. Of these fourteen Member States, eight allow insurance companies to provide residential mortgage loans only as part of their asset management activities while the other six allow residential mortgage lending as part of the insurance companies' main insurance business.

Thirteen Member States do not allow insurance companies to provide residential mortgage loans at all.

## 2.2 Regulation and supervision of non-credit institutions

London Economics has undertaken a detailed survey of the current legal frameworks for mortgage lending by non-credit institutions across the EU, and the motivation for the national frameworks as reported by the financial regulators in each Member State.

The information is presented separately for OMLs (section 2.2.1) and insurance companies (section 2.2.4).<sup>20</sup>

### 2.2.1 Regulation and supervision of OMLs

In this sub-section we present a summary of the regulatory and supervisory frameworks for OMLs, domestic and foreign, in the twenty Member States that allow residential mortgage lending by such domestic and foreign institutions, and the single Member State that allows residential mortgage lending by domestic OMLs only. Any difference in the regulatory or supervisory frameworks for domestic and foreign OMLs is also discussed.

It is important to note at this point that Article 24 of EC Directive 2006/48 applies to some non-credit institutions (called "financial institutions" within EC Directive 2006/48). Namely, article 24 provides for non-credit institutions that are:

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<sup>20</sup> This framework is described in section 1.2, and Figure 2 provides a schematic of this framework.

- the subsidiary of a credit institution; or,
- the jointly-owned subsidiary of two or more credit institutions; and
- whose parent undertaking or undertakings are authorised as credit institutions in the Member State by the law of which the financial institution is governed; and
- whose activities in question are carried on within the territory of the same Member State;

can, subject to two additional conditions<sup>21</sup>, benefit from the “mutual recognition of services” or in other words, the EU Banking Passport.

The summary of the regulatory and supervisory frameworks is for non-credit institutions that do not fall within the mutual recognition of services within the meaning of article 24 of EC Directive 2006/48.

### *Overview of situation in individual Member States*

- In **Belgium**, all domestic institutions (credit institutions and OMLs) that provide mortgage loans must apply and receive registration and authorisation (“Inscription”) from the Belgium Banking Finance and Insurance Commission (CBFA), (Article 43 and 43bis, Law in Relation to Mortgage Credit 1992). All institutions that provide mortgage loans in Belgium are called “Mortgage Firms”. The CBFA is responsible for supervising mortgage firms and ensuring they comply with the Law on Mortgage Credit 1992. Mortgage firms that are OMLs are currently not subject to prudential supervision. The CBFA reports that a draft bill is being prepared which will subject all mortgage firms to prudential supervision. A “Mortgage Firm” is specifically defined in the Law in Relation to Mortgage Credit, Chapter 1, Article 2, as those firms that provide mortgage credit. Mortgage credit is defined as: “a loan guaranteed by a mortgage; a privilege on a building or by a claim of the same category; the claim resulting from the subrogation of one or several persons on the rights of a privileged claim on a building; credit stating the right to ask for a mortgage guarantee even if this right is stated in a different document”.

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<sup>21</sup> The full text of article 24 of EC Directive 2006/48 is reproduced in the legal appendix to this report.

In regard to the regulation and supervision of foreign OMLs; credit institutions, “under the law of another Member State of the European Community”, and which have the “right under their national law to grant mortgage loans in their home state” do not need to seek “inscription”. Such institutions must (only) seek “Registration” (Article 43bis, Law in Relation to Mortgage Credit 1992). OMLs, whose home state is other than Belgium, must seek “Inscription”.

Therefore, the Belgian legal framework adopts an “activity” approach. Namely, the Law regulates the “activity” of mortgage provision in the same way for both credit institutions and OMLs.

The CBFA has not reported on the motivation for this regulatory approach. However a reading of the Law in Relation to Mortgage Credit, suggests that the motivation for this approach is to “protect borrowers rights” and therefore regulating and supervising the activity of mortgage lending, as opposed to (just) the regulation and supervision of institutions by type regardless of activity, ensures a higher level of protection to the borrower.

- In **Bulgaria**, the Law on Credit Institutions of 21 July 2006 provides the regulatory and supervisory framework for mortgage lending by credit institutions. The Law on Credit Institutions, Article 3, provides the requirement for OMLs to “notify” the Bulgarian National Bank (BNB) within 14 days of commencing operations. There is no requirement for authorisation of OMLs. Further, the BNB may require non-credit institutions to provide information on their legal status and activities at any time (Article. 3 (3), of the Law on Credit Institutions). OMLs are called “Financial Institutions” in Bulgarian Law (Article 3 of the Law on Credit Institutions).

There is no distinction between domestic and foreign OMLs in regard to mortgage lending in Bulgaria.

Therefore, in Bulgaria OMLs can provide mortgage loans without authorisation, regulation or supervision. Notification is the only requirement. The only other legal framework that is applicable to OMLs is the Law on Consumer Credit, 2007, which provides the requirements for advertising for all forms of consumer credit, and therefore includes mortgage credit provision by both credit institutions and OMLs. The motivation for this regulatory and supervisory framework is that OMLs are a very small player in the residential mortgage markets in Bulgaria.

- In **Cyprus**, the Cypriot Banking Law of 1997 provides the regulatory and supervisory framework for credit institutions. There are no notification, authorisation, regulation or supervision requirements for non-credit institutions. The activity of mortgage lending, by both credit institutions and OMLs, is not specifically regulated or supervised.

There is no distinction between domestic and foreign non-credit institutions in regard to mortgage lending in Cyprus.

Therefore in Cyprus, Non-credit institutions can undertake mortgage lending without regulation or supervision. Cypriot Consumer Protection Law 2001 does apply to all consumer credit loans by both credit institutions and OMLs, but only to a maximum of €85,000. The motivation for this regulatory and supervisory framework is that OMLs are a very small player in the residential mortgage markets in Cyprus.

- In the **Czech Republic**, the Act on Banks 1997 provides the regulatory and supervisory requirements for credit institutions. There is no regulation or supervision of OMLs.

There is no distinction between domestic and foreign OMLs in regard to mortgage lending in the Czech Republic.

Therefore, in the Czech Republic, OMLs can undertake mortgage lending without regulation or supervision. The CNB reports that from time to time there is discussion about introducing regulation and supervision of non-credit institutions. The motivation for considering the introduction of such regulation and supervision is the recent growth in consumer credit not mortgage loans. In the future, the CNB does envisage introducing regulation in regard to consumer credit and this may or may not include the provision of residential mortgages. The decision to regulate and supervise the mortgage lending activity by non-credit institutions will depend on the observed growth of the activities in the next few years. There is no planned timeline for the introduction of any regulation and supervision at this time.

- In **Denmark**, the Financial Business Act 2006 provides the regulatory and supervisory requirements for credit institutions. There is no regulation or supervision of OMLs.

There is no distinction between domestic and foreign OMLs in regard to mortgage lending in Denmark.

Therefore in Denmark, OMLs can undertake mortgage lending without regulation or supervision. The motivation for this regulatory and supervisory framework is that OMLs are a very small player in the residential mortgage market in Denmark.

- In **Estonia**, the Credit Institutions Act 1999 provides the regulatory and supervisory requirements for credit institutions. There is no regulation or supervision of OMLs.

There is no distinction between domestic and foreign OMLs in regard to mortgage lending in Estonia.

Therefore in Estonia, OMLs can undertake mortgage lending without regulation or supervision. The Law of Obligations Act, Article 402 and 403, does apply consumer protection rules to all consumer credit loans, including mortgage loans, by both credit institutions and OMLs. The motivation for this regulatory and supervisory framework is that OMLs are a very small player in the residential mortgage markets in Estonia.

- In **Finland**, the Act on Credit Institutions 2007 provides the regulatory and supervisory requirements for credit institutions. There is no regulation or supervision of OMLs. The Act on Credit Institutions defines two types of credit institution by authorised activity, and these are Deposit Banks - a credit institution which may accept deposits and other repayable funds from the public, and Financing Institutions which may accept repayable funds other than deposits from the public.

There is no distinction between domestic and foreign OMLs in regard to mortgage lending in Finland.

Therefore in Finland, OMLs can undertake mortgage lending without regulation or supervision. The Consumer Credit Act 2005, Chapter 7, does apply to all consumer credit loans, including mortgage loans, by both credit institutions and OMLs. The motivation for this regulatory and supervisory framework is that OMLs are a very small player; the Finnish Financial Supervision Authority, reports that they believe OMLs do not play a role in residential mortgage markets in Finland.

- In **Hungary**, the Act on Credit Institutions and Financial Enterprises 1996 provides the regulatory and supervisory requirements for “Financial Institutions”. Such institutions are defined as “Credit Institutions” and “Financial Enterprises” in the Act, and therefore Hungary employs a different definition of Financial Institutions as compared to EC Directive 2006/48.

Credit Institutions are defined as those institutions that can undertake a) collection of deposits and acceptance of other repayable monetary instruments from the general public in excess of the equity capital; and, b) credit and loan operations.

Financial enterprises must be registered and authorised by the Hungarian Financial Supervisory Authority.

The Act on Mortgage Loan Companies and Mortgage Bonds 1997 defines a specialised credit institution called “Mortgage Loan Companies”. These are institutions which can accept repayable funds from the public but not deposits, and can extend mortgage loans, and can issue general debt securities, covered mortgage bonds and mortgage backed securities.

There is no distinction between domestic and foreign OMLs in regard to mortgage lending in Hungary.

Therefore in Hungary, The Definition of “Financial Institution” is different under the Hungarian Act on Credit Institutions and Financial Enterprises as compared to EC Directive 2006/48. In Hungary “Financial Institutions” are credit institutions and Financial Enterprises. Financial Enterprises are non-credit institutions and such undertakings are limited in their funding mechanisms. Hungary has established in Law a specialised credit institution called a Mortgage Loan Company. The motivation for establishing such specialised credit institutions is “to improve facilities for the extension of long-term loans required for economic growth”.

- In **Italy**, the Banking Law 1993 provides for the authorisation, regulation and supervision of OMLs, called “Financial Intermediaries” in Italian law. OMLs are entered on a register held by the Bank of Italy. An OML may be entered on a general register or a special register given certain conditions in terms of activity carried on, volume of business and ratio of debt to equity capital. OMLs entered on the special register are subject to more stringent supervisions and regulations. These are more akin to that of credit institutions (“banks”). Consumer protection legislation also applies to all forms of credit provision by both credit and non-credit institutions.

There is no distinction between domestic and foreign OMLs in regard to mortgage lending in Italy.

In Italy, the Banking Law 1993 provides the regulatory and supervisory frameworks for both credit and non-credit institutions. Regulations and supervision are most stringent for banks, secondly for non-credit institutions on the special register, and lastly non-credit institutions on the general register.

The motivation for this approach is:

- Entry on the general register is primarily intended to gain knowledge of the non-credit institution and to ensure that they meet a minimum level of reliability in terms of minimum capital requirements, integrity of members and corporate officers, and experience requirements.
- Entry on the special register imposes prudential controls similar to that for banks. This is because of the risks associated with the larger scale and scope of activities undertaken by such institutions.

Non-credit institutions are (currently) not very active in the mortgage market in Italy, non-credit institutions are specialised in the provision of financial leasing, factoring and consumer credit including credit cards.

- In **Ireland**, A 2007 amendment to the Markets in Financial Instruments and Miscellaneous Provisions Act, introduced the requirement for OMLs to be authorised and supervised by the Financial Regulator. The 2007 amendment creates in Law two new types of institutions, namely a “Retail Credit Firm” and a “Home Reversion Firm”. OMLs that provide mortgage loans must be registered and authorised as one of these two types of firms. Home Reversion Firm means an entity carrying on a business of entering into home reversion agreements. Home Reversion Agreement means an agreement between a vendor and a home reversion firm that provides—(a) for the conveyance by the vendor to the home reversion firm of an estate or interest in land (which includes the principal residence of the vendor or of the vendor’s dependants) for a discounted sum or an income (or both); and (b) for the vendor to retain the right to live in the residence until the occurrence of one or more events specified in the agreement. A Retail Credit Firm is a specialised type of credit institution within the meaning of the Irish Consumer Credit Act 1995, chapter 3, but lower prudential requirements apply to such institutions as compared to those credit institutions which can take deposits from the public.

In the case of a Retail Credit or Home Reversion Firm authorised in another EEA Country, the Central Bank,

(a) shall have regard to any requirements imposed on the firm by an authority of that country that appears to the Bank to exercise a regulatory or supervisory role similar to that of the Bank in relation to the firm; and,

(b) may exchange with that authority information relevant to the carrying out of the Bank’s functions under this Act or the functions of that authority under the laws of that country.

Therefore in Ireland, the 2007 amendments to the Central Bank Act of 1997 adopt an activity based approach to regulation; firms that engage in retail credit provision and home reversion agreements, must be registered and authorised with the Financial Regulator. The prudential requirements that apply to credit institutions, do not apply to retail credit or home reversion firms. The main policy objectives underpinning the regulatory and supervisory framework is to ensure that all consumer-related lending is subject to the safeguards available under the Financial Regulator's Consumer Protection Code and to allow for access to the Financial Services Ombudsman, particularly in the case of the sub-prime lending and equity release mortgages sectors where there were concerns that the limited regulation of the lending activities of these sectors gave rise to the potential abuse of consumers.

- In **Latvia**, there is no regulation or supervision of non-credit institutions. The Credit Institution Law 1996 provides the regulatory and supervisory framework for credit institutions. The only other legal framework that applies to both credit and non-credit institutions for all forms of lending is the Consumer Rights Protection Act 2001.

There is no distinction between domestic and foreign OMLs in regard to mortgage lending in Latvia.

Therefore in Latvia, OMLs can provide mortgage loans with no specific regulation or supervision. Consumer Rights Protection laws do apply to all types of consumer loans made by both credit and non-credit institutions. The motivation for this approach is that OMLs are not significant players in the residential mortgage market in Latvia.

- In **Lithuania**, the Law on Financial Institutions 2002 defines "Financial Institution" as both a "Financial Undertaking", which would be an OML within the meaning of this study, and a Credit Institution. Financial undertakings must meet both requirements set out in paragraph 42 of Article 2 of the Law on Financial Institutions and engage in the provision of at least one of the financial services referred to in Article 3 of the Law on Financial Institutions. Both credit institutions and financial undertakings are regulated under the Law on Financial Institutions 2002. Only credit institutions are, however, supervised by the Bank of Lithuania under the provisions of the Law of the Central Bank of Lithuania, Article 8.

There is no distinction between domestic and foreign OMLs in regard to mortgage lending in Lithuania.

Therefore in Lithuania, the Law on Financial Institutions employs a different definition of “Financial Institution” as compared to EC Directive 2006/48. In Lithuania Financial Institution means both credit institutions and OMLs (“Financial Undertakings”). Credit Institutions and OMLs are regulated by the Law on Financial Institutions 2002. OMLs are not supervised in Lithuania. The motivation for this approach is that OMLs do not take deposits from the public and therefore, general financial stability and consumer risk is not as high as compared to credit institutions.

- In **Luxembourg**, the legislation and regulation in regard to mortgage lending activities is the same for credit and non-credit institutions in Luxembourg. Both credit and non-credit institutions are regulated under the Law of the 5th April 1993 on the financial sector. The Law also defines a specialised credit institution called Mortgage Banks. Mortgage Banks are credit institutions having as their main object the following activities:

- (a) the granting of loans secured by rights in rem in immoveable property or by charges on real property, and the issuing on that basis of debt instruments secured by those rights or charges, such instruments being known as mortgage bonds;

- (b) the granting of loans secured by bonds, or by other similar debt instruments, which are in turn coupled with the guarantees indicated in subparagraph (a) above, and the issuing on that basis of debt instruments covered by those guarantees, such instruments being known as mortgage bonds;

- (c) the granting of loans to public entities and the issuing of debt instruments secured by the debt entitlements resulting from those loans, such instruments being known as mortgage bonds;

Mortgage providers other than credit institutions must be registered and authorised as “Professionals of the Financial Sector” (PFS) under the category of “Professionals carrying on lending operations”. The Commission de Surveillance du Secteur Financier (CSSF) supervises the PFS.

Therefore in Luxembourg, the regulatory and supervisory frameworks are the same for domestic and foreign OMLs in regard to mortgage lending in Luxembourg.

The Luxembourg Law defines a special form of credit institution called a Mortgage Bank.

OMLs must be registered and authorised as a “professional of the financial sector” (PFS), in order to undertake mortgage lending. PFS are supervised by the Commission de Surveillance du Secteur Financier. The motivation for this approach is to allow competition in the mortgage markets without requiring all mortgage lenders to meet the more stringent regulations and supervisions required by institutions that take deposits and repayable funds from the public. To date, however, there is only one institution that has applied and received registration and authorisation in Luxembourg, and, to date, this institution has made no mortgage loans.

- In **Malta**, the Banking Act 1994 provides the regulatory and supervisory framework for credit institutions. The Financial Institution Act 1994 provides the regulatory and supervisory framework for OMLs, and requires that OMLs must be registered and authorised as “Financial Institutions” with the Malta Financial Services Authority in order to undertake the activity of mortgage lending.

Financial Institutions are defined as any person who regularly or habitually acquires holdings or undertakes the carrying out of, lending (including personal credits, mortgage credits, factoring with or without recourse, financing of commercial transactions including forfeiting). This definition carries a proviso in the sense that a financial institution is not to be funded through the taking of deposits or other repayable funds from the public as defined in the Banking Act 1994.

The requirements for registration and authorisation of credit institutions and OMLs is provided for in two separate laws (as above), but the regulation and supervision of lending (under these two laws) is the same.

There is no distinction between domestic and foreign non-credit institutions in regard to mortgage lending in Malta.

The Maltese legal framework adopts an “activity” and “risk” approach. The MFSA assesses the risk associated with the activity of mortgage lending, and the MFSA (then) applies the same set of regulations and supervisory requirements to both credit institutions and OMLs in regard to mortgage lending.

The motivation for this approach is that the credit risk associated with the lending activity is considered to be of a high risk nature, irrespective of what type of institution is providing the loan.

- In the **Netherlands**, OMLs must seek registration and authorisation (a licence) from the Netherlands Authority for the Financial Markets (AFM) in order to provide mortgage loans (chapter 2.60 of the Financial Supervision Act). Credit institutions must seek registration and authorisation (a Licence) from the Dutch National Bank (DNB) to undertake the provision of financial services including mortgage lending (chapter 2.11, Financial Supervision Act).

There is no distinction between foreign and domestic OMLs in regard to mortgage lending in the Netherlands.

Credit institutions have a wide scope licence issued by the DNB which allows for credit institutions to undertake all financial services. In comparison OMLs have a specific licence issued by the AFM which allows credit provision including mortgages.

Supervision of all institutions that operate in the financial markets is divided between the AFM and the Dutch Central Bank under the Financial Supervision Act 2006. Prudential supervision is undertaken by the Dutch Central Bank, and market conduct supervision by the AFM (chapter 1.24 and 1.25 of the Financial Supervision Act). This supervisory approach is called the “Twin Peaks Model”.

The motivation for this supervisory approach is to undertake supervision on a cross-sectoral basis, and to separate prudential supervision from market conduct supervision.

- In **Poland**, The Banking Act 1997 provides the regulatory and supervisory requirements for “banks” (credit institutions). The Banking Act, does however, include in article 5, point 5, that institutions other than banks may undertake banking activities (including the provision of mortgage loans) if they are authorised to do so under separate legislation. This (separate) legislation is the Credit Unions Act 1995, which provides for credit unions (cooperative non-credit institutions) to make mortgage loans to their members only.

Credit Unions are a special form of non-credit cooperative institution defined in Polish law. Foreign Credit Unions must be authorised and registered as credit institutions in their home Member State in order to provide residential mortgages in Poland.

Credit Unions, a type of non-credit institution, may provide mortgage loans to their members only. The motivation for this framework is that on first principles only credit institutions can grant mortgage loans, but under special provision there are exceptions to this rule. The only exception is Credit Unions.

- In **Romania**, OMLs that provide residential mortgages must be registered (“notification” and “inscription”) as “Non-bank Financial Institutions” or “Specially Licensed Institutions” with the National Bank of Romania. This requirement was introduced in 2006. “Specially Licensed Institutions” are, however in practice, national institutions, such as the National Housing Agency. Non-bank Financial Institutions are defined as “legal persons incorporated with a view to performing, with professional status, lending activities and whose financing sources arise from own resources or resources borrowed from credit institutions, from other financial institutions, or, as the case may be, from other sources provided for by special laws”.

There is no distinction between domestic and foreign OMLs in regard to mortgage lending in Romania.

In Romania, Government Ordinance No 28/2006 defines “Non-bank Financial Institution”, which would include OMLs. OMLs registered as NBFIs or Special Licensed Institutions are subject to less strict regulations and supervisions than those applying to credit institutions. This is because non-credit institutions do not take repayable funds from the public.

- In **Slovenia**, the Banking Act 2007 provides the regulatory and supervisory requirements for “credit institutions”, and states that credit institution shall refer collectively to banks, savings banks and electronic money institutions.

Mortgage lending by OMLs is regulated by the Consumer Credit Act 2000. OMLs are required to obtain registration and authorisation prior to undertaking consumer credit provision of any form.

There is no distinction between domestic and foreign OMLs in regard to mortgage lending in Slovenia.

Therefore in Slovenia, mortgage lending by OMLs is regulated and supervised under the Consumer Credit Act. The Act provides the regulatory and supervisory frameworks for mortgage lending by both credit institutions and OMLs.

- In **Spain**, the Law Regulating the Mortgage Market provides the regulatory and supervisory requirements for “Financial Institutions”, which are credit institutions in Spain.

The Legal Framework for Financial Credit Entities 1996 defines a special class of credit institution – a Financial Credit Entity. Such OMLs may provide mortgage loans but cannot take deposits or repayable funds from the public. Financial credit entities can, however, use the EU Banking Passport to export their services cross-border in the EU.

Institutions that provide mortgage loans and are not registered and authorised as Financial Institutions or Financial Credit Entities (in Spanish Law), are subject to no regulation or supervision.

There is no distinction between domestic and foreign OMLs in regard to mortgage lending in Spain.

There is a type of OML in Spain called a Financial Credit Entity which in Spanish law is a special type of credit institution, but within the meaning of EC Directive 2006/48 these entities would not be credit institutions because they can not take deposits or other repayable funds from the public. The Spanish authorities have not commented on the motivation for this approach.

- In **Sweden**, the Swedish Financial Supervisory Authority, Finansinspektionen, regulates OMLs. OMLs are however not supervised. OMLs are only subject to certain disclosure requirements at the request of Finansinspektionen, and inspection under certain conditions.

Under the Obligations to Notify Certain Financial Operations Act 1996, OMLs must notify Finansinspektionen of the activities (including mortgage lending) they plan to undertake in Sweden.

Credit institutions must receive registration and authorisation (a “licence”) from Finansinspektionen to undertake business activities as stated in the Financing Operations Act 1992. The rules for this process are contained within Finansinspektionen’s General Guidelines regarding Applications for a Licence to Conduct Banking or Financing Business or to Issue Electronic Money 2004.

The list of business activities OMLs and credit institutions can undertake, and for which they must notify (OMLs) and register and seek authorisation (credit institutions) for, is stipulated in the Banking and Business Finance Act 2004, Chapter 7.

There is no distinction between domestic and foreign OMLs in Sweden in regard to mortgage lending.

Therefore in Sweden, OMLs that have notified the Swedish Financial Supervisory Authority of the activities they will undertake in Sweden are required to disclose certain information at the request of the regulator, and are subject inspection by the regulator under certain conditions.

Credit institutions, that can take deposits and other repayable funds from the public, are subject to more stringent registration and authorisation requirements (“licensing”), and supervision. The motivation for this approach is the higher risk to general financial stability and consumer protection risks if an institution takes deposits.

- In the **United Kingdom**, The Financial Services Authority (FSA) regulates and supervises the activity of mortgage lending by both credit institutions (termed deposit-taking institutions in the UK) and OMLs (non-deposit taking institutions). OMLs must, therefore, be registered and authorised as non-deposit taking institutions.

There is no distinction between domestic and foreign OMLs in regard to mortgage lending in the UK.

In the UK, prudential requirements are at a higher level for credit institutions as compared to OMLs. Conduct of business rules on mortgage lending is the same for credit institutions and OMLs.

The motivation for this framework is that applying the same prudential requirements to both deposit and non-deposit takers would (most likely) create a barrier to non-credit institutions entering the residential mortgage market in the United Kingdom. This would be an unnecessary barrier as non-credit institutions do not take deposits from the public and therefore there is no social need for deposit security to the level that exists for credit institutions.

### 2.2.2 Observations from, and motivations for, the regulatory and supervisory frameworks for OMLs

The main observation we can draw from the legal frameworks presented in section 2.2.1, is that the national frameworks differ significantly across Member States.

However, it is possible to characterise the different legal frameworks and the motivations for them in the following way:

- The creation of a level playing field in the provision of mortgages. This is one of the objectives of the six Member States that require all institutions to be credit institutions in order to undertake mortgage provision.

- No regulation or supervision specifically for mortgage provision by OMLs. This is the approach of Member States in which OMLs are only very marginal players in the national mortgage markets or not active at all. These Member States are:
  - Bulgaria (“notification” is the only requirement)
  - Cyprus
  - The Czech Republic
  - Denmark
  - Estonia
  - Finland
  - Latvia
  - Slovenia
  
- The use of regulations and specific legislations for mortgage lending by non-credit institutions but at a less intense level as compared to credit institutions because non-credit institutions do not take deposits from the public and therefore the risks to the functioning of the financial system as a whole and the risk to consumers is perceived as being lower. These Member States are:
  - Belgium
  - Hungary
  - Italy
  - Ireland
  - Lithuania
  - Luxembourg
  - Malta
  - Netherlands
  - Poland (domestic OMLs only, foreign OMLs cannot provide mortgages)
  - Romania

- Spain
- Sweden
- The United Kingdom

The implication of these differences in legislative and regulatory approaches to residential mortgage lending by OMLs is that OMLs seeking to engage in the provision of residential mortgage loans across EU Member State borders could be faced with significant costs in understanding and conforming to the different national frameworks.

The magnitude of such costs will vary across different OMLs. Key cost drivers are:

- The size of the OML and the number of specialist staff available to deal with the legislative and regulatory approaches; and,
- The OMLs experience in EU residential mortgage markets.

These costs can be broadly specified as:

- *Search costs* to find the correct legislative and regulatory approaches for the Member State of interest;
- *Interpretation costs* to understand the different legislative and regulatory approaches;
- *Incorporation costs* to analyse how the different legislative and regulatory approaches impact upon the OML's business; and
- *Administration costs* to undertake the required notifications and authorisations in the Member States.

These observations are supported by our findings from the survey of individual OMLs (Chapter 0). Namely, one of the main barriers reported by all respondents was the differences in the regulatory and supervisory frameworks across Member States.

### 2.2.3 Summary observations regarding the regulation and supervision of OMLs in EU residential mortgage markets

In the EU, 6 Member States **do not** allow OMLs to provide residential mortgages, 20 Member States **do** allow OMLs, both domestic and foreign, to provide residential mortgages, and 1 allows only domestic OMLs to provide residential mortgages.

Of the 20 Member States that allow both foreign and domestic OMLs to provide mortgages, 8 have no regulation or supervision specifically in regard to residential mortgage provision by OMLs, and 12 do have specific regulations and supervisions for mortgage provision by OMLs.

### 2.2.4 Regulation and supervision of non-credit institutions that are insurance companies

In this sub-section a summary of the regulatory and supervisory regimes for non-credit institutions that are insurance companies, both domestic and foreign, in the fourteen Member States that allow residential mortgage lending by such institutions is presented.

This question has been very difficult for many Member States to answer. The problem is that mortgage lending is not usually part of the “insurance business”, as defined in the Member States’ legal frameworks. Therefore, the first answer from respondents was usually that insurance companies cannot provide mortgages. However, upon further discussion it became clear, in a number of instances, that insurance companies may provide mortgage loans as part of their asset management activities.<sup>22</sup>

When the question regarding foreign insurance companies was posed to the respondents, many were unable to answer this question. However, we did have some detailed discussions with insurance specialists in the legal field in a number of Member States, and they reported that the EU insurance passport would be used by insurance companies seeking to supply “insurance services” across EU borders. If the insurance authorisation (or licence) in the company’s home Member State allows the provision of mortgages as part of the “insurance business” as defined in the home Member State’s legal frameworks, then this activity would be allowed in the new or host Member State. In situations where a company uses the EU insurance passport, then supervision remains with the home Member State’s

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<sup>22</sup> Asset management activities refer to “technical reserves” which are the amounts insurance companies set aside from premiums to cover claims.

financial regulator and “notification” – given to the financial regulator in the state of entry - would be all that is required in the host Member State.

### *Member State summaries*

- In **Belgium**, insurance companies must seek the same registration and authorisation as OMLs. Namely, “inscription” as a mortgage firm within the meaning of the Dutch Law in Relation to Mortgage Credit 1992, from the Belgium Banking Finance and Insurance Commission (CSSF). However, insurance companies are subject to prudential supervision while OMLs are not. There is no distinction between domestic and foreign insurance companies in regard to mortgage lending.
- In **Cyprus**, mortgage provision is not permitted as a main insurance activity. Insurance companies can provide mortgage loans as part of their asset management activities (technical reserves). There is however, no known instance of insurance companies making mortgage loans.

Regulation and supervision of insurance companies is undertaken by the Ministry of Finance, Insurance Company Control Service, under the Law on Insurance Services and Other Related Issues 2002. There is no distinction between domestic and foreign insurance companies in regard to mortgage lending.

Pre-2002 insurance companies could provide mortgage loans linked to life insurance policies. This is no longer allowed. Insurance companies can now only provide mortgage loans as part of the company’s technical reserves. The regulations governing these activities are provided for in the Orders for Approved Investment by the Finance Minister.

- In the **Czech Republic**, mortgage provision is not permitted as a main insurance activity. Insurance companies can provide mortgage loans as part of their asset management activities (technical reserves), as provided for in the Insurance Act 1999. The Act does not cover the provision of mortgage loans to non-policy holders, but this activity is not prohibited. Decree 303/2004 stipulates prudential rules that apply to mortgage loans made to (both) policy and non-policy holders.

The Insurance Act 1999 provides the regulatory and supervisory frameworks, the activities of which are undertaken by the Czech National Bank. (Supervisory powers and responsibilities were passed to the CNB on the 1<sup>st</sup> April 2006 from the Ministry of Finance, Office for Supervision of Insurance.) There is no distinction between domestic and foreign insurance companies in regard to mortgage lending.

- In **Denmark**, mortgage provision is not permitted as a main insurance activity. Insurance companies can provide mortgage loans as part of their asset management activities (technical reserves). The Financial Business Act 2006, Special regulations for insurance companies, provides for the ability of insurance companies to make mortgage loans as part of their investments to cover their financial obligations. Special Placement of Funds and liquidity rules apply. There is no distinction between domestic and foreign insurance companies in regard to mortgage lending.
- In **Estonia**, mortgage provision is not permitted as a main insurance activity. Insurance companies can provide mortgage loans as part of their asset management activities (technical reserves).

The Financial Supervision Authority registers, authorises and supervises insurance activity under the Insurance Activities Act 2005. There is no distinction between domestic and foreign insurance companies in regard to mortgage lending.

The Insurance Activities Act 2005, chapter 1, chapter 2, requires insurance companies to be “licensed” by the Financial Supervision Authority to undertake insurance activities. The Ministry of Finance informed us that mortgage loans are not an insurance activity. However, chapter 4, chapter 77 of the Act states that insurance companies can use loans secured by mortgage as assets to cover technical provisions.

- In **Finland**, mortgage provision is not permitted as a main insurance activity. Insurance companies can provide mortgage loans as part of their asset management activities (technical reserves).

The Finnish Financial Supervisory Authority registers and authorises insurance companies under the Act on Insurance Companies. The Insurance Supervisory Authority, under the Ministry, supervises the activities of insurance companies and the regulations governing supervision are provided in the Act on Insurance Supervision 1999.<sup>23</sup> There is no distinction between domestic and foreign insurance companies in regard to mortgage lending.

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<sup>23</sup> The Ministry of Justice Finland, reported in February 2009, that from the beginning of 2009 the Insurance Supervisory Authority will no longer exist. From 2009 the Financial Supervisory Authority supervises insurance companies in accordance with the Act on the Financial Supervisory Authority 878/2008.

The Act on Insurance Companies 1062/1979 stipulates that insurance companies can provide mortgage loans as part of their technical reserves. Special rules on such investments apply.<sup>24</sup>

- In **Germany**, mortgage provision is not permitted as a main insurance activity. Insurance companies can provide mortgage loans as part of their asset management activities (technical reserves): The Law on the Supervision of Insurance Undertakings, chapter 7 and chapter 54.

BaFin registers, authorises and supervises insurance companies under the Law on the Supervision of Insurance Undertakings 2000. There is no distinction between domestic and foreign insurance companies in regard to mortgage lending.

- In **Hungary**, insurance companies can provide mortgage loans as part of their insurance business to policy-holders only.

Insurance companies must be registered and authorised by the Hungarian Financial Supervisory Authority in order to undertake the activity of mortgage lending.

We understand that if insurance companies are registered and authorised to provide mortgage loans as part of their main business, they can also provide mortgage loans as part of their asset management. There is, however, no known case of an insurance company providing mortgage loans.

There is no distinction between domestic and foreign insurance companies in regard to mortgage lending.

The Act LX of 2003 on Insurance Institutions and the Insurance Business, provides the regulatory and supervisory framework for mortgage lending by insurance companies. The Act limits mortgage loans to 60% of the value of the property being used as security.

- In **Ireland**, insurance companies' mortgage lending is regulated and supervised in the same way as that for OMLs. Namely, they need to be registered and authorised as "Retail Credit Firms".

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<sup>24</sup> In the beginning of 2009, the new Act on Insurance Companies (521/2008) replaced the 1979 Act. Within the new Act no changes have been made in regard to the ability of insurance companies to provide mortgages.

- In **Latvia**, insurance companies cannot provide mortgage loans as a main part of their business; insurance companies can however use mortgage loans as part of their technical reserves.

There is no distinction between domestic and foreign insurance companies in regard to mortgage lending.

The Law on Insurance Companies and Supervision 1999, chapter 7, states that insurance companies can only engage in insurance business on a commercial basis, and the Ministry of Finance reports that this does not include mortgage loans. However, chapter 42 of the Law states that mortgages can be used as part of the company's technical reserves.

- In **Lithuania**, insurance companies can provide mortgage loans under their licence if the mortgage is part of their technical reserves. Insurance companies cannot provide mortgage loans as a main part of their insurance business.

There is no distinction between domestic and foreign insurance companies in regard to mortgage lending.

The Law on Insurance 2003 states that insurance companies can only engage in insurance services, which, as reported by the Ministry of Finance, does not include the provision of residential mortgages. However, article 35 (3) of the Law states that loans secured by immovable property can be used as "assets covering technical provisions".

- In the **Netherlands**, insurance companies can provide mortgage loans as part of their insurance business. Insurance companies must seek authorisation and registration (a licence) from the Dutch National Bank, and this licence includes the provision of mortgages.

Supervision of insurance companies is jointly undertaken by the DNB and the Authority for the Financial Markets (AFM). The DNB is responsible for prudential supervision and the AFM is responsible for the supervision of conduct in financial markets.

There is no distinction between domestic and foreign insurance companies in regard to mortgage lending.

Insurance companies must be licensed by the Dutch National Bank to undertake all insurance business, including mortgage loans (chapter 2.27 of the Financial Supervision Act 2006).

- In **Sweden**, insurance companies can provide mortgage loans to both policy and non-policy holders.

The activity of the “selling of insurance services” is defined as a “financing operation” within the Financing Operations Act 1992. Institutions that undertake “financing operations” require a “licence” from Finansinspektionen only if they take deposits from the public. Therefore, insurance companies must notify Finansinspektionen of their activities in the same manner as OMLs.

There is no distinction between domestic and foreign insurance companies in regard to mortgage lending.

Insurance companies must notify Finansinspektionen of their intention to provide mortgage loans. This requirement is contained within the Financing Operations Act 1992 and the Obligations to Notify Certain Financial Operations Act 1996.

- In the **United Kingdom**, insurance companies can provide mortgage loans to both policy and non-policy holders. Insurance companies are authorised, registered and supervised by the Financial Services Authority (FSA).

The FSA reported that mortgage lending by insurance companies is only marginal in the UK. The exception to this is lifetime mortgages where there are two providers and these two account for approximately 1% of the total mortgage market.

There is no distinction between domestic and foreign insurance companies in regard to mortgage lending.

The same conduct of business rules apply for all institutions that provide residential mortgage loans (Financial Services Authority Handbook, Prudential Source Book for Mortgage and Home Finance Firms, and insurance intermediaries (MIPRU), chapter 4)

### 2.2.5 Observations on the regulation and supervision of insurance companies

From section 2.2.4 we can observe that mortgage provision is not one of the permitted “main activities” for insurance companies in eight of the fourteen Member States in which insurance companies can provide mortgage loans. In these eight Member States insurance companies can only engage in mortgage lending as part of their asset management activities. These Member States are:

- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- Germany
- Latvia
- Lithuania

In six Member States, insurance companies can provide mortgage loans as part of their main insurance business if they are registered and authorised to do so. These Member States are:

- Belgium
- Hungary
- Ireland
- Netherlands
- Sweden
- UK

### 2.2.6 Summary observations regarding the regulation and supervision of insurance companies in EU residential mortgage markets

In the EU27, 14 Member States allow insurance companies to provide residential mortgage loans, and 13 do not.

Of the 14 Member States that do allow mortgage provision by insurance companies, 8 allow mortgage provision only as part of an insurance company's asset management activities and 6 allow mortgage lending as part of the main insurance business.

## 2.3 Funding mechanisms available to OMLs

London Economics has also undertaken a detailed survey of the funding mechanisms available to OMLs across the EU.

### 2.3.1 Types of funding mechanisms defined in the study

For the purpose of this study, the various funding mechanisms that could potentially be used are defined in the following way:

- When a lender makes a mortgage loan, the loan is recorded as an asset on the firm's balance sheet. The liabilities incurred to fund the mortgage lending activity may include:
  - own equity and retained earnings (shareholder funds);
  - general debt securities other than those backed by mortgages, which include:
    - bonds
      - bonds issued by private placement <sup>25</sup>
      - bonds issued by public placement
    - commercial paper <sup>26</sup>
    - notes <sup>27</sup>
  - covered mortgage bonds (CMBs), which include:
    - CMBs issued by private placement
    - CMBs issued by public placement;

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<sup>25</sup> Private placement is when general debt securities are sold privately to expert or informed investors.

<sup>26</sup> Commercial paper is a short term debt instrument issued by a company. The main characteristics of commercial paper are: it is usually unsecured, it is short term (maturity and full repayment are usually within a year of issue in Europe and 290 days in the USA), it is usually less liquid than bonds - there is no real secondary market. Commercial paper is included in the EC definition of "Money Market Instruments" in Directive 2001/108/EC and 2004/39/EC.

<sup>27</sup> Notes are a contract by the issuer to pay a sum of money to the payee. The terms of the note include the principal amount, interest rate if any, and maturity date. The contract may also specify the provisions concerning the payees' rights in event of default by the maker. Notes are included in the EC definition of "Money Market Instruments", Directive 2001/108/EC and 2004/39/EC.

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- Loans:
  - from a parent company (which could be a credit or non-credit institution)
  - from other “financial institutions” and “credit institutions”. and,
- A lender may alternatively package-up the mortgages on their balance sheet and sell these assets to a Special Purpose Vehicle (SPV) or a Structured Investment Vehicle (SIV).<sup>28</sup> In this situation, the mortgage is transferred off the lender’s balance sheet onto the balance sheet of the SPV. Such instruments are called mortgage backed securities in this study.

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<sup>28</sup> A SPV or SIV (also sometimes called a Special Purpose Entity (SPE)), is a legal entity - a company, trust or partnership - created solely for a particular transaction or series of transactions. A SPV may buy long-term bonds or asset backed securities (including mortgage backed securities), and funds this activity by issuing short-term debt such as commercial paper or medium term notes. A lender may use a Special Purpose Vehicle in order to transfer “credit risk”, the risk of default of payment on the underlying asset (for example, the mortgage), and to allow the effective sale of future cash-flow (the future payments on the mortgage). A Special Investment Vehicle is a Special Purpose Vehicle, which tends to focus on the purchase of asset backed securities and more specifically mortgage backed securities while SPVs may engage in a broader spectrum of transactions (for example Eurobond transactions).

Table 3: Funding mechanisms available to OMLs

✓ = available, X = not available

Member State	Shareholder funds (own equity and retained earnings) funds	General debt securities				Covered mortgage bonds		Loans		Mortgage backed securities
		Bonds		Commercial paper	Notes	Covered mortgage bonds issued by private placement	Covered mortgage bonds issued by private placement	From the parent company	From other "financial institutions" and "credit institutions"	
		Bonds issued via private placement	Bonds issued via public placement							
Belgium	✓	✓	✓	✓	✓	X	X	✓	✓	✓
Bulgaria	✓	X	X	X	X	X	X	✓	✓	X
Cyprus	✓	X	X	X	X	X	X	✓	✓	X
Czech Republic	✓	X	X	X	X	X	X	✓	✓	X
Denmark	✓	X	X	X	X	X	X	✓	✓	X
Estonia	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Finland	✓	✓	X	✓	✓	X	X	✓	✓	X
Hungary	✓	X	X	X	X	X	X	✓	✓	X
Italy	✓	✓	✓	✓	✓	X	X	✓	✓	✓
Ireland	✓	X	X	X	X	X	X	✓	✓	✓
Latvia	✓	X	X	X	X	X	X	✓	✓	X
Lithuania	✓	✓	X	✓	✓	X	X	✓	✓	X
Luxembourg	✓	X	X	X	X	X	X	✓	✓	X
Malta	✓	X	X	X	X	X	X	✓	✓	X
Netherlands	✓	✓	✓	✓	✓	X	X	✓	✓	✓
Poland	✓	X	X	X	X	X	X	X	✓	X
Romania	✓	X	X	X	X	X	X	✓	✓	X
Slovenia	✓	X	X	X	X	X	X	✓	✓	✓
Spain	✓	X	X	X	X	X	X	✓	✓	X
Sweden	✓	X	X	X	X	X	X	✓	✓	✓
United Kingdom	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

Further points to consider when comparing funding mechanisms available to non-credit institutions are:

- Belgium: Mortgage backed securities may be used by OMLs, however as of September 2004 (the most up-to-date information the institutions were willing to provide), only one such operation had been undertaken by a non-credit institution. Mortgage covered bonds, while not prohibited in Belgium, are not used by OMLs because there is no covered bond market reflecting the fact that there is no covered bond law in Belgium.
- Bulgaria: OMLs that provide mortgage loans cannot also be an issuer of general debt securities, covered mortgage bonds or mortgage backed securities because the co-existence of the two activities would be considered to be accepting repayable funds from the public which is a credit institution activity within Bulgarian Law.
- Cyprus: the concept of “repayable funds from the public” has not been defined. The markets for general debt securities, covered mortgage bonds and mortgage backed securities are not developed in Cyprus and therefore OMLs are not using these types of funding mechanisms. Further, the Banking Law of 1997 defines “Banking Business” as “business carried on in the Republic or abroad from within the Republic consisting of lending of funds acquired from the assumption of obligations to the public, whether in the form of deposits, securities or other evidence of debt”.
- Czech Republic: all non-credit institutions are either subsidiaries of a foreign credit institution, or a foreign credit institution has acquired ownership of a domestic non-credit institution, and, therefore, non-credit institutions do not raise funds for mortgage lending from within the Czech Republic but rather via loans from their parent companies outside the Czech Republic.
- Denmark: The Financial Business Act has translated the term “covered mortgage bond” into Danish Law. Only credit institutions that are registered and authorised as “Mortgage Credit Institutions” can issue instruments called “mortgage covered bonds”. Other institutions may issue “ordinary” bonds backed by mortgages but these cannot be called “mortgage covered bonds”. One of the motivations for this distinction is that “mortgage covered bonds” have a higher level of security (i.e. backed by mortgages with low risk) as compared to ordinary mortgage covered bonds that may be backed by less secure mortgages and are not called mortgage covered bonds within the meaning of Danish law.

- Estonia: the Ministry of Finance reports that all sources of funding are available to non-credit institutions in Estonia. There are no specific regulations for the issuing of mortgage covered bonds or mortgage backed securities and therefore the Ministry suggests all would be available to non-credit institutions.
- Italy: the Interministerial Committee for Credit and Savings in decree of 19 July 2005 and 22 February 2006 has set certain limits for non-credit institutions to issue general debt securities via public placement. Issuance of bonds and other general debt securities account for approximately 0.7% of total liabilities of non-credit institutions. In 2006/2007 the percentage of new lending by non-credit institutions that was securitised was 10% but this includes other assets besides mortgage loans i.e. credit cards (reported by the Bank of Italy).
- The Netherlands: the Ministry of Finance reported that they know of non-credit institutions using loans from parent institutions and other credit and financial institutions, and mortgage backed securities. The use of mortgage backed securities is confirmed by the Dutch non-credit institution we have spoken to directly as part of this study. Further, the Ministry of Finance confirmed that legislation on mortgage covered bonds is under development.
- Poland: Credit Unions (non-credit institutions in Poland, see Chapter 24 for a description), can use own equity and savings from their members and funds (including loans) provided by the National Association of Cooperative Savings and Credit Unions.
- Romania: Ordinance No. 28, Provisions on lending activity performed by non-bank financial institutions, 2006, Chapter 5, article 9, indicates that “non-bank” financial institutions may be able to issue bonds if the offering is to “qualified investors” within the meaning of the Law on Capital Markets. The Bank of Romania reports, however, that OMLs are generally prohibited from using such funding mechanisms because of the way the article is interpreted by the Bank.

### 2.3.2 Observations from the funding mechanisms across Member States

Table 3 summarises the funding mechanisms available to non-credit institutions across the EU.<sup>29</sup>

Of the twenty one Member States that allow OMLs to provide mortgage loans, eleven restrict the funding mechanisms available to such institutions to shareholder funds and loans from other credit and financial institutions.

These Member States are:

- Bulgaria
  - Cyprus
  - Czech Republic
  - Denmark
  - Hungary
  - Italy
  - Latvia
  - Luxembourg
  - Malta
  - Romania
  - Spain
- Two Member States allow OMLs to use shareholder funds, loans and general debt securities, but not covered mortgage bonds or mortgage backed securities. These are:
- Finland which allows bonds issued via private placement, and commercial paper and notes if sold privately to an “expert investor”; and,

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<sup>29</sup> The Member States in which non-credit institutions cannot provide residential mortgage loans do not appear in Table 3.

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- Lithuania which allows the issue of general debt securities to informed buyers (private placement)
- A further three Member States allow OMLs to use in addition covered mortgage bonds and mortgage backed securities. These are:
  - Estonia
  - Poland; and,
  - the United Kingdom
- In Belgium, there are no covered mortgage bonds and therefore OMLs do not use such funding mechanisms. OMLs can use shareholder funds, general debt securities, loans and mortgage backed securities.
- In the Netherlands, OMLs can use shareholder funds, general debt securities, loans and mortgage backed securities, but at the present time not covered mortgage bonds. We have been informed that legislation is currently under consideration to allow issuance of such instruments in the future.
- In Ireland, Sweden and Slovenia OMLs can use shareholder funds, loans, and mortgage backed securities but not general debt securities or mortgage covered bonds.

### 2.3.3 Motivations for funding mechanism frameworks

In this section we discuss some of the motivations for limiting the funding mechanisms available to OMLs. It is important to note that many Member States did not provide details on motivation.

In the Member States in which funding mechanisms are limited to shareholder funds and loans, the motivations reported by the survey respondents for these restrictions are:

- Protection of consumers as non-credit institutions are not part of the deposit insurance schemes;
- Risk mitigation because non-credit institutions are subject to lower prudential supervision requirements as compared to credit institutions;

- Minimisation of barriers to entry because, if non-credit institutions are allowed to issue general debt securities, mortgage covered bonds and mortgage backed securities, then more stringent prudential requirements would be necessary. The more stringent prudential requirements would create a barrier to entry and limit competition in the mortgage markets.

In the Member States in which non-credit institutions may also issue general debt securities, the motivations for allowing them to do so are reported:

- In Finland, the ability to issue general debt securities via private placement depends on the application of the definition of “the public” to the sale. The Finnish Financial Services Authority has the power to determine the application of the definition on a case by case basis. The motivation for this approach is that private investors have greater knowledge and experience in financial markets as compared to the “public”, and therefore the risks to such informed purchasers, and the (ultimate) functioning of the financial system is minimal;
- In Lithuania, non-credit institutions may issue general debt securities via private placement as these informed purchasers have more complete information about the risks associated with such investments.

In the Member States in which non-credit institutions may also issue mortgage backed securities, the following is to be noted as:

- Belgium: the CBFA has not reported on the motivation for this approach to funding mechanisms. The CBFA does, however, report that non-credit institutions (e.g. institutions that have inscription as Mortgage Firms) typically use shareholder funds and loans from credit institutions;
- In the UK, the FSA takes a risk based approach to regulation. Therefore, while prudential rules apply to securitisation by credit institutions (FSA Prudential Handbook for Banks, Building Societies and Investment Firms, BIPRU 9), such rules do not apply to securitisation by non-credit institutions because the risk to the individual consumers and the market is low (*FSA Consultation on a Mortgage Sourcebook, 2001*). Instead the approach is to ensure a rule is designed to ensure the legal and audit certainty of such asset transfers.

### 2.3.4 Summary observations regarding funding mechanisms available to OMLs

In the EU27, all the 21 Member States, in which OMLs can provide residential mortgages, allow such institutions to use shareholder funds.

Twenty Member States allow OMLs to use loans from a parent company, and 21 allow OMLs to use loans from “financial institutions” (as defined in EC Directive 2006/48), and credit institutions other than a parent company.

Seven Member States allow OMLs to use general debt securities.

Two Member States allow OMLs to use covered mortgage bonds. While 7 allow OMLs to use mortgage backed securities.

## 2.4 Market shares of non-credit institutions

In this section, an overview of non-credit institutions’ market shares in EU mortgage markets is presented. We again distinguish between OMLs and insurance companies.

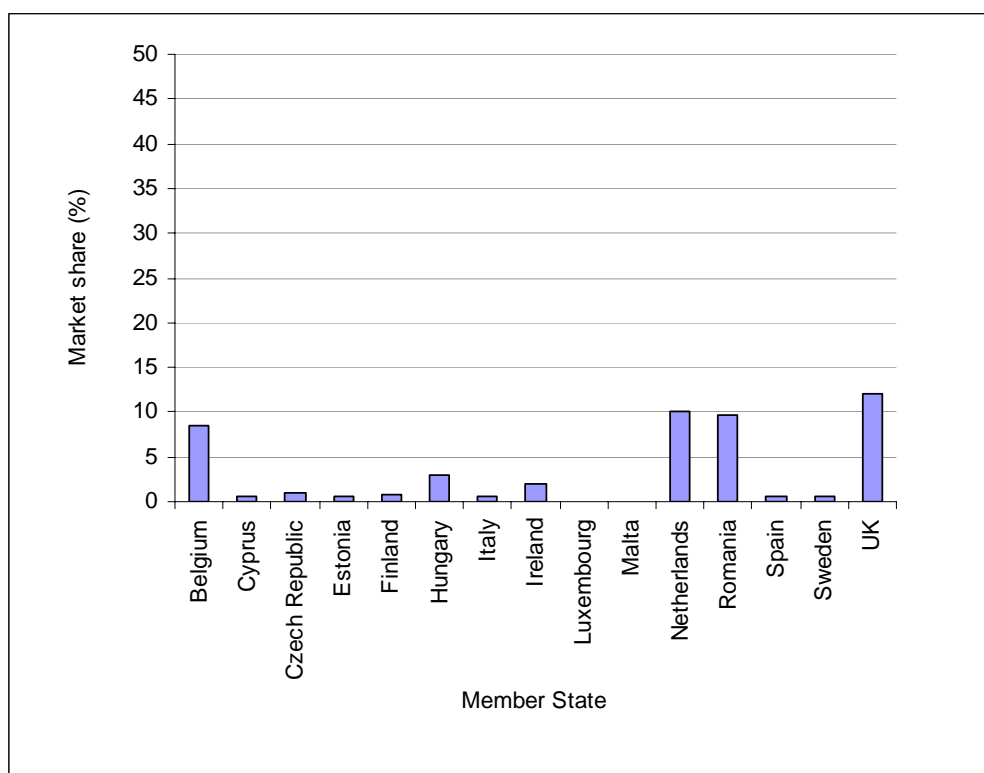
### 2.4.1 National markets

#### 1. OMLs

Information on the market share of OMLs in residential mortgage markets across the EU is limited. Many countries do not require OMLs to be registered and authorised with the national financial regulator. Other countries may require registration and authorisation but do not collect data on the activities of such institutions. In the Member States where data is not currently available, we requested the respondents provide an informed estimate.

Figure 4 presents the market shares of OMLs in 2006 in the Member States in which the regulatory or supervisory authorities provided data or informed estimates. Below Figure 4 we provide a picture of the overall situation in the EU.

**Figure 4: Market share of OMLs in national residential mortgage markets 2007**



Note: The market share for Belgium is for the year 2006. Hungary reported an estimate for 2006 (3%) and 2007 (4%). The UK reported a market share of 12% for 2006 and 2007. The Member States that reported OMLs as marginal players in the mortgage market are shown with a market share of 0.5%.

The market share of OMLs in the EU Member States' residential mortgage markets is "small to very small" as compared to the market share of credit institutions.

The largest market share for OMLs is in the UK, in which the Financial Services Authority reported a market share of 12% of new loans advanced in 2006 and 2007 for OMLs as compared to 88% for credit institutions.

In the Netherlands and Romania, the OMLs' market share of total outstanding residential mortgage loans is 10% and 9.7% in 2007 respectively, while in Belgium the market share of OMLs is 8.4%.<sup>30</sup> In Finland, the market share is 0.7% and this was constant over the period 2000 – 2007.

In Hungary the market share increased by 1% between 2006 and 2007, from 3% in 2006 to 4% in 2007.

The other 9 Member States that provided data or estimates all have a market share for OMLs of 1% or less; in the case of two of these nine Member States, Luxembourg and Malta, the financial regulators reported that OMLs have a 0% market share.

Member States for which we could not obtain any data or estimate are:

- Bulgaria
- Denmark
- Latvia
- Lithuania
- Poland
- Slovenia

In Austria, France, Germany, Greece, Portugal and Slovakia mortgage providers need to be registered and authorised as credit institutions.

### 2.4.2 Summary observations regarding the market share of OMLs in EU residential mortgage markets

Of the 21 Member States in which OMLs can provide residential mortgages, officials or industry representatives in 15 Member States were able to provide data or estimates of OMLs' market share.

Of these 15 Member States, 3 reported a market share for OMLs of 10% or greater in their respective national residential mortgage markets. Two reported a market share for OMLs of between 5% and 9%, and 8, reported a market share of between 0.5% and 4%. In addition, two Member States reported a market share of 0%.

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<sup>30</sup> The data for Belgium is for the year 2006, the most recent data currently available.

## 2. Insurance companies

The market share of insurance companies in residential mortgage markets was not included in the questionnaire to survey participants. However, where possible, we have collected data and estimates in follow-up communications with the respondents.

- In Belgium, data is published by the CSSF and, in 2006, insurance and pension companies with registration and authorisation to provide mortgage loans accounted for 4% of total outstanding mortgage loans.
- The Cyprus Superintendent of Insurance reported that, even though in principle insurance companies can provide mortgage loans to individuals, it is very unlikely that they would do so.
- The Czech Insurance Association reported no known instances in which insurance companies have provided mortgage loans in the Czech Republic, and the Czech National Bank reported that insurance companies would only provide insurance loans in very exceptional circumstances.
- The UK FSA reports that mortgage lending by insurance companies is only marginal in the UK. An exception to this is lifetime mortgages where there are two providers and these two companies account for 1% of the total mortgage market.

For the remaining ten Member States in which insurance companies can provide mortgage loans, no data is available on the market shares of such institutions.

### 2.4.3 Cross-border activity

The UK Financial Services Authority was the only Member State regulator that could provide information on the cross-border activity of non-credit institutions at this time. According to their data, in the case of mortgage loans made by non-credit institutions in 2006, 64% of these loans were provided by foreign non-credit institutions; in 2007 this figure was 59%.<sup>31</sup> In comparison, in the case of mortgage loans made by credit institutions, 12% of these loans were from foreign credit institutions in 2006 and 15% in 2007.

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<sup>31</sup> Many of these OMLs are UK subsidiaries of US financial services firms that operate on global scale.

## 3 Survey of OMLs currently providing residential mortgage loans in the EU

In this chapter the findings from a survey of individual OMLs across the EU are reported. The sample size is ten OMLs from 7 Member States. The definition of OMLs is the same as that used throughout this study. Namely, all institutions active in the financial sector that are not registered and authorised as credit institutions according to the domestic regulatory and supervisory frameworks and are not insurance companies, and which provide mortgage loans on a commercial basis.

As noted previously, credit institutions are defined in Article 4 of EC Directive 2006/48. Further, some OMLs, or “financial institutions” within the meaning of Article 24 of the same EC Directive, can benefit from the EU banking passport.<sup>32</sup> The OMLs surveyed in this study do not benefit from the EU passport within Article 24 of EC Directive 2006/48.

Further, and also noted previously, the non-credit institutions that provided answers to our questionnaire are not identified because some of the information provided by participants is commercially sensitive.

### 3.1 Sample selection

As noted above, ten OMLs have been surveyed. These firms were selected for inclusion in the survey on the basis of the following criteria:

1. They are “reasonably sized” participants in their home member State’s mortgage market.<sup>33</sup>
2. They are non-public organisations with shareholders.<sup>34</sup>

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<sup>32</sup> These Articles are reproduced for the reader in the legal appendix to this report.

<sup>33</sup> “Reasonable size” is a subjective measure, and is not linked to a minimum or maximum percentage share in the home or foreign mortgage market. We employ this subjective measure to exclude those institutions that are very small, and are therefore not likely to be participating in or considering cross-border mortgage provision. The two non-credit institutions in Belgium are “small”. This is because most non-credit institutions in Belgium are small. We have, however, identified two Belgian non-credit institutions, one institution which has undertaken cross-border provision of residential mortgages in the past, and one located near the border of with France which has provided information on perceived barriers to the cross-border provision of residential mortgages.

<sup>34</sup> We include this criterion to remove from the sample government owned or public mortgage lenders that are not credit institutions.

3. The selected institutions are distributed across EU Member States.

## 3.2 OMLs sample

Our sample includes:

- Four OMLs that currently provide residential mortgage loans cross-border in the EU;
- One OML that has undertaken cross-border provision in the past but which has now stopped this activity;
- One institution that has undertaken feasibility studies into the cross-border provision of mortgages but has not elected to proceed with the activity;
- Four OMLs that have not undertaken cross-border provision but which were willing to discuss their opinions in regard to the cross-border provision of residential mortgages.

## 3.3 The questionnaire to non-credit institutions

The questionnaire has been designed to investigate the following issues:

- The size or volume of cross-border activities by non-credit institution mortgage providers.
- The method of cross-border provision:
  - 'Cross-border trade': A situation where the lender is located in country X, but the borrower and property (the purchase of which the loan is provided for) are located in country Y. And, the lender has no physical presence in country Y either through branches, subsidiaries or distribution agreements with local brokers or other firms.
  - 'Holiday home' purchase: A situation where the lender is located in country X and the relevant property is located in country Y. But the borrower is normally resident in country X. (The property may not strictly be a holiday home)
  - 'Cross-border entry via subsidiaries': A lender with headquarters in country X uses a subsidiary in country Y, either via merger or acquisition, and conducts its mortgage business through this subsidiary.

- 'Cross-border entry via branches': A lender with headquarters in country X opens branches in country Y and conducts its mortgage business through these branches.
- 'Cross-border distribution agreements': A lender with headquarters in country X agrees with a broker or other financial institution in country Y that the latter will sell the lender's mortgage products in country Y.
- The funding mechanisms used by the institutions for both domestic and cross-border mortgage lending.
- The type of mortgage products provided by the institutions and the type of borrowers to which the institutions are lending.
- The barriers encountered by non-credit mortgage providers currently engaged in, or planning to engage in, cross-border provision as well as barriers encountered by institutions that have explored the possibility of doing so but which subsequently elected not to enter because of problems encountered.
  - In particular, the potential barriers arising in cases where cross-border provision is dependent on acquiring the status of a credit institution in the target Member State.
  - In addition, other barriers including national legislations and regulations, supervisory frameworks, national market practices, potential profit margins on mortgage products, cultural and language differences, and any other barriers mentioned by the institutions.

## 3.4 Findings on the cross-border provision of mortgages by non-credit institutions

### 3.4.1 Aggregate size of mortgage lending by non-credit institutions

The value of mortgage loans provided in 2007 by the OMLs included in our survey range from € 500 million to € 15 billion. Within this range four institutions reported mortgage loans between € 500 and € 700 million, three reported loans between € 3 and € 6 billion, and one reported loans of € 15 billion. Two institutions declined to provide this information.

### 3.4.2 Value of cross-border mortgage provision

One institution that currently provides mortgage loans cross-border was willing to provide details on the value of these loans. This institution provides mortgages cross-border into two EU Member States besides its home state and one non-EU country. This institution reported that five percent of mortgages (in value) were provided cross-border (within the EU) in 2000 and this increased to ten percent by 2007.

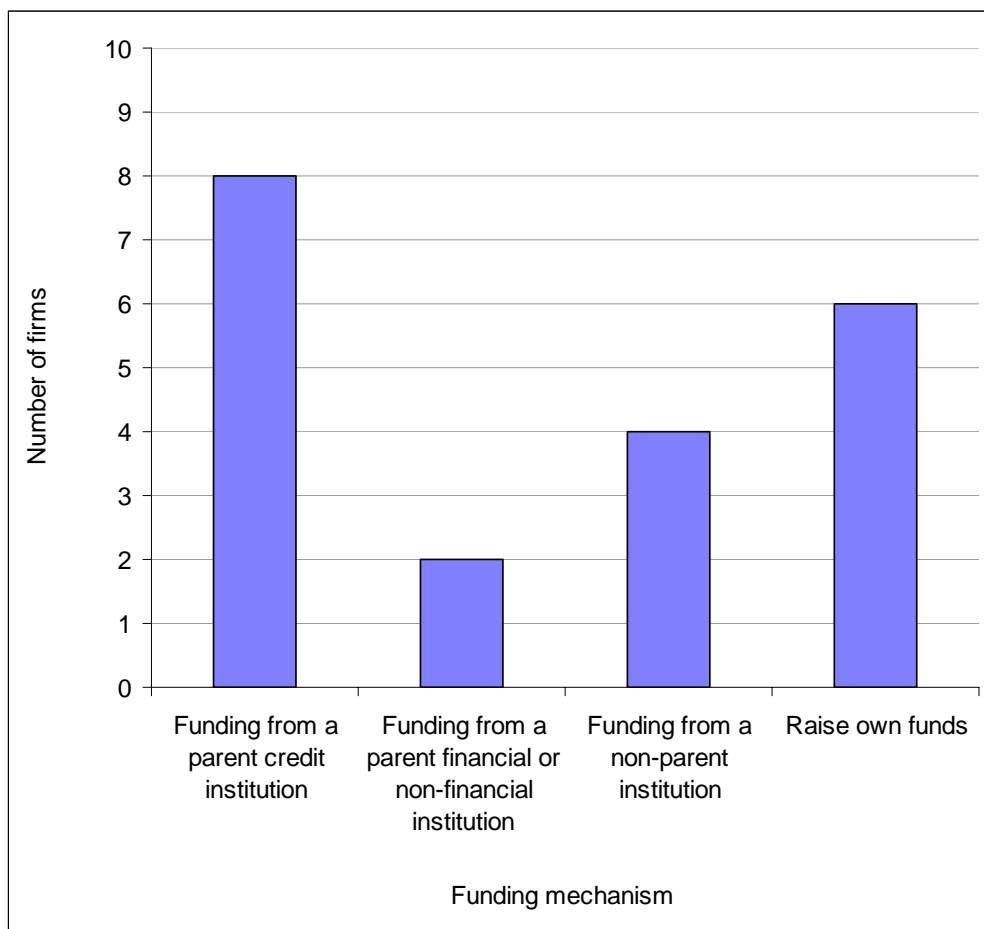
A second institution that provides cross-border loans within the EU reported that this activity was only minor but was not willing to provide an estimate due to expected imminent changes in its ownership structure due to current conditions in international financial markets.

Two other OMLs in the survey have been active in the cross-border provision of mortgages both within the EU, and internationally beyond EU borders. However, these two institutions also declined to provide detail of the cross-border provision of mortgages at this time, because they are undergoing significant structural change due to the decrease in availability of loans (both to themselves and to their parent company) from other credit and financial institutions and the decline in securitisation opportunities internationally.

### 3.4.3 Funding mechanisms

Figure 5 summarises the main funding mechanisms used by the OMLs in our sample.

**Figure 5: Funding mechanisms used by the OMLs**



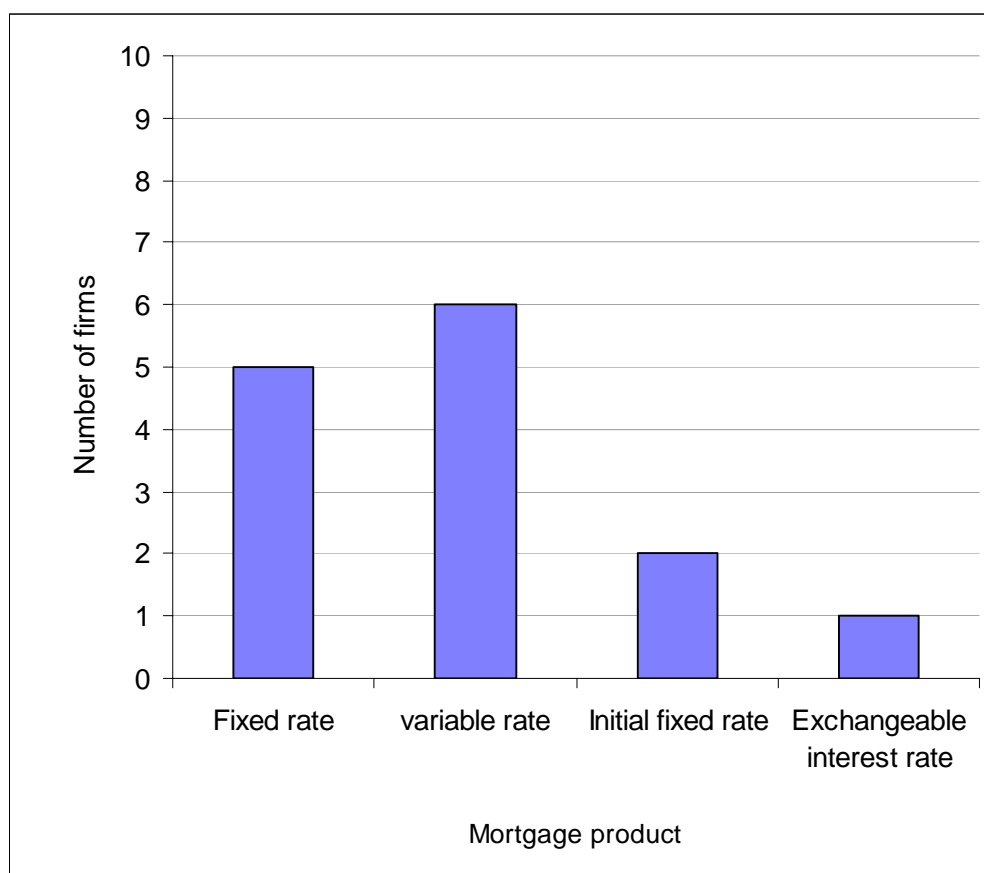
Note: Eight out of the ten OMLs were willing to provide information on their funding mechanisms.

All institutions surveyed reported the use of loans from parent companies or other institutions as the main sources of funding. Five out of the ten institutions reported the use of mortgage backed securities in the past. These institutions, however, are not currently using mortgage backed securities as the opportunities for securitisation in international markets are almost all gone. The institutions also reported that it is becoming more difficult for them to secure loans from other credit and financial institutions. Many did report, however, that they have well established lines of credit with larger institutions.

### 3.4.4 Type of mortgage products

Figure 6 reports the type of mortgage products provided by the non-credit institutions. Seven institutions were willing to provide details on their mortgage products for the year 2007. No institutions surveyed reported the provision of capped, guaranteed or mixed interest rate mortgages.<sup>35</sup>

**Figure 6: Mortgage products provided by the OMLs in 2007**



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Note: Seven of the ten institutions surveyed were willing to provide information on their mortgage products.

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<sup>35</sup> The definitions of the mortgage products mentioned in this study are provided in a Glossary in the appendix to this report.

Six of the seven firms that responded to this survey question, reported that they provide variable rate mortgages. All of these institutions reference their variable rate mortgages to either an interbank lending rate, a central bank rate or a government bond rate. Two institutions reported that they provide discounted variable rate mortgages.<sup>36</sup> One institution reported that they provide semi-exclusive variable rates mortgages<sup>37</sup>

Two institutions reported that they provide initial fixed interest rate mortgages. One of these institutions reported that 11% of their mortgages are fixed for 10 years and the subsequent variable rate is revised every 5 years. The other institution reported that they provide these mortgages to a limited extent, with initial fixed periods of 1 - 2 years or 3 - 5 years.

Three institutions reported they provided fixed-rate mortgages. One of these institutions removed this product from the market in mid 2008 due to volatility in the interest rate swap markets. Two institutions continue to provide fixed-rate mortgages, and of these two, one reports that 85% of its mortgages are fixed for more than 10 years, and the other reports that 100% of its mortgages are fixed. The institution for which 100% of its mortgages are fixed-rate, approximately 10% are 5 - 10 year mortgages, 90% are greater than 10 years, and of this 90%, 50% are 20 year mortgages which is the maximum available from this lender.

One institution reported that they provide exchangeable-rate mortgages to a large extent.<sup>38</sup>

Therefore, in this survey, the most common form of mortgage product provided by OMLs is variable-rate mortgages.

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<sup>36</sup> Discounted interest rate means interest is charged at a variable rate that applies to the mortgage, less a discount for a set period. The rate, and the monthly payment, will vary up or down whenever the variable rate changes, but will remain below the variable rate during the discounted period.

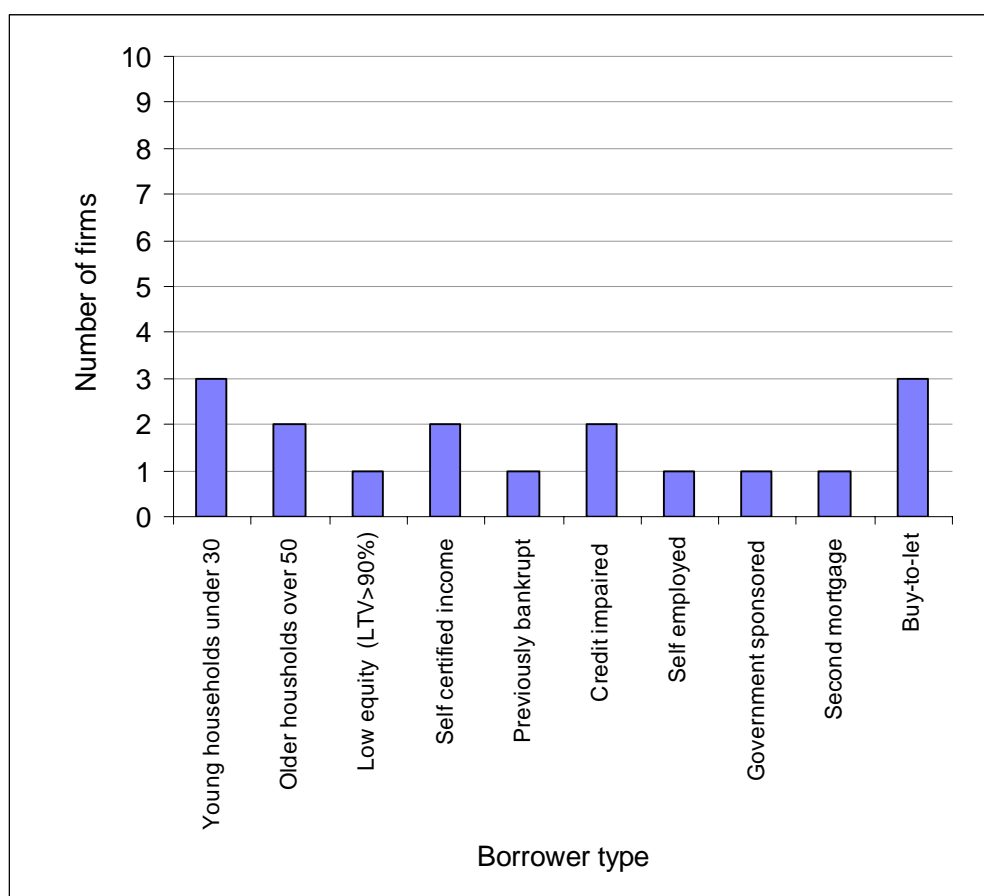
<sup>37</sup> Semi-exclusive rates are interest rates available to limited groups that belong to mortgage clubs or other networks as determined by the lender.

<sup>38</sup> Exchangeable interest rate mortgages are residential mortgages for which at a given maturity the borrower can swap the variable interest rate with a fixed interest rate or vice versa.

### 3.4.5 Type of borrowers

In this section we report the type of borrowers to which the OMLs in this survey provide residential mortgage loans. Only five OMLs were willing to report on borrower type at this time.

**Figure 7: Type of borrower to which OMLs provide residential mortgages in 2007**



Note: Five out of ten OMLs were willing to respond to this question. These categories are not necessarily mutually exclusive. For example, a self certified borrower could take out a second mortgage.

The most common types of borrower to which OMLs, having participated in this survey, lent in 2007 was buy-to-let and young households.

Of the three institutions that provide mortgages to young households, one reported that 24% of their mortgage loans were to this group, one reported that the majority of their loans are to borrowers between 35 and 45 years of age, and the third reported they lend to this group only to a limited extent.

The three institutions that lend to buy-to-let borrowers, one of these is a specialist buy-to-let lender and therefore all their products were provided to this group (albeit in 2008 they are providing no new buy-to-let mortgages). The second institution reported that 5% of their mortgages are buy-to-let and the third reported only limited provision to this group.

The second most common types of borrower are older households over 50 years of age, self certified income, credit impaired and self employed.

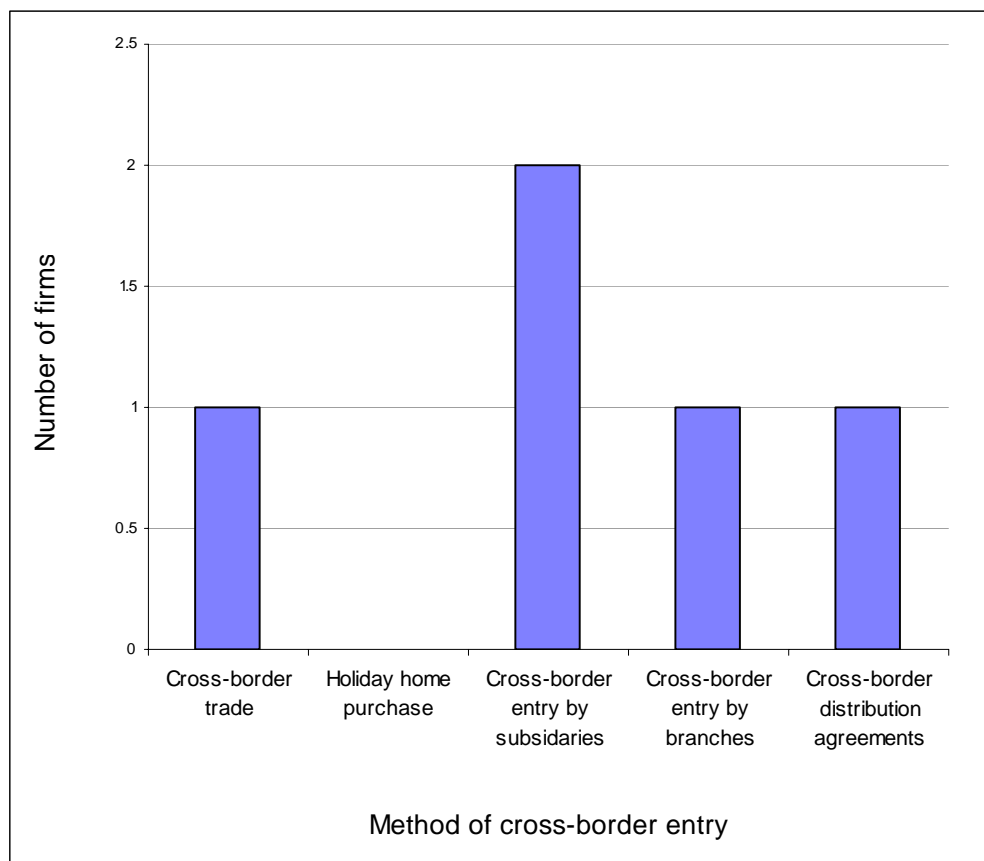
Only one institution in the survey reported that they provide loans to low equity borrowers. And, only one institution was providing mortgages to government sponsored borrowers and one to second mortgagees.

### **3.4.6 Method of cross-border provision**

In this section the methods of cross-border mortgage provision by the OMLs in our survey that are currently, or have in the past, undertaken cross-border mortgage provision is presented.

Figure 8 provides a summary of the methods of cross-border provision as defined in this study. We then provide a brief analysis of the comments made by the respondents.

Figure 8: Method of cross-border provision



Note: Five of the ten institutions surveyed were willing to answer this question

The most common form of cross-border trade by the institutions that were willing to respond to this survey question is “Cross-border entry by subsidiaries”.

The reported motivations for the establishment of subsidiaries were the following:

- In the Member States in which the national regulatory and supervisory frameworks require institutions to be registered and authorised as credit institutions in order to provide residential mortgages, even if the institution (that is entering) has credit institution status in at least one of these countries, the differences in the legal frameworks for credit institutions across Member States leads to a situation in which it is considered (by the institution) to be

less expensive in terms of cost and risk management if the institution is registered and authorised with the financial regulator in each Member State of entry, instead of using the EU Banking Passport. This is because it is considered 'better' to employ indigenous staff to conduct the businesses, instead of training staff in the home country to understand and conform to the regulatory and supervisory frameworks in the "foreign" Member State.

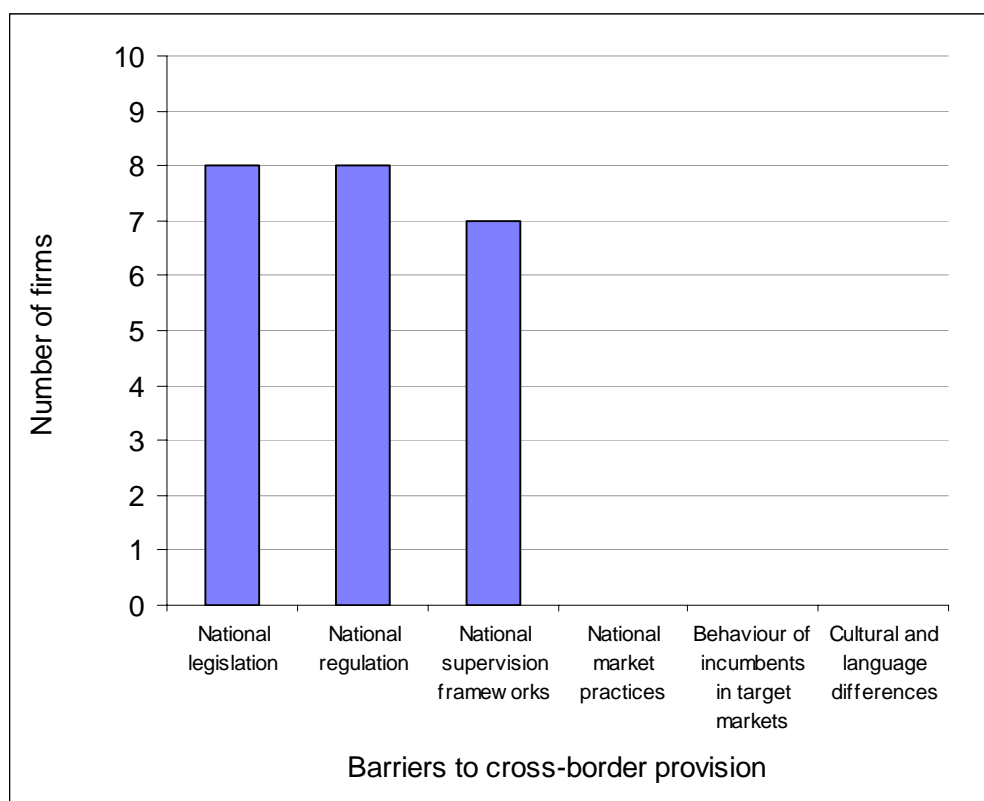
- In Member States in which it is not necessary to be registered and authorised as a credit institution, the institution will establish a local business and register this business with the national financial regulators as a non-credit institution. The motivation for this approach is, again, to use indigenous staff familiar with the national regulatory and supervisory frameworks. However, in these Member States it is cheaper to provide consumer credit including residential mortgages without the requirement to be registered and authorised as a credit institution. Capital requirements are lower for non-credit institutions as compared to credit institutions. This in turn allows the lender to provide consumer credit at a lower cost as compared to a situation where it is registered and authorised as a credit institution. The provision of residential mortgages by cross-border distribution agreements was attempted by one of the OMLs. This activity proved unprofitable and was stopped. The reason for the poor performance was lack of knowledge of the foreign market in regard to the different regulatory and supervisory frameworks for consumer credit provision, and the types of borrowers and products in the market of entry.

Therefore, from this survey, the most prevalent form of cross-border entry is by subsidiaries, and the reason for this is the differences in the regulatory and supervisory frameworks across Member States which means that many OMLs consider it more risky to enter using branches.

### 3.4.7 Barriers to cross-border provision

In this section the main barriers to cross-border residential mortgage provision are discussed. For institutions that are currently not providing mortgages cross-border, we asked for them to report on perceived barriers.

**Figure 9: Barriers to cross-border provision of mortgages in the EU**



Note: All institutions were willing to provide a response to this survey question.

The two most common responses in regard to the barriers to cross-border provision of residential mortgages by OMLs were differences in national legislation and regulation. The second most common was differences in national supervision frameworks.

The main barriers to cross-border mortgage provision as reported by the questionnaire respondents are the following:

- The differences in the regulatory and supervisory frameworks for “regulated activities” between Member States, and the costs (including risks) of employing non-indigenous staff to understand and conform to the legal frameworks across different Member States. This leads to a situation where the institutions will acquire domestic subsidiaries that conform to the national legislations and regulations of the target Member State and employ indigenous staff that understand the domestic legal frameworks.
- The classification of “financial institution” as defined in Directive 2006/48/ED is not harmonised across the EU such that the by-laws governing the activity of an institution cannot be directly transposed from one Member State to another. Activities that a financial institution can undertake in the home market may not be allowed in the target market and therefore it is necessary to set-up a local subsidiary in the target market with share capital outside of the EU passport framework.
- The definition of a “credit institution” is not harmonised across the EU. For example, there is no harmonisation of what are regulated activities and therefore which activities require an authorisation (licence) in the different Member States. Having credit institution status in one Member State does not mean this authorisation “fits in” with the authorisation in another Member State.
- Due to the non-harmonisation of authorisations and the differences in regulated activities across Member States, new entrants do not know what products their authorisations will allow in the Member State of entry.
- “Back-office” adaptations and the need for software to be adapted to conform to the different regulations across Member States. This can be a significant cost.<sup>39</sup>
- Differences in the potential margins on mortgage products across target markets. In particular, differences in the regulatory provisions that stipulate the number of months a loan may be in arrears, and differences in the percentage of loans that can be in arrears in any one month. This regulation impacts upon institutions’ pricing of credit (including mortgages), and impedes their ability to compare pricing and therefore profitability between Member States. In other words,

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<sup>39</sup> The term significant is a subjective measure chosen by the respondent. The fact the respondent used the term significant means they consider it to be a barrier to them when considering entry into other Member States, but it may not be the most important barrier in any choice they make.

the lenders cannot compare “like with like” across EU credit markets (including mortgage markets), and therefore their entry (and exit) decisions are made more difficult.

- Differences in the type of assets that the different Member States’ national regulations permit to be used to collateralise a mortgage loan. This barrier was particularly relevant to the Belgian institutions considering cross-border provision into France.
- One OML reported that the constraint on “deposit-taking” does not limit the institution’s ability to provide mortgage loans. Non-deposit taking status is not a determining factor in business strategy. The regulatory requirements in each Member State determines how the institution provides mortgage loans cross-border, e.g. In Germany institutions must be credit institutions but in the UK it is possible to be a non-credit institution.

### 3.4.8 Concluding comments from the non-credit institutions

In this chapter we reproduce some of the comments made by the non-credit institutions.

One of the main conclusions from the OMLs is that gaining credit institution status does not reduce the barriers to cross-border mortgage provision in the EU. Even with credit institution status, and therefore the benefit of the EU Banking Passport, the differences between Member States’ credit institution authorisations (or licences) - and therefore the regulations and supervisions - make it very difficult to engage in cross-border trade. These regulatory and supervisory differences have meant institutions that have credit institution status in one Member State have elected not to use the EU Banking Passport but instead to acquire indigenous institutions (either credit or non-credit) in the target Member State.

As reflected in the comments from the OMLs, the main issue for the cross-border provision of mortgages for both credit and non-credit institutions is differences in the legal frameworks between Member States, and the introduction of passporting does not necessarily reduce this barrier:

*“The differences in the regulatory and supervisory frameworks across the EU make it too risky to provide mortgages cross-border and therefore our business made a strategic decision to acquire indigenous mortgage lenders [in the target Member State] and to use indigenous staff familiar with the indigenous legal frameworks”*

*“Harmonise the definition of what a credit institution is across Member States”*

*“Harmonise what are regulated activities and therefore which activities require a licence across Member States”*

*“It is easier to provide mortgages into Australia than cross-border provision in the EU”*

## 4 Conclusions

Non-credit institutions engaged in residential mortgage lending are either OMLs or insurance companies.

Insurance companies can provide residential mortgage loans in fourteen Member States. In eight of these, insurance companies can provide residential mortgages as part of their asset management activities only. Whereas, in the six other Member States, insurance companies can provide mortgage loans as part their “main activities”.

OMLs can engage in residential mortgage lending in twenty one Member States. However, OMLs are only small players in many Member States’ residential mortgage markets, and due to the current changes in the sector the number of OMLs operating in EU residential mortgage markets is declining.

For OMLs that do not benefit from the mutual recognition of services within the meaning of article 24 of EC Directive 2006/48, the main conclusion from this study is that the legislative and regulatory frameworks differ significantly across the EU. These regulatory differences create barriers to the cross-border provision of residential mortgages.

In the situation where a fully fledged single market in residential mortgage lending was to be established, the differences in allowable sources of funding for OMLs’ mortgage lending may create an un-level playing field. In some Member States OMLs have access to many sources of funding but in others, funding sources are limited to shareholder funds and loans.

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## 5 Austria

### 5.1 Role of non-credit institutions in Austria

In this chapter we report the findings from the survey of the Austrian Federal Ministry of Finance and the Austrian Financial Market Authority. This summary has been verified by the Austrian Ministry of Finance.

#### 5.1.1 Ability of non-credit institutions to provide residential mortgage loans

In Austria all institutions that provide residential mortgage loans must be registered as credit institutions.

Insurance companies cannot provide mortgage loans in Austria.

The regulatory and supervisory regimes for credit institutions are set out in the Austrian Federal Banking Act 532/1993 with amendments up to 70/2008.<sup>40</sup>

The Austrian Ministry of Finance reported that if non-credit institutions want to provide mortgage loans in Austria, then they should be regulated and supervised in the same way that credit institutions are regulated and authorised. In effect, they would be required to be credit institutions. The motivation for this approach is to avoid the duplication of regulation and supervision regimes for comparable businesses.<sup>41</sup>

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<sup>40</sup> An unofficial English language translation of the Act is available from ([http://www.fma.gv.at/cms/site//attachments/0/4/5/CH0348/CMS1195144574023/bwg\\_108\\_2007\\_engl\\_version\\_18\\_02\\_08.pdf](http://www.fma.gv.at/cms/site//attachments/0/4/5/CH0348/CMS1195144574023/bwg_108_2007_engl_version_18_02_08.pdf)). The official text in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt - BGBl)

<sup>41</sup> This response is the same as that provided by the Ministry of Finance, the Ministry of Justice and the Ministry of Social Welfare to the Commission's Working Paper on Mortgage Credit 2006.

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## 6 Belgium

### 6.1 Role of non-credit institutions in Belgium

In this chapter we report the findings from the survey of the Belgian Banking, Finance and Insurance Commission (CBFA) and the Union Professionnelle du Cr dit.

Information reported below has been collected through targeted discussions with representatives from the CBFA and the Union Professionnelle du Cr dit, and from the CBFA website. This summary has been verified by the CBFA.

#### 6.1.1 Ability of non-credit institutions to provide residential mortgage loans

In Belgium, institutions that provide mortgage loans do not need to be registered as credit institutions. All mortgage providers do, however, need to be registered and authorised as Mortgage Firms by the CBFA. This means which those firms that are registered as Mortgage Firms can be credit institutions and non-credit institutions.

Insurance companies that wish to provide mortgage loans must also be registered and authorised as Mortgage Firms with the CBFA.

#### 6.1.2 Regulatory and supervisory regimes for non-credit institutions

In Belgium, the Law in Relation to Mortgage Credit 1992 provides the legal provisions governing the activities of all institutions that provide mortgage loans.

In particular, Articles 43 and 43bis of the Act govern the registration and authorisation of these firms. Article 43 requires all Belgian mortgage providers to gain an "inscription" or an "enregistrement" (registration) from the CBFA.

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In the situation where a credit institution under the law of another Member State of the European Community, and which has the right under their national law to grant mortgage credits in their home state, then Article 43bis removes the requirement to seek an inscription from the CBFA. In the latter case, the procedures provided by articles 25, 26 and 28 of the Banking Directive 2006/48/EC apply. Instead the foreign credit institution must seek “registration” with the CBFA. This exclusion does not apply to foreign firms which do not have credit institution status in their home country. In the case of non-credit institutions from other EU member States, such institutions must seek “inscription”.

The CBFA is responsible for supervising mortgage firms that are credit institutions and insurance companies and ensuring they comply with the requirements set out in the Law on Mortgage Credit 1992. Mortgage firms that are non-credit institutions, except for insurance companies, are not currently subject to prudential supervision. The CBFA reports that a draft bill is being prepared which will subject all mortgage firms to prudential supervision.

### 6.1.3 Funding mechanisms available to non-credit institutions

In Belgium, non-credit institutions that have inscription as a Mortgage Firm can use general debt securities (bonds not backed by mortgages and issued by both private and public placement, commercial paper and notes), loans (from both a parent company and other credit and non-credit institutions) and mortgage backed securities.

There are no specific legal provisions regarding funding mechanisms available to non-credit institutions for their mortgage lending, therefore general rules apply.<sup>42</sup> Namely, all companies that issue bonds or equity must comply with general consumer law or general stock exchange regulations.

Non-credit institutions typically, however, use own equity and loans from credit institutions to fund their mortgage lending.

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<sup>42</sup> Non-credit institutions must be inscribed as Mortgage Firms, but there are no legal provisions specifically in regard to funding mechanisms used by Mortgage Firms.

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### 6.1.4 Size of mortgage lending activity by non-credit institutions

In 2006, the size of the overall mortgage market was €114.1 billions. The market share of insurance companies and pension funds was 4%. The market share of non-credit institutions that are Mortgage was 8.4%.<sup>43</sup>

The CBFA website provides a list of all mortgage firms that have gained “inscription” or “registration” to provide mortgage loans in Belgium. The list of ‘other enterprises’ which are those institutions not registered as credit institutions with mortgage firm inscription, in other words these are the non-credit institutions, is reproduced in Annex 1 to this report. The list of insurance and pension firms that have inscription as mortgage firms is (also) reproduced in Annex 1.

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<sup>43</sup> Source: CBFA statistics ([http://www.cbfa.be/fr/hk/stat/pdf/vbs\\_srd\\_2006.pdf](http://www.cbfa.be/fr/hk/stat/pdf/vbs_srd_2006.pdf))

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## 7 Bulgaria

### 7.1 Role of non-credit institutions in Bulgaria

In this chapter we report the findings from the survey of the Bulgarian National Bank (BNB). This summary has been verified by the Bulgarian National Bank.

#### 7.1.1 Ability of non-credit institutions to provide residential mortgage loans

In Bulgaria, institutions that provide residential mortgage loans do not need to be registered as credit institutions.

In Bulgaria, non-credit institutions are “Financial Institutions” (in the meaning of Article 4 (5) of Directive 2006/48/EC) and may carry out lending business (as their principle business) using funds other than “publicly accepted deposits” (deposits from the public) or “other repayable funds”. The legislation applicable to this activity in Bulgaria is the Law on Credit Institutions (LCI, article 3 (1)), which was published on 21 July 2006, and which transposed the EC directive mentioned above. Financial institutions (non-credit institutions) are required to “notify” the Bulgarian National Bank (BNB) within 14 days of commencing such operations (Article 3 (2), (3), Law on Credit Institutions).

The LCI does not distinguish between domestic and foreign non-credit institutions. The provisions concerning the freedom of establishment and the freedom to provide services (mutual recognition regime) under article 24-28, Directive 2006/48/ EC are completely transposed and are subject to article 24-27, LCI.

In Bulgaria, insurance companies cannot provide residential mortgage loans, or any other loans, as part of their business, in accordance with the Insurance Code.

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### 7.1.2 Regulatory and supervisory regimes for non-credit institutions

The LCI defines “financial institutions” (non-credit institutions) and requires such institutions to notify the BNB. Beyond the LCI, there exist no (other) special regulations and/or prudential supervisions for non-credit institutions in relation to mortgage lending in Bulgaria, but the BNB may require non-credit institutions to provide, at any time, information on their legal status and activities (art. 3 (3), LCI). Residential mortgage lending activities by credit institutions, however, are regulated by the provisions for providing credits (art. 58-61, LCI).

According to article 3 (5), Law on Consumer Credit, the requirements regarding the advertising of consumer credit products set out in article 15, of the Law on Consumer Credit, also apply to credit agreements which are, 1) secured with mortgage on immovable property and, 2) intended for the purpose of acquiring or retaining property rights in land or in an existing or projected building, as well as for renovating or improving an immovable property.

There exists a Law on Mortgage-backed Bonds, which applies to banks (credit institutions) only. This regulates the terms and procedure for the issuance and redemption of mortgage covered bonds. Initial public offerings and dealing in secondary markets of mortgage covered bonds are subject to the provisions of the Law on Public Offering of Securities and the Law of Markets in Financial Instruments 2005. The activities undertaken in the bond markets are beyond the competence of BNB and are supervised by an independent Financial Supervision Commission.<sup>44</sup>

### 7.1.3 Funding mechanisms available to non-credit institutions

Non-credit institutions are allowed to use any funds other than “publicly accepted repayable funds” (repayable funds from the public), which includes the acceptance of deposits and issuance of bonds or other debt securities, in a manner other than the procedure under the Law on Public Offering of Securities.

The definition of repayable funds from the public as provided in § 1. (1), item 3, Additional Provisions of LCI is reproduced here:

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<sup>44</sup> Further information on these activities, which are beyond the scope of this study, are available at [www.fsc.bg](http://www.fsc.bg).

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*'Publicly accepted deposits or other repayable funds' shall be the acceptance of deposits or other repayable funds of more than 30 persons other than banks or other institutional investors. Bonds or other debt securities issued in a manner other than the procedure under the Law on Public Offering of Securities are considered as publicly accepted deposits or other repayable funds, where:*

- a) the issues of bonds or other debt securities that are acquired at their primary offering by more than 30 persons in total other than banks or other institutional investors;*
- b) this is one of the principal activities of the issuer and;*
- c) the issuer provides loans or other financial services as a line of business.*

Due to the provisions in a) and b) above, a non-credit institution is not allowed to be both a lender or provider of other financial services and a issuer of bonds or other debt securities at the same time, since the undertaking of both activities is considered "public acceptance of deposits and other repayable funds" and such activities can be undertaken by credit institutions only.

#### 7.1.4 Size of mortgage lending activity by non-credit institutions

There exist no data in Bulgaria on the volume of residential mortgage lending for credit institutions. It was not possible for the BNB to provide estimates of mortgage lending by non-credit institutions.

Data from the European Mortgage Federation show that the size of the market for residential mortgages has grown very rapidly as a whole, however. The value of total residential mortgage loans outstanding was €1,745m in 2006, 70% higher than one year earlier. Between 2003 and 2005, the total value of outstanding loans doubled each and every year, from €205m to €1,006m.

According to the BNB statistics, the total amount of mortgage loans granted by credit institutions (banks) in 2004, 2005, 2006 and 2007 is as follows: € 515 m.; € 1 037 million; € 1 799million and € 3 012 million.

Mortgage loans granted by banks with more than 50% foreign ownership is: €493 million; € 899 million; € 1 612 million and € 2 736 million (2004, 2005, 2006 and 2007 statistics).

Mortgage loans granted by banks with 50% domestic ownership is: €22 million; € 139 million; € 187 million and € 276 million (2004, 2005, 2006 and 2007 statistics).

The amount of mortgage loans granted by banks to Bulgarian residents is: € 2 971 million, and respectively to non-residents: € 41 million.

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## 8 Cyprus

### 8.1 Role of non-credit institutions in Cyprus

In this chapter we report the findings from the survey of the Central Bank of Cyprus, the Association of Cyprus Commercial Banks, the Ministry of Finance, the Insurance Association of Cyprus, the Insurance Supervision Authority and the Cyprus Securities and Exchange Commission. This summary has been verified by the Central Bank of Cyprus.

#### 8.1.1 Ability of non-credit institutions to provide residential mortgage loans

In Cyprus, institutions that provide residential mortgage loans do not need to be registered as credit institutions. The types of institutions that are classified as non-credit institutions in Cyprus include all legal and natural entities (firms and individuals) except banks. Banks take deposits and must therefore be registered with the Central Bank of Cyprus as a credit institution. There is no register of non-credit institutions in Cyprus.

In Cyprus insurance companies can in principle provide residential mortgage loans.<sup>45</sup> Insurance companies can provide mortgage loans to individuals (both policy and non-policy holders) as part of an insurance company's 'technical reserves' (reserves covering the insurance company's liabilities). These loans must be fully secured by property within the Republic of Cyprus, another EU Member State, or the following non-EU countries: Australia, Canada, Hong Kong, Japan, Malaysia, New Zealand, Singapore, Thailand or the USA. The regulations governing these loans made as part of the insurance company's technical reserves are provided in the Orders for Approved Investments issued by the Minister of Finance.

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<sup>45</sup> This information was provided via the telephone by the Assistant Superintendent of Insurance, Ministry of Finance, Insurance Companies Control Service.

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Prior to 2002, insurance companies could issue mortgage loans to life insurance policy holders and the surrender value of the contract was used as collateral for the loan. In 2002, the Superintendent of Insurance issued new orders, and loans could no longer be granted in this way after 31/12/2002. The Insurance Association has recently raised this issue with the Superintendent of Insurance and the Association has argued for a return to the pre-2002 arrangement. To date there has been no change in policy.<sup>46</sup>

The Superintendent of Insurance informed London Economics, that even though in principle insurance companies can provide mortgage loans to individuals it is very unlikely that they would do such.

### 8.1.2 Regulatory and supervisory regimes for non-credit institutions

In Cyprus there is no regulation or supervision of non-credit institutions. There exist no regulation or supervision requirements specifically governing the provision of mortgage credit. Mortgage providers, both credit and non-credit institutions, are however subject to general consumer protection legislation, but only on loans up to €85,000. The relevant national Law is the Cypriot Consumer Credit Law 2001 (not reproduced in this report).

The Central Bank of Cyprus and the Ministry of Finance report that they support the view that non-credit institutions should be regulated and supervised in a way comparable with the regulation and supervision of credit institutions.<sup>47</sup> To date such regulation and supervision has not been required because non-credit institutions are believed to be a non-existent player in mortgage markets in Cyprus.<sup>48</sup>

### 8.1.3 Funding mechanisms available to non-credit institutions

In Cyprus, the definition of other repayable funds from the public has not been determined to date. Non-credit institutions cannot take deposits from consumers; it is necessary to be a credit institution to take deposits. Mortgage backed securities and covered bonds are not currently available in Cyprus.

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<sup>46</sup> Information provided via telephone by the Director General, Insurance Association Cyprus.

<sup>47</sup> This information provided to London Economics by the Central Bank and the Ministry of Finance are in line with the response provided by the Ministry of Finance to the Green and White papers on Mortgage Credit in the EU.

<sup>48</sup> Information provided by a Senior Economic Officer, Ministry of Finance.

### 8.1.4 Size of mortgage lending activity by non-credit institutions

The European Mortgage Federation Hypostat publication 2006 reports that total outstanding residential mortgage loans in 2006 were € 2,077 million. The Association of Cyprus Commercial Banks reports that new mortgage loans on immovable property including equity release loans were € 10,200 million in the period 31<sup>st</sup> December 2006 to 30<sup>th</sup> September 2007.

The Association of Cyprus Commercial Banks reports that mortgage lending by non-credit institutions is non-existent. The Central Bank and the Ministry of Finance agree with this statement.

## 9 Czech Republic

### 9.1 Role of non-credit institutions in the Czech Republic

In this chapter we report the findings from the survey of the Czech Republic. In the Czech Republic, the Czech National Bank (CNB) was the organisation which was in the best position to respond to the questionnaire. The CNB is responsible for financial regulation and supervision in the Czech Republic. The Czech Banking Association responded but reported that they did not have information on non-credit institutions. In addition London Economics contacted the Czech Ministry of Finance. The State Supervision of Financial Markets Department, Department 36 within the Financial Market section of the Ministry, stated that the Czech National Bank, and not the Ministry, was the correct institution to provide information about the regulation and supervision of non-credit institutions. The Czech Statistical Office was also contacted and directed London Economics to the Czech National Bank. The Czech Insurance Association reported that it is possible for insurance companies to provide mortgage loans but they know of no instances where this has occurred.

The information reported below is based on the Czech National Bank survey and is combined with information provided by the Czech Insurance Association. This summary has been verified by the Czech National Bank.

#### 9.1.1 Ability of non-credit institutions to provide residential mortgage loans

In the Czech Republic, institutions that provide residential mortgage loans do not need to be registered as credit institutions. In the Czech Republic, mortgage credit is defined as a loan whose redemption, including appurtenances (i.e. interest) is secured by lien (right of pledge) over real estate (property) including property under construction (the Act on Bonds 190/204, Chapter 28(3)). However, for the purpose of the data reported here, mortgage loans include all loans for the purpose of residential housing regardless of security type.<sup>49</sup>

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<sup>49</sup> The second definition is a broader definition and therefore loans secured wholly by real estate are captured in loans for the purpose of residential housing. Loans secured against real estate include buy-to-let properties.

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In the Czech Republic, insurance companies, domestic and foreign registered, can provide residential mortgage loans to both policy and non-policy holders. The granting of residential mortgages is, however, not part of the regular business of an insurer in the Czech Republic and would only occur in very exceptional circumstances. The Czech Insurance Association reports no known instances in which insurance companies (domestic or foreign) have provided mortgage credit in the Czech Republic.

Non-credit institutions can be any type of non-bank financial institution or individual. Non-credit institutions do not need to notify, register or gain authorisation from the Czech National Bank or Ministry of Finance. There is no register of non-credit institutions in the Czech Republic.

### 9.1.2 Regulatory and supervisory regimes for non-credit institutions

There exist no authorisation or licensing procedures, nor any regulation or supervision of non-credit institutions in relation to mortgage lending in the Czech Republic. Information provided by the Czech National Bank reports that from time to time there is discussion about introducing regulation and supervision of non-credit institutions. The motivation for considering the introduction of this regulation and supervision is the recent growth in consumer credit, but not mortgage loans. In the future the Czech National Bank does envisage introducing regulation in regard to consumer credit and this may or may not include the provision of residential mortgages. The decision to regulate and supervise the mortgage lending activity by non-credit institutions will depend on the observed growth of the activities in the next few years. There is no planned timeline for the introduction of any regulation and supervision at this time.

The Insurance Act 363/1999, Chapter 21a provides for insurance companies to make loans, including mortgage loans, to their own life insurance policy holders. There are no regulations that provide for the making of loans to non-policy holders, but this activity is not prohibited. In the instance where an insurance company may make a mortgage loan to either a policy or non-policy holder then prudential supervision rules apply. These prudential rules are stipulated in Decree 303/2004 specifying limits on financial placement and solvency calculation.

The regulation and supervision of credit and non-credit institutions is different because the share of non-credit institutions in the credit market is small. In the last two years, there has been growth in consumer credit (other than mortgage loans) provided by credit institutions and this observed growth has stimulated discussions about the need for regulation and supervision of these institutions.

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### 9.1.3 Funding mechanisms available to non-credit institutions

In Czech law, repayable funds to the public are defined as deposits, and deposits are defined as any funds entrusted to a licensed bank that constitute an obligation of the bank to the depositor repayment thereof (the Act on Banks 21/1992, Part 1, Article 1(2.a.)). No person other than a licensed bank may accept deposits (ibid, Article 2(1)). Further, the issuance of bonds and other comparable securities are deemed deposits where the issuer's line of business is providing loans (ibid, Article 2(2.b.)), in addition the Act on Bonds, Chapter 28(2), limits the issuance of mortgage bonds to licensed banks.

All non-credit institutions in the Czech Republic are either subsidiaries of a foreign bank or a foreign bank has acquired ownership of a domestic non-credit institution, usually during the privatisation process of the state-owned lending institutions. Therefore, non-credit institutions in the Czech Republic do not raise funding for lending activity from within the Czech Republic. Rather, the parent company will fund the lending activity through deposits and inter-bank loans raised and debt securities issued outside the Czech Republic.

### 9.1.4 Size of mortgage lending activity by non-credit institutions

In the Czech Republic, non-credit institutions accounted for an estimated 1% of total outstanding residential mortgage loans in the period 2002 – 2007.<sup>50, 51</sup> Outstanding residential mortgage loans in the Czech Republic were € 1,531 million in 2002 increasing to € 8,627 million in 2007; an increase of 463% but non-credit institutions remained a small (1%) participant in this market.

#### *Lending activity by product type*

All mortgages in the Czech Republic during the period 2002 – 2007 were fixed rate mortgages. As non-credit institutions are not registered or authorised, no information is collected on the type of mortgage products provided by these institutions. The organisations contacted were unable to provide a list of non-credit institutions.

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<sup>50</sup> Czech National Bank estimate, March 2008.

<sup>51</sup> Information on total outstanding residential mortgage loans is not available prior to 2002.

***Lending activity by market segment***

Information on mortgage loans by market segment (customer type) is not available in the Czech Republic.

***Cross border lending activity***

Ninety-nine percent of mortgage loans provided by credit institutions were from subsidiaries of credit institutions registered outside the Czech Republic (mainly in the EU 27), as a vast majority of the banks in the Czech Republic have foreign owners. The Czech Republic collects no information on either inward or outward loans from foreign non-credit institutions as these institutions do not need to notify, register or gain authorisation to provide loans in the Czech Republic. Only foreign (EU) credit institutions (banks) providing cross-border loans under EU passport have to notify the Czech National Bank.

The main non-credit institutions providing consumer credit in the Czech Republic are Provident Financial and Cetelem. Provident Financial Czech is owned by Provident Financial UK, and provides unsecured loans that can be used for any purpose in the Czech Republic. Provident Financial Czech reports that they do not make loans for the purpose of buying residential property. Cetelem is owned by the BNP Paribas International Banking and Financial Services Group. In the Czech Republic Cetelem provides consumer credit not mortgage loans.

## 10 Denmark

### 10.1 Role of non-credit institutions in Denmark

In this chapter we report the findings from the survey of the Danish Financial Supervisory Authority, the National Bank of Denmark, Statistics Denmark, the Danish Mortgage Bank Association, the Danish Bankers Association and the Danish Insurance and Pensions Association. This summary has been verified by the Danish FSA.

#### 10.1.1 Ability of non-credit institutions to provide residential mortgage loans

In Denmark, institutions do not need to be registered or authorised as credit institutions in order to provide mortgage loans.

In Denmark, insurance companies can provide mortgage loans to both policy and non-policy holders. Insurance companies can provide mortgage loans as part of their investments to cover their financial obligations. This is provided for in the Financial Business Act, 2006, Part 11, chapters 158 – 168, ‘Special regulations for insurance companies and pension funds regarding the placement of funds and liquidity’.

There exists no register of non-credit institutions in Denmark.

#### 10.1.2 Regulatory and supervisory regimes for non-credit institutions

In Denmark credit institutions are defined under the Financial Business Act, April 2006, as undertakings, the activity of which consists of receiving from the general public deposits or other funds to be repaid, and granting loans at its from own funds.

Non-credit institutions (both domestic and foreign) are not covered by financial regulation or supervision even if they provide mortgage loans.

### 10.1.3 Funding mechanisms available to non-credit institutions

In Denmark non-credit institutions may not receive deposits from the public (only credit institutions may receive deposits from the public). Non-credit institutions may issue “ordinary mortgage backed securities”, to fund their lending activity, but only mortgage credit institutions and banks with a specific license may issue and use the names, “covered bonds” (særligt dækkede obligationer) or “mortgage backed securities” (realkreditobligationer) (Financial Business Act, chapter 8.1.). The difference between these funding mechanisms is that the latter have less risky assets behind them (i.e higher rated mortgages).

Non-credit institutions may also use shareholder funds and loans.

### 10.1.4 Size of mortgage lending activity by non-credit institutions

Total outstanding residential mortgage loans in Denmark were €123,639 million in 2000 increasing to €221,970 million in 2006 (European Mortgage Federation, Hypostat 2006).

There is no authorisation or registration of non-credit institutions in Denmark, and therefore London Economics has been unable to source data or informed estimates of the market share of these institutions.

The respondents to the survey were unable to name any non-credit institutions in Denmark that provide residential mortgage loans on a larger scale.

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## 11 Estonia

### 11.1 Role of non-credit institutions in Estonia

In this chapter we report the findings from the survey of the Ministry of Finance, the Ministry of Justice and the Estonian Banking Association. This summary has been verified by the Ministry of Finance.

#### 11.1.1 Ability of non-credit institutions to provide residential mortgage loans

In Estonia, non-credit institutions that provide residential mortgage loans do not need to be registered and authorised as credit institutions.<sup>52</sup> The Credit Institutions Act (1999), which has been amended several times since, defines credit institutions as companies, “the principal and permanent economic activity of which is to receive cash deposits and other repayable funds from the public and to grant loans for its own account and provide other financing” (Article 3(1)).

Any individual or entity may provide residential mortgage loans, with the restriction that only credit institutions may receive deposits and other repayable funds from the public. Non-credit institutions active in mortgage lending are defined as financial institutions (*ibid*, Article 5).

There is no requirement for a financial institution (non-credit institution) engaged in mortgage lending to acquire a licence to perform such activities.

The Insurance Activities Act 2005, chapter 1, chapter 2, requires insurance companies to be licensed by the Financial Supervision Authority to undertake insurance activities, and the Ministry of Finance informed us that mortgage loans are not an insurance activity. However, chapter 4, chapter 77, of the Insurance Activities Act 2005 states that insurance companies can use loans secured by mortgage as assets to cover their technical provisions.

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<sup>52</sup> In Estonia all companies are registered on a commercial register, but in addition special entities (financial entities) like credit institutions are also authorized to undertake mortgage lending by Supervision Authority.

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### 11.1.2 Regulatory and supervisory regimes for non-credit institutions

There is no supervision of mortgage loan providers which are financial institutions (non-credit institutions) in Estonia. In the residential mortgage loans sector the Estonian Financial Supervision Authority is concerned solely with credit institutions.

The provision of residential mortgage lending by non-credit institutions is regulated by general consumer protection rules, which equally apply to credit institutions. Articles 402 to 423 of the Law of Obligations Act stipulate the rules that apply to the provision of consumer or mortgage credit.

The regulations that affect non-credit institutions active in mortgage lending is jointly administered in Estonia by the Ministry of Justice, the Ministry of Economics and Communications and the Ministry of Finance.

### 11.1.3 Funding mechanisms available to non-credit institutions

In Estonia, non-credit institutions are not allowed to accept (cash) deposits or other repayable funds from the public, according to the Credit Institutions Act, as described above. The Ministry of Finance informs us that there is no specific regulation for the issuing of mortgage covered bonds or mortgage backed securities, and therefore, all funding mechanisms would be available to non-credit institutions.

### 11.1.4 Size of mortgage lending activity by non-credit institutions

According to the Estonian Banking Association (EBA), provision of residential mortgage credit by non-credit institutions is very marginal in Estonia. Neither the EBA nor any of the Ministries collect any information on the size of mortgage lending by non-credit institutions, in part because the level of such activity is marginal and in part because the activity is not specifically regulated nor supervised.

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## 12 Finland

### 12.1 Role of non-credit institutions in Finland

In this chapter we report the findings from the surveys of the Finnish Financial Supervision Authority, the Ministry of Finance, the Consumer Ombudsman and the Federation of Finnish Financial Services.

The findings reported below are based on the Federation of Finnish Financial Services' response to London Economics' survey including information obtained from the *'Saving and borrowing in Finland, Survey report, Spring 2007'*<sup>53</sup>, and are combined with information provided by the Financial Supervision Authority, the Ministry of Finance and the Consumer Ombudsman. This summary has been verified by the Finnish Financial Supervision Authority.

#### 12.1.1 Ability of non-credit institutions to provide residential mortgage loans

In Finland, institutions that provide residential mortgage loans do not need to be registered as credit institutions.

Insurance companies can provide mortgages in Finland. Insurance companies would use insurance premiums to fund their mortgage lending and as insurance premiums are not repayable funds from the public, insurance companies can grant mortgage loans without being registered as credit institutions. However, the respondents were not aware of any case in which insurance companies have done so.

#### 12.1.2 Regulatory and supervisory regimes for non-credit institutions

There are no regulations and supervisory requirements for non-credit institutions in Finland. The Act on Credit Institutions 2007 prohibits institutions other than credit institutions from taking deposits and repayable funds from the "general public" (see chapter 9.1.3, presented below, for a further discussion of this point). Consumer credit lending by both non-credit and credit institutions is, however, regulated under the Consumer Protection Act 38/1978: including amendments up to 29/2005. Chapter 7, of the Act - Consumer Credit (385/1986) stipulates that the provisions governing

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<sup>53</sup> Provided by the Federation of Finnish Financial Services.

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consumer credit also apply to credit for the purposes of acquiring a residence. Chapter 7 provides the legal rules and requirements for the marketing of consumer credit, provisions to be included on the consumer credit agreement, the consumers' right of withdrawal and the conditions for return of payments.

In addition to the Consumer Credit legislation, the Consumer Ombudsman has a general authority to supervise business activity towards consumers.

The objective of this approach is to ensure a high level of consumer protection while allowing the mortgage market (and wider consumer credit market) to be competitive and flexible, and to minimise barriers to entry to firms from other EU countries.<sup>54</sup>

### 12.1.3 Funding mechanisms available to non-credit institutions

In Finland, only credit institutions can take deposits, and these institutions are regulated under the Act on Credit Institutions (121/2007). Non-credit institutions cannot issue mortgage backed securities<sup>55</sup>, but may be able to use general debt securities such as bonds in some circumstances, but this depends on who buys the debt instrument from the non-credit institution.

The Federation of Finnish Financial Services reports that repayable funds are all sources of funds except own funds. Funding from the public means that the possibility to offer funds is open and unrestricted. In contrast, private placement or the selling of debt, equity or hybrid securities to a small number of informed buyers, would not be considered repayable funds from the public.

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<sup>54</sup> The respondents' comments are in line with those reported by the Ministry of Justice, in the Ministry's answers to the Working Document for the Government Expert Group on Mortgage Credit, September 2006, for the Internal Market and Services DG.

<sup>55</sup> According to the Mortgage Banks Act (kiinnitysluottopankkilaki 1240/1999) only mortgage banks may grant credits where the security interest is a mortgage or shares in a housing company. Mortgage bank is a special purpose credit institution pursuant to banking directive 2006/48/EC.

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### 12.1.4 Size of mortgage lending activity by non-credit institutions

The Finnish Financial Supervision Authority reported that they consider non-credit institutions to play no role in residential mortgage markets in Finland. Residential mortgage loans are (almost always) provided by credit institutions in Finland. The Federation of Finnish Financial Services confirms that non-credit institutions have only a very minor role in residential mortgage markets.

Total outstanding residential mortgage loans in Finland were € 39,990 million in 2000.<sup>56</sup> In 2007 total outstanding residential mortgage loans were € 82,142 million.<sup>57</sup> This is an increase of 105%. Data provided by the Federation of Finnish Financial Services reports that non-credit institutions have a market share, of total outstanding residential mortgage loans, of 0.7% and this share has remained constant over the period 2000 – 2007.

The Federation of Finnish Financial Services reported that non-credit institutions may have a greater role in the provision of commercial mortgages as compared to residential mortgages.

#### *Lending activity by product type*

Information on product type is not available in Finland. The Federation of Finnish Financial Services reported that institutions operating in Finland do not need to report such detailed information.

#### *Lending activity by market segment*

Information on activity by market segment was not available. The Federation of Finnish Financial Services reported that institutions are not required to provide this information. However, the Federation does conduct its own survey on saving and borrowing in Finland. The information from this survey cannot be separated by institution type, but it does provide some indication of who is borrowing mortgages for the purpose of residential property in Finland. The number of residential mortgage borrowers is largest in the age group 29 to 34: 57% of respondents to the Federation's survey had a home loan in 2007. This figure was 54% in 2006. Residential mortgage loans to borrowers over 40 have been declining in Finland.

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<sup>56</sup> Figure reported by the European Mortgage Federation, Hypostat, 2007.

<sup>57</sup> Figure reported by the Federation of Finnish Financial Services and taken from the Finnish Central Statistics Office datasets.

## 13 France

In this chapter we report the findings from the surveys of the Directorate General of Treasury and Economic Policy (Direction Générale du Trésor et de la politique économique) and the Association Française des sociétés financières (Financial Houses French Association) answered the questionnaire. This summary has been verified by Directorate General of Treasury and Economic Policy.

### 13.1 Role of non-credit institutions in France

In France all institutions must be registered as credit institutions in order to provide mortgage loans. This requirement is provided for in the Financial and Monetary Code.

Specifically, Article L311 - 1 of the Code defines credit transactions as a “banking transaction”. Article 511 - 11 provides that credit institutions are legal entities whose customary business activity is the carrying out of banking transactions within the meaning of L311 -1, and article L511 - 5 states that it is prohibited for any other person to carry out banking transactions on a regular basis.

Insurance companies cannot provide residential mortgage loans in France.

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## 14 Germany

### 14.1 Role of non-credit institutions in Germany

In this chapter we report on the regulatory and supervisory framework for non-credit institutions in Germany. Information contained in this chapter is based on our own survey of the relevant authorities and other stakeholders. These are in particular the Federal Ministry of Justice (BMJ), the Federal Financial Supervisory Authority (BaFin) and the association of German Pfandbrief Banks (vdp). This summary has been verified by BaFin.

The German Banking Act (KWG<sup>58</sup>) stipulates that businesses involved in “the granting of money loans and acceptance credits (lending business)” are credit institutions.<sup>59</sup> Typical mortgage lenders are thus by definition credit institutions.

According to BaFin, one reason for requiring mortgage lenders to be registered, authorised and supervised as credit institutions is to ensure that prudential supervision across institutions that provide mortgage loans is the same.

Exceptions to this rule, i.e., financial institutions that are not defined as ‘credit institutions’ under the KWG, are listed in point 2 of division 1, General Provisions, in the KWG. Exceptions include, among others, public and private insurance companies<sup>60</sup> and the Reconstruction Loan Corporation (*Kreditanstalt für Wiederaufbau - KfW*)<sup>61</sup>, a public law banking institution that is active in areas such as development finance, export credit and support for SMEs. According to the Federal Financial Supervisory Authority these institutions also engage in residential mortgage lending.

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<sup>58</sup> "Kreditwesengesetz, current version dated 9 September 1998 (BGBl. I S. 2776), last revision pursuant to Article 2 of the law of 21 December 2007 (BGBl. I S.3089).

<sup>59</sup> KWG § 1 chapter 1 number 2. The text is quoted after the unofficial English translation of the revised read-only version of the Sixth Act Amending the Banking Act published by the *Deutsche Bundesbank*.

<sup>60</sup> KWG § 2 chapter 1 number 4.

<sup>61</sup> KWG § 2 chapter 1 number 2.

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Insurance companies can provide mortgages if the mortgage is part of their asset management. The Law on the Supervision of Insurance Companies 2000 (VAG), chapter 5, states that “the insurance undertakings shall be permitted to carry on in addition to insurance business only such other business as is directly related to it”. BaFin reports that the interpretation of chapter 7 of the Law means that insurance companies cannot provide mortgages as a main part of their business but, chapter 54 allows for the acquisition of real property and the provision of mortgages if it is part of the insurance company’s asset management.

Those mortgage lenders which are credit institutions require a written licence from the Federal Financial Supervisory Authority and are governed by the KWG to the extent that they engage in ‘banking business’ within the meaning of § 1 chapter 1 of the KWG.<sup>62</sup> Permission – which is not always a full banking licence – is granted subject to the fulfilment of various conditions regarding transparency and evidence of the viability of the business.<sup>63</sup> Those credit institutions issuing Mortgage-Pfandbriefe are also subject to the German Pfandbrief Act and connected regulations are applicable.

The only difference between buy-to-let mortgages and mortgages for owner-occupiers according to the KWG is the amount of information the borrower must to disclose. Lenders can waive their right to disclosure of borrowers’ financial circumstances in the form of the submission of annual accounts in cases where the loan is secured on an owner-occupied property.<sup>64</sup>

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<sup>62</sup> KWG § 2 chapter 3. The core business of insurance companies is regulated by the Insurance Regulation Law (VAG).

<sup>63</sup> KWG § 32.

<sup>64</sup> KWG § 18 sentence 3 number 1.

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## 15 Greece

In this chapter we report on the regulatory and supervisory framework for non-credit institutions in Greece. Information contained in this chapter is based on targeted discussions with the Director Supervision of Credit and Financial Institutions Department Bank of Greece, a written response by the Head of the Regulatory Framework and B.C.C. Support Division Bank of Greece, and a phone conversation with the Financial Supervisory Committee for Private Insurance Companies within the Ministry of Development. We also contacted the Hellenic Banking Association. This summary has been verified by the Bank of Greece.

### 15.1 Role of non-credit institutions in Greece

In Greece, non-credit institutions cannot provide residential mortgage loans. All institutions that provide residential mortgage loans must be registered, authorised and supervised as credit institutions by the Bank of Greece (article 4 of the Law 3601/2007).

Non-credit institutions are defined as “credit companies” in Greece. The main activity of credit companies, as set out in Chapter 1, paragraph 3 of the Governor’s Act 2485/31.1.2002, is to “grant loans or provide credit in any form to natural persons, so that the latter cover their consumer and personal needs”. This is interpreted to mean that non-credit institutions may only provide consumer credit excluding mortgage loans (as reported by the Head of the Regulatory Framework Division and the Director Supervision of Credit and Financial Institutions, Bank of Greece).

Insurance companies in Greece can only provide mortgage loans to their own employees as reported by the Financial Supervisory Committee for Private Insurance Companies.

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## 16 Hungary

### 16.1 Role of non-credit institutions in Hungary

In this chapter we report the findings from the survey of the Hungarian Financial Supervisory Authority (HFSA), which is the organisation responsible for supervision of the financial markets in Hungary. The Ministry of Finance is responsible for the regulation of financial markets in Hungary. Our questionnaire was also completed by the Hungarian Mortgage Association, however, it was the HFSA who had access to more information and could provide more detailed answers. This summary has been verified by the HFSA.

#### 16.1.1 Ability of non-credit institutions to provide residential mortgage loans

In Hungary mortgage loans can be provided by credit institutions, financial enterprises, mortgage loan companies and insurance firms. A “financial enterprise” is defined by Hungarian Law as a “financial institution” (Section 6 of the Credit Institutions and Financial Enterprises Act). Mortgage loan companies are a specialised type of credit institution as regulated under the Act on Mortgage Loan Companies and on Mortgage Bonds 1997. Insurance companies and financial enterprises would be considered non-credit institutions.

In principle, insurance companies can provide mortgage credit to policyholders only. However, the HFSA knows of no instances in which they have done so.

#### 16.1.2 Regulatory and supervisory regimes for non-credit institutions

Insurance companies and financial enterprises are the only non-credit institutions in Hungary that can provide mortgage loans. Insurance companies must be authorised by the HFSA in order to commence mortgage loan operations (Act on Insurance Institutions and the Insurance Business, Chapter 68, Conditions for Mortgage Loans). The act also provides for certain conditions on mortgage loans provided by insurance companies such as a loan to value ratio that must be less than 60%. Financial enterprises are regulated under the Act on Credit Institutions and Financial Enterprises 1996. These institutions must be licensed by the HFSA.

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### 16.1.3 Funding mechanisms available to non-credit institutions

Firms carrying on the business of taking deposits and other repayable funds from the public must be authorised as credit institutions in Hungary.

According to Act CXII of 1996 on Credit Institutions and Financial Enterprises, repayable funds include monetary instruments from non-specified persons that allow the collector of such deposits to exercise control over the assets as its own, but under obligation to repay the same - with or without interest or some other gain.<sup>65,66</sup>

With no right to accept repayable funds from the public, non-credit institutions finance residential mortgage loans through loans received from their parent bank or from other strategic partner banks, or from their own equity.

### 16.1.4 Size of mortgage lending activity by non-credit institutions

In Hungary, non-credit institutions had a share of about 3.7% of total outstanding residential mortgage loans in 2007, accounting for 467 million Euros of outstanding residential loans of the 12,636 million Euros total.

Information on mortgage loans by product type and market segment is not available in Hungary.

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<sup>65</sup> In the case of a cooperative, accepting loans from members shall also be treated as collection of deposits if provided in an amount that exceeds the limit specified in the Act on Cooperatives.

<sup>66</sup> The issue of notes, cards or other certificates that may be used as payment instruments only when purchasing the issuer's goods or paying for the issuer's services shall not be construed as the collection of deposits. The issue of debt securities under the conditions and restrictions laid down in specific other legislation shall not be construed as the collection of repayable funds from the general public.

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## 17 Italy

### 17.1 Role of non-credit institutions in Italy

This chapter reports the findings from the survey of the Bank of Italy. We also contacted the Italian Banking Association (ABI). However, the ABI does not have information on non-credit institutions. This summary has been verified by the Bank of Italy.

#### 17.1.1 Ability of non-credit institutions to provide residential mortgage loans

In Italy, it is not necessary for institutions to be registered as credit institutions in order to provide residential mortgage loans. The Bank of Italy reports that non-credit institutions, called “financial intermediaries” in Italy, can provide mortgage loans. We use the term non-credit institution in this summary in line with the terminology adopted for this study.

Insurance companies cannot provide mortgage loans in Italy because Title V of the 1993 Banking Law restricts the granting of loans on a public basis to financial intermediaries (non-credit institutions).

#### 17.1.2 Regulatory and supervisory regimes for non-credit institutions

Non-credit institutions (financial intermediaries) are registered, authorised and supervised by the Bank of Italy. Non-credit institutions are entered onto a “general register” maintained by the Bank of Italy (The 1993 Banking Law, article 106).

Title V of the 1993 Banking Law (BL) restricts granting loans, acquiring holdings, providing money transmission services and trading in foreign exchange on a public basis to financial intermediaries (FI) entered in a general register (article 106 BL). In order to obtain entry in the register and therefore be able to engage in financial intermediation, FI must have:

- a corporate purpose restricted to the pursuit of financial activities;
- the legal form of “società per azioni”, “società a responsabilità limitata”, “società in accomandita per azioni” or “società cooperativa”;
- paid-up share capital of at least € 516;

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- corporate officers who satisfy integrity and experience requirements and members with significant interests who meet integrity requirements.

Non-credit institutions meeting certain standards (pursuant to the decree of the Minister for the Economy and Finance of 13 May 1996) with reference to the activity carried on and the volume of business must be entered in a special register (article 107 BL). Specifically, entry in the special register is compulsory for:

- a. FI engaged in the granting of loans in any form with a volume of financial business of at least € 103.3 million or capital of at least € 5,2 million;
- b. FI engaged in merchant banking with a volume of financial business of at least € 51.6 million or capital of at least € 25.8 million;
- c. FI engaged in foreign exchange trading on own account;
- d. FI engaged in the issue and management of credit and debit cards other than those intended for the exclusive purpose of facilitating the sale of products and services of companies in the same group (fidelity cards);
- e. the foreign financial companies subject to mutual recognition pursuant article 18 of BL;
- f. the special purpose vehicles and companies other than banks charged with collecting assigned claims and performing collection and payment services (servicers) in securitizations carried out pursuant to Law 130/1999.

The thresholds indicated in points a) and b) are determined on the basis of the figures reported in the most recent approved financial statements and must be maintained for the 6 months subsequent to the end of the financial period to which the financial statements refer.

The Banking Law confers authority to the Bank of Italy to supervise non-credit institutions entered on both the general and special registers (article 106 and 107 respectively of the Banking Law). Non-credit institutions entered on the special register are subject to higher levels of regulation and supervision as compared to those on the general register (articles 107 - 114 of the Banking Law). There are further supervisory instructions for non-credit institutions entered on the special register contained within the Bank of Italy's Circular 216 (not reproduced in this report). In addition, Circular 217 provides for the requirements on supervisory and statistical reports, Circular

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154 on data measurement and transmission and the Governor's Order of 14<sup>th</sup> February 2006 on annual financial reports.

Entry in the special register brings FI under the supervision of the Bank of Italy, with an accompanying change in the type of controls to which they are subjected:

Entry in the general register is primarily intended to gain knowledge of FI and ensure that they meet a minimum level of reliability (minimum capital, integrity requirements for members and corporate officers, with the latter subject to experience requirements as well);

The supervisory framework for FI in the special register, in view of risks associated with a larger volume of business or type of activity, envisages prudential controls similar to those for banks designed to ensure the stability and efficiency of intermediaries. Specifically, entry in the special register:

- a) subjects FI to the regulations, reporting requirements and inspection powers of the Bank of Italy. The Bank's regulatory powers concern the traditional aspects of prudential regulation (capital adequacy, limitation of risk; administrative and accounting procedures and internal controls);
- b) expands the scope for raising funds with the public;
- c) expands operational opportunities for some intermediaries. In particular, companies involved in the granting of loans, merchant banking and trading in foreign exchange may also engage in derivatives trading on own account. In addition, FI that grant loans and engage in merchant banking may also place financial instruments with or without standby commitments.

Credit institutions are termed "Banks" under the Banking Law. Credit institutions must be authorised and registered by the Bank of Italy to undertake banking activities. The Banking Law (legislative decree nr. 385/1993 as amended) provides for the general regulatory framework concerning "bank activity". Articles 38 - 41 contain the provisions for mortgage lending by "banks", and these provisions are further specified in the decisions of the Interministerial Committee for Credit and Saving (CICR) in the Decision of the 22<sup>nd</sup> of April 1995 and the Decision of the 9<sup>th</sup> February 1999 (these decisions are not reproduced in this report). The Bank of Italy supervises credit institutions ("banks") and the supervisory instructions for credit institutions are contained within the Bank of Italy Circular 229. Further, in the Banking Law, articles 53 and 67, confer regulatory powers in regard to prudential regulation to the CICR and the Bank of Italy, and these powers are further specified in Circular 263, "New regulations on the prudential supervision of banks".

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Consumer protection legislation applies to consumer credit provision by both credit institutions and non-credit institutions. The main points in this legislation relate to distant marketing, and early termination and portability of mortgage credits.

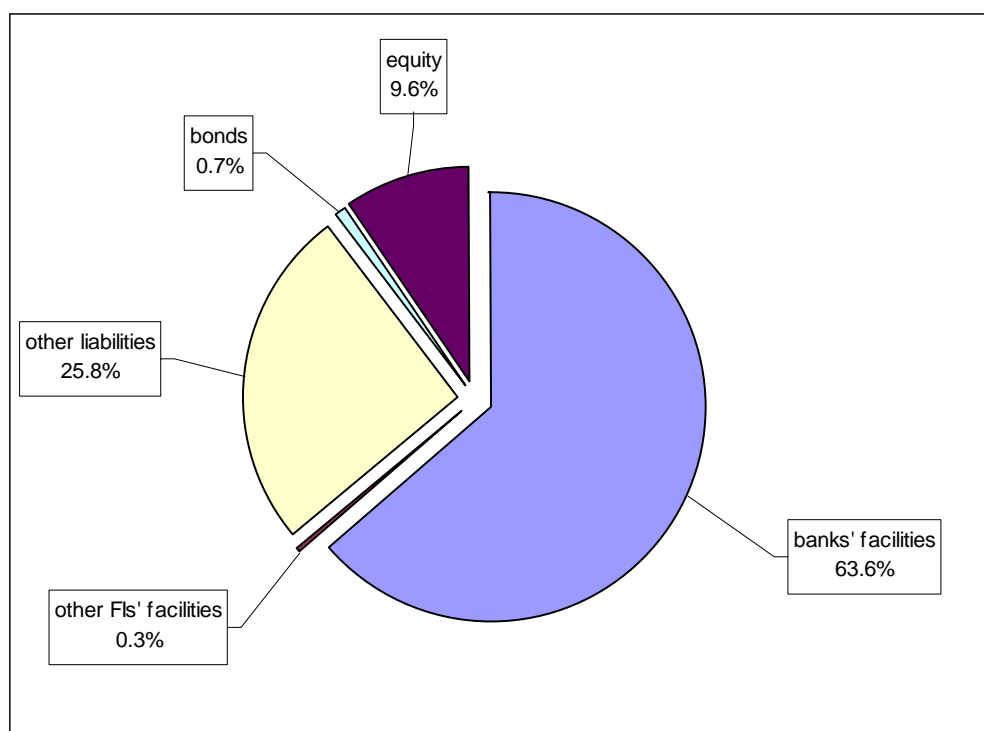
### 17.1.3 Funding mechanisms available to non-credit institutions

The Banking Law, article 10 and 11 define receipt of deposits and other repayable funds as “fund-raising”. Fund-raising from the public is only allowed by authorised credit institutions. What constitutes fund-raising from the public is determined by limits and criteria established by the Credit Committee (as defined in the Banking Law, definitions chapter).

Article 12 of the Banking Law provides for the issue of bonds and general debt securities by Banks.

Non-credit institutions can use all funding mechanisms as defined in this study, except for mortgage covered bonds. However, the Interministerial Committee for Credit and Savings in decrees of 19 July 2005 and 22 February 2006 set certain limits in regard to how non-credit institutions can issue of general debt securities via public placement.

At the end of March 2008, 64% of liabilities for non-credit institutions were as loans from credit institutions, 9.6% own equity, 0.7% general debt securities (bonds) and 0.3% as loans from other non-credit institutions. The figure below, as provided by the Bank of Italy, illustrates the breakdown of total liabilities of non-credit institutions at the end of March 2008.



Source: Bank of Italy, June 2008.

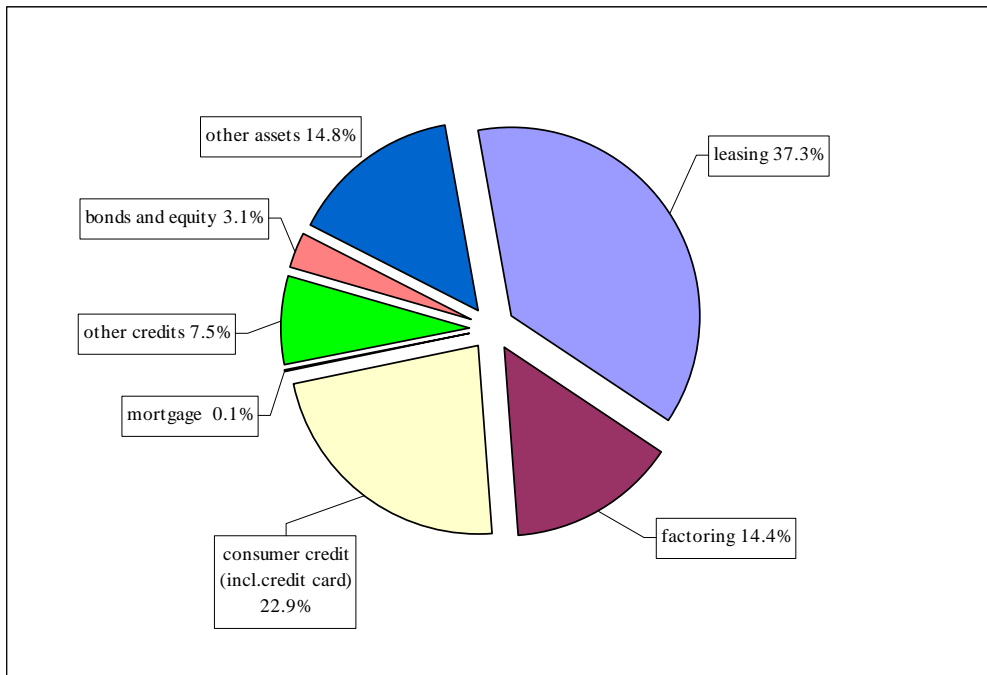
The main source of funding is funding from parent institutions (credit institutions, industrial or commercial companies), which accounted for 50% of total liabilities granted to non-credit institutions.

Securitisation is also an important source of funding for non-credit institutions, and in 2006/2007 10% of the new lending portfolio by non-credit institutions was securitised (this includes mortgages and other forms of consumer credit i.e. credit cards).

#### 17.1.4 Size of mortgage lending by non-credit institutions

The Bank of Italy reports that non-credit institutions are specialised in financial leasing, factoring and consumer credit including credit cards but excluding mortgages. Only a very small number of non-credit institutions supply mortgages in Italy.

The figure below has been provided by the Bank of Italy and illustrates the percentage of total assets held by non-credit institutions and the proportion of which that are mortgage loans.



Source : Bank of Italy, June 2008

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## 18 Ireland

### 18.1 The role of non-credit institutions in Ireland

In this chapter we report the findings from the survey of the Irish Financial Regulator, the Department of Finance and the Irish Banking Federation. The Department of Finance has provided their own submission to this study and we include this submission at the end of the summary. The summary has been verified by the Ministry of Finance.

#### 18.1.1 Ability of non-credit institutions to provide residential mortgage loans

In Ireland, non-credit institutions are permitted to provide residential mortgage loans. However, non-credit institutions that make retail credit loans, including mortgages, or home reversion loans (i.e. equity release loans) must be authorised and subject to ongoing supervision by the Financial Regulator. This requirement was introduced into law as an amendment to the Central Bank Act 1997 in November 2007 and came into effect on the 1<sup>st</sup> February 2008. These institutions have until 30<sup>th</sup> April 2008 to register with the Financial Regulator.

Insurance companies historically faced no legal limitations on their lending activities. However, since February 2008 these institutions need to be registered and authorised as “retail credit firms” or as credit institutions in order to provide mortgage loans. Neither the Financial Regulator nor the Irish Banking Association know of any instances in which an insurance company has provided mortgage credit.

There is currently no register available for non-credit institutions in Ireland. It is expected that within 12 months a comprehensive register will be available as non-credit institutions that provide mortgages will need to be registered and authorised with the Financial Regulator (expectation reported by both the Financial Regulator and the Banking Association).

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### 18.1.2 Regulatory and supervisory regimes for non-credit institutions

In Ireland, the Central Bank Act of 1997 regulates the provision of residential mortgages by (both) credit and non-credit institutions. As already noted, a November 2007 amendment, which came into effect on 1<sup>st</sup> February 2008, and called the Markets in Financial Instruments and Miscellaneous Provisions Act, requires that all non-credit institutions that make mortgage loans be registered and authorised as a “retail credit firm” or a “home reversion firm”.

In addition, since 1<sup>st</sup> February 2008, non-credit institutions that make retail credit loans are subject to the Consumer Protection Code, Minimum Competency Requirements and the Consumer Credit Act 1995. These legal requirements apply to credit institutions in the same way. The prudential requirements that apply to credit institutions do not, however, apply to non-credit institutions as these prudential requirements are to protect deposits and non-credit institutions do not take deposits.

The Financial Regulator is responsible for the supervision of credit and non-credit institutions from February 2008. The Regulator will use themed inspections and mystery-shopping exercises to monitor compliance with the regulations. The relevant themes for supervision, and the suitable financial providers for inspection, are determined via a number of methods. These include market concerns that are identified through the regulator’s contact with consumers, the Financial Services Ombudsman, consumer complaints and previous inspections and visits with regulated service providers. The findings from the inspections will be published publicly on the regulator’s website and in annual reports.

The motivation for subjecting the lending activity of non-credit providers to the same legal frameworks as that for lending by credit institutions is to improve the overall level of compliance with Consumer Protection Code and to ensure that financial service providers are at all times acting in the best interests of consumers. The protections in place for consumers who deal with banks and other authorised financial service providers should equally apply to all types of retail credit lenders.

### 18.1.3 Funding mechanisms available to non-credit institutions

In Ireland there is no definition of repayable funds from the public in the legislation. The Regulator would, however, consider money market instruments such as commercial paper to be repayable funds from the public.

Non-credit institutions cannot take deposits nor can they raise funds through covered bonds. Non-credit institutions can use mortgage backed securities.

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The Irish Banking Association reports that many non-credit institutions would be subsidiaries or joint ventures and would leverage off the funding activities of the parent company.

#### 18.1.4 Size of mortgage lending activity by non-credit institutions

Data published in the Central Bank of Ireland Quarterly Bulletins and Monthly Statistics, show that outstanding residential mortgage loans made by credit institutions were 29,474 million Euros in 2000, and increased to 123,002 million Euros by 2007. It is not possible at this time to collect data on the market share of non-credit institutions in Ireland. However, in the future, given the requirement for these institutions to register with the Financial Regulator, data will be collected on their lending activities.

A very loose estimate was offered upon request by the Irish Banking Federation. It is important to recognise this is only an estimate; it is not possible to verify this figure and therefore this estimate should not be used for further analysis or argument. The estimate is 200–300 million Euros in 2007, which is 0.16 - 0.2% of total residential loans outstanding.

The Irish Banking Association provided some names of non-credit institutions that have in the past offered retail credit in Ireland. These are, Start Mortgages (previously owned by Kensington Mortgages and Investec); GE Money; Nua (or New); and, Springboard Mortgages.

### 18.2 Submission by the Department of Finance Ireland

In late-2007, Ireland enacted legislative amendments, by means of its *Markets in Financial Instruments and Miscellaneous Provisions Act, 2007*, for the regulation of non-credit institutions, including providers of home reversion products and equity release mortgages. Chapter 19 of that Act provides that all non-credit institutions which had not previously been regulated (other than in respect of their lending activities under the Consumer Credit Act, 1995) and which are involved in the provision of credit to the public are to be subject to an authorisation and supervision regime by the Financial Regulator. It, also, includes provisions regulating providers of home reversion products and equity release mortgages.

The *main policy objectives* underpinning this Act are to ensure that all consumer-related lending is subject to the safeguards available under the Financial Regulator's Consumer Protection Code and to allow for access to the Financial Services Ombudsman, particularly in the case of sub-prime lending and equity release mortgages sectors where there were concerns that

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the limited regulation of the lending activities of these sectors gave rise to the potential abuse of consumers.

*Why did we choose to regulate non-Credit Institutions at that particular time?*

At the time, there existed no requirement under either domestic or EU legislation for firms to be authorised to lend money from their own resources at their own risk. Domestically, the Financial Regulator's Consumer Protection Code, which came in to full effect in mid-2007, sets high standards in respect of the conduct of business by regulated financial service providers. Regulation of the non-credit institution sector was deemed to be necessary to create a level playing field for both lenders and borrowers in relation to the application of that Code and to address growing concerns about the need for enhanced regulatory oversight of the activities of some categories of lenders. Accordingly, it was considered prudent to put in place, as soon as practicable, appropriate domestic legislation rather than await its inclusion in the domestic legislation to be formulated for the transposition of EU Directives such as the Consumer Credit Directive and the 3<sup>rd</sup> Anti-Money Laundering Directives.

It was decided to introduce the necessary legislative amendments at Dáil (Lower House of Parliament) Committee Stage Debate of the *Markets in Financial Instruments and Miscellaneous Provisions Bill, 2007*, scheduled for November 2007. With that schedule in mind, the Department published a *Consultation Paper* prepared in conjunction with the Financial Regulator, on its website in early October 2007 in which it set out the various options for putting the proposed new regime in place.

Once authorised, in accordance with the provisions of *Chapter 19 of Markets in Financial Instruments and Miscellaneous Provisions Act, 2007*, retail credit firms and home reversion firms become "regulated financial service providers" for the purposes of both the Financial Regulator's Consumer Protection Code and the Financial Services Ombudsman scheme. Their customers will have the same level of protection under the Code and the same access to the Ombudsman as they would in dealing with a regulated bank or building society. Previously, the Code did not apply to non-Credit Institutions and they were subject to the Ombudsman only in respect of lending activities to which the Consumer Credit Act 1995 applies. It has been necessary for the Financial Regulator, in consultation with relevant stakeholders, to slightly revise the Consumer Protection Code in order to take account of the specific nature of the newly regulated non-credit institutions. The related addendum to the Consumer Protection Code has recently been finalised, by the Financial Regulator in consultation with the Department of Finance, and is to be published on 1 June 2008.

*Benefits of the Consumer Protection Code*

Ireland's Central Bank Act, 1942 empowers the Financial Regulator to prescribe codes of practice for regulated financial service providers as it is not possible to legislate for every possible interaction between a customer and a financial institution. The resultant *Consumer Protection Code* sets down both general principles and detailed rules in relation to the conduct of business by regulated entities. The principles require that the entities act fairly, honestly and professionally in the best interest of the consumer. Detailed rules cover matters such as advertising, identifying the customer's needs and providing information. The Financial Regulator may investigate breaches of the Code and impose sanctions under Part IIIC of the Central Bank Act, 1942 for any such breaches. The process of authorisation means that retail credit firms and home reversion firms will become "regulated financial service providers" for the purposes of the Code.

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## 19 Latvia

### 19.1 Role of non-credit institutions in Latvia

In this chapter we report the responses from the Ministry of Economics in Latvia. Financial services regulation in Latvia is the remit of the Financial and Capital Market Commission, but non-credit institutions are not supervised by the Commission. We have also made enquiries with the Association of Latvian Commercial Banks. This summary has been verified by the Ministry of Economics.

#### 19.1.1 Ability of non-credit institutions to provide residential mortgage loans

It is possible for non-credit institutions to provide residential mortgage lending in Latvia.

The Credit Institution Law (7 March 1996, amended several times, most recently 22 February 2007) defines credit institutions and distinguishes these from financial institutions (non-credit institutions) by stating that a financial institution is “a commercial company which has been founded in order to provide one or more financial services (except the attraction of deposits and other repayable funds)” [Credit Institution Law, Chapter I, Chapter 1 (20)].

Foreign financial institutions that are owned by a credit institution in another EU Member State are allowed to provide mortgage loans, as long as the companies conform to the rules stated in Chapter II, Chapter 12<sup>4</sup> (amended 22 February 2007) of the Credit Institution Law.

The Law on Insurance Companies and Supervision Thereof, chapter 7, specifies that an insurance company must have a licence in order to undertake insurance business and cannot engage in any other commercial activity. Chapter 42 of the Law, does however state that loans on immovable property can be used as technical reserves. Supervision of insurance companies is undertaken by the Finance and Capital Market Commission.

### 19.1.2 Regulatory and supervisory regimes for non-credit institutions

Non-credit institutions (financial institutions) that provide mortgage loans are neither supervised nor regulated in Latvia, unlike credit institutions.

However, non-credit institutions are obliged to follow the rules set out by the Consumer Rights Protection Law (2001). The rules stipulated in this Act also apply to mortgage credit, whether it is provided by credit institutions or any other institutions. Chapter 8 of the Law sets the rules for the drawing up of, and the rights of the consumer in, consumer credit contracts.

### 19.1.3 Funding mechanisms available to non-credit institutions

Non-credit institutions cannot finance themselves by receiving repayable deposits. This is stated in the definition of financial institutions in Credit Institution Law (Chapter I, Chapter 1 (20)).

Furthermore, non-credit institutions in Latvia may not fund themselves through the issuance of mortgage backed securities. The Law on Mortgage Bonds (1998, with several amendments, latest in September 2006) states that a mortgage bond is “a security issued by a bank” in Article 1(1).

### 19.1.4 Size of mortgage lending activity by non-credit institutions

There are no statistics on the level of activity in the provision of residential mortgage credit by non-credit institutions in Latvia.

The value of total outstanding residential mortgage loans in Latvia grew exponentially between 2000 and 2006. The annual growth rate was never less than 65% and the total value almost doubled in each of 2005 and 2006. The total value of the loans was €4,680 million in 2006, from €133 million in 2000.

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## 20 Lithuania

### 20.1 Role of non-credit institutions in Lithuania

In this chapter we report the findings from the survey of the Lithuanian Ministry of Finance, Financial Services Regulation Division. This summary has been verified by the Ministry of Finance.

#### 20.1.1 Ability of non-credit institutions to provide residential mortgage loans

Non-credit institutions can provide residential mortgage loans in Lithuania. The Law on Financial Institutions 2002 sets out the requirements for all “financial institutions” in regard to establishment, registration, audit systems, capital and profit distribution and business risk. It is not, however, necessary for non-credit institutions to gain authorization to undertake mortgage lending.

Insurance companies cannot provide mortgage loans as part of their main business in Lithuania. The Insurance Law article 3 (2) states that, “Insurance companies can provide only insurance services”. Article 34 of the Law does state, however, that loans on immovable property can be used as part of an insurance company’s assets covering technical provisions.

#### 20.1.2 Regulatory and supervisory regimes for non-credit institutions

Both credit institutions and non-credit institutions are subject to the Law on Financial Institutions 2002, and the Law on Economic Entity’s Funds Lending to Legal and Natural Persons. We have been unable to source a copy of the second law. Supervision of credit and is undertaken by the Central Bank of Lithuania, and for insurance companies, supervision is undertaken by the Insurance Supervisory Authority within the Ministry of Finance.

Non-credit institutions are not supervised in regard to their mortgage lending in Lithuania.

### 20.1.3 Funding mechanisms available to non-credit institutions

Non-credit institutions are not directly prohibited from borrowing funds by issuing general debt securities to informed buyers (via private placement). Only credit institutions, however, have the right to receive funds repayable from unprofessional market players. According to the Law on Mortgage Bonds and Mortgage Lending 2003, article 2 and article 3, only credit institutions have the right to issue mortgage covered bonds. The Central Bank of Lithuania informed the Ministry of Finance that so far no mortgage covered bonds have been issued in Lithuania.

### 20.1.4 Size of mortgage lending activity by non-credit institutions

There is no data on mortgage lending activity by non-credit institutions in Lithuania.

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## 21 Luxembourg

### 21.1 Role of non-credit institutions in Luxembourg

In this chapter we report the findings from the survey of the Luxembourg financial regulator. The information has been provided by the International and Policy Department of the Commission de Surveillance du Secteur Financier (CSSF). This summary has been verified by the CSSF.

#### 21.1.1 Ability of non-credit institutions to provide residential mortgage loans

In Luxembourg, institutions that provide residential mortgage loans do not need to be authorised and registered as credit institutions as long as they do not take deposits and other repayable funds from the public. Non-credit institutions do, however, need to be authorised as “Professionals of the Financial Sector”, under the category “Professionals carrying on lending operations”. The CSSF reports that, to date, there is only one non-credit institution in Luxembourg that has applied and received authorisation. The authorisation was awarded in 2007 and to date no mortgage loans have been provided by the firm.

Insurance companies are not permitted to provide mortgage loans under their insurance licence in Luxembourg. Insurance companies can provide mortgage loans through a subsidiary company where the subsidiary is authorised as a credit institution or a Professional of the Financial Sector.

#### 21.1.2 Regulatory and supervisory regimes for non-credit institutions

The legislation and regulation in regard to mortgage lending activities is the same for credit and non-credit institutions in Luxembourg. Both credit and non-credit institutions are regulated under the Law of the 5<sup>th</sup> April 1993 on the financial sector.

Chapter 1 of the Law pertains to credit institutions and chapter 2 to non-credit institutions. Both credit and non-credit institutions must be authorised by the Minister responsible for CSSF.

Part III of the Law of April 1993 confers the supervision of both credit and non-credit institutions to the CSSF. Prudential supervision in Luxembourg does not encompass (specifically) the mortgage market beyond the current Basel II requirements.

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### 21.1.3 Funding mechanisms available to non-credit institutions

The sources of funding available to credit and non-credit institutions does, however, differ in Luxembourg. Chapter 1, article 2(3) of the Law of April 1993 explicitly limits the taking of deposits and repayable funds from the public to credit institutions. Further, Chapter 3 of Chapter 1 of the Law stipulates that Mortgage Banks are credit institutions having the main objective of granting loans secured by bonds or other debt instruments.

Therefore, in Luxembourg non-credit institutions can only use their own funds or loans from a parent institution or other credit and non-credit institutions.

### 21.1.4 Size of mortgage lending activity by non-credit institutions

The CSSF reports that non-credit institutions do not make any mortgage loans in Luxembourg. The total outstanding mortgage loans in 2007 by credit institutions in Luxembourg were 13,552 million Euros.<sup>67</sup>

The fact that non-credit institutions do not make mortgage loans may be because of the limitations on funding and the specialised category of credit institution, Mortgage Banks, which are able to use bonds and other debt instruments and thereby perform the mortgage lending function in Luxembourg. Further the CSSF reports that the mortgage market in Luxembourg is “highly saturated by local banks”.

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<sup>67</sup> This figure is based on the following criteria provided by the CSSF: every residential loan is backed up by a mortgage, every mortgage backed loan taken by a private individual concerns the residential housing market, and every loan is a domestic loan

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## 22 Malta

### 22.1 Role of non-credit institutions in Malta

In this chapter we report the findings from the survey of the Malta Financial Services Authority (MFSA). This summary has been verified by the MFSA.

#### 22.1.1 Ability of non-credit institutions to provide residential mortgage loans

In Malta, institutions that provide residential mortgage loans do not need to be registered as credit institutions. Non-credit institutions do, however, need to be registered and authorised as Non-bank Financial Institutions with the Malta Financial Services Authority, under the Financial Institution Act 1994.

Foreign financial institutions, whose principal place of business is in a country outside Malta, must, unless they are able to provide the activity in other EU Member States through the establishment of a branch or by way of the provision of services pursuant to the conditions laid down in Article 24 of the Capital Requirements Directive (2006/48/EC), seek a licence from the Malta Financial Services Authority in order to provide loans in Malta.

The MFSA reports that there are no non-credit institutions currently providing mortgage loans in Malta.

The Financial Institutions Act was introduced as an offshoot to the Banking Act 1994 as previously (under the Banking Act 1970, and repealed by the Banking Act 1994), non-credit institutions that wanted to undertake lending activities (including mortgage loans) would have had to be registered and authorised as credit institutions. The motivation for the new Act was:

- Recognition that non-bank financial institutions undertake a wide variety of activities and therefore regulation should provide flexibility.
- Mitigation of the statutory requirements and obligations upon Non-bank institutions; they do not need to be as onerous as those required under the Banking Act because non-credit institutions cannot take deposits of repayable funds from the public, see discussion of funding mechanisms below.

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- Introduction of flexibility in regulation by conferring the power upon the MFSA to issue Directives to financial institutions depending upon the complexity or otherwise of their business operations.

Insurance companies cannot provide mortgage loans in Malta.

### 22.1.2 Regulatory and supervisory regimes for non-credit institutions

In Malta the granting of mortgage credit is not a specific activity mentioned in the local financial services legislation, but is actually captured under the activity of lending. In turn, the activity of lending is regulated under two separate laws:

- The first, is the Banking Act (Cap 371) through the definition of the business of banking which states "the business of a person who ... accepts deposits of money from the public withdrawable ... for the purpose of employing such money in whole or in part by lending to others or otherwise investing for the account and at the risk of the person accepting such money".
- On the other hand, the activity of lending can also be regulated under the Financial Institutions Act (Cap 376). This law caters for an institution which is prohibited from taking deposits from the public to fund its operations, but can be funded from the wholesale market, shareholders' capital and own equity. These latter institutions are subject to regulatory and prudential oversight, and the MFSA applies specific rules and regulations according to the risk associated with the activity being undertaken.

Financial institutions in Malta are licensed, regulated and supervised by the Financial Services Authority. The Financial Institutions Act 1994, Article 3, Licensing Requirements, requires financial institutions to acquire a licence in order to undertake the business of a financial institution in Malta. The MFSA undertakes an analysis of a business plan submitted by the applicant showing, inter alia, the resources and internal control procedures that will be applied to undertake such activity. Eventually, the MFSA will carry out on-site inspections to ascertain that the requisite controls and set-up are in place and that all conditions of its licence are being adhered to.

The Schedule to Article 2 of the Financial Services Act, lists the activities licensed financial institutions may undertake in Malta, including the provision of mortgage credits.

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Since the MFSA adopts a risk-based approach, the credit risk associated with the lending activity is considered to be of a high risk nature, and therefore measures in relation to both the prudential and the supervisory oversight are adopted accordingly. On the prudential side, the licence letter usually contains conditions indicating which Banking Rules are applicable. On the supervisory side, both on-site and off-site procedures are applied. Institutions have to report to the MFSA on a monthly and quarterly basis, with the quarterly reports being more detailed and comprehensive. Institutions are also subject to on-site visits, naturally depending on the supervisory cycle. An on-site visit can also be triggered from an off-site report.

### 22.1.3 Funding mechanisms available to non-credit institutions

In Malta repayable funds from the public include deposits and financial instruments that create or acknowledge indebtedness, the Banking Act 1994, Article 2.

The Financial Institutions Act, Article 2, stipulates that financial institutions shall not fund their activities through the taking of deposits or other repayable funds from the public as defined in the Banking Act. Further, Article 10, of Financial Institutions Act, defines the transactions prohibited to be undertaken by a financial institution and these include the granting of any credit facility against the security of its own shares or against any other securities issued by the financial institution itself. Therefore, funding mechanisms available to non-credit institutions are limited to own funds and loans, or the leveraging of funds from a parent company.

The MFSA reports that currently there are no non-credit institutions providing residential mortgages in Malta.

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## 23 Netherlands

### 23.1 Role of non-credit institutions in the Netherlands

In this chapter we report the responses from targeted discussions with the Netherlands Authority for the Financial Markets (AFM), Policy Division, and the Ministry of Finance's GEGMC member. The Dutch National Bank (DNB), Policy Division, has completed our survey, and provided data on the market shares of non-credit institutions. This summary has been verified by the DNB and the AFM.

#### 23.1.1 Ability of non-credit institutions to provide residential mortgage loans

Both credit and non-credit institutions can provide residential mortgage loans in the Netherlands.

Non-credit institutions include insurance companies, and insurance companies can provide mortgage loans. The provision of mortgage loans does not have to be specified in the license of an insurer. Any insurer is allowed to invest the funds it receives insofar as these constitute the "free assets" of its undertaking.<sup>68</sup>

#### 23.1.2 Regulatory and supervisory regimes for non-credit institutions

Non-credit institutions must seek registration and authorisation (a licence) from the Netherlands Authority for the Financial Markets (AFM) in order to provide mortgage loans (chapter 2.60 of the Financial Supervision Act). Non-credit institutions are called financial institutions in the Netherlands (definitions chapter of the Financial Supervision Act).

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<sup>68</sup> This legal framework comes from Article 8.1.b of Directive 73/239/EEC which limits the activities of licensed insurers to the business of insurance and operations directly arising there from to the exclusion of all other commercial business. In line with decisions c-109/99 and c-241/97 of the European Court of Justice, Chapter 3.36 of the Financial Supervision Act abstains from enacting any rules as to the choice of assets constituting the free assets of insurance undertakings, whether in relation to the quality or to the quantity of such assets.

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Credit institutions must seek registration and authorisation (a Licence) from the Dutch National Bank (DNB) to undertake the provision of financial services including mortgage lending (chapter 2.11, Financial Supervision Act).

Insurance companies can provide mortgage loans as part of their technical reserves. Insurance companies must seek authorisation and registration (a licence) from the Dutch National Bank in order to undertake insurance business (chapter 2.27, Financial Supervision Act). But, as noted above, the insurance licence does not have to specify the provision of mortgages.

Supervision of credit institutions, non-credit institutions and insurance companies is undertaken by both the Netherlands Authority for the AFM and the DNB under the Financial Services Act, chapters 1.24 and 1.25. The DNB undertakes prudential supervision and the AFM undertakes market conduct supervision.<sup>69</sup>

The supervisory framework is called a “Twin Peaks” model, the main motivations for this framework are:<sup>70</sup>

- There are benefits from cross-sectoral supervision. One of the main benefits comes from the emergence of financial conglomerates in the Dutch financial markets. Today, 70% percent of the “banking and insurance” sector is characterised by conglomerates that provide multiple financial products. Sectoral prudential supervision (as was the situation prior to 2002), may fail to capture the risk characteristics of a financial conglomerate as a whole. Cross-sectoral prudential supervision minimises the risk of regulatory “black spots”. A common example of this in the Netherlands is the provision of mortgages with life insurance policies.
- Given the degree of market concentration there was widespread agreement between the Ministry of Finance, the AFM and the DNB that prudential supervision should be harmonised.

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<sup>69</sup> Until 2002 supervision in the Netherlands had been based on sectoral lines. The DNB supervised the banking and investment industry, the Pensions and Insurance Supervisory Authority (PVK) supervised the insurance and pensions industries and the Securities Board (STE) regulated securities trading.

<sup>70</sup> The motivations for the Twin Peaks model are taken from Gorter.J and Mosch.R., “*The Appeal of Twin Peaks*”, published in *The Financial Regulator* No.13 pp. 53 – 61. Gortger and Mosch are from the DNB. This paper was sent to London Economics by the DNB.

- There are differences between prudential supervision which ensures the smooth functioning of the financial system as a whole, and market conduct supervision which ensures that consumers and industry refrain from misconduct and wrongful practices in the financial markets.

### 23.1.3 Funding mechanisms available to non-credit institutions

There is no specific relationship between the definition of “redeemable funds from the public” and mortgage regulation in Dutch legal frameworks. The definition of “redeemable funds”, as provided in the definitions chapter of the Dutch Financial Supervision Act (FSA) is: “funds that must be redeemed at some point, for whatever reason, and regarding which it is clear beforehand which nominal sum should be redeemed”. In turn, the term “redeemable funds” defines a “bank” (a credit institution) in the definitions chapter of the FSA.

Institutions other than “banks” (credit institutions) can “invite, receive or have redeemable funds in the operation of a business outside a restricted circle from parties other than professional market parties in the Netherlands” (chapter 3.5 of the FSA).

In the FSA, “outside a restricted circle” is defined as:

*“a circle composed of persons or companies from which a person or company receives redeemable funds,*

*a. that is exactly defined;*

*b. of which the criteria of access are defined beforehand, are verifiable and do not result in easy access of persons or companies not belonging to the circle; and*

*c. within which the members of the circle already had a legal relationship with the person or company having the funds available at the time at which the redeemable funds are received, based on which they may in all reasonableness be aware of his/her/its financial condition.”*

In principle, the term “redeemable funds” covers a wide range of activities, a notable exemption to chapter 3.5 of the FSA is that all institutions (both credit and non-credit institutions) can “invite, receive or have redeemable funds via the provision of securities” if done in accordance with the provisions of the Prospectus Directive (Directive 2003/71/EC). Therefore, all entities in the Netherlands can issue general debt securities as long as this is done in accordance with this Directive.

Legislation was enacted to facilitate that both banks (credit institutions) and non-banks (non-credit institutions) can also issue mortgage backed securities. Many Dutch providers of mortgage loans obtain capital market funding via securitisation transactions. Furthermore Dutch providers may obtain capital market funding by issuing structured covered bonds. The Ministry of Finance is currently considering covered bond legislation in order to facilitate covered bonds.

#### 23.1.4 Size of mortgage lending activity by non-credit institutions

In the Netherlands, data reported by the DNB shows that non-credit institutions accounted for 15% of total outstanding mortgage loans in 2000, 16% in 2001 and 2002, 13% in 2003, 11% in 2004, 10% in 2005, 9% in 2006 and 10% in 2007. Data for 2008 is not available as of yet. It is not possible for the DNB to break these loans into those provided by domestic and foreign non-credit institutions, nor by mortgage type or borrower type.

The AFM maintains a register of “registered” and “licensed” financial institutions (non-credit institutions). The register can be found at <http://www.afm.nl/> and then by following the links to “registers”.

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## 24 Poland

### 24.1 Role of non-credit institutions in Poland

The information provided in this chapter is based on responses from the Director of the Polish Financial Supervision Authority to our targeted questions, and a phone conversation with the President of the Mortgage Credit Foundation. This summary has been verified by the Polish Financial Supervision Authority.

#### 24.1.1 Ability of non-credit institutions to provide residential mortgage loans

In Poland, institutions that are authorised to grant mortgage loans, under the Banking Act 1997, are “banks” (credit institutions). However, article 5, point 5 of the Act, provides for institutions other than “banks” (credit institutions) to provide mortgage loans “where so authorised under the provisions of separate legislation”. This separate legislation is the Credit Unions Act 1995, which provides for Credit Unions (Spółdzielcze Kasy Oszczędnościowo-Kredytowe (SKOK)) to provide residential mortgage loans. Credit unions are “non-bank” (non-credit) cooperative institutions, and can only provide mortgage loans to their members. Foreign Credit Unions must be authorised and registered as credit institutions in their home Member State in order to provide residential mortgage loans in Poland.

Insurance companies cannot provide mortgage loans in Poland. The Act on Insurance Activity, 22<sup>nd</sup> of May 2003, article 3, point 2, states that insurance companies cannot perform any other activity than insurance. This does not include mortgages.

Credit unions are the only non-credit institutions that can provide mortgages in Poland. The Polish Financial Supervision Authority reports that credit unions are small players in the Polish residential mortgage market.

#### 24.1.2 Funding mechanisms available to non-credit institutions

Credit unions may use the following funding mechanisms as laid out in the Credit Unions Act 1995: Own equity provided by their members, savings collected from their members and funds from the “Polish National Association of Cooperative Savings and Credit Unions”.

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## 25 Portugal

### 25.1 Role of non-credit institutions in Portugal

In this chapter we report the findings from the survey of the Bank of Portugal. The issues contained within this summary have been discussed with the Bank of Portugal, prior to including the summary in this report. This summary has been verified by the Bank of Portugal.

The main legal text is the General Regulations on Credit Institutions and Financial Societies (Regime Geral das Instituições de Crédito e Sociedades Financeiras) (RGIC) contained in Law (Decreto-Lei) 1/2008. It reflects about 12 separate sets of changes introduced to the original text of the RGIC contained in Decreto-Lei 298/92.

The current text considers two types of institutions: Instituições de crédito (credit institutions) and Sociedades financeiras (financial societies).

Credit institutions are defined as undertakings whose activity consists of receiving from the public deposits or other returnable funds with the objective of application on own account through the concession of credit. (Article 2 of RGIC). Article 3 lists the 12 possible types of credit institutions. These types include financial societies of credit, mortgage-credit institutions<sup>71</sup> and financial societies for credit acquisitions.

Financial societies are defined in Article 5 as undertakings that are not credit institutions and whose main activity is one of a subset of those described in Article 4 of RGIC. As such, financial societies of credit, mortgage-credit institutions and financial societies for credit acquisitions are not financial societies.

Article 8 grants exclusivity to credit institutions and financial societies on a number of commercial activities. Of particular relevance for the present, these undertakings have the legal exclusive right to the provision of credit operations.

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<sup>71</sup> In 2006 a new form of credit institution is created under Portuguese law. The Decreto-Lei 59/2006 provides the legal framework for mortgage-credit institutions. These are defined as credit institutions whose activity consists of giving, acquiring and selling credits guaranteed by mortgages to the end of issuing mortgage-backed securities. The purpose of Decreto-Lei 59/2006 is thus to enlarge the range of institutions that are allowed to perform financial transactions with mortgage-backed securities. Mortgage-credit institutions, in what is not specifically determined by Decreto-Lei 59/2006, are in all else bound by the RGIC and complementary regulations.

### 25.1.1 Ability of non-credit institutions to provide residential mortgage loans

As such, we conclude that, in Portugal, institutions that provide residential mortgage loans must be registered as credit institutions.

In Portugal insurance companies cannot provide residential mortgage loans neither to policy nor to non-policy holders. Article 3 of the RGIC lists the 12 types of credit intuitions, in which insurance companies are manifestly not included. Furthermore, the n.3 of Article 6 determines that insurance companies are not considered “sociedades financeiras” for the purpose of that document.

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## 26 Romania

### 26.1 Role of non-credit institutions in Romania

In this chapter we report the findings from the survey of the National Bank of Romania (NBR). This summary has been verified by NBR.

#### 26.1.1 Ability of non-credit institutions to provide residential mortgage loans

In Romania, lending activity, including granting mortgage credit, may be undertaken by the following three types of institutions:

- i) credit institutions;
- ii) non-bank financial institutions (NBFIs); and
- iii) certain specially licensed institutions.

The latter two types of institutions qualify as non-credit institutions. Note the following points regarding non-credit institutions:

- NBFIs include mortgage loan societies since 2006;
- insurance companies do not qualify as NBFIs and cannot provide mortgage loans;
- the National Housing Agency (ANL) is the only non-NBFI non-credit institution that has been authorized so far to perform lending activities.

Credit institutions differ from non-credit institutions in that credit institutions can take deposits and other repayable funds from the public. In turn, whether an activity represents attracting deposits or other repayable funds from the public (activity reserved to credit institutions) is determined solely by the NBR. According to the Romanian law, covered bonds may be issued in Romania only by banks and mortgage banks while mortgage backed securities only by Special Purpose Vehicles created for securitization schemes.

#### 26.1.2 Regulatory and supervisory regimes for non-credit institutions

In Romania credit institutions are regulated in accordance with the EC Directive 2006/48 by the Government Emergency Ordinance No 99/2006 on Credit Institutions, and the Capital Adequacy and Law No. 227 of 4 July 2007 approving Emergency Ordinance No. 99/2006. Non-credit institutions are regulated through Government Ordinance No 28/2006.

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Ordinance No. 28 provides for the ability of non-bank institutions to make loans including mortgage loan (Chapter 4, Article 7).

Non-bank financial institutions must notify the National Bank of Romania of their intention to commence operations (Chapter 2 of the Ordinance). NBFIs must be registered and 'inscribed' on the General Register with the National Bank, and in certain cases – determined by a number of factors including firm turnover, volume of loans made, assets and 'indebtedness' – must also be registered on the Special Register with the National Bank. Those institutions on the General Register are subject to general supervisions by the National Bank (Chapter 2 of the Ordinance). Those on the Special register are also subject to prudential supervision by the National Bank (Chapter 3 of the Ordinance).

Non-credit institutions are less strictly regulated than credit institutions (due to the fact they are not allowed to accept reimbursable funds from the public, see below for discussion of funding mechanisms). However, they still need to comply with some minimum requirements regarding, (i) the setting up of NBFIs; (ii) capital requirements, (iii) the manner for organising business activities; (iv) requirements linked to shareholders, managers and members of the board; (v) certain rules regarding accounting and auditing issues, and (iv) the manner NBFIs are to be monitored/supervised by the National Bank of Romania (as outlined above).

### 26.1.3 Funding mechanisms available for non-credit institutions

In Romania, 'other repayable funds from the public' refer to issuing of bonds or other comparable financial instruments as far as at least one of the following conditions is fulfilled:

- i) the issuing is the only or the main business activity of the issuer;
- ii) the issuer commercially performs at least one of the activities listed under no.1) to 12) from the Annex I of the EC Directive 2006/48.<sup>72,73</sup>

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<sup>72</sup> This definition is provided by the Government Emergency Ordinance No 99/2006 on Credit Institutions and Capital Adequacy and Law No. 227 of 4 July 2007 approving Emergency Ordinance No. 99/2006, with amendments and supplements, which transpose the EC Directive 2006/48 into the Romanian legal framework.

<sup>73</sup> Also note that any amount received by the lender in the process of lending activity from the borrower (such the advance, over-repayment or early repayment) it is not considered 'taking deposits or other repayable funds from the public'.

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Non-credit institutions cannot take deposits or other repayable funds from the public. This limitation is provided for in Ordinance 28, section 5, article 9. Non-credit institutions must therefore finance their mortgage loans through credits from either parent credit institutions or other credit or financial institutions and from own funds.

#### 26.1.4 Size of mortgage lending activity by non-credit institutions

In Romania, non-credit institutions had a share of approximately 9.7% of total outstanding residential mortgage loans in 2007. This accounts for 196 million Euros of total outstanding residential loans of 2,017 million Euros.<sup>74</sup>

There is no data on the breakdown of personal mortgage loans by the country of registration of non-credit institutions.<sup>75</sup> The National Bank of Romania does, however, publish the General and Special Register of Non-bank institutions.

The General and Special Registers can be found at [http://www.bnro.ro/Ro/Legi/IFN/OG\\_28\\_2006\\_lista.pdf](http://www.bnro.ro/Ro/Legi/IFN/OG_28_2006_lista.pdf).

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<sup>74</sup> Note that no such breakdown is available for earlier years.

<sup>75</sup> It is only known that about 17% of mortgage provided by credit institutions came from companies registered abroad in 2007, up from 6% in 2004.

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## 27 Slovakia

### 27.1 Role of non-credit institutions in Slovakia

In this chapter we report the findings from the survey of the Slovakian Ministry of Finance. This summary has been verified by the Ministry of Finance.

#### 27.1.1 Ability of non-credit institutions to provide residential mortgage loans

In Slovakia, institutions that provide residential mortgage loans must be registered as banks (credit institutions), in accordance with Article 2 and Articles 67 to 88 of the Act on Banks (Act number 483/2001).

A banking licence is required to provide mortgage credit. The licence is issued by the National Bank of Slovakia. Foreign banks may also be granted such a licence, provided that they are allowed to provide mortgage credit in their country of origin, and provided that the law of that country guarantees equal rights for mortgage loan borrowers and holders of mortgage bonds issued in the Slovak Republic as for those groups in the country in which it is registered. This includes equal ranking in bankruptcy proceedings, and must meet at a minimum the extent of rights given by the law of the Slovak Republic.

Mortgage bonds can be issued only by banks, which obtain a licence to perform mortgage transactions pursuant to Act on Banks (Article 15 of Act on Bonds; Act no. 530/1990).

The main restriction is that mortgage credit in the Slovak Republic is strictly defined according to Articles 67 to 88 of the Act on Banks. It is a credit secured by the right of lien established upon (domestic) real estate, the definition of which includes an uncompleted construction, for which no less than 90 percent of the financing is by the issue and sale of mortgage bonds by a mortgage bank, and which a mortgage bank provides only for the following purposes – acquisition, construction, modification and maintenance of (domestic) real estate.

It is possible for a non-credit institution (non-bank) to provide loans, but not mortgages as such, due to the restriction on the source of the financing.

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## 28 Slovenia

### 28.1 Role of non-credit institutions in Slovenia

In this chapter we report the findings from the survey of the Slovenia Ministry of Finance, which obtained statistical data from the country's Central Bank, the Bank of Slovenia; and, a survey of the Slovenian Banking Association. The Ministry of Finance has verified this summary.

#### 28.1.1 Ability of non-credit institutions to provide residential mortgage loans

In Slovenia, institutions that provide residential mortgage loans do not need to be registered as credit institutions. Both domestic and foreign non-credit institutions may provide mortgage loans. Non-credit institutions may be natural persons or legal persons (entities) or a group thereof. This is stipulated in Article 15(1) of the Banking Act and in the Consumer Credit Act Article 2(3).

Insurance companies, foreign or domestic, are not allowed to provide residential mortgage loans at all.

The Bank of Slovenia maintains a list of domestic banks in Slovenia. The Bank also publishes a list of EEA states' credit institutions and special financial institutions (non-credit institutions whose parent company is a credit institution) active in Slovenia. Some of these foreign institutions, in both categories, would be classified as non-credit institutions in Slovenia, since they are not permitted to accept deposits. There is no list of domestic non-credit institutions.

#### 28.1.2 Regulatory and supervisory regimes for non-credit institutions

The regulation of credit institutions, whether domestic or foreign, is specified under the Banking Act. The supervision of credit institutions, whether domestic or foreign, is conducted by the Bank of Slovenia in accordance with the Act of Bank of Slovenia.<sup>76</sup>

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<sup>76</sup> An official translation into English of the Act of Bank of Slovenia was published in Official Gazette of the Republic of Slovenia, No. 72/06, and is available for download at

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Non-credit institutions are not regulated in the same manner as credit institutions. The regulation and supervision of non-credit institutions are specified by the Consumer Credit Act. Article 2, of the Act defines consumer credit including mortgage loans. Article 22(1) requires that non-credit institutions must obtain a licence prior to performing consumer credit services. Article 24(6) of the same Act specifies the conditions under which the licence can be revoked by the market inspection authority, which is the joint responsibility of the Ministry of the Economy and the Consumer Protection Office.

### 28.1.3 Funding mechanisms available to non-credit institutions

Credit institutions in Slovenia refer to institutions performing “banking services” or “electronic money issuing services” (Banking Act, Article 13(3)). Banking services are defined as accepting funds from the public and lending for the bank’s own account (ibid, Article 7).

“Accepting deposits from the public means accepting deposits from uninformed persons”, and “a deposit for the purpose of defining the acceptance of deposits shall mean any money deposit which is made by a person on behalf of another person on the basis of a contract on money deposit or on the basis of another legal transaction in which the depositor is granted the right to request repayment of the deposited money from the recipient of payment within specified time limits” (Article 8 of the Banking Act).

Non-credit institutions are thus restricted from accepting cash deposits, general debt securities or issuing covered mortgage bonds.

### 28.1.4 Size of mortgage lending activity by non-credit institutions

The Bank of Slovenia does not hold any data on mortgage lending by non-credit institutions or by foreign credit institutions.

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<http://www.bsi.si/library/includes/datoteka.asp?DatotekaId=2959>.

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## 29 Spain

### 29.1 Role of non-credit institutions in Spain

In this chapter we report the findings from the survey of the Spanish Public Treasury, the Bank of Spain, the Spanish Mortgage Association and the Spanish Directorate General Insurance and Pensions. This summary has been verified by the Spanish Public Treasury.

#### 29.1.1 Ability of non-credit institutions to provide residential mortgage loans

In Spain institutions that provide residential mortgage loans do not need to be registered as credit institutions. Such non-credit institutions are subject to no regulation or supervision in Spain.

There are six types of credit institution in Spain,

- Banks;
- Official Credit Institutions;
- Savings Banks;
- Credit Co-operatives;
- Financial Credit Entities; and,
- Electronic Money Institutions.

Financial Credit Entities are a special type of credit institution often referred to as “specialised institutions”. Financial credit entities may provide residential mortgage loans but cannot take deposits or repayable funds from the public. Financial Credit Entities can, however, use the EU Banking Passport to provide financial services in another EU Member State.

Financial credit entities must be registered with the Bank of Spain and authorized by the Minister of Economy and Finance.

The definition of residential mortgage loans in Spain, are those loans secured on real estate irrespective of purpose (Articles 4 and 5 of Law 2/1981, of 25<sup>th</sup> March, Regulating Mortgage Market, including updates with Law 41/2007). This is a security/collateral based definition.

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Insurance companies and Electronic Money Institutions cannot provide mortgages in Spain.

### 29.1.2 Regulatory and supervisory regimes for non-credit institutions

There is no regulation or supervision of non-credit institutions (either domestic or foreign) in Spain.

There was a plan to extend the regulation on the 'Transparency of the Financial Conditions of Mortgage Loans, Decree 5<sup>th</sup> May 1994' which currently covers the pre-contractual and contractual information that credit institutions must provide clients. The Bill was expected to be read and passed by the Spanish Parliament in 2007, however this did not happen and therefore non-credit institutions remain unregulated in Spain.

Financial Credit Entities, the specialised credit institutions that provide mortgage loans, must be registered with the Bank of Spain and authorised authorized by the Minister of Economy and Finance (Article 3 of the Legal Framework for Financial Credit Entities 1996). The Bank of Spain has supervisory powers over all credit institutions (Pre-ambule to the Discipline and Intervention of Credit Institutions 1988).

### 29.1.3 Funding mechanisms available to non-credit institutions

In Spain repayable funds from the public include, 'repayable funds from the public, for whatever purpose, in the form of deposits, loans, repurchase agreements or other similar transactions' (as reported by the Spanish Public Treasury). Only credit institutions may take these funds.

As noted above, financial credit entities have credit institution status but are prohibited from receiving repayable funds from the public (Royal Decree 692/1996 of 26 April 1996). The motivation for introducing this special class of credit institution is to release financial credit entities from the obligation to be covered by a deposit guarantee fund and to allow these entities to broaden the activities they undertake. Historically, different types of credit institutions had been limited by their scope of activity (Royal Decree 771/1989 of June 23; not reproduced in this report). Nowadays, different types of credit institutions are limited by their financing options but not by their scope of activities.

Only credit institutions (including the special class of financial credit entities) can use mortgage backed securities and covered bonds as funding mechanism (Articles 11-13, of Law 2/1981, of 25<sup>th</sup> March, Regulating Mortgage Market, including updates with Law 41/2007). Funding mechanisms available to non-credit institutions are therefore limited to borrowings from credit institutions and own funds.

#### 29.1.4 Size of mortgage lending activity by non-credit institutions

The Bank of Spain collects mortgage loan figures for credit institutions only. The Spanish Public Treasury and the Spanish Mortgage Association both reported that it is not possible to report on the market share of non-credit institutions. However, both indicated that any lending by non-credit institutions is only marginal.

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## 30 Sweden

### 30.1 Role of non-credit institutions in Sweden

In this chapter we report the responses from the financial services regulator in Sweden and from the Swedish Bankers' Association. Financial services regulation in Sweden is the remit of Finansinspektionen. This summary has been verified by Finansinspektionen.

#### 30.1.1 Ability of non-credit institutions to provide residential mortgage loans

In Sweden, institutions that provide residential mortgage loans do not need to be registered as credit institutions. Companies wishing to provide such loans must notify Finansinspektionen according to the Obligation to Notify Certain Financial Operations Act (1996:100, amended 1 April 2008).

There is no restriction preventing foreign companies or insurance companies from providing mortgage lending.

The system of definition in Sweden in relation to credit institutions has several layers. The Banking and Finance Business Act (2004:297) defines credit institutions and non-credit institutions in Chapter 1, Chapter 5, sub-chapters 7 and 10-13.

A non-credit institution, labelled a "financial institution", is one "whose main activity is to [...] conduct one or more of the activities listed in Chapter 7, chapter 1, second paragraph, sub-chapters 2-10 and 12, without being subject to licence pursuant to Chapter 2, chapter 1". Chapter 7, chapter 1, second paragraph, sub-chapter 2 specifies the provision of loans secured by mortgages.

Crucially, the difference between a credit institution and a financial institution is that only credit institutions "may engage in business activity intended to receive repayable funds from the public, unless otherwise specially provided for" (Chapter 1, Chapter 7, paragraph 1). If this principle is adhered to, then the financial institution is exempt from needing a licence, which is explained in Chapter 2, Chapter 3, Articles 5(b) and 6(c).

There are broadly three levels of activity at which companies offering mortgage loans can operate. The most restrictive is banking business, as part of which deposits received from the public must be available to the depositor within at most 30 days. The second most restrictive is financing business, which may be conducted by banks and credit market undertakings (companies and associations). Both banks and credit market undertakings must be granted authorisation or licences to conduct their business, in contrast to non-credit institutions, which must simply notify Finansinspektion of their intentions.

Non-credit institutions are registered at Finansinspektionen as “Financial institutions”.<sup>77</sup> These companies are registered with, but are not supervised by, Finansinspektionen. There are 212 companies on the list (as of 15 May 2008), though not all of these necessarily provide mortgage loans.

### 30.1.2 Regulatory and supervisory regimes for non-credit institutions

Non-credit institutions (financial institutions) that provide mortgage loans are neither supervised nor regulated in Sweden, beyond the notification that they provide to Finansinspektion of the existence of their activity. Unlike banks and credit market undertakings, they do not require authorisation or a licence to operate.

However, non-credit institutions are obliged to follow the rules set out by the Consumer Credit Act (1992:830). The rules stipulated in this Act also apply to mortgage credit, whether it is provided by credit institutions or any other institutions.

### 30.1.3 Funding mechanisms available to non-credit institutions

The Banking and Finance Business Act (2004:297) limits non-credit institutions to sources of finance that exclude repayable funds received from the public.

According to information we received from the Swedish Bankers’ Association, “the public” encompasses all entities except government, regional and local authorities and credit institutions.

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<sup>77</sup> [http://www.fi.se/Templates/InstitutGridPage\\_\\_\\_6057.aspx?la=en&typ='FIINST](http://www.fi.se/Templates/InstitutGridPage___6057.aspx?la=en&typ='FIINST)

A separate piece of legislation, the Covered Bonds (Issuance) Act (2003:1223), restricts the issuance of covered bonds to banks and credit market undertakings that receive a special licence to do so, the granting of which is subject to fulfilling certain conditions set out in the Act. The activity of covered bond issuance is also supervised by Finansinspektion. Therefore, non-credit institutions may not use such funding mechanism.

Finansinspektion reported that a non-credit institution can sell its mortgages to a special purpose vehicle, which in turn can use these for securitisation. The non-credit institution can then finance itself using profits or distributable earnings from the SPV. Therefore, non-credit institutions may use mortgage backed securities if sold to an SPV.

### 30.1.4 Size of mortgage lending activity by non-credit institutions

There is no data available on non-credit institutions in Sweden, but their share of the market is thought to be low by the Swedish Bankers' Association.

The value of total outstanding residential mortgage loans in Sweden stood at €186 billion in 2007. There has been steady growth of between 7% and 9% per year between 2001 and 2007.

#### *Lending activity by product type*

Data for credit institutions show that initial fixed rate mortgages are the more popular product, but that variable rate mortgages have been increasing in popularity. Within fixed rate mortgages, shorter-term (1-5 years) products have overtaken longer-term (more than 5 years) products in popularity.

In 2007, initial fixed rate mortgages counted for 62% of outstanding residential mortgage credit, falling from 72% in 2000 as variable rate mortgages rose from 28% to 38%. In that same period, the share of initial fixed rate mortgages with terms of 1-5 years rose from 38% to 62%, whereas terms of more than 5 years fell from 62% to 38%.

#### *Lending activity by market segment*

Mortgage lending for the purpose of buy-to-let is possible in Sweden, but is virtually non-existent, according to the response from the Swedish Bankers' Association.

There are no official data for credit or non-credit institutions.

***Cross border lending activity***

The Swedish Bankers' Association informed us of one foreign non-credit institution with branches in Sweden: Bluestep.<sup>78</sup> They also told us of one foreign credit institution with many branches in Sweden: Danske Bank.<sup>79</sup>

There is no information available on the distribution of residential mortgage lending in Sweden by foreign institutions.

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<sup>78</sup> [http://www.bluestep.se/about\\_bluestep.asp](http://www.bluestep.se/about_bluestep.asp)

<sup>79</sup> <http://www.danskebank.se/>

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## 31 United Kingdom

### 31.1 Role of non-credit institutions in the United Kingdom

In this chapter we report the findings from the survey of the Financial Services Authority (FSA), and the Council of Mortgage Lenders (CML). The FSA was able to provide detailed data on the market shares of credit and non-credit institutions for the calendar years 2006 and 2007. This information is collected by the FSA as part of its Product Sales Data (PSD). The PSD is a requirement for registered firms to provide the FSA with transaction level data on all sales of regulated mortgage contracts, retail investment products and certain pure protection products to retail and private customers.

The Council of Mortgage Lenders (CML) answered our questions in a face to face meeting in May 2008, and subsequently supplied data on both credit and non-credit institutions for the years 2000–2007.

This summary has been confirmed by the FSA and the CML.

#### 31.1.1 Ability of non-credit institutions to provide residential mortgage loans

In the United Kingdom, institutions that provide residential mortgage loans do not need to be registered as credit institutions. These institutions do, however, need to be registered, and are authorised, regulated and supervised as “non-deposit taking” institutions with the FSA.

Insurance companies can provide mortgage loans. Insurance companies are only marginal players in the mortgage market in the UK. An exception is lifetime mortgages, in which there are two suppliers (Norwich Union and Prudential) and they account for approximately 1% of the residential mortgage market.

#### 31.1.2 Regulatory and supervisory regimes for non-credit institutions

The United Kingdom takes a risk based approach to regulation. Therefore, the United Kingdom does not differentiate between credit and non-credit institutions in regard to (most) financial regulation. The “Financial Services Authority’s Handbook” sets out all requirements for regulated financial

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activities that come under the FSA's remit. The full handbook can be found at <http://fsahandbook.info/FSA/html/handbook>.

In the United Kingdom, the same conduct rules apply to all "firms" with mortgage business customers (this includes credit and non-credit institutions and insurance companies).<sup>80</sup>

Regulations in the United Kingdom do however distinguish between credit and non-credit institutions in relation to prudential requirements. The motivation for this distinction is that applying the same prudential requirements to both deposit and non-deposit takers would (most likely) create a barrier to non-credit institutions entering the residential mortgage market in the United Kingdom. This would be an unnecessary barrier as non-credit institutions do not take deposits from the public.

The regulations pertaining to prudential requirements are set out in the FSA Handbook, Prudential Sourcebook for Mortgage and Home Finance Firms and Insurance Intermediaries (MIPRU). The relevant chapter of the MIPRU is 4.2. The capital resource requirements for regulated firms differ depending on what type of "Regulated Activity" the "firm" undertakes.

### 31.1.3 Funding mechanisms available to non-credit institutions

In essence, the UK has implemented the requirement in Article 3 of Directive 89/646/EEC, now Article 5 of Directive 2006/48/EC, by including "accepting deposits" as a specified activity under Part II, chapter 1, article 5 of the Financial Services and Markets Act (Regulated Activities) Order 2001.

Article 5 of the Regulated Activities Order (RAO) does not include separate definitions for "deposit" and "other repayable funds from the public". Instead the RAO's definition of "deposit" (article 5(2)) is designed to be broad enough to cover both concepts.

It is important to note, however, that the Order's broad definition of "deposit" is subject to a number of exclusions. For example, article 5(2)(b) excludes from the definition of "deposit" certain sums of money which are referable to the giving of security and article 9 excludes sums received in consideration for the issue of debt securities.

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<sup>80</sup> The Code of Conduct is not reproduced in this report. The code can be downloaded from <http://fsahandbook.info/FSA/html/handbook/MCOB> Mortgage and Home Finance Conduct of Business Sourcebook (MCOB) of the FSA Handbook.)

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Therefore, non-credit institutions may use the following mechanisms to fund their mortgage lending activities:

- Own funds;
- General debt securities including bonds not backed by mortgages and issued via both private and public placement, commercial paper and notes;
- Covered mortgage bonds issued by both public and private placement;
- Loans from either a parent institution or other credit and non-credit institutions; and,
- Mortgage backed securities.

Mortgage backed securities were a significant funding mechanism for non-credit institutions in the past, but this option has now decreased due to the reduction in credit available in international financial markets.

#### 31.1.4 Size of mortgage lending activity by non-credit institutions

In the United Kingdom, data reported by the Financial Services Authority and taken from their Product Sales Data, shows that non-credit institutions accounted for 12% of “new residential loan advances” in the calendar years 2006 and 2007.<sup>81</sup> This amounts to € 43.4 billion in 2006 and € 43.6 billion in 2007. In contrast, credit institutions made new advances of € 318.6 billion and € 319.8 billion in 2006 and 2007 respectively, representing 88% of new advances.

The Council of Mortgage Lenders, the industry federation in the UK, reports that non-credit institutions share of “gross mortgage loans” was 2.8% in 2001, 4.2 % in 2002, 5.1% in 2003, 5.4% in 2004, 6.9% in 2005, 7.5% in 2006 and 8.5% in 2007. It is important to note that the CML’s data comes only from its members, and therefore may not include as many institutions as the FSA’s Product Data Sales data.<sup>82</sup>

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<sup>81</sup> The Product Sales Data is a compulsory reporting requirement for all regulated firms. The Product Sales data has been collected since 2006 only. New residential loan advances are defined by the FSA as “the original interest bearing balance when the mortgage was completed”. The term “completed” means when the mortgage was granted to the customer and all legal documents for the loan have been completed.

<sup>82</sup> Gross mortgage loans are “all loans drawn down in the year whether subsequently securitised or not”. We believe this definition is a comparable definition to “new residential loan advances “as collected

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### *Lending activity by product type*

If we consider market share by mortgage product type, then the most common mortgage product supplied in 2006 and 2007 by both credit and non-credit institutions were variable rate mortgages with an initial fixed rate period. Sixty percent of mortgages supplied by credit institutions were of initial fixed rate periods in 2006 increasing to 69% in 2007. In the case of non-credit institutions; 68% of new mortgage advances were of the initial fixed rate period type in 2006, and increasing to 79% in 2007.<sup>83</sup>

Thirty nine percent of mortgage loans made by credit institutions in 2006 were variable rate mortgages with no fixed period, and this figure decreased to 30% in 2007. In the case of non-credit institutions; 31% of mortgage loans were variable mortgages in 2006 and this figure was 20% in 2007.

In short, variable rate mortgages with no fixed rate period have declined and mortgages with an initial fixed rate period have increased. The magnitude of the change is similar for both credit and non-credit institutions.

We can observe a difference in the type of variable rate mortgage supplied by credit and non-credit institutions: Of the variable rate mortgages supplied by non-credit institutions, 90% of these loans had reviewable interest rates and 10% had reference (or tracker rates) rates in 2006. In 2007, 69% of variable rate mortgages supplied by non-credit institutions were reviewable and 31% were reference. In comparison, in the case of credit institutions, 44% of variable rate mortgages were reviewable and 56% reference in 2006, and 36% were reviewable and 64% reference in 2007. We can observe a decrease in the proportion of reviewable rate mortgages and an increase in reference rate mortgages supplied by both credit and non-credit institutions. Non credit institutions do, however, supply more reviewable rate mortgages in both calendar years as compared to credit institutions.

### *Lending activity by market segment*

In 2006 and 2007 the market segment to which both credit and non-credit institutions made the greatest proportion of mortgage loans to were young households under 41. Sixty one percent of mortgage loans made by credit institutions in this time period were to young households, and 53% and 52% (in 2006 and 2007 respectively) of mortgage loans made by non-credit institutions were to young households. "Income not verified borrowers"<sup>84</sup>

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and reported by the FSA.

<sup>83</sup> The FSA data does not break initial fixed rate mortgages down into the term of the fixed rate.

<sup>84</sup> The FSA uses a broader definition that self certification. Income verification means that "income has been verified in the case of loans based on one or more persons' income".

were the next largest market segment to which mortgage loans were supplied by both credit and non-credit institutions. Credit institutions provided 42% of their mortgages to income not verified borrowers in 2006, and 52% in 2007. Non-credit institutions provided 42% and 39% of their mortgages to income not verified borrowers in 2006 and 2007 respectively. Therefore, we can observe an increase in the proportion of loans made to income not verified borrowers by credit institutions but loans from non-credit institutions to this market segment decreased.

Non credit institutions made a greater proportion of their mortgage loans to low equity borrowers as compared to credit institutions. Twenty three percent of loans made by non-credit institutions in 2006 were made to low equity borrowers as compared to 14% by credit institutions. The figures for 2007 are 26% of loans from non-credit institutions and 14% from credit institutions.

Non-credit institutions (also) made a greater proportion of their mortgage loans to self employed borrowers as compared to credit institutions. Thirty seven percent of loans made by non-credit institutions were made to self employed borrowers in 2006 as compared to 20% for credit institutions. In 2007, the proportion of loans made to self employed borrowers by non-credit institutions was (again) 37% and from credit institutions 21%.

### *Cross border lending activity*

If we consider cross border trade, non-credit institutions registered outside United Kingdom accounted for 64% of total lending by (all) non-credit institutions in 2006 and 59% in 2007. In the case of credit institutions, 12% of total lending was by those registered outside the United Kingdom in 2006, and in 2007 this proportion was 15%.

Of the foreign credit institutions providing mortgages into the United Kingdom economy, 99% of these loans in 2006 were from foreign credit institutions registered in another EU country; this figure was 96% in 2007. The FSA was unable to report on where foreign non-credit institutions are registered. Further, data collected by the FSA does not break down the market shares for foreign non-credit institutions into type of cross border trade, or product and market segment type.

The FSA has provided a list of the twenty largest authorised non-credit institutions in the United Kingdom from which a subsequent sample could be drawn. In June 2007 there were 119 registered and authorised credit institutions and 61 non-credit institutions making mortgage loans in the UK. This number is expected to have changed, but more recent data is not currently available. The list of the largest twenty non-credit institutions is reproduced in Annex 1 to this report.

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## Annex 1 Glossary of terms

In this annex we define some key terms used in the study.

**Credit Institutions** are those undertakings whose business is to receive deposits or other repayable funds from the public and to grant credit for its own account (as per the definition provided in EC Directive 2006/48, Credit Institutions, Article 4(1)).

**Non-credit institutions** are those undertakings active in the financial sector that are not registered as credit institutions according to domestic regulatory and supervisory frameworks.

**Financial Institutions** are undertakings other than credit institutions, that carry on a defined set of activities which include, “lending including, inter alia: consumer credit, mortgage credit, factoring, with or without recourse, financing of commercial transactions (including forfeiting)” and exclude the “acceptance of deposits and other repayable funds” (as per the definition provided in EC Directive 2006/48, Credit Institutions, Article 4(5) and Annex I)).

**Mortgage loans** are defined as the provision of credit for the purchase of immovable property. This definition is not dependent on guarantee or security type.

**Residential mortgage loans** are defined as credit provided for the purpose of residential property. Where residential property means a residence to be occupied or let by the borrower (as per the definition provided in EC Directive 2006/48, Article 113).

**Money market instruments** mean those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment (as per definition provided in Directive 2004/39/EC, Markets in Financial Instruments, Article 4 (19)).

**Transferable securities** mean those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as:

(a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;

(b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities;

(c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference transferable securities, currencies, interest rates or yields, commodities or other indices or measures;

(as per the definition provided in Directive 2004/39/EC, Markets in Financial Instruments, Article 4 (18)).

**General debt securities** are “money market instruments” and “transferable securities” that are not backed by mortgages, and these include: bonds, commercial paper and notes.

**Covered mortgage bonds** are “transferable securities” which are backed by mortgages and remain on the mortgage originator’s balance sheet.

**Mortgage backed securities** are “transferable securities” which are backed by mortgages and are transferred to a Special Purpose Vehicle’s balance sheet.

**Mortgage product type:** the different mortgage products as used in this study are defined below. The definitions are taken from the European Mortgage Federation’s “*Study on Interest rate Variability in Europe*”, July 2006.

*Fixed rate mortgages* are residential mortgages for which the interest rate remains unchanged throughout the duration of the mortgage loan. The duration of such loans can be, i) less than 5 years, ii) between 5 and 10 years, or iii) more than 10 years.

*Variable rate mortgages* are residential mortgages for which the interest rate can vary during the entire duration of the loan. The two main variability mechanisms are:

- Referenced rate: the interest rate follows an external index. E.g., the Euribor or the Central Bank base rate. This is called a “tracker rate” in the UK.
- Reviewable rate: the interest rate can be reviewed by the lender at discretionary intervals throughout the duration of the loan.

*Initial Fixed Rate Mortgages* are residential mortgages for which the interest rate remains fixed for pre-defined period of the mortgage. The length of the fixed rate period can be, i) 1 - 2 years, ii) 3 - 5 years, or iii) 6 - 10 years.

*Capped rate mortgages* are residential mortgages for which the interest rate cannot rise above a maximum level (a CAP) or below a minimum level (a COLLAR).

*Guaranteed interest rate mortgages* are residential mortgages for which the interest rate on the mortgage can be fixed for up to one year before the mortgage is used.

*Exchangeable interest rate mortgages* are residential mortgages for which at a given maturity the borrower can swap the variable interest rate with a fixed interest rate or vice versa.

*Mixed interest rate mortgages* are residential mortgages for which part of the mortgage is at a fixed interest rate and part of the mortgage is at a variable interest rate.

## Annex 2 Non-credit institution lists

In this annex we present the lists of non-credit institutions currently available for the EU Member States.

Lists for non-credit institutions were available for the following Member States:

- Belgium
- Ireland
- Malta
- Netherlands
- Romania, and
- UK

### *Belgium*

Table 4 reproduces the list of non-credit institutions that are registered and authorised (inscribed) in Belgium. This information is available from the CBFA website (<http://www.cbfa.be/fr/index.asp>).

<b>Table 4: Belgium OMLs with mortgage firm inscription (called “other enterprises” in Belgium)</b>	
<b>Firm name</b>	<b>Contact details</b>
<b>Arcole</b> Limited Company	Da Vincilaan 9, Box E.6 B - 1935 Zaventem
<b>Auxifina - GE Money</b> Limited Company	Avenue des Communautés 5 B - 1140 Bruxelles
<b>B-Arena</b> Limited Company	Boulevard de la Cambre 74 B - 1000 Bruxelles
<b>Belsca</b> Limited company	Avenue Reine Astrid 47-49 B 10 B - 5000 Namur
<b>Building</b> Limited company	Chaussée de Bruxelles 122 B - 6040 Jumet
<b>Compt. d'Esc. de Charleroi-Mons-Soignies</b> Partnership	Boulevard Albert-Elisabeth 43 B - 7000 Mons

<b>Comptoir d'Escompte de Dinant-Marche</b> Partnership	Rue de l'Institut 1 B - 5004 Bouge
<b>Comptoir d'Escompte de Huy-Liège</b> Partnership	Avenue Air Marshal Coningham 6 B 3 B - 1000 Bruxelles
<b>Comptoir d'Escompte de Namur</b> Partnership	Rue de l'Institut 1 B - 5004 Bouge
<b>Comptoir d'Escompte du Luxembourg</b> Limited company	Avenue de la Gare 7 B - 6700 Arlon
<b>Comptoir d'Escompte Europeen</b> Limited company	Boulevard Saint-Michel 68 B - 1040 Bruxelles
<b>Creafin</b> Limited company	Achterstenhoek 48 B - 2275 Lille
<b>Créd Soc et les Petits Propriétés Réunis</b> Limited company	Grand-Rue 89 B - 6200 Châtelet
<b>Créd. soc. de la Prov. du Brabant Wallon</b> Limited company	Avenue de Burlet 1 B - 1400 Nivelles
<b>Credibe</b> Limited company	Rue de la Loi 42 B - 1040 Bruxelles
<b>Credimo</b> Limited company	Weversstraat 6-10 B - 1730 Asse
<b>Credis</b> Société privée à responsabilité limitée( private company with limited responsibility)	Rue Sainte-Marie 5 B - 4000 Liège
<b>Credissimo</b> Limited company	Rue du Charbonnage 7 A B - 4100 Seraing
<b>Crédit à l'Epargne Immobilière</b> Limited company	Rue de Tourcoing 46 B - 7700 Mouscron
<b>Crédit Immobilier, Soc. de Crédit Social</b> Limited company	Rue du Prince Royal 33 B - 1050 Bruxelles
<b>Crédit Ouvrier Couvinois</b> Limited company	Avenue Franchet d'Esperey 1 B - 5500 Dinant
<b>Crédit Ouvrier, Société de Crédit Social</b> Limited company	Rue du Prince Royal 33 B - 1070 Bruxelles
<b>Crédit pour Habitations Sociales</b> Limited company	Jagersveld 4 B - 1170 Bruxelles
<b>Crédit Social du Luxembourg</b> Limited company	Rue Général Molitor 22 B - 6700 Arlon
<b>Crédit Social Logement</b> Société coopérative à responsabilité limitée	Rue des Minières 21 B - 4800 Verviers
<b>De Limburgse</b> Limited company	Weg naar As 138/11 B - 3600 Genk

<b>De Meiboom - Eigen Huis</b> Limited company	Torenstraat 2 B - 8800 Roeselare
<b>De Vooruitziende Werkman</b> Limited company	Stapelplein 70 B 101 B - 9000 Gent
<b>De Voorzienigheid</b> Limited company	Scholtisplein 11 B - 3680 Neeroeteren
<b>Demer en Dijle</b> Limited company	Naamsesteenweg 142 B - 3001 Heverlee
<b>Diamond Mortgage Finance 2004</b> Limited company	Da Vincilaan 9, box E.6 B - 1935 Zaventem
<b>Diamond Mortgage Finance 2006</b> Limited company	Rue du Congrès 33 B - 1000 Bruxelles
<b>EB-Lease</b> Limited company	Burgstraat 170 B - 9000 Gent
<b>Eigen Bouw</b> Limited company	Torhoutsesteenweg 34 B 1 B - 8200 Sint-Andries
<b>Eigen Haard</b> Limited company	Dr. L. Colensstraat 10 B 1 B - 8400 Oostende
<b>Eigen Haard is Goud Waard</b> Limited company	Kastanjelaan 26 B - 3630 Maasmechelen
<b>Eigen Heerd</b> Cooperative society	Oude Veurnestraat 15 B - 8900 Ipre
<b>Eigen Heerd is Goud Weerd</b> Limited company	Burgstraat 148 B - 9000 Gent
<b>Eigen Huis - Thuis Best</b> Limited company	Boeveriestraat 42 B - 8000 Brugge
<b>Eigen Huis der Durmestreek</b> Limited company	Markt 40 B 2 B - 9160 Lokeren
<b>Eigen Woon</b> Limited company	Stationsstraat 58 B - 9880 Aalter
<b>Elantis</b> Limited company	Rue des Clarisses 38 B - 4000 Liège
<b>Elk Zijn Huis</b> Limited company	Broelkaai 1g B - 8500 Kortrijk
<b>EVE - Eerste Vlaamse Effectisering</b> Limited company	Rue de Colonies 40 B - 1000 Bruxelles
<b>Finkap</b> Limited company	Capucienenlaan 40 B - 9300 Alost
<b>Finmatic</b> Limited company	Mechelsesteenweg 150 B - 2018 Antwerpen
<b>Fraternitas</b> Limited company	Grote Markt 2 B - 3300 Tienen
<b>Habitation Lambotte</b> Limited company	Avenue Franchet d'Esperey 1 B - 5500 Dinant
<b>Het Werkmansion</b> Limited company	Pliniuswal 12 B - 3700 Tongres
<b>Hypotheekmij De Beide Vlaanderen</b> S Limited company	Wilgenlaan 39 B - 8610 Kortemark

<b>Ieder zijn Huis</b> Limited company	Sint-Ursmarusstraat 56a B - 9200 Dendermonde
<b>IMABO</b> <i>Société coopérative à responsabilité limitée</i>	Sint-Michielskaai 31 B - 2000 Antwerpen
<b>Kempar</b> Limited company	Achterstenhoek 48 B - 2275 Lille
<b>Kempische Heerd</b> Limited company	Parklaan 113 B - 2300 Turnhout
<b>Klein Eigenaarskrediet</b> Limited company	Justitiestraat 21 B - 2018 Antwerpen
<b>Koning in mijn Woning</b> Limited company	Gasthuisstraat 76 B - 9140 Temse
<b>Krediet voor Eigen Heerd</b> Limited company	Stationsstraat 13 B - 9600 Ronse
<b>Kredietmaatschappij der Zuiderkempen</b> Limited company	Noordstraat 8 B - 2220 Heist-op-den-Berg
<b>Kredietmaatschappij Germinal</b> Limited company	Kol. Dusartplein 2 B 3 B - 3500 Hasselt
<b>Kredietmaatschappij Onze Thuis</b> Limited company	Albert Panisstraat 8 B 2 B - 9120 Beveren
<b>Kredietmaatschappij Sint-Trudo</b> Limited company	Gorseweg 53 B - 3800 Saint-Trond
<b>Kredietmij voor Soc. Woningen Eigen Huis</b> Limited company	Hasseltsesteenweg 28 B 2 B - 3700 Tongres
<b>Kredietmij. voor Sociale Woningen</b> [544] Limited company	Genkersteenweg 304 B - 3500 Hasselt
<b>Krefima</b> Limited company	Mechelsesteenweg 150 B - 2018 Antwerpen
<b>La Maison Ouvrière de l'Arr de Charleroi</b> Limited company	Rue de France 34 B - 6000 Charleroi
<b>La Maison Sociale de Tournai-Ath</b> Limited company	Rue Royale 85 B - 7500 Tournai
<b>La Prévoyance</b> Limited company	Rue Hamoir 10-12 B - 7100 La Louvière
<b>La Terrienne du Crédit Social</b> <i>Société coopérative à responsabilité limitée</i>	Rue Capitaine Jomouton 44 B - 5100 Jambes (Namur)
<b>La Terrienne du Luxembourg</b> <i>Société privée à responsabilité limitée</i>	B - 6900 Marloie
<b>L'Abri</b> Limited company	Dorpsstraat 15 B - 3560 Lummen
<b>Landwaarts Sociaal Woonkrediet</b> Limited company	Dieplaan 57-59 B - 3600 Genk

<b>Le Crédit Hypothécaire O. Bricoult</b> Limited company	Rue de la Station 232a B - 6200 Châtelet
<b>Le Crédit Social de Tubize</b> Limited company	Rue de Mons 78 B - 1480 Tubize
<b>Le Petit Propriétaire</b> Limited company	Rue du Pont-Levis 1 B 2 B - 1200 Bruxelles
<b>Le Petit Propriétaire de Tournai-Ath</b> [516] Limited company	Rue Saint-Jacques 5 B - 7500 Tournai
<b>Le Travailleur Chez Lui</b> [417] Limited company	Rue Sainte-Marie 5 B - 4000 Liège
<b>Leenmij voor de arrond. Roeselare-Tielt</b> Limited company	Iepersestraat 34 B - 8800 Roeselare
<b>L'Entr'Aide Financière du Tournaisis</b> Limited company	Rue Neuve 2-4 B - 7601 Roucourt-Péruwelz
<b>Limburgs Volkskrediet</b> Limited company	Gouverneur Roppesingel 137 B - 3500 Hasselt
<b>Loan Invest</b> Limited company	Boulevard de la Cambre 74 B - 1000 Bruxelles
<b>L'Ouvrier Chez Lui</b> Limited company	Rue d'Amérique 26/01 B - 4500 Huy
<b>MBS</b> Limited company	Boulevard du Roi Albert-II 19 B - 1210 Bruxelles
<b>Meetjeslanders Eigen Huis</b> Limited company	Kerkplein 1 B - 9900 Eeklo
<b>Mijn Huis</b> Limited company	Beekstraat 28 B - 3800 Saint-Trond
<b>Nationale Mij voor Hypothecair Krediet</b> Limited company	Sint Annadreef 68 B B - 1020 Bruxelles
<b>Notre Maison</b> Limited company	Rue du Peuple 95 B - 7340 Pâturages
<b>Occhiolino</b> Limited company	Rue de la Chancellerie 17A B - 1000 Bruxelles
<b>Office Central de Crédit hypothécaire</b> Limited company	Belgiëlei 49-53 B - 2018 Antwerpen
<b>Ons Eigen Huis</b> Limited company	Marktplein 10 B 1 B - 3910 Neerpelt
<b>ProxiPrêt</b> Limited company	Rue grande 1 B - 5100 Wierde
<b>Rail Facilities</b> Limited company	Rue de France 56-58 B - 1060 Bruxelles
<b>Sint-Jozefskredietmaatschappij</b> Limited company	Graaf van Loonstraat 13 B - 3580 Beringen

<b>Soc. de Crédit pour Habitations Sociales</b> Limited company	Rue des Arsilliers 26 B - 4960 Malmédy
<b>Soc. Terrienne du Crédit Soc. du Hainaut</b> <i>Société coopérative à responsabilité limitée</i>	Rue Deffacqz 17 B - 7800 Ath
<b>Sociaal Woningkrediet</b> Limited company	Terlindenhofstraat 24 B - 2170 Merksem
<b>Sociaal Woonkrediet - Regio Mechelen</b> Limited company	Désiré Boucherystraat 8 B - 2800 Mechelen
<b>Sociaal Woonkrediet Antwerpen-Kempen</b> Limited company	Renier Sniedersstraat 26 B - 2300 Turnhout
<b>Sociaal Woonkrediet Middenkempen</b> Limited company	Nieuwstraat 74 B - 2260 Westerlo
<b>Société Patronale Hypothécaire</b> Limited company	Rue Belliard 3 B - 1040 Bruxelles
<b>Société Régionale de Crédit au Logement</b> Limited company	Rue Belliard 3 B - 1040 Bruxelles
<b>Société Wallonne de Crédit Social</b> Limited company	Boulevard Tirou 7 B - 6000 Charleroi
<b>Socodix - Le Foyer</b> <i>Société coopérative à responsabilité limitée</i>	Place Docteur Schweitzer 8 B - 1082 Bruxelles
<b>Sokrema</b> Limited company	Sint-Michielskaai 31 B - 2000 Antwerpen
<b>Terre et Foyer</b> <i>Société coopérative à responsabilité limitée</i>	Avenue Roi Baudouin 29 B - 4432 Ans-Allieur
<b>Tous Propriétaires</b> Limited company	Rue Albert Ier 177 B - 6560 Erquelinnes
<b>Union Hypothécaire</b> Limited company	Square de Meeûs 21 B - 1050 Bruxelles
<b>Uw Eigen Huis der Vlaanderen</b> Limited company	Neermeerskaai 147 B - 9000 Gent
<b>Vlaams Sociaal Woonkrediet</b> Limited company	Dorpsstraat 15 B - 3560 Lummen
<b>Vlaams Woningfonds van de Grote Gezinnen</b> Cooperative society	Square de Meeûs 26-27 B - 1000 Bruxelles

Table 5 reproduces the list of insurance and pension firms that are mortgage firms in Belgium. This list is available from the CBFA website (<http://www.cbfa.be/fr/index.asp>).

<b>Table 5: Belgium insurance and pension firms with mortgage firm inscription</b>	
<b>Firm name</b>	<b>Contact details</b>
<b>Allianz Belgium</b> Limited Company	Rue de Laeken 35 B - 1000 Bruxelles
<b>Argenta Assurances</b> Limited Company	Belgiëlei 49-53 B - 2018 Antwerpen
<b>AXA Belgium</b> Limited Company	Boulevard du Souverain 25 B - 1170 Bruxelles
<b>Contassur</b> Limited Company	Place du Trône 1 B - 1000 Bruxelles
<b>Delta Lloyd Life</b> Limited Company	Boulevard de la Plaine 15 B - 1050 Bruxelles
<b>Dexia Assurances Belgique</b> Limited Company	Avenue Livingstone 6 B - 1000 Bruxelles
<b>Ethias Droit Commun</b> Association of mutual benefit insurances	Rue des Croisiers 24 B - 4000 Liège
<b>Ethias Vie</b> Association of mutual benefit insurances	Rue des Croisiers 24 B - 4000 Liège
<b>Fidea</b> Limited Company	Van Eycklei 14 B - 2018 Antwerpen
<b>Fortis Insurance Belgium</b> Limited Company	Boulevard Emile Jacqmain 53 B - 1000 Bruxelles
<b>Generali Belgium</b> Limited Company	Tour Louise - Avenue Louise 149 B - 1050 Bruxelles
<b>Hamburg-Mannheimer</b> Limited Company	Boulevard Bischoffsheim 1-8 B - 1000 Bruxelles
<b>KBC Assurances</b> Limited Company	Waaistraat 6 B - 3000 Leuven
<b>Korfina</b> Limited Company	Minister Liebaertlaan 10 B - 8500 Kortrijk
<b>L'Ardenne Prévoyante</b> Limited Company	Avenue des Démineurs 5 B - 4970 Stavelot
<b>Les Assurances Fédérales, Acc. Travail</b> Caisse commune	Rue de l'Etuve 12 B - 1000 Bruxelles
<b>Les Assurances Fédérales, Accidents</b> Cooperative company with limited responsibility	Rue de l'Etuve 12 B - 1000 Bruxelles
<b>Les Assurances Fédérales, Vie</b> Association of mutual benefit insurances	Rue de l'Etuve 12 B - 1000 Bruxelles
<b>L'Integrale, Caisse Commune d'Assurance</b> Caisse commune	Place Saint Jacques 11, B 101 B - 4000 Liège
<b>Mercator Assurances</b> Limited Company	Desguinlei 100 B - 2018 Antwerpen

<b>MetLife</b> Limited Company	Boulevard de la Plaine 11 B - 1050 Bruxelles
<b>Nateus</b> Limited Company	Frankrijklei 79 B - 2000 Antwerpen
<b>Nationale Suisse Assurances</b> Limited Company	Rue des Deux Eglises 14 B - 1000 Bruxelles
<b>P &amp; V Assurances</b> Cooperative society	Rue Royale 151 B - 1210 Bruxelles
<b>Swiss Life Belgium</b> Limited Company	Avenua Fonsny 38 B - 1060 Bruxelles
<b>V.O.V. Fonds de Pension Brabo</b> Non-profit making association	Sint-Aldegondiskaai 36-42 B - 2000 Antwerpen
<b>Vivium</b> Limited Company	Rue Royale 153 B - 1210 Bruxelles

### *Ireland*

Table 6 presents the list of non-credit institutions provided by the Irish Banking Association. There is no published list currently available.

<b>Table 6: Non-credit institutions that provide residential mortgage loans in Ireland</b>
Start Mortgages
GE Money
Nua
Springboard Mortgages

## Malta

Table 7 presents the licensed “financial institutions”, as defined in Maltese Law, (non-credit Institutions) in Malta. This information is available from the MFSA website. Note: no non-credit institutions are currently providing residential mortgages in Malta.

Table 7: Licensed Financial Institutions Malta	
Institution name	Contact details
Britannia Financial Services Limited	(No website or e-mail reported on MFSA website) 11A Falcon House High Street, Sliema, SLM 1544 Ph. 21346610
Deutsche Financial Services (Malta) Limited	<a href="http://www.deutsche-bank.com">www.deutsche-bank.com</a> Level 14 Portomaso Business Tower, St Julians, STJ 4010. Ph. 21373666/21374186, e-mail <a href="mailto:andreas.siewert@db.com">andreas.siewert@db.com</a>
Fexco Financial Services (Malta) Limited	<a href="http://www.fexcomalta.com">www.fexcomalta.com</a> Suite 2 International House Naxxar Road, San Gwann, SGN 9032. Ph. 21387361, e-mail <a href="mailto:dbh@fexcomalta.com">dbh@fexcomalta.com</a>
Northway Financial Corporation Ltd	(no website or e-mail reported on MFSA register) Level 8 Suite 3 Plaza Commercial Centre, Bisazza Street, Sliema SLM 1640, Ph. 21322473

\* The list was last updated 14<sup>th</sup> April 2008 on the MFSA website

## Netherlands

The Netherlands Authority for the Financial Markets (AFM) maintains a public database of Financial Service Providers that are not banks (<http://www.afm.nl/publicdatabase>). The database must be searched by individual firm and the license conditions checked for each firm. Currently there are 99 Financial Service Providers that provide consumer credit ([aanbieden van krediet](#)). Most of these do not however currently provide residential mortgages.

The AFM supplied a list of Financial Service Providers that currently provide residential mortgages for the purpose of the individual OML survey, but requested that this list was not reproduced.

## Romania

Table 8, presents the Non-bank Financial Institutions that provide residential mortgage loans in Romania

<b>Table 8: Non-bank financial institutions that provide residential mortgage loans in Romania</b>
SC Domenia Credit SA
SC Finans Credit Ipotecar SA
SC Imocredit SA

Note: The list of all non-bank financial institutions in Romania is available at, [http://www.bnr.ro/Ro/Legi/IFN/OG\\_28\\_2006\\_lista.pdf](http://www.bnr.ro/Ro/Legi/IFN/OG_28_2006_lista.pdf). London Economics has drawn out the three non-bank institutions that provide residential mortgage loans.

## United Kingdom

Table 9, presents the twenty largest non-credit institutions in the UK residential mortgage market. These institutions are called “non-deposit taking” institutions in the UK.

<b>Table 9: Twenty largest “non-deposit taking” institutions that provide residential mortgages in the UK</b>
<b>Institution name</b>
GMAC-RFC Ltd
National Westminster Home Loans Ltd
GE Money Home Lending Ltd
Mortgage Express
Platform Funding Ltd
Mortgages 1 Ltd
Kensington Mortgage Company Ltd
Southern Pacific Mortgages Ltd
Accord Mortgages Ltd
The Mortgage Business Plc

**Table 9: Twenty largest “non-deposit taking” institutions that provide residential mortgages in the UK**

**Institution name**

Bank of Ireland Home Loans Ltd  
Preferred Mortgages Ltd  
Yorkshire Bank Home Loans Ltd  
Norwich Union Equity Release Ltd  
Money Partners Ltd  
Amber Homeloans Ltd  
Beacon Homeloans Ltd  
UCB Home Loans Corporation Ltd  
Future Mortgages Ltd  
Rooftop Mortgages Ltd  
Prudential Lifetime Mortgages Ltd



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