



**VERBAND DEUTSCHER  
PFANDBRIEFBANKEN**  
| Immobilien- | Staats- | Schiffsfinanzierung |

The Association of German Pfandbrief Banks<sup>1</sup> welcomes the opportunity to comment on the content of the study on the role and regulation of non-credit institutions in EU mortgage markets.

The German Pfandbrief Banks support the research of the European Commission in this area. Indeed, it was communicated by the Commission's press release that one of the main drivers of the NCI research was to make regulatory gaps in this area transparent, having in mind the US experience where 50% of sub-prime mortgages have been granted by non-bank mortgage lenders. We fully share the relevance of this objective and welcome that the impact of the financial crisis was taken into consideration by the consultants at several instances.

We would like to confirm that the study correctly reflects the German legal framework where a banking licence is required for the provision of mortgage credits, with the exception of insurance companies being allowed to grant mortgage loans as part of their asset management activity. We didn't note any inaccuracies of the report at that respect. The study produced a well-focused evidence on all NCI regimes of member states and this will certainly add much value to the current discussion on mortgage markets integration.

More generally, and after thorough consideration of the content of the study, we conclude that the overarching principle to be applied to the NCI market segment shall be 'same business, same risks, same rules' in order to ensure a level playing field between mortgage lenders in the European Union. This should not only cover consumer protection rules but also banking supervisory provisions with respect to equity allocation, risk management and reporting requirements.

In our view, the study produces evidence of the fragility of the NCI's business model, particularly under difficult market conditions. The study's findings also generate some doubts with respect to the sustainability of the NCI's funding basis consisting primarily of own shareholder funds, securitisation and/or short-term loans (warehouse or from parent companies). Indeed, the business model of NCIs, which is primarily based on a niche-market approach and higher risk-taking, seems less resilient during crisis periods or distressed market cycles.

We therefore expect the Commission raising doubts regarding the suitability of NCIs as drivers for the further integration of European mortgage markets.

Our more specific comments on the study are as follows:

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<sup>1</sup> The Association of German Pfandbrief Banks is composed by 36 Pfandbriefe issuing member banks. vdp members rank among the most important providers of capital for residential and commercial real estate as well as for the public sector and its institutions.

## 1. Regulation of NCIs:

- The study explains the less extensive regulation of NCI's (in those countries where these institutions are regulated at all) as compared to credit institutions by their non-deposit taking nature. We don't share the view of the consultants that non-deposit taking translates in lower risks to the functioning of the financial system and to consumers. The financial crisis showed the opposite and evidenced that the scope of the EC Capital Requirements Directive 2006/48 is not solely deposit protection, but also financial stability.
- It is true that the differences in legislative and regulatory approaches to residential mortgage lending by NCIs might lead to significant cost in understanding and conforming to the different national frameworks when seeking to engage in the provision of cross border residential mortgages. But such cost might only be reduced through the introduction of a EU-wide NCI regulation (NCI Directive or alike) on the basis of which a European passport could be granted to these institutions.

But even then, a considerable cost burden will remain, because significant administration, search or interpretation costs are induced by the need to find and comply with all legislative and regulatory provisions applicable to mortgage lending in host Member States. Thus, a crucial size of the NCI and a sufficient number of specialist staff available to deal with foreign rules (law and regulation) will continue to be a prerequisite for foreign market entry of NCIs, irrespective of the NCI's regulatory regime.

## 2. Funding of NCIs

On pages 59 and 60, the study seems to suggest that NCIs could issue mortgage covered bonds for funding purposes. We would like to emphasise that in our view, the issuance of covered bonds necessarily requires the status of a credit institution.

## 3. Cross border mortgage provision and related obstacles

We note that the most common form of cross border trade is foreign market entry by subsidiaries. Indeed, we also experienced that it is more appropriate to employ indigenous country staff instead of training staff in the home country, because this is the more suitable and more efficient approach for the understanding of and compliance with the foreign regulatory framework.

It has been evidenced over recent years (COM Green and White Papers on Mortgage Credit) that the same applies to credit institutions willing to engage in cross border mortgage transactions. Thus, cross border challenges appear to be quite the same for NCIs and credit institutions.

The study seems to confirm that neither a credit institution status nor a passporting of NCIs would reduce the barriers to cross border mortgage provision, these obstacles consisting of differences in the legal frameworks of Member States, diverging product authorisation and mortgage collateral regimes, the need for costly software and back-office adaptations, differences in margins of mortgage products and their pricing, as well as related impediments to compare profitability between Member States.

It is worthwhile to note that all these obstacles are intrinsic to the diversity of European mortgage markets and likewise fully apply to credit institutions. It is therefore our view that passporting or harmonising NCIs would hardly facilitate or speed up the integration process of European mortgage markets. After all and having in mind that “the market share of NCIs in the Member States’ national mortgage markets is small to very small as compared to the market share of credit institutions”(page 7 of the study), we conclude that the added value of NCIs to mortgage market integration remains uncertain.

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