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Internal Market and Services DG

FINANCIAL INSTITUTIONS

Retail issues, consumer policy and payment systems

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## WORKING DOCUMENT

### GOVERNMENT EXPERT GROUP ON MORTGAGE CREDIT (GEGMC)

**31 MAY 2006, 10.00–17.00**

CONFERENCE CENTRE ALBERT BORSCHETTE, RUE FROISSART 36, BE-1040 BRUSSELS

#### 1. INTRODUCTION

On 19 July 2005, the European Commission published its Green Paper on Mortgage Credit in the EU. The Green Paper was supplemented by a cost/benefits study published in August 2005 carried out on behalf of the Commission by independent external contractors London Economics. The Commission's consultation on the Green Paper concluded on 7<sup>th</sup> December 2005 with a public hearing.

A White Paper will be released in early 2007. During 2006 all issues will be explored in detail. Although the consultations so far have provided indications on the views of many participants, further work is required in order to get a comprehensive understanding. Consultations will continue to be held throughout 2006 with consumers, mortgage lenders, Member States and other stakeholders.

The purpose of the meeting is threefold:

- to take stock of progress to date in the consultations on mortgage credit; the Commission services will present the results of the Green Paper consultation.
- to outline the next steps: the Commission services will outline how it intends to proceed on the various issues during 2006.
- to obtain further input into some of the open questions and issues in order to prepare the White Paper.

**Member States are kindly asked to provide information on the topics in this paper no later than 31 August 2006 (by email to [markt-h3@ec.europa.eu](mailto:markt-h3@ec.europa.eu)).**

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## **2. CONSUMER PROTECTION**

### **2.1. Background**

The Green Paper asked for input on various consumer protection issues. Many responses expressed clear support for the harmonisation of some key consumer confidence provisions. There are, however, significant differences between, respectively, industry's and consumer's positions on how to arrive at a more efficient and competitive mortgage market where consumers are confident enough to make a well informed decision about the single most important financial investment of their life.

In order to shed further light on areas where consensus between mortgage industry and consumers might exist, the Commission launched a dialogue between the EU mortgage lending industry and consumer associations. The objective of the dialogue is to explore to what extent consumer and industry representatives can agree on common principles or even arrive at commonly acceptable standards on mainly four targeted consumer protection provisions, namely information, advice, early repayment and annual percentage rate (APR).

The dialogue will meet eight times before the end of 2006. The first meeting took place on 10 May on information and advice. Four more technical meetings will be held on the various topics. The results of the dialogue will be taken into high account in drafting the future policy orientations for the White Paper.

### **2.2. Next Steps and Questions for discussion**

#### *2.2.1. Information*

Pre-contractual information is currently subject to a European Code of Conduct adopted in 2001. In the Green Paper consultation, several respondents made proposals to modify the European Standardised Information Sheet (ESIS) either by modifying existing items or adding additional items. In addition, contributions appear to indicate that the information should be provided in time for the consumer to be able to shop around, i.e. before the consumer has signed the contract.

In order to facilitate the discussion on information during the meetings of the dialogue, as well as to consider the implications of any future policy orientations in this area, DG Internal Market services would like to explore in more detail existing national provisions on information.

Member States are requested to:

- Consider and advise on the feasibility of defining the stage at which the ESIS should be provided to the consumer. Is this stage defined at the national level?
- Assess the relevance of the ESIS: are there studies or research available on the efficiency of the ESIS.
- Assess whether all ESIS information fields are clear and understandable and discuss whether the structure could be improved.

- Deliberate on what information could be added (or removed) from the ESIS to enhance its efficiency.
- Consider whether the ESIS should be made binding or not.

In the contributions to the Green Paper, the majority of respondents supported the idea of extending information requirements to intermediaries, e.g. brokers. It was however unclear to exactly which intermediaries. Member States are therefore asked to contemplate what entities should be subject to the information provision regime for mortgages?

### 2.2.2. *Advice Provision*

DG Internal Market services believe that it is necessary to gather further information on advice before any conclusions on the provision of advice can be drawn. Therefore, DG Internal Market services would be grateful to get additional information about the framework in place in the respective Member States.

Member States are requested to:

- Explore the definition of and standards for the provision of advice. Are there legal or self-regulatory obligations regarding the definition and standards in Member States?
- Consider whether the approach currently proposed in the Consumer Credit Directive should be applicable to mortgages.
- Reflect on who should give advice: lenders; specialised advice providers; etc.

### 2.2.3. *Early Repayment (ERP)*

Since early repayment systems differ considerably between the Member States, the Commission consider it to be essential to have more in depth information about the various frameworks in place.

The Green Paper consultation provided an insight into the views of contributors. At the same however, many of the responses were unclear. Against this background, DG Internal Market services believe it important to fully understand the existing situation in Member States as well as consider the different options available.

Member States are requested to:

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

- Explain (if such a right to ERP exists) whether the right is conditional or unconditional (i.e. it can be executed under any circumstances and at any time). Member States are asked to consider if a legal right were to be established at the EU level whether it should be conditional or unconditional.
- Describe whether, early repayment fees may be charged? If yes, how are these fees calculated and are there any caps on them? Member States are requested to discuss whether it is advisable and feasible to address ERP fees at the EU level.

#### 2.2.4. *Annual Percentage Rate (APR)*

The responses to the Green Paper consultation clearly indicate that a harmonisation of the APR in relation to the method of calculation and the basis of calculation would facilitate the comparability and transparency of different offers. Therefore, the Commission services would like some additional information about the currently existing national frameworks.

Member States are asked to:

- assess the merits of having a specific mortgage APR and in particular consider whether the APR proposed in the Consumer Credit Directive should also apply for mortgage credit;
- discuss which costs should be included and which costs should be excluded;
- reflect on how the consumer can be made aware of the costs excluded from the APR.

### 3. CLIENT CREDIT-WORTHINESS

#### 3.1. Background

The Commission suggested in the Green Paper that the priority on the evaluation of credit-worthiness could be to ensure cross-border access to databases on a non-discriminatory basis and welcomed comments on this position. The large majority of contributions supported the idea of cross-border access to databases on a non-discriminatory basis. Several contributions, however, raised the question of whether legislative action is required or whether other means would be more effective, e.g. the development of a Memorandum of Understanding between the credit agencies. Stakeholders from all categories highlighted the need to comprehensively consider data protection rules to protect privacy. The importance of ensuring that the data held is accurate and up-to-date was also emphasised. Furthermore, contributions underlined that the credit agencies should be subject to some form of supervision to monitor who can access the databases.

#### 3.2. Next Steps and Questions for discussion

Commission services have met with several consumer credit information suppliers in order to investigate in more detail on the existing credit registers. DG Internal

Market services are considering organising a meeting with all existing European credit registers (public and private) to explore the issues and the different options. The Commission services seek further guidance on several aspects of this debate.

Member States are therefore asked to:

- Consider whether the approach currently being proposed in the Consumer Credit Directive would also be suitable for mortgage credit. In particular, how non-discriminatory access to credit information could concretely be ensured?
- Discuss the different options for facilitating cross-border access: legislation, memorandum of understanding, etc. Are there rules which hinder the negotiation of bilateral or multilateral agreements to facilitate the cross-border access? Member States are also asked to provide information on any bilateral or multilateral agreements which they are currently aware of in this area.

#### **4. PROPERTY VALUATION**

##### **4.1. Background**

The Green Paper requested information on the merits of a single EU standard for valuation processes and/or mutual recognition of national valuation standards. A majority of contributions indicated their support for the development of international standards for valuation. All contributions however underlined importance of a degree of differentiation to take into account local characteristics. Consequently, the contributions tended to favour standards based on principles rather than on details. Mutual recognition of valuation standards also received support from some stakeholders. On valuers qualifications, a majority were also in favour of developing international minimum standards with again a degree of support for mutual recognition.

##### **4.2. Next Steps and Questions for discussion**

The Commission services intend to investigate several issues relating to valuations in greater detail before making its final policy orientations. Commission services have met with several valuation bodies including International Valuation Standards Committee (IVSC), the European Group of Valuers' Associations (TEGoVA), and the Royal Institution of Chartered Surveyors (RICS). Additional information on the framework in place in Member States is therefore sought.

Member States are asked to consider:

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

- What possible solutions could be considered for the issue of valuation requirements? Legislation? Recommendations? Market initiatives? Other options?
- Valuers qualifications. The Green Paper consultation highlighted valuers qualification as a significant barrier to cross-border activity due to differences in the regulation of the profession in different Member States. In which Member States is the profession regulated and how? Are the professional qualifications for valuers available? If yes, what are they?
- What possible solutions could be considered for the issue of valuers qualifications? Legislation? Recommendations? Market initiatives? Other options?
- Whether there are any systems in place for monitoring the quality of valuation undertaken by a valuer.

## **5. FORCED SALES PROCEDURES**

### **5.1. Background**

The Green Paper asked for views on whether the Commission should first collect information on the cost and duration of the foreclosure procedures and their effectiveness to then present it in a regularly updated "scoreboard".

### **5.2. Next Steps and Questions for discussion**

The majority of contributions to the Green Paper supported the development of a scoreboard but noted that the items in the scoreboard would have to be carefully considered to ensure clear definitions and comparability of information.

Member States are asked to consider:

- Whether they are willing to work with the Commission in developing any scoreboard, for example, by providing information for publication.
- If the Commission were to develop a scoreboard, what information should be included?
- Whether there is a maximum limit for the duration of foreclosure procedures in your country.

## **6. LAND REGISTERS**

### **6.1. Background**

The Commission requested in the Green Paper information on EULIS as well as other issues relating to land registration. The overwhelming majority of contributions addressing this issue supported the EULIS project. A large number of contributors felt that a substantial effort should be undertaken to encourage more countries to join.

With regard to other issues relating to land registration, there appeared to be a general consensus that cross-border access to land registers should be facilitated under the same conditions. Some contributions proposed that quality guidelines for land registers be developed and suggested that minimum requirements should be created on the creation, modification, extinction and ranking of rights. Several contributions also referred to a "Eurotitle" as an idea to be pursued further.

## **6.2. Next Steps and Questions for discussion**

The Commission services intend to investigate the issues connected with land registers in more detail before drawing any conclusions for future policy in that field. Additional information on the framework in place in the various Member States is sought.

- Contributions to the Green Paper indicated that accessibility to mortgage/land registers varied considerably across Europe. Consequently, the Commission services would like to obtain further information as to the precise nature of the problems. In this respect, it would be useful to know: who has the right to access the register (e.g. only persons who can prove a justified interest, anyone, etc.); whether the register is accessible on a cross-border basis; and finally, if the register is accessible on a cross-border basis, whether the same conditions and rights apply as for nationals.
- Some contributions reported difficulties in accessing databases as the information required to access was not readily available. What information is therefore needed in order to access a registered property? What are the costs of accessing the register? Are there any differences between national and cross-border inquiries?
- Several contributions to the Green Paper consultation noted that hidden charges should be abolished. It is therefore important to know in which countries these hidden charges exist. As such, are there any hidden charges/mortgages/preferences (charges that could affect property rights but are not reflected in the register) that would rank higher than any registered mortgage in your Member State? These hidden charges may be a result of either State claims (e.g. taxation) or other claims (e.g. an employee's right on the payment of salaries in the wake of an insolvency of the employer).
- Responses to the Green Paper consultation indicated that one problem in relation to land registration is understanding fully the ranking of different land registers. The Commission services seek additional information on whether, apart from possible hidden charges, your country applies the principle for establishing the creditor's ranking "first registered, first in rank and priority". If not, what is the ranking based upon? How could this problem be addressed, for example, enhancing the transparency of the ranking by making information on ranking easily available?

## **7. NON-DEPOSIT TAKING INSTITUTIONS**

### **7.1. Background**

The Green Paper asked for input as to whether mortgage lending should necessarily be an activity which is restricted to credit institutions or whether and under what conditions such activity could be performed by institutions which do not take deposits or repayable sums and therefore do not fall within the scope of the EU definition of a credit institution.

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

### **7.2. Next Steps and Questions for discussion**

Further information is required before making any final conclusion on its policy orientations. In particular, the Commission services would like to explore further the regulatory and supervisory framework in place in those Member States which allow non-deposit takers to provide mortgages and how that compares and contrasts with the framework in place for deposit-takers. Against this background, some additional information on the framework in place in the respective Member States is sought.

- Does your Member State allow non-deposit takers to provide mortgage loans?
- If yes, what regulatory and supervisory requirements is this under? For example, are there: capital requirements (are these the same or slightly different from the capital requirement for deposit takers?); conduct of business rules (consumer protection legislation, etc.)?
- Are non-banks, for example, able to use capital market funding (MBS or bonds)? Can, for example, non-deposit takers issue covered bonds and/or MBS