



NFU response to

GREEN PAPER COM(2005) 327 final Mortgage Credit in the EU

Facts on NFU

The Confederation of the Nordic Bank, Finance and Insurance Unions (NFU) is an organisation for co-operation between trade unions that organise employees in the banking, finance and insurance sectors in the five Nordic countries. At present, eight trade unions are affiliated to the NFU, two in Denmark, two in Finland, two in Sweden and one in each Iceland and Norway. Through these trade unions, the NFU represents 165 000 employees on the Nordic Financial Market. Some 135 000 of these employees belong to the banking sector, while the remaining 30 000 belong to the insurance sector.

Approach

This response has been created in cooperation in-between policy officers from all NFU affiliates. The NFU Executive Committee has discussed a draft response and thereafter made a per-capsulam decision to adopt this response.

General remarks

We have the following general remarks concerning the market and the risk diversity:

The market

The Commission should analyse the impact of an economic setback or a collapse in the property market. The safety net which the mortgage institutions and society can offer clearly differs.

The risk

The funding of property has changed concurrently with the mortgage institutions' increased income and business areas resulting in smaller risk diversity.

Earlier a property was normally financed through a combination of mortgage loans and private bonds at least in Denmark. This type of lending is no longer common after the entry into the market of financial supermarkets that offers a whole range of financial products including mortgage lending. Today the lending is often a combination of mortgage loans and bank loans or a large down payment in combination with a residual funding through a mortgage loan only.

The financial supermarket will bear the overall risk resulting in smaller risk diversity.

The Green Paper mentions that part of the funding is done through mortgage loans. However, the above-mentioned remark on financial supermarkets should be observed when analysing the composition of the lending.

If the borrower is in arrears with the mortgage payment it could be problematic for the borrower with only one lender, since the latter would demand the highest possible security.

Responses to the questions in the Green Paper

In the following we answer to the questions in the Green paper we find is constructive to contribute. Questions are written in bullet points with italics.

II CONSUMER PROTECTION

Information

- *Should the Code of Conduct be replaced by binding legislation or remain voluntary?*

We suggest that the Code of Conduct remains voluntary.. The duty of consumer information provision should be borne jointly by the borrower and the provider. In connection with compulsory provision of advice and guidance, the borrower may receive advice and information without the borrower himself taking responsibility for the greatest financial decision in her/his life. The provider is under an obligation to provide the borrower with objective information, but so that the borrower can make her/his choice on an informed basis.

The choice of product must be made by the borrower and not by the provider. This division of responsibilities must be ensured from the commencement of the provision of advice. If there is a requirement for provision of written advice, the provider and the provider's employees may be legally obligated and may incur a liability for damages. This may limit the provision of advice to being solely factual, instead of being objective and based on overall financial considerations, which is the type of advice for which the borrower has the greatest need when he is to find the right mortgage.

A voluntary code of conduct allows certain flexibility in companies' ways of handling daily affairs. Flexibility allows mortgage providers to differentiate from competitors by providing competent advice and information.

- *What information should be given to consumers? A careful balance must be found between information deficiency and information overload.*
- *The Commission considers it fundamental that pre-contractual information is provided at a stage that enables the consumer to shop around and compare offers. Can such a common EU stage be identified, given the variations in Member States' traditions and legislations?*
- *Should an information provision regime apply only to lenders or to others such as brokers too? How can compliance with any such regime (binding/voluntary) be ensured?'*

Yes, the information regime should apply to brokers too in order to ensure that competition is not distorted.

Advice Provision and Credit Intermediation

- *Should the provision of advice to the borrower be made compulsory or be a matter of choice?*

Mortgage products are complex and involve decisions of high economic importance for the consumers. The provision of advice should be compulsory and should be made on joint

conditions in order to protect the borrower as well as the provider and the provider's employees. Moreover, it is crucial that the employees receive sufficient and ongoing training, instruction and information about their advisory role and the Code of Conduct described above.

- *Should conditions be applied to any advice actually provided, whether under a duty or by choice (e.g. standards for the advice, sanctions for non-compliance, advance disclosure of fees, of the adviser's role and recording on durable medium)?*

Product pricing should be free in relation to a free market. Information about prices, fees and charges and their effect on the loan during its term should be provided when the loan is obtained. It should be observed that the addition of a charge or fee is made on the basis of a risk assessment throughout the term of the loan.

Early Repayment

- *Should early repayment be a legal right or a matter of choice? If it is to be a right, should it also be made possible for a consumer to waive this right? Under what conditions? Should this right be subject to compensation in the form of fees?*

We think that early repayment should be a legal right to ensure certain product diversity. In addition, we think that the consumer should be able to waive this right in exchange of better loan conditions. To this end, the Danish possibility of early repayment at par should be observed where bond-based loans are involved. In periods of falling yields, this possibility enables borrowers to prepay their loans at par and to take out new loans at a lower interest rate. In Denmark, borrowers are highly focused on the possibility of prepaying their mortgage loans.

If the possibility of early repayment is not present, the consumer will lose the possibility of re-mortgaging and switching to more favourable loan types during the term of the loan.

- *How should such fees (whether under a right or through contractual choice) be calculated? Should there be caps, as is the case in some Member States?*
- *How should the consumer be informed about early repayment? Is there scope for consumer education here?*

We think that this information should be included as a natural part of the compulsory advice provision mentioned above.

Annual Percentage Rate

- *What is the purpose of an APR? Information? Comparison? Both?*

The purpose of APR is to provide consumers with knowledge about the total loan costs to ensure that they are able to evaluate and compare competing mortgage products and to make the correct choice.

- *Should there be an EU standard covering both the calculation method and the costs elements?*

The interest charged by the lender, the annual percentage rate, will obviously be calculated using a mathematical model that is based on costs and profit. Such a model is regulated naturally by the market. It is difficult to provide consumers with advice and information about the calculation model, and a standardisation will be impossible in practice. The borrower should obviously be informed about the calculation result.

- *If so, what kinds of cost elements should such an EU standard include?*

There should be a minimum EU standard for provision of information about costs comprising administrative expenses, risk/insurance costs as well as costs for drawing up and issuing the loan. This will ensure comparable products.

- *The Commission welcomes views on the merits of providing separately information on all costs not specified in the APR, and on the presentation of the effects of the APR in concrete terms such as the cost per month or the overall cost of the loan.*

A total statement of the monthly costs that are not included in the APR must be regarded as only partly easy to grasp for the borrower. The borrower should be able to be provided with this information on demand when the loan is obtained, repaid or extended.

Usury Rules and Interest Rate Variation

- *What are the implications of usury rules for market integration (including any relationship with products such as equity release and mortgage insurance)?*

The charging of excessively high rates of interest (usury) on the consumer's overall accounts will be a relevant area of focus when the loan composition is a mortgage credit loan and a bank loan with the same institution. The reason for this is that most Member States have a maximum limit for mortgage lending on the value of the property.

Residual funding is often provided by a bank loan. In connection with high-risk lending, the lender will seek to protect himself, and the charging of excessively high interest rates should be regulated for this combination.

Usury is not a great problem in connection with pure mortgage credit lending, as the loan is partly secured by a combination of the value of the property and the borrower's creditworthiness. The charging of interest and the imposition of compound interest is an area that is difficult to regulate, and if such regulation is to be imposed, it should be done by the individual Member State. This area is often regulated by market mechanisms.

- *Should this issue rather be examined in a broader, non-mortgage specific, context?*
- *Do such restrictions hinder market integration?*
- *What impact can they have on the development of particular products such as equity release products?*

Credit Contract

- *The Commission welcomes views on the merits of the standardisation of mortgage contracts, e.g. via a 26th regime instrument.*

Enforcement & Redress

- *Should the Commission consider imposing on Member States an obligation to ensure the existence of such alternative means of redress in the mortgage credit area?*

Rules pertaining to civil law, law of succession, divorce law, insolvency law and property law apply in the Member States. Added to this are tax rules and Land Register rules. These rules in themselves regulate the enforcement of the legal relations between borrower and lender. Seen from the mortgage credit sector's point of view, the imposition of further legal consequences and consequences pertaining to arbitration law may act as a negative deterrent measure. The sector in the individual Member States should, as a minimum, have a complaints body so that the enterprises in the sector themselves contribute to creating and ensuring a good image and a high level of credibility for the sector. Moreover, the co-operation between national complaints bodies in the finance sector (i.e. FIN-NET) should be promoted and the knowledge and the use of FIN-NET among European consumers. Consumer confidence in foreign financial providers and a well functioning European redress body is a necessary precondition for growth in cross-border transactions.

- *The Commission welcomes views on ways to reinforce the credibility of existing alternative redress systems, particularly in the mortgage credit area.*

III LEGAL ISSUES

Applicable Law

We agree with the Commission that there is no reason to depart from the principle that the law of the country in which the property is situated applies.

There is one aspect regarding the provision of collateral that, on the face of it, has not been highlighted in the Green Paper. The borrower often provides collateral in the form of an owner's mortgage deed to the finance institution that provides the residual funding. This mortgage deed is covered by the applicable legislation in the country in which the institution is situated, which is not necessarily the same country as the country in which the property is situated. The matter of cross-border collateral should be examined.

Client Credit-Worthiness

- *Following the same approach as for consumer credit, the Commission considers that the priority could be to ensure cross-border access to databases on a non-discriminatory basis. It welcomes comments on this.*

The Commission's recommendation that the top priority should be to ensure cross-border access to databases on a non-discriminatory basis should be observed. Consumers should be protected so that registration in a creditworthiness database is followed by cross-border legislation.

Property Valuation

- *What are the merits of a single EU standard, for both valuation processes and valuers?*

- *What are the merits of Commission action to ensure mutual recognition of national valuation standards?*

Property valuation is a highly complex area and is often based on local knowledge and estimates. A single EU standard should therefore be avoided. In stead mutual recognition of national valuation standards could be viable. One of the arguments against the introduction of such a single EU standard is that the assessment of location is often of great importance to the overall property valuation.

Property valuation may be done in several ways if the lender knows the property, for example because the customer is a current customer of the lender and because the lender knows the property, the property can often be valued on the basis of the taxable value according to the public land assessment and other registered material. This can often ease the work burden for the employee, as no inspection of the property will be required. In other cases, in connection with conversion or extension work, or when the property belongs to a new customer, the property should be inspected by a person who has knowledge of the local area.

Forced Sales Procedures

- *The Commission seeks views on the following gradual approach to encourage improvements in forced sales procedures: to first collect information on the cost and duration of these procedures in all Member States and their effectiveness in protecting the interests of all involved, then present it in a regularly updated "scoreboard" and, should this prove ineffective in the long run, consider putting forward more robust measures.*

In connection with forced sales procedures, the lender's legal position should be protected. The lender needs to be able to maintain credible relations with the bond owners and other investors. An analysis should be implemented of the various aspects of forced sales procedures, including an analysis of the difference between the legal relations of various borrower types. Private and professional borrowers can be mentioned as examples of borrower types. Consumer protection agencies should be involved in such an analysis.

It is recommended that a gradual introduction of forced sales procedures should be attempted in this area, one reason being the current historically low percentage of forced sales.

Tax

- *The Commission seeks information on similar or other tax obstacles to the cross-border provision of mortgages, which are likely to infringe the freedoms provided for by EU law.*

IVMORTGAGE COLLATERAL

Land Registers

- *Before making further assessments, the Commission would welcome input on all these issues.*

As a general comment on mortgage collateral we agree with the Commission that there is no reason to depart from the principle that the law of the country in which the property is situated applies. There is one aspect regarding the provision of collateral that, on the face of it, has not been highlighted in the Green Paper. The borrower often provides collateral in the form of an

owner's mortgage deed to the bank that provides the residual funding. This mortgage deed is covered by the applicable legislation in the country in which the bank is situated, which is not necessarily the same country as the country in which the property is situated. The matter of cross-border collateral should be examined.

Euromortgage

- *The Commission invites views on the feasibility and desirability of the Euromortgage. It will, in any event, await the outcome of ongoing initiatives to inform its assessment of this issue.*

V FUNDING OF MORTGAGE CREDIT

- *The Commission intends to create an ad hoc stakeholders working group to examine the need for and nature of action on the funding aspects (primary and secondary) of mortgage credit.*
- *It is interested to assess to what extent a pan-European market in mortgage funding can be promoted by market led initiatives, e.g. on documentation standards and model definitions to be used in cross-border funding activities.*
- *In this respect, the Commission is interested to receive views on whether mortgage lending should necessarily be an activity which is restricted to credit institutions, or whether and under which 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 and therefore of all related prudential rules.*