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Mortgage Credit

European Parliament resolution on mortgage credit in the EU (2006/2102(INI))

The European Parliament,

- having regard to the Commission Green Paper on Mortgage Credit in the EU (COM(2005)0327) (Green Paper),
- having regard to the Commission White Paper on Financial Services Policy 2005-2010 (COM(2005)0629),
- having regard to the response of the Governing Council of the European Central Bank (ECB) to the Green Paper on Mortgage Credit in the EU of 1 December 2005,
- having regard to the Second Council Directive 89/646/EEC of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions¹,
- having regard to Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast)² (Capital Requirements Directive) and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast)³,
- having regard to Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services⁴,
- having regard to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce in the Internal Market⁵,
- having regard to the modified proposal for a directive of the European Parliament and of the Council on credit agreements for consumers amending Council Directive 93/13/EC (COM(2005)0483),
- having regard to the Commission's amended proposal for a Council directive on the freedom of establishment and the free supply of services in the field of mortgage credit (COM(1987)0255),
- having regard to Rule 45 of its Rules of Procedure,
- having regard to the report of the Committee on Economic and Monetary Affairs and the

¹ OJ L 386, 30.12.1989, p. 1.

² OJ L 177, 30.6.2006, p. 1.

³ OJ L 177, 30.6.2006, p. 201.

⁴ OJ L 271, 9.10.2002, p. 16.

⁵ OJ L178, 17.7.2000, p. 1.

opinions of the Committee on the Internal Market and Consumer Protection and the Committee on Legal Affairs (A6-0370/2006),

- A. whereas mortgage credit represents a large and rapidly expanding market and is a vital part of the EU's economic and social structure,
- B. whereas some Member States have experienced unprecedented growth in the property market, which has succeeded in making the construction sector anti-cyclical, a key factor in achieving growth and employment during the economic recession experienced in Europe during the period 2000 to 2005,
- C. whereas historically low interest rates have resulted in much extended mortgage borrowing, particularly in those countries where it has been based on confidence which has brought about economic growth,
- D. whereas the protection of European consumers must be a paramount feature of any legislative action on mortgage credit, which for most EU citizens represents the biggest financial commitment in their lifetime, with long-term implications for their standard of living and financial stability,
- E. whereas enhanced transparency on key features concerning available mortgage products will not only improve market efficiency, but will also increase the confidence of borrowers looking for mortgage credit deals in other Member States and enable them to take informed decisions,
- F. whereas consumers need to have access to the fullest and simplest information possible, provided on a case-by-case basis in standard forms lending themselves to comparative study across Member States, in order to enable them to exercise their freedom of choice more effectively when taking out mortgage credit on a cross-border basis,
- G. whereas targeted measures for an improved product and services range, wider availability and an integrated funding market could enhance market efficiency, economies of scale and diversification reduce borrowing costs, and thereby benefit the European economy,
- H. whereas creating access to client credit databases for mortgage service providers in case of cross-border lending is a crucial contribution to boosting competition in mortgage-based lending activity and creating a single European mortgage market,
- I. whereas an integrated mortgage market will facilitate workers' mobility,
- J. whereas, surprisingly, there is little pressure from mortgage lenders or consumer organisations to develop cross-border lending other than by physical establishment in the separate national markets,
- K. whereas considerable market barriers have so far hindered the increase of cross-border mortgage credit offers, so far amounting to less than 1% of the overall EU mortgage market,
- L. whereas on a number of important issues the Community has no competence, or only limited competence, and whereas the principles of subsidiarity and proportionality must be respected,

- M. whereas mortgage brokers can play an important role, drawing on their expertise with mortgage products on their domestic market but also in markets across Member States, supporting cross-border activity and acting as a bridge between consumers and both foreign and local financial institutions,
- N. whereas significant variations in the range and characteristics of products, distribution structures, loan durations, and funding mechanisms exist between Member States, due to differing legal, fiscal, regulatory, and consumer protection conditions,
- O. whereas mortgage credit markets display an extremely high degree of complexity; whereas legal systems and financing cultures, property law and land register systems, law of rights in rem, law governing credit agreements, valuation issues, forced sales procedures, refinancing markets, etc., differ considerably between one country and another while at the same time an internal coherence exists among the various fields,
- P. whereas there still exist tax obstacles of a discriminatory nature which impede the exploitation of a single market for mortgage credit and may in some cases even contravene EC legislation,
- Q. whereas there is a direct link between the mortgage market and macro-economic policy and the conduct of monetary policy in particular,
- R. whereas mortgage market volatility can affect housing and economic cycles and thus cause systemic risk,
- S. whereas, in order to bring more efficiency and competitiveness to the EU mortgage credit market, it may be preferable to look first at the implementation and effectiveness of the Commission Recommendation 2001/193/EC of 1 March 2001 on pre-contractual information to be given to consumers by lenders offering home loans¹ (Code of Conduct) and the use of the European Standardised Information Sheet (ESIS), aiming to ensure that consumers obtain transparent and comparable information on housing loans,
- T. whereas the above-mentioned Code of Conduct appears to have been implemented with varying degrees of success across Member States, yet without solving the overall problem of a lack of a common legal framework,

Introduction

1. Recognises the consumer benefits that would be brought by further well-focused integration of the EU mortgage market;
2. Considers that any action at EU level regarding the European mortgage credit market must, first and foremost, benefit the public directly as mortgage borrowers and that the mortgage credit market should be accessible to a larger number of potential borrowers, including those with a low or incomplete credit profile, workers with fixed term contracts and first-time buyers;
3. Welcomes the Commission's wide consultation and insists that any specific proposals should be preceded by thorough economic and social impact assessments;

¹ OJ L 69, 10.3.2001, p. 25.

4. Welcomes the Commission's efforts to date to comply with better regulation requirements; however, reminds the Commission that any conclusions reached should always be the result of an extensive consultation process;
5. Notes the numerous obstacles to a single EU retail market for mortgage credit highlighted in the Green Paper and urges the Commission to focus on targeted measures offering the greatest benefits, encouraging market-led initiatives wherever possible;
6. Cautions the Commission that attempts to harmonise products themselves might lead to legal inconsistencies and thus produce a negative impact on the sector;
7. Insists that any EU action should not hamper competition and innovation, in particular regarding products, ancillary services and funding techniques;

Code of Conduct and pre-contractual information

8. Calls for moves towards the harmonisation of provisions on pre-contractual information, which are necessary to enable borrowers to take informed decisions on potential mortgage contracts;
9. Insists that such pre-contractual information must be accurate and comprehensible to allow an informed choice, and that it should give the consumer as comprehensible and global a picture as possible in the light of the available information on which the mortgage contract is based; stresses that, in the event that the lender takes the initiative of offering a credit in another Member State, such information must be supplied to the borrower as quickly as possible in the official languages recognised in the borrower's Member State of residence;
10. Considers the Code of Conduct and the ESIS to be important yet insufficient instruments for the protecting the economic interests of citizens moving between Member States and likely to acquire property in other Member States; encourages the Commission to assess progress and consider making the Code of Conduct, which is currently voluntary, mandatory if early compliance is not forthcoming;

Funding

11. Considers that the development of a single, open and compatible funding market is a first priority as it will boost efficiency, allow international diversification of credit risk, optimise funding conditions and capital allocation, and reduce borrowing costs; recognises the importance of and the potential for integrating market-led initiatives in this area;
12. Points out that the creation of a single secondary market for mortgages can not be achieved without a gradual convergence of national contract rules;
13. Welcomes the setting up of the Mortgage Funding Expert Group and calls for an in-depth analysis of variations in national regulatory and legal practices affecting mortgages;
14. Considers that provisions in the Capital Requirements Directive on covered bonds and mortgage-backed securities offer important funding options;

15. Suggests that the Commission consider how best to create a central database as a depository of information about the different national mortgage markets and transnational pools of mortgage securities (such as default probabilities, losses from default and prepayments), which would enable investors to evaluate and price adequately mortgage pools;
16. Suggests that a range of standardised packages of European mortgages could be traded on the capital markets with credit ratings according to their characteristics, thereby enhancing secondary markets in securitised mortgages;
17. Calls on the Commission to consider the growing market of mortgages compliant with sharia law and to ensure that any legislation does not exclude the requirements of that market;
18. Recognises the important role of mortgage insurance in reducing the risk exposure of lenders and allowing access for a wider range of borrowers;

Retail

19. Calls on the Commission to investigate barriers which impede lenders' rights to free provision of services or freedom of establishment in other Member States and whether the 'general good' clause is being used to discourage cross-border activity;
20. Supports Commission action to facilitate cross-border mergers and acquisitions in financial services, while ensuring that distribution networks take into account the requirements of regional situations and smaller markets, but notes that cross-border mergers and acquisitions alone will not promote integration of the market in this area;
21. Considers that opening up the mortgage credit market to non-credit institutions, with an equivalent supervisory regime, will increase competition and the range of products;
22. Recognises the beneficial role that credit intermediaries, such as mortgage brokers, can play in helping customers access competitive mortgage credit from domestic and non-domestic lenders and supports the Commission's commitment to consult on an appropriate regulatory environment for such operators;
23. Calls on the Commission to investigate impediments to the transfer of loans across borders, and to explore further the potential of the Euromortgage as a collateral instrument, including consideration of:
 - the accompanying guarantees necessary for its set up and use, particularly as regards verifying the collateral, public access to the deeds and effects vis-à-vis third parties;
 - the status that it would be given in relation to other charges secured on land;
 - the link between the credit and the collateral; and
 - the legal consequences of a partial or full discharge of the guaranteed credit, a change in its assessment basis or its transfer, whether vis-à-vis creditors or third parties;

24. Considers that any proposals to this effect should, if necessary, be accompanied by an impact assessment, including legal aspects, with detailed studies of comparative law, as well as economic and social aspects in line with the approach advocated under the guide to impact assessment approved by the Competitiveness Council on 29 May 2006;
25. Calls on the Commission to encourage the development of mechanisms for rechargeable mortgages and life annuity mortgage loans with full guarantees in terms of public information, with due regard to issues of confidentiality and effects *vis-à-vis* third parties;
26. Considers that lenders are more likely to enter a market if national rules allow them to offer early repayment terms at a price proportionate to costs or to vary interest rates in line with market conditions and risk and that restrictions in these aspects are likely to impair the development of the market in terms of funding, new products and lending to higher-risk borrowers;
27. Considers that an EU standard, defining the scope and method of calculating the annual percentage rates charged, should combine all charges to be levied by the lender and should ensure comparability among products with the same maturity offered in other Member States; believes that borrowers should also be informed in advance of any other charges related to the transaction and the borrower's legal obligations, including items levied by third parties such as legal fees, registration and administration fees and the costs of any valuations, or estimates of such costs if a precise figure is not available;
28. Believes that in addition to providing exact information on the annual percentage rate, the lender must provide information on any other types of charges or costs likely to arise from its activities, for example the expenses incurred in examining applications, commitment fees, penalties for early full or part repayment;
29. Recognises the potential of the Internet as a means for mortgage credit marketing, and recommends that the Commission study this further;

Legal, fiscal and operational barriers

30. Urges the Commission to examine legal and regulatory barriers hindering a market-led development of a pan-European funding market for mortgage credit;
31. Calls on the Commission to define the scope of its future proposals and to restrict it to mortgage contracts and their guarantees (fixed charges on real estate), so as to avoid any overlapping with COM(2005)0483;
32. Calls on the Commission to take steps to ensure the smooth running of the secondary mortgage market and establish a legal framework for conducting effective portfolio trading, in particular by identifying the factors preventing the available legal refinancing facilities from meeting the desired objective and allowing for the differing legal traditions and the different models for collateral security in land;
33. Agrees with the Commission that the issue of the law applicable to mortgage credit contracts should be addressed within the context of the revision of the 1980 Rome Convention on the law applicable to contractual obligations; but supports the Mortgage Credit Forum Group's view that the law applicable to mortgage credit contracts does not have to be aligned with the law applicable to mortgage deeds and that, in the case of

mortgage deeds, *lex rei sitae* applies;

34. Stresses the importance of comprehensive and reliable client credit databases and urges the Commission to promote the development of a process of transition to a consistent format in all Member States;
35. Urges the Commission to facilitate cross-border access to client credit databases on a non-discriminatory basis as a priority for encouraging lenders to enter new markets;
36. Recognises that, subject to justifiable privacy protection, access to both positive and negative credit data is desirable;
37. Welcomes efforts to bring about improvements and adjustments in the law governing forced sales procedures;
38. Supports the Commission's proposal of a scoreboard for the length and cost of forced sales procedures;
39. Suggests that valuers' professional bodies should collaborate to adopt common EU property valuation standards of high quality and comparability;
40. Stresses the importance to lenders of easy access to full and accurate information on mortgage collateral and ownership rights;
41. Favours encouraging access to land registers, where this is not prevented by existing legislation, and supports all efforts to harmonise the informative value of these registers by means of national measures and encourages the enhancement of the current European Land Information Service (EULIS) system;
42. Supports action to abolish tax obstacles of a discriminatory nature, such as differential fiscal treatment of local and foreign lenders and government fees;
43. Urges the Commission to consider, in the case of cross-border mortgages, how to reconcile the varying approaches to the tax deduction of mortgage interest across the EU;

Systemic, macroeconomic and prudential issues

44. Urges the Commission and the ECB to monitor and analyse the potential risks of increasing levels of mortgage debt and of mortgage credit funded from capital markets;

Conclusion

45. Concludes that there is potential for consumer and economic benefits by some further, well-considered integration of the EU mortgage market;

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46. Instructs its President to forward this resolution to the Council, the Commission, the ECB and the governments of the Member States.