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ANNEX II

COMMISSION STAFF WORKING DOCUMENT

Accompanying the

White Paper on the Integration of EU Mortgage Credit Markets

IMPACT ASSESSMENT

ANNEX 2: Process

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ANNEX 2: Process

Disclaimer

This impact assessment report commits only the Commission's services involved in its preparation and the text is prepared as a basis for comment and does not prejudice the final form of any decision to be taken by the Commission.

1. CHRONOLOGY OF EVENTS

The Commission's better regulation principles foresee that a thorough analysis of issues at stake in European mortgage markets be undertaken before any measures are proposed. In this regard, the Commission has followed a coherent consultative process which meets the Commission's minimum consultation standards.

Table 1: Chronology of events

| Date | Item |
|--------------|--|
| 2001 | |
| 1 March | Commission Recommendation on pre-contractual information to be given to consumers by mortgage lenders offering home loans |
| 5 March | Signature of the Voluntary Code of Conduct on housing loans |
| 2002 | |
| 30 September | Entry into force of the Voluntary Code of Conduct on housing loans. |
| 2003 | |
| 27 March | 1 st Meeting of the Forum Group on Mortgage Credit |
| 14 March | 1 st Annual Progress Report by the European Banking Industry Committee on the implementation of the Code of Conduct in the EU |
| 17 June | Publication of IFF study on the implementation of the Code of Conduct on Home Loans |
| 2004 | |
| 16 November | Final Meeting of the Forum Group on Mortgage Credit |
| 13 December | Publication of the Report of the Forum Group on Mortgage Credit |
| 2005 | |
| 24 February | 1 st Meeting of the Government Expert Group on Mortgage Credit |
| 18 April | FIN-USE opinion on the Forum Group on Mortgage Credit Report |
| 19 July | Publication of the Green Paper on Mortgage Credit |
| | Launch of Public Consultation |
| 5 August | Publication of the study on the Costs and Benefits of Integration of EU Mortgage Markets by London Economics |
| 30 November | End of Green Paper's consultation period |
| 30 November | FIN-USE opinion on the European Commission Green Paper |
| 7 December | Public Hearing |
| 13 December | 2 nd Annual Progress Report by European Banking Industry Committee on the implementation of the Code of Conduct in the EU |
| 15 December | Adoption of the European Economic and Social Committee's response to the Green Paper |
| 2006 | |
| 5 April | Establishment of the Mortgage Funding Expert Group |
| 6 April | Establishment of the Mortgage Industry and Consumer Dialogue |
| 23 May | Publication of a report providing feedback on the consultation on the Green Paper |
| 31 May | 2 nd Meeting of the Government Expert Group on Mortgage Credit |
| 20 June | Presentation of results of the Green Paper consultation to the Financial Services Consumer Group |
| 27 October | Meeting with Mortgage Stakeholders |
| 14 November | Adoption of the European Parliament Report on Mortgage Credit in the EU |
| 22 December | Publication of Mortgage Funding Expert Group Report |

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|--------------|--|
| 2007 | |
| 10 January | 3 rd Meeting of the Government Expert Group on Mortgage Credit |
| 12 January | Publication of a summary of the discussions of the Mortgage Industry and Consumer Dialogue |
| 17 January | Launch of consultation on the Reports of the Mortgage Funding Expert Group and the Mortgage Industry and Consumer Dialogue |
| 15 February | End of consultation on Reports of the Mortgage Funding Expert Group and the Mortgage Industry and Consumer Dialogue |
| 5 July | 1 st Meeting of the Interservice Impact Assessment Steering Group |
| 10 September | 2 nd Meeting of the Interservice Impact Assessment Steering Group |
| 17 October | Impact Assessment Board |

2. FORUM GROUP ON MORTGAGE CREDIT

The consultative process was launched in March 2003 with the establishment of the Forum Group on Mortgage Credit whose task was to identify the main barriers to the development of an integrated market for mortgage credit. The Forum Group included 20 experts from a wide variety of market participants and stakeholders, including the banking sector, consumer organisations, insurers, chartered surveyors and civil law notaries, from 11 EU national markets. The Forum Group met 14 times from March 2003 to November 2004.

The Report of the Forum Group was published in December 2004 and proposed both legislative and non-legislative measures contained in 48 recommendations to promote integration in EU mortgage markets¹. The recommendations covered five main issues:

- consumer confidence (e.g. information requirements, early repayment, advice, redress, APRC and interest rate restrictions);
- legal issues (e.g. applicable law, credit registers, property valuation, and forced sales procedures);
- collateral issues (e.g. land registration and Euromortgage);
- distribution issues (e.g. cross-border establishment and credit intermediaries);
- mortgage finance (e.g. securitisation vehicles, segregation of assets and pooling of assets).

3. GREEN PAPER ON MORTGAGE CREDIT IN THE EU

After reviewing the recommendations of the Forum Group, in July 2005, the European Commission published a Green Paper on Mortgage Credit in the EU². The Green Paper examined the case for Commission action, looking at whether and how Commission action to develop the single market in mortgages could enhance efficiency and competitiveness and provide concrete benefits for EU consumers. The publication of the Green Paper launched a public consultation which ended in December 2005 with a public hearing in Brussels³. All contributions authorised for publication were published on the internet⁴. A report

¹ The full report is available at: http://ec.europa.eu/internal_market/finservices-retail/docs/home-loans/2004-report-integration_en.pdf.

² COM(2005) 327, 19.7.2005.

³ Further information about the hearing is available at: http://ec.europa.eu/internal_market/finservices-retail/home-loans/integration_en.htm#greenpaper.

⁴ See http://ec.europa.eu/internal_market/finservices-retail/home-loans/comments_en.htm.

summarising the feedback received in the Green Paper consultation was published in May 2006⁵.

4. FIN-USE AND THE FINANCIAL SERVICES CONSUMER GROUP

Since its establishment in April 2004, FIN-USE⁶ has been closely associated in the development of the Commission's policy, discussing mortgage credit on at least 15 occasions and producing two reports⁷. FIN-USE also participated as an observer in the Mortgage Industry and Consumer Dialogue.

The Financial Services Consumer Group⁸ has also been associated to the Commission's work on mortgage credit since its establishment in mid-2006. At its meeting of 20 June 2006, the Commission presented the results of the Green Paper consultation and outlined next steps.

5. GOVERNMENT EXPERT GROUP ON MORTGAGE CREDIT (GEGMC)

The Government Expert Group on Mortgage Credit⁹ was established in early 2005 to advise the Commission on its policy on mortgage credit. It is composed of Member State representatives from all EU Member States, plus some EFTA countries. Representatives come from a range of bodies, including Ministries of Finance, Ministries of Justice, financial regulators, etc. Its main tasks are to assist the Commission in the definition and development of its mortgage credit policy. The Government Expert Group on Mortgage Credit has met on three occasions (24 February 2005, 31 May 2006 and 10 January 2007).

Through the Government Expert Group on Mortgage Credit, Member States were asked to supplement the information contained in their responses to the Green Paper.

6. EUROPEAN PARLIAMENT

The European Parliament's response to the Green Paper on Mortgage Credit (the Purvis Report) was adopted on 14 November 2006¹⁰. In general, the report concluded that there is potential for consumer and economic benefits through the further integration of EU mortgage

⁵ See http://ec.europa.eu/internal_market/finservices-retail/docs/home-loans/feedback_gp-en.pdf.

⁶ FIN-USE was set-up by the European Commission in 2004 as an expert forum to help it meet the need to improve policy-making in the field of financial services by including a user perspective.

⁷ Opinion on the Forum Group on Mortgage Credit Report *The Integration of the EU Mortgage Credit Markets*, 18.4.2005 and Opinion on the European Commission Green Paper *Mortgage Credit in the EU*, 30.11.2005. Both opinions are available at:

http://ec.europa.eu/internal_market/fin-use_forum/documents/index_en.htm.

⁸ The Financial Services Consumer Group (FSCG) is a sub-group of the European Consumer Consultative Group (ECCG). The overall objective of the Financial Services Consumer Group is to ensure that consumer interests are properly taken into account in EU financial services policy development. Further information is available at:

http://ec.europa.eu/internal_market/finances/fscg/index_en.htm.

⁹ The agendas and working documents of the Government Expert Group on Mortgage Credit together with contributions received from Member States are available at:

http://ec.europa.eu/internal_market/finservices-retail/home-loans/integration_en.htm#gegmc.

¹⁰ European Parliament resolution on mortgage credit in the EU (2006/2102(INI)), 14.11.2006. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0487+0+DOC+XML+V0//EN&language=EN>.

markets by enhancing product diversity as well as by improving competition and efficiency. According to the report, these benefits could best be achieved through targeted measures, for example, an EU wide standard for the annual percentage rate of charge. The report also takes a position on many of the specific issues addressed by the Commission in its Green Paper.

7. EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

The European Economic and Social Committee's response to the Green Paper was adopted on 15 December 2005¹¹. The report, while agreeing with the aims proposed by the Commission, takes the view that full integration will be difficult to achieve in the short term due to the fact that mortgage credit markets in the EU differ considerably and have their own characteristics. The report states that the Commission should take action in the sectors where harmonisation does not present excessive difficulties. The report also takes a position on many of the specific issues addressed by the Commission in its Green Paper.

8. EXPERT GROUPS

The consultation on the Green Paper raised several issues on which it was decided that further analysis was required. The Commission therefore established Expert Groups in order to go into more detail on specific aspects, namely mortgage funding and certain consumer protection issues.

8.1. Mortgage Funding Expert Group (MFEG)

The Forum Group stressed in its Report that further integration of mortgage markets could be considerably enhanced by the emergence of a pan-European mortgage funding market and funding mechanisms. In the Green Paper, the Commission announced its intention to create an ad hoc working group to examine these issues in more depth. This was unanimously supported in the responses to the Green Paper consultation.

The Mortgage Funding Expert Group¹² was established in April 2006 to identify the barriers to integration for each of the funding models outlined in the Forum Group report, prioritise the barriers identified, and consider possible solutions. Experts were selected to ensure a balance between the different stakeholders involved in the funding process including originators, investors, ratings agencies and investment banks. Experts represented all funding techniques (covered bonds, mortgage-backed securities, deposits, etc.) and most EU mortgage markets. The Mortgage Funding Expert Group met eight times during 2006. The Report of the Mortgage Funding Expert Group was published in December 2006 and opened for consultation in January 2007¹³. The Mortgage Funding Expert Group concluded that a market-based, deregulated approach based on targeted measures (e.g. to facilitate the disintermediation of the mortgage value chain) would improve the efficiency of European mortgage funding markets. Their specific recommendations covered primary market issues

¹¹ Opinion of the European Economic and Social Committee on the Green Paper: Mortgage Credit in the EU, http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_065/c_06520060317en01130119.pdf.

¹² Further information on the Mortgage Funding Expert Group is available at: http://ec.europa.eu/internal_market/finservices-retail/home-loans/integration_en.htm#greenpaper.

¹³ The report of the Mortgage Funding Expert Group is available at: http://ec.europa.eu/internal_market/finservices-retail/docs/home-loans/mfeg/final_report-en.pdf.

(e.g. early repayment, property valuation, land registration, foreclosure and data protection); secondary market issues (e.g. covered bonds, residential mortgage backed securities, whole loan sale); and investor issues (e.g. definitions, reporting, Basel II, and property indices). All responses to the consultation authorised for publication were published on the internet¹⁴. A report summarising the feedback received in the consultation was also published on 26 November 2007¹⁵.

The vast majority of responses to the consultation supported the recommendations outlined in the Mortgage Funding Expert Group report, recognising that mortgage credit products and funding are intrinsically linked, and agreed that, where relevant, market based rather than regulatory measures should be sought. The majority of respondents supported the recommendations outlined in the Mortgage Funding Expert Group report. However, a few issues, namely the creation of a passport for non-bank originators and the recommendations on early repayment, RMBS and taxation, were more controversial.

8.2. Mortgage Industry and Consumer Expert Group (MICEG or the so-called Mortgage Dialogue)

The Forum Group report highlighted not only the differing views of industry and consumers but also areas where agreement may be possible. The Green Paper consultation shed further light on areas where consensus exists or where bridges may be built. Against this background, in April 2006, DG Internal Market and Services and DG Health and Consumer Protection launched the Mortgage Dialogue¹⁶ to explore to what extent common principles on four key consumer protection issues, namely: information, advice, early repayment and annual percentage rate (APR), could be agreed upon. Industry was represented by the European Banking Industry Committee (EBIC) and consumers were represented by the European Consumers' Organisation (BEUC), European Community of Consumer Cooperatives (Euro Coop) and Confédération des Organisations Familiales de la Communauté Européenne (COFACE). The Mortgage Dialogue met eight times during 2006.

The Report of the Mortgage Industry and Consumer Expert Group was published in January 2007 and opened for consultation¹⁷. The Dialogue proved an invaluable source of information for Commission services and for the parties themselves, enabling a full understanding of the positions of consumers and of the mortgage lending industry. However, although a consensus began to emerge on some issues (e.g. the timing for the provision of general pre-contractual information, the need for updating the content of the European Standardised Information Sheet), the discussions have not led to definitive conclusions on how consumer protection could be enhanced. All responses to the consultation authorised for

¹⁴ See http://ec.europa.eu/internal_market/finservices-retail/home-loans/mortgage_comments_en.htm.

¹⁵ *Feedback on comments received on reports of the Mortgage Funding Expert Group and Mortgage Industry and Consumer Dialogue*, 26.11.2007, http://ec.europa.eu/internal_market/finservices-retail/docs/home-loans/feedback_summary-mfeg_miceg_en.pdf.

¹⁶ Further information on the Mortgage Industry and Consumer Expert Group is available at: http://ec.europa.eu/internal_market/finservices-retail/home-loans/integration_en.htm#greenpaper.

¹⁷ Further information on the Mortgage Industry and Consumer Dialogue, including its Report, is available at: http://ec.europa.eu/internal_market/finservices-retail/docs/home-loans/miceg/final_report-en.pdf.

publication were published on the internet¹⁸. A report summarising the feedback received in the consultation was also published on 26 November 2007¹⁹.

The majority of contributions emphasised the usefulness of a dialogue between industry and consumer representatives to enable a clear understanding of the different positions. Most contributions proposed a continuation of the Dialogue in the future. At the same time, it was emphasised by some responses that the lack of agreement between the industry and consumer representatives supports the view that reaching any agreement on consumer protection represents a considerable challenge. Contributions also provided additional arguments to the positions of industry and consumer representatives on the discussed issues.

9. OTHER MEETINGS WITH MORTGAGE STAKEHOLDERS

Bilateral meetings were regularly held with all relevant mortgage stakeholders throughout the consultative process. In addition, on 27 October 2007, an Ad Hoc Meeting with Stakeholders on Mortgage Credit was held in order to inform stakeholders of the progress as well as to have an opportunity to discuss some key issues in detail.

The purpose of these meetings was to ensure that all stakeholders were kept up-to-date with the process and had the opportunity to provide additional information and further opinions to targeted questions raised by the Commission.

10. INTERSERVICE IMPACT ASSESSMENT STEERING GROUP

An Interservice Impact Assessment Steering Group was established in September 2006 to help prepare the Impact Assessment accompanying the White Paper on the integration of EU Mortgage Markets. The Steering Group was chaired by DG Internal Market and Services and representatives of DG Health and Consumer Protection, DG Enterprise and Industry, DG Competition, DG Economic and Financial Affairs, DG Justice, Freedom and Security, DG Taxation and Customs Union, the Secretariat General and the European Central Bank, all actively participated in the preparation of the Impact Assessment. The Steering Group met on two occasions: 5 July 2007 and 10 September 2007. In addition, bilateral meetings took place with specific Directorates General to consider certain aspects of bilateral interest.

11. IMPACT ASSESSMENT BOARD

On 17 October 2007, the Impact Assessment for the White Paper on the integration of EU mortgage markets was presented to the Impact Assessment Board.

The Impact Assessment Board works under the direct authority of the Commission President. Its members are high-level officials from the Commission departments most directly linked with the three aspects of the impact assessment – economic, social and environmental impacts. The Board's mandate is to scrutinise and issue opinions on the quality of individual draft impact assessments.

The Impact Assessment Board adopted its opinion on the Impact Assessment for the White Paper on the integration of EU mortgage markets on 22 October 2007²⁰. The Board concluded

¹⁸ See http://ec.europa.eu/internal_market/finservices-retail/home-loans/mortgage_comments_en.htm.

¹⁹ Cf. footnote 15.

²⁰ The Opinion of the Impact Assessment Board will be published alongside this impact assessment.

that the Impact Assessment presented a rigorous and comprehensive problem analysis, clearly identifying the underlying problem drivers and the impacts of possible policy measures on different stakeholders. The Board focused on six recommendations to potentially improve the Impact Assessment. These have been incorporated into a revised version of the Impact Assessment.