



*European Association of Co-operative Banks
Groupement Européen des Banques Coopératives
Europäische Vereinigung der Genossenschaftsbanken*

EACB Response to the Study on the Role and Regulation of Non-Credit Institutions in EU Mortgage Markets

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AN ASSOCIATION ON THE MOVE

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1. Introduction

The EACB very much welcomes the opportunity to comment on the Study on the Role and Regulation of Non-Credit Institutions in EU Mortgage Markets. In the context of the current financial crisis and the extended period of uncertainty which it may cause, the EACB considers it especially important when seeking to establish a level playing field in the European mortgage market to assess which measures would be appropriate at the European level and which solutions, be they statutory or on the basis of self-regulation, would best remain the responsibility of national authorities.

The following sections contain the views of the EACB on the methodology and conclusions of the study.

2. Survey of Other Mortgage Lenders

The EACB considers it to be questionable whether the results of Chapter 3 of the study are representative of the commercial practices and experiences of Other Mortgage Lenders (OMLs) in the EU. This is because only 10 OMLs from 7 Member States were able to be surveyed.¹ This lack of representativity is exacerbated by the fact that some questions could not be answered by all 10 OMLs surveyed. By way of example, the question on the method of cross-border provision of mortgage credit was answered by only 5 OMLs.²

The EACB considers that this makes it rather difficult to draw any real conclusions from the survey of OMLs. This is especially regrettable given that two of the five stated aims of the study are to “[e]xplore and establish the extent to which non-credit institutions are active on a cross-border basis” and to “[i]dentify the barriers faced by non-credit institutions in the cross-border provision of mortgage credit”.³ The small sample used and the few responses received mean that, in the view of the EACB, these two core aims of the study have not been satisfactorily met. As a result, any conclusions about the role of non-credit institutions in mortgage markets can relate at most to only five out of a total of 27 national markets.

3. Regulation and Supervision of Non-Credit Institutions at European Level

The study concludes that the market share of OMLs in national mortgage credit markets is “small to very small as compared to the market share of credit institutions”.⁴ Furthermore, this small share of OMLs appears to be in decline.⁵ The (albeit limited) information collected on insurance companies seems to indicate that the market share of these companies is even lower than that of OMLs.⁶ This low level of mortgage lending by non-credit institutions is confirmed by the European Commission’s European Financial Integration Report 2008 in which it is stated that specialised mortgage institutions “are

¹ Page 64.

² Page 74.

³ Page 1.

⁴ Pages 7 and 61.

⁵ Page 18.

⁶ Page 63.



marginal credit providers in most Member States. In the EU the lion's share of mortgage lending is carried out by banks.”⁷

In view of the small market share of non-credit institutions, the EACB does not believe that the results of the study make a case for regulating the mortgage lending activities of these institutions at European level. The potential benefits to consumers and to the mortgage lending industry as a whole would be correspondingly low and would therefore be outweighed by the time and costs involved for both legislators and stakeholders. Given that not all Member States permit mortgage lending by non-credit institutions and, even in those that do, their market share is often negligible, the EACB suggests that the regulation of such activities be left to up to the individual Member States. In line with the principle of subsidiarity, this will ensure that the different roles played by non-credit institutions in the various national markets can still be taken account of in the way most appropriate to the respective market. Indeed, the study itself highlights that the different regulatory approaches taken by the Member States can be categorised according to the diverse roles played by non-credit institutions within the respective national mortgage markets.⁸ It is therefore also for this reason that the EACB believes that a need to regulate non-credit institutions at European level is not evidenced by the results of the study.

Should the European Commission nevertheless decide to take action to regulate non-credit institutions at the European level – the necessity of which the EACB does not believe is evidenced by the report - then the principle “same business, same risks, same rules” must be applied.

If it is considered that non-credit institutions should be able to compete with each other on a level playing field within the internal market then the playing field must also be level as between credit institutions and non-credit institutions in order to ensure fair competition between mortgage providers. In particular, it does not seem coherent to introduce measures intended to enhance the cross-border mortgage lending activities of non-credit institutions if these are to be subjected to a less stringent regime than that which is applicable to credit institutions engaging in the same business. This element is deserving of particular attention given the origins of the current financial crisis and the ongoing discussions on the future regulation of credit institutions.

In any event, the EACB believes that the Member States in which mortgage lenders must be registered as credit institutions should not be required to lower their strict requirements. On the contrary, this model of regulation ought to serve as a blueprint for any EU-wide regulatory approach to non-credit institutions.

As regards the level of consumer protection afforded to borrowers, the EACB wishes to highlight that one of the key markets targeted by many non-credit institutions is the subprime sector. Consumers in this market segment are often particularly vulnerable to aggressive marketing practices, for example due to a lack of financial literacy. Against this background, it would be important in the context of any potential European legislation on non-credit institutions to ensure that existing rules of consumer protection, such as pre-contractual information requirements, are equally applicable to all mortgage providers. This would contribute to the creation of a level playing field as between credit and non-credit institutions.

⁷ Commission Staff Working Document “European Financial Integration Report 2008”, SEC(2009) 19 final of 9th January 2009, page 48 (para. 25).

⁸ “It is possible to characterise the different legal frameworks and the motivations for them”, page 42.



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The EACB trusts that its comments will be taken into account.

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