



# New EU Forum on Mortgage Financing Session in Warsaw

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## Mortgage Credit in the EU

Response by  
the Polish Mortgage Credit Foundation  
to the EU Green Paper  
published by the European Commission on the 19<sup>th</sup> of July 2005



Warsaw, 29.11.2005



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## **Preparation of the position paper:**

This position paper has been prepared by the Polish Mortgage Foundation In cooperation and after the consultation with its members.

The position takes into account also the opinions of the subjects active In the process of the Green Paper consultation – i.e. Polish Banks Association, Financial Enterprises' Association and the Ministry of Finance.

The present document integrates as well the broader aspect of the Green Paper assessment – from the point of view of the market typical for the new Member States. That was the purpose of organizing in Warsaw the first session of the New EU Forum on Mortgage Financing (27-28.10.2005), with the participation of the representatives of the European Commission, authors of the London Economics' report, representatives of the new Member States and financial institutions operating on those markets.

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## Introduction

1. Mortgage Credit Foundation (hereafter: Polish Mortgage Foundation) welcomes the opportunity to respond to the EU Commission Green Paper on Mortgage Credit in the EU, respecting its contribution to defining the questions crucial for the development of the mortgage markets in Europe.
2. Polish Mortgage Foundation is the representative body of mortgage business in Poland, uniting 14 members, covering about 90% of assets of the Polish mortgage market. At the same time, present in the Foundation's structures are also representatives of the Ministries, responsible for the development of the construction and mortgage market in Poland.
3. Polish Mortgage Foundation, as a member of the European Mortgage Federation, participated in the process of preparation the EMF position to the Green Paper (28 Nov. 2005), and in principle supports its conclusions. We would like to stress that, from our point of view, the EMF position has been prepared after the detailed analysis of various national solutions and properly weights both the situation on the individual EU markets and the interests of all participants of the mortgage financing process.

## General remarks

During the process of consultation of the Green Paper on Mortgage Credit, Polish Mortgage Foundation led a broad consultation process on the effects of the measures proposed in the Green Paper on Mortgage Credit, especially regarding the development of young, dynamically growing Polish market. We hope, that before introducing the ultimate solutions, into consideration will be taken the fact, that their results may be different on the developed markets of huge scale and on the markets on the new EU Member States - among them the Polish market, which is characterized by:

- little volume (less than 1% of share in the European mortgage business)
- huge growth potential (nearly 40 mio of citizens) and only 240 € mortgage debt per capita,
- one of the highest dynamics of growth in Europe, foreseen on that level also without any additional integration initiatives on the mortgage markets.

Taking that into consideration, we assume that **the priority**, while assessing the national solutions and the ones proposed in the Green Paper – both from the borrowers' and lenders' point of view – is **to maintain the dynamics of the market**



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development, at least to the moment when the new EU Member States will reach the EU average.

That's why we welcome the solutions proposed in the Green Paper, which support the growth of competitiveness, diversification and complexity of the mortgage products. The issues, seized by the European Commission in the Green Paper, will play an essential role for ensuring the further development on the Polish mortgage market. **Improvement of the efficiency of the national markets of mortgage financing will automatically contribute to creating the additional room for cross border financing in the broad meaning of that concept.**

Having analyzed the range of **issues regarding consumer protection, submitted for consideration in the Green Paper, the financial institutions operating on our market try even more attentive to use the best practice** in the area of restricting the risk of mortgage credit for the customer. We admit that the essential role here should be played by the full information on the financial consequences of his decisions regarding the mortgage credit. However, we'd like to draw the attention that on the Polish market there has been no evidence so far, that there're significant problems with unsuitable protection or lack of mortgage consumer's rights. Lately, the level of national legislation in that area has also been improved. So any measures on the European level should be carefully analyzed, whether there's a need to introduce them on the new markets, as well as in the terms of costs generated by them – also for the mortgage borrower.

During the works on ultimate solutions, it would be appropriate to take into account and coordinate the solutions discussed in the Green Paper with new implications for the mortgage credit, arising from the new Capital Requirements Directive, Consumer Credit Directive and new accountancy rules, to ensure the consistency of proposed solutions with the implemented ones (referring e.g. to the questions of valuation and data bases). Basically, creation of the new, unified legal rules in the area of mortgage credit should be preceded by a detailed analysis of their costs and by their adjustment to the level of existing solutions, in order to avoid the concentration of costs and parallel implementation of many measures in the same time. Such negative effect would be surely more harmful for the markets of little scale – i.a. due to the rise of price of mortgage credit – which is for example the Polish market.

In that context, we welcome the European Commission's declaration, included in the preamble of the Green Paper, saying:



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**“What is clear is that any action that the Commission might take to integrate these markets would be aimed at making them more efficient and competitive for the benefit of all”**

We think, just like the Commission, that the priority is to prove, that the benefits of the integration should surpass its costs, what would legitimize the further action on the legal area and the use of measures proposed in the Green Paper. We also count on using the already announced, precise analyses of measuring the costs of new solution according to the sequence:

- describing the business case, which would explain the reason for regulating certain area,
- working out the solution,
- **assessing the costs and benefits of the implementation in reference to the certain solution – both regarding the national markets, as well as the full European integration.**

## Consistency of the definitions

Leading the consultation process, we have also noticed that – despite of the advanced stage of the discussion on the detailed solutions, it’s not clear what should be understood as “mortgage markets’ integration”.

## Definition of integration

During the next stage of works, a priority should be to precise a definition of integration and its purpose – there’s no such definition in the Green Paper.

Generally used is however referring to the definition used in the London Economics’ report<sup>1</sup> - “*We define mortgage integration to imply the ideal case that the same mortgage products are available in all EU countries at the same prices*”.

We would like to draw the attention that this assumption – used as a purpose of integration, concerning **the availability of the same products at the same price – does not in practice suit the process of the creation of banking offers**, e.g. due to the fact, that it should be then taken into consideration the risk of country, the risk of a customer and his credibility; and in case of the new EU Member States – currency risk, as well as the unemployment risk. All those macroeconomic aspects influence the price of the product, which in the end reaches different, adjusted levels.

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<sup>1</sup> On the 12<sup>th</sup> of September 2005, the Commission published the outsourced research prepared by London Economics “The Costs and Benefits of Integration of EU Mortgage Markets”, on which our first analyses are based.



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That's why we claim that integration in the shape proposed by the London Economics, cannot be achieved in practice. That is why the next step of consultation requires first of all precisising the definition and its common understanding.

## The proposition of definition to be put under discussion:

### A) European mortgage market integration

As an example of a minimum modification of a current definition, we propose to be taken into consideration, that an integration is a situation when **analogical** products are available in all EU countries **at that price, which is most optimal for all participants of the local markets.**

However, maybe it would be worth considering to take up broader and more universal sense of the effect of integration, understood as a state **ensuring the maximum efficiency of operating on the national mortgage markets in the EU, and introducing on those markets such solutions in the area of the legal infrastructure for mortgage credit, which are characteristic for the most efficient markets, operating on the basis of market competition.**

We would also like to draw your attention to the range of the term "cross-border financing". In the context of the discussions on the certain solutions, it would be recommended to make a difference between cross-border trade and cross-border activities. In the consultation process we've noticed some misunderstandings as far as the London Economics' conclusions and the assessment of the Green Paper are concerned.

### B) Measure of the mortgage market integration

Of the same importance is to qualify the suitable measure of the integration of mortgage markets. We conclude form our observations – and we want to stress that – that **cross-border activity is only one of the symptoms of mortgage market integration** and that criterion shouldn't be used as a measure of integration. As a measure of integration we propose to use the level of efficiency of financing on the local market and the opportunities to offer the products on the scale typical for the most developed markets among the European ones.



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## COSTS

We find the final results of the London Economics research (additional growth of EU GDP by 0.7% and EU private consumption by 0.5% in 2015) to be questionable as the research is concentrated on the benefits of the integration of European mortgage markets and roughly include the assessment of its costs. Practically there's no direct reference to the costs of measures proposed in the Green Paper, although it was made public at the time of preparing the research.

So our first note resolves itself into taking into consideration the question of making the additional analysis of costs connected with the process of integration of the mortgage markets in reference to the proposals included in the Green Paper, which are nowadays being consulted.

The lack of such analysis is noticed mainly by Poland and probably other new Member States, as it seems that those costs will be relatively higher than assumed on average for the other, more developed markets of the European Union.

We identify the following points of the Green Paper, that are expected to generate costs:

First of all it's the whole Section II of the Green Paper – "Consumer Protection" (points 15-22).

**At the same time we want to emphasize that ensuring the borrower the full, transparent and professional information about the obligations connected with the mortgage credit, is the aim of the financial institutions operating on the Polish market. However, we need to look for such measures, which will be effective and proportional to the costs.**

**Proposals included in the points 15-22 of the Green Paper will generate the following costs:**

**The costs born mainly by the financial institutions:**

**Training of staff, cost of improved legal apparatus, production of additional leaflets, change of the software, banking administrative costs, new procedures and computer systems connected with the necessity of registering on durable medium the obligatory process of the provision of advice by the banks and other institutions distributing the credit. We must also be prepared for the constant annual costs of management and supervision caused by the implemented measures.**

**We also need to take into account the increase in cost of distribution of the credit.**



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The most measurable costs will be born by the financial institutions, but indirectly - also by the customers.

Apart from the costs mentioned above, we also need to take into consideration the costs of such actions like the potential regulations referring to the early repayment, annual percentage rate and the level and changes of percentage rates.

The interference into system solutions such as land registers also generate costs, but they will mainly be born by the State and they are not included into the sphere of calculation.

Both the reference model of assessing the costs and the proposals of the Green Paper that generate them, are based on the experiences of Great Britain – especially in the area of the pro-consumer measures.

Implementing the pro-consumer measures in Great Britain cost over 300 million pounds and their supervision also generates substantial cost. Even if – proportionally to the size of the market – we assume that in Poland we'll bear only a part of that cost, we'll need to remember that the problem of cost for small and developing markets is more vivid, as those costs partially have fix value. Polish market of residential credit is for example 140 times smaller and those costs won't be leveled by the scope of advantages resulting from the size of the market.

What's more, just like it's punctuated in the London Economics report, the cost of implementation will be cumulated in it's first phase, so the first years of implementation of the measures proposed in the Green Paper, or later in the White Paper on Mortgage Credit, would bring in the effect the essential increase in cost of mortgage credit, and the downturn in the dynamics of mortgage credit development, which is expected to be maintained on a high level in Poland, Hungary, Czech Republic and Slovakia – no matter whether the measures proposed in the Green Paper are implemented or not.

We also argue that the cost of implementation of the Green Paper will be relatively higher than in the 15 "old" Member States of the EU due to the lower level of implementation of those measures in the "new" Member States. Poland is one of those countries, where the solutions referred to the consumer protection are a 100% novelty.

It's enough to remind a essential question of the lack of implementation of Code of Conduct on Mortgage Credit, whereas in the other countries it was already introduced in 90%.

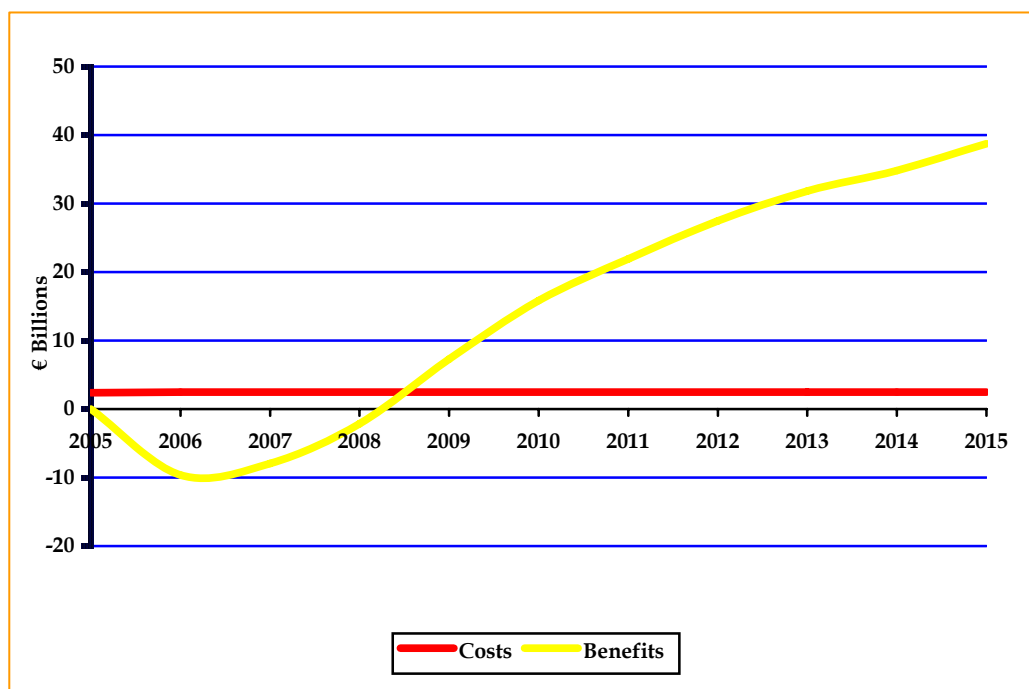


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So in the countries that have already reached a high level of implementation (voluntarily or as a result of regulation) of the packages of the consumer protection, the cost generated by the Green Paper has already been born, whereas in Poland it has to be born during one stage.

Estimated costs and benefits of integration of EU mortgage markets.



Source: London Economics, *presentation made during the EMF Economic Group, Warsaw, 16.09.2005*

So the cost of integration of mortgage markets - already high in the first years of implementation in the EU countries - would be much more higher on the Polish market due to the factors mentioned above.

The above situation of the possibly negative balance of the costs and benefits on the Polish market would undermine its attractiveness - also in terms of the cross-border financing.



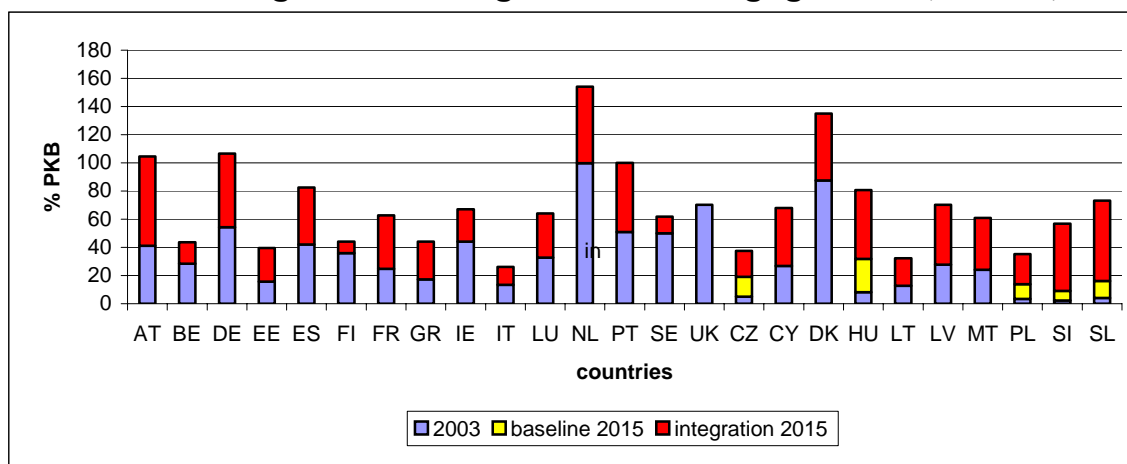
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In that context, the negative balance of the costs over the benefits is even more possible due to the fact that **the costs are rather inevitable but we're not sure whether the costs have not been overestimated.**

## BENEFITS

### Prognosis of the growth of mortgage debt (% GDP)



Source: Mortgage Credit Foundation, based on data from London Economics' report

It seems that the research, pointing on the high increase in mortgage debt and positive influence on the GDP growth, does not take into account the real demand on mortgage credit. The analysis is concentrated on the additional supply of the mortgage credit and does not appraise whether it will be able to be absorbed by the Polish customers. Taking into consideration such factors as: unemployment level, inflation, probable fluctuation of prices in the result of joining the euro zone or economic slowdown arising from fulfilling the convergence criteria, we may find out that the forecasted growth of mortgage credit in such countries as Poland is overestimated.

### To sum up:

- Identification and assessment of costs resulting from the package of actions arising from the Green Paper is essential for its evaluation from the perspective of the Polish market.
- No matter, whether the measures ensuring the consumer protection will get an institutional support or remain as a voluntary banking action (which we are in favour of), we notice high costs of that implementation (incommensurable to



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- the benefits gained by the customers on the Polish market) which need to be precisely assessed.
- c) As the factors mentioned above would rise the cost of mortgage credit in Poland much more than in the other – mainly Western European countries, we infer that the period of implementation of the consumer protection package should be much longer. The new EU Member States should have the opportunity to spread the costs over appropriate additional period – e.g. complying with the Eurozone accession schedules. The implementation period by the 15 EU Member States in case of the Code of Conduct took already some years.
  - d) We ask for the supporting action of the European Commission in order to start the implementation of the voluntary pro-consumer solutions soonest possible, so that the effect of gradual implementation would be achieved.
  - e) Advisable would be the appointment (by the European Commission) of an ad hoc group ensuring the technical support for the effective implementation of the Code of Conduct in the new Member States. Among the members of that group should be both the experienced specialists from the countries which have already implemented those measures, and the representatives of the new EU countries, to ensure:
    - Conscious estimation of the costs of implementation,
    - Know-how exchange – how to do it effectively and in the shortest time, achieving the desirable effect for the maximum consumer protection. It seems that the Commission should reflect on the means for such an initiative and in case of their lack – allocate them e.g. from the planned research of the level of implementation in the countries where that level is already high.
  - f) We also ask the European Commission to formally invite the new Member States to the Code of Conduct– just like the Commission did in 2004, with defining the conditions and references to the implementation process and translating the Code into national languages of the new Member States. The lack of action from the side of the European Commission delays the implementation process.



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## DETAILED COMMENTS ON THE EUROPEAN COMMISSION'S QUESTIONS, ASKED IN CONNECTION WITH THE GREEN PAPER ON MORTGAGE CREDIT

### Information provision

#### Referring to question 1.

In response to the Commission's question, **whether the Code of Conduct should be replaced by binding legislation, there's no doubt that the Code of Conduct for home loans should be remained as voluntary and common procedures referring to the mortgage borrowers.**

There is much to be said for it, that the European Standardised Information Sheet is the adequate instrument, which helps the consumer to make a decision in order to choose the most appropriate mortgage product, what is based on a transparent comparison. The voluntary form of Code allows to change it according to the situation on the market – e.g. to include the new products and conditions, which should be included into ESIS form, as well as in the complementary information.

This is extremely important in the case of the new Member States, which – according to the London Economics report – are characterised by the low availability of mortgage credit. Nowadays it's not possible to predict the direction of development and it could prove that the legal binding specification of information doesn't follow the changes in market offer. That would depreciate the value of the binding forms, which wouldn't serve as a source of complex and actual information, in normal conditions obtained from the bank.

#### Referring to question 2.

The Commission asks what information should be given to consumers – it seems that ESIS in accordance with the Code of Conduct gives the sufficient basis of information about the features and cost of the products. Radically, there's no need to make those issues more precise, as it would make them less transparent, with detriment to a customer. However, it would be desirable on that stage if the Commission harmonized the way of adding to the Code of Conduct the information arising from the directives, which refers to the mortgage credit – e.g. The Distance Marketing of Financial Services Directive.

Considering the peculiarity of developing markets – also of the Polish one – it's needed to decide **in what way and in what range the Code of Conduct should be completed with the information for the borrower about his rights and obligation and the risk in reference to the mortgage credits denominated or granted in a foreign currency (i.e. the currency other than the one in which the borrower gets his earnings).**

It's worth noticing, that after making the effort of implementation of the Code of Conduct for home loans in 12 Member States of the EU, the Commission's aims of ranging this sphere of market with binding regulation would lessen the meaning of voluntary codes, which purpose is to protect a customer in other branches. It wouldn't be desirable for the consumers, but would also disappoint the financial institutions, which have already born considerable cost of implementation. It seems that **the Commission should give a clear signal that the Code**



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**of Conduct will be maintained in its voluntary shape – otherwise there won't be much determination to implement it on the new markets.** We remind that so far the Commission has not confirmed that way of protecting the consumer. The effect is that in the new Member States the Code was hardly implemented. That ambiguous situation plus the fear of high cost of implementation will not promote the procedure of introducing the Code.

Form the point of view of such market as Poland, it's also important that the Commission ensured and declared that if the Code became the binding regulation, the present formula of the Code would be maintained and it would be completed with the points referring to the credits granted in foreign currency, as mentioned above.

### Referring to question 3.

In response to Commission's question: **is it possible to harmonise in all EU countries the stage of providing a pre-contractual information** - it seems that it's not possible.

The customers' rights as well as the procedures described in detailed acts referred to the concept of 'binding offer', time for the withdrawal form the offer, procedures connected with the collateral, are the subject of national legislation and it seems that they can't be harmonised on this stage. So **accepting any common measure in a form of rigid regulations would lead to the harmonization of credit offers, what is contradictory to the Commission's position** that the purpose of action proposed in the Green Paper is to lead to the greater diversification and availability of mortgage products.

It seems that in this matter those solutions should be maintained, which are diverse, but in the result they must lead to the situation, where the customer will get the proper, transparent information in the adequate time, which allows him to decide whether to take a credit or to withdraw form the contract without excessive financial consequences.

### Referring to question 4.

Referring to the question whether information provision regime should apply only to lenders or to others such as brokers too, **we stand on a position that the same rules, duties and purposes of giving a customer a professional information should apply to all channels of credit distribution – including intermediaries.** If the works in the sphere of directive on the financial services will be defined, it's essential to ensure that those conclusions applied also to credit intermediaries.

## Advice Provision and Credit Intermediation

### Referring to question 5.

The basic question asked by the Commission is: should the provision of advice to the borrower be made compulsory? The answer to that question is negative.

The Commission properly notices that a compulsory advice provision would lift a price of a credit and expose the lenders on a legal risk. It can be foreseen that introducing rigid regulations in that sphere would hamper the dynamics of a growth of mortgage credit, as well as a **less expansive development of diverse products, contrary to the Commission's**



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**aspirations.** It's obvious that every new product, in a situation of a compulsory advice provision, would have to be prepared together with all possible analyses. The efficiency and cost of credit are influenced by the praxis of delegating decisions on the lower grades in banking structure. **The compulsory advice provision would reverse that tendency through centralizing the decisions and subordinating them to more detailed banking instructions.** That would also result in higher administrative costs of banks. If the obligation of registering the advisory process on a durable medium was introduced, it would cause the development of banking institution similar to the almost administrative institutions. It's contrary to the mechanisms that build long-lasting relations with a customer, based on confidence, professional handling and enabling the customer making choice from a broad range of banks and credits. Creating conditions for the banks that increase their competitiveness in the area of the quality of customer handling is a factor raising customer's security.

It seems, that at least from the point of view of Polish market, much more effective method of consumer protection is condemnation of wrong banking practice, which in the effect causes the customer to resign from the cooperation with a certain bank, than extending legal -administrative links, which are long-lasting, expensive and make both banks and customers to use legal measures instead of looking for the most effective, simple and flexible solutions.

The compulsory advice provision and related consequences of legal responsibility of a credit institution may be harmful for a customer also because in a difficult situation he loses the opportunity to negotiate flexibly with a bank, i.e. to search for different methods of restructuring the debt not included in the procedures. It's worth to emphasize that execution of a collateral caused by the customer's insolvency, is the least profitable situation, that can happen to a bank.

The Commission should also take into consideration the supervisory mechanisms that have to the same aim, that the one faced by the Commission – preventing the over-indebtedness. It's guaranteed by the supervisory mechanisms – duty to make reserves for credits of a higher risk, lower ratings and higher cost of capital for a bank if he were excessively engaged into the situations mentioned by the Commission. It seems that it's the right way in order to prevent the over-indebtedness. The Commission's project of introducing rigid rules and switching responsibility on legal regulations is a non-market attitude, which may hamper the activity on the area of mortgage credits.

## Referring to question 6.

The Commission's **question regarding the sanctions due to inappropriate advice on mortgage credit is essential to assessment of costs of introducing the proposed advisory services standard, particularly if such standard is to be obligatory.** In such a model, each banking product would need to be safeguarded with extensive procedures, instructions regarding the advisory process and its registration, which generates significant costs and extends the credit decision time. Therefore, these aspects require prudential consideration, also to the best interest of the customer.



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It seems that creating a Paneuropean standard in advisory services may reduce flexibility of the mortgage credit offer and render it unfit to meet the specific local market needs.

In the case of the Polish mortgage credit market, the advice becomes an increasingly frequent element of operations of credit intermediaries, due to the increasing competition. However, it is worth to consider introduction of an appropriate advice standard across the banking sector with regard to relations with the credit intermediaries.

## Early Repayment

### Referring to question 7.

#### Is it necessary to legally regulate the early repayment of the credit?

The legal regulation of the early credit repayment **may decrease competition among banks and impede growth of fixed interest banking products**. Such effect would be in conflict with the primary assumption of the Mortgage Credit Green Paper, namely ensuring that mortgage lending offers are more varied and complementary (the example, here, could be the *reverse mortgage* offer, where the legal interference of granting the early repayment right to the customer would contradict the idea and nature of the product). Moreover, such approach could increase the credit offer pricing and **negatively impact the growth of long-term forms of funding the mortgage portfolio with the capital market funds**.

From the perspective of the free market principles, it would be justified to **leave it up to the borrower** who can choose between a product with early repayment option without any additional fees or a product with early repayment option but with the need to pay a relevant fee which is reflected in the final price of the product.

### Referring to question 8.

#### Should the manner of calculating fees for early credit repayment be legally regulated?

Consequently, the early credit repayment (question 7) and the amount of fees for early repayment **should not be subject to regulation on the community level**. It is advisable to leave the free market environment to creditors with regard to shaping the credit offer that incorporates products with the fee-based early repayment option. Therefore, the calculation of early repayment fees should be left completely up to the creditor. At the same time, however, the borrower should be informed about financial consequences of each option.

### Referring to question 9.

#### Manner of informing the borrower about the option of early credit repayment.

The information about the possibility to repay the credit earlier should be included in the pre-contract information package. However, we need to bear in mind that at this stage, and also at the moment of concluding the credit agreement, it is not always possible to precisely determine the amount that will be due for the early repayment. Still, in each case, a formula



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should be provided to the borrower, so that the borrower can calculate how much the early repayment will cost.

## Annual Percentage Rate

### Referring to question 10.

#### Is APRC successfully an informative and comparative tool?

APR on a mortgage credit should be subject to harmonisation, provided that we adopt a narrow APR definition that is limited to costs charged from the borrower for sanctioning the credit. This tool is informative and it facilitates comparison of offer on the national and trans-border level.

In August 2005, the Polish Consumer Credit Act was amended which caused that since February 2005, the reporting regime for the actual annual interest rate has also included the group of housing loans with value up to PLN 80 000. Considering the average value of a housing loan in Poland, which is currently estimated at PLN 100 000, it can be assumed that the act will cover a significant part of the housing loan portfolio. It seems that for the Polish market, if APR is applied to a considerable part of the mortgage credit portfolio, principally, it will enable the borrower to compare various offers.

### Referring to question 11.

#### Should there be a European methodology standard for APR?

To support the position paper of the Mortgage Credit Foundation, at the stage of consultations for the Forum Group Report, the key condition for comparability of offers is to assume the same method of calculating APR, based on the same components in all EU states (fulfilling the full harmonisation principle).

### Referring to question 12.

#### Cost components

APR should consider only those elements that point to costs covered by borrower, connected to a mortgage credit and presented at the moment of granting the credit.

It is advisable for the European Commission to perform an analysis comparing the mortgage credit cost elements incurred by the borrower in all the EU member states and select shared elements that meet the comparability principle.

### Referring to question 13.

#### Information about additional costs

In the situation where APR does not account for all the cost components of the mortgage credit, it seems necessary to provide the borrower with separate information about additional costs. It would be logical to use the Code of Conduct formula to expand it with any information that has not been included in the APR standard but is meaningful to the customer. Such approach should ensure compliance with the principle of the credit offer transparency and comparability



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on the national and community level, without making the scope of consumer information more rigid by applying additional legal regulations.

## Usury rules and interest rate variations

### Referring to question 14. Usury rules

In Poland, there is lack of experience in usury law. With the amendment of Consumer Credit Act in August 2005 and the Civil Code, there will be a new upper limit for interest on legal transactions so that annually it cannot exceed four-fold lombard rate, as defined by the National Bank of Poland.

At this stage, it is hard to precisely assess the consequences of introducing such new regulations. However, at the stage of processing the regulations, the following negative implications of introducing the upper limit for credit interest have been identified:

- exclusion of some borrowers, particularly those with low credit rating, from the financial market,
- tightening the credit availability criteria,
- stimulating activity of entities operating in the grey area of this sector,
- decelerating current growth trend in the banking offer.

Regulations in this area could negatively impact the growth of higher risk products, where the final product price, from the today's perspective, could exceed the statutory limit. Such types of regulations would hard to justify with reliable calculations of the interest rate growth in a long-term mortgage lending.

### Referring to question 15. Wider context

In the case of Polish regulations, the upper interest limit refers to, as already mentioned (question 14), to all legal transactions. Therefore, the indicated negative impact refers not only to the mortgage credit market, but also to other types of financial products.

### Referring to question 16. Barrier for market integration

Such limitations hinder the integration of markets and reduce growth opportunities for financial products.



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## **Referring to question 17. Implications for individual products**

The implications of statutory upper interest rate limits, as shown above (questions 15 and 16), apply also to products in the mortgage annuity area.

### **Credit Contract**

## **Referring to question 18. Normalisation of mortgage contracts?**

Normalisation of mortgage credit contracts, due to considerable legislation discrepancies in individual EU member states, seems unreasonable and hard to achieve.

We need to consider the practicality of rendering the agreements comparable, particularly from the trans-border perspective, and therefore, we would need to determine the minimum scope of information provided to the customer in the agreement, that would be common for all national markets. It should never lead to standardising the agreements and mortgage products.

## **Alternative means of redress**

### **Referring to question 19. Should alternative means of redress be ensured?**

Alternative means of redress should be supported also in mortgage lending. However, the borrower should be able to refer to the common court institution.

It would be worth to use European experience related to the FIN-NET (arbitrage for financial services consumers in trans-border and domestic transactions).

On the Polish market, there is the Banking Arbiter at the Polish Banks Association and its activity has been positively assessed both by the banking sector and the consumer environment. It is also advisable to develop less formalised mediation forms and mortgage credit information centres which would propagate knowledge of the mortgage product and consequences of raising such type of liabilities.

## **Referring to question 20. Support for alternative means of redress**

It seems reasonable to take efforts aimed at strengthening the role of arbitration as the alternative means of redress. The pros of such solution are the flexibility of the procedure, lower costs of the procedure, and higher effectiveness as compared to traditional court procedures. At the same time, it is worth to stress the importance of increasing the awareness of the borrowers in this area.



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#### Client credit-worthiness

##### Referring to question 21.

##### Access to databases

Limited access to national databases may be a considerable obstacle in trans-border lending. The domestic and foreign institutions should be able to access the databases on equal terms (either fee-based or free access), where the access is based on providing corresponding data from local markets, following appropriate authorisation of the database user. However, such approach should not result in the obligation to create new databases.

The use of databases should be voluntary rather than obligatory. However, the key aspect in ensuring availability is to solve, mainly on the national level, the legal restraints associated with the personal data protection.

In further consultations, it is necessary to precisely answer the question: Should the access include national (state) databases only or also the private ones, e.g. interbank databases)?

#### Property Valuation

##### Referring to question 22.

##### Standardising the valuation standards

Considering the main objective regarding the real estate valuation, namely to ensure comparability of valuations, it is worth to create a unified European property valuation standard for credit purposes.

The unified standard would ensure consistent transparency of the valuations, particularly in the case of building a trans-border portfolio. Expert valuers would certainly benefit due to expanded job market, which could lead to greater competition on that market, and consequently it could potentially ensure lower valuation costs, and at the same time, improved service quality.

A unified valuation standard is also the sine qua non condition for projects like EULIS, in order to maintain adequate quality and comparability of real estate data from local markets.

Nevertheless, it seems desired to **assume the minimum approach in building the unified valuation standard**, as overly detailed information will not allow to grasp the specifics of local markets.

The standard should be consistent with the assumptions applied to the valuation for lending purposes, which refer to financial institutions, and particularly it should be consistent with the Capital Requirements Directive. Also, it would be necessary to perform a comparative analysis



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in order to assess the standards and terms of granting authorisations to value property for lending purposes.

The above considerations and any regulations should be preceded by analysis of costs of such solution (changes in the banking procedure, valuator training costs, adjusting the banking databases, etc.).

The point of reference for the unified valuation standard could be the generally known, and proven in banking practice, international valuation standards (IVS, EVS) or the commonly acknowledged standards (RICS Red Book).

**The unified European standard should be available to both the domestic and trans-border institutions, and there should be an option to choose between this standard or the local valuation standard.**

**Referring to question 23.**

**The rule of mutual recognition of local standards**

**We are against the rule of mutual recognition of local valuation standards** (during the period of developing the unified standard, we could consider temporary application of this rule). In the situation of the Polish market, with highly varied foreign capital operating at a large scale on the mortgage market (and with the applied mutual recognition rule), we would apply at least 10 different national methodologies in the valuation process on the Polish market. In such situation, the valuations would show incomparable figures and lead to incorrect market analysis.

## Forced Sales Procedures

**Referring to question 24.**

**Changes in the forced sale procedure**

Undoubtedly, with the presence of varied forced sale procedures is a considerable obstacle to the integration of mortgage markets in the European Union. It is advisable for the European Commission to take steps aimed at determining the actual state in this area on each market. That would ensure basis for creating the "scoreboard", and then formulating an optimal model of the forced sale procedure. However, it needs to be stressed that the optimal model should not lead to adopting the maximum period for the whole procedure, but it should rather refer to maximum periods for individual stages of the procedure. Such approach would definitely increase the effectiveness and simplify the forced sale procedure.

At the same time, it must be stressed that banking policy should remain flexible, depending on the demand cycle on the real estate market. With rigidly set deadline, whereby e.g. the procedure must end within a year, may turn out unfavourable to the consumer in the cycle of low prices on the real estate market.



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## Taxation

### Referring to question 25.

Tax discrimination of financial institutions operating in the mortgage lending sector in individual EU member states is unacceptable. It would infringe the treaty freedom, which is the basis for the internal market operations.

## Land Registers

### Referring to question 26.

#### Assessment of the EULIS/database project

Initiatives such as EULIS contribute to greater transparency and efficiency in the access to real estate registers.

**However, European projects which ensure access to the local information on real estate markets are justified only if real estate databases, containing information about real estate on national markets, are created and developed.** To ensure effective use of EU funds, which have been rightfully granted for improving transparency of and access to information on real estates in the territory of EU, first of all, it would be necessary to improve the quality of, and on some markets **even create**, electronic databases of real estates and land register systems.

On this stage it would be worth to (independently of the EULIS initiative) discuss on the European forum, and then obtain the European Commission's approval of, **the guidelines on database quality requirements**. It would be necessary to **ensure a unified approach to the monitoring of real estate markets and collection of information on real estates, with requirements applied by banking supervision in relation to the new Capital Requirements Directive**.

The consistence of the European Commission's actions with the requirements with regard to real estate markets, as provided in CRD, and at the same time providing the investors and creditors with access to standardised information is the prerequisite for safe creation of the large-scale European mortgage market.

## Euromortgage

### Referring to question 27.

In line with the European Commission's intention, it is worth to continue working on the Euromortgage concept. Its features, such as the lack of non-accessory type of mortgage, are particularly important to building secondary mortgage credit markets and transfer of mortgage receivables. As far as Poland is concerned, it seems that Euromortgage, with its advantages over the only available accessory mortgage, would become commonly applicable – mainly in



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credit relations. It would also facilitate creating and increasing the effectiveness of new credit products, such as syndicated loans under unregistered syndicates.

The advantage of using 26 regime for the purposes of the Euromortgage is that it ensures only an alternative instrument that is available to all market participants, without limiting or altering the present mortgage, as it is still going to be used for traditional mortgage financing as well as in liability relations between natural persons.

## Funding of mortgage credit

### Referring to question 28.

#### Working group

The European statistics indicates growing interest of financial institutions in refinancing mortgage credits with funds acquired from the capital market (covered bonds, MBS). The European Commission's initiative to establish a working group to analyse conditions for developing this channel of mortgage credit refinancing, seems valuable. The countries with well developed legal infrastructure in mortgage refinancing would need to share their experience in long-term mortgage refinancing with the new EU member countries where the markets are still developing.

### Referring to question 29.

#### Common European mortgage financing market and trans-border financing definitions.

At the moment, it is hard to evaluate the real demand for the common European mortgage financing market. It would be worth to include this market study in the agenda of the working group mentioned in the question 28.

At the same time, it seems important to adopt model definitions to ensure monitoring of the trans-border financing. Such definitions should be consistent with the definitions applied in the reporting of financial institutions and across other legal acts (e.g. CRD).

### Referring to question 30.

#### Restrictions for non-lending institutions in the meaning applied by the EU regulations.

The Green Paper already with its title shows the paper is subject- rather object-focused in terms of mortgage lending. Institutions which want to be present on the mortgage credit market should follow the Green Paper's guidelines for this instrument, and additionally subject themselves to the same supervisory rules, and respect all recommendations and regulations designed to protect the mortgage consumer. Only such approach will ensure a safe mortgage lending system, with healthy competition conditions, in the European Union.

Prepared by the Polish Mortgage Credit Foundation  
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