R&D measures. In the case of biomass, non-supported uses of the products from limited land areas have to be taken into account. Rise in generic (mainly fossil) energy prices gives reasons to re-evaluate the needs and levels of support. Particularly important are the effects of the EU emissions trading scheme, which as such has already caused rising electricity prices. To achieve the identical aim, double or overlapping measures have to avoided.

5.10 While support schemes are required for new technologies to ripen and enter the market, they cannot be indefinitely maintained. Influences on employment have to be carefully considered in order not to create jobs that will be lost when the support is ended.

5.11 The EU RES-E Directive leaves the organisation of such support to Member States. This has led to an incoherent and in some cases market-distorting patchwork of support mechanisms. The result is a loss of synergies and in parts of the EU a lack of market incentives and drivers, while elsewhere arise unnecessarily high costs. Most of this could be avoided through a common European approach. The EESC addressed this problem already in its opinion on the RES-E Directive (see footnote 1). While an ideal common European solution does not yet seem to be at hand, the choice of national support schemes seems to slide towards more use of green certificates. As experiences accrue the issue has to be further studied and developed.

5.12 After the initial 'pioneering' phase there is a definitive need to reassess EU policies for renewable energy sources. The changing situation in the global energy markets with high and volatile prices, effects of related EU policies and measures, in particular emissions trading, and the Lisbon strategy goals have to be taken carefully into account. Focus has to be set on ensuring a steady long term development by concentrating on R&D and technology development.

Brussels, 15 December 2005.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on the 'Green Paper: Mortgage Credit in the EU'

(COM(2005) 327 final)

(2006/C 65/21)

On 19 July 2005 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the *Green Paper: Mortgage Credit in the EU*

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 11 November 2005. The rapporteur was Mr Burani.

At its 422nd plenary session (meeting of 15 December 2005), the European Economic and Social Committee adopted the following opinion by 97 votes in favour with 1 abstention.

1. **Summary of the position adopted**

1.1 The Green Paper on mortgage credit for residential properties in the EU forms part of the policy of integrating financial services at European level. The Green Paper is currently being considered by the sectors concerned.

1.2 The Committee, while agreeing with the aims proposed by the Commission, takes the view that full integration will be difficult to achieve in the short term. It must be borne in mind that mortgage credit markets in the EU differ to a considerable extent and that each has characteristics of its own.

1.3 In the Green Paper the Commission raises a number of questions, which the Committee endeavours to answer. The first series of questions concerns consumer protection: on this point the EESC asks that the codes of conduct be drawn up by the associations of European financial institutions in consultation with consumer associations, checked by the national

ombudsmen and registered with courts or chambers of commerce. It also proposes the provision of information (including pre-contractual information) with clear and transparent content, which would apply, perhaps even more strictly, to credit intermediaries. As regards early repayment, the EESC takes the view that the calculation should rely on formulas of financial mathematics which also take account of the actual burden borne by the provider. On the question of whether there should be a European standard covering both the method of calculation and the cost elements, the EESC maintains that a lowest common denominator could be made up of the cost of drawing up the file, the cost of setting up the mortgage, clearly identifiable administrative costs and the cost of insurance. However, it points out that the proposal to standardise mortgage contracts must not impede the supply of new products, as that would amount to a brake on innovation. The EESC is in favour of setting up mediation structures, but not arbitration structures, since the latter do not come under the scope of consumer protection.

1.4 A second series of questions concerns legal issues. The EESC confines itself to a few comments on these. First and foremost, it points out that the rule on the jurisdiction of the consumer's country of residence limits supply considerably; moreover, it points out the need to establish clearly the language to be used in the contract, contacts and correspondence.

1.5 A third series of questions concerns mortgage collateral. The EESC takes the view that the Commission should continue its work of promoting cooperation between property owners and controllers of land registers (also drawing up an annual report on the results achieved). In general terms the EESC thinks that the Euromortgage idea deserves to be encouraged.

1.6 The last question concerns the financing of mortgage credit. On this point the EESC agrees with the idea of a pan-European financing system as proposed by the Commission, but thinks that such an objective can be achieved only in the long term and intends to clarify its position on this at a later date.

2. **Background**

2.1 As part of its policy for the integration of financial services, the Commission is tackling the subject of residential mortgage credit in the EU, proposing to move on to practical regulatory measures should the current studies and contacts show that such measures would result in an integrated market which would be 'more efficient and competitive for the benefit of all'. The present Green Paper is based on a study ('The integration of the EU mortgage credit markets') drawn up for the Commission by the 'Forum Group on Mortgage Credit' (FGMC), even if it does not necessarily always follow the same line.

2.2 The responses to the Green Paper from the all the sectors concerned are expected by the end of November 2005 and will be followed by a hearing in December. The Commission will then assess what measures, if any, on its part are needed.

3. **The Green Paper (GP): The Committee's comments**

3.1 *Assessing the case for Commission action (point I of the GP)*

3.1.1 The Commission points out that the mortgage credit market is **one of the most complex financial markets**, both because of the large number of players involved and because of the variety of technical forms it can take. There is also a *direct relationship between the mortgage credit market and the macro-economy*, in the sense that any variation in economic cycles and rates of interest influences the volume and the trend of mortgage credit. In practical terms, the growth in the volume of credit in the EU has been influenced by macro-economic factors (reduction of interest rates and rapid growth in property prices in many countries) and by structural factors (growing liberalisation and integration of the financial markets).

3.1.2 Despite these common trends, **the EU mortgage credit markets remain profoundly different**: each has its own characteristics in terms of products, the profile of lenders, the distribution structures, the timescale of loans, taxation of property and refinancing mechanisms. These differences are the result of the differing attitudes of Member States with regard to regulation, but also of factors of a historical, economic and social nature. These factors sometimes have features which are not easy to reduce to a common denominator. The picture is further complicated by state interventions in municipal building, tax systems, prudential rules, levels of competition and risks of insolvency, which vary from one country to another.

3.1.3 Given this situation it is not surprising that markets are not very integrated, but it is necessary to take account of the fact that **cross-frontier sales of property constitute barely 1 % of the overall market** for residential building. The Commission takes the view that, hypothetically, the benefits of integration would be a reduction in the cost of mortgage credit, a higher level of consumer protection guaranteed by law and an increase in the number of potential users of such credit, thanks to the inclusion of those whose credit profile is low or incomplete.

3.1.4 The Committee agrees with the aims proposed by the Commission; however, it considers that the differences between the various markets listed by the Commission (and other differences which will be mentioned in this document) as so many and such as to suggest that *a total integration will be very difficult to achieve in the short term*. For the moment it will be necessary to take action in the sectors where harmonisation does not present excessive difficulties, questioning each time whether the game is worth the candle, and without having the ambition of dictating rules — or changing them — just for the satisfaction of following programmatic or ideological imperatives.

3.1.5 One point in particular should be borne in mind. As mentioned above, cross-frontier purchases of property amount to only 1 % of the market and concern almost exclusively holiday homes and property in frontier areas; it does not therefore seem likely that this small market share was the main aim of the Commission, but rather the **strategic objective** mentioned in point 3.1.3 above. In other words, the Commission envisages an integration such as to *enable any citizen of the Union to acquire a property in his own country or another, using the services of a financial intermediary in his own country, the country where the property is situated or a third country*.

3.2 *Consumer protection (point II of the GP)*

3.2.1 On **information** the Commission raises four questions. On the first of these, concerning **codes of conduct** [1]**,** the EESC points out that they are by definition voluntary; the problem arises with the content, which should be drawn up by the associations of European financial institutions in consultation with consumer associations, so that it either includes sanctions mechanisms or is checked by the national ombudsmen and registered with courts or chambers of commerce. Such codes should be signed by all the associates in the trade category, and the contracts and information documents should *expressly mention the fact that the provider of the service has signed the code of conduct*.

3.2.2 The second question concerns the **content** of the **information**, which is an essential element: all the aspects of the contract — legal, technical and accounting — must be clear to the consumer, but it is not easy to find a satisfactory compromise between transparency, precision and ease of comprehension. The need to explain the *technical terms* makes the texts longer and does not necessarily contribute to their clarity. The *survey of failures to meet contractual obligations and the consequences of such failures* should also form part of the information: the EESC suggests that the information on the most frequent aspects should be included in the codes of conduct in the form of a standardised text.

3.2.3 Third question: the points made above also apply, at least in part, to **pre-contractual information**; this could make possible comparisons with other offers, and thus contribute to an *informed choice* at national level, but at this stage is unlikely to assist the comparison with credits offered by other countries. There is also a European initiative on the subject promoted by the trade federations, which have adopted the 'European Information Sheet', drawn up with the help of the consumer associations. Although this initiative has been supported by most of the financial institutions, it would seem, according to some, to be put into practice with little conviction in a number of countries. The Commission is investigating the matter and could if necessary adopt coercive measures which could involve turning the agreement into a regulation.

3.2.4 Fourth question: there is no doubt that the provision on information must be applied and, indeed, even more rigorously, to **credit intermediaries** (*brokers* and others).

3.2.5 **On advice for borrowers** the Commission raises two questions. The first has long been debated: should there be an *obligation* for the provider to give advice on the best form of loan, timescale, price etc.? The Commission points out that *advice in writing* — as requested by the consumers — exposes the provider to legal risks and compensation claims. It is unlikely that a provider would be prepared to take on this burden, above all in the view of the fact that it would be difficult for him to show *a posteriori* that he had not been in possession of *all* the necessary factors for evaluation or that he had taken account of possible future eventualities. Making advice compulsory would greatly reduce the credit on offer, and it is therefore undesirable; however, it cannot be excluded that under pressure of competition certain providers or intermediaries may decide to offer this service, either free of charge or in return for payment.

3.2.6 With regard to the second question, on the responsibility **for any advice or information** provided in writing, whether voluntarily or compulsorily, it is necessary to **distinguish between *advice and information***; as regards advice, the reply is in the second part of the preceding point. On the other hand, any information which is incorrect or concealed — whether deliberately or by negligence — involves the *responsibility of a provider*. But the scope of the information must be clearly understood: it cannot be confined to setting out the technical aspects, but must — or should — ensure that the consumer has at his disposal every other element useful for making an independent, reasoned final choice. Codes of conduct, or if necessary the civil code, should provide a guide to settling any disputes.

3.2.7 As regards **early repayment** the Commission raises three questions. The first revives a long-debated question: should early repayment be a *legal right* of the consumer or a choice for both parties? In general early repayment is requested by the consumer in the event of rate variations unfavourable to him, whether for fixed-rate loans or for variable-rate loans, such as the rate changes made in the past in some countries following high inflation. At all events, early repayment is *always* requested by the consumer and very rarely refused by the provider, regardless of whether it is provided for in the contract. The problem is not so much whether early repayment is possible or not, rather the problem posed by the next question.

3.2.8 **How should the fees for early repayment be calculated?** Ways of financing mortgage credit vary from one country to another, but as a general rule a provider obtains funds by issuing *bonds* guaranteed by the mortgages on the property he sells on the primary or secondary market. The techniques and products, which include an entirely new one, *equity release*, vary considerably depending on the timescale of the loans, whether rates are fixed or variable, the payments, the techniques and the market procedures. Early repayment

[1] OJ C 221 of 8 September 2005.

involves, alongside an advantage for the consumer, a burden for the provider who must — in very approximate and simplistic terms — reuse the sum received in anticipation in order to buy back the *bonds* which have been deprived of their guarantee. Financial mathematics provides the formulas for calculating the burden to the provider, a burden which varies according to the period remaining, the trend of rates and the situation of the market. The EESC takes the view that one response to the question would be to *apply a principle of equity: alongside the benefit for the consumer it is necessary to calculate the effective burden borne by the provider as a result of early repayment*.

3.2.9 Rules for calculation should be included in the code of conduct or, better still, in each individual contract. The only standardised rules possible in this area are those of financial mathematics: it is not particularly difficult to calculate advantages and disadvantages on the basis of the period which has elapsed and the remaining period, the rates applied and the current rates. The result, purely a matter of financial mathematics, should be supplemented by the calculation of the profits or disadvantages for the financial institution deriving, in the period in question, from the reinvestment of the liquid funds acquired in advance. At all events, the payment of penalties should be excluded.

3.2.10 The third question, **how the consumer should be informed about the possibility of early repayment**, has already received a reply in the last part of the preceding point: there is no reason why the possibility of early repayment should not be included either in prior information or in ongoing information and, better still, also in the contract.

3.2.11 Four questions concern the **annual percentage rate (APR)**. The first refers to a question already fully discussed in the preliminary stages leading to the adoption of the relevant directive, namely **whether the purpose of an APR is to inform or allow comparison or both.** The fact that after a number of years the Commission is raising the question again seems to suggest that doubts on the matter persist. The formula adopted for calculating the APR corresponds to a precise *mathematical and economic logic*, and was intended by the legislator to also meet criteria of *information, transparency and comparability*. In practice, however, a consumer who is not an expert in financial mathematics can do no more than take note of the figure communicated to him: thus the information and transparency requirements are respected only as a formality. As regards *comparisons with other offers, they are possible on condition that the various proposers offer* ***exactly*** *the same product and have followed the same calculation methods and that the figures used for the calculations are specified in detail.*

3.2.12 The second question, **whether there should be an EU standard covering both the calculation method and the cost elements**, should undoubtedly receive *a positive reply in principle*. In practice, however, it will not be possible to define such a standard until there are harmonised systems, exactly comparable products and standardised administrative procedures: an objective which is not easy to achieve in the short term.

3.2.13 On the third question, **what kinds of cost elements a European standard should include**, the EESC takes the view that a lowest common denominator could be made up of the *cost of drawing up the file, the cost of setting up the mortgage, clearly identifiable administrative costs and the cost of insurance*. As an initial approximation, this should be enough for the consumer to make a comparison among the various offers; every provider, however, should clearly warn consumers against making too easy a choice based *only* on an APR calculated in this way.

3.2.14 The last question, whether it is desirable for the provider to give information *separately* on all costs not specified in the APR, and on the presentation of the effects of the APR in concrete terms such as the cost per month or the overall cost of the loan, lends itself to two distinct replies. On the first part of the question the EESC would reply in the affirmative, partly because, among other things, the presentation of the costs not included in the APR would make it possible to lift the reservation on comparison of conditions mentioned in the preceding point. On the presentation of the effects of the APR in 'concrete' terms in the sense indicated by the Commission, the EESC takes the view that it is undoubtedly possible and that there are computer programmes capable of meeting this requirement — if it is indeed a requirement. The doubt arises for the reasons set out in point 3.2.11: the consumer runs the risk of being further confused if he is confronted simultaneously with a financial reimbursement plan — the one which is of real use to him — and another plan which, although correct in terms of financial mathematics, diverges from the first.

3.2.15 Four questions are raised by the Commission on **usury rules and interest rate variation**. As regards the first of these, on the implications for integration of the markets of rules against usury (existing in certain Member States), it is necessary to make a preliminary statement: in a Member State where the law lays down binding limits on interest rates, it seems that such limits have been laid down with a view to consumer credit, current account overdrafts and personnel credit, but *not* — in the EESC's view — mortgage credit. At all events, the problem is a delicate one: a Member State which had laid down limits could wish to take action against a provider in another country who has contravened a rule to which the provider is not subject, but which concerns a contract valid on his territory. *The national rules on usury in any case constitute an obstacle to integration of the markets.*

3.2.16 The second question concerns the possibility of examining usury rates in a broader context which is not specifically connected with mortgage credit. The EESC's reply to this question is *affirmative; if a further investigation showed it to be necessary,* Community legislation could usefully replace the various existing national rules. However, the EESC warns against simplistic solutions: a uniform usury rate would run the risk of not taking account of the individual characteristics of the markets. In particular, the fixing of a single rate would be pointless and should be left to the individual Member States, once the problem raised in the last part of point 3.2.15 has been solved.

3.2.17 The third question is whether the restrictions imposed by certain Member States on the imposition of compound interest rates constitute an obstacle to market integration. The EESC's reply can only be the same as that given on usury rates in the preceding point. Moreover, the Commission should check the level of *simple* interest rates in countries which do not apply compound interest: should they be higher *on average* than those of other countries for comparable transactions, the suspicion could arise that the loss of compound interest has been compensated for by higher simple interest, following a market logic which is not transparent and has no advantages for the consumer.

3.2.18 The fourth question concerns the 'equity release' product and asks what impact the restrictions on the imposition of compound interest can have on its development. As this is a new product, for which there is insufficient experience, the EESC refrains from taking up a position and leaves the reply to technicians with specific experience of the market.

3.2.19 As regards the **standardisation of credit contract terms**, the Commission points out that the subject is part of the broader framework of the initiative on European contract law; standardisation could be achieved either by classical harmonisation or by way of a so-called '26th regime', a legal instrument parallel to national legislation and usable, with the agreement of the parties, as an alternative to that legislation. The EESC takes the view that the first alternative is at present premature, and that the second could be a valid option only after it has been ascertained, through a thorough study of the laws and contracts of all 25 countries, that the 'parallel' instrument does not contravene the rules and laws of any of them. At all events, **it is necessary that standardisation rules should not hinder the supply of new products and thus become a brake on innovation**. But, while awaiting a solution to the various problems, it should not be difficult to reach an agreement between financial institutions, consumers and Commission on a basic draft contract which would include at least the clauses in most current use and common to all types of contract.

3.2.20 The last two questions concern the **legal structures for the protection of consumers' rights**. In every country there are structures for mediation or arbitration other than the legal channels, which are often too slow and costly to the consumer: the Commission calls in the first place for opinions on the **possibility of imposing on Member States an obligation to set up specific mediation or arbitration structures for mortgage credit**. The EESC is favourable in principle to mediation structures but not to arbitration structures, since the latter do not come under the scope of consumer protection. Moreover, it points out that **mortgage credit law is by its very nature linked to a range of other legal or administrative rules**: the code of civil procedure, succession, bankruptcy, ownership, land registry rules and tax rules. One alternative structure to that of the courts, capable of taking decisions likely to stand up to casual contestation, could be found in the need to develop structures and resources similar to those of the courts themselves. But given that certain Member States seem to be open to this possibility, they could report on this after a suitable period of experimentation, so as to provide useful lessons for possible general adoption.

3.2.21 The Commission calls for suggestions on the possibility of strengthening the credibility of existing alternative redress systems, especially in the field of mortgage credit. The EESC is aware that the existing systems give reasonably good results, which could be improved in many cases by speeding up the decision-making procedures. With specific reference to mortgage credit, and in the light of the preceding point, it should be pointed out that the mediation or arbitration structures should be *credible for both parties, and not just for the consumer*: the high average value of every dispute requires decisions to be *fair and unassailable even in legal terms* to avoid a later appeal to the courts.

3.3 *Legal issues (point III of the GP)*

3.3.1 The Commission deems it appropriate to consider the legal aspects of mortgage credit in the light of the current review of the 1980 Rome Convention, which will be transformed into an EU regulation. The following three approaches to **applicable law** are currently under review:

— to establish *specific arrangements* for determining the law applicable to mortgage credit contracts: the law applicable to such credits could be aligned to the law of the country in which the property is situated;

— to continue ensuring compliance with the *general principles of the Rome Convention*, thus granting the parties concerned the freedom to choose the applicable law, provided that the mandatory rules of the consumer's country of residence are applied;

— to ensure that the *mandatory protection rules enforced in the consumer's country of residence are not applicable to mortgage contracts*, provided that there is a high level of consumer protection across the European Union;

— As far as the collateral (the mortgaged property) is concerned, the Commission sees no reason to depart from the well-established principle — which the EESC fully supports — which stipulates that it is the law of the country in which the property is situated that applies.

3.3.1.1 The three approaches outlined above warrant further discussion in a separate opinion: the subject is complex and each approach presents advantages and disadvantages. The EESC will confine itself here to some basic observations:

a) none of the three approaches can be applied without disadvantage to a hypothetical consumer residing in country A, a lender residing in country B and property situated in country C (which could also be situated outside the EU);

b) the offer is severely restricted by the law of the consumer's country of residence — or, to put it better, the possibility for the consumer to use the services provided by a lender residing in another country: lenders are usually reluctant to draw up a contract that is subject to laws that are unknown to them, since they realise that if any controversy arises they would need to seek legal assistance abroad and use a language that is not their own;

c) the language that is to be used in the contract, for the purposes of contact and correspondence, must be clearly established: if the choice falls on the consumer's language, this would be a further deterrent for the lender, in addition to the one outlined in point b).

3.3.2 The Commission has addressed several issues on **client credit-worthiness**, which have previously been covered in a similar area (consumer credit), and considers that the most pressing issue is to **ensure cross-border access to databases on a non-discriminatory basis**. In the EESC's opinion, the ***right to access is necessary***, but *appropriate rules are needed to establish who can enjoy the right, the relevant conditions and consumer guarantees*. Furthermore, the EESC would like to raise an issue that has not been previously addressed: the property buyer, whether the property being bought is a main residence or a holiday home, is often not included in any database owing to the fact that he/she had not taken out credit before; the search for accurate information will, in this case, be problematic, time-consuming and costly.

3.3.3 The Commission is therefore addressing the issue of **property valuation** by considering the merits of a single **EU standard** or whether steps **to ensure mutual recognition of national valuation standards** are required. The EESC believes that the first alternative should be rejected *a priori* without entering into further discussions on the topic. As to the second, the experts point out that national or even just regional standards are an utopia of which one should beware; too many variables help to create a property market whose characteristics are primarily *local*. Any attempt at standardisation could prove to be distorting. The EESC supports this view.

3.3.4 Another important issue is then discussed — the **forced sale** of mortgaged property. The GP notes that this area is characterised by a *large number of procedures, timeframes and costs and that this would hinder cross-border lending activity*. It therefore suggests a **gradual approach to encourage improvements in forced sales procedures**: to first gather information on the cost and duration of these procedures so that a regularly updated scoreboard could be developed. Should this prove ineffective, the GP suggests **considering adopting 'more robust' measures**. The EESC considers that the gathering of information and the development of a scoreboard would constitute a kind of moral suasion of those Member States which have relatively ineffective or cheap procedures in place; this could give lenders and consumer associations a good reason to exert pressure on their national authorities until adequate remedial measures are taken. To venture beyond this point, by threatening 'more robust' measures, seems unrealistic: the chances that a measure of this kind would meet with the consensus of the Member States are very slim. Moreover, the premise of invalidating entire judicial systems only to promote *cross-border* mortgage credit (which presently constitutes only 1.1 % of the EU total and for which — in the best hypothesis — future estimates are not more than 5 %) seems to lack a natural sense of proportion.

3.3.5 Another — still intractable — obstacle to full market integration is the **taxation issue**; the Commission, showing a sense of realism, has not developed any plans to harmonise this area. However, there are some other obstacles which can be removed. Several Member States have **refused to make the mortgage interest payments made to foreign lenders tax deductible**; in other cases, **the interest received by domestic lenders is taxed net of the interest paid to finance loans, whereas foreign lenders are taxed on the *gross* amount of interest paid by national debtors**. Both cases are in breach of the Treaties or Community legislation: the first is in breach of Articles 49 and 56 of the Treaty, as established in two judgments delivered by the Court of Justice; the Commission — with the *full support of the EESC* — intends to take direct action against the second.

3.4 *Mortgage collateral (point IV of the GP)*

3.4.1 **Land registry** is a key element in determining property ownership rights; furthermore, there is concern that registers do not always reflect the property rights of third parties. For cross-border mortgage credit activity to work properly (including financing), the content and management of land registry must be clearly understood. The Commission has **financed a pilot project** (EULIS) with the aim of **enhancing cooperation between property owners and controllers of land registers; this project could, among other things, be very useful for many of the new Member States.** It now wonders whether it should **continue to play an active role in this initiative and whether, given the use of such registers by lenders and investors, the latter might be required to contribute to and invest in such initiatives**. In the EESC's opinion, the Commission should continue to play its valuable role in promoting this type of cooperation and should, furthermore, produce an annual report on the results obtained. It is however not of the opinion that joint projects should be financed by a single category of user (which is not even the main one) owing to the fact that i) *it is in the interest of the state and the community to hold land registers* and that ii) *currently, both registration and access are subject to payment*.

3.4.2 The idea of a Euromortgage is not new but it has not yet been tested on the market, not even as a pilot project. Essentially, the objective of **Euromortgage would be to weaken the link between the mortgage credit and mortgage collateral: the latter would form part of an EU-wide**

pool of guarantees on securities issued on the market. The concept seems attractive and would reflect the idea of an integrated EU-wide property market; the EESC believes that the project deserves to be encouraged. If carried out, it would be a first step towards an integration of the markets, brought about by the market itself instead of by regulatory pressure.

3.5 *Funding of mortgage credit (point V of the GP)*

3.5.1 Individual countries have different funding systems, which, however are essentially based on bonds where the mortgaged property provides the investor's security. In the sectors concerned, the idea that further integration of markets would be enhanced by the emergence of such a pan-European security market is gaining ground. While the Commission shares this view, it observes that the issue does need further exploration. In the Commission's view, the advantage of a pan-European financing system would be to increase sources of funding, enhance market liquidity and more generally allow for the diversification of risk. Furthermore, it would promote the integration of secondary markets, which is, in any case, dependent on the integration of primary markets. The EESC supports this view but shares the opinion of those that consider this a long-term objective.

3.5.2 The **transferability of mortgage loans** is a key consideration. The Commission plans to set up an ad hoc stakeholders working group which will be responsible for assessing the need for, and nature of, any action on funding aspects, and expresses interest in assessing **whether it would be possible to promote a pan-European market in mortgage funding via market led initiatives** (for example by establishing documentation and definition standards for use in cross-border funding activities). The EESC believes that it is up to market operators to react, since they are the only ones with the necessary expertise to make an informed assessment.

3.5.3 The Commission's final comment raises a crucial issue for the future of markets: it asks whether mortgage lending should necessarily be restricted to credit institutions or whether, and under what conditions, it could be provided by institutions which do *not* take deposits or any other repayable sums and which therefore do not fall within the EU's definition of credit institutions and are consequently excluded from prudential regulation. The EESC notes initially that in order to ensure stable and strong markets, the presence of a controlling authority to monitor property markets is insufficient; all financial institutions involved, irrespective of their type, need to be effectively monitored. The consumer protection factor has triggered the creation of *prudential* rules, and every new proposal must be discussed in this context.

3.5.4 Institutions of the type mentioned above should be ***fully* self-financed**: this is difficult to achieve and would moreover require constant monitoring to ensure that the initial conditions remain valid over time. As regards other cases, recourse to external funding — whatever the arrangement — is unavoidable. The EESC concludes that **institutions of the type described by the Commission *must* be subject to prudential controls**, regardless of whether these are imposed by banks or other agencies; secondly, a ***level playing field must be maintained and the rules applicable to credit institutions — particularly those on solvency and liquidity* — must also apply to any of these other institutions**. If the guiding principles of *prudential supervision* still hold true today, there should be no room for exceptions.

Brussels, 15 December 2005

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND