



EUROPEAN COMMISSION

Internal Market and Services DG

FINANCIAL INSTITUTIONS

Retail issues, consumer policy and payment systems

Brussels, **23 May 2006**

MARKT/H3/JR D(2006)

**FEEDBACK ON THE CONSULTATION
ON THE GREEN PAPER ON MORTGAGE CREDIT
2006**

Commission européenne, BE-1049 Bruxelles / Europese Commissie, BE-1049 Brussel - Belgium. Telephone: (32-2) 299 11 11.
Office: C107 00/007. Telephone: direct line (32-2) 296 20 91. Fax: (32-2) 295 07 50.

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

E-mail: jennifer.robertson@ec.europa.eu

TABLE OF CONTENTS

1.	INTRODUCTION	3
2.	METHODOLOGY	3
3.	RESPONSES	4
4.	DEVELOPING THE BUSINESS CASE	7
4.1.	Comments received on the London Economics Study	7
4.2.	Considerations for the Business Case	8
5.	DEFINITIONS	8
5.1.	Mortgage Credit	8
5.2.	Cross-border lending	9
6.	CONSUMER PROTECTION	9
6.1.	Information	9
6.1.1.	Code of Conduct	9
6.1.2.	What information should be given to consumers?	11
6.1.3.	When should information be provided to the borrower?	12
6.1.4.	Credit Intermediation	12
6.2.	Advice Provision	14
6.3.	Early Repayment	17
6.4.	Annual Percentage Rate	21
6.5.	Usury Rules and Interest Rate Variation	25
6.6.	Credit Contract	28
6.7.	Enforcement and Redress	30
7.	LEGAL ISSUES	31
7.1.	Applicable Law	31
7.2.	Client Credit-Worthiness	33
7.3.	Property Valuation	35
7.4.	Forced Sales Procedures	39
8.	MORTGAGE COLLATERAL	41
8.1.	Land Registers	41
8.2.	Euro Mortgage	44
9.	FUNDING OF MORTGAGE CREDIT	46
10.	NON-DEPOSIT TAKING INSTITUTIONS	48

1. INTRODUCTION

On 19 July 2005, the European Commission published its Green Paper on Mortgage Credit in the EU. In it, the Commission gave its initial reactions to the recommendations of the Forum Group on Mortgage Credit whose report was published in December 2004, but left most issues quite open in order to launch a public debate on the future of an integrated market for mortgage credit in the EU.

The Green Paper was supplemented by a cost/benefits study published in August 2005 carried out on behalf of the Commission by independent external contractors London Economics. According to the study, the current (2005) value to the EU economy of such increased integration over the next ten years is estimated at EUR 94.6bn, which amounts to 0.89% of current EU GDP. By 2015, the study estimates that integration of the EU mortgage credit market would raise EU GDP by 0.7% and private consumption by 0.5%.

The Commission's consultation on developing an EU mortgage credit market concluded on 7th December 2005 with a public hearing bringing together a cross-section of the key stakeholders to which more than 250 delegates (mortgage lenders and related industries, consumer representatives, Member State representatives, and academics) attended.

This document is a summary of the contributions provided to the Commission in the context of the consultation on the Green Paper on Mortgage Credit. Its objective is to present an overview of views expressed and the arguments presented in the contributions. The views and arguments expressed are neither necessarily shared by all contributors nor should be perceived in any way as exhaustive. Furthermore, the views expressed in this report have not been adopted or in any way approved or endorsed by the European Commission.

The European Commission will publish its future policy orientations in a White Paper which is due to be published in early 2007.

2. METHODOLOGY

In order to identify general trends, a high-level analysis has been undertaken using both quantitative and qualitative analysis. In this respect, it is important to take into account several factors.

First, the results are based on answers to the questions posed in the Green Paper. It should be noted however that not all contributions responded to all questions. Moreover, many contributions did not directly answer the questions presented in the Green Paper but rather focused on more general remarks. Unless indicated otherwise, therefore, the percentages mentioned in this report deal only with those who specifically answered the question.

Second, given the dominance of contributions from particular stakeholder groups or countries, care should be taken in drawing too much from the figures presented. Although a more complex analysis is possible, for example, weightings to take into account the contributions from different countries or interest groups, it was decided to adopt a simple approach since it is the comments and arguments presented as much as the figures which are valuable for the Commission. Results have been – where possible – presented by stakeholder category rather than aggregate conclusions. This enables the

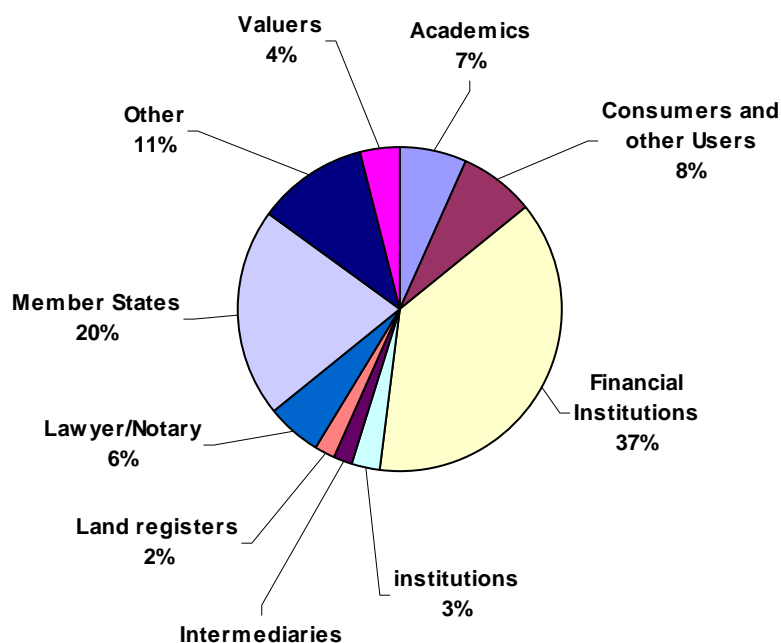
Commission to identify tendencies - the similarities and differences – between the principle groups.

Finally, the stakeholder categories have been determined by the Commission in order to simplify the analytical process. Consequently, in the statistics that follow (with the exception of following section), four general stakeholder groups have been established for the purpose of analysis. These stakeholder groups contain a number of different entities. For example, the financial institutions and intermediaries have been grouped together; the consumers and other user interests are grouped; and the Member States category covers ministries, central banks, supervisors, etc. It should be particularly noted however that the "other" stakeholder category covers an extremely diverse group of different organisations ranging from valuers to notaries and other various trade associations.

3. RESPONSES

106 written responses have been received by the Commission.¹ Four main categories of respondents can be identified: individuals; corporate (banks, law firms, notaries, etc.); Member States (Ministries of Finance and Justice, Central Banks and supervisory authorities); representative bodies (national and European associations from various interests, mainly financial services). Approximately half of the responses came from this last category. Input has also been received from the European Economic and Social Committee, and ECB².

Breakdown by Stakeholder Group



¹ A complete list of responses can be found on the following internet site:
http://ec.europa.eu/internal_market/finservices-retail/home-loans/comments_en.htm.

² The European Parliament is preparing its Opinion on the Green Paper (expected in Autumn 2006).

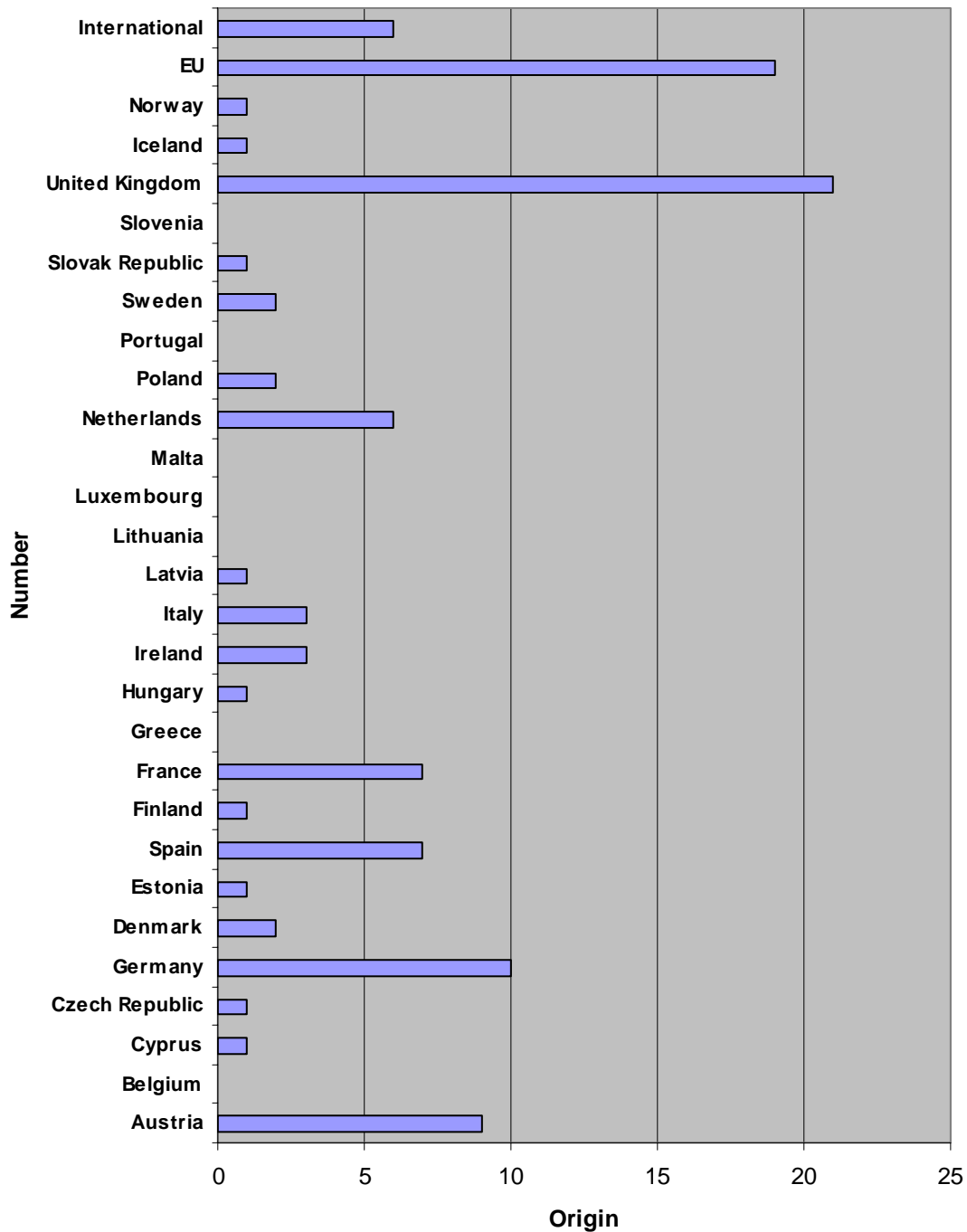
The contributions were overwhelmingly dominated by responses from the financial sector as the breakdown illustrates. 37% of responses came from financial institutions or organisations directly representing them. This strong input from the financial industry is can also be seen in the individual categories where approximately 85% of corporates and 44% of representative bodies come from the financial sector.

In contrast, the contributions from consumer, investor and other user interests were limited accounting for only 8% of responses. In this respect, and given the importance of a mortgage to European consumers, DG Internal Market and Services has made a particular effort to obtain input from these stakeholder groups and involved several representatives in the public hearing. In addition, DG Internal Market and Services has actively used its financial services user's expert group, FIN-USE, to obtain technical input on various issues.

Reflecting the wide range of issues covered in the Green Paper consultation, responses were also received from a wide range of other industry interest groups ranging from lawyers/notaries to land registers and valuers.

Contributions were also received from 16 out of the 25 EU governments (financial supervisors, finance, justice and consumer affairs ministries, and central banks).

Overview of Responses by Country of Origin



In total, contributions were received from 18 European Member States. The largest numbers of respondents come from the UK (19%), with European organisations close behind (18%). Germany and Austria each account for 9% of the respondents. Respondents from France and Spain account for 7% each and the Netherlands for 6%.

4. DEVELOPING THE BUSINESS CASE

4.1. Comments received on the London Economics Study

The Green Paper was supplemented by a cost/benefits study published in August 2005 carried out on behalf of the Commission by independent external contractors London Economics. According to the study, the current (2005) value to the EU economy of such increased integration over the next ten years is estimated at EUR 94.6bn, which amounts to 0.89% of current EU GDP. By 2015, the study estimates that integration of the EU mortgage credit market would raise EU GDP by 0.7% and private consumption by 0.5%.

Many contributions commented on the study by London Economics and offered their views on the business case for Commission action. Few contributions contested the fact that there is a need for an integrated European mortgage market rather the contributions questioned only the size of the benefits and the means to achieve them. Below is a summary of the main arguments presented:

- The benefits will not be distributed evenly. Consequently, respondents suggested that in the future, cost benefit analyses examine the impact on different Member States. For example, a limited number of contributions noted that given the low margins and interest rates available in some Member States, the price of mortgage loans would be unlikely to fall.
- In terms of an assessment of the costs, criticisms were received on the fact that the report draws heavily on the UK market which is seen by a number of contributors as misrepresentative. Others argued that this was misleading as the costs of mortgage legislation in the UK were substantially underestimated.
- According to a small group of contributors, the real demand for mortgage credit had not been taken into account and the study ignores differences in inelasticities of demand due to variations in transaction costs, availability of social housing, etc.
- The study does not adjust for price differences. Should this have been done, it is argued by contributors the benefits would be reduced.
- The definition of integration is questioned by certain contributors who argue that the same products available at the same price everywhere is neither desirable nor feasible. They state that factors such as demographics, geography, social provisions and culture may lead to differences in level of price and product availability in Member States. Some responses argue for example, that success of equity release mechanisms will be limited in continental Europe due to differences in pension provision.
- Questions were raised in a few responses about how the product availability index (all ranges equal weighting) was developed.
- Several responses questioned the growth forecasts due to: the lack of consideration of diminishing returns, a credit boom may not necessarily lead to more houses being built but could see a rise in property prices; the possible social impact of expanding to sub-prime mortgages, e.g. over-indebtedness.

4.2. Considerations for the Business Case

In addition to the debate on the costs and benefits of integration, four common themes can be identified in the contributions.

First, there was a clear message that there should be no integration for integration's sake. Many national mortgage markets are described as being generally efficient and competitive, and integrating the EU market should not be to their detriment. The need for a proper and robust impact assessment of any future measure is therefore deemed indispensable.

While all respondents support the open and consultative process which the Commission has initiated to prepare its policy in the mortgage credit area, contributions indicated a desire to see the better regulation approach is continued. Respondents underlined the need for a comprehensive impact assessment of the costs and benefits of any eventual proposals. According to the comments received, this impact assessment should cover aspects such as: a full market (integration) failure analysis and definition of the problem; assessment of the costs as well as the benefits on industry, markets and consumers; this should however also cover direct and indirect costs/benefits as well as unintended effects; one-off and ongoing costs to firms and consumers.

Second, contributors also agreed that integration should not lead to standardisation. The diversity of mortgage products is seen as an asset which should not be sacrificed.

Third, responses indicated that integration should not necessarily occur through harmonisation and alternatives to regulation should also be considered.

Finally, according to contributions from all stakeholders, integration will be predominantly supply-driven rather than demand-driven. Few respondents believe that there is, at least in a foreseeable future, a substantial consumer appetite for actively looking cross-border. A more credible business model is that of lenders establishing branches or subsidiaries abroad, taking over local firms, using local credit brokers, or using the Internet.

Consequently, with integration seen as predominantly occurring via lenders going cross-border through a variety of different channels, contributors propose that targeted initiatives to facilitate this process are required. At the same time however, contributors agreed that an effort needed to be made to building a customer lender relationship. Moreover, transparency and consumer information play a central role since only a well informed consumer can benefit from product variety.

5. DEFINITIONS

5.1. Mortgage Credit

Several contributions highlighted the need for a clear definition of what is meant by mortgage credit. Several comments were presented according to which the Commission should:

- consider mortgage credit and property or home loans whether secured or not and irrespective of the type of security or guarantee provided.
- decide whether mortgages to finance property and second/subsequent mortgages securing other loans should be treated the same way.
- ensure consistency with other EU legislative texts, for example, the Capital Requirements Directive.
- contemplate if a mortgage credit may be offered by any bank or only by a mortgage bank. In some cases reported, a mortgage credit of the same nature yet granted by a commercial bank is not considered to be a mortgage credit.

5.2. Cross-border lending

The definition of cross-border lending also received several comments. It should be considered whether a wide definition, for example, any mortgage activity that is conducted through the free establishment, free provision of services, setting up of subsidiaries, mergers and acquisitions, and consumers going cross border, is sufficient or a more restrictive definition is appropriate. For example, a small number of contributions noted that a service provided by a branch is not a cross-border service, whereas other contributions underlined that instances of borrowers going cross-border should not be excluded. Comments were also received stating that integration should be measured on the basis of competition, market efficiency and market completeness and not just by cross-border activity.

6. CONSUMER PROTECTION

6.1. Information

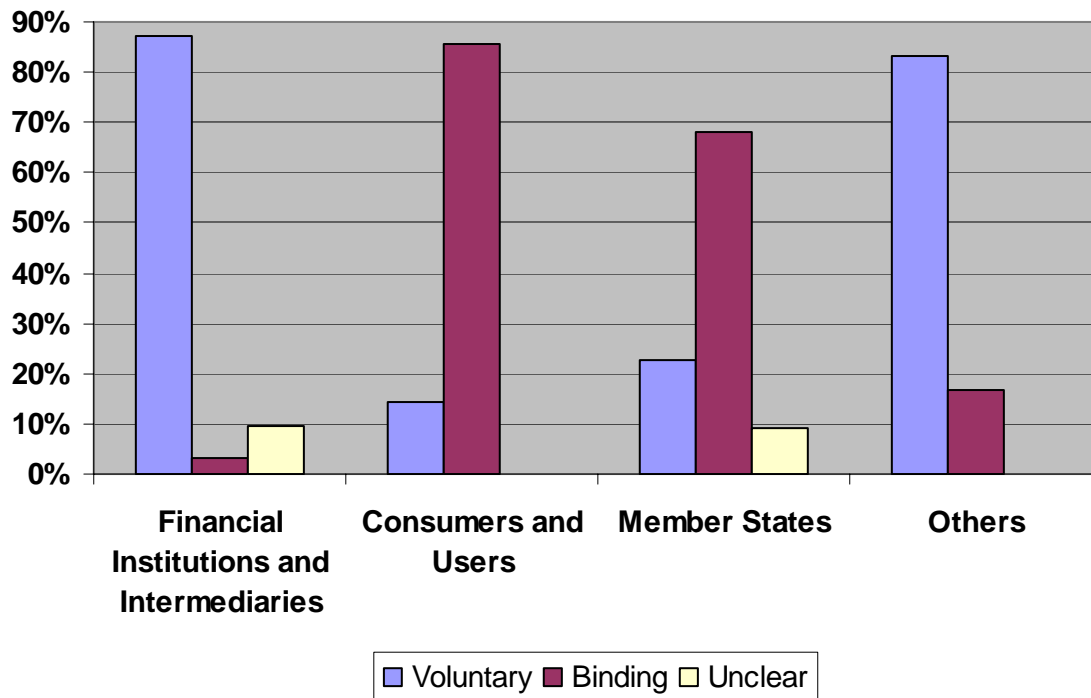
As emphasised in the Green Paper, the provision of information is a crucial issue in mortgage transactions. Given the information asymmetries in the mortgage borrower-provider relationship, it is crucial that the borrower is provided with the appropriate level of information to make an informed decision.

6.1.1. Code of Conduct

Although a large number of contributions referred to the need to clear information and warned of the dangers of information overload, only 62% of the responses dealt specifically with the question posed in the Green Paper as to whether the Code of Conduct should be replaced by binding legislation or remain voluntary.

Contributions on the subject came primarily from the financial sector and Member States, reflecting the overall composition of the responses. In relation to their overall numbers: 74% of financial institutions, 88% of consumers and users, and 100% of Member States dealt directly with the subject of information; but only 18% of the other contributors dealt with the subject.

Should the Code of Conduct be replaced by binding legislation or remain voluntary?



The views of contributors on the Code of Conduct on Pre-Contractual Information on Home Loans are divided.

A large number of financial institutions (87%) opposed the introduction of any binding legislation in the area. A clear majority of consumer and user representatives (86%) support the introduction of binding legislation. The single consumer and user contribution opposing the introduction of a binding Code of Conduct proposes instead that binding consumer protection measures are strengthened at the national level rather than at the European level. In general, Member States also supported the introduction of binding measures however not with as clear a majority as consumers (68% for binding and 23% opposed).

Reasons presented for opposing the introduction of binding legislation were clear. Many financial institutions believe that a substantial effort in terms of both time and financial costs has been undertaken to introduce the Code and that more time is required in order to see it work. Many contributors noted that the credibility of self-regulation at the European level was at stake and cited the advantages of self-regulation (flexible and sometimes quicker to implement than binding legislation).

At the same time, several respondents acknowledged that implementation and use by financial institutions was limited. In this context, several contributions (financial institutions and other stakeholders) emphasised the need for independent governance, effective monitoring, and regular review. In this context, the introduction of new enforcement mechanisms such as the use of Ombudsmen to enforce the Code and the use of an internal compliance or

another internal department inside financial institutions were proposed. It was also suggested that clear consequences were required should the Code not be adhered to and sanctions should be introduced.

A few financial institutions acknowledged however, that eventually binding legislation may be required, should all other efforts fail.

Those who supported binding legislation (predominately consumers and Member States) cited the failure of the Code and poor implementation. Several respondents noted that binding legislation would remove the problems of conflicting provisions, as the Code does not supersede national law. The few financial institutions who supported the introduction of binding legislation underlined the need for a level playing field between those institutions who use the Code and those who do not.

6.1.2. What information should be given to consumers?

Several financial institutions and representatives of financial institutions referred to the European Standardised Information Sheet as being sufficient, focused and balanced in terms of the information provided.

At the same time, various stakeholders commented that the following elements should be included in the information provided to borrowers (NB: some of this information is already provided in the ESIS):

- Name of lender, description of product (fixed, variable, etc.), amount of loan, duration, total cost of the transaction, currency of loan, number of instalments and interval of repayment, right of withdrawal, costs of early repayment (and the conditions under which it can be exercised), amortisation tables, circumstances when lender can terminate loans and repossess homes, cost of insurance and sureties.
- Nominal interest rate, APR (which should be more prominent than the nominal interest rate), its method of calculation, the compound interest period, the period of applicability and a revision formula if relevant, 2 year historical interest rate, an explanation of equivalent effective interest, the interest rate applicable if delayed or late payment, amount of principal and interest.
- Standardised definition of key loan terms, draft of credit contract.
- Information on risks (including currency risks) associated with the loan and consequences if default, advice (including commission to be paid), information to be provided and under what conditions after the contract has been signed.

A majority of contributions also emphasised the need for consistency with other EU legislation. Above all, contributions highlighted the need for consistency with the Consumer Credit Directive (87/102/EEC), as well the amended proposal of October 2005. Contributors also emphasised the need for consistency with other legislation such as the Directive on the Distance Marketing of Financial Services (2002/65/EC) and the Directive on Electronic Commerce (2000/31/EC).

Finally, contributions from all stakeholder groups underlined the importance of using "plain English" in the information provided to borrowers. Several also proposed that the European Commission undertake market research/opinion polls on the information provided to borrowers to identify clearly what is useful and in which format it should be provided.

6.1.3. When should information be provided to the borrower?

In the Green Paper, the Commission stated that it was fundamental that pre-contractual information is provided at a stage that enables the consumer to shop around and compare offers. It asked whether a common EU stage could be identified given the variations in Member States' traditions and legislation.

The responses received to this question were difficult to analyse. It became apparent that the simple yes/no responses were insufficient for the purposes of analysis as the explanations provided in support of the yes/no answers were generally similar, if not identical.

Those opposing the definition of a common stage for the provision of information, underlined the importance of flexibility and of adopting an objective-based approach rather than the definition of a legally binding precise moment in time. Those supporting the definition of a common stage however also mainly defined the common stage as an objective-based approach.

In conclusion, there appears to be a general agreement amongst both those who support the definition of a common stage and those who oppose it that the information should be provided in time for the consumer to be able to shop around, i.e. before the consumer has signed the contract.

Several contributors cited the distance marketing, distance selling, and Consumer Credit Directive as examples of other EU acts which could be emulated.

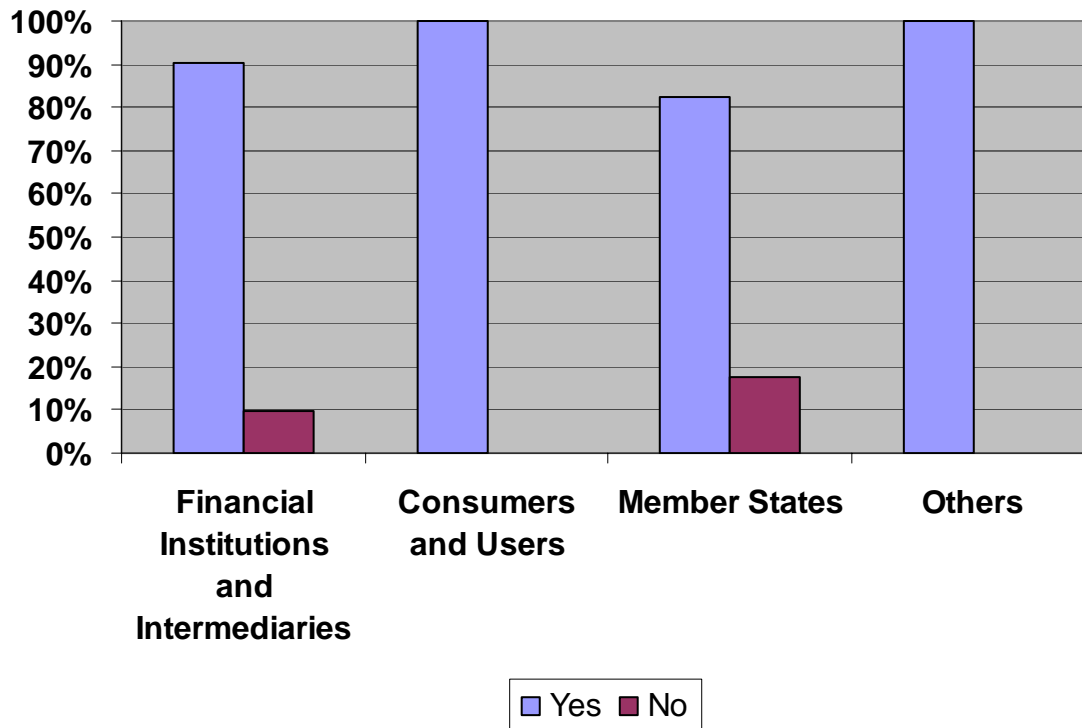
6.1.4. Credit Intermediation

45% of contributions to the Green Paper consultation addressed the question of whether the information provision regime should apply only to lenders or to others such as brokers.

The large majority of respondents (90% of financial institutions, 100% of consumers and users, 82% of Member States and 100% of other stakeholders) from the four main stakeholder categories supported the inclusion of other actors under the information regime, however some of the responses differentiated between the type of intermediary concerned.

The most frequently cited concern for those opposing an extension in scope of the information regime to intermediaries is that they are unable to provide the same information as a lending bank. In contrast, the most frequent argument for those supporting the extension was the argument for a level playing field: "same business, same rules".

Should the Information Provision Regime be applied to Intermediaries?



The contributions on both sides of the argument did however address similar issues.

First, stakeholders emphasised the need to differentiate between different types of credit intermediaries: between those acting on behalf of a lender and independent intermediaries, between those whose role was to introduce borrowers to a bank and those whose task was to complete the deal thereby binding the lender. On the question of who exactly should be covered and who should not, the responses diverged. On the one hand, certain stakeholders argued that if the intermediary could bind the lender, it should be covered by the same information requirements. On the other hand, other stakeholders noted that should the intermediary be acting on behalf of the lender, then the lender would be responsible for ensuring that the information requirements were met (for example, the Code of Conduct is binding to its signatories therefore intermediaries acting as agents for lenders should already meet the conditions). Consequently, if the intermediary is acting on behalf of a lender, the lender would be liable and thus an extension of Code of Conduct is required to cover independent intermediaries (for example, independent brokers could be encouraged to sign and apply the Code of Conduct).

Second, a range of respondents opposing any extension of the scope of the information regime stated that the more people involved, the higher the likelihood of liability problems. Consequently, even some of those supportive of the need to extend the scope of the information regime, pointed out the need to ensure that intermediaries were subject to supervision, registration,

competences and professional qualifications and professional liability insurance.

Third, a large number of contributions argued that several intermediary specific information requirements were required such as requirements to disclose commission and scope of search.

Finally, several responses noted that the Commission announced a future project on credit intermediaries in the White Paper on Retail Financial Services and proposed that information requirements for intermediaries be dealt with in the context of that project.

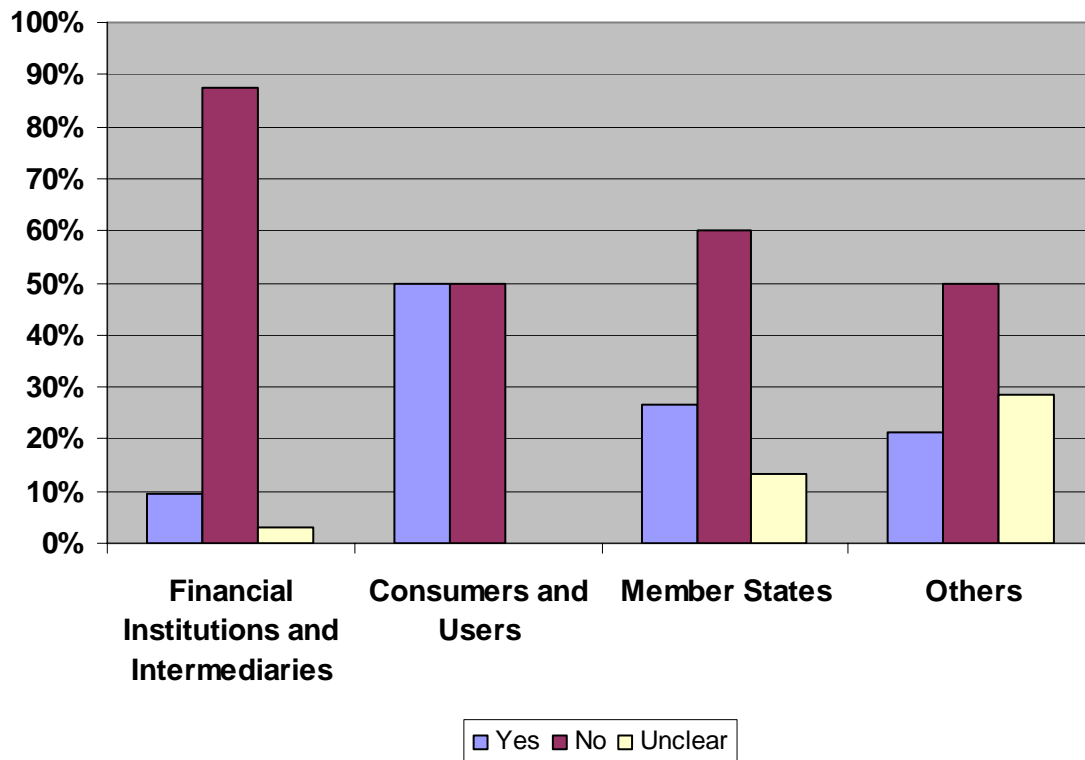
6.2. Advice Provision

According to the Green Paper on Mortgage Credit in the EU, mortgages are complex high value products. Consequently, advice tends to be sought more often than on most other financial services products. The Green Paper sought to examine first, whether advice should be made compulsory and second, whether conditions should be applied to any advice provided.

63% of responses to the Green Paper dealt with the question of whether advice should be compulsory: including 76% of financial intermediaries, 75% of consumer/user responses; 68% of Member States; and 41% of the other stakeholders. Far fewer (32%) contributions examined however whether standards should be applied.

It is important to note that the responses received seemed to indicate a degree of confusion amongst the respondents about what could be classified as information and thus should be provided under an information regime and what could be defined as advice and thus may, or may not, require standards to be developed. Different views on this could well have impacted on the responses.

Should the Provision of Advice be Compulsory?



The picture obtained from the contributions is complex. On the one hand, financial institutions and intermediaries clearly oppose (88%) the introduction of compulsory advice. Amongst those who would support the introduction of compulsory advice are however intermediaries who already perceive their role as one providing advice. On the other hand, other categories of stakeholders appear more divided. Consumers and users appear split on the issue, however, this division reflects to a large extent the different types of organisation classified in this particular stakeholder category. Consumer organisations generally favour mandatory advice whereas user representatives tend to oppose it. Both Member States and other stakeholders appear opposed to an obligation to provide advice albeit with a substantial minority in favour of it.

The arguments presented against the introduction of an obligation to provide advice are the following:

First, all responses emphasised that not all consumers would necessarily need or require advice. In such cases, the obligatory provision of advice by all lenders could in fact deter consumers from shopping around different lenders. Furthermore, it was argued by some that advice could be particularly detrimental to the development of any online market.

Second, imposing an obligation to provide advice would increase the costs of all mortgage loans (cost of time and legal obligations, i.e. liability). For this reason, several responses argue of the need to disclose the specific fees for advice separately. In this respect, advice may however be seen as an independent service which is open to a competitive market and not just amongst bank but also for independent advisors.

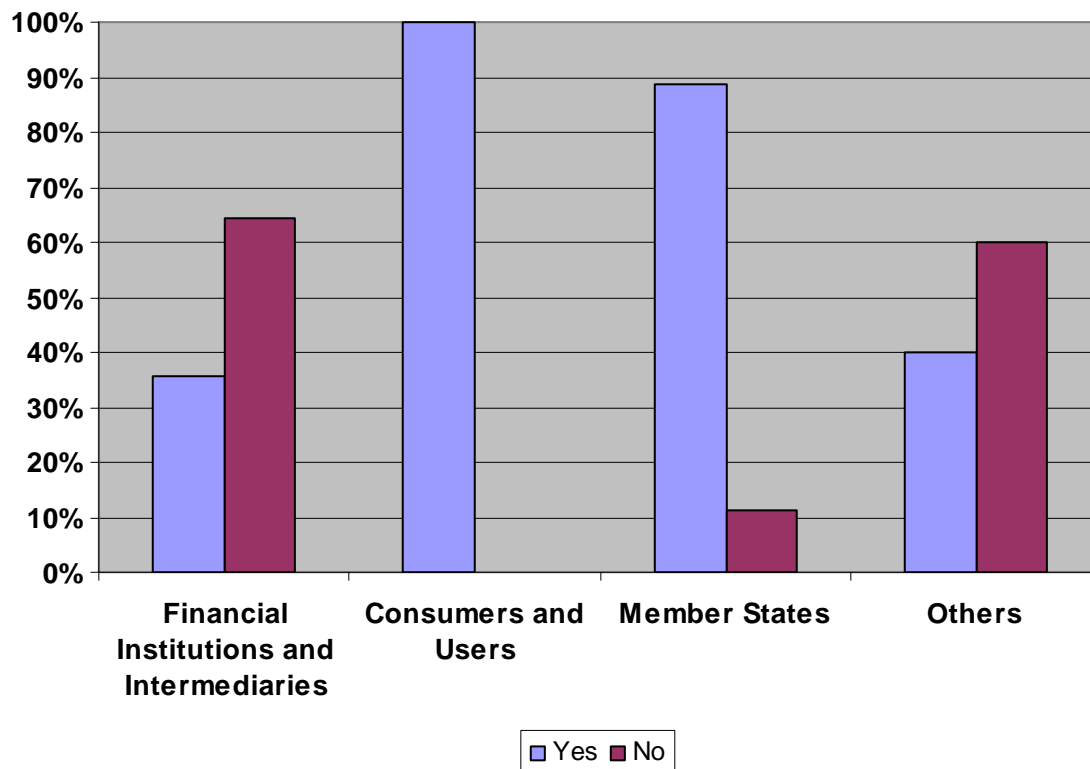
Third, several contributors noted the difficulties in defining advice: for example, was it advice on most suitable product available or on the suitability of a given product. This is also linked to the need for clarification on the difference between advice and information.

The arguments presented for the introduction of an obligation to provide advice emphasised the socio-economic importance of the provision of mortgages. The role of advice in avoiding over-indebtedness was underlined. In addition, avoiding over-indebtedness would help reduce the number of defaults and thus foreclosures, something which could benefit banks and consumers alike.

Although certain opponents to obligatory advice questioned the contribution it could make to the creation of an integrated market for mortgages, others refuted the claim, arguing that advice was of particular importance for cross-border lending as consumers may not always be familiar with the products on offer and the conditions under which they are offered.

Finally, a number of responses proposed alternative options such as the same provision as in the amended proposal for a Consumer Credit Directive or the optional provision of advice (consumers receive advice unless they confirm, in writing, to the firm that they do not wish to be advised and the firms record this).

Should conditions be applied to any advice provision?



The question of whether there should be standards for advice was also divided, with 100% of consumer/user representatives and 89% of Member States in favour of introducing standards for advice but only 36% of financial institutions and 40% of other stakeholders.

Those in favour generally view standards for advice in three different ways. First, advice standards are seen by a majority of proponents as an essential element of consumer protection. They argue that there should be clear standards to ensure that the advice provided is of a high quality (best advice possible) and it relevant to the consumer. Second, other contributors saw advice more as a type of information whereby lenders would disclose charges/commission, and conflicts of interest. Third, further contributors saw advice as a form of education whereby a bank should educate consumers in the risks associated with the financial products being offered.

Several responses, specifically those from consumer representatives, recommend that the advice should be provided on a durable medium.

Those opposed to the introduction of standards most frequently cite the personal nature of advice as the biggest barrier to the development of advice standards. Different consumers have different needs and given this personal element, standards would not be beneficial for the consumer. Moreover, providing the advice in a durable medium would create substantial legal risks in terms of liability and could lead to difficulties in terms of data protection rules.

In terms of options proposed, quite a few contributors asked whether standards could be developed through form of self-regulation. Other contributors stated the need for sanctions for non-compliance.

6.3. Early Repayment

Although 59% of the total responses dealt with the question of whether early repayment should be a legal right, only 27% of responses commented on whether consumers should have a waiver. Furthermore, 57% of total contributions addressed the question of whether there should be fees or not.

Before presenting a summary of the results, it is important to clarify the different options presented by the respondents.

The question posed in the Green Paper was whether early repayment should be a legal right or a matter of choice. This question was either not clear or misunderstood by many respondents in that the question is not so much whether early repayment should be a right or not but whether early repayment should be a right stemming from law or whether the issue should be left to contractual freedom. This makes the final results extremely difficult to analyse. Consequently, it is useful to begin by presenting a summary of the different early repayment options presented by the respondents in order to clarify the alternatives.

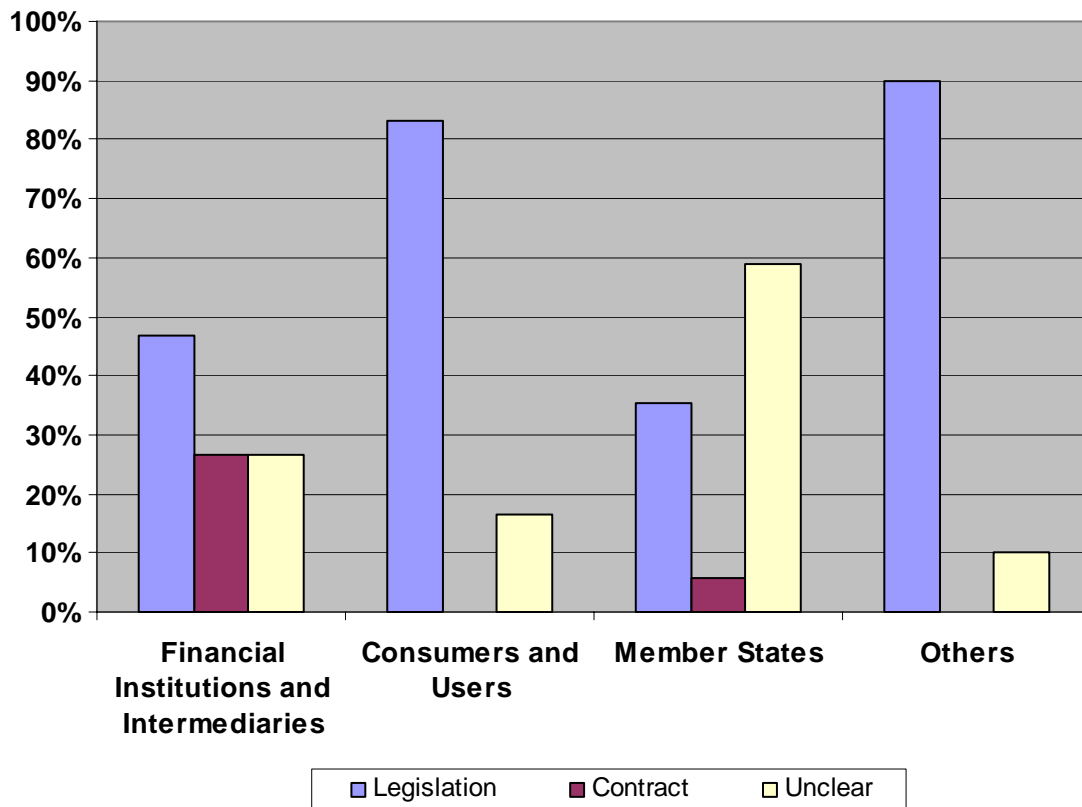
- If early repayment is to be a contractual issue, the entire process (whether there are conditions attached, whether it can be waived or not and the existence of a compensation) is left up to the lender and the borrower.
- If it is to be regulated by law, the law may then determine three things. First, whether the right provided for under the law is a conditional or unconditional right (an unconditional right can be defined as a right to early repayment any time and under any circumstances; a conditional right may be defined as a right after a certain period of time or under certain circumstances). Second, whether

there should be a waiver or not. Third, whether there should be fees for early repayment or not and the basis for calculating fees.

The responses received clearly indicated that a majority of respondents in all categories believed that early repayment should be a "right". On the more important question of how it should be regulated, the responses were not so clear.

A substantial number of responses were unclear. To take into account these views could potentially influence the final conclusions in the case of Member States and Financial institutions and intermediaries. Only consumer/user representatives as well as "other stakeholders" have a clear preference (i.e. the number of unclear positions would not change the overall trend) for early repayment being legislated. For financial institutions and Member States, the picture is less clear.

Should early repayment be based on law or determined by contract?



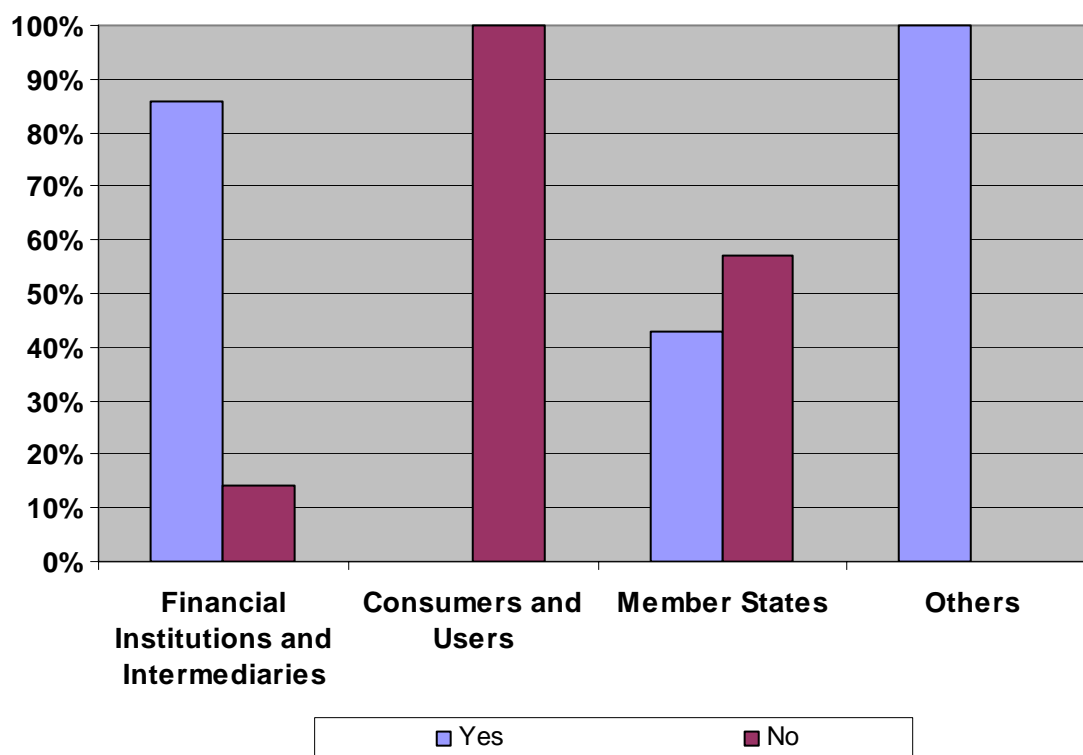
The responses were also unclear on whether the right should be conditional or unconditional. Although detailed statistics are not possible due to the high number of ambiguous answers, some observations can be made. An unconditional right to early repayment was supported by a variety of contributors: consumer/user representatives generally supported an unconditional right as did several Member States. It was however a conditional right to early repayment which received the largest support, at least amongst Member States, Financial institutions and their representatives, and other stakeholders.

Those who opposed an unconditional right to early repayment did so because of the potential impact it could have on existing funding systems and consequently, on product diversity. Contributions cited in particular fears that the introduction of

an unconditional right would lead to a reduction in the number of long term fixed interest mortgage loans being offered and an increase in the costs for all consumers (to offset the costs of early repayment of some consumers). Such concerns arose from the concept that a right to early repayment at any time and under any circumstances would lead to the collapse of some traditional financing systems such as the *Pfandbrief* system in Germany.

According to the comments received, a conditional right would enable consumers to have the choice between a wide range of products without limiting the product range. At the same time, responses noted that in making the choice between products, consumers would have to be aware that a right to early repayment does not come without a cost and this cost would be priced into the offer. Early repayment would become part of the competitive mortgage product package.

Should consumers be able to waive their right to early repayment?



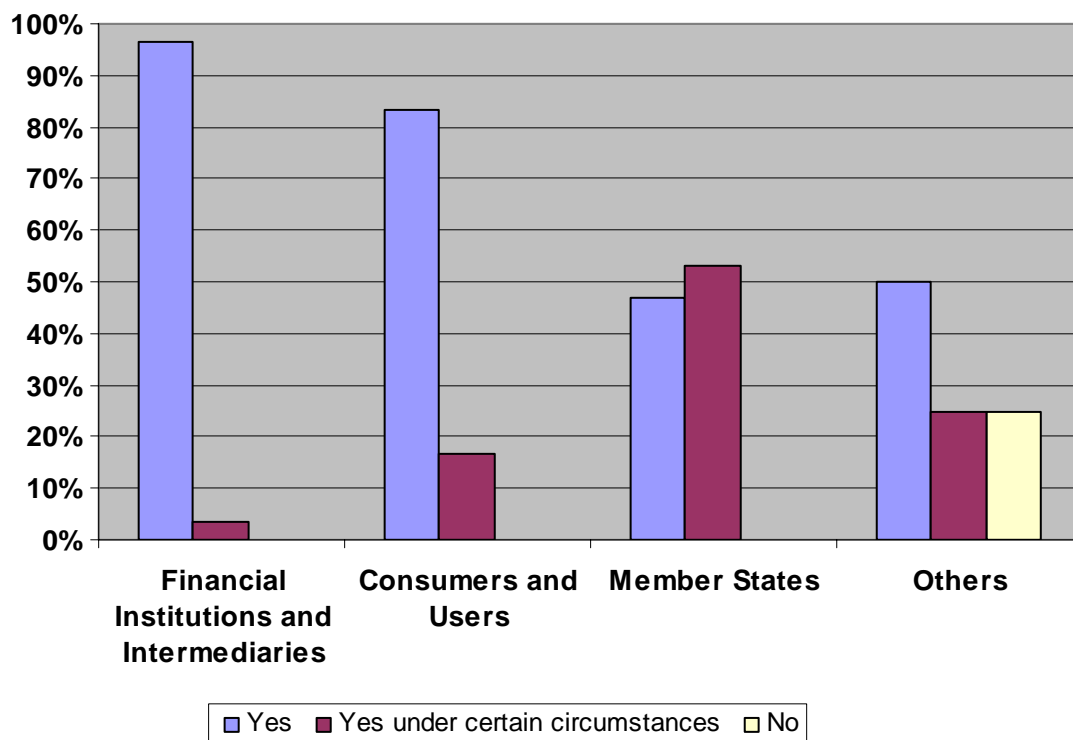
In general, far fewer contributions (27% of total contributions) addressed this question.

Consumers/users who supported a right to early repayment also strongly opposed providing consumers with a waiver right for fear of creating loopholes in the system.

Although a few financial institutions opposed any waiver, the vast majority supported a waiver (written waiver in some cases) should it be decided to have a right to early repayment by law as a means to provide consumers with a choice. This position echoes that of the contractual position as it places the decision with the consumer. The contributions acknowledged that any waiver right would have to contain suitable safeguard to ensure that the consumer gets appropriate treatment in

return for any waiver. The role of information in this process is very important: according to the responses received, consumers must be well informed about the effect of the waiver.

Should there be early repayment fees?



57% of responses dealt with the question of whether there should be fees for early repayment.

Although most categories of stakeholders indicated their strong support for the provision of fees to lenders (97% of financial institutions and intermediaries, 83% of consumers/users, 47% of Member States and 50% of other stakeholders) in the event of early repayment, several contributions qualified this support.

Quite a few responses stated that the payment of fees and/or the level of fees to be paid should be the outcome of a decision process by the borrowers and the legal environment in which they operate, whether they have a conditional or unconditional right, whether they have a waiver or not, etc. The payment of fees may also be paid in different ways, for example, it may be incorporated into the interest rate from the start of the contract, consequently, according to a few contributors, fees would not therefore be required. Other contributors felt that fees should not be paid in certain instances such as if the fixed interest period is over or the interest rate is under revision, or in special circumstances such as death.

On whether a common calculation method was required, those responses which specifically addressed this issue were split: some argued that there was no need for a common calculation while others stated it was necessary. Various responses stated that laws on contractual terms/unfair terms were sufficient in terms of legislation. These responses were also split within categories of stakeholders.

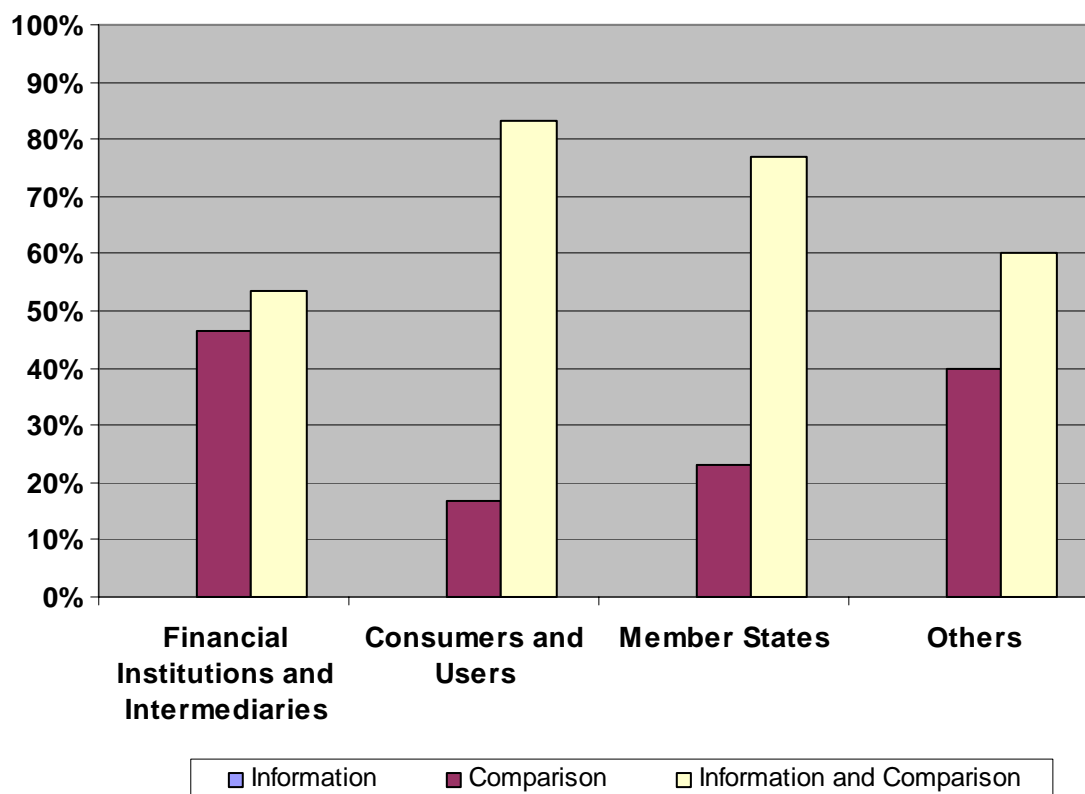
In terms of the calculation method, it was emphasised on the one hand by a few respondents from consumers/users and selected Member States that the fees themselves should not become a barrier. Consequently, those contributions proposed the introduction of caps to early repayment fees. On the other hand, financial institutions and intermediaries, as well as certain Member States opposed the introduction of caps stating that it would mean that regardless of whether a borrower opted for early repayment, the clients not using the option would subsidise those who did (i.e. the cost of the loan would be increased to offset losses from early repayment). It was also stated that in some cases, when caps were introduced, the number of fixed rate mortgages being offered declined.

In terms of the calculation base, stakeholders from all categories underlined that it was vital that any calculation base be fair, justified and appropriate. Compensation should cover the losses to the financial institution but not provide a profit. Aspects to be taken into account in the calculation of funding loss type of rate, degree of variability, term remaining until loan expiration, evaluation of interest rates (interest lost – although some consumer representatives argue this should not be included), administrative and operational costs.

6.4. Annual Percentage Rate

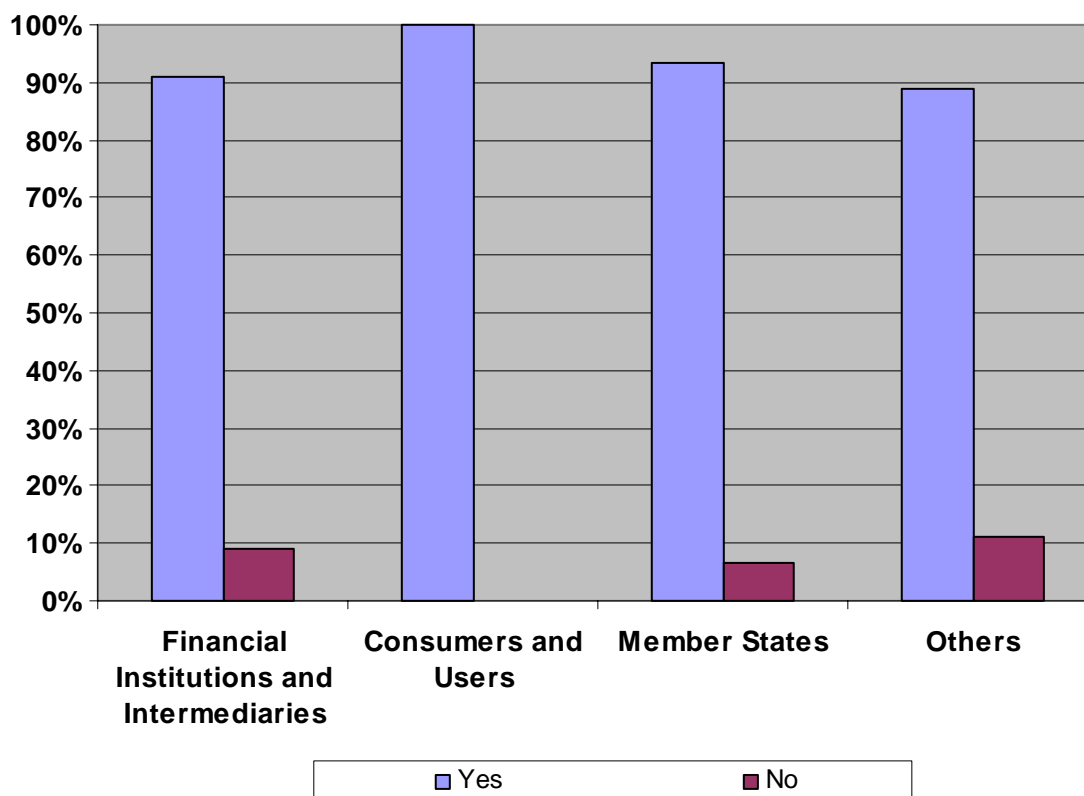
49% of the total responses addressed the question of the purpose of the APR (67% of financial institutions and intermediaries, 75% of consumers and users, 59% of Member States, and 15% of other stakeholders). According to the Green Paper, the calculation and the cost elements which enter into such calculations vary across Member States, making comparisons difficult.

What is the purpose of the APR?



Although a substantial number of contributors see the APR as a tool for comparisons (as many as 46% of financial institutions and intermediaries although other stakeholder categories were lower), the large majority of contributors – from all stakeholder categories – see the APR as both an information and comparison tool. A number of stakeholders however pointed out that for the APR to have any real comparative role, it should be harmonised.

Should the APR be harmonised?

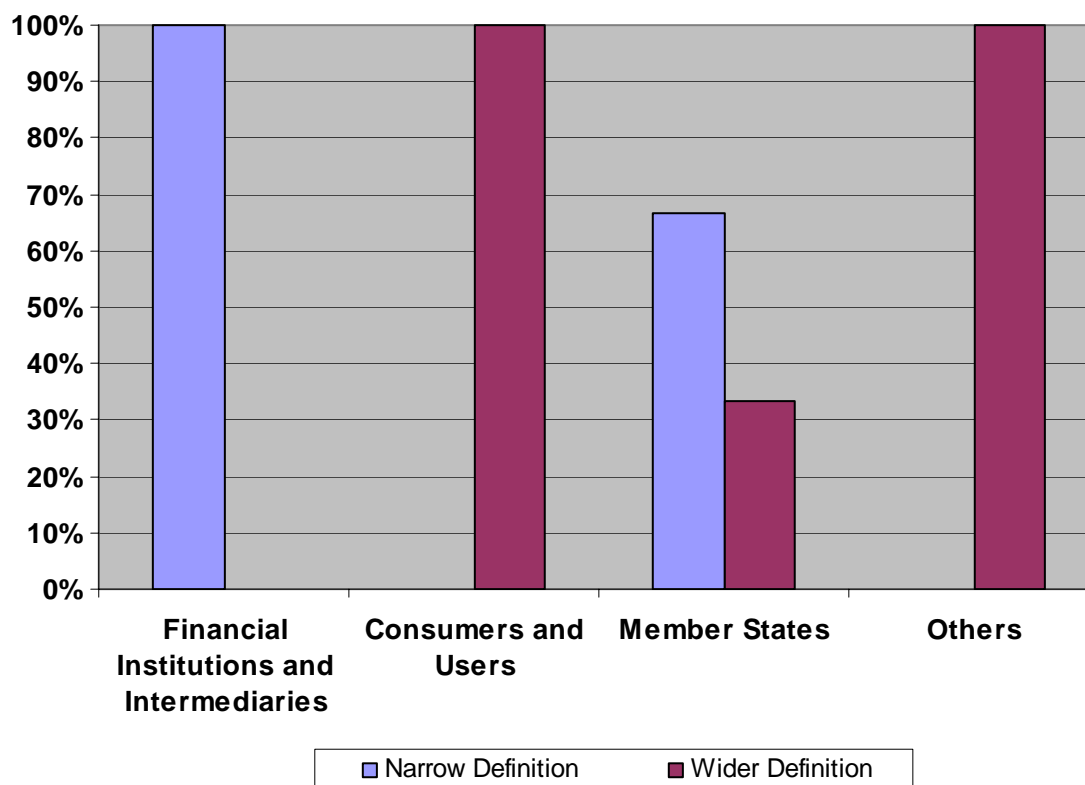


In line with the arguments presented by respondents that in order for the APR to play its role in comparing offers, the vast majority of responses (91% of financial institutions and intermediaries, 100% of consumers and users, 93% of Member States and 89% of other stakeholders) support the need for a harmonised APR both in terms of the methodology used to calculate it and the costs base. This support for harmonisation can also be seen in each of the four separate stakeholder categories.

The principle argument presented by respondents in favour of harmonisation is that – to a large extent – the APR is already harmonised as the Consumer Credit Directive provides for a harmonised APR. In many countries, Member States have extended the scope of the Directive to also cover mortgage credits. The question highlighted by the contributions is however whether the APR in a future Consumer Credit Directive should also be applied to mortgage credits or whether a mortgage specific APR is required. On this point, the responses are mixed: on the one hand, it is argued that the primary objective should be to have one single APR method for mortgage and consumer credit; on the other hand, the difficulties in achieving this are pointed out.

Those who opposed harmonisation stated that although it may – to some extent – be useful, the costs of introducing (adapting banks systems and information material) it would – most likely – outweigh the benefits as it is lenders rather than consumers who are most likely to go cross-border.

What cost elements should be included?



Although there is general agreement on the need for a harmonised APR both in terms of methodology and cost basis at the European level, the issue which is subject to debate is which cost elements should be taken into account.

On the one hand, financial institutions (100%) and a majority of Member States (67%) support the notion of a **narrow basis for the APR**. According to this concept, only those costs which are caused or can be influenced by the lender should be included in the APR. Moreover, a number of contributions stated that the costs must be clearly definable at the time the agreement is concluded.

Those who favoured a narrow basis would include:

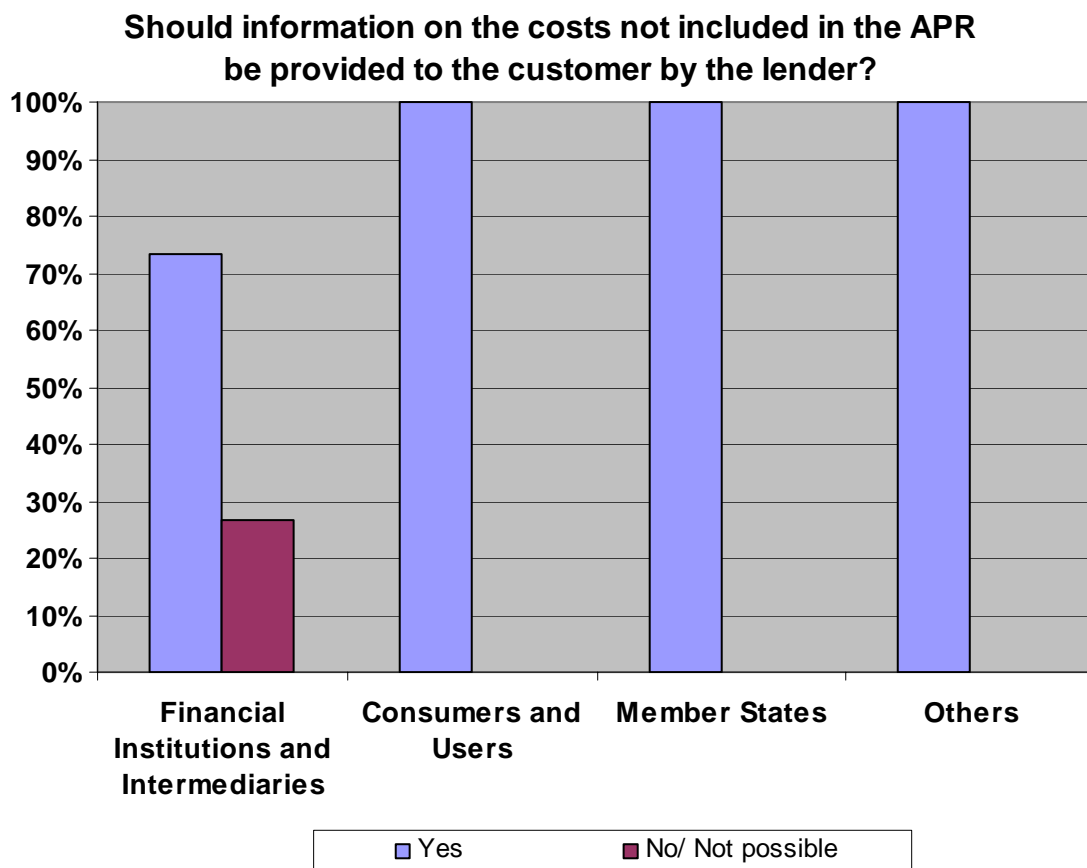
- Commission and administrative fees, e.g. handling charges, loan charges;
- Survey costs (levied by the lender for his own benefit);
- Net interest;

and exclude:

- Costs which lenders incur but do not charge consumers e.g. procurement fees (paid to intermediaries by lenders);

- Costs that a consumer may not incur, e.g. early repayment fees, product transfer fees, arrears fees
- Costs associated with the property purchase or legal fees, e.g. cost of establishing or creating the security, notary, land registration, taxes.
- Insurance
- Costs present in one country but not another.

On the other hand, consumer/user representatives and other respondents as well as several Member States believe that a wider definition should be adopted. This would include all costs necessary for the credit including: the narrow basis plus insurance, registration, commissions, taxes. It would not matter whether the costs are payable to the creditor, third party intermediary, other competent authority levying the taxes or any other third party authorised to receive payments following brokering or the conclusion of a credit agreement.



For those costs not included in the APR, the question arises whether the consumer should be informed of them and to what extent. Only 28% of contributions dealt with this question, however, the message was clear: information on costs not included in the APR should be provided to the customer by the lender. Documentation could provide a list of all costs included and those not included. A number of contributions suggested that those costs not included could be accompanied by a description.

More controversial is whether the information should include an amount/value, a reference value/estimate, or nothing (i.e. just the nature of the costs). While consumer/user representatives believe that this should include an amount/value, financial institutions oppose this position with some favouring an estimate but more information on the costs nature.

Those opposed to the provision of information on costs not included in the APR state that it would not be possible for the lender to provide detailed information since the figures are unknown to lenders, particularly on a cross-border basis. However, it is principally the idea of adding a value to the costs that is opposed rather than providing information on their nature.

Consumer/user representatives also state that an example of monthly payments and the total cost of the credit should be included.

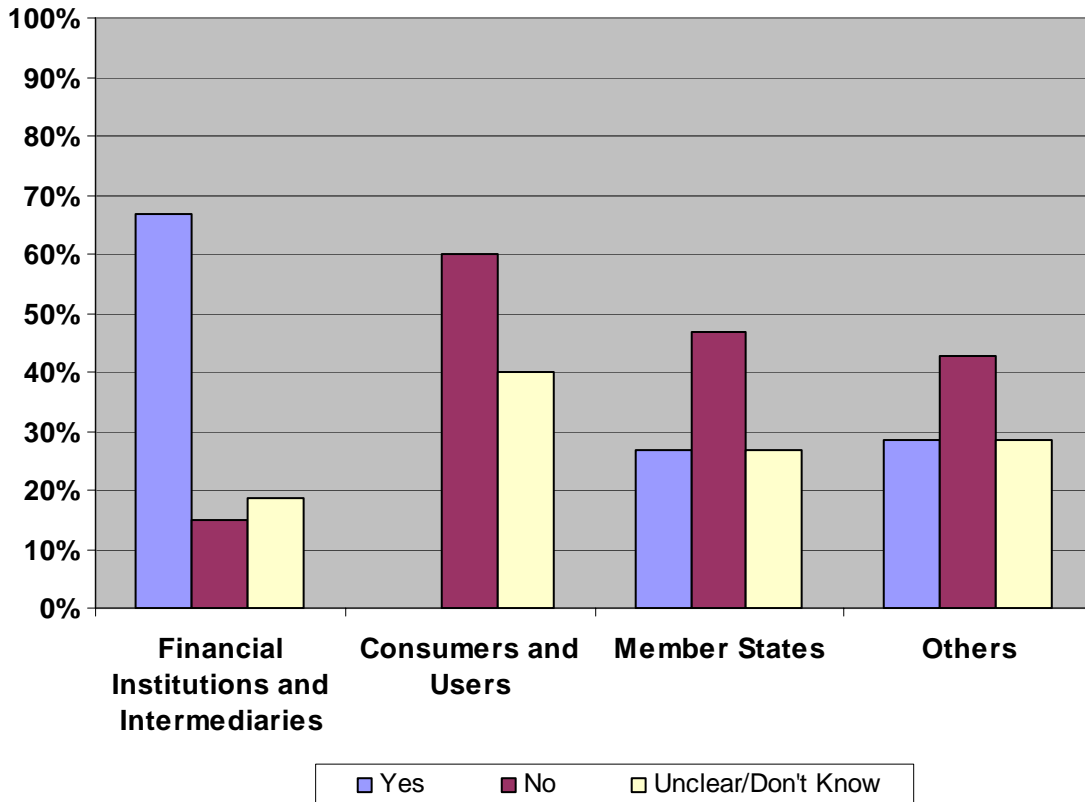
There is general agreement this information should be provided at the pre-contractual stage.

6.5. Usury Rules and Interest Rate Variation

The Green Paper on mortgage credit pointed out that some Member States have legally enforceable caps on interest rates and asked for input on the implications of such rules on market integration.

Between 28% and 50% of responses dealt with different aspects of this question. In this respect, respondents answered three main questions: do usury rules impact on integration; should usury rules be examined in a broader, non-mortgage specific, context; and do caps on compound interest rates impede integration.

Do Usury Rules Impact on Integration?



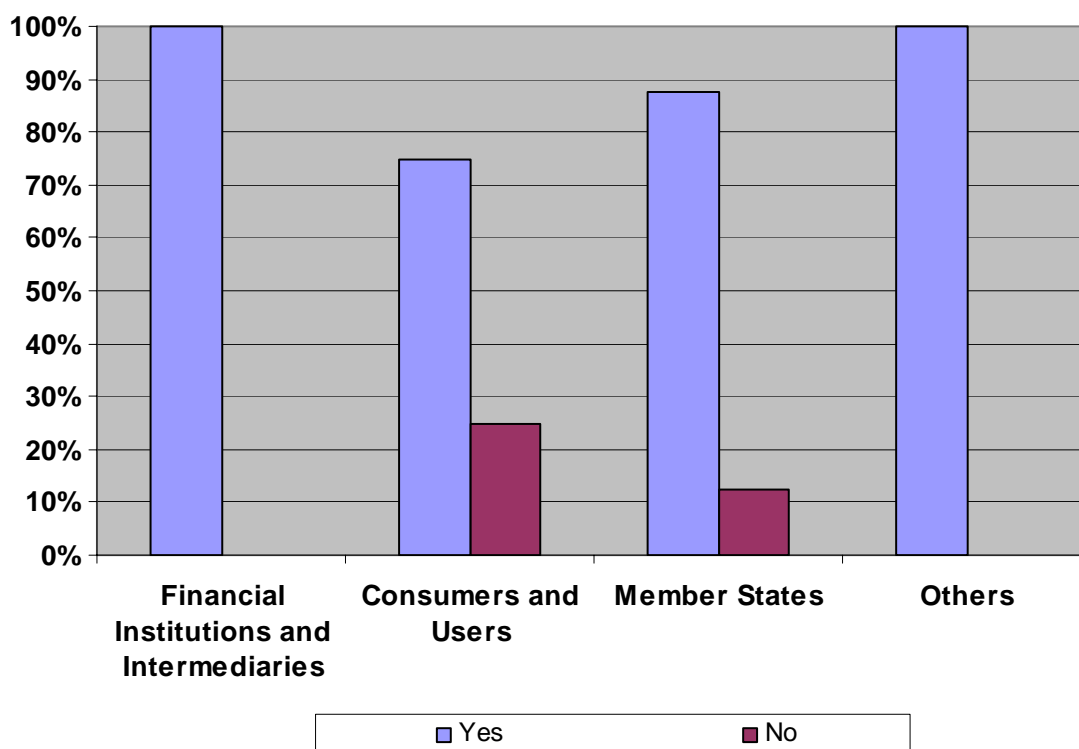
51% of contributions examined whether usury rules in particular impacted on integration (64% of financial institutions and intermediaries, 63% of consumers and users, 68% of Member States and 21% of other stakeholders). The responses were mixed.

A large majority of financial institutions and intermediaries believed that usury rules were a barrier to integration and competition. The position of Member States, Consumers and Users as well as other stakeholders, was less clear. Although a substantial number of these three categories emphasised that usury rules were not a barrier to integration (60% of consumers and users, 47% of Member States and 43% of other stakeholders), the responses of a large number of these categories were unclear. In actual fact, the "unclear" views, although not clear on the abovementioned question, were generally consistent in their message which was that there was no need to introduce any usury rules at the EU level.

Those asserting that usury rules were a barrier to integration and competition presented various arguments. First, many felt that the existence of such rules reduced the competition in the market. In this respect, it was also mentioned that usury rules could hide the real price of products and lead to cross-subsidisation of products. Second, it was stated that usury rates led to a reduction in the products available in the market and acted as a disincentive to product innovation. In particular, it was felt by respondents that sub-prime borrowers may be excluded from the market by the existence of usury rules. Third, several contributions noted that other legislation, in particular, legislation on unfair terms, had the same effect however distorted the market less. Finally, many financial institutions argued that usury rules were contrary to the risk based principles of Basel II.

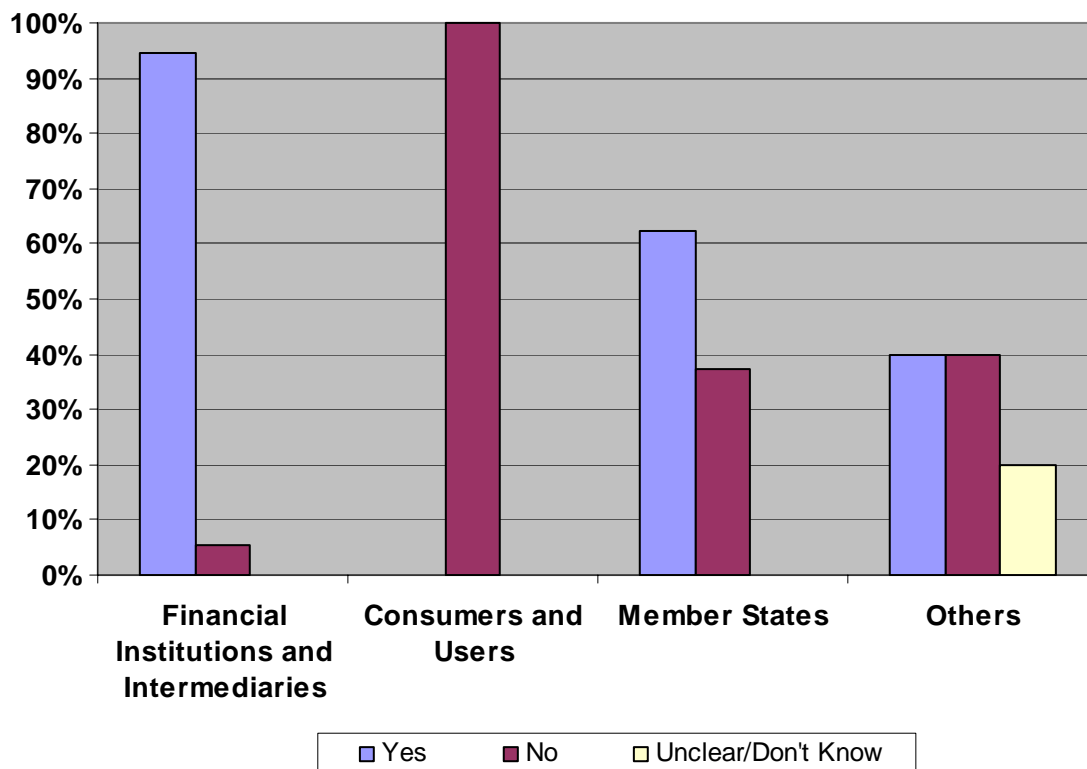
In contrast, those supporting usury rules cited the following arguments. The most frequently cited argument was quite simply that the existence of such rules are not a barrier to integration as their existence does not impact on cross-border activity or to a very limited extent. Second, a handful contributions mentioned that usury rules may be considered a part of the general good so should be respected by all lenders, whatever their country of origin. Finally, a few contributors pointed out that the existence of the caps were an illustration of the social and human aspects of mortgage credit.

Should Usury Rules be examined in a broader, non-mortgage specific, context?



Only 28% of contributions stated whether usury rules should be examined in a broader, non-mortgage specific, context. A clear majority of all stakeholders argued that this should be the case. The occasional reaction requested that the European Commission undertake a study to identify the extent of usury, the practices involved and in this context develop concrete measures to protect borrowers by standardising the classification of usury and the penalties imposed.

Do caps on compound interest rates impede integration?



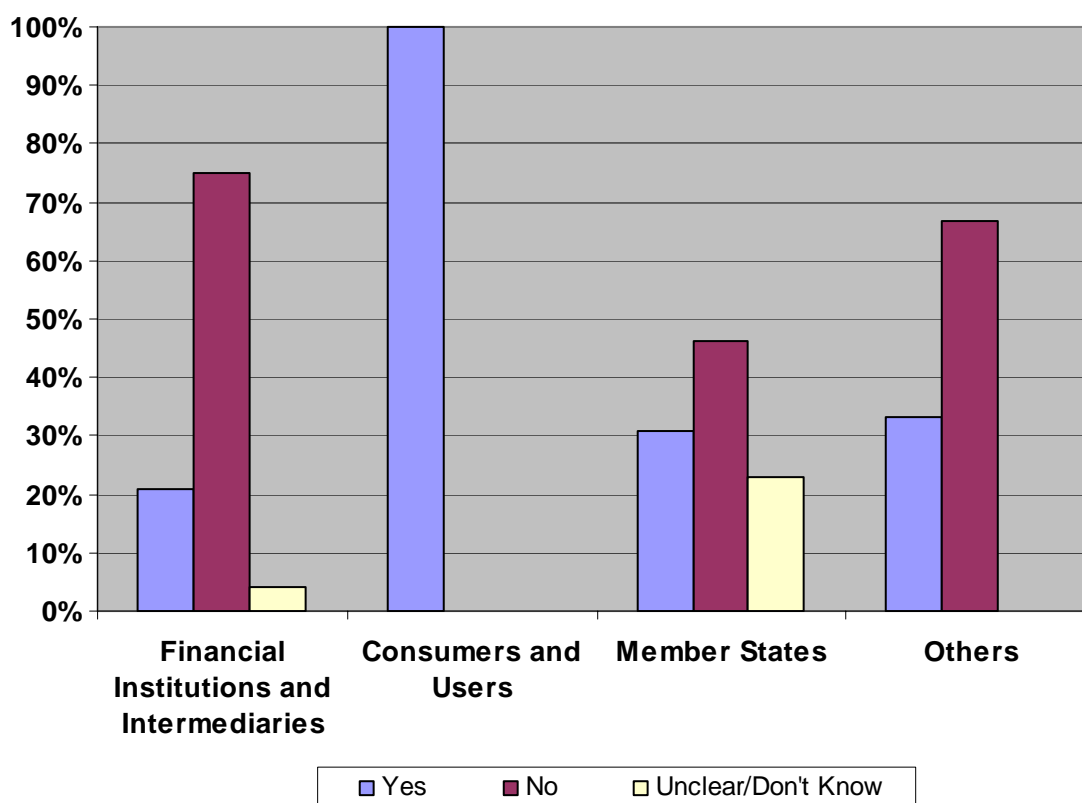
31% of total contributions responded to the question as to whether there should be restrictions on the imposition of compound interest rates. For industry and consumers, the views were clear: 94% of financial institutions and intermediaries stated that caps on compound interest rates impeded integration and 100% of consumers stated that such caps did not impede integration. For Member States and other stakeholders, the picture is mixed. The arguments presented for and against caps for compound interest rates were the same as those for and against usury rates.

Finally, on the specific question of the impact of compound interest restrictions on product development, in particular equity release products, it was commented that equity release products are based on compound interest and thus would be affected by the imposition of any restrictions. This would therefore restrict product and consumer choice. Responses noted however that equity release products required a specific treatment both in terms of information and advice due to their special features.

6.6. Credit Contract

The question in the Green Paper welcomed views on the standardisation of mortgage contracts, for example, via a 26th regime. The responses received however differentiated however between their views on the standardisation of contracts and the 26th regime. Some responses answered one or the other question whereas others answered both questions. As such, the graphs should be seen separately rather than together.

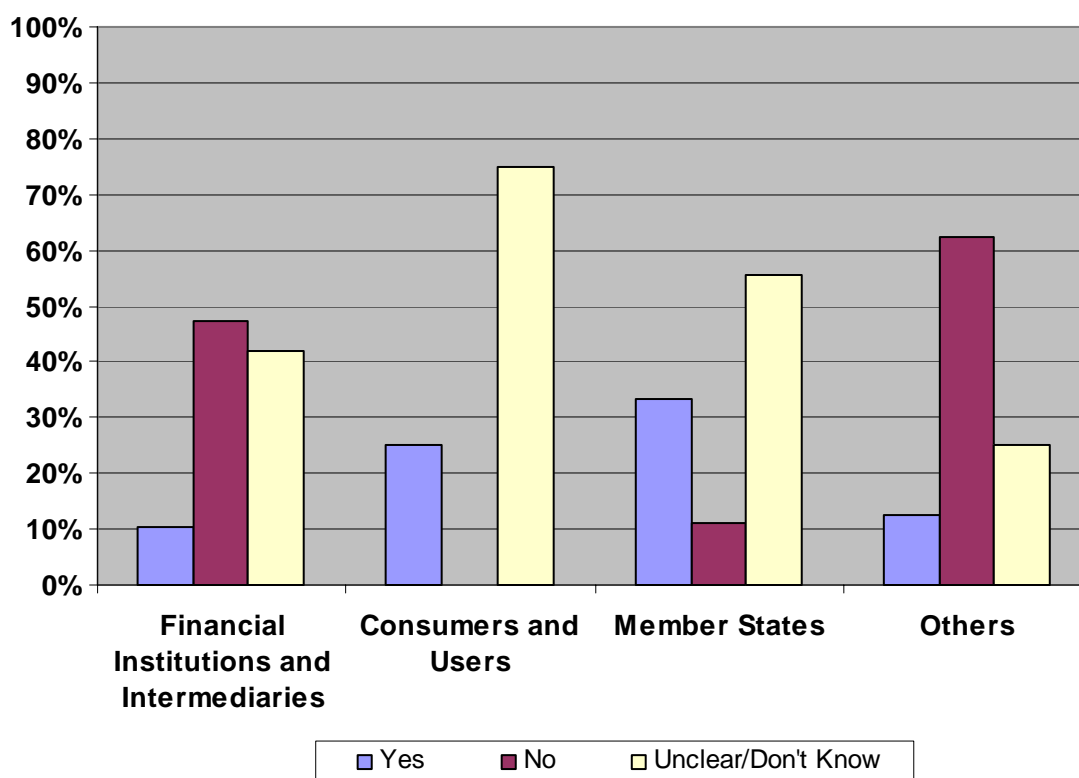
Is the standardisation of credit contracts necessary?



In terms of the general standardisation of credit contracts, 42% of the Green Paper responses answered this question. Financial institutions and intermediaries (75%), Member States (46%) and other stakeholders (67%) indicated their opposition to any general attempt to standardise contracts. The principle concern was that standardisation of contracts would lead to the standardisation of products and consequently a reduction in product diversity and product innovation. In addition, contributions stated that in general it was unnecessary and impractical to consider such a step.

Consumers and users (100%) supported the standardisation of contracts along with a sizeable minority of Member States (31%) and financial institutions (22%). Those in favour cited the advantages in terms of funding opportunities that standardised contracts would bring, for example, facilitating the pooling of loans or being used as collateral for a combined transaction. It was recognised however that this may be difficult to achieve in practice. Consequently, some contributions proposed the establishment of minimum contractual terms.

Is a 26th Regime supported?



38% of the responses to the Green Paper addressed the issue of a 26th regime. The contributors were in general unclear on what precisely was meant by a 26th regime with 42% of financial institutions and intermediaries, 75% of consumers and users, 56% of Member States and 25% of other stakeholders expressing the need for additional information and further research. The following questions were presented by various contributions: whether it was an additional product/contract or whether it would replace existing products/contracts, how it would fit into national legal systems and whether it would make sense commercially. Many contributions also conveyed the message that further exploration was required before any policy orientations could be adopted. It was also questioned whether it would not lead to more confusion amongst consumers and further complicate an already complicated situation. Assorted contributors also expressed their doubts as to whether it would help achieve the objective of creating an integrated and competitive market.

6.7. Enforcement and Redress

The Green Paper asked whether an obligation on Member States to ensure the existence of alternative means of redress in the mortgage credit area should be imposed as well as for proposals to reinforce the credibility of existing alternative dispute resolution systems (ADRs).

The vast majority of contributions support the existence and use of ADRs in the mortgage area. This support can however be divided into two types: those who would support the imposition of an obligation and those who believe that there is no need for any obligations as existing mechanisms are sufficient and ADRs should not

focus on one particular product. There was also a request for clarification as to whether the ADRs were judicial or extrajudicial.

A very small minority of contributions from all stakeholder categories (except consumers and users) stated that there was no need for ADR systems in the field of mortgage credit. The reasons provided were varied, e.g. ADR do not work in the area of mortgage credit due to the fundamental nature of particular aspects, e.g. property law.

The comments received focused more on how the existing ADRs could be developed and enhanced. In this respect, a number of proposals were received. First, a number of comments noted that ADRs should be independent, objective and fair. Second, access to ADRs should be clarified (where can they be accessed from: domestically, in the country where the property is located, etc). Third, to what extent decisions by ADRs are binding or not. Fourth, how to develop the consistency of decisions by national ADRs to ensure equivalent treatment of complaints. Fifth, how awareness of existing ADRs could be enhanced (a few contributions questioned whether it was credibility or awareness that needed to be developed). In this respect, it was proposed that an online portal for consumer complaints in all languages should be facilitated. Finally, the occasional contributor referred to the need to following existing EU recommendations on ADRs.

One common theme which ran through the responses was the need to enhance the work of FIN-NET. Respondents emphasised the need for enhanced cooperation through FIN-NET and the need for it to be used more. The need to encourage and broaden membership was also emphasised. In this manner, FIN-NET could also develop the minimum standards for ADRs.

7. LEGAL ISSUES

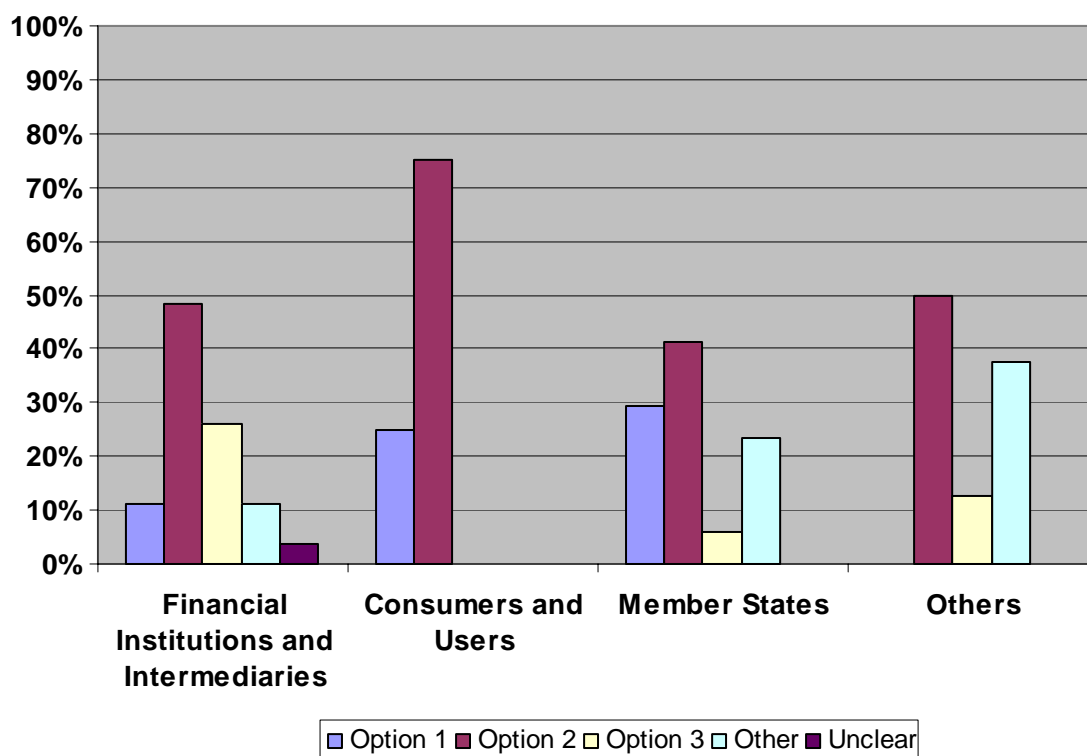
7.1. Applicable Law

The Green Paper proposed at least three potential solutions in the context of the law applicable to mortgage credit contracts:

- Option 1: provide for a specific regime for the law applicable to consumer mortgage credit contracts in a future Regulation. This could consist of aligning the law applicable to the mortgage credit contract with the law applicable to the collateral contract.
- Option 2: continue to subject mortgage credit contracts to the general principles which, in the Rome Convention as it stands, would mean essentially that parties can freely decide on the law applicable to their contract, subject to the application – under some conditions – of the mandatory rules of the consumer's country of residence.
- Option 3: exclude the application to a consumer mortgage credit contract of the consumer's mandatory protection rules, provided that certain conditions are met, for example, that there is a high level of consumer protection in place at the EU level.

53% of the contributions to the Green Paper consultation addressed this question (64% of financial institutions and intermediaries, 50% of consumers and users, 77% of Member States, and 24% of other stakeholders.).

Which is the preferred applicable law option for consumer contract law?



Option 1 (described above) received limited support with 11% of financial institutions and intermediaries, 25% of consumers and users, and 29% of Member States. This support was however not necessarily support for aligning the law applicable to the mortgage credit contract with the law applicable to the collateral contract (although a few responses did indeed support this) but rather more support for the idea of providing for a specific regime for the law applicable to mortgage credit.

The support for Option 2 was more substantial: 49% of financial institutions and intermediaries, 75% of consumers and users, 41% of Member States and 50% of other stakeholders. A key factor in these contributions was that consumer rights should not depend on the nationality of the bank. At the same time, within these contributions, there a number of contributions pointed out that the Commission should ensure that Article 5.2 of the Rome Convention was applied properly and thus examine on what ground the rules imposed by Member States are imposed and whether the equivalence of mandatory rules exists or not.

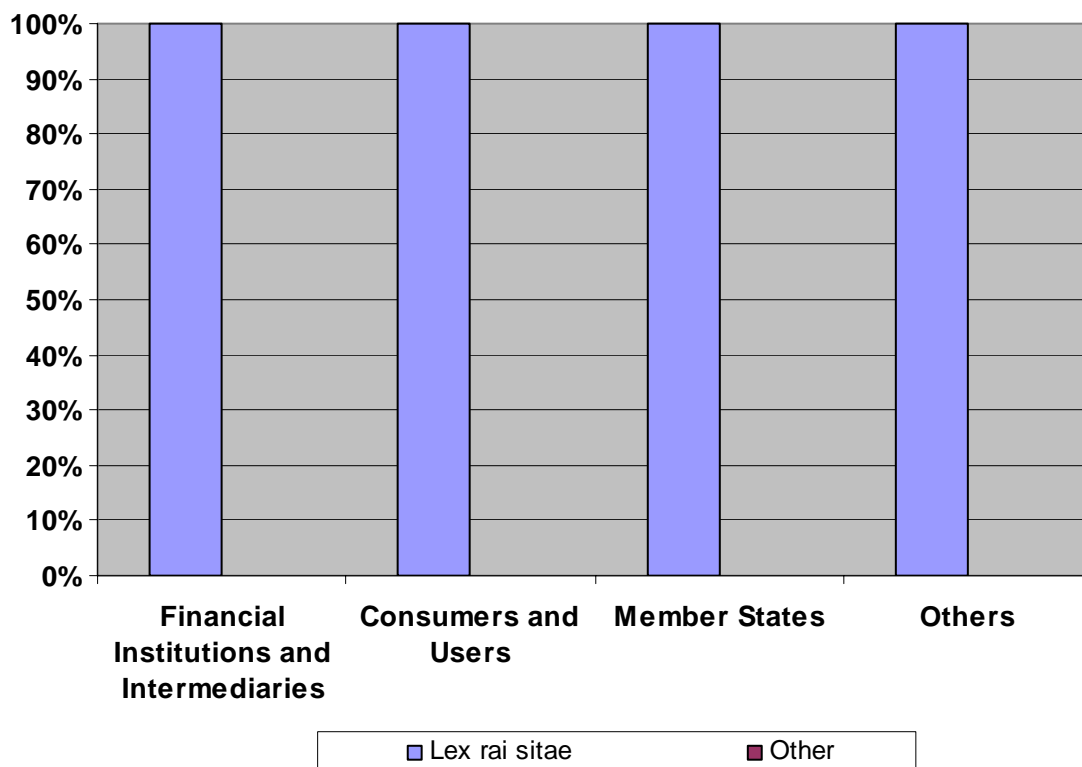
The support for Option 3 fell somewhere in between that of Option 1 and 2: 26% of financial institutions and intermediaries, 6% of Member States and 13% of other stakeholders although it should be noted that no consumer or user stakeholders supported it. Those supporting Option 3 argued primarily

that full harmonisation or targeted harmonisation should be undertaken and this Option should allow for the choice of law applicable in the country where the bank is situated.

In addition, to the alternatives presented in the Green Paper, other alternatives were proposed such as the law of the country where the property is located applying also to the credit contract.

Finally, on this subject, comments were received requesting the Commission to consider all options in more detail as well as to fully involve all stakeholders in the process from an early stage.

What should be the law applicable to the mortgage deed?

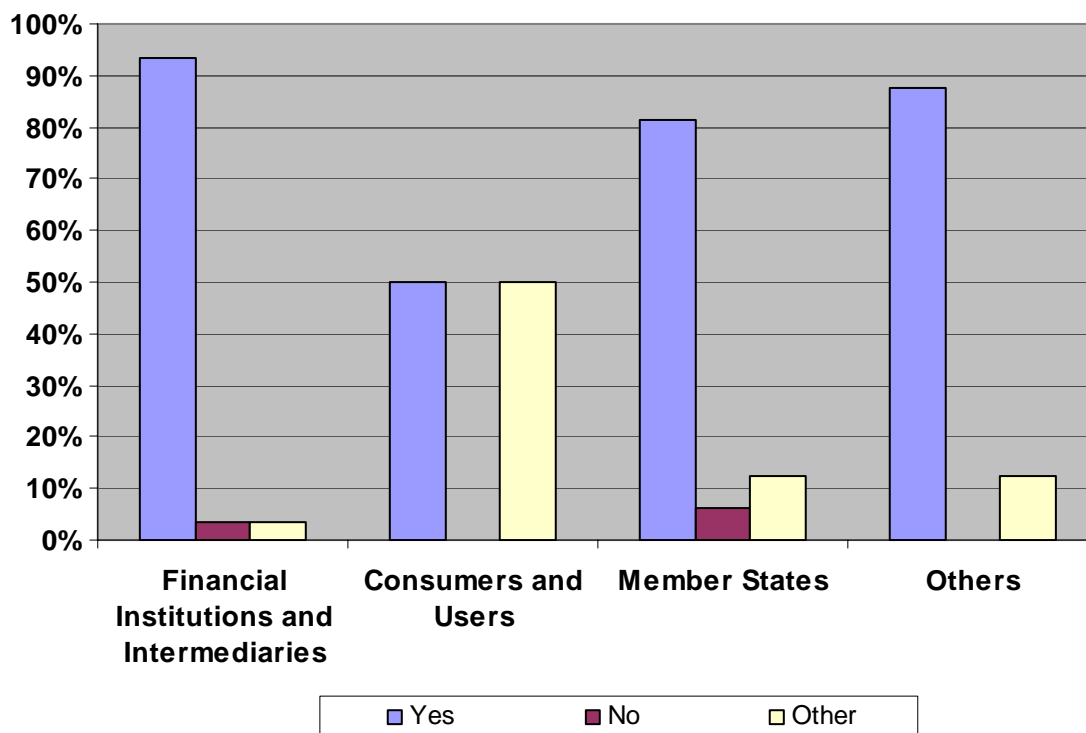


22% of Green Paper contributions also referred to the law applicable to the mortgage deed. In this respect, all fully supported the proposal in the Green Paper that there should be no departure from the principle that the law of the country in which the property is situated applies (lex rai sitae).

7.2. Client Credit-Worthiness

The Green Paper stated that the Commission considered that the priority could be – following the same approach as for consumer credit – to ensure cross-border access to databases on a non-discriminatory basis. 57% of contributions received dealt with this question: 71% of financial institutions and intermediaries, 75% of consumers and users, 73% of Member States, and 24% of other stakeholders.

Should cross-border access to databases on a non-discriminatory basis be enabled?



The large majority of contributions supported the idea of cross-border access to databases on a non-discriminatory basis (93% of financial institutions and intermediaries, 50% of consumers and users, 81% of Member States and 88% of other stakeholders), with only a very small minority of Member States (6%) and financial institutions and intermediaries (3%) opposing it who argued that it was not a matter for EU action or it was a private matter (i.e. cannot intervene in the business of private companies).

Even those in favour of cross-border access to databases on a non-discriminatory basis did however emphasis several aspects to be considered.

First, a large number of contributions raised the question of whether legislative action was required or whether other means would be more effective. A few proposed the development of a Memorandum of Understanding between the credit agencies.

Second, stakeholders from all categories highlighted the need to comprehensively consider data protection rules to protect privacy. The importance of ensuring that the data held is accurate and up-to-date was also emphasised. In this respect, some contributions noted that the data should be preserved only for a maximum period of time. A large number of contributions noted that it was important to have mechanisms in place to ensure that incorrect data could be corrected easily and the data was updated regularly. In the event of errors, assorted responses added that redress, including liability and sanctions, should be considered.

Third, contributions underlined that the credit agencies should be subject to a form of supervision to monitor who can access the databases. Contributions added that there should be research only for legitimate reasons and consumer should be informed about results for free. The need to ensure that the information provided was to assess credit worthiness and not for predatory marketing was also mentioned.

Fourth, a small majority of contributions stated that there should not be any requirement to establish new schemes, for example, positive databases. A minority of contributions however stated that there was a need to require the establishment of positive databases. In this regard, comments were also received on the type of information to be held in the database: information on performing accounts, default information, register of voters, country court judgements, bankruptcies, credit searches, etc. It was also mentioned that there was an increasing need for lenders to go beyond a credit reference database to actual investigation of relevant circumstances of borrower in order to prevent over-indebtedness.

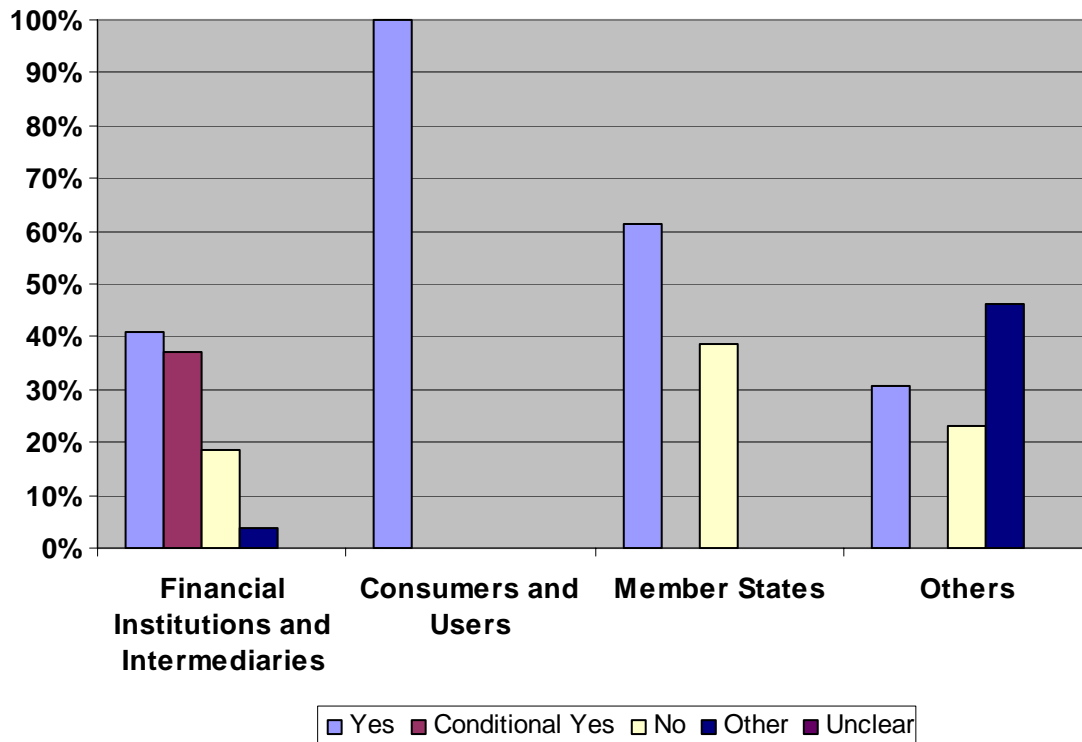
Fifth, financial institutions commented there should be a right for lenders to consult a database and not an obligation. They also added that each database should consider the technical means and arrangements for information sharing.

Finally, a few contributions considered that the harmonisation of content, structure and format since the more standardised the different European databases, the lower the costs of consulting them and using the information. To this end, a handful of contributors also proposed the creation of a pan-European credit register in the long run.

7.3. Property Valuation

The Green Paper requested information on the merits of a single EU standard for valuation processes and/or mutual recognition of national valuation standards. 55% of the responses to the Green Paper addressed the question of a single EU standard but only 25% considered the question on mutual recognition.

Should there be a single EU standard for valuation?



The majority of responses indicated a support for the development of a single EU standard for valuation with 41% of financial institutions and intermediaries (plus 37% who supported it conditionally), 100% of consumers, 62% of Member States and 31% of other stakeholders supporting a single EU standard unconditionally. At the same time, a not insignificant minority opposed any move to create a single EU standard.

On the one hand, those opposing the creation of a single EU standard argue that it would only be possible if there is already equivalence in EU property law and customs. In addition, should a single standard be established only a limited number of bodies could undertake valuations thus the price of valuations would rise.

On the other hand, it is argued that neutral and comparable standards would benefit all market actors, creating a level playing field between banks in different jurisdictions both on the primary as well as secondary markets. Furthermore, a few contributions noted that national valuation standards are historically defined and the differences bear no real economic justification.

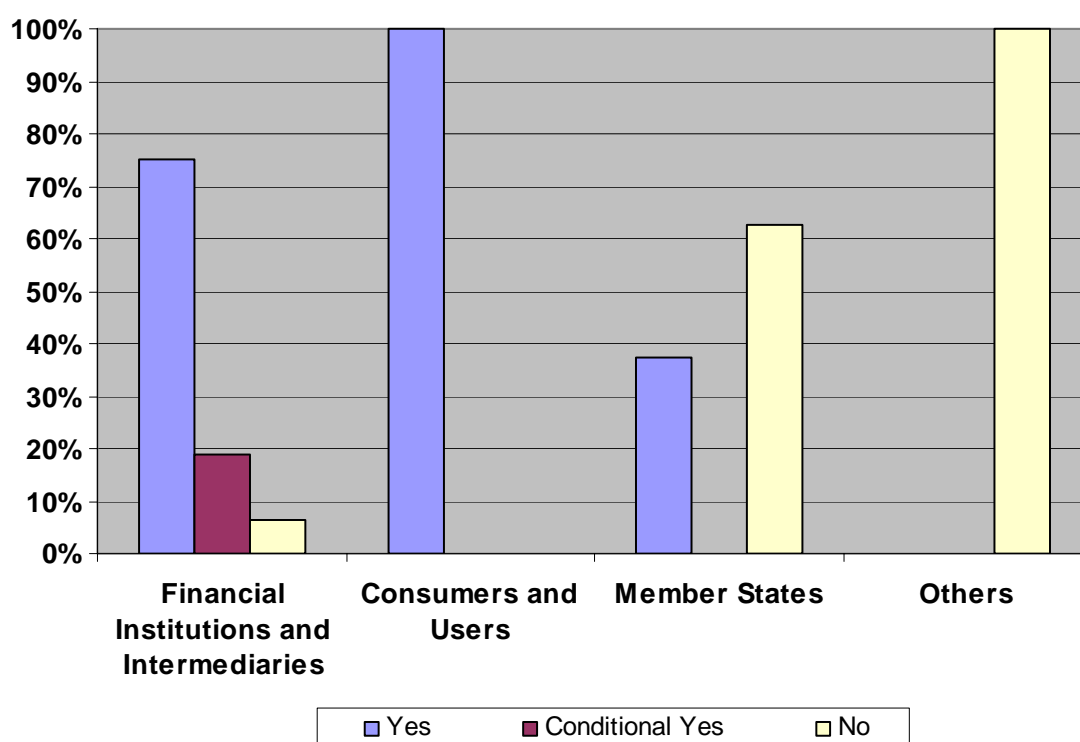
Consequently, those in favour of a move towards a single EU standard remarked that full convergence is only possible to limited extent and that it is convergence rather than a single standard that is required. According to the comments received, a degree of differentiation is required in order to take into account local characteristics.

Against this background, the majority of the contributions propose the use of international standards as the basis for the valuation. The contributions indicate that

guidelines for valuation principles and definitions (e.g. market value, lending value, rental area, net or gross surface, construction and property management cost, etc.) are supported to enhance the comparability of information and technical data. The responses note however that the methodology itself cannot be standardised as it reflects specific national conditions.

Furthermore, a small number of contributions pointed out that both the Basel Committee and the IASB increasingly refer to internationally accepted valuation standards. The responses drew the attention of the Commission to the standards of the IVSC and TeGoVA in particular.

Should there be mutual recognition of valuation standards?



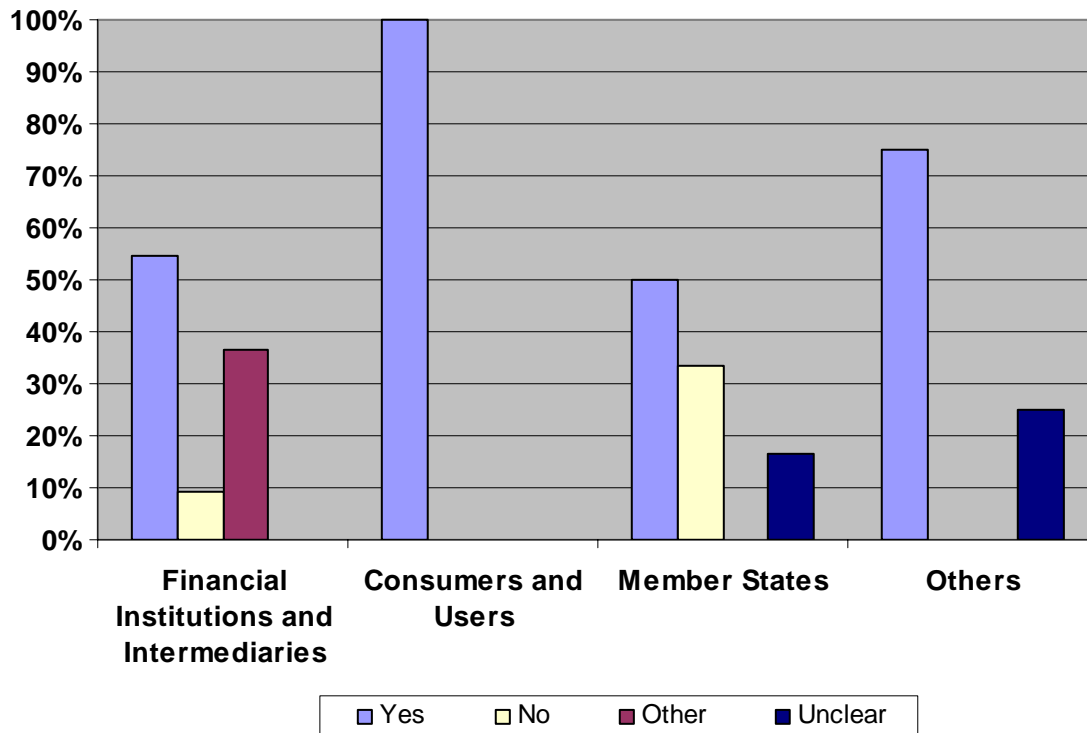
In terms of the mutual recognition of national valuation standards, there was also a majority of financial institutions and intermediaries (75% plus 19% conditionally supportive), consumers and users (100%) in favour. Those in favour of mutual recognition of valuation standards predominantly see it in conjunction with the previous question. While some argue that mutual recognition should be allowed if the national standard meets certain minimum requirements, for example, that it is in line with international standards, others argue that mutual recognition is a short term solution and is a stepping stone to the development of international standards, while others see the two operating together with the choice of standard being left to the lender.

In contrast, Member States (63%) and other stakeholders (100%) tended to oppose mutual recognition. The principle arguments presented were that mutual recognition was not necessary and it would not bring any advantages for either the buyer or the seller. One example cited is that getting the valuation according to the rules of the

country where the property is located is useful as it may also be needed for other reasons, e.g. foreclosure value.

Other issues highlighted by the contributions were the need to consult the relevant industry bodies; the consideration of redress for negligent valuations; the need to consider how long a valuation is valid for and whether valuations should be published in a publicly accessible database of valuers.

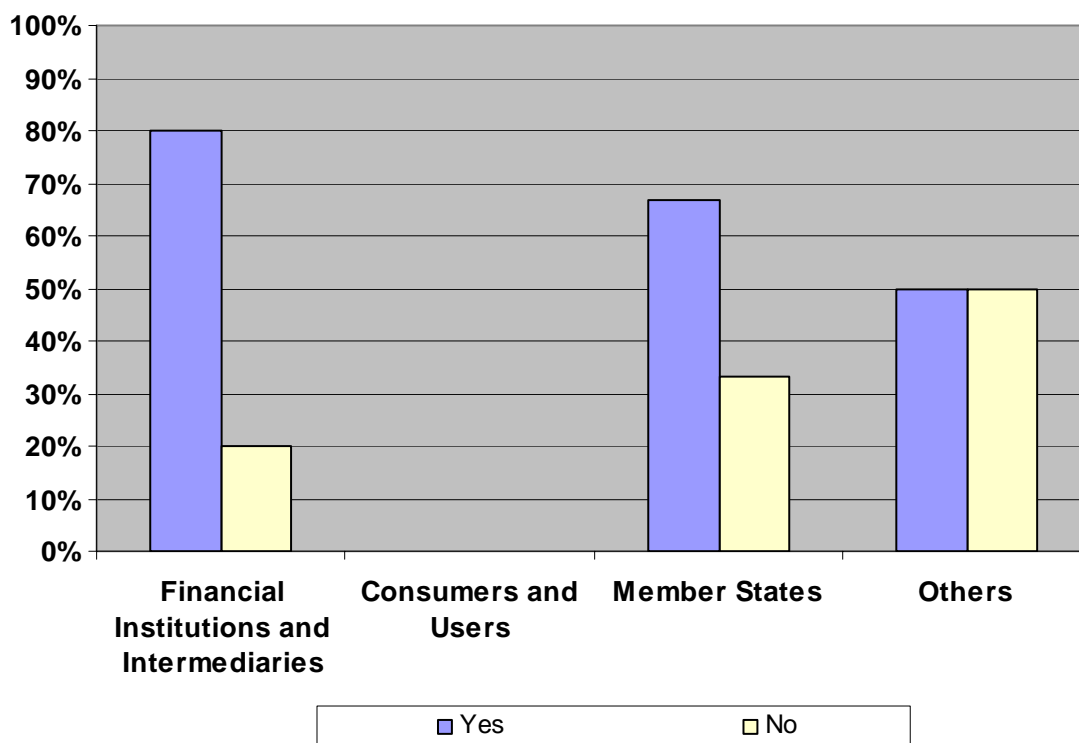
Should there be a single EU standard for valuers?



26% of responses dealt specifically with the question of whether there should be a single standard for valuer's qualifications: 26% of financial institutions and intermediaries, 13% of consumers and users, 55% of Member States and 12% of other stakeholders. The majority of responses supported the development of a single EU standard for valuers qualifications (55% of financial institutions and intermediaries, 100% of consumers and users, 50% of Member States and 75% of other stakeholders).

The core argument presented by those supporting the development of a single EU standard for valuers was that it should be the free choice of the lender which valuer is used for the valuation. The contributions argue that as long as the valuer does the valuation in accordance with internationally recognised valuation standards, the bank should be able to choose. Furthermore, the development of an EU standard for valuers would increase the reliability of cross-border valuations. Any such standard could set requirements for conflicts of interest, corporate governance, conditions of engagement or the form and content of a valuation report. Moreover, a few contributions suggested that valuers should have a university degree as well as expert knowledge of the type of valuation and the location being valued.

Should there be mutual recognition of valuers qualifications?



Only 9% of the total Green Paper responses addressed this question including 12% of financial institutions and intermediaries, 14% of Member States and 6% of other stakeholders.

A majority of most stakeholder categories supported the mutual recognition of valuers qualifications (80% of financial institutions and intermediaries, 67% of Member States and 50% of other stakeholders). While some responses argued that mutual recognition would enable any bank to instruct a valuer who is a member of an internationally recognised valuation body to carry out the valuation without being subject to additional national conditions, others noted that before mutual recognition could be allowed it should first be ensured that the standards were sufficiently high. An alternative approach proposed by certain contributors is for mutual recognition to be possible in one of two cases: first, recognition of a system of valuers qualifications that is well established; second, recognition of valuers certified according to European standard 45013 (ISO 17024).

Those opposing mutual recognition of valuers qualifications generally did so on the basis that the valuer must have local knowledge and thus be based in the country where the land is situated so as to have knowledge about the market, type of property, etc.

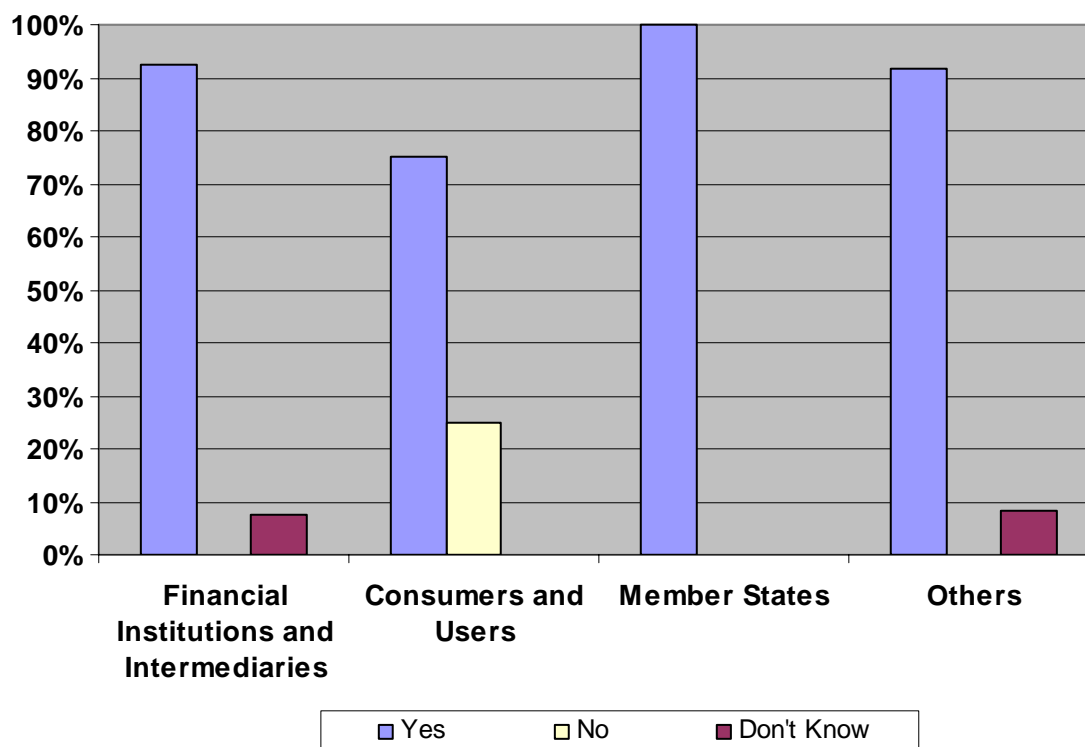
7.4. Forced Sales Procedures

The Green Paper sought views on whether the Commission should adopt a gradual approach to encourage improvements in forced sales procedures. It was proposed to first collect information on the cost and duration of these procedures in all Member

States and their effectiveness in protecting the interests of all involved and to present it in a regularly updated scoreboard. In the long run, should this prove ineffective, the Commission would consider putting forward more robust measures.

54% of contributions answered this question including 62% of financial institutions and intermediaries, 50% of consumers and users, 68% of Member States and 35% of other stakeholders.

Is the proposal to collect information and establish a scoreboard supported?



Various responses questioned whether there was a real market failure in this area and thus whether forced sales procedures were really a barrier to integration.

Despite these concerns, the Commission's approach to develop a scoreboard however received substantial support with 92% of financial institutions, 75% of consumers and users, 100% of Member States and 92% of other stakeholders all supporting the proposal.

At the same time, the contributions highlighted several issues to be considered in the development of a scoreboard.

First, in terms of the items on the scoreboard, it was mentioned that the duration of a forced sale procedure should be defined (duration of the sale of the property by the lender or the duration of the court procedure). A lot of contributions also underlined the need for genuinely useful and comparable data. Items suggested for inclusion were the enforceability, cost, time taken, the extent to which the debtor can raise objections, and differences in enforcement for first mortgage and second mortgage or the domicile of the debtor and 1st and 2nd residence.

Second, the responses asked the Commission to consider how frequently the scoreboard should be updated.

In addition, the responses dealt with possible next steps, should the scoreboard approach prove ineffective. With reference to the "more robust measures", a number of responses asked for clarification and further explanation of possible measures. Several responses also proposed that the Commission seek to develop an optimal model for forced sales procedures based on the best practices obtained from the scoreboard. Furthermore, various responses stated that the Commission should ensure coherency with its other initiatives, for example, the Green Paper on Improving Enforcement of Judicial Decisions. Finally, while a few responses stated that binding measures were required as regard the timing to be respected in each Member State (for example, maximum duration 2 years); others stated that this was neither feasible nor desirable.

8. MORTGAGE COLLATERAL

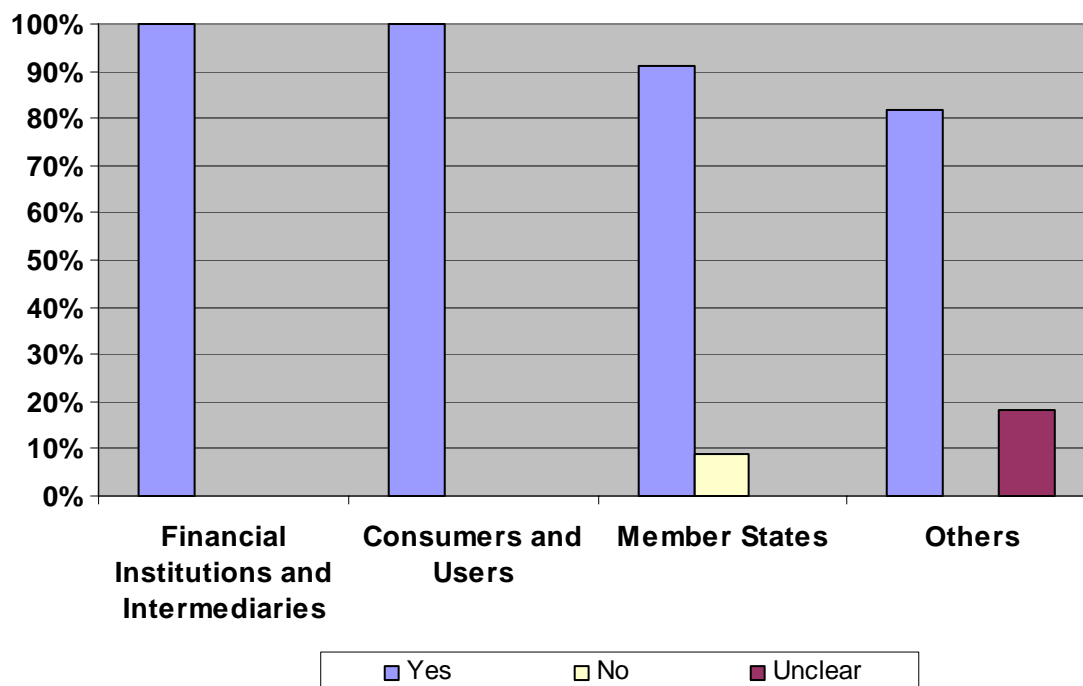
8.1. Land Registers

The Commission requested in the Green Paper information on EULIS³ as well as other issues relating to land registration.

45% of contributions to the Green Paper consultation addressed the question of whether EULIS should continue to be supported: 57% of financial institutions, 25% of consumers and users, 50% of Member States and 32% of other stakeholders.

³ In the EULIST initiative, official land registration organisations from eight European countries have cooperated to develop a pan-European land information service. The initiative was supported through the European Commission (Information Society Directorate general) eContent programme.

Should EULIS be supported?



Financial institutions and intermediaries as well as consumers and users unanimously supported the EULIS project. A majority of Member States and Other stakeholders also supported the project on 91% and 82% respectively. In general, EULIS was seen to be efficient and quick. At the same time however, stakeholders offered comments and suggestions about its functioning.

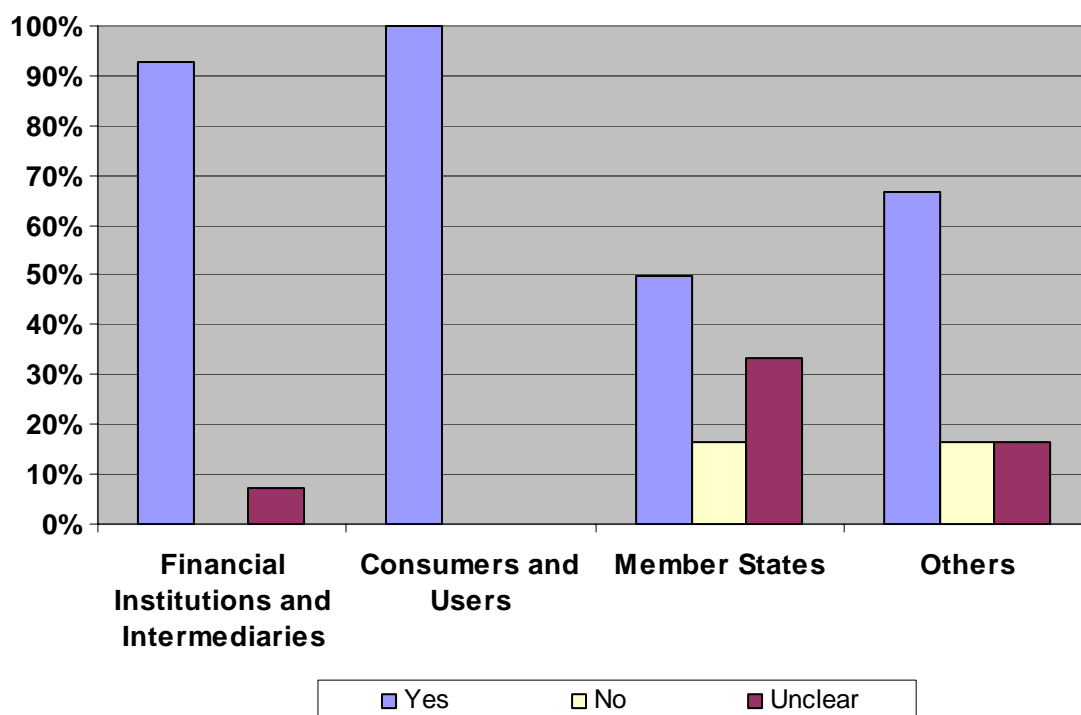
First, although EULIS is relatively successful, a large number of contributors felt that a substantial effort should be undertaken to encourage more countries to join.

Second, responses indicated that further effort should be undertaken to standardise the content of EULIS in order to ensure its credibility. The occasional contributor suggested that information on lawsuits should also be added.

Third, in terms of IT solutions, it was suggested that remote access should be further facilitated.

Fourth, responses stated that the legal status of registers on EULIS should be examined and persons should be informed about their legal status, i.e. how binding the information is, online.

Should the Commission continue to finance EULIS?



26% of Green Paper contributions addressed the question on whether the Commission should continue to finance EULIS. The responses were mixed with 93% of financial institutions and intermediaries, 100% of consumers and users, 50% of Member States and 67% of other stakeholders favouring continued finance of EULIS however there was also a handful of responses that were unclear or opposed to continued financing.

On the one hand, a number of contributions from financial institutions and intermediaries supporting continued EU finance of EULIS stated that it was not appropriate for mortgage providers to finance the development and improvement of land registers or that it was too early for lenders to contribute. On the other hand, some Member States and other stakeholders stated that EULIS's budget is reasonable and efficient and thus support their efforts to raise the financing for the project. According to information provided in the contributions, property registers are usually financed by users as they have to pay a transaction fee. Such an approach could be developed by EULIS in the future.

Those opposing continued finance by the Commission commented that the project is in the interests of Member States and the community at large to hold land registers and both registration and access are subject to payment.

The contributions to the Green Paper also listed further proposals for examination:

First, there appeared to be a general consensus that cross-border access to land registers should be facilitated under the same conditions. While various contributions indicated that access was not difficult, others provided examples of the problems encountered: for example, in some countries a register can only be

accessed if a name and date of birth is known which can sometimes be difficult to obtain.

Second, quite a few contributions indicated that the accuracy of land registers was essential. As such, they proposed that quality guidelines for land registers be developed. For example, registration should include not just day but the hour and the minute. There were also a small number of contributions which stated that mortgages which had been fully paid off should be deleted from registers. A handful of responses also mentioned that unregistered land should also be taken into account. Furthermore, minimum requirements should be created on the creation, modification, extinction and ranking of rights. In addition, a number of proposals suggested that the register should be accompanied by a deed that has passed the relevant tests.

Third, there was agreement that a central feature of land registers should be completeness. All charges affecting real estate should be in a public register and publicly available. Moreover, the responses proposed that the ranking should be undertaken on a first registered, first right basis. Above all, contributions indicated that hidden charges should not be allowed. Furthermore, some responses indicated that it was not possible to register certain mortgages such as those of an indefinite duration as there was a limit on the duration of a mortgage that could be registered.

Fourth, several proposals urged EULIS to consider the following aspects: real property classification (e.g. by location of ownership rights); the structure and how it is updated; and the contents of mortgage rights (e.g. transcripts of legal clauses or references).

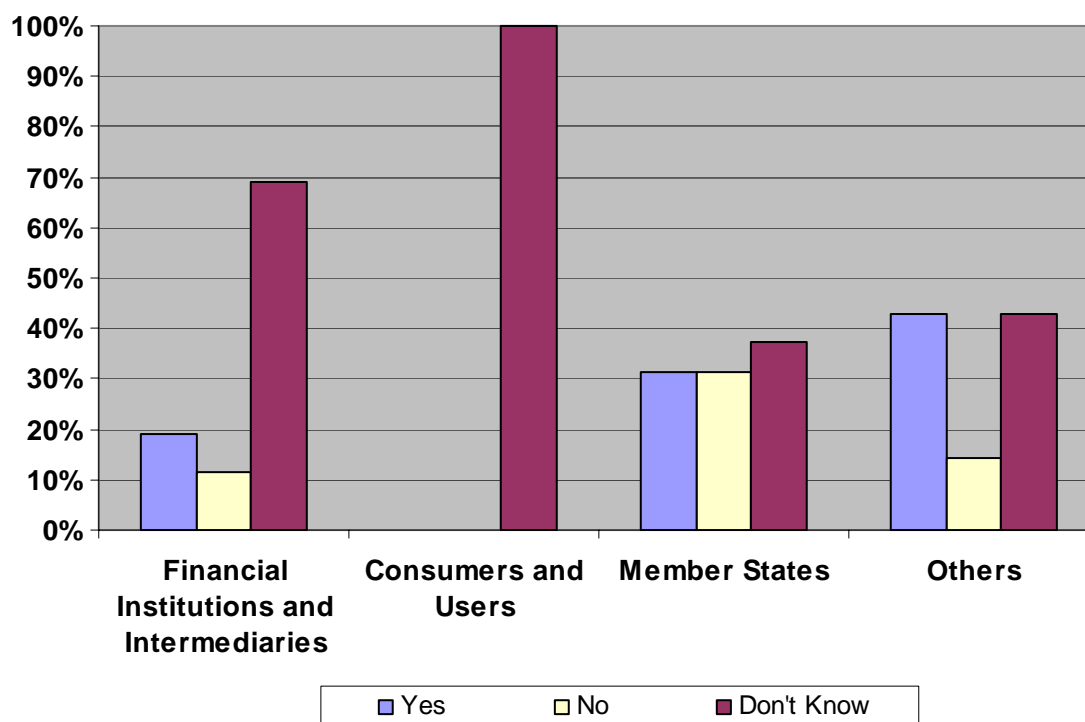
Fifth, quite a few of contributions mentioned projects to introduce an electronic registry of charges and e-conveyancing. Responses proposed that these projects should receive a high priority and views should be exchanged to ensure that best practices were adopted.

Sixth, a few contributions referred to a "Eurotitle" as an idea to be pursued further. The "Eurotitle" would be a title which can be issued by national registers and may be guaranteed by the national organisations that register this Euro title.

8.2. Euro Mortgage

In the Green Paper, the Commission invited views on the feasibility and desirability of the Euromortgage, also known as the Eurohypotheec. 56% of responses to the Green Paper covered this question (62% of financial institutions and intermediaries, 38% of consumers and users, 74% of Members States and 41% of other stakeholders.).

Is the Euromortgage/ Eurohypothek feasible and desirable?



As stated in the Green Paper, the idea of a Euromortgage is not new and there are several market participant and academic led projects ongoing.

A minority of responses supported the Euromortgage concept (19% of financial institutions and intermediaries, 31% of Member States and 43% of other stakeholders) arguing that its flexibility would encourage competition, and thus lower interest rates and better conditions for consumers.

As the graph above illustrates, however, the majority of the responses were cautious and indicated that further clarification of the Euromortgage concept was required and consequently, offered neither a positive or negative response (69% of financial institutions and intermediaries, 100% of consumers and users, 38% of Member States and 43% of other stakeholders).

Responses highlighted various issues for the Commission to consider.

Many responses emphasised the need for further evidence based justification. In this respect, the responses asked for the following issues to be examined in more detail: the impact on and relationship with national law and in particular whether changes would be required to national law; the impact on consumers (benefits, applicable consumer law); whether the Euromortgage would actually solve all the relevant issues. Moreover, some responses, in particular those from certain Member States, indicated that the EC should consider carefully the principle of subsidiarity in this context.

On how to proceed, the responses were split. Those in favour of the Euromortgage requested the EC to develop basic legal and economic guidelines. Amongst those

who requested further research, particular stakeholders argued that the Commission should elaborate the project more clearly and undertake the economic and legal impact analysis, while other stakeholders stated that those advocating the Euromortgage concept should further develop their proposals and comprehensively consider their impact.

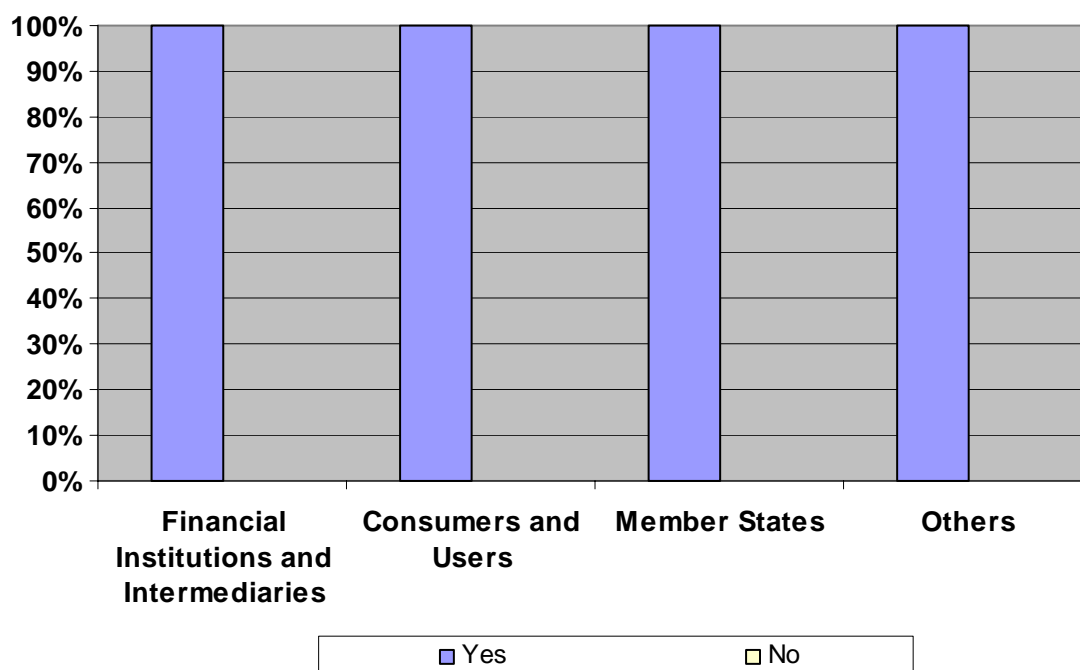
One of the central aspects of the Euromortgage is that the link (accessoriness) between the mortgage collateral and the mortgage credit would be weakened and thus the creation and transfer of mortgages would be facilitated, which would be beneficial for the mortgage credit market as a whole. This aspect of the Euromortgage attracted multiple comments.

On the one hand, the weakening of the link between the collateral and credit was amongst the key concerns of the responses. Those opposed to the Euromortgage concept cited this as one of the primary arguments. Those whose views were still unclear also drew attention to the issue. In particular, they asked whether a non-accessoriness model is the right model to use. Amongst the concerns was whether it could lead to problems where the debtor would be held accountable for their own creditworthiness. Consequently, a few responses proposed that a comparative analysis of accessory and non-accessory mortgages be undertaken to determine which system is most beneficial. On the other hand, those supporting the Euromortgage argued that the weaker accessoriness link is a key factor to integration and competitive markets.

9. FUNDING OF MORTGAGE CREDIT

The Commission proposed in the Green Paper to establish an ad hoc working group to examine the need for and nature of action on the funding aspects of mortgage credit. 41% of the Green Paper responses dealt with this question, with the majority of responses coming from financial institutions and intermediaries (57%) and Member States (55%). A few consumers and users as well as other categories also responded but to a lesser degree.

Do you agree that an ad hoc stakeholders working group to examine the need for and nature of action on mortgage funding should be established?



As is illustrated by the graph, all stakeholder categories unanimously supported the creation of an expert group dealing with mortgage funding. The following ideas were put forward in the responses.

First, in terms of procedure, numerous responses emphasised that the expert group should be careful not to go over the same issues as the Forum Group on mortgage credit. Moreover, it should have completed its work in time for the conclusions to be taken into account in the White Paper.

Second, various responses underlined the need to consider if the recommendations would be relevant for mortgage funding products or certain financial instruments in general.

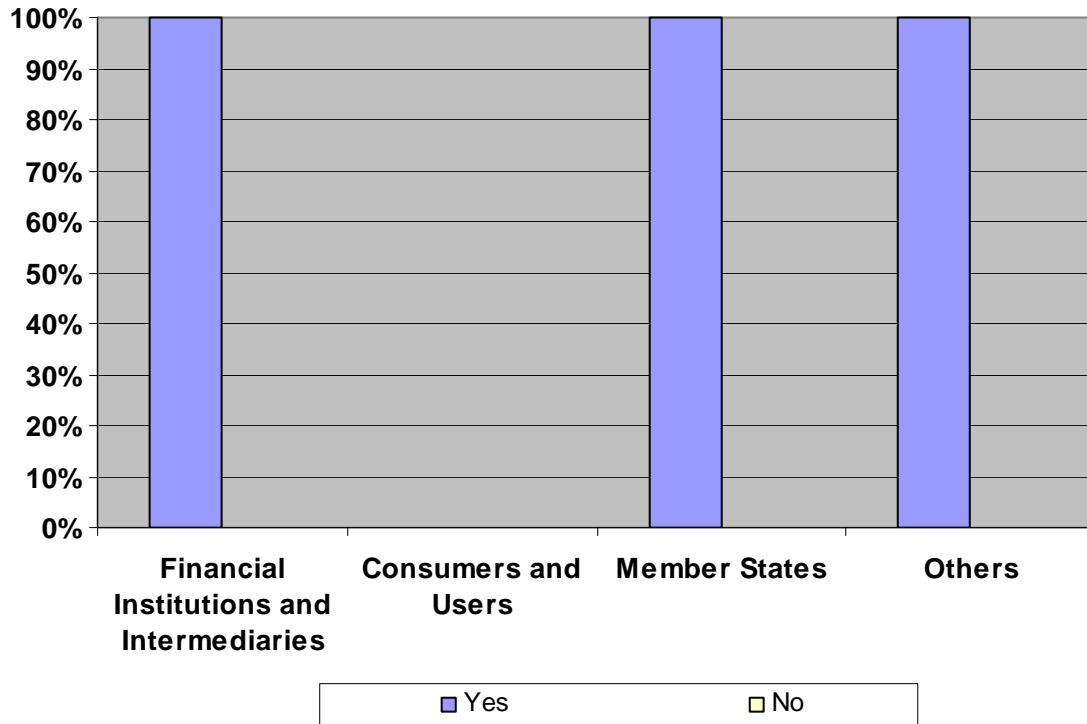
Third, the responses proposed that the following technical issues should be examined: adoption of standard forms of contract, adoption of standard terms, restrictions on cross-border funding of foreign subsidiaries by the parent company, insolvency proof nature of Pfandbrief and SPVs, standardisation of securitisation law (including notification procedure), harmonised covered bond law, relation with certain legal aspects of mortgage lending (land registration, property valuation), transferability of mortgage loans, definition of "mortgage loan", tax issues, own capital requirements.

Fourth, contributions pointed out that all mortgage funding instruments should be covered by the expert group, including amongst other things, deposits, MBS and covered bonds.

Fifth, a quantity of responses proposed that the expert group should also consider the macroeconomic implications of any recommendations: What benefits would an increased

secondary market funding bring? What would the risks be? How would they deepen integration?

Can a pan-European market in mortgage funding be promoted by market led initiatives?



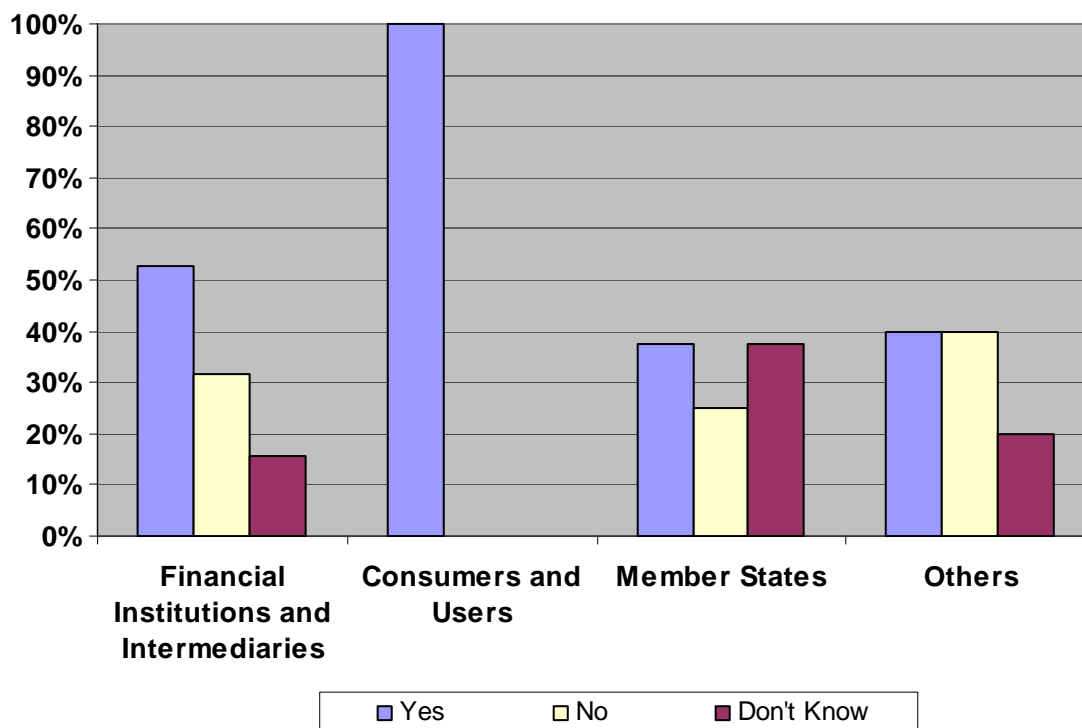
Finally, the majority of the responses agreed that the expert group should consider whether legislative action is required or to what extent an integrated market can be promoted via market led initiatives. Although only 14% of the responses to the Green Paper addressed this question, all those agree unanimously that market led initiatives play an important role in this respect.

10. NON-DEPOSIT TAKING INSTITUTIONS

The Green Paper asked for input as to whether mortgage lending should necessarily be an activity which is restricted to credit institutions or whether and under what conditions such activity could be performed by institutions which do not take deposits or repayable sums and therefore do not fall within the scope of the EU definition of a credit institutions and therefore of all related prudential rules.

This question was addressed by 41% of the Green Paper responses (45% of financial institutions and intermediaries, 36% of consumers and users, 73% of Member States and 15% of other stakeholders.).

Should non-deposit takers be able to provide mortgage loans?



The responses appear to indicate a divided response to the idea of non-deposit takers being active in the mortgage lending business. In reality, however, the differences are less differentiated than the figures illustrate.

Those supportive of enabling mortgage lending by non-deposit takers argued that there was no need for any barrier to exist to mortgage lending by non-deposit takers and encouraged a separation of the regulatory regime and the deposit taking function. At the same time, they also argued that non-deposit taking mortgage lenders should be authorised, registered and regulated in the same way as other mortgage lenders who do take deposits. Furthermore, the responses acknowledged that mortgage lending does not just need to be funded via retail deposits but can also increasingly be undertaken using alternative means. In essence, while mortgage lending by non-deposit takers should be encouraged, there should be a degree of regulation and supervision according to the activity rather than according to the person undertaking the activity.

Consumer and user responses were also fully supportive of the notion of expanding the number of mortgage lenders via enabling non-deposit takers to enter the market since it would improve competition in the market and thus choice and price for consumers.

A handful of Member States indicated that non-deposit takers could already provide mortgage loans. Those most supportive of allowing non-deposit takers to be active were generally those who already have such an option.

Those responses who were unclear or opposed to facilitating mortgage lending by non-deposit takers however also generally presented similar arguments, arguing the

need for regulation and supervision for the sake of a level playing field, consumer protection, EU financial services regulation, etc. At the same time, it should be acknowledged that a small minority of those opposed to mortgage lending by non-deposit takers stated that mortgage lending should only be undertaken by banks in order to ensure long term continuity in mortgage provision since the duration of a mortgage is of a long term nature.