



Munich Financial Centre Initiative Position Paper

on the occasion of the meeting on June 12, 2008
with the EU Commission's Directorate General for Consumer Protection

A. Core statements

I. EU consumer protection policy in the financial services sector

- Consumers are parties capable of informing and deciding for themselves. This fact should be a tenet informing the formulation of consumer protection policies.
- EU-wide harmonization of consumer protection regulations should be pursued.

II. New EU anti-discrimination directive

- The EU's new anti-discrimination directive should not prevent financial service companies from making purposeful distinctions among its customers.

III. European-level class action suits related to consumer protection

- Several member states have just authorized the use of collective lawsuits. It is only once such suits have established a suitably-long track record that they can be introduced and implemented on an EU-wide scale. The use of out-of-court mediation mechanisms should be fostered.
- Situations similar to the ones prevailing in the United States have to be avoided. The misuse of class actions as a tool of extortion has to be precluded.
- MFCI opposes proposals leading to the introduction of consumer protection class actions. A first step could, however, be the entitlement of „group representatives“ from other EU member states to be party to national-level collective instruments designed to protect legal rights. Should such be requisite, a second step could be the authorization of model lawsuits.



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- A variety of initiatives are striving to achieve the authorization of the use of collective lawsuits by consumers in the areas of competition and consumer protection laws. These two areas have to be coordinated with each other. It is only after a track record has been established in the area of competition that the introduction of model lawsuits could be considered in the area of consumer protection.

IV. Initiatives launched by the Commission to augment customer mobility in relation to bank accounts

- An EU-wide self-commitment by the banking industry on measures augmenting consumers' ability to switch banks would be welcome. This commitment should, however, only delineate fundamental guidelines.
- These guidelines are to be fleshed out by self-commitments entered into on the national level.
- By pursuing this, a set of conditions under which a switching of service provider could be carried out will take effect.
- However, we reject the portability of account numbers.

V. Call for evidence – consultations on substitute retail investment products

- The EU's regulations contain stipulations forming – along with national-level laws – a framework providing an adequate level of protection for investors. This legislation has been configured to efficaciously meet the individual needs of each kind of product.
- A new, horizontally applicable legal instrument to be employed for all kinds of products would not be capable of addressing these highly individual and variegated needs.
- MiFID and the broker directive should be given an adequate amount of time to prove their mettle. Once this has occurred, the process of beefing up consumer protection codes could be considered.



VI. Uniform European contract law

- MFCI supports the efforts to compile a basis upon which a single, EU-wide contractual code could be formulated.
- The precepts informing the freedom of contract formulation have to be respected.
- To ensure this process' comprehensibility, the first step to be undertaken is the formulation of the fundamentals of contractual law (conclusion of contracts, listing of rights and duties, penalties for non-compliance).

VII. Mortgage loans

- Instead of coming up with a directive for mortgage loans and a binding formulation of the code of conduct to be adhered to on a voluntary basis by the housing industry, MFCI supports the revamping of the code in a way permitting its use by all of the EU's banks.
- MFCI strongly rejects the according of the right to repay a loan on a pre-term basis, even in those cases in which a right of compensation is foreseen for the provider of the loan.
- The EU Commission should give priority on its agenda to establishing separate markets for secondary mortgages, creating a broader basis for funding and expanding funding instruments. This would foster the development of conditions that would secure the stability of European mortgage markets.
- We oppose allowing non-deposit taking institutions that are not subject to strict capital requirements and supervisory regulations to offer mortgage loans in view of the unjustified competitive disadvantages that would result and in particular in view of the stability of financial markets. In the USA 60% of the subprime loans were issued by institutions without banking licences.



B. Elucidations

I. EU consumer-protection policy in the financial services sector

1. Perception of the consumer as a responsible and informed party

EU consumer-protection policy should be guided by the perception of the consumer as a responsible and informed party. Among other things, this means that the consumer does not require unnecessary protective regulations, such as those pertaining to advisory services. Consumers have to be put into the position of being able to decide for themselves whether they want any information and advice before buying financial services and, if so, how much. An exaggerated amount of consumer protection inevitably goes hand in hand with higher costs. These are ultimately borne by the customer. Therefore any harmonisation of consumer-protection rules among the individual member states should not lead to an automatic adaptation to the highest common denominator in consumer protection. Rather, the existing regulations set up by national legal systems must be subjected to critical scrutiny, so as to establish whether they perceive the consumer as a responsible and informed individual and are really necessary from the point of view of consumer protection.

2. Harmonisation of consumer-protection rules across the EU

As the Commission explains in its Communication on the EU's consumer-policy strategy for the years 2007 to 2013, consumer lack of trust is one impediment to the creation of a single European market. Other impediments are constituted by regulations – especially those regarding financial services as legal product. These could lead to situations in which a supplier of financial services striving to offer its products in another EU member state finds that certain of its contractual conditions do not apply, as they contravene legal provisions of that other member state. The harmonisation of individual consumer-protection rules cannot fully do away with these regulatory obstacles. It is therefore necessary to systematically harmonise all consumer-protection rules in order to remove the impediments to the cross-border distribution of financial products and to thereby promote competition. In addition, no member state should be allowed to adopt more stringent measures than those in force at the EU level. A reciprocal recognition of contractual provisions among the member states should be taken into consideration as an interim move towards full harmonisation.



II. The EU's new anti-discrimination directive

The EU's program of legislation and consultation for 2008 contains the announcement that a directive will be issued on the application of the principle of equitable treatment in areas not related to employment. The EU Commission regards current anti-discrimination laws as not being strict enough. The Commission criticizes the laws as not offering the protection against discrimination due to religion, belief, age or sexual orientation provided by that against discrimination due to race. A draft of the anti-discrimination directive has not yet been submitted.

In MFCI's view, this formulation should not contain passages completely forbidding providers of financial services from using the above categories in configuring their contracts according to the nature of the contractual parties. By ways of example: age, being handicapped or sexual orientation. The forbidding of the use of these categories would preclude insurers' adequate examination of risks and calculation of schedules of charges. A role model for this formulation could be the directive on promoting gender equality in areas other than employment of December 13, 2004 (2004/113/EU), which establishes criteria permitting insurance contracts to distinguish within carefully-delineated bounds between the genders.



III. European-level class actions related to consumer protection

1. Introduction

The EU's Directorate General for Health and Consumer Protection is currently carrying out a study on ways of authorizing European-wide class action suits and of setting EU-wide standards in this area. The idea is to lessen the costs and obstacles faced by consumers wishing to assert their legal rights. The Directorate General for Competition has also published a White Book and a Working Paper on suits seeking indemnification for damages resulting from breaches in competition law. The idea is for customers to be provided with an instrument – collective civil actions – effectively assisting them in securing indemnification equal in amount to the losses suffered through these breaches. MFCI supports this objective, as its attaining would benefit both consumers and companies. Procedures similar in nature to class action suits have already been authorized by a number of EU member states. As most of these authorisations took place over the past few years and as they show diversities of nature and of application, track records for these procedures have yet to be established. Therefore, it is too early to conduct assessments of these new forms of lawsuits that show an adequately high degree of accuracy and thoroughgoingness.

2. Difficult-to-answer questions are associated with the introduction and implementation of instruments enabling the lodging on an EU-wide basis of collective lawsuits. These questions should be addressed once the instruments that have just been authorized by a number of member states have been employed long enough to permit their evaluation. During this time, the employment of out-of-court conflict resolution mechanisms should be fostered.

It is too early to create and authorize a kind of collective lawsuit which could be lodged throughout the EU and which would have an in-depth impact on the national level, unharmonized codes of legal procedures. The first thing is to ascertain how well the procedures, each of which evinces country-specific characteristics, do their jobs. Any deficiencies manifesting themselves can then be remedied at the national level. These characteristics are the product of national legal codes and cultures, histories and politics, and social and economic conditions, and take into account the efficaciousness of market supervision and public sector administrative systems prevailing in the countries in question. As it would apply to civil law procedures, an area which has yet to be subjected to harmonization, the introduction of class action suits on the EU-wide level would give rise to the peril of far-reaching inconsistencies of practice manifesting



themselves in the areas of the capabilities to sue and exposure to being sued, of indemnification for damages, of statutory limitations, and of defraying of costs. Also, it should be determined whether this subject lies within the scope of responsibility entrusted to the EU.

The Commission should therefore concentrate its efforts upon the fostering of the use by consumers of out-of-court conflict resolution mechanisms, for three key reasons: As compared to normal court proceedings, these mechanisms operate and decide quicker and result in lower costs.

3. US-like conditions have to be avoided

a) Collective lawsuits are not to be used as weapons of extortion

As America's decades of painful experiences with them amply detail, class actions are not primarily lodged to protect consumer interests, but rather to serve the strategic or pecuniary interests of the attorneys lodging them and of other stakeholders. The pursuit of these often turns the actions into instruments of extortion, as the following cases reveal. An American purchased a BMW whose paintjob featured a blemish causing a loss in value of \$4000. A lawsuit led to the awarding of punitive damages of \$4 million. A collective lawsuit lodged against a telephone company led to each of its customers receiving a certificate of indemnification worth \$5 – and to their lawyers earning \$18 million. Stanford Law School's "Securities Class Actions Settlements, 2006 Review and Analysis" found that some 35% of the companies involved in class actions went bankrupt, with all of the attendant losses of jobs for their employees – who are also, of course, consumers.

b) Misuses have to be avoided

With the above in mind, it is imperative that procedures governing civil lawsuits be capable of precluding such misuses – among them, importantly, the awarding of excessive compensation for damages experienced. To be rejected is the ability to levy punitive damages along the lines of those authorized by America's legal codes and based on the appropriation of corporate profits. Such a practice would be in conflict with Europe's legal tradition and with the verdicts issued by Germany's Supreme Court and by the European Court of Justice. These have awarded compensation based on the extent of the damage incurred, and have relied upon criminal codes to punish companies for any misdeeds committed.



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Another essential provision would be the establishment of a minimum number of plaintiffs (or of one of them being a consumer protection association) as being a requisite for the lodging of a class action. The establishment of this requisite is not intended to release each party involved in a legal dispute from his or her responsibility for striving to assert his or her legal rights. Therefore, a class action is only to be authorized in those cases in which it is required to maintain the interests of consumer protection as such, and in which this maintenance cannot be guaranteed by the individually-lodged lawsuits. These, in turn, have the advantage of giving rise to court cases which are easier to pursue than those in which the interests of a large number of potential claimants have to be respected.

In cases in which third parties (consumer associations) have been authorized to lodge lawsuits, these parties are to have been accorded certification (which could take the form of official approval) and should have the capacity to act solely in the interest of consumers.

To minimize the danger of unjustified class actions, the adherence to the “loser pays rule” has to be maintained. The problem of making sure that companies are defrayed for the costs arising from unsuccessful class actions lodged against them can be solved by the requiring of the paying of a deposit on court costs, or a similar prepayment.

Those whose assertions of claims are based on facts have to be able to prove them. This precept is widely observed in European jurisprudence, and has to be maintained. It, however, does not exclude claims based on reversals of burdens of proof, as, for instance, those situations in which consumers are faced with assessing defendants’ internal operating procedures. The precept does preclude the “discovery” procedures so popular in the USA. In these, rumours and vague accusations suffice to get court cases tabled. These are then used to compile the proof – with this often occurring through the authorization of the examination of corporate documents – during the case.

Also to be precluded is “forum shopping”, in which potential plaintiffs are entitled to select courts of jurisdiction on the basis of their offering the potential advantages of adhering to a legal code favourable to the plaintiffs. To accomplish this, regulations completely precluding clashes of jurisdiction and clearly assigning judicial responsibility have to be enacted to properly deal with cases of transnational scope – ones involving plaintiffs from more than one country. Applying to both contractual and non-contractual obligations, the EU’s ROME I and ROME II regulations, by way of an example, do not cover those obligations entered into prior to the conclusion of a contract, or those arising from tradable securities.



4. MFICI opposes proposals for the introduction of consumer protection-related class actions. An alternative measure could, however, be the entitlement of „group representatives“ from other EU member states to be party to national-level collective instruments designed to protect legal rights. Should such be requisite, a second step could be the authorization of model lawsuits.

Class actions cannot be permitted to lead to damage claims being accepted for amounts and parties whose exact numbers cannot be determined. This would contravene Europe’s legal tradition of providing indemnification of an amount defraying a party for the damages incurred – but nothing more than that. Cases in which this amount is not determinable give rise to the great danger of damages being awarded which go far beyond the dictates of the matter at hand, as is often the case in the USA.

Class actions are also not to lead to the not taking into account of the plaintiff’s individual entitlements to file suit (causality) and of the individual defences and objections advanced by the party being sued (statutory limitations, co-culpability, offsetting claims).

A first and easy-to-implement step could be the entitlement of representatives of groups (with these especially being officially-recognized consumer protection organizations) from other EU member states to be party to national-level collective instruments designed to protect legal rights.

Should this step not suffice, a second one could be undertaken. It would entail the authorization of model lawsuits lodged by a quantifiable number of plaintiffs, along the lines of Germany’s Capital Investor Test Case Act. In such cases, the court decides whether or not the grounds exist for the lodging of the claim. It does not determine the amount of indemnification due, with this to be done on a plaintiff-by-plaintiff basis. Only those consumers who had properly registered themselves in a dedicated list would be the beneficiaries of such an award (“opting in solution”), whose amounts would be the subjects of individual court cases.

5. A variety of initiatives are striving to get the use of collective lawsuits authorized for consumers in the areas of competition and consumer protection codes. These have to be coordinated with each other. It is only after a track record has been established in the area of competition that the introduction of model lawsuits could be considered in the area of consumer protection.



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The EU Commission is planning on introducing instruments permitting consumers to lodge collective lawsuits on issues of competition and consumer rights. The Commission's formulations and considerations in the area of competition (White Book) seem to be far nearer completion than those in the consumer protection area. The results of these processes will require melding.

The expansion of the use of collective lawsuits in the competition area would yield findings which could form the basis of a similar move in the consumer rights area. A first step would be to see whether such a legal instrument is actually needed in the area, as a contravention of consumer protection regulations is also often a breach of competition ones. By way of example: the incorporation of invalid stipulations in a company's general terms and conditions or in specific contract clauses is a contravention of both consumer rights and of competition regulations.

For these reasons, the introduction of instruments enabling consumers to lodge collective lawsuits in competition matters could well obviate such moves in the consumer rights area.

IV. Initiatives launched by the Commission to augment customer mobility in relation to bank accounts

1. Activities undertaken by the EU Commission

In its Green Paper on Retail Financial Services in the Single Market of April 30, 2007, the EU Commission issued the evaluation that such a market does not yet exist, with this especially holding true in the consumer area. The creation of such a market has accordingly been established as one of the primary objectives of Europe's economic policies.

The final report submitted on June 5, 2007 by a group of experts convened by the Commission to come up with ways of easing and expediting customers' transferring of accounts between banks detailed the four main obstacles hampering such transfers:

- a lack of equitability between the information possessed by consumers and by banks, and a lack of transparency as regarding charges
- administrative expenditures
- product tie-ins
- account closing fees



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Complementing the above, the working paper entitled “A single European market for the 21st century” issued on November 20, 2007, and furnished by the Commission to the European Parliament, the European Council, the European Economic and Social Committee, and the Committee of the Regions challenged Europe’s banking industry to voluntarily come up with guidelines easing and expediting the transferring of accounts between banks. A failure to produce such a self-commitment would cause a law to be enacted.

2. MFCI’s position

Consumers generally maintain their accounts at domestic banks. MFCI does not see this situation as being liable to undergo major changes in the years to come. As is the case in other areas of financial services, MFCI’s members are in favour of fostering transnational competition in the retail banking sector. Achieving this requires all players observing fair and easy-to-implement rules. This also applies to the conditions governing the switching of banks.

a) Required is an approach taking into account differences and divergences

The EU Commission’s Directorate General for Internal Markets and Services emphasized in both its internal market report and in a meeting with representatives of Europe’s banking industry in January 2008 that its preference would be a self-commitment of the banking industry –rather than legislative measures.

MFCI sees the need for an approach taking differences and dissimilarities into account. Europe will never quite achieve its objective of creating a fully harmonized internal market for financial services. The same holds true for the solving of the problems facing individual member states on the EU-wide level. National and regional characteristics will continue to shape, in particular, the retail market. The consequence of this fact is that regulations have to be promulgated giving the Union’s banks and consumers the beneficial freedom to act in ways taking into account the diversity of payment-related patterns of behaviour existing in the EU’s member states.

MFCI expressly welcomes the position taken by the EU Commission of giving Europe’s banking industry the opportunity to formulate its self-commitment, as this will ensure the creation of an instrument capable of giving banks the flexibility, speed and efficiency required to take into proper account history-derived and national-level changes and characteristics, and of precluding a systematic and forcible rearranging of these markets’ structures. The formulation of a self-commitment is thus to be preferred to the process of creating a completely new piece of legislation.



When facilitating such a formulation, the EU Commission has to take two important factors into account in our view. The objective of this process should not be the formulation of a highly-detailed self-commitment of applicability to all of the EU. Such a code of regulation would not yield any benefits to bank customers. Europe's national-level banking industries would also have a hard time identifying with the code. Rather, the objective of this process has to be a self-commitment which represents a country-by-country compromise between the needs of consumer protection and the banks' interests.

With this in mind, MFCI recommends the promulgation of fundamental guidelines applicable to the EU as a whole. If required, these could be complemented by detailed, national-level self-commitments. This approach would ensure flexibility and would observe the principle of subsidiarity.

The formulation of this self-commitment is going to take a relatively long period of time. To properly calculate and allow for this, the EU Commission should use as a yardstick the time required to formulate and promulgate directives. In its Single European Market Paper of November 2007, the EU Commission voiced its expectation that the formulation of the self-commitment was to have been completed by June 2008. This timetable is not realistic. The conceiving of an EU directive and the ensuing procession of regulation are always allocated a year to a year and a half – the same amount of time has to be accorded to the promulgation of fundamental principles and guidelines.

b) Tenets informing the formulation of a self-commitment

There are three aspects to be considered by policy-makers when looking at customer mobility in relation to bank accounts:

- The conditions under which customers switch banks
- The portability of account numbers
- Giro accounts for all



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MFCI's position is that national-level banking communities should enter into self-commitments containing guidelines facilitating the no-delay switching of banks and orienting themselves on European guidelines. These should evince the following concepts:

- Each bank is obliged to accept the customer's ending of a banking relationship within the period established in the contract between customer and bank.
- Should he or she so wish, the customer is to be informed by the bank as to how this relationship is to be ended, free of charge.
- Once such an order has been placed by the customer, the positive balance in his or her account is to be transferred to his or her new one.
- A fee specifically levied for the closing of his or her account is not to be charged.
- Legal considerations preclude the automatic relaying of funds paid into the cancelled account via bank transfers to the new one. Required is the placing of such an order by the customer.
- The efficacy of offers of tie-in products is to be determined by the forces of supply and demand.
- MFCI opposes the portability of account numbers (on a transnational scale), as the related implementation – largely comprised of an adaptation of IT – would require a disproportionately large expenditure of time and money. This adaptation would take the form of a reconciliation and recalibration of all dedicated software in use at banks. Management consultant BearingPoint's December 2007 study on this subject estimates the costs arising from this adaptation to be some €14.7 billion – or €10,800 per EU citizen intent on switching banks. This magnitude of costs makes unjustifiable the undertaking of changes for the sole purpose of satisfying the interests of the very small number of customers switching banks on the transnational scale.
- The stipulations on preventing money laundering (as contained in the Third Money Laundering Directive) are being adhered to by Europe's banks – albeit at the cost of the ensuing hampering of the pursuit of transnational transactions.

“Giro accounts for all” is not directly related to the availing of transnational banking services, and is thus dealt with in the regulations enacted on the national level. Self-commitments or even legal stipulations at European level are therefore to be rejected.



V. Call for evidence – consultations on substitute retail investment products

The survey conducted by the EU Commission of stakeholders was designed to find out whether or not the diversity of EU regulations on product information and on the distribution of investment products designed for small-scale investors seriously endangers investor protection. This consultation was concluded at the end of January 2008.

Leading stakeholders will be given the opportunity to discuss the subjects manifesting themselves in the consultation process at a hearing to be held on July 15, 2008 in Brussels. The Commission will issue a bulletin in autumn 2008 detailing whether or not proof of an investor-detrimental situation has been provided, and thus whether or not further steps need to be taken.

MFCI does not see the need to undertake measures designed to further beef up investor protection. This especially holds true for the enactment of a legal instrument of horizontal application. The regulations in force on the EU and national levels constitute a framework providing an adequate level of protection to investor interests. The regulations evince another advantage: they are configured to serve the needs innate to the various kinds of products.

The products encompassed in the survey (including investment funds, structured debt instruments, and funds-based life insurance) do not show an adequate level of comparability. Some of these products are designed to be objects of investment by consumers pursuing short-term objectives. Others, including pension and funds-based life insurance, serve the long-term goal of providing for old age. A legal instrument applying to all kinds of products would not be able to deal with their specific needs.

Also to be taken into account is the fact that such consumer protection-serving legal instruments as MiFID and the broker directive were recently promulgated, and thus should be given the opportunity to prove their mettle. It is only after that has taken place that it might be time to start considering their beefing up.



VI. Uniform European contract law

As stated in the past, MFCI welcomes and supports efforts to create the fundamentals necessary to produce a contract law applicable to all of Europe, as it could impart great impetus to the continent-wide trading in goods and services. A prime beneficiary of the replacement of national-level codes, each a source of uncertainties for foreign contractual parties, by a continent-wide law would be the continent's small and medium-sized enterprises.

The view held by the European Council of Ministers of Justice and of the Interior and, obviously, by the Commission itself is that the "Common Framework of Reference" is to serve solely as a kind of "toolbox". It is to be deployed in the scrutinizing of the consumer acquis and in the formulating of regulations on contract law. Notwithstanding this, MFCI emphasizes that it remains highly important not to lose sight of the long-term objective of creating a single contract law for Europe. The Common Framework can serve as an important steppingstone to this objective.

The above serves as a preface for the following points, which MFCI believes should guide the further proceedings:

1. The principles of contractual freedom have to be retained

The principles of contractual freedom have to remain the foundation upon which a contract law of European-wide applicability is to be formulated. The balance between the interests of companies and of consumers has to be maintained. For European legislators it will be a major challenge to master the reconciliation of these interests. This challenge arises in the distinguishing between individual agreements and general terms and conditions of business. The definition of general terms and conditions of business and the extent of court control are therefore of particular importance.

2. Uniform formulation of the fundamentals of contract law

To ensure that the process is comprehensible, the first step to be undertaken is a cogent and binding definition of the fundamental terms of contract law (with these including conclusion of contracts, listing of rights and duties, and of penalties for non-compliance).



3. Uniform case law

Uniform European contract law will be capable of creating a single unified market and of facilitating and expediting cross-border trade only if national courts uniformly apply it. It should therefore be considered whether this responsibility requires the establishment of a new judicial authority within the European Court of Justice, or whether it is sufficient to provide a reliable, generally accessible database (including, whenever possible, any required translations).

VII. Integration of Europe's mortgage loans markets

1. Easing the offering of loans and the procurement of refinancing on a transnational basis

The last few years' studies have shown that supply and not demand is the force driving the transnational provision of mortgages. Suppliers of mortgages have been the ones taking the first step of crossing borders to look for new business. A range of hindrances is hampering such efforts. These in turn could impair the suppliers' attaining of adequately high rates of return:

- lack of channels of distribution
- lack of contact with potential customers
- more stringent examinations of creditworthiness
- large-sized processing costs arising from adaptations to local market conditions
- dealings in and with new and unknown markets and property-deriving risks
- divergent codes of encumbrances on real property
- low interest rates

Overcoming these difficulties requires the deployment of a business model which is capable of producing a volume of transnational business capable of making feasible the defraying of such expenditures. The model chosen by banks and insurers acting on a global scale is the founding of subsidiaries charged with entering national-level markets. Such global players do not, however, truly act on transnational scale. Rather, their subsidiaries serve as local players competing for business in their national markets by supplying the products customary to and authorized for them.



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Another point to be considered is the fact that neither non-German suppliers of mortgages operating in Germany nor German suppliers active in other EU member states experience restrictions either in the provision of such loans or in the founding of subsidiaries or in the setting up of offices. Such restrictions apply only to non-deposit taking institutions not holding banking licenses. These are not permitted to offer mortgages in Germany, in accordance with Germany's laws of banking supervision. This restriction is justified by the protection of consumer interests, of fair trading precepts and of the health of the banking sector itself. Some 60% of the subprime loans issued in the USA were made by institutions not holding such licenses.

We view the only realistic ways of integrating national markets as being the creation of liquid secondary markets for mortgages and the extension of the base of refinancing by the creation of refinancing instruments. The investing in portfolios of out-of-home-country mortgages enables the diversification of risk exposure and the optimisation of refinancing. The employment of negotiable mortgage claims, ones easing the transferability of claims secured by encumbrances on real property, would greatly promote the creation of a liquid secondary market.

The development of a refinancing strategy of EU-wide applicability would greatly increase cost-efficiency. Mortgage bonds have long made real estate usable as collateral everywhere in the European Union. The utilization of mortgage-backed securities gives rise, however, to complex legal and tax problems. These arise from the founding of SPVs and the assembling of portfolios comprised of transnational mortgages, and are primarily caused by the dissimilarities existing among national-level transfer of claims and tax laws. This, in turn, implies that these problems are not within the province of the listing of measures contained in the White Book. Whether or not progress will be achieved in this area will be determined by the alterations currently being considered by Europe's banking supervision authorities and by other policy-makers in the regulations applied to the markets in securitized assets. These alterations are to provide ways of palliating the subprime crisis, and of preventing its reoccurrence.

We now wish to present several points which we believe have to be considered when pursuing the integration of Europe's markets for mortgages:



2. Information required to be provided to consumers

The code laid down in the European Standardized Information Sheet (ESIS) ensures that Europe's customers receive information which is easy-to-understand, correct, complete and thus useful in the making of comparisons. Should customers so need, they are provided with consulting services complementing the information provided in product descriptions.

The adding of such items as a general warning, information on currency and capital procurement loans (equity release), and an adaptation to the latest market trends could lead to the code's remaining a viable alternative to a regulation. MFCI espouses the widely-held view that the provision of information to consumers prior to their entering into agreements is highly important. The main medium of this dispensing is to be the European Standardized Information Sheet, which is of EU-wide applicability. This sheet is derived from a code of conduct, and has been adopted in Germany – in contrast to several other EU member states.

3. Repayment prior to term

Borrowers in Germany have the choice of loans with preset terms and without the right of repayment prior to term, and of those which can be repaid at any time. The former have relatively attractive interest rates and conditions, with these being the product of the interest rate-advantageous refinancing provided by mortgage bonds.

Fixed-interest forms of financing are highly consumer-friendly, in that they offer them security of planning. Their long-term rates of interest protect consumers from interest rate hikes. The vital importance of such protection has been revealed by the subprime crisis. It is for these reasons that this security and calculability of interest payment and principal repayment are so prized by German borrowers.

Studies have detailed that the average margin in Germany for banks and insurers providing mortgages is down to 35 basis points. This extremely low margin is primarily attributable to the absence of pre-term repayment-necessitated premiums having to be factored into the calculation of interest rates to be levied.



4. Creation of a Euro-mortgage

The creation of a non-accessory Euro-mortgage would greatly further the integration of a single European market for mortgages. The Euro-mortgage would greatly extend the range of opportunities available to potential borrowers looking to secure mortgages from banks not based in their home countries. Euro-mortgages would also have the same effect on banks looking for new sources of refinancing.

5. No licensing of non-banks

MFCI is opposed to the licensing of non-deposit taking institutions for the provision of mortgages, as they, unlike banks, are not required to adhere to strict capital adequacy and supervisory-imposed regulations. This provides the non-banks with unfair advantages vis-à-vis other kinds of competitors. This lack of such adherence has proven to be to the detriment of financial markets as a whole. Some 60% of the subprime credits dispensed in the USA stemmed from institutions not holding banking licenses.

6. Single set of valuation standards

A harmonization of standards of valuations should be striven for, as it would increase the accountability and comparability of expert valuations. This, in turn, would be a driver of integration. This harmonization has, however, to be at a high level and has to feature easy-to-understand criteria.

We consider the maintenance of a high standard of valuation to be an indispensable component of the retention of value of the mortgage bonds issued to refinance mortgages. The weakening of these criteria would cause rises in the interest rates borne by mortgage bonds and thus of those borne by the mortgages being refinanced by them.