

European Community action on housing finance

Richard Hirst describes the steps taken so far towards the goal
of a common market in housing finance

THE EUROPEAN Community has four institutions: the Commission, the Council of Ministers, the Assembly or European Parliament, and the European Court of Justice. As it is an entity *sui generis* in the international order of things, it is not easy to make illustrative comparisons with other institutions at national or international levels.

In general terms, the Commission originates proposals and is the guardian of the founding Treaty of Rome. The Council of Ministers, representing the collective national interests of the Member States, decides which of the Commission's proposals will become effective and can also initiate and approve proposals of its own. The European Parliament, unlike national parliaments, has no legislative power and is a purely advisory body with some constitutional checks at its disposal. The European Court of Justice adjudicates on disputes involving both individuals and Member States and develops Community law by precedent.

The internal market

The Community has a duty to establish four fundamental freedoms — of movement of goods, of movement of persons, of establishment and provision of services, and of capital. However, the Treaty of Rome makes no provision for a Community housing policy. The right of establishment and freedom to provide services (including financial services)



are guaranteed by Articles 52-66, and Articles 67-73 deal with the abolition of restrictions on capital movements.

Following a meeting of heads of government at Fontainebleau on 25-26 June, 1984, the Community reaffirmed the priority of constructing a true internal market in Europe. The concrete result was a detailed timetable for achieving this goal by 1992, *Completing the Internal Market*, a white paper produced by the Commission in June 1985, under the aegis of the British Commissioner and vice-president, Lord Cockfield.

Previously, efforts by the Community to liberalise finance of whatever kind had been limited. This was partly because financial institutions were, through the liquid nature of capital and despite governments' restric-

tions, able to develop international markets in response to their customers' needs — the Eurobond market being a prime example.

Housing finance

Housing finance, however, could not, by its nature, so easily lend itself to such developments. First, the security for housing loans is by definition fixed and immobile. Second, this means that, to avoid a currency risk, an institution lending across frontiers must ensure a match between the loan, the repayments and the value of the security. Third, the legal framework surrounding housing finance (for example, title, enforcement procedures, mortgage priorities, etc) is firmly rooted in the often very different national systems in the Community.

Nevertheless it was the specialist housing finance institutions themselves which felt that they should be afforded the opportunity of the wider Community market and should not be limited to their own national markets. Many of the specialist institutions were limited by their own specific national legislation, and considered themselves competitively disadvantaged in relation to the commercial banks which generally can, and sometimes do, undertake mortgage lending other than in their country of origin.

The initial major step taken by the Community was the First Directive on

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the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions of 12 December, 1977. This set out common guidelines relating to the supervision of credit institutions in the Community and introduced the principle of home country supervisory control in the case of institutions operating across frontiers. It was implemented in the United Kingdom by the Banking Act 1979 and specifically in the case of building societies by the Building Societies (Authorisation) Regulations 1981.

Although an important step, this was nevertheless a limited one. Many specialist housing finance institutions still faced obstacles both at home and abroad to operating in other Member States: these were analysed in studies carried out by the European Community Mortgage Federation and the European Federation of Building Societies in 1983. These bodies collectively, and their national members individually, began lobbying for a special directive for housing finance institutions.

'Background of financial deregulation'

Before 1979 the whole philosophy of Community legislation had been one of prior "harmonisation" of the relevant national laws and regulations. However, in that year the legislative emphasis was radically changed by a decision of the European Court of Justice, the so-called *Cassis de Dijon* judgment ([1979] ECR 649).

Although the facts of this case related to the free movement of goods in the Community, it laid down the principle that the import of a product could not be prohibited by a Member State unless by a measure

intended to protect a legitimate interest (for example consumer protection). This flexible principle of mutual recognition was seized upon by a Commission anxious to begin work on creating a true internal market.

On 4 February, 1985, the Commission submitted a proposal for a Council Directive on the freedom of establishment and the free supply of services in the field of mortgage credit which applied this principle in the field of housing finance. Very simply, the proposal prescribes that if a housing finance technique recognised in one Member State is exported into another Member State, then that Member State cannot prohibit this unless it is protecting a legitimate interest. And, under current case law, such legitimate interests are relatively narrowly defined.

According to the timetable laid down in the white paper of June 1985, this proposal for a directive should be adopted by 1988, and thereafter implemented in the national legislation of the Member States.

In this way the Community has laid down a blueprint as to how a common market in housing finance might be achieved. Will it be achieved in practice? The renewed impetus of the Community itself must be seen against the general background of deregulation of financial services occurring world-wide. It could be the case that market forces will dictate that specialist housing finance institutions should begin operations across frontiers without waiting for the Community proposals to be enacted.

The biggest single question mark remains the foreign demand for exported housing finance. In this context the British House of Lords Select Committee on the European Communities in its report *A Common Market for Mortgage Credit* (21 May, 1985) concluded:

"The initial stimulus to this proposal was the predicament of a

particular group of expatriates. There are no doubt many other groups in a similar position, who would take advantage of facilities made available under this directive. The Committee are less convinced that there are many citizens of a host Member State who will wish to make use of foreign mortgage credit institutions in preference to indigenous organisations."

'Momentum will not easily be dissipated'

However, as a counter to that argument, there are some major housing markets in the Community where the level of owner-occupation is relatively low, below 50% in the case of France and Federal Republic of Germany.

Perhaps the final word should be given to the House of Lords Select Committee who saw:

"Every reason in principle why Europe should enjoy a common market in mortgage credit as in all other financial services ... (The Committee) considers that, under appropriate supervision (specialist) institutions should be allowed to operate across the Community. If they can be competitive and provide an increased choice, the results both for consumers and for the British financial services industry can only be good."

It does seem, therefore, that the momentum which has been built up over the last 15 years for Community action in housing finance will not easily or readily be dissipated. ■

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