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Milano, 18 novembre 2008

Ai partecipanti al workshop

Oggetto: novità dall'assemblea generale di TEGoVA tenutasi a Bucharest il 14-15 novembre 2008

Gentili Signori,

prima di tutto Vi auguro che possiate trovare di Vostro interesse questo corso di formazione riguardante le analisi DCF ed il rating immobiliare che codesta associazione ha avuto l'onore di sponsorizzare ed accreditare in relazione alla formazione continua dei valutatori IsIVI.
Il tema trattato in questo corso di formazione è di centrale importanza nell'ambito delle valutazioni di carattere commerciale, specialmente in questo momento di mercato. Il rating immobiliare, in particolare, è utile oggi per dare finalmente quella trasparenza agli strumenti strutturati finanziari con beni immobili in garanzia, fra cui gli MBS e CMO, che era stata auspicata da codesta associazione in tempi non sospetti.
Anche a seguito delle battaglie che codesta associazione, così come tutte le associazioni aderenti a TEGoVA, hanno sostenuto a livello nazionale ed a livello Comunitario per una maggiore trasparenza e ripercorribilità dei rapporti di valutazione e per la necessaria indipendenza e professionalità del valutatore, la Comunità Europea sta per emettere una raccomandazione di fondamentale importanza per il settore creditizio dal titolo: **"on property valuation, foreclosure procedures and land registration in the area of Eu mortgage credit markets"** (di cui si allega una bozza).
In tale contesto, TEGoVA e le 23 associazioni nazionali ad essa aderenti si preparano ad assumere l'onere di essere punto di riferimento per il settore.

Si riportano di seguito per comodità gli articoli 1 e 2 della bozza di raccomandazione allegata:

"Article 1

Subject matter

This Recommendation concerns valuation of immovable property for mortgage lending purposes, foreclosure procedures in relation to residential mortgage loans and land registration.

Article 2

Ensuring reliable property valuation

1. Member States should promote the development and use within their territory of reliable property valuation standards for mortgage lending purposes either through binding legislation or self-regulation. In order to be considered reliable, valuation standards should comply at least with the International Valuation Standards developed by the International Valuation Standard Committee or the European Valuation Standards developed by the European Group of Valuers' Associations.

2. Member States should ensure that minimum professional qualifications for property valuers, such as those set by the European Group of Valuers' Associations, exist and are adhered to within their territory."

Proprio al fine di dare una risposta a quanto richiesto dalla Comunità Europea, TEGoVA ha riformulato gli EVS specialmente nella parte riguardante la qualifica del valutatore (si allega un estratto dei nuovi EVS, che saranno presentati all'inizio del 2009 in contemporanea con la nuova raccomandazione).

Lo Standard 3, paragrafo 4.1, definisce il concetto di Valutatore Qualificato così come, i paragrafi 4.4 e 4.5 definiscono rispettivamente quello di **Recognised European Valuer (REV)** e quello di **Minimum Educational Requirements (MER)** che le associazioni nazionali, fra cui IsIVI, devono determinare.

Vi è, inoltre, un obbligo specifico di formazione permanente per il valutatore nonché di adeguata copertura assicurativa, se richiesto dall'associazione nazionale, come nel caso di IsIVI che ha sempre richiesto questo elemento di garanzia per il cliente.

Insieme con la Borsa Immobiliare, codesta associazione farà in modo che i propri soci siano pronti a rispondere a quanto il mercato richiede ed alle specifiche istanze della Comunità Europea nei confronti di tutti gli Stati membri.

Un cordiale saluto.

Dott. Ing. Enrico Campagnoli

Presidente

Istituto Italiano di Valutazione Immobiliare – IsIVI

All. csd

Allegato I

Bozza di raccomandazione della Commissione della Comunità Europea

"on property valuation, foreclosure procedures and land registration in the area of Eu mortgage credit markets"

In occasione del corso di formazione dal titolo :
"*Analisi discounted cash flow del Property and Market Rating*" - 18 e 28 novembre 2008
Sponsorizzato anche da IsIVI

EN

H3-2008-mort_credit_recommendation

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3.9.2008

Draft

COMMISSION RECOMMENDATION

of [...]

on property valuation, foreclosure procedures and land registration in the area of EU mortgage credit markets

EN

Draft

COMMISSION RECOMMENDATION

of [...]

on property valuation, foreclosure procedures and land registration in the area of EU mortgage credit markets

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 211 thereof,

Whereas:

(1) Completing the Single Market for financial services is an integral part of the Lisbon economic reform process; and essential for the EU's global competitiveness. However, despite significant progress in constructing a Single Market, retail financial services integration has not yet reached its potential. Competition in residential mortgage credit markets is insufficient, leaving EU consumers and mortgage lenders unable to take full advantage of the benefits of the Single Market.

(2) The Commission Communication on a Single Market for 21st Century Europe[1] underlines the benefits that the European economy could derive from a greater integration of retail financial services markets in general.

(3) The White Paper on the Integration of EU Mortgage Credit Markets[2] presents the Commission's policy orientations in the field of mortgage credit. It concludes that the Commission will adopt a Recommendation on property valuation, foreclosure procedures and land registers.

(4) In order to foster integration of EU residential mortgage credit markets, the Commission aims at facilitating the cross-border supply and funding of mortgage credit, increasing the diversity of products that meet consumers' needs, improving consumer confidence and facilitating customer mobility.

(5) It is important that mortgage lenders can rely on property valuation undertaken for mortgage lending purposes in a national and a cross-border context. This should have a positive impact on cross-border supply of mortgage credit and, indirectly, on product diversity.

(6) It is desirable to enhance the efficiency of foreclosure procedures for mortgage loans in order to reduce the risk to the mortgage lender's ability to recover the loan and to avoid higher financing costs for mortgage lenders on secondary markets. Streamlined foreclosure procedures would facilitate cross-border supply of mortgage credit and, indirectly, impact positively on product diversity, while lower costs for foreclosure procedures would benefit consumers directly.

(7) Foreclosure procedures have an important social dimension. Member States should therefore ensure that the measures introduced to lower the duration of foreclosure procedures are without prejudice to national rules aiming at protecting citizens' rights.

(8) It is important to facilitate access to land registers from within a Member State and on a cross-border basis. The development of online land registers would facilitate such access. Where they exist, such online registers should be encouraged to join services, which aim at interconnecting land registers and at making them interoperable through common formatting and content.

(9) A reduction in the duration and costs of land registration procedures would benefit both mortgage lenders and mortgage borrowers.

(10) Land registers do not always contain all the charges affecting a given property. Some charges are sometimes not reflected in the register, in particular for social, fiscal or environmental reasons. This may affect the possibility for a mortgage lender to have a full and reliable picture of the value and the quality of his mortgage.

(11) In order to allow the Commission to monitor closely the situation and to assess the need for further measures, Member States should be invited to provide the Commission with any relevant information on the measures they will take to comply with this Recommendation.

HEREBY RECOMMENDS:

Article 1
Subject matter

This Recommendation concerns valuation of immovable property for mortgage lending purposes, foreclosure procedures and land registration in relation to residential mortgage loans.

Article 2
Ensuring reliable property valuation

1. Member States should promote the development and use within their territory of reliable property valuation standards for mortgage lending purposes either through binding legislation or self-regulation. In order to be considered reliable, valuation standards should comply at least with the International Valuation Standards developed by the International Valuation Standard Committee or the European Valuation Standards developed by the European Group of Valuers' Associations.

2. Member States should ensure that minimum professional qualifications for property valuers, such as those set by the European Group of Valuers' Associations, exist and are adhered to within their territory.

[1] COM(2007) 724, 20.11.2007 and SEC(2007) 1520, 20.11.2007. See also COM(2005) 629, 5.12.2005; COM(2007) 33, 31.1.2007 and SEC(2007) 106, 31.1.2007; and COM(2007) 226, 30.4.2007.

[2] COM(2007) 807, 18.12.2007

Article 3
Ensuring efficient foreclosure procedures

1. Member States should ensure that their foreclosure procedures are completed in the shortest time possible and, in any event, within 12 months calculated from the writ of execution to the completion of sale proceedings. Preliminary measures and the time taken to pay the proceeds should not be taken into account when measuring the foreclosure period.

2. Member States should ensure that their foreclosure procedures are completed at the lowest possible cost.

3. Member States should ensure that any measure taken to increase the efficiency of foreclosure procedures is without prejudice to national rules aiming at protecting citizens' human and social rights.

Article 4
Facilitating access to land registers

1. Member States should ensure that their land registers are available in an online version, in order to facilitate remote access for users.

2. Member States should encourage their national land registers to adhere to initiatives aiming at interconnecting national online land registers. The European Land Information Service (EULIS) is one such initiative.

Article 5
Ensuring efficient land registration procedures

1. Member States should ensure that their land registration procedures are completed in the shortest possible time and in any event within 21 days from the application for registration.

2. Member States should ensure that their land registration procedures are completed at the lowest possible cost and in any event at a maximum cost for the procedure of 1 % of the mortgaged amount.

Article 6
Encouraging more transparency and reliability into land registers

1. Member States should review the charges reflected in their land registers with a view to identifying whether there are some which do not appear when consulting land registers but affect property rights.

2. Member States should ensure that, as a rule, all charges on properties are reflected in the land register, unless there are imperative reasons to keep some charges out of land registers. In this case, Member States should ensure that information is available about the nature of such charges and, whenever possible, their amount.

Article 7
Final provision

1. Member States are invited to inform the Commission by 1 January 2012 of actions taken as follow-up to this Recommendation.

2. In order to enable the Commission to monitor improvements regarding the duration and cost of foreclosure and land registration procedures, Member States will be regularly invited to provide the Commission with appropriate data. The Commission will use the provided data to publish, on a regular basis, a "scoreboard" on the duration and cost of foreclosure and land registration procedures.

Article 7
Addressees

This Recommendation is addressed to the Member States.

Done at Brussels, [...]

For the Commission
[...]
Member of the Commission

Allegato II

Bozza dello Standard 3 dei nuovi EVS

"The Qualified Valuer"

In occasione del corso di formazione dal titolo :
"*Analisi discounted cash flow del Property and Market Rating*" - 18 e 28 novembre 2008
Sponsorizzato anche da IsIVI

EVS3 – THE QUALIFIED VALUER

Contents

1. **Introduction**
2. **Scope**
3. **General**
4. **The Qualified Valuer**
5. **Commentary**

1. Introduction

For a client to be able to rely on a valuation, it must be professionally prepared by a suitably skilled, competent, experienced and objective valuer.

2. Scope

The Standard considers who should take responsibility for a valuation, requiring that the Valuation Report be approved by a Qualified Valuer who bears responsibility for it.. All valuers contributing to a report must have sufficient expertise and work to professional standards and where considering valuation issues should meet the expectations of this standard.

EUROPEAN VALUATION STANDARD 3

Each valuation carried out in accordance with these Standards must be carried out by, or under the strict supervision of, a Qualified Valuer.

Valuers will at all times maintain the highest standards of honesty and integrity and conduct their activities in a manner not detrimental to their clients, the public, their profession, or their respective national professional valuation body.

All Qualified Valuers and their representative professional or technical organisations are required to adhere to the TEGoVA Professional Code of Conduct.

3. General

3.1 A valuation should be prepared by a qualified valuer and meet the requirements of a professional service. Such a person will commonly be an individual but on occasions and in some countries a valuation may be made by a company with a legal personality in which case the relevant work should be undertaken by suitably qualified individuals retained by that company.

3.2 The valuer must be able to show professional skill, knowledge and competence appropriate to the type and scale of valuation and must disclose any factor which could compromise an objective assessment.

3.3 The terms and conditions for the valuer's instruction should be agreed before undertaking the valuation and then set out clearly in writing before the valuation is reported (see EVS4 for further guidance).

3.4 Valuations which are to be in the public domain or which will be relied on by third parties are frequently subject to statute or regulation. There are often specific requirements that a valuer must meet in order to be deemed suitable to provide a truly objective and independent view. However, there are no specific criteria for most valuations, and the onus is on valuers to ensure that they are aware of potential conflicts of interest.

4. The Qualified Valuer

4.1 Definition - A **Qualified Valuer (including valuers working for valuation companies)** who is responsible for preparing and supervising valuations, bearing liability for them as included in financial statements and for other authorised purposes, shall be a person of good reputation, who can demonstrate:

(i) either:
  - a university degree, post graduate diploma; or other certificate relevant to asset valuation; and having at least two years' professional experience in property valuation and having maintained and enhanced his professional knowledge through a relevant programme of continuing education; or
  - long term relevant experience; or
  - having undertaken at least twenty written valuations within the last two years; or otherwise satisfied the requirements of TEGoVA's Recognised European Valuer Scheme (see the TEGoVA website).

(ii) sufficient local knowledge and experience in valuing real property in the location and category of the subject property or, having disclosed the insufficiency to the client, before accepting the assignment, having obtained assistance from competent and knowledgeable person(s);

(iii) where required by national legislation or regulations, any required licence to practice as a valuer or membership of a professional association;

(iv) compliance with all legal, regulatory, ethical and contractual requirements related to the assignment;

(v) compliance with the regulations and professional practice code of the TEGoVA member organisation to which the valuer belongs which are to meet the minimum standards recommended by the TEGoVA code of professional ethics and conduct (see the TEGoVA website) save where this would be in conflict with national or EU law; and

(vi) where such cover is commercially available and required by the Member Association, maintenance of professional indemnity insurance appropriate to the valuation work undertaken.

4.2 European Definition of an Asset Valuer for State Aid Rules

4.2.1 The 1997 Commission rules provide a definition of an "asset valuer" for the purposes of valuations undertaken for those rules (*Commission Communication on State* *aid elements in sales of land and buildings by public authorities (OJ C 209, 10/07/1997, p0003-0005 – 31997Y0710* and extended to EFTA countries by *EFTA Surveillance Authority Decision No 275/99/COL of 17 November 1999 introducing guidelines on State aid elements in sales of land and buildings by public authorities and amending for the 20th time the Procedural and Substantive Rules in the field of State aid.)*

4.2.2 Under these 1997 Rules, that valuer is to be

"a person of good repute who:

- has obtained an appropriate degree at a recognized centre of learning or an equivalent academic qualification,
- has suitable experience and is competent in valuing land and buildings in the location and of the category of the asset."

In the absence of the Member State having appropriate established academic qualifications, the asset valuer should be

"a member of a recognized professional body concerned with the valuation of land and buildings and either:

- be appointed by the courts or an authority of equivalent status,
- have as a minimum a recognized certificate of secondary education and sufficient level of training with at least three years post-qualification practical experience in, and with knowledge of, valuing land and buildings in that particular locality.

The valuer should be independent in the carrying out of his tasks, i.e. public authorities should not be entitled to issue orders as regards the results of the valuation. State valuation offices and public officers or employees are to be regarded as independent provided that undue influence on their findings is effectively excluded."

State Aid Communication II.2.(a)

4.3 National Legislation - Several European states have specific certification systems to qualify valuers under national legislation or regulation.

4.4 Recognised European Valuer (REV) - TEGoVA has developed the Recognised European Valuer (REV) scheme so that individual valuers can, through their professional associations, have an enhanced status, over and above TEGoVA's Minimum Educational Requirements, to assure clients, especially from other countries, of their valuation expertise. The requirements for REV are set out on the TEGoVA website.

4.5 TEGoVA's Minimum Educational Requirements (MER)
As part of its education strategy supporting standards of professional competence, TEGoVA requires its Member Associations to set Minimum Educational Requirements (MER) for their qualified members so that they apply to every valuer elected to practice after 1 January 2003. The TEGoVA requirements are set out in detail on the TEGoVA website. Many member associations demand more stringent qualifications.

4.6 Continuing Professional Development - The qualified valuer should maintain that expertise by remaining abreast of all relevant developments, whether legislative,

technical or otherwise, affecting instructions to be undertaken so that he continues to have the commercial and professional expertise for the construction and provision of valuations.

5. Commentary

5.1 General - Valuers must ensure that they meet the requirements of the instruction with professional standards of knowledge, competence and independence. It therefore follows that a valuer who is asked to undertake an assignment must make initial enquiries of the client as to the nature of the instruction and purpose of the valuation. The valuer must be able to meet both the requirements of the client and the rules, legislation and codes of conduct relevant to the task.

5.2 Conflicts of Interest

5.2.1 The requirements of the valuer in terms of professional objectivity mean that he must be aware of anything that could be perceived as a conflict of interest. In his initial inquiries he should ask the client to identify any other interested or connected parties so as to establish whether there is a possible conflict of interest for the valuer, the valuer's partners, co-directors or close family.

5.2.2 If such a conflict exists, then this should be disclosed in writing to the client who may then choose whether or not to confirm the appointment, subject to a clear statement of the circumstances in any Certificate or Report that is produced by the valuer.

5.2.3 There may be circumstances where the valuer, despite the client's wishes, will still decline to accept the instructions.

5.3 Independence of the Valuer

5.3.1 While the valuer must always be objective and professional in his appraisal and assessment of value, in many cases it will be necessary and professional for the valuer (and where appropriate any valuation company) to show that he is independent of any party interested in the outcome of the valuation. Any such connection, other potential conflict of interest or other threat to the valuer's independence and objectivity should be disclosed in writing to the client and recorded in the valuation report.

5.3.2 Where joint valuers are appointed they are subject to the same requirements individually and severally as regards independence and objectivity, as set out above.

5.3.3 There are various circumstances where the relationship with the client or another party makes it imperative that the valuer is, and is seen to be, not only competent to act, but also independent, and without any undisclosed potential conflicts of interest which are actual or possible and which could be foreseen at the time that the instructions are accepted.

5.3.4 Where a country has national rules on objectivity and independence, they must also be complied with and referred to in the Report.

5.3.5 EU Definitions - Directive 2006/48/EC, in considering the monitoring of the values of property used as collateral for credit institutions, defines an "independent valuer" at Annexe VIII, Part 2, 1.4, paragraph 8(b) .as:

> "a person who possesses the necessary qualifications, ability and experience to execute a valuation and who is independent from the credit decision process."

5.3.6 The 1997 State Aid rules provide that "The valuer should be independent in the carrying out of his tasks" (for the full text see 4.2.2 above).

5.4 The Valuer's Liability

5.4.1 The valuer has been instructed to undertake a professional task, advising as to the value of property, on which the client can expect to rely in taking decisions. Thus, the valuer's role is one that carries liability and any deficiency may result in loss to the client and legal action against the valuer.

5.4.2 According to the circumstances and the national legal system, that liability may arise where loss flows from a failure to apply skill and care, breach of the contract or otherwise.

5.4.3 The extent of that liability may be defined by the written instructions and the terms of engagement as well as the drafting of and qualifications in the valuation report.

5.4.4 The valuer may seek to limit his liability in the terms of his contract with the client. Unless it is clear that a third party needs to have access to the report (perhaps as where the property is to be used as security), its use could be limited to the client and liability to third parties expressly excluded.

5.4.5 However, in a number of countries there are strict limits, statutory or otherwise, to the limitation of liability and, before attempting to draft clauses which are intended to do this, valuers are advised to take legal advice as to the likely effect of the limiting clauses.

5.4.6 As a professional, the valuer's fundamental duty is to his client. Any limitations on his liability should not be at the expense of the professionalism of the valuation.

5.4.7 The valuer should undertake tasks within his competence and fulfil them professionally within his instructions, appraising the property and seeking out all relevant evidence before determining the value, maintaining sound records while doing so, and reporting in a professional way.

5.4.8 Recognise Limits on Expertise - The valuer should not accept instructions outside his expertise. In some more complex cases, the valuer may, on occasion, lack specific necessary specialist expertise for the proper completion of the assignment – this might, for example, concern geology, environmental issues, minerals, accountancy or a legal point. In these circumstances, the valuer must advise the client and seek specialist professional assistance to complete the assignment. To avoid confusion as to

responsibilities and potential issues of contractual liability, valuers are advised that the client should, wherever possible, instruct the expert directly, rather than the valuer instructing the expert.

5.4.9 Professional Indemnity Insurance – As the level of liability for the valuer that could arise out of valuation (together with any costs of associated legal action or interest accruing over the period of a dispute) may often be greater than the valuer can afford personally, professional indemnity insurance is available in many countries. Recognising that such cover is an assurance to the client, many professional associations make the maintenance of appropriate cover a condition of qualified membership. However, it is not universally available.