



2008 Annual Report

1. INTERNAL AFFAIRS

Presidency

On 15 May, John Frederiksen, Chairman of the Board of the Danish Property Federation, was elected President of EPF.

Managing Committee

Throughout the year, as previously, Liz Peace held the Chairmanship of the Managing Committee and Per-Åke Eriksson, the Vice-Chairmanship.

Daniel Loureda, CEO of Testa Inmuebles en Renta S.A. (Grupo Sacyr Vallehermoso) replaced Josep Núñez i Navarro as the Managing Committee member representing ASIPA, the Spanish Association of Rental Property Companies.

Membership

At the May Managing Committee meeting, the Statutes were amended to allow Academic Membership, specifically “any physical or legal persons (in particular any institution, public or private) which dispense teaching with a direct or indirect link to real estate” (Article 5.4). At the same meeting, the University of Maastricht and the Solvay Brussels School of Economics and Management were both admitted as EPF’s first Academic Members.

Update of assets represented by EPF members

Following a review, property assets owned and managed by the members of EPF’s member associations amounted at end 2008 to € 1.1 trillion, up from the previous € 800 million.

2. THE EU INTERNAL MARKET FOR PROPERTY

2.1. Campaign for an EU REIT

On 10 January, a delegation of ELO, EPF, RICS and TEGoVA met with Internal Market Commissioner Charlie McCreevy who said that he would be willing to meet again if the Coalition could produce a concrete plan for an EU legislative framework sensitive to the constraints on any Internal Market initiative with tax aspects. By end year, a plan by Coalition experts was near completion. It facilitated cross-border activity by REITs while leaving the status of REITs with purely national activity untouched.



Throughout the year, ELO, EPF, RICS and TEGoVA brought the EU REIT debate to the property industry and other interested parties through presentations at European and national property conferences and articles in the European and national property press.

2.2. EU Passport for Open Ended Real Estate Funds (OEREFs)

In March, the Expert Group set up by the European Commission (EPF representative: Eva Liljelblom, Professor and Head of the Department of Finance at the Swedish School of Economics and Business Administration of Helsinki) completed its work and published its report. This included core principles and essential regulatory chapters of an EU OEREF regime. This was followed by an open hearing in April.

In June, ELO, EPF, RICS and TEGoVA presented joint recommendations to the Commission. They supported and requested EU legislation enabling OEREFs to collect investment in host member states as easily as they can currently purchase property there, as they believed this would be a significant contribution to improving the Internal Market for Real Estate, providing, in particular, economies of scale and lower transaction costs. They considered that the 'Essential elements for a European regime for OEREFs' outlined in the Expert Group Report generally correspond to what is needed.

However, they cautioned that the future Commission Communication should project a more balanced view of the range of real estate investment vehicles, avoiding the impression given by the drafting of the Expert Group report that OEREFs merit priority intervention by the EU legislator because, supposedly, obstacles to their cross-border business are somehow greater than for other vehicles such as real estate investment trusts (REITs), or because OEREFs would be the superior, safer retail investment vehicle.

Finally, they pointed out in detail certain aspects that need to be carefully reviewed by the Commission, in particular valuation.

In August, the Commission feedback statement acknowledged these points. It also revealed that all respondents agreed that nothing less than hard legislation is necessary to overcome the significant regulatory differences which currently impede cross-border distribution, and that even without a harmonised tax regime, a harmonised regulatory regime would help to diminish tax discriminations (of foreign real estate funds or of domestic investors in foreign funds). All in line with EPF objectives and useful for its campaign for an EU REIT framework.

2.3. State Aid to Swedish Municipal Housing Companies

In the spring, the national committee appointed by the Swedish government to find a way of meeting the requirements set by the Commission on the basis of EPF's complaints submitted to the housing minister a report that actually accorded more than EPF had asked for because



new discriminations were still being discovered and the scale of the state aid was being shown to be even greater than EPF had thought at the time it submitted its complaints.

Work progressed along these lines throughout the year.

2.4. EU Guidelines on State Aid for Environmental Protection

The general Treaty rule forbids all state aid that distorts interstate competition. In April, the Commission issued guidelines setting forth the conditions under which it is prepared to soften that stance where the objective is environmental protection. This included target areas of specific interest to land and building owners:

- *Section 1.5.5. on “Aid for energy saving”* refers specifically to Directive 2006/32/EC on energy end-use efficiency and energy services and its obligation to member states to achieve 9% energy savings over nine years, a large part of which will fall to buildings in all of the obligatory member state action plans for achieving the target. The Guidelines indicate that State aid may be allowed in cases where the cost of energy saving is higher than the related private economic benefit, in particular in the case of small and medium-sized enterprises.
- *Section 1.5.6. on “Aid for renewable energy sources”* indicates that “State aid may be justified if the cost of production of renewable energy is higher than the cost of production based on less environmentally friendly sources”. EPF had concluded that state subsidy in this field would be very necessary (see 3.2. below)
- *Section 1.5.7. on “Aid for cogeneration and aid for district heating (DH)”* states that “provided that DH is shown to be less polluting and more energy efficient in the generation process and the distribution of the heat, but more costly than individual heating, State aid can be granted with a view to giving incentives to attain environmental targets”.
- Finally, *section 1.5.9. on “Aid for the remediation of [orphan] contaminated sites”* explains that “State aid may be justified if the cost of remediation is higher than the resulting increase in the value of the site”. That may be especially useful in the UK, where the Commission has traditionally been rough on state aid to brownfield developers. The guidelines on contaminated sites were particularly interesting in that the aid for the remediation may amount to up to 100% of the eligible costs (cost of remediation work less the increase in the value of the land).

One of the many caveats was that state aid is less likely to be tolerated in sectors with overcapacity (higher risk that the aid will sustain the overcapacity and maintain inefficient market structures). For real estate, that could be problematic in the current downturn.

Another caveat was that there be no mandatory EU standards. The reasoning was that since the company would have to comply with those standards in any event, the aid will not fulfil its



primary justification of resulting in a higher level of environmental protection than would occur without the aid. Fortunately, the property-focussed EU environment and energy efficiency rules do not contain specific standards.

2.5. Reduced Rates of VAT on Renovation and Repair of Housing

In May, EPF made representations to the Commission thanking them for their past efforts to extend the option of reduced rates to private housing, and not just social housing as is the case today, and urging them to do so again. EPF also asked the Commission to propose extending the reduced rate to VAT on rent as it had done in its 2003 Proposal (on the suggestion of EPF).

In particular, EPF highlighted the excellence of the Copenhagen Economics report for the Commission that had underlined that social housing companies often have normal income tenants, so reserving low VAT rates for social housing creates EU Internal Market distortions of competition because the foreign property investors/landlords are always from the private sector. Copenhagen Economics used exactly the same reasoning as EPF had in its complaints about state aid to Swedish municipal housing companies.

In July, the Commission issued its proposal for a directive amending the Sixth VAT Directive. It extended the low rate option to private housing. However, in an attempt to increase its chances of success in the Council of Ministers by keeping the list of low rate option services as small as possible, it did not propose a low rate on rent.

The Council of Ministers made no progress in 2008.

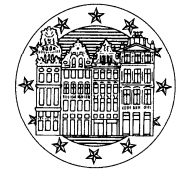
2.6. Integration of EU Mortgage Credit Markets

EPF had previously asked the Commission for an EU legislative initiative to open up a true European market for mortgage credit, and in 2007 a Commission White Paper had announced a package of initiatives.

In September 2008, the Commission met with EPF and other interested parties to discuss a draft Commission Recommendation on property valuation, foreclosure procedures and land registration in the area of EU mortgage credit markets. EPF considered this to be only a modest and partial step in the drive to open up cross-border mortgage lending, but was able to support the content of the draft Recommendation.

2.7. Lisbon Agenda and the EU Conveyancing (House and Land Sales) Services Market

The Lisbon Agenda is a process by which, without resorting to EU legislation, the Commission, Parliament and the member states all work together to set policies to make the EU the most competitive knowledge-based economy in the world. In 2008, for the first time, the Agenda focussed on real estate, specifically the EU conveyancing services market. A study



done for the Commission compared the different regimes regulating conveyancing in the EU and concluded that the traditional, highly regulated Latin notary system is by far the most expensive and provides the least good service and the lowest consumer protection. Member states under this regime will now be encouraged to consider appropriate reforms.

2.8. European Court of Justice Action to Free Up the EU Internal Market for Real Estate - Judgment of 16 October 2008 – R.H.H. Renneberg v Staatsecretaris van Financiën

In December, the EPF Secretariat reported in detail on this judgement protecting EU citizens against unfavourable tax treatment of income from real estate caused by exercising the right to free movement.

3. ENERGY AND ENVIRONMENT

3.1. Recast of the Energy Performance of Buildings Directive (EPBD)

In January, in a speech at an assembly at the Commission's Sustainable Energy Week gathering EU authorities, member states, environmental groups and industry bodies, Michael MacBrien expressed EPF's commitment to energy efficiency in buildings and to working with the Commission to improve the EPBD.

From January to June, ELO, EPF, RICS and TEGoVA worked closely with Commission officials in meetings at EPF drafting recommendations on the recast. In June, ELO, EPF, RICS and TEGoVA sent a joint position to the Commission recommending in particular:

Energy performance certificates (EPCs)

- harmonisation of EPC categories so as to enable cross-border investors and developers to compare the energy performance of the buildings in their pan-European portfolios and highlight the energy efficiency of their building stock in their international marketing strategies
- for completed properties, presentation of the EPC as soon as the property is put up for rent or sale, and not just before the sale or lease is concluded
- harmonisation of certifier training programmes and Commission action to ensure free movement of certifiers
- no compulsory cost-effective recommendations in the EPC
- no EU register of certificates



Energy performance renovation requirements

- extension of the Directive's requirements to all sizes of buildings and not just those over 1000m²

In November, the Commission issued a Proposal for a Directive. It corresponded to the recommendations of EPF and allies apart from not providing for harmonisation of EPC categories and not exempting unbuilt buildings from the requirement to produce a certificate. EPF spent the rest of the year preparing to work for the changes it needed in the European Parliament and the Council of Ministers.

3.2. Directive on Energy from Renewable Sources

In January, the Commission published a Proposal for a Directive requiring member states to set and require minimum levels of energy from renewable sources in new or refurbished buildings, any exemption from those minimum levels having to be transparent and based on criteria relating to the use of passive, low or zero energy buildings or local limitations in the availability of renewable energy resources.

EPF had no objection to this, the main concern being about the necessary government subsidy.

Work in Commission, Parliament and Council progressed quickly throughout the year.

3.3. Water Performance of Buildings Directive

From the beginning of the year, ELO, EPF, RICS and TEGoVA worked on joint recommendations to the Commission on a future Water Performance of Buildings Directive. They completed the work and transmitted it to the Commission in March, just before the Commission's first exploratory discussions with the member states. Recommendations included detailed recommendations on what the Directive should cover:

1. Individual water metering of buildings when connected to public water supply system
2. Methodology for calculating the water performance of buildings
3. Water performance requirements
4. Energy/Water performance certificate
5. Inspection of air conditioning systems
6. A requirement for member states to run information campaigns on the precious nature of water as a resource with Commission assistance along the lines of EPBD Article 12, but replacing "Member States *may*" by "Member states *shall*".



and on what it should not cover:

1. Management issues
2. Voluntary agreements with building managers
3. Certain kinds of buildings: temporary buildings, some forms of older domestic property, heritage buildings

EPF and allies also stressed the need to address leakage from public water systems, as that accounts for 60% of water wastage.

3.4. Integrated Environmental Performance of Buildings

Throughout the year, as previously, EPF participated as a Liaison Member in the Commission-mandated work of CEN (the European standards body) developing a common European methodology for evaluating the overall sustainability performance of buildings and construction, including their life-cycle costing. However, in October, a status report from EPF's Liaison Member showed that the CEN work had branched out from environmental performance to social and economic performance of the building as well, with confusing results in what was becoming a very long process.

EPF, while staying on the Technical Committee, decided to scale back its commitment.

3.5. Proposal for a Directive on Soil Protection

At the start of the year everything seemed to be heading for a swift conclusion. Concerning EPF's single issue – the question of who has to make the soil status report (EPF wanted this to be exclusively for the owner so as to avoid any possibility of a reporting obligation for a prospective buyer who is just taking a look and moving on) – the end result was that, in order to accommodate the UK and its 'buyer beware approach', the Directive would still allow member states to choose between owner and prospective buyer (although EPF received reassurances from the Commission that its position was well received in Council and that probably all member states except the UK would place the obligation on the owner).

However, after this, a blocking minority stopped Council from reaching a Common Position, bringing the whole legislative process to a halt. The hard core were Austria and Germany, with the view that the Directive did not respect subsidiarity and interfered with member state soil policy, and the UK who thought it would be too much expense for too little environmental benefit.

Nonetheless, in June, backed by 21 member states and a majority in Parliament, Environment Commissioner Dimas made clear the Commission would not withdraw the Proposal, but little progress was made during the rest of the year.



3.6. Bio-waste Management

In December, the Commission issued a Green Paper considering EU regulation of bio-waste management. One option was strengthening the supply of ‘clean’ bio-waste for composting and biogas facilities which “would require organising national, regional or local separate collection of (selected) bio-waste possibly accompanied by targets for measuring progress requiring new reporting and enforcement obligations for waste managers and authorities, and thus create additional costs and administrative burdens for enterprises and public administrations, which should be considered in balance with environmental benefits.”. Also, the Commission considered it “likely that inhabitants of areas covered by separate collection will have to change their waste separation habits; however, there are no data for assessing the societal cost of separate collection.”.

Property companies being often very involved in waste management, including bio-waste management, EPF began preparing to respond.