



## TEGoVA Counsels European Banking Authority on Mortgage Lending Value and Valuer Independence



In recent months the European Banking Authority has been drafting regulatory technical standards impacting the valuation profession covering Mortgage Lending Value (MLV) methodology in the context of implementation of the Capital Requirements Regulation and independence of valuers as part of implementation of the Bank Recovery and Resolution Directive. TEGoVA has issued a position paper on MLV and responded to a consultation paper on independence. The papers may be downloaded from [www.tegova.org](http://www.tegova.org).

### Mortgage Lending Value

Article 124(4)(a) of Regulation (EU) No 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms (Capital Requirements Regulation) requires the EBA to develop draft regulatory technical standards to specify: *"the rigorous criteria for the assessment of the mortgage lending value ..."* defined in Article 4(74) as follows: **'mortgage lending value' means the value of immovable property as determined by a prudent assessment of the future marketability of the property taking into account long-term sustainable aspects of the property, the normal and local market conditions, the current use and alternative appropriate uses of the property.**

This presents a unique opportunity of elevating the concept of MLV from an analytical tool to a respected "basis of value" positioned alongside Market Value in the valuation hierarchy.

**TEGoVA emphasised the need to provide for a sufficiently flexible approach in order to allow European MLV rules to be adapted to the diversity of national mortgage finance systems and real estate markets in EU Member States.** If the regulatory technical standards provide the

flexibility to take proper account of national and/or even local market conditions, uptake of the concept will be facilitated.

Whilst requiring that independent and competent valuers should follow a rigorously prescribed methodology, the regulatory framework should not extend to laying down minimum or maximum valuation adjustments or inputs. These should be left to the discretion of the competent valuer. This is because the appropriate valuation inputs and adjustments will inevitably vary from country to country, and even within a country as well as between and within different property sectors, and can only be properly and accurately derived by an experienced and properly trained valuer following an in-depth analysis of the local market.

**Whilst the Regulation may prescribe the recognised valuation approaches (comparative, income and cost) the choice of the approach that is most appropriate to each case should be left to the valuer.**

It will generally be a matter of the nature of the type of property, its market and the available evidence as to whether a comparative or income based approach is most apt (or, indeed, if both are used). With the diversity of possible properties and circumstances, the standards must provide the flexibility to allow that choice by the professional valuer

undertaking the work.

**In order to ensure professionalism and consistency at European level, any regulation on MLV should stipulate that property valuers must be qualified and independent, both in accordance with European Valuation Standards.**

### Valuer Independence

In response to the consultation on the independence of valuers, TEGoVA pointed out to the EBA that: **"Independence of the valuer must be ensured at every level of the bank resolution valuation chain including for valuations of real estate collateral, in which case the independence criteria must be adapted to real estate valuers."**

Though 'valuation' in the sense of the Directive does not encompass in the first instance real estate valuation, there will be situations in which the valuing auditor values the asset side of the balance sheet, i.e. the mortgage loan, and in order to determine the fair value of the loan, has to assess the value of the underlying collateral. This might occur in cases of high LTV mortgage loans where the value of the security has an impact on the value of the loan. It could also occur when the resolution authority imposes on the auditor to systematically value the underlying securities, e.g. in the case of a mortgage bank to be resolved. In such cases, if the bank auditor is not qualified to do the property valuation, he will outsource to qualified property valuers. Either way, it is important that the independence of the valuer be ensured for property valuers as well. Thus, auditors valuing property or property valuers brought into the process must be qualified in property valuation and independent in line with European Valuation Standards (the relevance of EVS for valuers' qualifications also stemming from its organic link to TEGoVA's Minimum Educational Requirements). ●

# European Mortgage Federation and TEGoVA Issue Joint Commercial Mortgage Valuation Specification

By John Hockey REV, Chairman of the European Valuation Standards Board



TEGoVA has joined forces with the European Mortgage Federation to launch a *Commercial Mortgage Valuation Specification* applying to valuations prepared in consideration of a new loan, a replacement loan or an additional

loan secured on commercial, (not residential) property. The specification is intended to satisfy lenders and their regulators as to what is required in a valuation report while at the same time satisfying the requirements of recognised valuation standards.

One of the benefits to the valuer is that explicit reference to the specification within terms of engagement will remove the requirement to include reference to most of the 'standard' assumptions normally found in a valuation report.

The valuation report is expected to be concise and reflect the extent of inspection and investigation undertaken. The specification recommends that the valuer should have regard to the EMF Profile of Risk Criteria for Valuations as part of the risk management process, though valuers are not expected to provide commentary or recommendations in respect of the mortgage term or the amount to be advanced; these decisions being solely the responsibility of the lender.

Valuers should ensure that the valuation report records the instructions for the assignment, the basis and purpose of the valuation and the results of the analysis, including, where appropriate, details of comparable evidence used in the approach to justify an opinion of value. The Valuation Report must provide a clear and unequivocal opinion as to value, as at the valuation date with sufficient detail to ensure all matters agreed with the client in the terms of engagement and all other key areas are reported.

The opinion of value reported must not be influenced by pressure brought by the client or a third party to produce a particular result in terms of the valuation or any other associated advice. Where a valuer has reported the existence of a conflict of interest

to the client and been instructed to proceed with the valuation, that conflict should be referenced in the report as well as in the terms of engagement. The valuation report must not be ambiguous, must not mislead the reader in any way nor create a false impression. The report should, as far as possible, avoid the use of technical terms that may not be understood by the client.

During consultations two specific matters were frequently raised, namely, that it was necessary to provide evidence within the report that sufficient investigation had been undertaken to justify the opinion of value reported, and secondly, that where there was any degree of uncertainty in the value set out, the valuer should include specific reference to that uncertainty in the report.

Reporting valuation certainty / uncertainty is explicitly referred to in the specification. Where the market for the property being valued is affected by uncertainty and this is relevant to the valuation, the valuer should comment on the reasons and degree of uncertainty within the report. Where the market for the specific type of property being valued is volatile or unstable, the valuer may state the period after which the valuation will be deemed to have expired.

Advice contained within TEGoVA Information Paper (IP3) – *Valuation Certainty and Market Risk – a Review* will assist. For example it recommends that a valuer should provide commentary that conveys some sense of the contemporary understanding of the state of the economic cycle or other economic trends bearing on the position of the property in the market.

In respect of the need to justify the opinion of value reported, the specification requires the valuer to explain the analytical processes undertaken in carrying out the valuation, and present the supporting information of all key areas covered.

Reaching agreement on the differing concerns of lenders, regulators and valuers across Europe has been challenging, yet rewarding. Hopefully it will encourage the banking industry to require its commercial lending valuations to be produced in accordance with this specification.

**For the valuer, the prospect of being**

## A Message from the Chairman of TEGoVA



Dear Colleagues,

Whilst wishing you all a happy and successful New Year, I would like to inform you of some of our new initiatives which will ensure that in its 38th year TEGoVA continues to be the Voice

of Property Valuation in Europe.

As you will have noted from the front cover, TEGoVA has just issued a position paper on Mortgage Lending Value. I predict that this will become the valuation hot topic of 2015 given the intention of the European Banking Authority to draft EU Regulatory Technical Standards setting out "*the rigorous criteria for the assessment of the mortgage lending value ...*" Let's just hope that the EBA takes a sensible approach by allowing qualified and experienced valuers to assess MLV as defined rather than turning us all into cooks having to perfect an old recipe.

Our European Valuation Standards Board is also busy drafting a new edition of European Valuation Standards to be launched in the Spring of 2016 and our newly established European Valuation Qualifications Board is looking at ways of improving TEGoVA's appeal to the residential property valuers. This is just a taster of what to expect in 2015.

Also, on 17th April TEGoVA Deutschland will be hosting a European Valuation Conference in Berlin. The programme of the conference, titled "**European Banking Union and an Emerging European Valuation Culture**" will be published soon but needless to say this will be a high level event with several top speakers from the world of banking. Thus an event not to be missed. I promise you an action packed year.

With best wishes  
Krzysztof Grzesik REV ●

**able to use the same template for different lenders must be a positive step forward and as lenders become familiar with the format of a valuation report produced in accordance with the specification, they will find it easier to understand the degree of risk associated with the proposed security.**

The EMF / TEGoVA *Commercial Mortgage Valuation Specification* is available to download at [www.tegova.org](http://www.tegova.org). ●

# European Valuation Qualifications Board Established

The phenomenal growth in the membership and activities of TEGoVA over the last few years has necessitated the establishment of

a European Valuation Qualifications Board (EVQB) with a remit to promote and oversee the development of the REV programme whilst keeping its provisions under constant review, to deal with appeals from any Awarding Member Association (AMA) against decisions of the Recognition Committee (the body which audits AMAs and inspects candidate AMAs), to engage with academia, to assist TEGoVA members in the provision of valuation courses and continuous professional development

and to investigate and address the demands of members for the development of valuer certification or qualification programmes in specialist areas or sectors.

The EVQB members are Roger Messenger REV (IRRV) – Chairman, Bernhard Bischoff REV (BVS), Alberto Cabrera Guardiola REV (AEVIU), Pat Davitt REV (IPAV), Gijs de Jager (VBO Makelaar), Jean-François Drouets REV (AFREXIM), Konstantinos Pallis REV (AVAG) and Ottar Skare REV (NTF) ●

# The Primacy of EU Law

By Michael MacBrien, Adviser to TEGoVA



The enactment of several EU Directives and Regulations affecting valuation practice including the Mortgage Credit Directive and Capital Requirements Regulation has led many disbelieving valuers to ask about the origins of

the primacy of EU law over national law given that there is no Treaty Article laying down such an order.

In the case of conflict between national and EU law, as with any international treaty, one of the parties can always take the matter to an international jurisdiction – in this case the European Court of Justice – but imagine how that would work if there had to be a court case every time a member state passed a law contrary to existing EU law? And what if a right given to an individual by EU law has been overturned by a new national law?

Not long after the Treaty of Rome came into force, a Belgian company called **Van Gend & Loos** transported several tons of plastic material from Germany to Holland and found itself facing higher customs duties. The company took it to a Dutch court invoking the Treaty of Rome, but the Dutch finance ministry invoked fresher Dutch law. The judge kicked it to the ECJ. The judgment of 5 February 1963 was a game changer for Europe. All three governments involved – Germany, Belgium and Holland – claimed this was a matter between member states and the EEC and that no little transport company had any rights. The European Commission took the opposite view.

The seven magistrates held that the answer to the question put to them did not reside just in the express provisions of the Treaty, but in its “*spirit, economy and terms*”. (*son esprit, son économie et ses termes*):

*“The objective of the EEC Treaty, which is to establish a common market, the functioning of which is of direct concern to interested parties in the community, implies that this treaty is more than an agreement which merely creates mutual obligations between the contracting states. This view*

*is confirmed by the preamble to the treaty which refers not only to governments but to peoples. It is also confirmed more specifically by the establishment of institutions endowed with sovereign rights, the exercise of which affects member states and also their citizens. Furthermore, it must be noted that the nationals of the states brought together in the community are called upon to co-operate in the functioning of this community through the intermediary of the European Parliament and the Economic and Social Committee.*

*In addition the task assigned to the court of justice under article 177, the object of which is to secure uniform interpretation of the treaty by national courts and tribunals, confirms that the states have acknowledged that community law has an authority which can be invoked by their nationals before those courts and tribunals. The conclusion to be drawn from this is that **the community constitutes a new legal order** of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and **the subjects of which comprise not only member states but also their nationals**. Independently of the legislation of member states, community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the treaty, but also by reason of obligations which the treaty imposes in a clearly defined way upon individuals as well as upon the member states and upon the institutions of the community.*

The result was a revolution. In law school jargon the judgment created ‘direct effect’. It caused every judge at every level of jurisdiction to lay down the law with the Treaty of Rome in his hand and it gave hundreds of millions of people the right to invoke EU law.

So far however nothing about primacy of EU law. It was all about a “new legal order” and direct effect, but without both those things we could not have had **Costa-ENEL**, judgment of 15 July 1964, as legendary as **Van Gend & Loos**. In this case an Italian lower court judge sought the Court’s view on a dispute between a consumer and the national electricity

company and the conflict between EU law and newer national law. The seven judges laid down that:

*“By creating a community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the states to the community, the member states have limited their sovereign rights and have thus created a body of law which binds both their nationals and themselves.*

**The integration into the laws of each member state of provisions which derive from the community and more generally the terms and the spirit of the treaty, make it impossible for the states, as a corollary, to accord precedence to a unilateral and subsequent measure over a legal system accepted by them on a basis of reciprocity. Such a measure cannot therefore be inconsistent with that legal system.** The law stemming from the treaty, an independent source of law, could not because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as community law and without the legal basis of the community itself being called into question.

*The transfer by the states from their domestic legal system to the community legal system of the rights and obligations arising under the treaty carries with it a permanent limitation of their sovereign rights”.*

No member state has ever tried to contest this. It took another ten years for all the supreme courts of all the founding member states to explicitly accept it, but they did, and as for the non-founding states that joined as of 1973, it was all part of the *acquis communautaire* that they had to sign up to in order to join.

In 2002-2003, the Convention working on the European Constitution declared primacy in the Constitution itself, but the Constitution died at birth. The fallback was the Treaty of Lisbon and its Declaration 17: “*The Conference recalls that, in accordance with well settled case law of the Court of Justice of the European Union, the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of Member States, under the conditions laid down by the said case law.*” ●

# Compulsory Purchase Compensation



From left to right: Mohamad Al-Dah (Dubai Land Department), Khater Al-Neami (Dubai Municipality), Geoff Fisher (IRRV) and Roger Messenger (IRRV)

This was a major theme of TEGoVA's European Valuation Conference in Riga last October. Two of the conference contributors Geoff Fisher (IRRV UK) and Mohamad Khodr Al-Dah, Director, Technical Department, Dubai Land Department, have kindly agreed to follow up with the articles below.

## United Kingdom by Geoff Fisher

Following the award in 2005, to London, of the right to host the Olympic Games 2012, there followed one of the world's largest and most complex compulsory purchase programmes. This was a vital part of not only developing an old industrial area but also an Olympic Legacy of the regeneration of the area as a new residential and employment community in East London – **the public GAIN**.

But the **private PAIN** of compulsory purchase was felt by the over 200 businesses, 450 residents, and other users affected, including over 2000 legal interests over a 200 hectare site.

The London Development Agency (LDA) led a massive 4 year programme of decontamination of the industrial area and then construction of the sports stadia and associated accommodation and facilities. The Olympics 2012 and later legacy benefits of new housing, employment and a new public

park were enhanced by the adjacent private commercial development of disused railway land as "Stratford City", including a huge new shopping centre.

The UK compensation code was developed mainly in the 19th Century with the coming of the railways. "Fair" compensation is broadly based on the Principle of Equivalence, and comprises 2 parts

- 1) Market Value (for the loss of property interest); and
- 2) "Disturbance" for losses from dispossession such as relocation costs, fees, and any loss of profits etc.

Compensation is negotiated on an adversarial basis with a claimant's surveyor negotiating with the acquiring authority's surveyor. Advances can be claimed from the date of dispossession if compensation is not agreed, but it can take several years to settle the claim.

Across Europe there are considerable variations in the compulsory purchase process and compensation. However a common factor tends to be – *Compulsory Purchase only allowed for Public Purposes and for Just Compensation* – with compensation to be fair and based on Market Value and provision for compensation for losses from dispossession. Disputes or appeals are usually determined by an Independent Expert or the Courts.

## Dubai by Mohamad Khodr Al-Dah

Whilst the United Arab Emirates was founded in 1971, the Dubai Government has existed for over 100 years. Dubai Municipality and Land Department were established in 1954 and 1960 respectively.

The Municipality is responsible for civic services and has handled compensation matters since the 1960s, a decade which saw the first oil fields around the Arabian Gulf and the end of British rule. In the 1970s many states declared independence. This

was an exciting time for the tiny fishing port of Dubai with the commencement of major infrastructure projects.

Dubai Land Department issues all title deeds for the Emirate as well as property site plans. The Department, which also conducts valuations for public and government purposes, has been an associate member of TEGoVA since 2009. It has published the Emirates Book Valuation Standards which are in line with European Valuation Standards.

The process of compensation for compulsory purchase in Dubai starts with a **pre-compensation phase** including project design and planning approval.

Next, the **compensation phase** involves notifications being sent to the affected owners, meetings/hearings and valuation. The total compensation sum is then approved by HH Ruler of Dubai (via the Finance Department in the central government).

During the 3rd **final phase**, the owner or tenants vacate the subject property and compensation is paid as a cash sum and/or in the form of alternative land, usually in a less-developed area. The transaction is then registered at the Dubai Land Department which issues new title deeds accordingly.

The major driver for compulsory purchase in Dubai is the expansion of the city's infrastructure, mainly roads but also airports, canals and the power grid as well as the re-zoning of certain areas. For example in the last decade, dwellings in the old neighbourhood of Al Shandagha which included the earliest government buildings and residence of the late Sheikh Saeed Al Maktoum, Ruler of Dubai's house and majlis, were acquired and carefully restored by the government. The area forms an integral part of the historical Dubai Creek, penciled-in as a future UNESCO World Heritage Site. The project involved the acquisition of 217 properties. ●

## EVS and REV, Motors of a Changing Valuation Profession in Spain

By Alberto Cabrera REV, AEUU Secretary



European Banking Union and the takeover of banking supervision by the European Central Bank following the recent Asset Quality Review with its emphasis on European Valuation Standards (EVS) have ensured that the latter are finally becoming embedded in Spain. AEUU is actively promoting EVS to all the major stakeholders

including legislators, the Bank of Spain, various professional bodies, public valuers, banks, developers, owners, tenants and investment funds. Spanish legislation regulates real estate valuation and gives exclusivity to certain university degree holders (mainly architects, quantity surveyors and some engineers) without imposing requirements of minimum professional experience nor a compulsory code of ethics. A degree in itself does not provide the graduate valuer with the full in depth knowledge of valuation demanded by TEGoVA's Minimum Education Requirements. AEUU is working with several universities (under the supervision of the Polytechnic University of Catalonia) in the development of training programmes based on European Valuation Standards. For example an upcoming EM-REV masters programme will be the first to deliver the full training requirements

of AEUU's REV scheme. Our universities provide external and independent assurance that REV candidates have the right valuation skills and follow a suitable programme of CPD. At the same time, independent professionals test the competence of candidates in an interview process. To date 16 valuers have become Recognised European Valuers.

AEUU and ATASA have recently established "TEGoVA Spain" which is seeking a convergence of Spanish valuation standards and practice with the rest of the EU and to enable employees of valuations companies to become Recognised European Valuers. At the same time AEUU aims to persuade the Spanish Government to reflect European Valuation Standards in legislation, and to acknowledge as the answer to the development of a self-regulated valuation profession. ●