



Mr Charlie McCreevy
Member of the Commission
Internal Market and Services
European Commission
1049 Brussels

By courier and e-mail

Brussels, 6 November 2007

Dear Commissioner,

Request for EU Real Estate Investment Trust (EU REIT) Legislation

by the European Landowners' Organization, the European Property Federation, the Royal Institution of Chartered Surveyors, The European Group of Valuers' Associations, and the Urban Land Institute Europe (description of each in Annex III)

The real estate industry represents 10 to 12% of EU activity, providing and servicing the building infrastructure for the rest of the economy. The industry has evolved rapidly in recent years and is now a key part of the high added value, knowledge-based economy. However, its development is being stunted and rendered riskier by Internal Market distortions of competition and obstacles to cross-border investment. To overcome these, investors need a suitable framework for pan-European property investment: the EU REIT (see short definition and explanation of REITs in Annex II). This is all the more necessary as EU scale is particularly important for the development and security of the industry.

The attached study from Maastricht University sheds light on the problems and seeks solutions. It addresses the market distortion problems ensuing from national REITs that DG TAXUD is currently grappling with. It also highlights the immense contribution that an EU REIT and the ensuing pan-European spread of property investment capital would bring to property market safety and security by providing the risk-reducing benefits of international diversification (particularly effective for property investment) and by increasing market transparency.



This is a matter of such importance that our organisations have come together for the first time to collectively ask the Commission to set up an expert group to consider an EU REIT framework. Six main drivers should inspire the Commission to action:

1. the need to address increasing distortions of competition as national REITs multiply
2. the opportunity to buttress market safety and security. Simply by ensuring a properly functioning Internal Market for real estate investment, the EU can make a major contribution to the control and stabilisation of property markets
3. the need to correct a situation where savers in small member states cannot access good quality property investment in other member states or even the prime property investments in their own countries
4. the opportunity to reverse the current trend of initiators of property companies to resort to tax havens
5. in the context of the work of the Commission expert group on open-ended real estate funds, the need to avoid a situation where property investors would have to resort to an open ended fund, not as their vehicle of choice, but because it would be the only pan-European vehicle available
6. the chance to boost specialisation in cutting edge real estate and investment in social property that both require development on a European scale

Annex I develops each of these six points and the Maastricht University study addresses them comprehensively before outlining a preferred structure for an EU REIT intended to help kick-start and frame a Commission-led debate involving all stakeholders.

We believe that if the Commission considers this project it will soon see a double advantage: an instrument that can open up an important part of the European economy to free competition and economies of scale, with no need for invasive tax harmonisation as no approximation of tax rates on shareholder dividends is required.

We would be grateful for a meeting to discuss this matter, in particular the setting up of an expert group.



Because of the taxation aspects of the REIT and the close connection with DG TAXUD work on Taxation Issues of REIT Schemes in the Community, we are also approaching Commissioner Kovács.

Yours sincerely,

Thierry de l'Escaille
Chief Executive Officer
ELO

Michael MacBrien
Director General
EPF

David Tuffin
President
RICS

Roger Messenger
Chairman of the Board
TEGoVA

William Kistler
President
ULI Europe

Attached: "The EU REIT and the Internal Market for Real Estate" – a research report by Prof.dr Piet Eichholtz and Drs. Nils Kok – Maastricht University – November 2007



ANNEX I

The six main drivers for an EU REIT Framework

1. The need to address increasing distortions of competition as national REITs multiply

We know that DG TAXUD began recently to consider the main cross-border taxation issues deriving from the introduction of national REITs and to discuss with the member states possible ways to ensure coordinated action. There is everything to gain by taking a comprehensive EU approach to the problem at this stage.

We emphasise that withholding tax treatment issues are vital, with many member states imposing protective tax measures that prevent European citizens from other member states from benefiting from the same withholding tax exemption granted to local resident taxpayers. The Maastricht University study provides an overview of the current legislation and shows that many countries not only discriminate between domestic and other EU investors, but also differentiate between the countries of origin of EU investors.

2. The opportunity to buttress market safety and security. Simply by ensuring a properly functioning Internal Market for real estate investment, the EU can make a major contribution to the control and stabilisation of property markets

An EU REIT will bring very real support to market security and stability:

1. The Maastricht University research confirms that the benefits of international diversification are higher for property than for stocks and bonds because of the strong differentiating factors of local sub-markets in property.
2. With reference to the tax haven question (see section 4 below), quite apart from the loss of tax revenue, vehicles in tax havens face less regulation and supervision than property companies incorporated in EU countries.
3. The obligatory payout of earnings inherent to REITs forces them to turn frequently to the capital market which in turn leads to increased scrutiny by external agents.
4. Introduction of a REIT-like structure lowers the use of debt by removing the tax incentive for using debt, as debt is tax deductible.



3. The need to correct a situation where savers in small member states cannot access good quality property investment in other member states or even the prime property investments in their own countries

In the present state of affairs, small member states that do not have a significant institutional investor sector stand to lose in two ways, even if they set up a national REIT structure.

First, their prime properties are typically acquired by big institutional investors from other countries. In this way, domestic savers do not have access to the prime property segment in their own country. Second, they do not have access to other good quality property investments in other European countries since there are few investment vehicles that are open to the public and that are marketed on a pan-European basis.

An EU REIT structure could allow for different strategies for savers and operators. We could have, on the one hand, big, well-capitalised REITs, investing on a pan-European basis, and being marketed also on a pan-European basis. This would be an ideal investment vehicle for all of the European small investors. We could have, on the other hand, smaller-scale REITs that could have a very much more focussed investment strategy (investing in particular niches but on a European basis). These very specialised REITs could be the appropriate option for the property operators of smaller markets in terms of their future on a global European property market.

Finally, an EU REIT would also help small countries to attract international investment into their property markets. The present situation is that, if we except the prime segments, small countries have extreme difficulty attracting global property investment of any type.

4. The opportunity to reverse the current trend of initiators of property companies to resort to tax havens

The Maastricht University study addresses the theoretical problems of distribution of tax income between member states. The research shows that there is no need to fear tax leakage from an EU REIT framework because the tax has already leaked.

An EU REIT could directly target the local taxation and withholding tax issues. In this way, tax revenues are distributed fairly over member states without double taxation of property companies. For investors, there would no longer be a reason to invest in property companies via tax havens.

5. In the context of the work of the Commission expert group on open-ended real estate funds, the need to avoid a situation where property investors would have to use an open ended fund, not as their vehicle of choice, but because it would be the only pan-European vehicle available

Despite their problems, open ended real estate funds have been a useful vehicle for property investment in several member states. But the availability of open-ended solutions in some countries has in no way tempered the soaring demand for REIT structures, which is why member states are scrambling to legislate, with Germany and the UK producing laws just this year. Pan-European property investors need to choose the investment vehicle that suits them best. It would be highly distorting and economically inefficient if they were forced to choose an open-ended structure simply because, in the absence of an EU REIT, that would be the only vehicle available at EU level.

6. The chance to boost specialisation in cutting edge real estate and investment in social property that both require development on a European scale

Today, the new frontier for property investment and management is the cutting edge skills deployed in new sectors and market niches:

- New industries: Bio-tech companies, for example, need a mix of office, laboratory and manufacturing space with particular requirements in terms of hygiene, security, etc.
- Public-private partnerships for social infrastructure investment: senior housing, student housing, health care property, correctional facilities, etc.

This new kind of property business is management intensive, requiring know-how and focussed operators having big portfolios in many countries because, for example, no one is going to specialise in state-of-the-art health care facilities just for, say, the Austrian market.

An EU REIT structure is key to achieving the pan-European scale needed to provide the building infrastructure of the European knowledge based economy and to develop private-public partnerships for social infrastructure, relieving state budgets.

American experience exemplifies this: a market as big as the US accommodates only three senior housing REITs, three student housing REITs and only ten healthcare REITs.



ANNEX II

Definition and ratio legis of REITs

A REIT is a company which:

- has to derive the majority of its income from property investment
- pays no taxes at corporate level; however, a very high proportion of net earnings is paid out as dividends to shareholders who are then taxed
- has the option – but not necessarily the obligation – of public listing
- functions within a specific legislative framework and under supervision of authorities

The goal of the member states setting up these regimes is to avoid taxing a rental income stream at the corporate level and again at the shareholder level. Thus, exemption from corporate tax for a property company puts the shareholder in such a property company in a comparable position with an investor who owns a property portfolio outright, since the rental stream for such an investor will only be taxed as income. In other words, corporate tax exemption creates a level playing field between the direct segment and the indirect segment of the property market. In this sense, such tax treatment of property companies is analogous to the corporate tax-exemption of mutual funds, for which a corporate tax levy would also entail double taxation.

Governments and markets favour REITs because they enable industrial and service companies to sell off their corporate real estate, leaving it in the hands of property professionals and freeing up capital for core business, and because they enable small investors to safely invest in property, enjoying the diversification benefits this asset class has to offer and its qualities as a protection against inflation.



ANNEX III

About the members of the EU REIT Coalition

European Landowners' Organization (ELO)

Created in 1972, ELO promotes a prosperous and attractive European Countryside. ELO is a unique federation of national associations from the EU27 and beyond which represents the interests of landowners, land managers, rural entrepreneurs and family businesses. It targets its actions on land use and housing, via seven major areas of European importance: environment, renewable energy, agriculture and rural development, status of private property and companies, forest, enlargement and trade.

www.elo.org

European Property Federation (EPF)

EPF represents all aspects of property ownership and investment: residential landlords, housing companies, commercial property investment and development companies, shopping centres and the property interests of the institutional investors (banks, insurance companies, pension funds). Members own and manage property assets valued at € 800 billion.

www.epf-fepi.com

Royal Institution of Chartered Surveyors (RICS)

RICS is the largest organisation for professionals in property, land construction and related environmental issues worldwide, promoting best practice, regulation and consumer protection to business and the public. With 140 000 members, RICS is the leading source of property related knowledge, providing independent, impartial advice to governments and global organisations

www.rics.org

The European Group of Valuers' Associations (TEGoVA)

TEGoVA is the European umbrella organisation of national valuers' associations, covering 39 professional bodies from 24 countries comprising specialist consultancies, major private sector companies and government departments both local and national. Its main objectives are the creation and spreading of harmonised standards for valuation practice, for education and qualification as well as for corporate governance and for ethics for valuers. It speaks with a common voice on valuation to European legislators and policy makers.

www.tegova.org



Urban Land Institute Europe (ULI Europe)

ULI is a non-profit research and education organization supported by its members. Established in 1936, the Institute today has more than 40,000 members in over 87 countries, representing the entire spectrum of land use and development disciplines. ULI's mission is to provide leadership in the responsible use of land and in creating and sustaining thriving communities worldwide.

www.europe.uli.org