

## **Minutes**

of the Meeting of the Legal Affairs Committee of the  
European Federation of Building Societies,  
Brussels, 22 March 2019

### **Participants:**

L. Anghel, Romania  
D. Botzem, Germany  
M. Cariboni, Germany  
Dr. R. Conradi, Germany – **Secretary** –  
Dr. B. Dedert, Germany  
R. Eichwede, Germany  
Dr. I. Ferencz, Hungary  
A. Freise, Germany  
C. Forche, Austria  
A. Georgiou, Republic of Cyprus  
B. Gerle, Hungary  
Dr. A. Grünbichler, Austria  
A. Guthmann, Germany  
K. Holler, EFBS  
H. Imgrund, Germany  
J. Jeníček, Czech Republic  
P. Jiráček, Czech Republic  
R. Kaschel, Hungary  
R. Kašiar, Slovak Republic  
L. Keuper, EFBS  
T. Kofroň, Czech Republic  
U. Körbi – **Chairman** –  
Ch. König, Germany  
L. Kohler, Slovak Republic  
Dr. V. Kreuziger, Germany  
Dr. Ch. Martell, Austria  
J. Markvart, Czech Republic  
J. Phlippen, Germany  
J. Pfenning, EFBS  
M. Poos, Luxembourg

Dr. S. Riess, Austria  
S. Rífaí, Hungary  
J. Schudrowitz, Germany  
J. Šedivý, Czech Republic  
A. Senjak, Austria  
M. Simon, Germany  
Dr. K. Stifter, Austria  
Dr. L. Tacacsova, Slovak Republic  
B. Tátrai, Hungary  
Dr. Z. Tichy, Hungary  
M. Url, Austria  
C. Varzaru, Romania  
A. Vogt, Luxembourg  
M. Weinrich, Germany  
P. Zaremba, Czech Republic

Mr. U. Körbi opened the meeting and welcomed the participants as well as the President and the Managing Director.

**Agenda item No. 1: Approval of the Minutes of the Meeting of the Legal Affairs Committee, Brussels, 22 March 2019**

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Dr. Ralf Conradi informed the delegates that no written requests for amendment of the minutes of the preceding meeting had been received, nor were any such requests orally made in the course of the current meeting.

Mr. U. Körbi thereupon stated that the minutes were unanimously adopted as submitted.

**Agenda item No. 2: Evaluation of the Mortgage Credit Directive**

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To begin with, Mr. Ch. König pointed out that the EU Commission had been required to evaluate before 21 March 2019 the mortgage credit directive in force since 2014. However, the Commission had not been able to start the evaluation process before also the last EU Member State, i.e. Spain, had transposed the directive into national law at long last, which was not earlier than at the beginning of 2019. The required evaluation was to cover, inter alia, the effectiveness of the information to be provided to potential customers prior to the date of signature of their loan contracts, i.e. the effectiveness of the European Standardized Information Sheet (ESIS), and the implications of the directive for the cross-border home financing sector. This meant for the EFBS as well as for other European federations of the building-saving industry already actively formulating their interests in getting corresponding modifications of the directive adopted. The EU Commission was actually planning to commission a study on cross-border business transactions. In this context, consumer complaints had turned out to be of special interest to the EU Commission. Its intention was to place at the beginning of the currently rather lengthy ESIS form (about 30 pages in German and about 80 pages in Danish) a summary text along the line of the Danish model. In the Commission's opinion, further room for improvement existed in the field of foreign-currency loans. Here, the directive allowed borrowers to switch to their national currency when the exchange rate fluctuations exceeded 20 percent. As a consequence, credit institutions were not interested in lending to consumers resident or employed near the national border of any non-euro currency country. Another important aspect in the Commission's view was the point in time by which pre-contractual information must have been handed over to potential borrowers. Here, the meaning of the text of the directive stipulated that such information had to be furnished "in good time prior to the date of contract conclusion."

Subsequently, the committee took note of the report submitted by Mr. Paulo Silva, law officer at the division of the Directorate-General FISMA („Retail financial services“) on the state of the evaluation process initiated by the EU Commission in the field of the mortgage credit directive. It was difficult to evaluate the directive especially because of the belated transposition into national law by a number of EU Governments with the consequence that the existing data

base was inadequate. For this reason, the Commission had decided to postpone the required evaluation of the directive by one year. At the present time, the work description necessary in connection with the planned study was in the process of being prepared. Its focus would be on the resources required for the supervision of credit registers among other things as well as on the influence of the PSD II-directive on the digitalization of mortgage lendings. Furthermore, the activities of credit brokers were of interest also to the EU Commission, because the knowledge available in this field was still scarce for the time being. Finally, the mortgage credit directive had to be harmonized with the activities of the EU Commission in integrating sustainability considerations into its financial policy framework. In this context, the Commission participated in the „energy-efficient mortgage credit project” managed by the European Mortgage Federation; one of its objectives was to examine how often and to what extent mortgage loans were used for the acquisition of energy-efficient buildings inter alia, or energy saving measures had resulted in lower risks to banks and, thus, in an improved creditworthiness of borrowers. Another purpose was to examine the extent to which energy-efficient buildings had the benefit of a higher market value and, thus, a higher collateral value as well. In turn, this might result in more attractive bank credit offers. The study was expected to provide the new Commissioner with knowledge about basic political requirements suggesting a need for modification of the mortgage credit directive.

In the course of the subsequent discussion, Mr. A. Vogt drew attention to a number of problems resulting from the mortgage credit directive, which must be expected to affect credit institutions resident in Luxembourg in particular. For instance, especially the extremely divergent degrees of transposition of the directive had resulted in an almost complete bog-down of the cross-border business in Belgium and France. Apart from this, the extremely excessive fees charged by Luxembourg’s supervisory authorities for the registration of credit brokers and their activities had given rise to the question whether the EU could put a lid on such excessive fees. Finally, it was difficult because of the directive to conclude loan contracts with married couples. Mr. Silva drew attention to the minimum degree of harmonization achieved by the directive, which might be one reason of the decline of the cross-border business, although its degree of harmonization exceeded that of the previous directive. The fees payable for the activities of credit brokers would be more thoroughly examined by the Commission under an evaluated directive. The problems arising in connection with lendings to married couples may be assumed to stem from whether and, if so, to what extent credit scoring was based on the household income of married couples as distinct from the two partners’ own incomes. If so, the Commission would examine whether it would be necessary to adjust the guidelines. Ms. Freise raised the question whether the Commission planned to respond to allegations of „over-information“ of consumers by the ESIS, which point had been made both by the Commission, by the credit industry and by consumer organizations, and whether the Commission considered the possibility to add to the ESIS a summary of the ESIS provisions in line with the Danish practice. Mr. Silva responded that the Commission was aware of this problem and was currently examining potential options for a solution along the lines of the Danish example or the possibility envisaged by the General Data Protection Regulation under the umbrella of which the necessary data could be provided in the form of a brief summary. In Mr. Körbi’s opinion, an answer would be

required to the question whether and, if so, investments in „green projects“ would have implications for the creditworthiness of borrowers. A possible answer to this question might be either somewhat less strict credit scoring standards to be met by potential customers or, alternatively, lower own-capital requirements in connection with potential lendings. On this question, Mr. Silva raised the question whether the existing data volume would allow the Commission to say at this stage whether the assumption that lower energy costs of „green“ housing projects would be a good road toward reduced loss probability on the part of borrowers. But the Commission’s aim was to get provisions included in the directive under revision which would promote „green“ lendings.

**Agenda item No. 3:                    Proposal of the European Parliament and of the Council on representative actions for the protection of the collective interests, and repealing Directive 2009/22/**

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The Committee took note of the presentation by Mr. Martin Küchler, head of the division for consumer protection and contract law at the Standing Representation of the Federal Republic of Germany before the EU, about the position of the German Federal Government on the proposal for representative action legislation aimed at protecting collective consumer interests as well as on the state of the deliberations thereon by the EU Council of Ministers. The German Federal Government had welcomed the proposed legislation, which fact was reflected by its law on collective actions in force since the end of 2018. Since the priority treatment of the so-called omnibus directive by the working groups of the Council had, thus far, made only slow progress, a partly revised text proposal had nonetheless been formulated under the Austrian Council Presidency. This was expected to represent the beginning of a general alignment under the present Romanian Council Presidency, which was expected to be adopted by the next Council on competition policy (May 2019). But it was doubtful whether this strategy would ultimately be successful, because the proposal for the directive was exposed to strong criticism. It was common knowledge that the EU Commission was planning to leave the annual collective actions regulations as they are in the individual Member States at present and to put a European system besides the existing national ones. But it was still unclear, whether a collective actions system modified by EU regulations would continue to exist in Member States in future or whether the national systems would remain as they are, though extended by a European system. Although the German Federal Government, like all the other Member Governments, was in favour of a uniform solution, it was very difficult to achieve such a solution, because of the existing differences between national systems and national action law systems. Since in the EU Member States – other than in Germany – the divergent collective actions regulations made it necessary for the parties concerned to pursue their legal claims individually, it would have to be apprehended that especially the integration of the collective actions system into a European one would pose substantial difficulties in the course of the further negotiations.

In the course of the subsequent brief discussion, Dr. Conradi – bearing in mind a corresponding discussion by the German Bundesrat (second chamber) – raised the question whether the proposed directive would not represent so thorough and deep cuts into the exclusively national

regulatory competences of the EU Member States' civil actions legislation systems that the EU Member States would not have any competences in the field of collective actions at all any more, and what would be the Federal Government's opinion on the this kind of problems. In Mr. Küchler's opinion, the answer to this question would largely depend on the final version of the directive. At present, a variety of issues represented a substantial number of surprising cuts into national actions law systems, including that of Germany, so that the scope of the necessary rewording was still considerable, before this kind of problem would ultimately have been removed. Since other Member States, too, had raised the question whether the internal market competences of Article 114 TFEU were sufficient for regulating collective actions, it was advisable to ask the legal service of the Council for its opinion on this issue. Mr. Körbi raised the point whether the right to sue of the so-called ad-hoc institutions might represent a business model for large law firms. In Mr. Küchler's opinion, such apprehensions of the German Federal Government had been wiped out by the Commission's statement that only such ad-hoc institutions would have the right to sue as had been authorized by their countries' supervisory authorities to lodge complaints in the respective Member State. This interpretation was, however, not supported by the present text so that the question would arise whether ad-hoc institutions still needed a directive for regulation under subsidiarity aspects. This issue would still have to be clarified in further negotiations. In Ms. Freise's opinion, the existence of a consumer mandate was of great importance as well (opt-in or opt-out model). Here, not only the maintenance of the principle of private autonomy, but also the date was the best way toward ensuring legal security. On this issue, Mr. Küchler explained that – as in the case of class actions – the German Federal Government preferred the opt-in system not only for Germany, but also at the European level. On the other hand, the Commission had attempted through its proposal to avoid a decision in favour of either the opt-in- or the opt-out system, because there were a number of Member States which would prefer to retain their opt-out system. As a result, the further negotiations would be faced with the question whether it would be possible to regulate both systems by one directive or whether it would be necessary as a matter of fact to introduce the opt-in procedure as the only possibility and envisage opening clauses for the (few) Member States preferring the opt-out system. In his opinion, it would be difficult in the Council anyhow to reach a majority in favour of a pure opt-in system. A special problem in this context was the question how it would be possible to transpose an opt-out system in the field of cross-border class actions. One way-out from this dilemma might be to envisage a pure opt-in system for cross border complaints.

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**Agenda item No. 4: Evaluation of the consumer credit directive**

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The Committee took note of the report submitted by Mr. Pontiroli-Gobbi, law officer at the division on consumer protection of DG JUST, on the state of evaluation of the consumer credit directive. He pointed out by way of introduction that the evaluation process initiated by the Commission would comprise the entire directive in view of the market developments observed for the preceding ten years (new products, new providers, digitalization) as distinct from the individual aspects mentioned in Article 27 only. In view of the 2016 Financial Services Action

Plan, the Commission had already carried out a number of preparatory examinations. With respect to Action 7 of this Plan (cross-border offers of consumer credit) it ought to be noted that just 6 to 7 percent of the total bank lendings represented cross-border loans, just 2 percent of which were of the nature of consumer credits. But the decisive reasons thereof (language, legal insecurities) could hardly be got under control by new legislation. Furthermore, the credits on offer by bank subsidiaries might perhaps be easier to sell through a subsidiary office resident in the country of domicile of the provider. In the field of credit scoring the Commission was aware of extremely different requirements existing among Member Countries. The evaluation would comprise a comprehensive consultation process and was planned to have been concluded by September 2019 in the form of a report to be submitted then. The study to be prepared by the services provider would focus on the following tasks: Investigation of the legal measures taken by Member States for the transposition of the directive, evaluation of the technical literature, execution of case studies in specific areas (for instance: field of application, pre-contractual information, premature repayment fees) as well as test purchases in seven Member States (objective: evaluation of the transposition of the existing pre-contractual customer information duties) as well as the preparation of a cost-benefit analysis of the directive. Moreover, stakeholders would be consulted in the period from 14 January to 08 April 2019. Up to the present time, 93 responses had been received. Moreover, credit providers, who would be asked for information especially on the costs and benefits of the directive, would also be consulted. Further details concerning these as well as future consultations by the Commission necessary for evaluating the consumer credit directive may be taken from **Annex 1** to this contribution.

In the subsequent brief discussion, Mr. König drew attention to differences in the handling of the regulations pertaining to credit scoring methods in the individual Member States. In this regard, wide differences existed especially in the field of sanctions in the event of faulty credit scoring. This was the source of major hindrances in the cross-border lending business. When aligning the regulations concerning the types of credit scoring at EU level, the divergent objectives of protection under the mortgage credit directive and the consumer credit directive must be duly taken into consideration. Since the main objective of the consumer credit directive was to prevent borrowers from incurring an excessive debt load, the credit scoring result ascertained for consumers should not be governed by the requirements of the mortgage credit directive. After all, the exercise of the right of revocation should include a cut-off date, which was not the case in the German practice. The EU Commission should bear these points in mind when revising the consumer credit directive. Mr. Pontiroli-Gobbi responded by mentioning that the Commission was well aware of the fact that differences existed in the transposition of the credit scoring rules between Member States. The Commission had no preferences as regards details of credit scoring in future and would examine, in light of the consultation results, whether the current rules were sufficient or whether modifications were required. Bearing in mind the right of revocation, the Commission would welcome the new provisions to come soon and would examine - in light of these decisions - to what extent modifications of existing rules would be necessary. In response to the question raised by Mr. König whether negative rates of interest would be taken into consideration when the consumer credit directive would be revised, Mr. Pontiroli-Gobbi pointed out that it was still too early to discuss this point, but the general experience was that the Commission would rather abstain from altering the character of products.

Moreover, it was doubtful whether the consumer credit directive was the right platform for defining credit agreements or for regulating fees. In case the Commission decided nonetheless in favour of revising the consumer credit directive, the different options for such revision would be examined on the basis of an impact study.

**Agenda item No. 5: EU Commission proposals for sustainable financing – current state**

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The Committee took note of Ms. Keuper's report (attached as **Annex 2**) on the background of the essentials of the package of legislative acts submitted by the EU Commission in May 2018 on sustainable financing as well as on the current state of the legislative procedure, which was as follows with respect to the Commission's three proposals for regulation enlisted hereafter:

1. Proposal for a regulation of reference values concerning low-carbon-emission investments as well as for investments with a favourable carbon emissions regime: In addition to its original regulatory purpose, i.e. the introduction of reference values, this regulation also safeguarded the continued validity of the EURIBOR and the EONIA rates of interest up to 31 December 2021. On this, the EU Council of Ministers and the European Parliament (EP) had already reached an understanding at the political level so that the EP in plenary session could give its okay before 26 March of this year.
2. Proposal for a regulation concerning the disclosure of information about sustainable investment and sustainability risks: This was another area in which the consent of the EU Council of Ministers and of the EP had already been reached as well. But the EP had not been able to obtain the support of its members for the idea to subject all credit institutions to the proposed regulations that building-saving institutions had not been affected thus far. But it was doubtful whether this would remain so in the medium term. Expectations are that the April agreement between the EP and the Council of Ministers would ultimately be carried by the plenary of the EP.
3. Proposal for a regulation concerning the creation of a framework of provisions facilitating sustainable investment (taxonomy): The Council had not yet been able to achieve a common position on this issue, nor had the EP reached any uniform opinion either. The latter discussed in particular whether taxonomy should make special consideration not only of "green" (sustainable) investments, but also of „brown“ investments (i.e. non-sustainable investments including investments harmful to the environment).

In the course of the subsequent brief exchange of opinions, the Committee agreed to the estimation presented by Mr. Körbi that the EU legislation on sustainable financing projects must be expected to exert a considerable influence on the business activities of European building-saving institutions. This would apply not only to the lending business, where building-saving institutions were offering sustainable financing products at this stage already in the form of renovation credit, but also to their investment business operations. It would have to be expected



that institutions would soon have to take precautions in terms of sustainability when investing their liquid resources. It would also have to be expected that the capital backing would have an effect on lendings as well. Dr. Stifter mentioned that the Austrian Federal Ministry of Finance had contacted the building-saving institutions in this context with a request for assistance in solving this problem especially for elder borrowers in need of loans for purposes of renovating their dwellings. In this context, the question was whether such assistance should be organized within the framework of the EU's sustainability legislation or, better, by modifying the immovable residential credit directive. Mr. König made reference in this context to a regulation by the German Federal Ministry of Justice taking into account the stipulations of the immovable residential credit directive of the EU on the one hand, while making specific mention of the age of borrowers which should not constitute any insurmountable hurdle to obtaining the loan funds they need on the other.

**Agenda item No. 6:                      Miscellaneous**

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Mr. Körbi established that no further requests for the floor had been received. So, he thanked the participants for their lively participation in the discussion as well as Dr. Conradi and the Brussels Office for having organized the meeting. Finally he expressed his special thanks to the interpreters on the other.



# Evaluation of the Consumer Credit Directive (2008/48/EC)

European Federation of Building  
Societies

22 March 2019

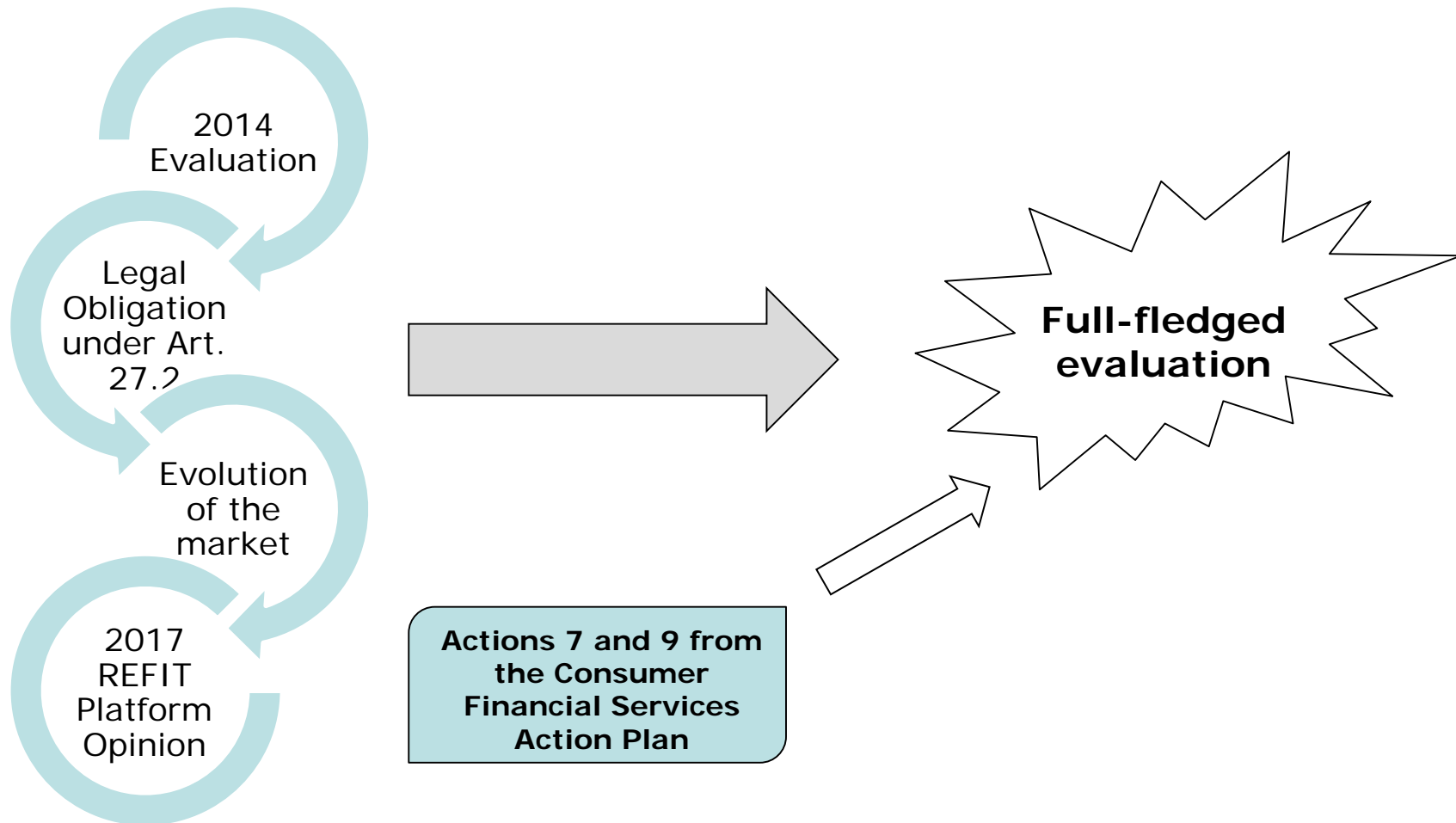
Francesco Pontiroli Gobbi  
Unit JUST.E1 - Consumer Policy

# Objectives and provisions

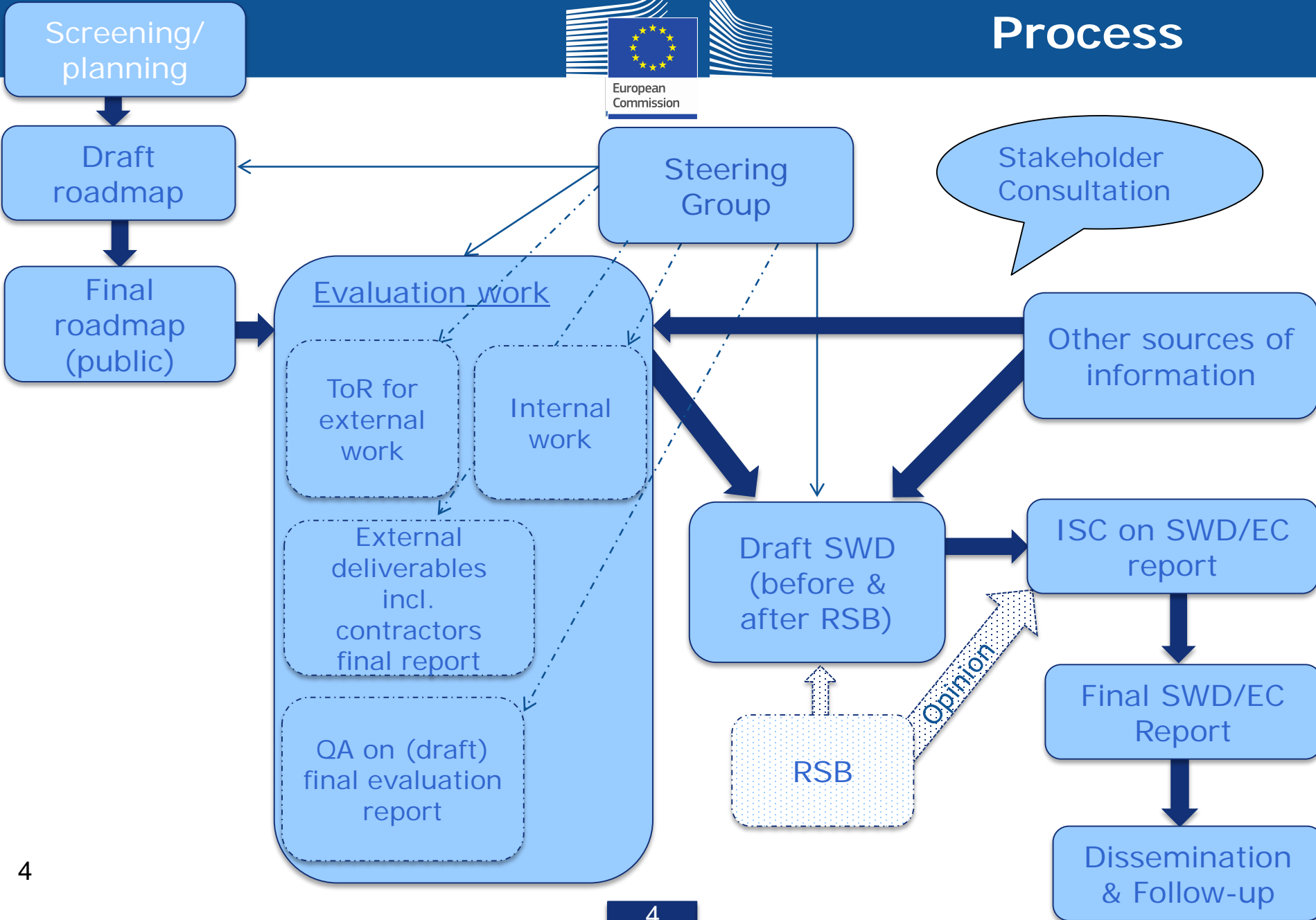
EU rules on consumer credit are designed to strengthen consumer rights in this sector and foster the creation of a single market for consumer credit, through:

- **Standardised information at the pre-contractual stage (SECCI)**
- **The provision of the annual percentage rate of charge (APR) – e.g. the total cost of the credit**
- **A 14-day right of withdrawal**
- **A right to early repayment**
- **Creditworthiness assessment**

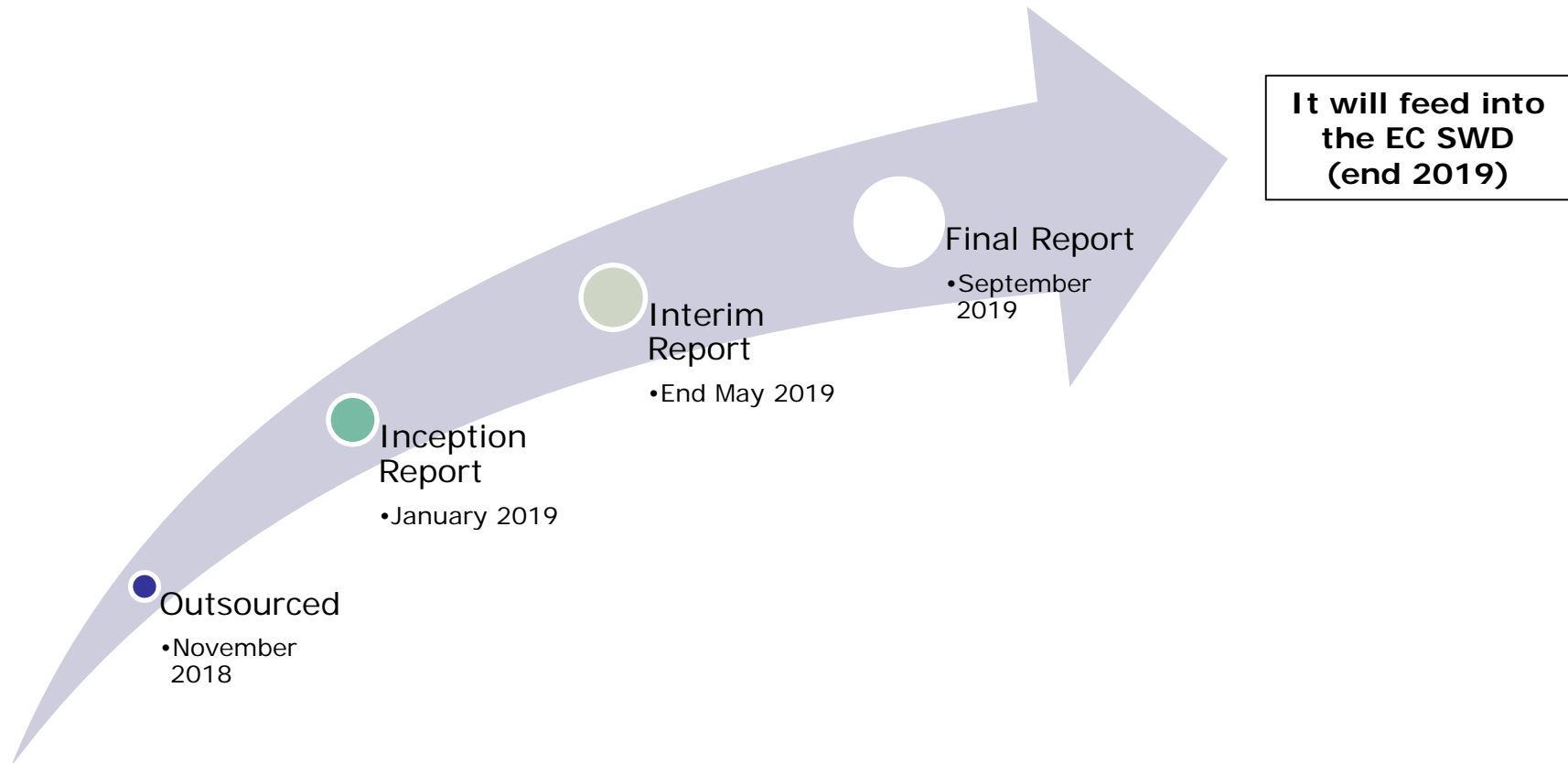
# General context



# Evaluation Process



# Timetable Study



# Tasks

Legal Analysis

Literature  
Review

Stakeholder  
Consultation

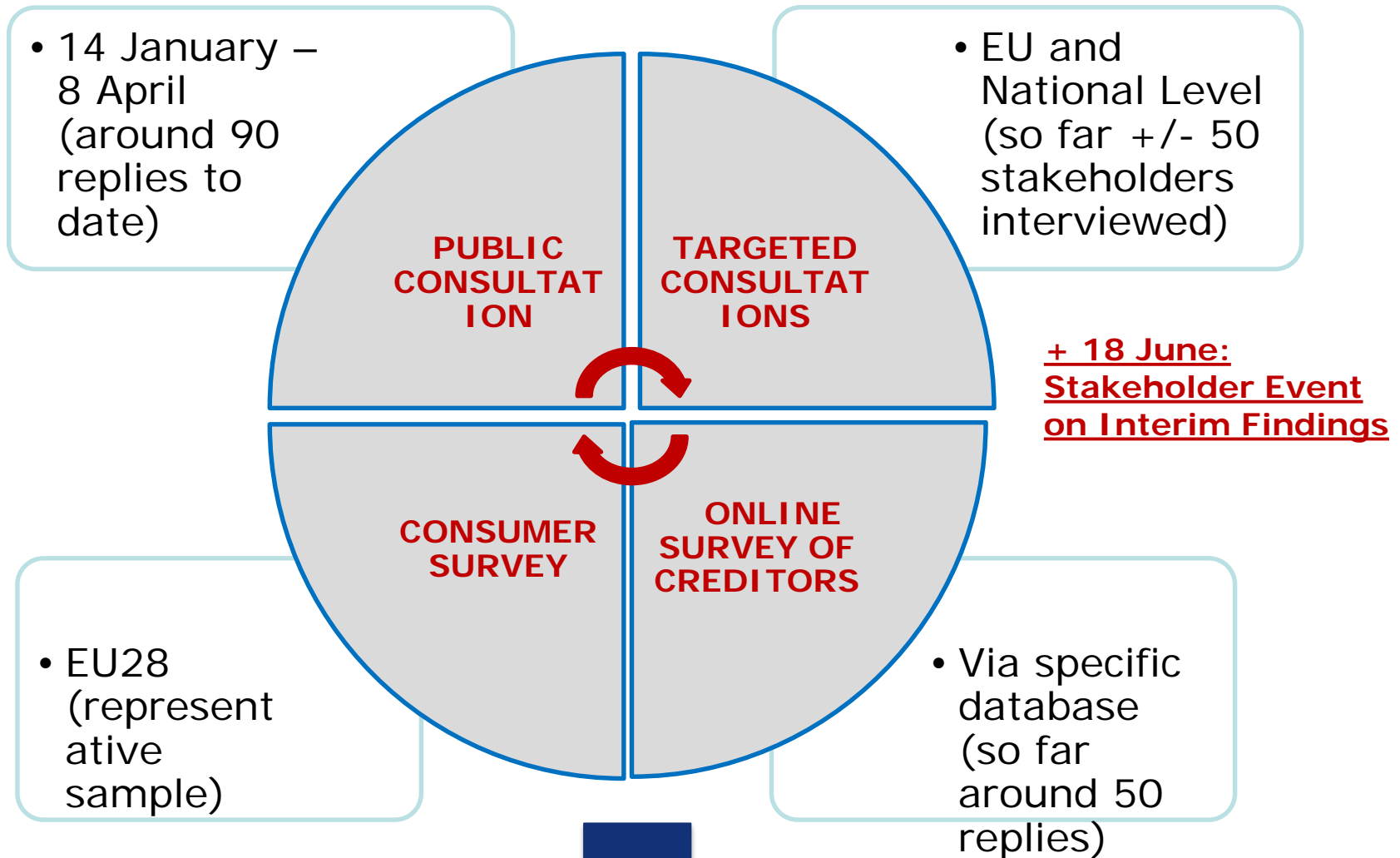
Case studies

Quantification  
Analysis

Mystery  
Shopping

# Stakeholder Consultation

(mid January – mid April)



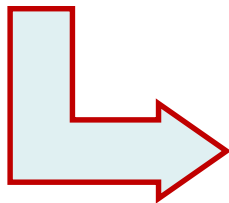


# Public Consultation

(14 January – 8 April)

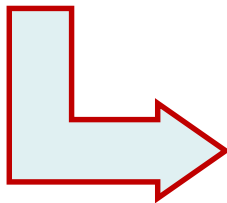
**PLEASE**  
**DISSEMINATE**  
**THE LINK!**

Questionnaire • 38 Questions



General Public

- 25 Questions on overall experience



Other  
stakeholders

- 13 Questions on Better Regulation Criteria



# 18 June Event

- *Co-organised with CEPS*
- *Currently drafting the agenda/list of speakers*  
*Most likely 4 sessions on most important CCD provisions (scope, pre-contractual information, creditworthiness...)*
- *Around 120 stakeholders (balanced mix)*



**Your comments and questions?**

# Nachhaltige Finanzierung

EuBV Halbjahrestreffen Rechtsausschuss

22. März 2019, Brüssel

Lisa Keuper



# Nachhaltige Finanzierung



# Nachhaltige Finanzierung

- Hintergründe:
  - Pariser Abkommen in 2015
    - Globale Erwärmung soll auf unter 2° C begrenzt werden.
  - Fehlendes Kapital- der öffentliche Sektor allein schafft es nicht, die benötigten Beträge aufzubringen, es fehlen zusätzlich ca. 180 Mrd. € jährlich bis 2030 um die gesetzten Ziele zu erreichen.
  - Bundeshaushalt für 2019 beträgt 356 Mrd. €.



# Nachhaltige Finanzierung

## Aktionsplan der Europäischen Kommission

- Was bedeutet Nachhaltige Finanzierung?
  - Umorientierung von Kapitalströmen in nachhaltige Investitionen.
  - Erstellung eines einheitlichen und transparenten Klassifikationsmodells.
  - Einbeziehung von Nachhaltigkeitskriterien in Anlageentscheidungen.
    - ESG Kriterien: Environmental, Social and Governance Kriterien.



# ESG- Kriterien

## Umwelt

- Klimawandel
- Treibhaus Gase
- Umweltschutz

## Soziales

- Arbeitsbedingungen (Versklavung und Kinderarbeit)
- Gesundheit und Sicherheit
- Konflikte und humanitäre Krisen

## Governance

- Korruption und Bestechung
- Faire Steuerplanung/Strategie
- Managergehälter





# Europäische Gesetzesinitiativen

- Drei Gesetzesvorschläge:
  - Low Carbon Benchmarks
    - Einführung neuer Kategorien von CO2 Benchmarks
  - Offenlegungspflicht für institutionelle Anleger
    - Verpflichtung der Vermögensverwalter und Anlageberater zur umfassenden Offenlegung hinsichtlich der Integration von Nachhaltigkeitsrisiken
  - Einführung eines Rahmenwerks für nachhaltige Produkte
    - Kennzeichnung von wirtschaftlichen Aktivitäten um den Marktteilnehmern ein zuverlässiges Klassifizierungssystem zu geben



# Potenzielle Auswirkungen auf Finanzmarktteilnehmer

- Offenlegungspflicht -> Pflicht für institutionelle Anleger offen zu legen wie sie die ESG Kriterien in ihre Anlageentscheidungen einbeziehen.
  - Mehr Bürokratie und Kosten um Endverbraucher akkurat zu informieren.
- Verwendung von einheitlichen EU-weiten labels (Klassifizierung) für nachhaltige Produkte.
  - Wenn als nachhaltig deklariert, muss erwiesen werden wieso jenes Produkt als nachhaltig gilt.



# Ausblick in die Zukunft

- 2/3 der Vorschläge wurden in der aktuellen Legislatur abgeschlossen.
- In der Europäischen Kommission gibt es ein neues Referat welches sich ausschließlich mit nachhaltiger Finanzierung beschäftigt (Referatsleiter: Martin Spolc).
- Weitere Initiativen werden erwarten:
  - Die Einführung eines EU-weiten labels;
  - Maßnahmen um auch Soziales und Governance in die Taxonomie aufzunehmen; und
  - Die eventuelle Einführung eines „green supporting factors“.

