

Minutes

of the Meeting of the Legal Affairs Committee
of the European Federation of Building Societies,
Prague, 16 October 2019

Participants:

Z. Anđel, Croatia
Dr. R. Conradi, Germany – **Secretary** –
E. Feix, Slovak Republic
R. Fink, Czech Republic
C. Forche, Austria
A. Freise, Germany
A. Guthmann, Germany
Prof. Dr. A. Grünbichler, Austria
K. Holler, EFBS
H. Imgrund, Germany
J. Jeníček, Czech Republic
P. Jiráček, Czech Republic
A. Kármán, Hungary
R. Kaschel, Hungary
R. Kašiar, Slovak Republic
L. Keuper, EFBS
T. Kofron, Czech Republic
P. Kotáb, Czech Republic
T. Kranz, Germany
C. König, Germany
U. Körbi, Germany – **Chair** –
M. Lesemann, Germany
N. Lohöfer, Germany
Dr. C. Martell, Austria
J. Masar, Slovak Republic
S. Masuch, Germany
J. Markvart, Czech Republic
V. Ondracka, Czech Republic
J. Pfenning, EFBS

D. Rádl Rogerová, Czech Republic
A. Senjak, Austria
Z. Szendrey, Hungary
Ing. J. Šedivý, Czech Republic
T. Sudler, Germany
Dr. L. Takacsova, Slovak Republic
Dr. Z. Tichy, Hungary
P. Vizkelety, Hungary
A. Vogt, Luxembourg
L. Vošický, Czech Republic
Dr. S. Wuttke, Germany
P. Zaremba, Czech Republic
Z. Zhubaniyazova, Kazakhstan
J. Žižka, 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**

Dr. R. Conradi informed the participants that written requests for amendment of the Minutes of the preceding meeting had not been received, nor were any such requests orally meeting at the meeting itself.

Mr. Körbi thereupon stated that the minutes stood unanimously as submitted. Requests for amendment of the agenda were not made.

**Agenda item No. 2: Current legal developments in Member States
– Delegates’ reports on their experiences -**

Mr. Körbi introduced this agenda item and called to mind that, at the committee’s latest meeting, EU Commission representatives from the Directorates General FISMA and JUST had informed the Delegates on the state of the deliberations about measures aimed at a revision of the mortgage credit directive (MCD) and the evaluation of the consumer credit directive (CCD). And that the EFBS itself had submitted to the EU Commission a position paper of its own setting out its ideas on how both directives could be modified.

At an ad-hoc working session in Frankfurt/M. on 16 September, members of the legal committee from Austria, Germany and Czechia had exchanged views about topical problems pertaining to the application of these directives in their countries. On this occasion it had turned out that a number of states had different views on the dimensions of such revision – not least because of the diverging speed of transposition among these countries.

On this occasion, the following details were discussed:

- Prepayment penalty – contractually specified or lump sum
- Right of withdrawal, especially its limitations

- Combination of the right of withdrawal plus an additional cooling off period
- Inclusion of the definition of credit agreement into the consumer credit directive (negative interest)
- Written form requirement for credit agreements
- Tying ban (e.g. credit products with any residual debt insurance)
- Extent of pre-contractual and contractual customer information duties
- Contents and date of submission of the standardized Information Sheet (ESIS) to customers
- Should credit scoring based on household income be permissible?

Against this background, it would be of interest to know the experiences, including problems, of the other committee member countries with the problems they have encountered in practice as well as the resultant wishes for improvement which the EFBS should make known to the EU Commission in view of the current procedures underway to review and/or revise the aforementioned directives.

The exchange of experiences among the member states represented on the committee has produced the following results:

- Czech Republic: There have not been any problems in the process of transposition of the mortgage credit directive into national law. This holds true for the application of the ESIS in particular. However, three years from transposition, the Czech national bank had suddenly expressed the view that the institutions had no right to charge prepayment penalties in the event of premature loan repayment, but just administrative fees to the tune of 1000 CZK (= about 40 €) at the most. This explains the now existing substantial legal insecurity, because it is not clear whether the clients, who had paid higher damages before, would have the right to claim these damages back from the institutions. For the time being, the finance ministry was working on a legislative proposal designed to clear the situation.
- Hungary: The Hungarian law had met the requirements of the directive already prior to the transposition of the mortgage credit directive so that major modifications are not necessary.

- Luxembourg: Regarding the problems already broached at the latest meeting (agenda item No.2), the situation has remained unchanged. This means that the cross-border business with married couples in France and Belgium is now more difficult than before because of the completely diverging degrees of transposition of the mortgage credit directive by those two countries and because the supervisory authorities are charging substantial amounts of fees for licencing credit intermediary activities.
- Germany: The requirements to be met by credit scoring are included in an ordinance into which the credit industry, too, could have included its own interests. This procedure could also serve as a model at the European level. One of the problems concerns the existence of an “eternal” right of withdrawal if and whenever the law courts discover the existence of an only tiny mistake. On the other hand, the scope of the right of withdrawal has already been curbed in part by the latest cases upon by the European Court of Justice. Nonetheless, it is felt that substantial room still exists for further improvement in the development of the right of rescission. It must be assumed that – as distinct from the present situation in Germany – another sentence of the European Court of Justice, requiring repayment of at least part of the costs (including commission fees) not only for credit period-related, but also for non-credit period-related loans would presumably lead to changes in the legal situation in Germany.

Mr. König emphasized in conclusion that the Federation stood in regular contact with the EU Commission and would broach the problems on the agendas of its present meeting as well as on the that of its special meeting on 16 September 2019 to be held for discussing the transposition of the consumer credit and the mortgage credit directives within the framework of the review processes currently under way. However, bearing in mind that the prepayment penalty has still not yet been uniformly regulated in various member countries, the Federation would not raise this topic itself, but would do its best to ensure that the system of contractually agreed damages would continue to exist also in future.

The subsequent exchange of experiences on current developments in the field of the law on building-saving institutions of the Member States may be described as follows:

Mr. Körbi informed the participants that the most recent major modification of the *German* law on Bausparkassen dates back to the year 2016. A minor modification made in 2019 concerns investment options of building-saving institutions in the United Kingdom after the Brexit. In order to avoid an infringement procedure, it would be necessary to modify the Law on the building-saving premium so that individuals, although resident abroad, but subject to unrestricted income taxation in Germany, would be permitted to use their building-saving funds including building-saving premiums for financing residential property outside Germany as well. Moreover, there are good reasons for assuming that building-saving premiums, which have been in existence for 20 years, would be increased (lifting income limits as well as rates and maximum amounts of promotion). From among the latest cases of jurisdiction, group action procedures against the introduction of service fees during the saving phase would be worth being mentioned. One public Bausparkasse had lost out on a case against itself and has therefore reimbursed the building saver with the amount he has paid thus far. Another case against a private Bausparkasse is still pending. Finally, yet another case is still pending before the Federal Court of Justice (Bundesgerichtshof); it concerns the issue whether a Bausparkasse would be authorized to turn down requests for having agreed building-saving sums augmented for saving technique reasons. Bearing in mind the present low-interest period, this issue is of great importance for the industry, because this would be tantamount to the risk that building-savers would have the right to demand that their building-saving sums be increased in order that they can profit from the previously agreed high-interest rates and thereby prolong the lives of their contracts. (Observations No. 1: The Deutscher Bundestag (German Federal Parliament) decided to permit increases in building-saving premiums at end-2019 effective as of 01 January 2021. No.2: The German Federal Court (Bundesgerichtshof) has decided in the meantime that it would be permissible to reject applications for having building-saving sums increased for saving technique reasons.)

Dr. Z. Tichy and Mr. Z. Szendrey reported for *Hungary* that, for about one year, building-saving premiums have no longer been on offer in connection with building-saving contracts, which means that the new products now offered by building-saving institutions do not include any promotional element any more. But, owing to a more recent change of the law, building-saving institutions may henceforth offer investment certificates. One of the institutions has availed itself of this possibility and sells government bonds henceforth. Moreover, further changes in the law are now under way to facilitate digitalization as well as to make investment regulations easier to understand and to evidence the use of

such funds for housing purposes. Moreover, the ministry of finance is prepared to relax the regulatory requirements to be met by non-supported building-saving products. Finally, new business fields would be opened up as well (e.g. commencement of housing brokerage by the Fundamenta building-saving institution).

Agenda item No. 3: Draft European Banking Authority (EBA)
Guidelines on loan origination and monitoring

The committee took note of the reports by Ms. A. Freise and Ms. S. Masuch on the contents of the consultation paper submitted by the European Banking Authority (EBA) on 19 June 2019 as well as on the Federation's pertinent comments. The EBA draft is rather lengthy and deals with the whole lending process from credit scoring up to the evaluation of securities including credit control. Problematic from the Federation's point of view is especially section 5 of the draft text applicable to credits granted pursuant to either the consumer credit directive (CCD) or the mortgage credit directive (MCD). With respect to the latter, this draft replaces by a total of 102 new rules the six EBA rules pertaining to credit scoring. It is problematic for countries like Germany, where loans granted by Bausparkassen may be subject to both the CCD and the MCD regulations, where the rules governing the first are henceforth distinctly stricter and, thus, have to meet such stricter MCD standards as well. In the Federation's opinion, this would violate the principle of proportionality as well as the existing rules of Articles 8 of the CCD and Article 18 of the MCD. Apart from this, the EBA would anticipate the results of the current reviews of both directives by the EU Commission.

Apart from this, the regulations of section 7 of the draft text on securities evaluation would be of importance for member institutions not least from a cost point of view. These regulations are relevant for both chattel and mortgage rights. A special point of interest is the fact that the requirements pertaining to non-performing loans (NPLs) in particular may neither be applied to all the other categories of credit. This means that especially the guidelines take more strongly into account the non-risky business of building-saving institutions so that they need not be subjected to the same strict provisions. It is true that the new provisions on evaluation clearly go far beyond previous requirements, but may not burden member institutions in practice to an unacceptable degree. For instance, the guidelines make it necessary to have the value of real property ascertained

by a valuer, but it would still be possible as in the past to use the services of both internal and external valuers. Against this background, the Federation has made it a point in its commentary that there would be no need to hire the services of exclusively certified internal valuers. The Federation also demands that not every valuation must be preceded by a visitation of the interior of the respective object; this is true especially where the respective object is similar to others. Moreover, the principle of rotation applicable to valuers according to the draft should be made less strict as well. On the occasion of the recent EBA hearing in Paris concerning the draft guidelines, the Federation had raised a question interesting to a majority of borrowers, i.e. about how to organize credit standing checks. It is gratifying to note that with respect to this demand the EBA had signalled its permission for taking the joint income of husband and wife as the basis of credit standing checks. Finally, not only this Federation, but even more so all the other European organizations of the credit industry had finally referred to as unrealistic the extremely brief period of time allowed for transposition of the draft (mid-2020). But the EBA's response to this complaint has been that it would not allow the demanded prolongation, although the date of entry into effect shifted by a few months would not be problematic.

**Agenda item No. 4: Legislative Proposals of the EU Commission
for sustainable financing – current state**

The Committee took note of the report submitted by Ms. L. Keuper on the latest state of the legislative procedure concerning the package of regulations on sustainable financing submitted by the EU Commission in May 2018. From among the drafts submitted at the time, the consultations about the regulations concerning Low Carbon Benchmarks as well as the obligation of institutional investors to lay open the respective documents have been concluded. These would soon be published in the Official Journal of the European Union. The European Parliament (EP) had concluded its deliberations on the taxonomy regulation in March of the same year already and had suggested to include also credit institutions into the scope of application of this regulation. In the opinion of the EP, investments bearing on nuclear energy, fossil fuels as well as gas infrastructures would not be sustainable in nature. At the level of the EU Council of Ministers, however, a majority of Member States considered nuclear energy to constitute a sustainable form of energy and would, moreover, only be prepared to include such credit institutions into the scope of application as are busy in the field of portfolio management. The start of the trilogue negotiations has been planned

for 23 October of the current year. It would, however, be open whether these talks can be concluded before the end of the year. In parallel, a so-called „Technical Group of Experts“ had met on taxonomy issues the results of which are included in its report of 452 pages submitted on 18. June 2019. This report includes statements on the building sector, inter alia, comprising the CO₂-emissions of buildings only in their period of use, but not during their erection. Further details of the report may be taken from the presentation attached to this report as **Annex 1**.

In the subsequent brief discussion, Mr. König pointed out that the rules on sustainable financing must be expected to have direct implications for the business activities of Member Institutions not least because of the fact that the environmental parties increased their election returns during the most recent elections at the national and the European levels. It is feared that the criteria developed by the “technical group of experts” would have to be taken into account also by the credit business. Further down in the course of the discussion, it had become clear that the credit industry would not be able to see what are “green” and/or sustainable investments and what would be the consequences of this inability for credit institutions, i.e. whether the funding of sustainable measures would result in facilitations in the field of own capital requirements and whether, conversely, the funding of non-sustainable (“brown”) projects would mean higher own capital contributions. Mr. König pointed out in this context that the activities of the European Mortgage Federation aimed for recognition of „green mortgages“; he argued in this context that green mortgages were less exposed to the risk of failure. Attempts were currently under way to substantiate this assumption on the basis of studies. Reliable figures confirming this assumption do thus far exist only for Denmark where banks have collected corresponding data within the framework of residential construction financing for quite some time already. Against this background, the Federation has been invited to develop its own position in good time and to give authority to their position at the EU level. The Committee unanimously supported this evaluation by Mr. König.

Agenda item No. 5: Fighting money laundering – current developments by the EU Council of Ministers, the EU Commission and the European Parliament

The Committee took note of the report submitted by Dr. Conradi on the further money laundering possibilities, which the EU Council of Ministers, the EU

Commission and the European Parliament currently have in parallel with the already running transposition period of the 5th the anti-money laundering directive. Against the background of several years of grave money laundering cases discovered in 2018, these possibilities are expected to fill gaps discovered especially in the existing provisions. In his commentary, Dr. Conradi offered explanations especially on the report of the EU Council of Ministers of 4 December 2018 concerning more vigorous steps against money laundering and the funding of terrorism, on modifications of the EU banking directive No. 2013/36/EU dated 20 May 2019 relevant in terms of money laundering, the communication from the EU Commission entitled „Anti-Money Laundering and Counter-terrorist Financing of 24 July 2019” (including individual reports relevant in this context), the EP Resolution of 16 September 2019 as well as the decisions of the ECOFIN Council of 10 October 2019 where relevant in terms of money laundering. Details may be taken from the presentation attached hereto as **Annex 2**.

Dr. Conradi expressed the view that, in his opinion, the current activities of the EU institutions are intended to replace the money laundering directive by an anti-money laundering regulation in the medium term. For the building-saving industry, such a regulation must be apprehended to result in less favourable possibilities regarding recognition of special phenomenon's of this branch in the mid-term.

In the subsequent discussion, reference was made to efforts for setting up a centralized anti-money laundering authority at the EU level. The Committee showed itself unanimously agreed that money laundering prevention must remain a national responsibility because this topic is more a national possibility and, thus, a concern of the national supervisory authorities and that the Federation should uphold this position vigorously press this point at the different EU institution levels.

Agenda item No. 6: Miscellaneous items

a) EU Commission proposal for a Group Action Directive to protect collective consumer interests – current state of legislation

The Committee took note of the report submitted by Ms. Holler and Ms. Freise on the developments recorded up to the present time. The slow progress up to now of the negotiations by the EU Council of Ministers would have to be explained by the difficulty to reach a European position which takes into account the interests of those Member States which already have a functioning system of collective legal protection for consumers. Here, the Finnish Council Presidency has developed a proposal not long ago which distinguishes between national and European group actions. Whilst in the case of the first, the right of qualified bodies to sue would be subject to national law, the regulations of the future EU directive would be applicable in the case of cross-border group actions. The German side had not been able to get the necessary support for its proposal to make this an action for a declaratory judgment enforceable in future. Moreover, it may be assumed that there would be no need for any mandate of consumers. Although there has not yet been any officially formulated compromise in existence, it could not be excluded that the Council would reach agreement still in the month of November of the current year. Bearing in mind the widely differing positions held by the EP and the Council, it was, however, extremely improbable that the trilogue negotiations would soon be brought to a conclusion.

b) European Deposit Insurance Scheme (EDIS) – present situation

The Committee took note of the report submitted by Mr. J. Pfenning on the current state of development. He began reminding Delegates that the legislative process has been under way for 4 years already. Although a draft report on the autumn 2015 legislative proposal of the EU Commission has been before the EP, the Member States have not yet voted on this proposal. Nor has the Council adopted any position either, as yet, since June 2016 on the basis of the argument that risks had first to be substantially reduced at the level of the Member States' banks. As a consequence, deliberations had thus far been held mainly by technical working groups which do, however, not have any political decision-making authority. Although in public the President of the Commission, Mrs. U. von der Leyen, and the designated

Finance Commissioner, Mr. V. Dombrovskis had hitherto stuck to this plan, it could not be excluded, that the EU Commission would withdraw its original proposal in view of the staggering legislative process and submit a new proposal which would include just the first level (reinsurance) of a European Deposit Insurance system. The further developments are completely unclear at present.

c) New EU Commission – Personalities, responsibilities, possible implications for the finance industry

The Committee took note of the report submitted by Ms. K. Holler and Ms. L. Keuper on the latest state of composition of the EU Commission. From the point of view of the building-saving industry, it is of importance that, insofar as the financial services sector is concerned the present commissioner, Mr. V. Dombrovskis, will retain his present position. The field of sustainability will continue to be ploughed by the Vice-President of the Commission, i.e. Commissioner F. Timmermans. The responsibility for law and consumer protection will be in the hands of a Belgian national, i. e. Mr. D. Reynders. In the hearings thus far conducted, all candidates have been confirmed by the EP except the nominees of Hungary, Romania and France. These last-mentioned three countries would have to nominate new candidates in order to enable the EP that it can confirm the Commission as a whole. The tasks of the Vice-Presidents of the newly created positions will have to work in the fields of digitalization, environment and economics.

Mr. Körbi satisfied himself that there were no further requests for the floor. He thanked the participants for their lively participation in the discussions as well as the speakers for their contributions. He closed the meeting with his special thanks to the interpreters.

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“.



Bekämpfung der Geldwäsche **- Aktuelle Entwicklungen im EU-** **Ministerrat, der EU-Kommission und im** **Europäischen Parlament -**

EuBV-Jahrestreffen

Rechtsausschuss, 16. Oktober 2019, Prag

Dr. Ralf Conradi



Bekämpfung der Geldwäsche seit 2015

10.06.1991

1. EU-Geldwäscherichtlinie



Umsetzung bis 01.01.1993



20.05.2015

4. EU-Geldwäscherichtlinie



Umsetzung bis 26.06.2017

30.05.2018

5. EU-Geldwäscherichtlinie



Umsetzung bis 10.01.2020



Bekämpfung der Geldwäsche seit 2015

04.12.2018 **Aktionsplan des Rates für eine bessere Bekämpfung von Geldwäsche und Terrorismusfinanzierung**

Festlegung kurzfristiger Maßnahmen nichtgesetzgeberischer Art zur Erreichung folgender 8 zentraler Ziele:

1. Ermittlung der Faktoren, die zu den jüngsten Fällen von Geldwäsche in EU-Banken beitragen
2. Auflistung von Aufsichtsverfahren, um Geldwäsche und Terrorismusfinanzierung entgegenzuwirken
3. Erhöhung der aufsichtlichen Konvergenz/verbesserte Einbeziehung der Geldwäschebekämpfung in den Aufsichtsprozess



Bekämpfung der Geldwäsche seit 2015

Aktionsplan des Rates für eine bessere Bekämpfung von Geldwäsche und Terrorismusfinanzierung

4. Gewährleistung einer effektiven Zusammenarbeit der für die Finanzaufsicht und der Bekämpfung der Geldwäsche zuständigen Behörden
5. Entzug von Bankzulassungen bei schwerwiegenden Verstößen gegen Geldwäschebestimmungen
6. Verbesserung des Informationsaustausches zwischen den Behörden
7. Austausch bewährter Verfahren zur Feststellung von Gemeinsamkeiten
8. Verbesserung der Befugnisse der europäischen Aufsichtsbehörden



Bekämpfung der Geldwäsche seit 2015

20.05.2019 **EU-Richtlinie zur Änderung der Bankenrichtlinie 2013/36/EU**



- Einbeziehung der Bekämpfung von Geldwäsche und Terrorismusfinanzierung in die Tätigkeit der Aufsichtsbehörden, u. a. durch
- Überprüfung der Anforderungen an die Eignung von Mitgliedern von Leitungsorganen im Falle des begründeten Verdachts (oder sogar des erhöhten Risikos) von Geldwäsche oder Terrorismusfinanzierung (Art. 91 Abs. 1)



Bekämpfung der Geldwäsche seit 2015

EU-Richtlinie zur Änderung der Bankenrichtlinie 2013/36/EU

- Verpflichtung der nationalen Aufsichtsbehörden zur Meldung an die EBA bei begründetem Verdacht von Geldwäsche- oder Terrorismusfinanzierung oder eines erhöhten Risikos (Art. 97 Abs. 6)
- Verpflichtung der EBA zur Herausgabe von Leitlinien zur Zusammenarbeit und zum Informationsaustausch zwischen den zuständigen Behörden und zentralen Meldestellen (FIUs) im Zusammenhang mit schwerwiegenden Verstößen gegen Vorschriften zur Bekämpfung der Geldwäsche bis 1. Januar 2020 (Art. 117 Abs. 6)



Bekämpfung der Geldwäsche seit 2015

24.07.2019 **Mitteilung der EU-Kommission „Verbesserte Umsetzung des Rechtsrahmens der EU für die Bekämpfung von Geldwäsche und Terrorismusfinanzierung“**

Inhalt:

Überblick über vier gleichzeitig mit der Mitteilung am 24.07.2019 veröffentlichten Berichte:



Bekämpfung der Geldwäsche seit 2015

Mitteilung der EU-Kommission „Verbesserte Umsetzung des Rechtsrahmens der EU für die Bekämpfung von Geldwäsche und Terrorismusfinanzierung

1. Supranationale Risikoanalyse



Inhalt:

Auflistung von Schwachstellen bei der Geldwäschebekämpfung in Bezug auf u. a.

- Ermittlung von wirtschaftlichen Eigentümern und
- nicht regulierte Produkte (z. B. virtuelle Vermögenswerte)



Bekämpfung der Geldwäsche seit 2015

Mitteilung der EU-Kommission „Verbesserte Umsetzung des Rechtsrahmens der EU für die Bekämpfung von Geldwäsche und Terrorismusfinanzierung

2. Bewertung der jüngsten Geldwäschefälle

 Inhalt:

Analyse zehn aktueller, öffentlich bekannt gewordener Fälle von Geldwäsche im EU-Bankensektor

 Ergebnisse:



Bekämpfung der Geldwäsche seit 2015

Mitteilung der EU-Kommission „Verbesserte Umsetzung des Rechtsrahmens der EU für die Bekämpfung von Geldwäsche und Terrorismusfinanzierung

Auf Institutsebene

- Unterlassene oder mangelhafte Umsetzung der Anti-Geldwäscheregelungen
- Unzureichende interne Mechanismen der Institute
- Unpassende Strategien bei risikoreichen Geschäftsmodellen
- Unzureichende Koordination der Anti-Geldwäschestrategien in den Instituten und auf Gruppenebene



Bekämpfung der Geldwäsche seit 2015

Mitteilung der EU-Kommission „Verbesserte Umsetzung des Rechtsrahmens der EU für die Bekämpfung von Geldwäsche und Terrorismusfinanzierung

Auf Aufsichtsebene

- Bei Bankengruppen: Ineffiziente Zusammenarbeit der Aufsichtsbehörden, zentralen Meldestellen etc.
- Zu starker Verlass auf die Tätigkeit der Behörden im Aufnahmestaat



Bekämpfung der Geldwäsche seit 2015

3. Verstärkung der Zusammenarbeit zwischen den zentralen Stellen für Geldwäsche-Verdachtsanzeigen (FIUs)

Folgende Schwachpunkte bei der Zusammenarbeit wurden festgestellt:

- Fehlende Möglichkeit des Zugriffs auf Finanz-, Verwaltungs- und Strafverfolgungsdaten
- Unzureichender und zu langsamer Informationsaustausch zwischen den FIUs
- Fehlen geeigneter IT-Ausstattung
- Eingeschränktes Mandat der FIU-Plattform der EU: nur Informationsaustausch, keine verbindlichen Leitlinien, Standards etc.



Bekämpfung der Geldwäsche seit 2015

Mitteilung der EU-Kommission „Verbesserte Umsetzung des Rechtsrahmens der EU für die Bekämpfung von Geldwäsche und Terrorismusfinanzierung

4. Vernetzung der zentralen Bankkontenregister

Inhalt:

Vorschlag der Kommission, ein dezentrales System mit gemeinsamer Plattform auf EU-Ebene einzurichten.



Bekämpfung der Geldwäsche seit 2015

16.09.2019 **EntschlieÙung des EP**

Initiator MdEP Sven Giegold (Grüne)

Hintergrund: Unzufriedenheit mit dem Ergebnis einer Anhörung von Vertretern der GD JUST und der GD Verbraucherschutz zum Thema Geldwäschebekämpfung im ECON



Bekämpfung der Geldwäsche seit 2015

Entschließung des EP



wesentlicher Inhalt:

- 4. Geldwäscherichtlinie: mangelhafte Umsetzung
- 5. Geldwäscherichtlinie: Verfehlung der Umsetzungsfrist wahrscheinlich, Gefahr verspäteter Einrichtung der Transparenzregister
- Forderung, ggf. im Geldwäschefall Danske Bank ein Vertragsverletzungsverfahren einzuleiten



Bekämpfung der Geldwäsche seit 2015

Entschießung des EP

- Prüfung der Option, EU-Geldwäscherecht künftig als Verordnung zu erlassen
- Entscheidungsfindung zur Liste der Drittländer mit hohem Geldwäscherisiko sollte nicht von sachfremden Erwägungen beeinflusst werden
- Forderung nach besserer personeller und finanzieller Ausstattung des für Drittländer zuständigen Referats der EU-Kommission



Bekämpfung der Geldwäsche seit 2015

10.10.2019 **ECOFIN-Rat**

Wesentliche Ergebnisse:



Erörterung folgender Punkte:

- Anwendungsbereich: einheitlicher Regelungsansatz oder getrennte Regelungen für den Finanzsektor und den Nicht-Finanzsektor?
- Fortschritte bzgl. der Umsetzung des Aktionsplans vom 04.12.2018
- Der strategischen Prioritäten für längerfristige Maßnahmen (Ziel: neue Schlussfolgerungen des Rates im Dezember 2019)



Bekämpfung der Geldwäsche seit 2015

ECOFIN-Rat

- Mögliche weitere Harmonisierung der Geldwäschevorschriften durch den Erlass einer EU-Verordnung
- Übertragung bestimmter Aufgaben der Geldwäscheaufsicht auf eine Einrichtung der EU
- Einrichtung eines Koordinierungs- und Unterstützungsmechanismus auf EU-Ebene zur Verbesserung der Zusammenarbeit mit und zwischen den FIUs



Bekämpfung der Geldwäsche seit 2015

Ausblick: Auswirkungen auf die Bausparkassen

- Mehr kleinteilige Verdachtsmeldungen
- Größerer Aufwand bei Kunden aus Nicht-EU-Staaten (Hochrisikostaaten)
- Künftige Geldwäsche-Verordnung: größere Distanz zur Aufsicht, weniger Möglichkeiten zur Berücksichtigung bausparkassenspezifischer Besonderheiten

