

Minutes
of the Meeting of the Legal Affairs Committee
of the European Federation of Building Societies,
held on 19 March 2021 from 11:00 to 12:30 virtually via MS Teams

Participants:

Z. Andel, Croatia
Dr. R. Conradi, Germany – **Secretary** –
J. Bureš, Czech Republic
Dr. B. Dedert, Germany
A. Finken, Germany
A. Freise, Germany
B. Gerle, Hungary
G. Grebler, Germany
A. Guthmann, Germany
K. Holler, EFBS
J. Jeníček, Czech Republic
P. Jiráček, Czech Republic
Dr. F. Jungkurth, Germany
A. Kármán, Hungary
R. Kaschel, Hungary
R. Kašiar, Slovak Republic
L. Keuper, EFBS
C. König, Germany
U. Körbi, Germany – **Chair** –
T. Kranz, Germany
M. Lesemann, Germany
Dr. C. Martell, Austria
D. Marwan, Slovak Republic
J. Masar, Slovak Republic
S. Masuch, Germany
S. Melchior, Austria
M. Müller, Germany
K. Nowak, Austria
M. Okáčová, Czech Republic
J. Pfenning, EFBS
J. Phlippen, Germany
C. Reitz, Austria
J. Šedivý, Czech Republic
T. Sudler, Germany
Z. Szendrey, Hungary
Dr. L. Takacsova, Slovak Republic

Dr. Z. Tichy, Hungary

P. Vizkelety, Hungary

M. Weinrich, Germany

J. Žižka, Czech Republic

M. Zmítko, Czech Republic

Mr. U. Körbi opened the meeting and welcomed the participants.

Agenda item No 1: Approval of the Minutes of the Meeting of the Legal Affairs Committee, Prague, 16 October 2019

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

Mr. Körbi thereupon stated that the minutes stood unanimously as submitted.

Requests for amendment of the agenda were not made.

Upon Mr. Körbi's proposal, Dr. Ralf Conradi and Ms. Kathrin Holler were asked to take the minutes.

Agenda item No. 2: The major reform of consumer protection in 2021 (with a focus on the Consumer Credit Directive)

In her introductory remarks Ms. K. Holler stated that the Directorate General for Justice and Consumers of the European Commission (DG JUST) planned a major reform of consumer protection for 2021. Therefore, it had published a so called "New Consumer Agenda" which sets out the main consumer policy priorities in the EU for the years to come (2020 - 2024). An action relevant for Bausparkassen in this context was the amendment of the Consumer Credit Directive (CCD). The European Commission had evaluated the Consumer Credit Directive in the last months and intended to publish the legislative proposal for a Directive before the summer break.

Subsequently, the Committee took note of the report by Ms. E. Brolis, Policy Officer in the Financial Services team of the Consumer Policy Unit of DG JUST, on the outcome the evaluation of the CCD and the planned New Consumer Agenda.

Ms. E. Brolis pointed out that the work of Commission was based on the evaluation of the CCD published last year and had focused on the text of the Directive as well as on its functioning. Further, it was part of the New Consumer Agenda which aimed at tackling particular priority areas such as

- the disruption caused by the covid-19 crisis,
- the green and digital transitions,
- redress and enforcement of consumer rights,
- the needs of special groups and
- international cooperation.

The results of the evaluation had confirmed that the objectives of the Directive are still relevant, namely to ensure

- a consistent high level of consumer protection and
- a well functioning and competitive internal market for consumer credit.

Nevertheless, some issues remained to be addressed, namely

1. the consumer protection objective was not fully achieved due to the fact that
 - the scope of the directive was too narrow to respond to new developments on the market such as new digital products, new operators, short term high cost loans mostly under € 200, and the emergence of new credit platforms,
 - disclosure requirements in advertisements and at the pre-contractual stage were not adapted to digital tools (e.g. to display the SECCI on a smartphone screen).
2. Rules for creditworthiness assessment appeared to be too vague to protect consumers adequately.

Against this background, the impact assessment which was just in the process of being finalised by the Commission, would – amongst several options – be supportive for a new legislative proposal, the aims of which would be

- to reduce the potential detriment to consumers caused by unregulated credit,
- to ensure effective and timely information of consumers particularly at the pre-contractual stage,
- to avoid “information overload” of consumers while also lowering the informational burden of suppliers (e.g. in radio ads) and
- to remove barriers for cross-border marketing of consumer credits.

Agenda item No. 3: Report and exchange of views with Committee members on the reform of consumer protection 2021 in particular on the Consumer Credit Directive – Tour de table –

At the outset, the Committee took note of the report by Ms. A. Freise on the recent European Court of Justice (ECJ) judgement in the “Lexitor” case. In this ruling, the ECJ had decided that Article 16(1) of Directive 2008/48 must be interpreted as meaning that the right of the consumer to a reduction in the total cost of the credit in the event of early repayment of the credit includes all the costs imposed on the consumer. In her report Ms. Freise also touched upon the repercussions of the ECJ ruling on the closing fee charged by the German Bausparkassen as well as on the upcoming implementation of the judgement by the German legislator. Further details of the report may be taken from the presentation attached hereto as **Annex 1**.

In the subsequent “Tour de Table on “The practical experiences with regard to the problems in implementing the CCD with a special view on the implementation of ECJ’s Lexitor judgement” Ms. S. Melchior started by delivering a short report on the reform of the Austrian consumer protection legislation in 2021. Further details of this report may be taken from the presentation attached hereto as **Annex 2**.

Afterwards, Mr J. Bureš delivered a brief report on the situation in the Czech Republic. There, the Lexitor judgement did not have any impact, as the Czech regulators only allowed to charge such administrative costs in connection with the early repayment of a credit, which were directly connected with the early repayment itself (e.g. postage for letters). These would normally not exceed amounts between € 40 and 50.

For Hungary, Dr. Z. Tichy reported, that there was no conflict between the ECJ’s Lexitor ruling and the Hungarian legislation on consumer lending.

For the Slovak Republic, Dr. L. Takacsova reported that with regard to the ECJ’s Lexitor ruling the situation was the same as in Hungary and in Czech Republic.

Agenda item No. 4: Review of the Mortgage Credit Directive

After a short introduction by Ms. K. Holler, the Committee took note of the report by Mr. Paulo Silva, Legal Officer at the Retail Financial Services Unit of DG FISMA, on the current state of state of play in the review of the Mortgage Credit Directive (MCD). The Commission was about to prepare a report on the basis of the study it had commissioned on the MCD-implementation. Due to the late transposition of the MCD into national law by Member States (the last Member State did so only in 2019), the contractor had difficulties in collecting the data on the application of the directive so that the review process by the Commission was supposed to start only in 2021. An impact assessment which would rather have the form of a “road map” was planned to be published before summer together with the launch of the official public consultation. As to the changes of the directive considered the Commission would be in touch with all relevant stakeholders such as consumers and the industry to get as much input as possible on these changes. Even though the overall impression from the study was that the directive worked rather well in terms of consumer protection, a few aspects had emerged to be less successful such as

- pre-contractual information, which was partly perceived by consumers as “information overload” (a problem, which might also be related to a lack of financial literacy),
- the digital transition of the MCD, e.g. with a view to the process of granting mortgage credit online or the application of AI (artificial intelligence) in connection with creditworthiness assessment,
- the use of “robo advice” and so-called chatbots by credit suppliers,
- the inclusion of energy efficient mortgages and their potentially lower risk in comparison with ordinary mortgages including the question how the Commission’s climate agenda could be supported by the MCD,

- the impact of covid-19 crisis in the field of mortgage credit with a special view on the existing MCD rules on arrears and foreclosure,
- removing existing obstacles for the creation of a single market for mortgage credit (even though they mostly were not in the scope of the directive (e.g. taxation) and
- foreign currency loans.

With a view to the ongoing process of reviewing the Consumer Credit Directive DG FISMA would keep close contact with its colleagues at DG JUST to ensure consistency between the CCD and MCD.

Agenda item No. 5: Sustainable finance

The Committee took note of a very brief report by Ms. L. Keuper on the current state of play of the Commission's activities in the field of sustainable finance. In the case of further need of information in this area, Committee members should feel free to address her directly.

Agenda item No. 6: State of play: Anti-Money Laundering Measures

The Committee took note of a very brief report by Dr. R. Conradi on the latest developments in the field of combatting money laundering and terrorist financing. He highlighted that there were three important issues at EC level:

- an action plan published by the Commission in May 2020,
- a resolution of the European Parliament of 7 July 2020 welcoming the aims laid down in the action plan and
- the conclusions the Council adopted on 5 November 2020 on AML policy.

Against this background, a single rule book harmonizing the provisions on money laundering prevention at EU level as well as a European supervisory body would be introduced within short time.

Agenda item No. 7: Miscellaneous

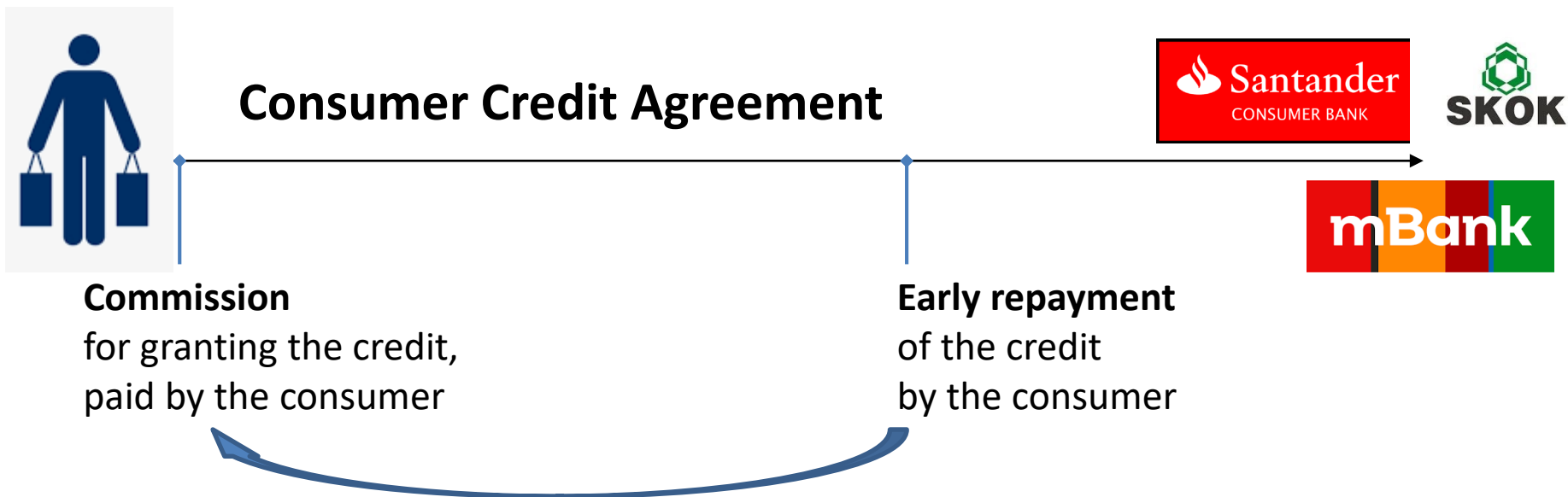
Mr. Körbi satisfied himself that there were no further requests for the floor. He thanked the participants for their lively participation in the discussions as well as the speakers for their contributions and closed the meeting.

Implementation of ECJ's Lexitor judgment (C-383/18)

Legal Affairs Committee
Friday, 19 March 2021,
Agnes Freise



ECJ's Lexitor judgment (C-383/18)



Does the consumers' right to a reduction of the total cost of a credit include those costs which are independent of the duration of the credit agreement?



ECJ's Lexitor judgment (C-383/18)

Consumer Credit Directive 2008/48 (CCD)

Article 16: Early Repayment

1. The consumer shall be entitled at any time to discharge fully or partially his obligations under a credit agreement. **In such cases, he shall be entitled to a reduction in the total cost of the credit, such reduction consisting of the interest and the costs for the remaining duration of the contract.**

2. In the event of early repayment of credit the creditor shall be entitled to fair and objectively justified compensation for possible costs directly linked to early repayment of credit provided that the early repayment falls within a period for which the borrowing rate is fixed.

L 133/66 EN Official Journal of the European Union 22.5.2008

DIRECTIVES

DIRECTIVE 2008/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 23 April 2008
on credit agreements for consumers and repealing Council Directive 87/102/EEC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

in the field of credit for natural persons in general and consumer credit in particular. An analysis of the national laws transposing Directive 87/102/EEC shows that Member States use a variety of consumer protection mechanisms, in addition to Directive 87/102/EEC, on account of differences in the legal or economic situation at national level.

(4) The *de facto* and *de jure* situation resulting from those national differences in some cases leads to distortions of competition among creditors in the Community and



ECJ's Lexitor judgment (C-383/18)

CCD

Article 3: Definitions

(g) “total cost of the credit to the consumer” means all the costs, including interest, commissions, taxes and any other kind of fees which the consumer is required to pay in connection with the credit agreement and which are known to the creditor, except for notarial costs; costs in respect of ancillary services relating to the credit agreement, in particular insurance premiums, are also included if, in addition, the conclusion of a service contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed.

L 133/66 EN Official Journal of the European Union 22.5.2008

DIRECTIVES

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ECJ's Lexitor judgment (C-383/18)

Opinion of Advocate General Hogan,
23 May 2019:



“As will shortly be demonstrated, the meaning of this legislative provision [...] is, in some respects at least, obscure and does not easily lend itself to an interpretation which is satisfactory. It may indeed be — possibly by reason of the issues thrown up by this very reference — that the Union legislature might wish at some point to **re-visit the wording of this provision.”**



ECJ's Lexitor judgment (C-383/18)

Opinion of Advocate General Hogan:



Two interpretations compatible with the principles laid down in Directive 2008/48:

1. The **total cost of the credit** are reduced in proportion to the remaining contract period. In essence, the terms 'for the remaining duration of the contract' would only be an indication of how the reduction is calculated, namely in proportion to the remaining duration of the contract.
2. The reduction to which the consumer is entitled corresponds to the one-off or recurring **payments not yet fallen due** when the early repayment was made.



ECJ's Lexitor judgment (C-383/18)

ECJ, Reasoning of the Judgement, 11 September 2019:

- Limiting the reduction of the total cost of the credit to those costs presented by the creditor as dependent on the duration of the contract **would reduce the effectiveness of the right of the consumer to a reduction in the total cost of the credit. It would entail the risk that the consumer would be required to make a higher one-off payment** when concluding the credit agreement **since the creditor could be tempted to reduce the costs depending on the duration of the contract to a minimum.**
- Including costs which are not dependent on the duration of the contract in the reduction is **not likely to be disproportionately disadvantageous to the creditor.** In the event of early repayment, **the creditor is recovering the sum borrowed ahead of schedule, which is then available for the conclusion of new credit agreements. The interests of the creditor are taken into account also by means of Article 16 (2) CCD,** which provides for the right to compensation for costs directly linked to early repayment of the contract.



ECJ's Lexitor judgment (C-383/18)

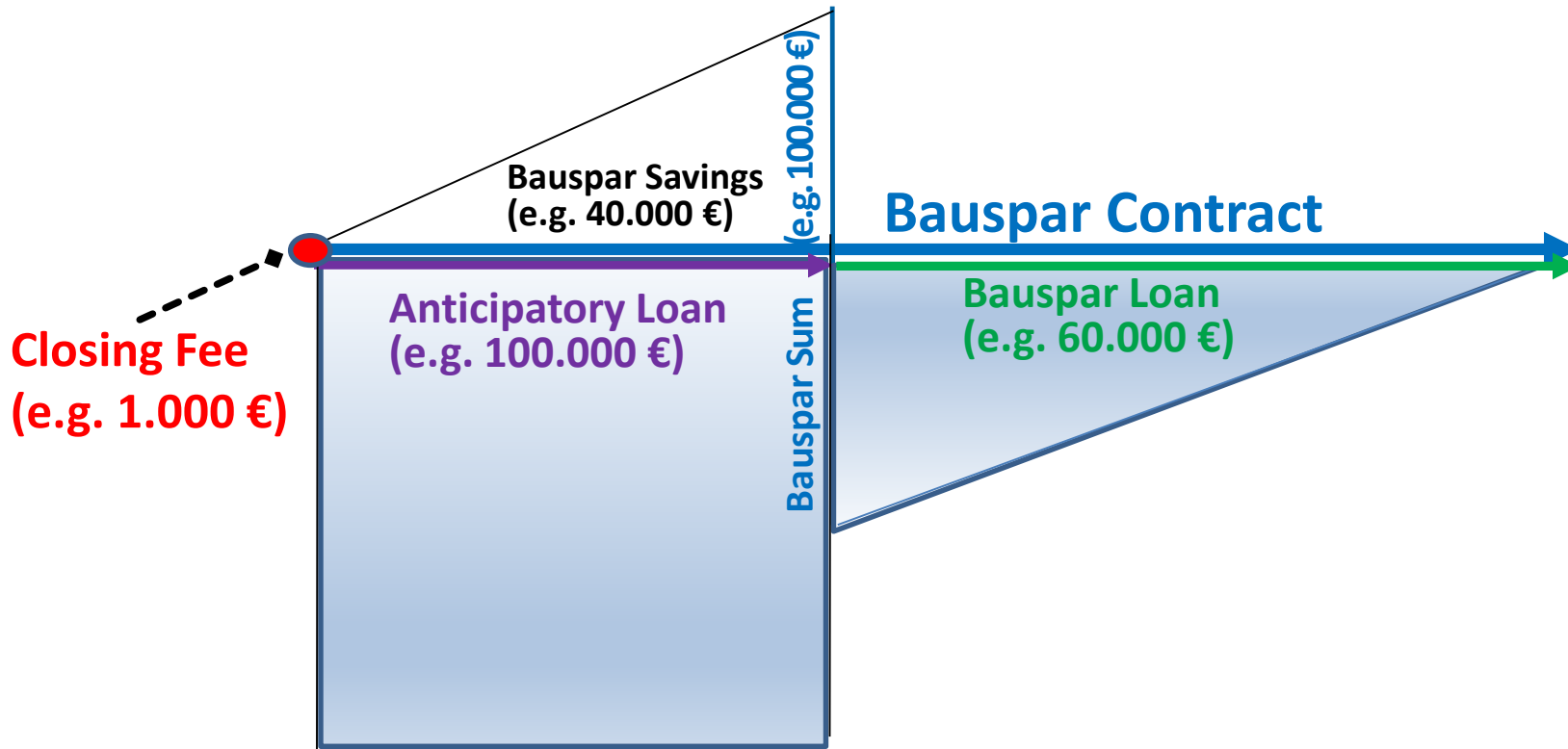
JUDGMENT OF THE ECJ,
11 September 2019



“the answer to the question referred for a preliminary ruling is that Article 16(1) of Directive 2008/48 must be interpreted as meaning that **the right of the consumer to a reduction in the total cost of the credit in the event of early repayment of the credit includes all the costs imposed on the consumer**”



Closing Fee – German Bauspar Contract



A part of the **closing fee** for the **Bauspar contract** is included in the total cost of the **Bauspar loan** and may be also included in the total cost of an **anticipatory loan**.



Implementation of ECJ's Lexitor judgment in Germany (§ 501 BGB)

Current Legislation	Draft Legislation
<p>Insofar as the borrower fulfils his obligations prematurely or the remaining debt becomes due by termination before the agreed time, the total cost of the credit shall be reduced by the interest and other term-related costs.</p>	<p>(1) Insofar as the borrower fulfils his obligations under a consumer loan agreement prematurely, the total cost of the credit shall be reduced by the interest and the costs.</p> <p>(2) Insofar as the residual debt of a consumer loan becomes due by termination before the agreed time, the total cost of the credit shall be reduced by the interest and the other term-related costs.</p>
<p>Soweit der Darlehensnehmer seine Verbindlichkeiten vorzeitig erfüllt oder die Restschuld vor der vereinbarten Zeit durch Kündigung fällig wird, vermindern sich die Gesamtkosten um die Zinsen und sonstigen laufzeitabhängigen Kosten.</p>	<p>(1) Soweit der Darlehensnehmer seine Verbindlichkeiten aus einem Verbraucherdarlehensvertrag vorzeitig erfüllt, ermäßigen sich die Gesamtkosten des Kredits um die Zinsen und die Kosten. (2) Soweit die Restschuld eines Verbraucherdarlehens vor der vereinbarten Zeit durch Kündigung fällig wird, ermäßigen sich die Gesamtkosten des Kredits um die Zinsen und die sonstigen laufzeitabhängigen Kosten.</p>



Implementation of ECJ's Lexitor judgment in Germany (§ 501 BGB)

Draft Legislation

(1) Insofar as **the borrower fulfils his obligations** under a consumer loan agreement **prematurely**, the **total cost** of the loan shall be **reduced by the interest and the costs**.

- **Only early repayment**, not early termination of a contract
- Both **consumer credits** and **mortgage credits**
- Reduction of costs does **not only** include **costs which are dependent on the duration of the contract**
- **Reduction of all costs which are included in the total cost of a credit as defined in Art 3 (g) CCD?**
 - **Costs paid to the creditor not for the credit agreement itself (i.e. costs for a saving contract or a **bauspar contract**)?**
 - **Third-party costs (i.e. fees for an insurance contract paid to an insurance company, fees for registering a mortgage paid to the registry office)?**



Implementation of ECJ's Lexitor judgment in Germany (§ 501 BGB)

Draft Legislation - Explanatory memorandum

The amendment of section 501(1) of the German Civil Code is intended to implement the ECJ ruling of 11 September 2019, C-383/18. **In view of the full harmonisation of the directive, no regulation going beyond or falling short of this is to be made.**

The wording of Section 501(1) of the German Civil Code is therefore **closely aligned with the wording of the Directive. This makes it possible, if necessary, to take into account future clarifications by the ECJ on the scope of the right of reduction in Article 16(1) of the Directive.**

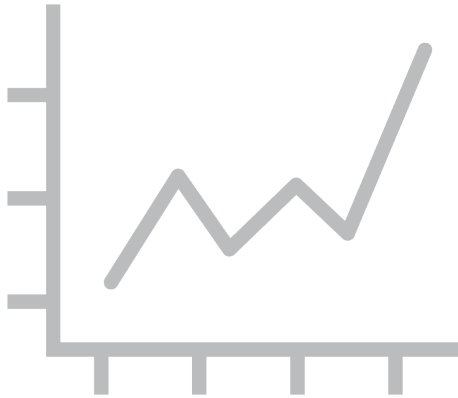
This concerns in particular the question of whether the right of reduction extends to all total costs of the credit within the meaning of Article 3(g) of the Directive; i.e. also to third-party costs, or only to those costs that are relevant in the contractual relationship between the lender and the borrower (for which parts of the reasoning of the judgement speak).



Tour de Table

Short oral reports of the committee members
on the practical experiences
with regards to the problems in implementing the CCD
in their respective countries
(e.g. implementation of ECJ's Lexitor judgement)





EuBV – Spring meeting 19.03.2021

3. Reform of consumer protection in 2021, in particular on the Consumer Credit Directive

Lexitor judgement

- Consumers have the right to a reduction in the total costs in the event of early repayment of the loan
- Costs **not related to the term** (e.g. processing fee, other fees, etc.) must also be reimbursed

Law Change in Austria

- amendment of § 16 para 1 Consumer Credit Act as well as § 20 para 1 Mortgage and Real Estate Credit Act with the same wording
- Changes came into force on **01.01.2021**
- **§ 16** consumer credit act
 - **Retroactive applicability** to contracts concluded after Sept. 11, 2019, provided they have not been repaid early before Jan. 1, 2021
- **§ 20** Mortgage and Real Estate Credit Act
 - Applicability to all credit agreements **concluded after 31.12.2020**
- Clarification in the explanatory notes that **payments to third parties** (such as credit intermediaries) are not to be affected by early repayment

Problems

- the Austrian building societies are affected in particular with regard to the **processing fee**
- disclosure of the **commission for credit intermediaries** so that it does not have to be refunded
- Individual claims pending



BAUSPARKASSEN –
WICHTIGER DENN JE