

Minutes

of the Meeting of the Legal Affairs Committee
of the European Federation of Building Societies
Luxembourg, 14 October 2022

Participants:

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|------------------------|-----------------|
| Freise, Agnes | Germany |
| Ginter, Cyntia | Luxembourg |
| Guthmann, Axel | Germany |
| Haslmaier, Oliver | Austria |
| Holler, Kathrin | Belgium |
| Huber-Srb, Karin | Austria |
| Ibragimova, Lyazzat | Kazakhstan |
| Jungkurth, Dr. Frank | Germany |
| Kállay, Gergely | Hungary |
| König, Christian | Germany |
| König, Sabine | Germany |
| Licht, Björn | Germany |
| Masár, Juraj | Slovak Republic |
| Masgutova, Zaure | Kazakhstan |
| Masuch, Sabine | Germany |
| Melchior, Mag. Simone | Austria |
| Müller, Martin | Luxembourg |
| Otterbach, Dr. Dirk | Germany |
| Pfenning, Jonathan | Belgium |
| Poos, Marc | Luxembourg |
| Reiner, Pierre | Belgium |
| Reitz, Cristina | Austria |
| Riemer, Jens | Germany |
| Schudrowitz, Juri | Germany |
| Sedrati, Dr. Redouane | Slovak Republic |
| Szendrey, Dr. Zoltán | Hungary |
| Takácsová, JUDr. Lucia | Slovak Republic |
| Trappe, Dr. Florian | Germany |
| Weinrich, Mark | Germany |

Agenda item No. 1: Welcome and approval of the Minutes of the meeting of the Legal Affairs Committee on 13 May 2022

Mr. Jens Riemer, Chair of the EFBS's Legal Affairs Committee, opened the meeting and welcomed the participants who were present in the conference room.

Mr. Riemer stated that no written requests for amendment of the Minutes of the preceding meeting of the Legal Affairs Committee in Brussels on 13 May 2022 had been received, nor were any such requests made at the meeting itself. The Minutes were approved unanimously as submitted.

At Ms. Freise's request, the topic "Anti-Money Laundering Regulation" was added to the agenda under Item No. 6 (Miscellaneous).

Agenda item No. 2: Reports of Committee Members on current legal developments in the Member States – Tour de table

Mr. Riemer referred to the previous tour de table in Brussels in May 2022, which included a report on a decision by an Austrian court on a clause of the general Bauspar terms and conditions relating to an account management fee. Depending on the individual case, court decisions on fees charged by Bausparkassen may have impacts across the entire Bauspar sector. The topic is also particularly relevant due to the commercial implications for the institutions. In Germany, several Bausparkassen have already received warnings or faced legal action due to their fee clauses.

Ms. Freise reported on the legal position regarding Bauspar fees in Germany. In recent years, the courts in Germany have frequently addressed the issue of the validity of fee clauses in the general Bauspar terms and conditions of the Bausparkassen. In 2010, the Federal Court of Justice (BGH) ruled that a clause on an arrangement fee applied by the Bausparkassen was lawful. However, the BGH has also ruled that the charging of fees during the lending phase is unlawful. The issue of the lawfulness of annual Bauspar fees during the savings phase has not yet been clarified at supreme court level. There are good arguments that the charging of fees during the savings phase is lawful. The BGH has scheduled oral hearings for 15 November 2022.

Dr. Trappe added that under Germany's Building Society Act (*Bausparkassengesetz*), the Bauspar saver has a legal claim to a low-interest Bauspar loan from the allocation fund after having made Bauspar deposits to the designated assets. As the BGH has rightly noted in the past, during the savings period, this is the principal obligation arising for the Bausparkasse under the Bauspar contract.

Ms. Ginter reported on the legal position in Luxembourg. Thus far, no legal problems have arisen with the charging of fees upon conclusion of a Bauspar contract or during the savings and lending phases. Mr. Müller added that arrangement fees had been the subject of legal proceedings in Italy. In the meantime, a court in Milan has ruled that arrangement fees are lawful. Ms. Takáčsová reported on the legal position in Slovakia: here, arrangement fees and the charging of fees during the savings phase are deemed to be lawful. However, the courts ruled back in 2014 that the charging of fees during the lending phase was unlawful across the entire banking sector.

Agenda item No. 3: Consumer Credit Directive – current state of play

Mr. Riemer reported that the Council had adopted its “general approach” on the Consumer Credit Directive in early June 2022. The European Parliament reached agreement on the final amendments in mid-July. A first trilogue took place in mid-September. On some points, such as pre-contractual consumer information and the right of withdrawal, a political agreement is not far off. In other areas, such as caps on interest rates and the rules on advertising, there is still a need for clarification.

a) Short lecture by Mr. Christian König

Mr. König reported on the current status of the trilogue negotiations and outlined the main provisions of the Directive. With regard to the proposed prohibition of discrimination, no institution should be obliged to conclude contracts under foreign law; efforts to achieve the deletion of this provision are therefore continuing. On the question whether a definition of green credits should be included in the Directive, it should be noted that in Germany, minimum standards have already been developed by the Bausparkassen here.

One aspect which should be viewed critically are the overly stringent requirements relating to advertising, introduced into the trilogue negotiations by the European Parliament. It is unclear what is meant by the vague legal term “social achievement”. This could raise a number of questions regarding interpretation. There is also a need to amend the provisions on the reflection period for pre-contractual information and the scope of the creditworthiness assessment requirements. As for the proposed caps on interest rates, more flexibility is called for. It cannot be the legislator’s task to set the margin here. In Germany, relevant legal provisions already exist in Section 138 of the Civil Code, which deals with usury. Finally, on a positive note, the call for a time limit on the right of withdrawal has been heard; this will ultimately create more legal certainty.

b) Guest speaker: Mr. Eero Säynäjäkangas, assistant to MEP Malte Gallée, the Greens, Germany

Mr. Säynäjäkangas reported on the current status of the trilogue negotiations. No negotiations on key points have been conducted so far in the first trilogue; the Commission’s, the Council’s and the European Parliament’s respective positions have merely been presented. Politically contentious issues have not yet been discussed. There is a general consensus that consumer protection is the overarching goal. Further meetings are planned for 26 October 2022 and 1 December 2022. The main topics of the next negotiating sessions will be the scope of the Directive, the scope of the pre-contractual information, and the rules on advertising.

c) Discussion with Committee members

Mr. König made it clear, during the discussion with Mr. Säynäjäkangas, that the pre-contractual information should only contain genuinely relevant information. There is no need to provide the consumer with details of the supervisory authority or draw attention to the right of withdrawal on the first page of the consumer information form. As regards the further rules on advertising, it is important to ensure that no vague legal terms are used that could cause problems with interpretation.

Ms. Ginter emphasised that the consumer already receives a substantial amount of consumer information. More information should not be added to that. Mr. König then provided an overview of the pre-contractual information currently supplied to consumers in Germany. It is becoming increasingly clear that this flood of information is overwhelming for consumers.

Ms. Takácsová asked about the current situation with regard to the rules on the reflection period for pre-contractual information. Mr. Säynäjäkangas informed the participants that discussions on this topic have not yet been concluded.

Mr. Riemer raised the issue of Bausparkassen and sustainability. In his view, this topic is becoming increasingly important, e.g. in relation to energy upgrading and sustainable finance. The new rules on green bonds should give investors easier access to environmentally sustainable products and promote investment in these products. Ultimately, this is a goal which should be supported. The trilogue negotiations on this topic began in July 2022.

a) Guest speaker: MEP Mr. Christophe Hansen, European People's Party (EPP), Luxembourg, shadow rapporteur on Green Bonds

Mr. Hansen reported on the current status of the negotiations in the trilogue. On some points, the positions of the Council and the European Parliament are still far apart. From his perspective, the goal is to define a “gold standard” for green bonds. This standard should continue to be voluntary for businesses and should not be extended to other products. The new standard should not displace other green projects but must allow them to continue.

b) Discussion with Committee members

In response to Mr. Riemer, who asked when the conclusion of the legislative procedure on green bonds can be expected, Mr. Hansen explained that due to a number of unresolved and contentious issues, a political agreement would appear to be unlikely this year.

In response to a question from Ms. König, Mr. Hansen explained that the standards for other investment products that contain mixed portfolios with existing real estate should not be excluded. In this context, it is a mistake – as with the “combustion engine”, for example – to dispense with technologies too soon. And as the example of coronavirus and the importing of masks and antibiotics has shown, if goods can no longer be produced in the EU, they have to be imported at high cost (and with more damage to the climate).

Ms. Freise then referred to the Commission’s proposal of 17 November 2021 for a Regulation on deforestation-free products (COM(2021) 706). In the legislative procedure, the European Parliament – contrary to the Commission’s existing proposal – called for the financial sector to be included in the scope of the Regulation. This would mean that Bausparkassen would have to comply with the lending requirements envisaged in the Regulation. The question is how this can be achieved in practice.

From Mr. Hansen’s perspective, compliance with the requirements of the Regulation on deforestation-free products is, in practice, not feasible for credit institutions. For that reason, he also took the view that the financial sector should not be included in the scope of the Regulation. He was optimistic that the proposal to include the financial sector will not go through. The Council has already adopted a contrary position. Another example of the “non-feasibility” of requirements relating to companies is the Supply

Chain Act (*Lieferkettengesetz*). It is simply not feasible for a business – when installing photovoltaic systems, for example – to trace the supply chain all the way back to Asia.

Anti-Money Laundering Regulation

Mr. Riemer referred to the effects of the new anti-money laundering package, which will also have implications for the practices of the Bausparkassen. The Bausparkassen should attempt to achieve some easing of the rules in the EU legislative package. This is especially important in light of the supervisory authority's announcement that the Interpretation and Application Guidance for Bausparkassen will no longer be updated.

Ms. Freise made it clear that it will be difficult to negotiate any easing of the rules for the Bausparkassen at the European level. In terms of their structure, the Bausparkassen have a low risk of money laundering. Bausparkassen do not offer payment accounts, issue credit cards or sell securities. Their business model is restricted to low-risk Bauspar business for housing purposes. Attempts have already been made via the EFBS, in position papers on the legislative package, to secure exemptions for the Bausparkassen.

The guest speaker at the meeting in Brussels in May 2022, Dr. Thomasius, had pointed out that an easing of the rules can only be achieved together with other Member States; in the Member States, the demands should be communicated to the national finance ministries. For Ms. Freise, this raised the question whether there have already been any initiatives on this issue in the other Member States. In addition, a one-pager had been produced for circulation to participants after the meeting. This paper sets out the key demands of the Bausparkassen and can be used when communicating with the finance ministries.

Mr. Müller reported that in Luxembourg, there is regular contact with the supervisory authority. While the authority understands the demands put forward by the Bausparkassen, it has indicated that no easing of the rules can be expected for the Bausparkassen in relation to the anti-money laundering requirements.

Mr. Riemer requested all the participants to approach their respective national financial ministries on this matter and to push for an easing of the anti-money laundering requirements for the Bausparkassen. This is becoming an increasingly important topic in connection with the audits of the annual financial statements.

Mr. Riemer satisfied himself that there were no further requests for the floor. He closed the meeting with thanks to the participants for their lively participation in the discussions and to the guest speakers for their contributions.
