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Verband deutscher Pfandbriefbanken e. V.

Die Deutsche Kreditwirtschaft

Simplifying Legislation

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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public banks, the Deutscher Sparkassen- und Giroverband (DSGV),
for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.

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Simplifying Legislation

SIMPLIFYING LEGISLATION

The 2025 Commission work program has a stronger focus on simplification than ever before. We fully support the Commission's approach of simplifying and de-bureaucratizing legislation.

At the same time, we see further opportunities to ensure that regulatory efficiency continues to support economic growth and competitiveness. With the following suggestions, we hope to contribute constructively to this discussion.

In this context, we believe that systematic, sustainable, and effective measures to reduce bureaucracy at the EU level are essential considering a significantly changing environment. Strengthening economic development requires a concerted effort to simplify legislation while maintaining high standards of legal certainty and competitiveness.

A key element in this regard is the establishment of a systematic horizontal approach, ideally within the framework of impact assessments, that places greater emphasis on legal comparison. Strengthening this aspect could contribute to a more coherent regulatory landscape across Member States and ultimately enhance the Union’s competitiveness.

We acknowledge that existing initiatives, such as impact assessments and the REFIT program, are already in place as part of the Better Regulation Policy. Nevertheless, recent EU legislative proposals indicate that businesses, including the financial sector, continue to face substantial bureaucratic burdens. A key driver of this development is the proliferation of delegated and implementing acts, along with additional regulatory requirements imposed by authorities.

Against this backdrop, we see merit in systematically reviewing current EU-level measures for reducing bureaucracy and addressing any identified weaknesses. A more structured and coherent approach, particularly within the framework of impact assessments, could strengthen legal comparability across Member States and enhance the Union’s overall competitiveness. In this context, a key element of such restructured impact assessments should be a systematic analysis of how other global benchmark jurisdictions regulate comparable issues.

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A. Considerations and proposals for European legislation

The following suggestions refer to legislation which is considered by the Commission or where the Commission has already presented proposals.

I. Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL harmonising certain aspects of insolvency law (COM(2022) 702 final)

The current draft directive on harmonising certain aspects of insolvency law aims to introduce, among other things, a winding-up proceedings for microenterprises and a pre-pack procedure for the simplified sale of parts of companies in insolvency.

1. Suggestions for improvement

The current proposals for winding-up proceedings for microenterprises and pre-pack procedures for company sales would make the granting of loans more difficult due to its high susceptibility to abuse. This derives from the lack of involvement of insolvency administrators and creditor participation, as well as insufficient consideration of the interests of secured creditors. This could also lead to premature withdrawal from loan commitments in the event of payment difficulties.

a. Winding-up proceedings for microenterprises

For this reason, the proposal to regulate the winding-up proceedings for micro-enterprises has been met with great concern in many member states and should not be pursued.

b. Pre-Pack procedure

However, the proposal for the pre-pack procedure also urgently needs to be improved with regard to the following aspects:

- the regularity of proceedings,
- the consideration of creditors' interests and
- the protection of loan collaterals in the event of insolvency,

The mentioned aspects are key factors for credit commitments.

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2. Background

a. Regularity of proceedings and consideration of creditors' interests

Only a properly organised insolvency procedure that largely excludes the possibility of abuse is suitable to maintain the trust of the parties involved in the proceedings in a fair procedure. If this trust is lacking, business relationships in case of payment difficulties are likely to be terminated prematurely in order to avoid the procedure. This may finally lead to an increase in unnecessary insolvencies. Furthermore, adequate consideration of creditors' interests is not only necessary to ensure a fair procedure, but is also crucial in the case of pre-pack proceedings, as these proceedings are unlikely to be successful without the participation of creditors, who are needed to support the approach.

b. Enforceability of loan collaterals in the event of insolvency

The purpose of loan collaterals is to protect the lender, especially in the event of the borrower's insolvency. In order not to jeopardise bank financing, the enforceability of loan collaterals in the event of insolvency must not be impaired by legislation at the European level. Credit financing is of central importance for the European economy and for SMEs in particular. If the validity of loan collaterals were restricted in insolvency, this would be directly detrimental to the supply of credit to the economy and SMEs in particular. In many cases only collaterals that are valid in case of insolvency make lending possible in the first place or form the basis for lower lending rates.

II. Considerations regarding the further harmonisation of insolvency law as part of SIU

The Commission has announced their strategy for a Savings and Investment Union which also includes considerations about further harmonisation of insolvency law.

However, the advancement of the European Savings and Investment Union and the European capital market does not require a broad harmonisation of insolvency law or with regard to the ranking of claims. It is highly questionable whether and to what extent a harmonised insolvency law across Europe would actually make the insolvency scenario more predictable in individual cases and whether this could have a positive effect on investment decisions. The real key factors for investment decisions are much more likely to be earnings opportunities, market access and the tax and bureaucratic environment. Furthermore, as insolvency law is closely intertwined with national corporate, labour, tax and civil law, comprehensive harmonisation would be both complex and lengthy and would require the prior harmonisation of the relevant legal provisions in these areas of law.

Therefore, policymakers should focus on the important issues. The modernisation of insolvency-related capital market regulations under the directive 2002/47/EC of 6 June 2002 on financial collateral arrangements and the directive 98/26/EC of 19 May 1998 on settlement finality in payment and securities settlement systems (together: “rules for financial collateral and settlement”) would be much more relevant to the creation of a European capital market.

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III. 28th Regime

Currently, there is only little clarity regarding the aimed regulatory content of a so called “28th regime”. Insofar as the goal is to establish an additional legal system, further increase in the costs and bureaucracy for market participants and a weakening of legal certainty might be a consequence. However, this should be avoided. Before a 28th regime is pursued further, it should be specified in more detail and the advantages and consequences need to be thoroughly evaluated. Furthermore, the stakeholders have to be involved.

IV. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the legal tender of euro banknotes and coins - COM/2023/364 final

The ECON draft report suggested the following addition in Art. 8 (1a) to the proposal regarding access to cash:

29.1.2024 Draft report (ECON)
Amendmend 113

1a. ATM providers and payment service providers who intend to close a bank branch or an ATM shall perform a detailed impact assessment based on the common indicators to ensure that sufficient and effective access to cash is still guaranteed after the closure of the bank branch or ATM. They shall notify their findings to the national competent authority in writing. Where gaps in the access to cash appear, the provider responsible for the closure shall take remedial measures to maintain efficient access to cash.

We advocate for deletion of the proposed amendment for the following reasons:

- The result of the proposed impact assessment and any necessary remedial measures are prioritised over the business policy of the respective institutions.
- This leads to distortions of competition and disadvantages for groups of institutions - and contradicts the basic principles of a market economy while creating bureaucracy.
- For banks and savings banks, the proposed amendment to Art. 8 would mean that, despite a demand-driven cash supply, they would have to comply with undifferentiated and currently unforeseeable remedial measures when optimising their cash infrastructure, which may be against their business strategy.
- Banks and savings banks would also be called upon to fulfil quasi-sovereign tasks without taking basic market economy principles into account.

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B. Legislation already in force

The following suggestions refer to legislation which is already in force.

I. DIRECTIVE (EU) 2023/2673 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 November 2023 amending as regards financial services contracts concluded at a distance and repealing Directive 2002/65/EC

1. In order to provide legal certainty with regard to the right of withdrawal, the Directive 2011/83/EU as regards financial services contracts concluded at a distance could benefit from including a standard form containing information about the right of withdrawal and an explanation of how to exercise this right as it is foreseen for non-financial services in annex I. Alternatively, it would increase legal certainty for traders if member states were allowed to create such standard forms.

2. In order to provide legal certainty with regard to the right of withdrawal, the Directive 2011/83/EU as regards financial services contracts concluded at a distance should also benefit from a provision such as Art. 6 (4), which clarifies, in which way information requirements are presumed to met. Alternatively, it would increase legal certainty for traders if member states were allowed to create such a provision.

3. Harmonisation of the rules on the expiry of the right of withdrawal for financial and non-financial service contracts: The right of withdrawal should uniformly expire at the latest after one year and 14 days after the contract is concluded, without exceptions, see Art. 10 in contrast to Art. 16b (1) subparagraph 2 sentence 3.

4. No application of the product-specific explanatory regime of the EU Mortgage Credit Directive to financial services that are marketed at a distance but not regulated under EU law.

5. Deletion of Art. 11a and Art. 3 (1b): The limited benefit of a withdrawal function for consumers (who have always been able to exercise their right of withdrawal with no formalities and are informed of this in detail each time they enter into a contract) is disproportionate to the costs incurred by traders for the implementation and administration of the (additional) ‘withdrawal function’, including the expected additional costs due to an increase in the number of incorrect or unauthorised withdrawals. Consumers will also have to bear at least part of the costs for this, but the button will not provide them with any real added value.

6. Deletion of the pre-contractual information requirement regarding the social and environmental factors of an investment strategy from Article 16a (1) (o) of the Directive, as it is too vague; alternatively, the start of the withdrawal period should not depend on whether or not the consumer has been informed about this unclear point, contrary to Article 16b (1) subparagraph 2 sentence 1.

7. Deletion of the requirement to remind the customer of the right of withdrawal if less than one day has passed between the provision of pre-contractual information and the conclusion of the contract, Art. 16a (5); no real added value for the consumer compared to the considerable bureaucratic burden for the trader.

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II. DIRECTIVE 2014/17/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010

1. Removal of the information that must always be provided to consumers regarding the estimated value of the property and maximum available loan amount relative to the value of the property in the European Standardised Information Sheet = ESIS = Annex II, Part A, Section 3, since according to Art. 18 (3) both values may not be used (predominantly) for the creditworthiness assessment anyway.

2. Restore the no longer functional link to FIN-NET in the ESIS = Annex II, Part B, Section 12, paragraph 3.

III. DIRECTIVE (EU) 2023/2225 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 October 2023 on credit agreements for consumers and repealing Directive 2008/48/EC

1. In order to provide legal certainty with regard to the right of withdrawal, the Directive (EU) 2023/2225 should benefit from a standard form containing information about the right of withdrawal and an explanation of how to exercise this right e.g. as foreseen for non-financial services in annex I of Directive 2011/83/EU as regards financial services contracts concluded at a distance. Alternatively, legal certainty could be increased for both consumers and creditors if member states were allowed to create such standard forms.

2. In order to provide legal certainty with regard to the right of withdrawal, Directive (EU) 2023/2225 should also benefit from a provision as stipulated in Art. 6 (4) Directive 2011/83/EU clarifying, in which way information requirements are presumed to be met. Alternatively, legal certainty could be increased for both consumers and creditors if member states were allowed to create such a provision.

3. Deletion of the requirement to send a reminder to the consumer of the possibility to withdraw from the credit agreement and of the procedure to follow for withdrawing included in Art. 10(2) in the case the pre-contractual information is provided less than one day before the consumer is bound by the credit agreement. There is very limited consumer protection benefit compared to the disproportionate expected costs incurred for the implementation and administration of this new requirement.

4. In order to reduce bureaucratic burdens, deletion of the newly inserted choice of the consumer to be provided with information by creditors, at all times on paper or on another durable medium (Artt. 9 (1), 10 (2), 16 (2), Art 22, Art. 23) and reintroduction of legal situation as provided by Directive 2008/48/EC, i.e. choice of creditor. Alternatively, inclusion of limited enumeration of common durable media in Art. 3 Nr. 11 (definition of “durable medium”) ensuring that creditors know which media must be provided and consumers do not choose any uncommon medium.

5. In order to enhance legal certainty, clarification in Art. 6 (Non-Discrimination) that there is no entitlement to conclude a credit contract, and credit institutions only need to adhere to national law. There should also be no obligation to offer credit in areas in which they do not conduct business.

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6. Art 18(8): regarding a consumer's right to request a clear explanation of the credit worthiness assessment, existing regulations in § 15 (1) lit. h) of the GDPR (Right to Information in Automated Decision-Making) and the limitation of the request for information based on trade secrets under § 29 (1) S. 2 BDSG should be reflected accordingly.

7. With a view to a harmonized European market, deletion of Art. 20 (2) allowing Member States to impose or maintain stricter formal requirements as provided for in 20 (1), which may lead to competitive distortions and counteraction of the digitalization objective of the Directive. This is especially true in the case where printed contract documents were required, producing excessive paper contrary to sustainability principles and environmental concerns.

8. Art. 26(1) should only depend on the customer having received information about their right of withdrawal and not on whether this information is entirely correct in order to effectively implement the Directive's objective as set out in Recital (64), i.e. expiration of the withdrawal period 12 months and 14 days after the conclusion of the credit agreement.

IV. DIRECTIVE (EU) 2013/36 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC Text with EEA relevance

We demand the removal of Article 91a CRD: There should be no suitability assessment of Key Function Holders (KFH) by the competent authority. The responsibility for KFH should remain with the institution. Article 91a CRD VI includes KFH in the fit and proper regime for members of the management body. But KFH are not members of management bodies, but employees of the institutions. Applying suitability standards comparable to those for managing directors to KFH is disproportionate. The requirements and profiles designated in the institutions for recruitment to such positions are sufficient. In addition, the assessment by the competent authority causes a considerable effort for all affected institutions.

Exemption for SNCIs from remuneration rules Article 92 - 94 CRD: The referred remuneration rules are not suitable for small and non-complex institutions (SNCIs). However, such small variable remuneration does not provide an incentive to take disproportionate risks and therefore has no potential to effectively influence management. Therefore, SNCIs should be completely exempted to relieve them from the administrative burden of remuneration rules.

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V. REGULATION (EU) 2024/886 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 March 2024 amending Regulations (EU) No 260/2012 and (EU) 2021/1230 and Directives 98/26/EC and (EU) 2015/2366 as regards instant credit transfers in euro

Improved coordination of reporting obligations under Art. 15 (3) of the new SEPA Regulation for instant credit transfers

Pursuant to Art. 15 (3) of the new SEPA Regulation, payment service providers are obliged to report annually to the competent authority (in Germany, the BaFin):

- the level of charges for credit transfers, instant credit transfers and payment accounts;
- the share of rejections, separately for national and cross-border payment transactions, due to the application of targeted financial restrictive measures.

It would be a significant relief in the reporting system of the credit institutions if these new reporting obligations were to be lifted again as soon as SEPA instant credit transfers have become well established.

It would also avoid double reporting in the payment sector.

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