



EPF

Memo Member Boards – November 2013

THE BULGARIAN PROPERTY ASSOCIATION JOINS EPF

BPA President Maria Batoeva said “The importance of the EU to Bulgarian real estate is obvious. EU funding and economic governance are the best guarantee of a future for our investors, landlords and tenants, EU law shapes our property markets and facilitates foreign real estate investment, and 100% of our sustainability regulation is European. *EPF is how Bulgarian real estate gets a voice in shaping its future.*”

John Frederiksen and Liviu Tudor, respectively President of EPF and Vice-Chairman of the Managing Committee, said “The key to success at EU level is organised national real estate which in many of the new member states for historical reasons simply isn’t there. Following on the achievements of the Romanian Association of Building Owners, today marks a big step forward.”

Sofia, Brussels, 10 October 2013

FURTHER EPF ENLARGEMENT

At its meeting of 15 October, the Managing Committee agreed on the high priority of sustaining EPF’s enlargement momentum. Members pledged to canvass their own Boards to pool key contacts in property companies of countries not yet represented in EPF, especially in France and Germany.

Secretariat to coordinate.

EU ECONOMIC GOVERNANCE – OUTCOMES OF THE FIRST MEETING OF THE EPF PLANNING LAW REFORM COMMITTEE ON 19 SEPTEMBER

For 29 November, each member capable of doing so is to prepare a paper on planning reform in his country which, once perfected following comparison with work by other members and critical analysis by the Committee (next meeting 9 December), will be presented to the European Commission DG Economic and Financial Affairs officials responsible for monitoring economic governance in the member’s country. The paper should:

- Describe the failings of national planning law
- Demonstrate that these failings are a significant drag on the economy/business environment/property business. Examples:
 - ✓ Planning inadequacies drive construction costs which drive house prices which drive mortgage debt (Sweden)
 - ✓ European Semester 2013 results, Netherlands: “... there is government involvement in spatial planning and land policy, regulation and supervision of housing associations, rent policy and financial guarantees. These policies show up in house prices and have in effect furthered substantial and persistent increases in household mortgage debt.” *Commission Staff Working Document – Assessment of the 2013 national reform programme and stability programme for the Netherlands – SWD(2013) 369 final, p. 20*
- Outline the specific reforms that are needed



The full exercise will be important even for those members from countries that have already been singled out for planning reform, the task in their case being to ensure that planning reform is given high priority among the many things the country is being asked to do.

The paper should concentrate on the following problem areas:

1. Levels of planning authority power
2. Inefficiencies in the plan-making process (length and/or complexity of process, lack of resources) (at whatever level of authority)
3. Poor implementation of EU law (Strategic Environmental Assessment Directive, Environmental Impact Assessment Directive, public procurement directives, etc.)
 - Can mean inadequate implementation but also overzealous gold plating
4. State-funded statutory entities which can veto or hold up the planning decision process
 - Length of process: introduction of time limits
 - Instate or improve communication between these bodies and local authorities
5. The application process
 - Instituting some sort of incentive to conclude within a reasonable time such as silent consent or a penalty (fine)
 - Instituting planning performance agreements (UK), i.e. agreements with the local authority on time limits
 - Separating the local authority from the influence of higher political instances
6. The development consent appeal process
 - The politicisation of the Boards that decide the appeals
 - Simplification and improvement of the appeal process
 - Review of the parties empowered to intervene
7. Retail development size caps

EUROPEAN PARLIAMENT REPORT ON THE COMMISSION'S EUROPEAN RETAIL ACTION PLAN

In August, EPF intervened with Shadow Rapporteurs Anna Maria Corazza Bildt, Morten Løkkegaard and Malcolm Harbour asking them to oppose the attempt by Rapporteur Cornelis de Jong to have Parliament “encourage Member States to introduce specific rules to guarantee a diversity of shops”.

This led in September to an amendment by Morten Løkkegaard deleting the de Jong text and another amendment from Anna Maria Corazza Bildt and Morten Løkkegaard that focussed instead on stimulating shop diversity by removing barriers to free movement and opening up markets – which was perfect.

In October, EPF concentrated on consolidating support for:

- the Løkkegaard amendment deleting the Rapporteur's text



- another amendment from Morten Løkkegaard deleting a text from the Rapporteur targeting large-scale retail developments outside of city centres
- a Corazza Bildt / Løkkegaard amendment taking a much more balanced approach to shopping centre development.

The end result will be decided in November by the vote of Parliament's Internal Market Committee.

EUROPEANISATION OF NUCLEAR LIABILITY FOR LOSS OR DAMAGE TO PROPERTY

At its meeting of 15 October, the Managing Committee decided not to respond to the Commission consultation and instead review the situation when the Commission makes a substantive proposal.

ENVIRONMENTAL IMPACT ASSESSMENT DIRECTIVE

In October, Parliament's Plenary voted amendments which will now be the basis for negotiations with Council. Normally, a vote in Plenary is a formality, rubber-stamping the amendments forwarded to it by the Parliamentary Committee in charge. In this case, however, many EPP (Christian Democrat) MEPs rebelled and watered down the compromise that the EPP Shadow Rapporteur, Cristina Gutiérrez-Cortines, had agreed on with the Rapporteur and other Shadows. The Rapporteur and Shadows now go into negotiations with Council (Trilogue) in a very weak position.

Parliament's Environment Committee had already given EPF everything it needs, sometimes using EPF's own words, with the following exceptions:

- The Committee backed Commission-proposed time limits for responding to the developer that were so long that we preferred the existing situation leaving time limits to the member states. *Plenary didn't change this.*
- No freedom to the competent authority to decide on a case-by-case basis whether post-development monitoring of significant adverse environmental effects is necessary. But Council didn't grant us this either, the EPF Secretariat had warned from the start that it was a very debatable request, and everyone is now agreed on dropping it. Unsurprisingly, *Plenary didn't budge.*
- Under epf13-80 of 26.08.13 the EPF Secretariat had pointed out a number of amendments that individual MEPs had managed to get through Committee that looked dangerous: Committee Amendments 60, 71, 74 & 78. *None of them survived Plenary.*

Therefore, as Council's drafts are equally EPF Coalition-friendly, all that's left to do in Trilogue is:

- make sure Council doesn't give ground on competent authority response deadlines. *But we know from good source that Parliament has no hope of overcoming this.*
- convince Commission and Council to accept Parliament's EPF Coalition-prompted amendment stipulating that responses to the developer must be in writing. *The EPF Secretariat will deal with that.*



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On 28 October, COREPER (the member states' Permanent Representatives to the EU) mandated the Lithuanian Presidency to open negotiations with Parliament. Trilogue begins on 5 November.

EUROPEAN COMMISSION SUSTAINABLE BUILDINGS CONSULTATION

During the summer, Commission DG Environment issued an electronic questionnaire which proposed extending energy performance building renovation and certification requirements beyond energy to broader 'sustainability' requirements.

EPF, leading a coalition of the European Historic Houses Association, the European Landowners' Organization, The European Group of Valuers Associations and the Union Internationale de la Propriété Immobilière decided not to respond to the simplistic, confusing and biased questionnaire, and instead address ourselves directly not just to DG Environment but also to DG Enterprise and DG Energy at a high level.

The paper recalled the immense difficulties encountered over the last decade in putting in place and carrying out energy performance requirements and highlighted the importance of consolidating this before moving to broader sustainability. The only viable initiative now would be enabling pan-European comparison of existing building sustainability rating methodologies.

This is exactly what DG Enterprise is now planning to propose for the sustainability component of its EU Construction Competitiveness initiative and they have taken the further exceptional step of circulating the EPF Coalition position paper to a large number of European and national government officials as well as to their contacts in the private sector.

Early in 2014, the Commission will issue a Communication on Sustainable Buildings indicating its regulatory plans. It will be very difficult for DG Environment to include its original plans.

VOLUNTARY COMMON EU CERTIFICATION SCHEME FOR THE ENERGY PERFORMANCE OF NON-RESIDENTIAL BUILDINGS

“If Parliament was the mother of Article 11(9), EPF was the father. We were just the executives.”

Robert Nuij, European Commission DG Energy, introducing Ricardo Sá in 2012

In 2009, at the time of the negotiation of the 2nd Energy Performance of Buildings Directive, EPF managed to convince a cross-party group of MEPs led by Alejo Vidal Quadras (Rapporteur of the original EPBD) to adopt an amendment they later sold to Council and that became Article 11(9) of the new EPBD:

“The Commission shall, by 2011, in consultation with the relevant sectors, adopt a voluntary common European Union certification scheme for the energy performance of non-residential buildings. ... Member States are encouraged to recognise or use the scheme, or use part thereof by adapting it to national circumstances.”

To convince Parliament, EPF had to come up with a general concept of how to produce such an EU EPC. It was developed by Ricardo Sá, APCC/Sonae Sierra's member of EPF's Energy & Environment Committee. In July 2010, with the Directive in place, EPF presented the Commission with a refinement of the general concept. However, as the Commission had opposed Parliament's amendment, they really took their time to follow up, and after years of tentative starts and delay, a new phase began on 24



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October with a Commission DG Energy meeting of national ministry and industry stakeholders and the consultants the Commission recruited to take this forward.

The meeting was difficult because of the low level of expertise of the participants. However, at least it is now in the hands of specialised consultants (Triple E*) and hopefully Ricardo Sá – and whoever else from EPF wishes to jump in – will now be able to make serious progress. Ricardo Sá's guidelines to them and to the Commission following the first meeting under epf13-104 of 04.11.13.

* www.tripleconsulting.com