

With the support of the  
Erasmus+ Programme  
of the European Union



# BUSINESS LAW COURSE

## EUMOL LECTURE 5

Gabriella Gimigliano, Ph.D.,  
<https://twitter.com/EumolM>  
<http://www.eumol.com>



UNIVERSITÀ  
DI SIENA  
1240

With the support of the  
Erasmus+ Programme  
of the European Union



# BUSINESS LAW COURSE

## EUMOL LECTURE 5

Information Requirements and Transparency  
Conditions.  
Title III PSD2



UNIVERSITÀ  
DI SIENA  
1240

# PSD2. Title III.

## INFORMATION REQUIREMENTS

Reducing the information asymmetry between user and provider

Making informed commercial decisions

Encouraging customer mobility

# PSD2. Title III

## INFORMATION REQUIREMENTS

### *Article 40. Charges for information*

1. The payment service provider shall not charge the payment service user for providing information under this Title.
2. The payment service provider and the payment service user may agree on charges for additional or more frequent information, or transmission by means of communication other than those specified in the framework contract, provided at the payment service user's request.
3. Where the payment service provider may impose charges for information in accordance with paragraph 2, they shall be reasonable and in line with the payment service provider's actual costs.

# PSD2. Title III

## INFORMATION REQUIREMENTS

---

**Burden of proof on information requirements lies with the PSP**

---

The PSP has to prove that it has complied with the information requirements set in the Title III PSD2

# PSD2. Title III.

## INFORMATION REQUIREMENTS

- Information before a contract is made (= information preliminary to a payment service contract)
- When a contract is made:
  - i. Periodical information
  - ii. **Before and After** the execution of an individual payment transaction (covered by a framework contract) – PSP/PAYER
  - iii. **After** the execution of an individual payment transaction (not covered by a framework contract) – PSP/PAYER as well as PSP/PAYEE

# PSD2. Title III. INFORMATION REQUIREMENTS DIFFERENT WHEN...



Contracts for single  
payment transactions



Framework Contract  
(and Payment Accounts)

# PSD2. Title III. INFORMATION REQUIREMENTS. Framework Contract.

- On PSP
- On use of the payments service(s) covered by the contract
- On charges, interest rates and exchange rates
- On communication
- On safeguard and corrective measures
- On changes and termination (of the framework contract)
- On redress: law applicable to the contract; the competent courts; ADR procedures.



# PSD2.Title III.

## INFORMATION REQUIREMENTS.

### *Article 54. Changes in conditions of the framework contract*

**1. Any changes in the framework contract or in the information and conditions specified in Article 52 shall be proposed by the payment service provider in the same way as provided for in Article 51(1) and no later than 2 months before their proposed date of application. The payment service user can either accept or reject the changes before the date of their proposed date of entry into force.**

Where applicable in accordance with point (6)(a) of Article 52, the payment service provider shall inform the payment service user that **it is to be deemed to have accepted those changes if it does not notify the payment service provider before the proposed date of their entry into force that they are not accepted.** The payment service provider shall also inform the payment service user that, in the event that the payment service user rejects those changes, the payment service user has the right to terminate the framework contract free of charge and with effect at any time until the date when the changes would have applied.

# PSD2.Title III.

## INFORMATION REQUIREMENTS.

### *Article 55. Termination*

1. The payment service user may terminate the framework contract at any time, unless the parties have agreed on a period of notice. Such a period shall not exceed 1 month.
2. Termination of the framework contract shall be free of charge for the payment service user except where the contract has been in force for less than 6 months. Charges, if any, for termination of the framework contract shall be appropriate and in line with costs.
3. If agreed in the framework contract, the payment service provider may terminate a framework contract concluded for an indefinite period by giving at least 2 months' notice in the same way as provided for in Article 51(1).
4. Charges for payment services levied on a regular basis shall be payable by the payment service user only proportionally up to the termination of the contract. If such charges are paid in advance, they shall be reimbursed proportionally.
5. The provisions of this Article are without prejudice to the Member States' laws and regulations governing the rights of the parties to declare the framework contract unenforceable or void.
6. Member States may provide for more favourable provisions for payment service users

# PSD2.Title III.

## INFORMATION REQUIREMENTS.

### *Article 54. Changes in conditions of the framework contract*

2. **Changes in the interest or exchange rates** may be applied immediately and without notice, provided that such a right is agreed upon in the framework contract and that the changes in the interest or exchange rates are based on the reference interest or exchange rates agreed on in accordance with point (3)(b) and (c) of Article 52 (in the framework contract made). The payment service user shall be informed of any change in the interest rate at the earliest opportunity in the same way as provided for in Article 51(1), unless the parties have agreed on a specific frequency or manner in which the information is to be provided or made available. However, changes in interest or exchange rates which are more favourable to the payment service users, may be applied without notice.

3. Changes in the interest or exchange rate used in payment transactions shall be implemented and calculated in a neutral manner that does not discriminate against payment service users.

# EU MONEY LAW

# JEAN MONNET CHAIR

## BAWAG-BANK CASE

With the support of the  
Erasmus+ Programme  
of the European Union



# ECJ 25 January 2017.

## Bawag-Bank Case

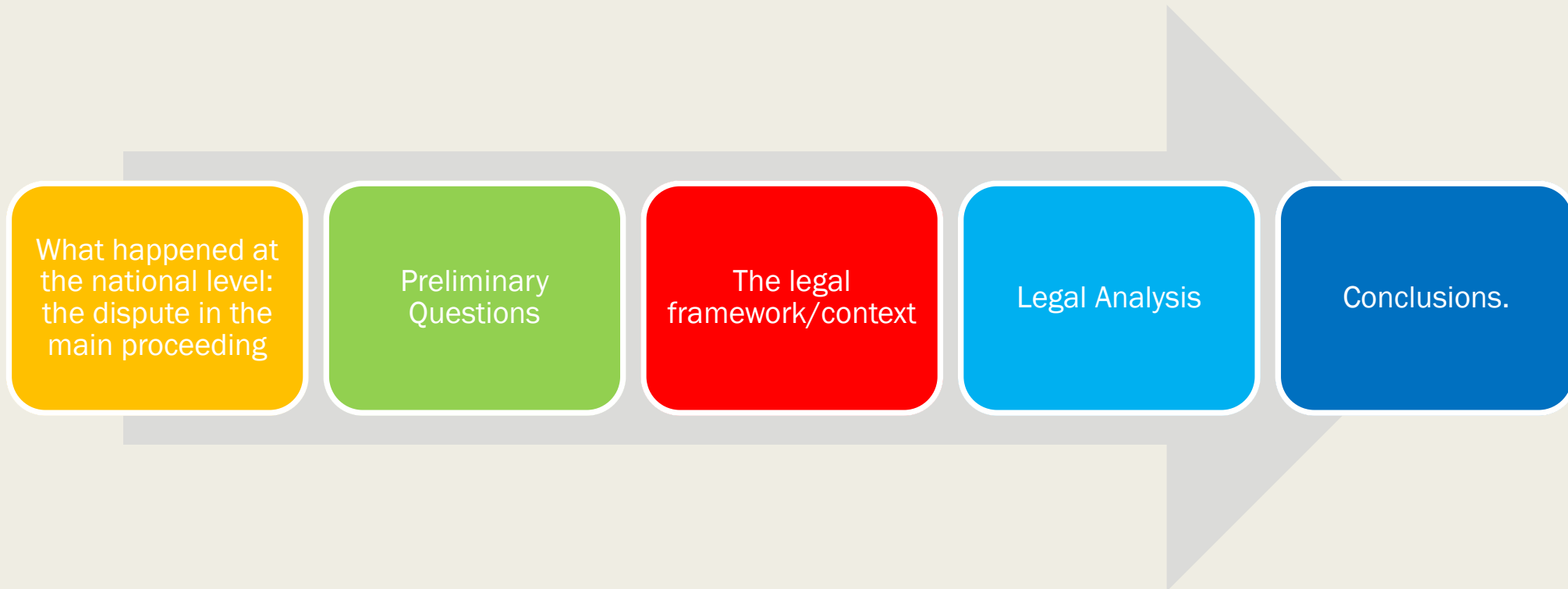
Case reference (case C-375/15);

Parties Reference  
(Bawag Bank, vs  
Consumer Information  
Association)

Type of Ruling:  
Preliminary Ruling

# Bawag-Bank Case.

## Structure of the Preliminary Ruling.



# Bawag-Bank Case.

## Dispute in the main proceeding.

Bawag Bank

Association

Vienna Higher Regional Court

# Bawag-Bank Case.

## Preliminary Questions.

- 1) Does the provision of information by means of BAWAG website comply with the duty of providing information **by a durable medium**?
- 2) If the customer has to log into the bank website in order to get the information, is the bank providing information or making information available to the customer?



# Bawag-Bank Case.

## European Legal Context (PSDs)

- Information prior to a payment service contract is made
- Single payment operation contract *vs* framework contract
- Meaning of «durable meaning»: any instrument which enables the payment service user to store information addressed personally to that payment service user in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored;
- Changes to initial contract terms and conditions
- Information **provided** by the PSP *vs* information **made available** by the PSP to the customer

# Bawag-Bank Case.

## National Legal Context (ZaDiG)

*1. The payment service provider must in good time, before the payment service user is bound by a contract or a contractual offer*

*(1) in the case of a framework contract in accordance with Paragraph 28, communicate the information and terms of the contract to the payment service user in paper form or, where the payment service user agrees, on another durable medium ...*

*Under Paragraph 29(1) of that law, 'The payment service provider must:*

*(1) propose amendments to the framework contract to the payment service user at the latest two months before the planned time of their application, in the manner provided for in Paragraph 26(1)(1) and Paragraph 26(2) ...*

# Bawag-Bank Case.

## Legal Analysis

i) durable medium

ii) information made available  
vs information provided

# Bawag-Bank Case.

## Conclusions

- *«for a website to be regarded as being a ‘durable medium’ within the meaning of that provision, any possibility that the payment service provider or another professional to whom the management of that site has been entrusted could change the content unilaterally must be excluded»*
- *«the information concerned which is transmitted by the payment service provider to the user of those services by means of an online banking website may be considered to have been provided within the meaning of Article 41(1) of Directive 2007/64 [duties of information for framework contracts], if such a transmission is accompanied by **active behaviour of the provider aimed at drawing the user’s attention to the existence and availability of that information on that site**».*