



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 2 December 2015

on the legal framework for home savings banks

(CON/2015/53)

Introduction and legal basis

On 1 November 2015 the European Central Bank (ECB) received a request from the German Federal Ministry of Finance for an opinion on a draft law amending the German Bausparkassen Act¹ (hereinafter the 'draft law').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and Article 2(1) of Council Decision 98/415/EC² as the draft law contains draft legislative provisions within the ECB's field of competence pursuant to Article 127(6) of the Treaty and rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. Main purpose of the draft law

- 1.1 Taking account of the challenges created by the current environment of low interest rates, the draft law introduces provisions aimed at securing and strengthening the manner in which profits are generated by Bausparkassen according to the German Bausparkassen Act (for the purposes of the present opinion referred to as home savings banks) and proposes measures to strengthen the risk management of home savings banks. The main purposes of the draft law are to: (a) amend the Bausparkassen Act so that it allocates supervisory competences to the ECB and the Federal Financial Supervisory Authority (BaFin) pursuant to Council Regulation (EU) No 1024/2013; and (b) ensure that the typical risks that home savings banks face while conducting their business activities are managed by the home savings banks themselves and not by other units of the banking group within which home savings banks are often included.
- 1.2 The draft law specifies the requirements that home savings banks must fulfil when carrying out their business activities. In particular, Tier 1 capital needs to amount to at least EUR 20 million. Furthermore, suitable regulations and instruments to manage, monitor and control the specific risks that home savings banks face in their business activities must be implemented and a business plan

¹ Bausparkassen Act ('Gesetz über Bausparkassen') of 15 February 1991 (BGBl. I p. 454), as amended by Article 6(14) of the Law of 28 August 2013 (BGBl. I p. 3395).

² Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

must be presented to BaFin that sets out the manner in which these business activities will be carried out on a regular and sustainable basis³.

- 1.3 The draft law introduces a requirement that, in the event of a home savings bank's banking license expiring or being withdrawn by the competent authority, all building loan agreements, including all related assets and liabilities, must be transferred to another home savings bank. If the bank does not comply with this requirement, BaFin may order the business to be wound up⁴.
- 1.4 The draft law reinforces the principle that a home savings bank may not be managed by any other type of entity by stipulating that any contract or agreement that places a home savings bank's management under the control of a different entity is invalid, unless this entity is recognised as a home savings bank⁵.
- 1.5 The draft law introduces a requirement to put in place a specific and independent risk management system, significant elements of which – in particular collective management and the management of risks related to the collective home savings business - may not be transferred to third parties⁶.
- 1.6 The draft law extends the possibility of home savings banks to grant 'other building loans'. Other building loans are granted in order to finance housing expenditures without being linked to a home savings contract. The draft law, on the one hand, increases the total limit on other building loans from 75% to 100% of home savings loans and loans for pre- and interim financing⁷, and, on the other hand, allows home savings banks to use the funds from home savings deposits that are temporarily not being used to grant home saving loans for the purpose of granting other building loans⁸.
- 1.7 The current Law on home savings banks does not allow home savings banks to issue covered bonds. Subject to the conditions set out in the Law on covered bonds⁹, the draft law grants home savings banks the possibility to issue covered bonds in order to grant home saving loans and other building loans and to raise funds required by it to carry out its business activities¹⁰.
- 1.8 The draft law provides that the special items fund in the form of a technical reserve may be used to secure the collective caused interest margin, and if necessary to guard against any specific risk that the business activities might not be sustainable as they are carried out by the home savings banks.¹¹

3 Section 2 of the draft Bausparkassen Act.

4 Section 2(5) and (6) of the draft Bausparkassen Act.

5 Section 2a of the draft Bausparkassen Act.

6 Section 8(1) and (2) of the draft Bausparkassen Act.

7 Section 4(2) of the draft Bausparkassen Act.

8 Section 6(1) No (2) of the draft Bausparkassen Act.

9 Law on covered bonds ('Pfandbriefgesetz') of 22 May 2005 (BGBl. I p. 1373), as amended by Article 5 of the Law of 2 November 2015 (BGBl. I p. 1864).

10 Section 4(1) of the draft Bausparkassen Act.

11 Section 6(2) No 2 of the draft Bausparkassen Act.

2. General observations

The draft law provides home savings banks with more flexibility to operate profitably, in particular by allowing them to issue covered bonds.

3. Specific observations

3.1 *Special provisions on risk management*

The ECB acknowledges that the draft law aims at strengthening the risk management of home savings banks. In view of establishing a level playing field, however, outsourcing (parts) of the risk management should not be restricted by special provisions for home savings banks as provided under the draft law. The existing legal framework transposing Directive 2013/36/EU of the European Parliament and of the Council¹² already requires that the risks stemming from outsourcing are mitigated by a proper risk strategy, processes and controls. Moreover, the current legal framework already requires that the risk management of any credit institution including home savings banks needs to be adequate for the credit institution's specific type of business, risk profile and complexity.¹³

3.2 *Allocation of competences*

3.2.1 Member States may issue legislation that specifically addresses the business model of home savings banks. Such legislation has to comply with Union law, in particular Directive 2013/36/EU and Directive 2014/59/EU of the European Parliament and the Council¹⁴. However, where national legislation creates competences that are directly related to competences conferred on the ECB, such competences established by national legislation should be applied by the ECB, provided that the relevant provisions can be construed as implementing Union legislation.

3.2.2 In particular, noting that the ECB has the exclusive competence to grant authorisations within the Single Supervisory Mechanism, the ECB understands that it will receive the business plan¹⁵ when going through the procedure to obtain an authorisation¹⁶.

3.2.3 Similarly, where the draft law includes a requirement that home savings banks must submit a collective status report annually to BaFin¹⁷, the ECB notes that the respective information is subject to the general obligation to submit information to the ECB¹⁸. It contains data, for example, on the banks' capacity to meet liabilities, the amount of their assets and other data relevant to assess their

¹² Directive 2013/36/EU 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 (OJ L 176, 27.6.2013, p. 338).

¹³ Section 25b of the German Banking Act ('Kreditwesengesetz').

¹⁴ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU, and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

¹⁵ Section 2(1) No 5 of the draft Bausparkassen Act.

¹⁶ Article 14(1) SSM Regulation.

¹⁷ Section 4(5) of the draft Bausparkassen Act.

¹⁸ Article 6(2) SSM Regulation, Article 21 SSM Framework Regulation.

financial situation and stability¹⁹, and such data is essential for the ECB to be able to carry out supervision in accordance with the tasks conferred on it by Council Regulation (EU) 1024/2013.

This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 2 December 2015.

[signed]

The President of the ECB

Mario DRAGHI

¹⁹ Section 3(5) of the draft Bausparkassen Act.