



Finanzgruppe

Deutscher Sparkassen- und Giroverband

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Comments on „EBA Consultation on Technical Standards on cooperatives, mutuals, savings institutions and similar institutions” (EBA/CP/2012/11)

The German Savings Banks Association welcomes the opportunity to comment on the consultation paper EBA/2012/11 “Draft Regulatory Technical Standards on Own Funds under the draft Capital Requirements Regulation - Part Two”.

In general we approve EBA’s approach concerning Art. 25 CRR-E. However there are some amendments and additions necessary.

Q01: Are the provisions on the conditions according to which competent authorities may determine that a type of undertaking recognised under applicable national law qualifies as a mutual, cooperative society, savings institution or similar institution for the purpose of Own funds sufficiently clear?

Art. 3a lit. a) RTS

The first criterion in Art. 3a lit. a) stipulates, that an institute needs to be registered as “Sparkasse” according to certain, listed regional savings banks laws. It should be clear that initially all institutions that act as “Sparkasse” in a certain jurisdiction must be mentioned in that enumeration - independent of the kind of law or legal ordinance the institution is built on and independent of the question if the subsequent conditions can be fulfilled.

We assume that the original intention was to cover all institutions that are registered as “Sparkasse” in Germany. Unfortunately in the list of savings banks laws regulations two of the oldest and biggest savings banks in Germany (Hamburger Sparkasse, Bremer Sparkasse) are missing. The institutions’ legal basis are company statutes. There is no written regional savings banks law existing for them. They are rather based on old Hamburgian Law respectively old “Bremen” Law.

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Furthermore the list does not include the Braunschweigische Landessparkasse, which does not fall under a regional savings banks law but is governed by treaty between the federal states of Niedersachsen, Sachsen-Anhalt und Mecklenburg-Vorpommern and therefore has a special company statute as legal basis.

Nevertheless those institutions (and consequently their company statutes) are recognized by the German Banking Act (Section 40 para 1 KWG) as Sparkasse, because they fulfil the general structural conditions of German savings banks like focusing on and promoting common welfare. Besides their activities are - just like the activities of all other savings banks - limited to their region.

It is not adequate, if an EBA-RTS is going to exclude institutions from the institutional scope of application (lit. a)). Savings banks according to national law must be accepted as savings banks in the context of both: EBA-RTS as well as the CRR. This condition is essential because CRR refers to Art. 25 also in other provisions.

- The list in Art. 3a lit. a) should be completed by “**and all other institutions referred to Section 40 para 1 of the Gesetz über das Kreditwesen (KWG)¹**”, so that all Sparkassen in Germany are covered.

¹ **Section 40 para 1 German Banking Act:** „The term “savings bank” (“Sparkasse”) or a term in which the words “savings bank” appear may be used in the corporate name, as an addendum to the corporate name, to describe the business purpose or for advertising purposes only by

1. public savings banks with authorisation pursuant to section 32;
2. other enterprises which, upon this Act coming into force, were legitimately using such a term pursuant to previous provisions;
3. enterprises which are newly established by restructuring the enterprises specified in number 2 as long as they, by virtue of their articles of association or articles of incorporation, exhibit specific features (in particular, tasks geared towards public welfare and a restriction of their principal business operations to the economic area in which the enterprise is domiciled) to the same extent as before restructuring.”

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Art. 3a lit. b) RTS

We demand to clarify, that the ability to issue capital instruments referred to in Art. 26 does not initially exclude such an institution to be classified as "Sparkasse" in the sense of this rule or does not put into question its nature to be a "Sparkasse". This could be achieved by the following completion:

*“with respect to Common Equity Tier 1 Capital, the institution is able to issue, according to national applicable law or company statutes, at the level of the legal entity, only capital instruments referred to in Article 27 of Regulation xx/XX/EU [CRR]; **the ability to issue instruments referred to Art. 26 CRR does not prevent the institution from being classified as a savings bank.**”*

Art. 3a lit. c) RTS

The first two provisions in Art. 3a RTS cover the crucial criteria to determine an undertaking as a savings institution for the purpose of Part II of CRR. Admittedly there are further defining characteristics for Europe's savings institutions but these are regulated in the savings institutions laws of the respective Member State. Since these laws are already mentioned in Art. 3a lit. a) RTS there is no need for a repetition of these criteria in a further regulation of RTS in Art. 3a lit. c). Beyond that you have to take into consideration the major difficulty that Art. 3a lit. c) RTS should be applicable for all the savings institutions laws mentioned in Art. 3a lit. a) RTS. This objective cannot be met, because although Europe's savings institutions have fundamental common features, in detail these characteristics are regulated very differently. Hence, the third provision in Art. 3a lit. c) RTS is neither required for the development of the intended RTS nor it is making sense. Therefore we plead for a cancellation of Art. 3a lit. c) RTS.

Alternatively Art. 3a lit. c) RTS has at least to be adapted to reflect the legal situation in Germany. The deciding reason for that is the fact, that under German law there is no case conceivable, where the sum of capital, reserves and interim or year-end profits is distributed all at once. Since the regulation has no case of application the current wording does not make any sense at all. This cannot be intended by EBA. Therefore the sentence 1 of Art. 3a lit. c) should be altered as follows:

“the ~~sum of~~ capital, reserves ~~and or~~ interim or year-end profits, ~~is~~ are not allowed, according to national applicable law, to be distributed to holders of Common Equity Tier 1 instruments”.

Moreover sentence 3 of Art. 3a lit. c) should be cancelled, since its regulatory content is redundant to the condition of proportionality regarding distributions in Art. 26 para. 1 lit. h) i) CRR.

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For both proposals for changes, please refer to Annex I

Q02: Are there issues which need to be elaborated further?

If Art. 3a lit. a), b) and c) RTS are amended as proposed above, no further amendments are needed.

Q03: Are there any additional conditions which shall be added, any additional commonalities of the European savings banks sector which shall be referred to?

If Art. 3a lit. a), b) and c) RTS are amended as proposed above, no further additions or references are needed.

Annex I

Article 3a

*Type of undertaking recognised under applicable national law as a savings institution under Article 25(1)(a) of the CRR
(Legal basis: Article 25(2)(a) of the CRR)*

Competent authorities may determine that a type of undertaking recognised under applicable national law qualifies as a savings institution for the purpose of Part II of Regulation xx/XX/EU [CRR], where all of the following conditions are met:

(a) the institution's legal status falls under one of the following categories:

- *in Austria: institutions registered as 'Sparkasse' under para. 1 (1) of the 'Bundesgesetz über die Ordnung des Sparkassenwesens (Sparkassengesetz – SpG)';*
- *in Denmark: institutions registered as 'Sparekasser' under the Danish Financial Business Act;*
- *in Finland: institutions registered as 'Säästöpankki' or 'Sparbank' under 'Säästöpankkilaki' or 'Sparbankslag';*
- *in Germany: institutions registered as 'Sparkasse' under*
 - i. *'Sparkassengesetz für Baden-Württemberg (SpG)'*
 - ii. *'Gesetz über die öffentlichen Sparkassen (Sparkassengesetz – SpkG) in Bayern'*
 - iii. *'Gesetz über die Berliner Sparkasse und die Umwandlung der Landesbank Berlin – Girozentrale – in eine Aktiengesellschaft (Berliner Sparkassengesetz – SpkG)'*
 - iv. *'Brandenburgisches Sparkassengesetz (BbgSpkG)'*
 - v. *'Sparkassengesetz für öffentlich-rechtliche Sparkassen im Lande Bremen (Bremisches Sparkassengesetz)'*
 - vi. *'Hessisches Sparkassengesetz'*
 - vii. *'Sparkassengesetz des Landes Mecklenburg-Vorpommern (SpkG)'*
 - viii. *'Niedersächsisches Sparkassengesetz (NSpG)'*
 - ix. *'Sparkassengesetz Nordrhein-Westfalen (Sparkassengesetz – SpkG)'*
 - x. *'Sparkassengesetz (SpkG) für Rheinland-Pfalz'*
 - xi. *'Saarländisches Sparkassengesetz (SSpG)'*
 - xii. *'Gesetz über die öffentlich-rechtlichen Kreditinstitute im Freistaat Sachsen und die Sachsen-Finanzgruppe'*
 - xiii. *'Sparkassengesetz des Landes Sachsen-Anhalt (SpkG-LSA)'*
 - xiv. *'Sparkassengesetz für das Land Schleswig-Holstein (Sparkassengesetz – SpkG)'*
 - xv. *'Thüringer Sparkassengesetz (ThürSpkG)';*

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and all other institutions referred to Section 40 para 1 of the Gesetz über das Kreditwesen (KWG)²;

- in Spain: institutions registered as 'Cajas de Ahorros' under 'Real Decreto-Ley 2532/1929, de 21 de noviembre, sobre Régimen del Ahorro Popular;
 - in Sweden: institutions registered as 'Sparbank' under 'Sparbankslag (1987:619)';
- (b) with respect to Common Equity Tier 1 capital, the institution is able to issue, according to national applicable law or company statutes, at the level of the legal entity, only capital instruments referred to in Article 27 of Regulation xx/XX/EU [CRR]; **the ability to issue instruments referred to Art. 26 CRR does not prevent the institution from being classified as a savings bank.**"
- (c) ~~the sum of capital, reserves and interim or year-end profits, is not allowed, according to national applicable law, to be distributed to holders of Common Equity Tier 1 instruments. Such condition is deemed to be fulfilled even where the institution issues Common Equity Tier 1 instruments that grant the holders, on a going concern basis, a right on a part of the profits and reserves, unless prevented by the applicable national law. This part shall be proportionate to their contribution to the capital and reserves or, where permitted by law of the Member State in which the institution has its registered office, in accordance with an alternative arrangement.~~

Alternatively:

- (c) ~~the sum of capital, reserves and or interim or year-end profits, is are not allowed, according to national applicable law, to be distributed to holders of Common Equity Tier 1 instruments. Such condition is deemed to be fulfilled even where the institution issues Common Equity Tier 1 instruments that grant the holders, on a going concern basis, a right on a part of the profits and reserves, unless prevented by the applicable national law. This part shall be proportionate to their contribution to the capital and reserves or, where permitted by law of the Member State in which the institution has its registered office, in accordance with an alternative arrangement.~~

² Section 40 para 1 German Banking Act: „The term “savings bank” (“Sparkasse”) or a term in which the words “savings bank” appear may be used in the corporate name, as an addendum to the corporate name, to describe the business purpose or for advertising purposes only by

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