



**The ESBG’s Response to the EBA “Consultation Paper – Draft Regulatory Technical Standards on Own Funds under the draft Capital Requirements Regulation – Part Two” – Types of undertakings recognised as cooperatives, mutuals, savings institutions or similar institutions  
(EBA-CP-2012-11)**

WSBI-ESBG (World Savings Banks Institute – European Savings Banks Group)

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## 1. Introduction

The European Savings Banks Group (ESBG) 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 the EBA’s approach concerning Art. 25 CRR. However, we have identified some amendments and additions which are necessary.

## 2. 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?

### a. Art. 3a lit. a) RTS

The first criterion in Art. 3a lit. a) stipulates, that an institution 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.

Concerning Germany, 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. These institutions’ legal bases 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.

Furthermore, the list does not include the Braunschweigische Landessparkasse, which does not fall under a regional savings banks law, but is governed by a 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 recognised 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 CRR also in other provisions.

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

b. 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 a "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.***”

c. Art. 3a lit. c) RTS

The ESBG would like to point out that the intention of Art 3a lit. (c) is unclear. It seems that Art 3a, and therewith also lit. (c), is a kind of prerequisite for the application of Art 25 CRR, and in consequence also for Art 27 CRR, because Art 27 CRR refers to Art 25 CRR. In other words - in order to apply Art 25 and 27 CRR institutions have to comply with the requirements of this RTS. Art 3a lit (c) of this RTS deals with the question what is distributable to whom. But this question is also dealt with in the context of Art 26 and 27 CRR, meaning, on the one hand a legal prerequisite, on the other a legal consequence. Furthermore we understand the differentiation between the “sum of” in the first sentence and “a part of” in the second sentence. We understand this differentiation in the sense that the institution shall not be allowed to distribute the total sum of capital, reserves and profits but parts thereof. What we also understand is that this rule shall apply to the going concern situation. What we further assume is that discretionary reductions, where the competent authority gave its prior consent in line with Art. 72 CRR, shall not be covered by this provision.

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<sup>1</sup> **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.”



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 does it make sense. Therefore we plead for a deletion of Art. 3a lit. c) RTS.

d. EEA countries

The institutions which belong to the EEA countries have signalled that the closed list of relevant types of institutions will make it impossible to implement the Regulation directly in EEA jurisdictions outside the EU. Indeed, if the EEA countries are not already taken into account, an unnecessary and harmful uncertainty may arise until the closing of the negotiations connected to the terms of inclusion in the EEA agreement.

As a result, the EEA countries would appreciate that, for them, a more general reference to relevant laws regulating mutuals, cooperative societies, savings institutions and similar institutions is made.

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

Please see answer to Q01.

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

Please see answer to Q01.



## About WSBI-ESBG (European Savings Banks Group)

### **WSBI-ESBG – The European Voice of Savings and Retail Banking**

WSBI-ESBG (European Savings Banks Group) is an international banking association that represents one of the largest European retail banking networks, comprising of approximately one-third of the retail banking market in Europe, with total assets of over €7,470 billion, non-bank deposits of €3,400 billion and non-bank loans of €4,000 billion (31 December 2010). It represents the interests of its members vis-à-vis the EU Institutions and generates, facilitates and manages high quality cross-border banking projects.

WSBI-ESBG members are typically savings and retail banks or associations thereof. They are often organised in decentralised networks and offer their services throughout their region. WSBI-ESBG member banks have reinvested responsibly in their region for many decades and are a distinct benchmark for corporate social responsibility activities throughout Europe and the world.



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