Current positions on the regulation of banks and the financial markets

Focus area: the coronavirus crisis
VÖB in Europe

**BERLIN**
- Headquarters with close to 80 staff members
- Professional support for member institutions
- Development of common positions and exchange of views in expert committees and working groups
- Contact with the German Federal government, and with both chambers of the German parliament (Bundestag/Bundesrat)

**FRANKFURT**
- Regular exchange of views with BaFin and the European Central Bank (ECB)
- Five press conferences per year
- Eight members are based in Frankfurt

**BONN**
- Regular exchange of views with the German Federal Financial Supervisory Authority (BaFin)
- Registered office of VÖB-Service GmbH subsidiary

**PARIS**
- Liaison office
- Regular contact with the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA)
Current positions on the regulation of banks and the financial markets

NOVEMBER 2020
Dear readers,

The coronavirus crisis poses great challenges for society, the way we live, our daily interactions, and the economy. The pandemic has hit Germany and the other European countries with great force. During the first peak in spring, which in many countries was accompanied by widespread disruptions to public life, unemployment levels rose significantly amid an economic slump. To mitigate the consequences of this outbreak, many countries have launched unprecedented budget and fiscal stimulation programmes.

In Germany, examples of major support measures are the grant and development programmes on federal and state level. These programmes, developed and continuously improved during the first half of the year, will also support German businesses during the second wave of COVID-19 infections. Therefore, politics and society can continue to rely on strong public-sector banks when combating the impact of the pandemic. Promotional banks, pass-through institutions, and principal banks are ready and prepared to support the self-employed, entrepreneurs, and their families.

As VÖB, we support our members by taking a part in shaping the framework structure for regulatory and supervisory-related development measures. Sound skilled work and a transparent exchange of information are prerequisites for our success. The 'Current positions on the regulation of banks and the financial markets' are a cornerstone of our open communication. With this regular publication, we aim to inform you about key legislative initiatives and regulatory requirements. This is the second consecutive publication with a focus on the coronavirus crisis. As VÖB, we take a clear stand and welcome a package of measures for direct and indirect economic support.

Our popular publication series helps us to successfully represent the common interests of our 59 member institutions, on a national and international level – and to support decision-making by politicians and supervisory authorities in a results-oriented and hands-on manner. Through our work, we aim to take part in shaping powerful, modern, competitive and customer-oriented financial centres in Germany and Europe.

I hope you will find this publication both interesting and inspiring. Together with my colleagues, I will be happy to answer any questions you may have.

Yours sincerely,

IRIS BETHGE-KRAUSS | EXECUTIVE MANAGING DIRECTOR

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CURRENT POSITIONS ON THE REGULATION OF BANKS AND THE FINANCIAL MARKETS

IRIS BETHGE-KRAUSS | EXECUTIVE MANAGING DIRECTOR
CURRENT POSITIONS ON THE REGULATION OF BANKS AND THE FINANCIAL MARKETS

Focus area: the coronavirus crisis

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The coronavirus crisis is also leaving its marks on the second half of 2020. It is challenging Germany and our European neighbours to a hitherto unknown extent. Social and economic consequences are huge and, as of yet, cannot be captured in their intensity and extent. The measures implemented to contain the pandemic, partly including massive interventions into everyday life, are plunging small and large companies alike into dramatic existential crises – despite full order books prior to the crisis. As in the first half of the year, it is essential that companies have access to sufficient liquidity to allow for an economic recovery. In acute crises, public-sector banks have a role of the utmost importance to play. That also applies to the ongoing coronavirus crisis. We, as the Association of German Public Banks (Bundesverband Öffentlicher Banken Deutschlands, VÖB), voice our views and opinions on the current developments and advocate the following measures aimed at counteracting the COVID-19 pandemic.

**Coronavirus-mitigating measures**

Cometh the hour, cometh the man: the coronavirus crisis has called upon public-sector banks to step into the light. We advocate the following measures in the COVID-19 pandemic.

The coronavirus crisis is also leaving its marks on the second half of 2020. It is challenging Germany and our European neighbours to a hitherto unknown extent. Social and economic consequences are huge and, as of yet, cannot be captured in their intensity and extent. The measures implemented to contain the pandemic, partly including massive interventions into everyday life, are plunging small and large companies alike into dramatic existential crises – despite full order books prior to the crisis. As in the first half of the year, it is essential that companies have access to sufficient liquidity to allow for an economic recovery. In acute crises, public-sector banks have a role of the utmost importance to play. That also applies to the ongoing coronavirus crisis. We, as the Association of German Public Banks (Bundesverband Öffentlicher Banken Deutschlands, VÖB), voice our views and opinions on the current developments and advocate the following measures aimed at counteracting the COVID-19 pandemic.

**OUR POSITION**

**DEVELOPMENT MEASURES FOR THE ECONOMY**

- We advocate that the EU state aid rules remain relaxed during the COVID-19 pandemic. This is the only way for promotional banks to contribute to saving jobs and companies with their programs.
- We call for negotiations on the Multiannual Financial Framework 2021–2027, the Next Generation EU recovery fund for 2021–2024, and the EU Regulations linked to funding programmes to be quickly finalised. The promotional banks need planning certainty at the beginning of the new funding period, starting on 1 January 2021.

**BANKING REGULATION AND SUPERVISION**

- We advocate that the support and participation of institutions in governmental development measures should be treated as non-contributory in terms of the EU bank levy, and we see urgent need for improvement in the process of passing through trustee loans, or development and promotional loans to end-customers.
- We advocate that the target contribution of the Single Resolution Fund (SRF), to be reached by the end of 2023, be based upon the level of deposits at the time the SRM Regulation came into force (1 January 2016), set at approximately €55 billion.

- We are in favour of postponing burdensome regulatory initiatives. This applies especially to first-time application of the CRR II and the application of guidelines established by the European Banking Authority (EBA), e.g. on the definition of default, on lending and monitoring, on outsourcing and non-performing exposures.
- We believe that the first-time application of the Basel III finalisation (Basel IV) should be postponed beyond 2023 and that a review of its effects should be conducted in light of the coronavirus crisis.
- We call for aid provided by way of pass-through mechanisms to be excluded from the Leverage Ratio.
- We are in favour of capital relief measures and buffer requirements being applied analogously to the Minimum Requirement for Own Funds and Eligible Liabilities (MREL).
- We advocate the suspension of further non-mandatory reporting obligations and statistical requirements, together with the postponement of data deliveries.
- We advocate the suspension of burdensome announcements by supervisory authorities, or the provision of corresponding legislative clarifications.
- We call for an extension of the timeframe for developing the amendment to BaFin’s Supervisory Requirements for IT in Financial Institutions (BAIT), and for a one-year time limit for implementing new requirements following publication or entry into force.
**CAPITAL MARKETS**

- **We** are committed to easing the funding requirements set by the European Central Bank and Deutsche Bundesbank (i.e. easing collateral requirements to participate in liquidity-providing operations, comprehensive implementation of the ACC framework by Deutsche Bundesbank).

- **We** believe it is necessary to postpone the obligation of posting initial margin for institutions with an average total nominal value of non-centrally cleared derivatives of more than €50 billion (phase 5 entities) to 1 September 2021, and for institutions with a corresponding average total nominal value of less than €50 billion and more than €8 billion (phase 6 entities) to 1 September 2022.

- **We** are committed to seriously examining capital markets regulation (MiFID II/MiFIR, MAD/MAR, Benchmark Regulation) within the scope of the upcoming reviews as to rules impeding efficient capital markets, in a quest to support a sustainable market recovery following the COVID-19 crisis. Therefore, we welcome the relief as to information requirements in the securities business proposed by the MiFID Quick Fix in July 2020 as a first important step. However, further steps are necessary to yield effective improvements. In particular, further reviews should not create new bureaucratic burdens.

**PAYMENT TRANSACTIONS**

- **We** deem the suspension of data collection pursuant to Art. 27 of the EU Payment Accounts Directive (PAD) to be a useful relief measure.

**CIVIL AND COMMERCIAL LAW**

- **We** call for a clarification by the legislator that loan amounts drawn will continue to bear interest during the forbearance period.

- **We** advocate no comprehensive expansion of the consumer loan forbearance rules to all loan types (e.g. corporate loans, interbank loans, municipal financing) without government-based security measures in favour of our institutions.

**LABOUR LAW**

- **We** advocate that the Federal Staff Representation Act and all state staff representation laws throughout Germany incorporate a co-determination right of the staff council on short-time working as soon as possible, since this would allow departments to save jobs by independently and temporarily introducing short-time working with their staff representatives.

**TAX LAW**

- **We** call for the EU Commission and the German Federal Ministry of Finance to postpone the notification duty for cross-border tax structuring arrangements (DAC 6) by twelve months.
Since the COVID-19 pandemic breakout, the EU Commission has focused its funding policy on this crisis. Additional first-aid measures have been taken, such as the Corona Response Investment Initiative, and have had a material impact on the plans for the new funding period. The Multiannual Financial Framework (MFF) for 2021–2027 and the Next Generation EU (NGEU) recovery fund for 2021–2024 must be adopted as soon as possible.

On 10 November 2020, the EU Member States and the European Parliament agreed on a budget: the MFF was projected at €1,074.3 billion, of which around one-third will be allocated to structural funds, while NGEU is set to hand out €360 billion in loans and a further €390 billion in direct grants to those Member States affected particularly severely by the COVID-19 crisis. Germany intends to make use of grants only. Apart from an additional allocation to structural funds in the amount of €2.4 billion in 2021–2022 (ReactEU), Germany will receive a projected €22.7 billion from the newly set-up so-called recovery and resilience facility. To help those European regions with the highest carbon intensity manage the structural changes, a Just Transition Fund (JTF) will be created under the Green Deal framework. The allocation to Germany for the 2021–2027 period is €2.2 billion. The EU structural fund has another €16.4 billion earmarked for Germany (excluding rural development).

In the new funding period, the funding instruments of various EU programmes will be bundled under a new, single support mechanism – InvestEU. For the first time, the EIB Group will be joined by other promotional banks as implementation partners that will use the EU budget guarantee for funding instruments directly. The new overarching programme was created to mobilise additional investments in key policy areas. To mitigate the impact of the COVID-19 pandemic and with the subsequent economic recovery in mind, the EU Commission saw fit in May 2020 to increase the budget guarantee provided for InvestEU from €38 billion to €75.6 billion. In addition to the policy areas of sustainable infrastructure (1), research, innovation and digitisation (2), SME (3), social investment and skills (4), a fifth investment window was proposed for strategic European investment (5). However, the agreement reached between Member States and Parliament on 10 November 2020 differs significantly from the EU Commission’s budget proposal for InvestEU. Out of a total of €23.5 billion for InvestEU, only €9.4 billion will be allocated to the EU budget guarantee. The trilogue on InvestEU will also bring clarity concerning the policy areas: while the Council wishes to integrate the ‘strategic European investment’ window into the existing four policy areas, in late October 2020 the European Parliament agreed on an additional, sixth policy area for InvestEU to support companies that have been hit by the COVID-19 crisis and are at a disadvantage (Solvency Support). Against this background, the outcome of the legislative procedure remains to be seen. The funds allocated to InvestEU stand in contrast to the ambitious targets, namely to provide sufficient support.

### Our Position

- **We** advocate a quick conclusion of the negotiations for the Multiannual Financial Framework, the Next Generation EU fund, the Structural Funds Regulation as well as the InvestEU Regulation, in the interests of planning security and legal certainty for the 2021–2027 funding period.
- **We** are also committed to ensuring that promotional banks, with the help of structural funds and EU guarantee facilities, will continue to provide support programmes beyond 2020, thus guaranteeing continuous and reliable support.
- **We** call for flexible and combinable financial products within InvestEU so that suitable support instruments will be available to tackle the challenges arising after the crisis.
- **We** advocate the involvement of national and regional implementation partners (promotional banks) on an equal footing with the EIB, by granting them direct access to the EU budget guarantee provided as part of InvestEU.

The EU must make funding available to the economy in line with demand and quickly, both during and after the crisis.
investment impetus in key policy areas. Furthermore, the German support programmes that rely on European risk protection may be more difficult to realise.

### Current Positions on the Regulation of Banks and the Financial Markets

#### Multiannual Financial Framework and Recovery Plan for Europe (NGEU) – Total Volume

<table>
<thead>
<tr>
<th>Multiannual Financial Framework (MFF)</th>
<th>€1,074.3 bn</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seven-year budget</td>
<td>€750 bn</td>
</tr>
<tr>
<td>Next Generation EU (NGEU) COVID-19 recovery package, brought forward for the first years</td>
<td>€1,824.3 bn</td>
</tr>
</tbody>
</table>

Source: Council of the European Union

### Allocation of Funds (Grants) per EU Member State under the Recovery Plan

<table>
<thead>
<tr>
<th>Member State</th>
<th>Grants (€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Italy</td>
<td>€81.8 bn</td>
</tr>
<tr>
<td>Spain</td>
<td>€77.3 bn</td>
</tr>
<tr>
<td>France</td>
<td>€38.8 bn</td>
</tr>
<tr>
<td>Poland</td>
<td>€37.7 bn</td>
</tr>
<tr>
<td>Germany</td>
<td>€28.8 bn</td>
</tr>
<tr>
<td>Greece</td>
<td>€22.6 bn</td>
</tr>
<tr>
<td>Romania</td>
<td>€19.6 bn</td>
</tr>
<tr>
<td>Portugal</td>
<td>€15.5 bn</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>€9.2 bn</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>€8.6 bn</td>
</tr>
<tr>
<td>Hungary</td>
<td>€8.1 bn</td>
</tr>
<tr>
<td>Slovakia</td>
<td>€7.9 bn</td>
</tr>
<tr>
<td>Croatia</td>
<td>€7.4 bn</td>
</tr>
<tr>
<td>Netherlands</td>
<td>€6.8 bn</td>
</tr>
<tr>
<td>Belgium</td>
<td>€5.5 bn</td>
</tr>
<tr>
<td>Sweden</td>
<td>€4.7 bn</td>
</tr>
<tr>
<td>Austria</td>
<td>€4.0 bn</td>
</tr>
<tr>
<td>Lithuania</td>
<td>€3.9 bn</td>
</tr>
<tr>
<td>Finland</td>
<td>€3.5 bn</td>
</tr>
<tr>
<td>Latvia</td>
<td>€2.9 bn</td>
</tr>
<tr>
<td>Slovenia</td>
<td>€2.6 bn</td>
</tr>
<tr>
<td>Denmark</td>
<td>€2.2 bn</td>
</tr>
<tr>
<td>Ireland</td>
<td>€1.9 bn</td>
</tr>
<tr>
<td>Estonia</td>
<td>€1.9 bn</td>
</tr>
<tr>
<td>Cyprus</td>
<td>€1.4 bn</td>
</tr>
<tr>
<td>Malta</td>
<td>€0.4 bn</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>€0.2 bn</td>
</tr>
</tbody>
</table>

Source: European Commission, Statista
Due to the COVID-19 pandemic, the Basel Committee on Banking Supervision (BCBS) has deferred the implementation date of the Basel III framework finalised in December 2017 (Basel IV) by one year, to 1 January 2023. The aim is to free up resources at the banks and supervisors so that they can cope with the crisis. It is foreseeable that the transposition of Basel IV into European law will also be significantly delayed. The European Commission has postponed the submission of a corresponding legislative proposal to the beginning of 2021.

At the beginning of August 2019, the European Banking Authority (EBA) submitted its report on the implementation of Basel IV to the European Commission. In this report, the EBA forecasts an increase of 24.4 per cent in capital requirements for European banks. With regard to German credit institutions, the EBA actually identified an increase of as much as around 40 per cent. In the EU, 9.1 percentage points of the overall increase can be attributed to the so-called output floor, which raises the capital requirements of banks using internal models to at least 72.5 per cent of the value calculated using regulatory standardised approaches. With an additional burden of about 20 percentage points for German banks, this amount turns out to be significantly higher. In addition, with Basel IV the risk weight for banks that are not rated externally (and whose rating therefore currently depends on their own central government’s rating – the ‘country of origin’ principle) is set to double to 40 per cent in standard cases. This would particularly impact development and promotional banks, as they frequently extend development loans via smaller principal banks that have not been rated by a rating agency.

**OUR POSITION**

- We are concerned that the new Basel IV regulations will hit the banks during the phase following the coronavirus crisis – despite the recently resolved one-year deferral. In particular, the massive capital increases related to the Basel output floor could dramatically delay the recovery of the real economy – or even incur another economic slump. Since the impact of the pandemic is not yet foreseeable, the EU Commission should carry out an impact analysis, an exercise to consider the actual consequences of the crisis, before Basel IV is implemented. Only after such an exercise has been conducted should the EU institutions begin to discuss when and how Basel IV is to be implemented within the EU.
- We believe that in addition to the leverage ratio, the output floor should be implemented as a second backstop for risk-based capital backing in the EU. This would reduce the negative impact of the floor. The standardised risk measurement approaches should also be geared more towards the actual risks.
- We are also in favour of maintaining well-founded deviations from the Basel Accord even after Basel IV is implemented. This applies for example to the SME supporting factor for lending to small and medium-sized enterprises, or the continuation of the EU practice on the treatment of real estate loans.
- We would like to point out that the energy turnaround in Germany (the ‘Energiewende’) is largely financed by German banks. If the European banking industry is burdened as feared, this raises the question as to whether the EU can reach its ambitious climate and sustainability targets.
- We advocate that the new regulations concerning treatment of claims on banks should not impede the development and promotional business. Therefore, final borrower receivables assigned to development and promotional banks within the scope of the Internal Ratings-Based Approach (IRBA) should be recognised as collateral; furthermore, within the standardized approach all loans provided to banks with the aim of passing through or granting promotional loans should be generally included with a risk weight of 20 per cent.
3 Discussion concerning the European Deposit Insurance Scheme (EDIS)

The ongoing COVID-19 pandemic makes it seem unlikely that the negotiations on the European deposit guarantee scheme will yield results in the near future. However, as the EU Commission works to improve the framework for bank crisis management and deposit guarantees in 2021, EDIS might gain momentum.

As early as 2015 the EU Commission presented a regulation proposal that included setting up a European Deposit Insurance Scheme (EDIS) within the Banking Union, on a step-by-step basis: from a re-insurance to co-insurance stage and, finally, a fully-fledged insurance system. As political consensus on the matter could not be reached, the EU Commission in 2017 proposed a diluted EDIS approach in its communication on completing the Banking Union. According to this communication, EDIS would merely provide liquidity coverage in a first re-insurance stage. Only at a later point would losses from national deposit guarantee schemes be taken over (limited co-insurance). The third phase – fully-fledged insurance – would be deferred, but not dropped altogether.

A proposal for compromise reached under the Austrian presidency of the Council of the European Union in late 2018 gained broad approval. This so-called hybrid approach is based on the re-insurance model on the one hand, built on the Commission’s proposals, and on a system of mandatory lending between EU members’ national deposit guarantee schemes on the other. This would mean that in the first stage of a payout event, the individual Member State’s national deposit guarantee scheme would bear the losses. In the second stage, that Member State’s national deposit guarantee scheme – prior to defaulting – would first raise extraordinary ex-post contributions; where this is not possible, or not to a sufficient extent, EDIS liquidity could be accessed. Should the second-stage funds not suffice, national deposit guarantee schemes across the EU would be required to provide liquidity in the third stage. The latter situation would lead to a departure from the current model of voluntary support.

Our Position

- We advocate taking great care during the COVID-19 crisis concerning decisions of major significance such as the introduction of a European Deposit Guarantee Scheme. Uncertainty amongst depositors must be avoided at all costs.
- We maintain our objections to the Commission’s concrete proposals for EDIS. Whilst a deepening of the Banking Union is only conceivable after successful implementation of risk-reducing measures, it must not threaten the viability of tried-and-tested German deposit guarantee schemes. Regardless of the specific structure of the scheme, the prerequisites to be fulfilled before such a scheme can be established are crucially important. We therefore object to mandatory lending between EU members’ individual national deposit guarantee schemes.
- We do not see a legal basis for the Commission’s draft regulation: it constitutes a breach of the subsidiarity principle and does not comply with the principle of proportionality. No comprehensive impact assessment has been published to date, thus breaching the principle of “Better Regulation”.

Objection to the EU Commission’s concrete proposals for establishing a European Deposit Insurance Scheme (EDIS).
The German Federal Financial Supervisory Authority (BaFin) was quite generous in its use of the margins of interpretation of the Minimum Requirements for Risk Management (MaRisk) during the COVID-19 crisis, granting institutions some leeway. A flexible MaRisk interpretation is an option for BaFin because it is a principles-based circular that largely dispenses with detailed provisions. This focus on principles allows institutions to take the special characteristics of their business model into account when implementing the requirements under normal circumstances. And it allows supervisory authorities to react to challenges quickly and flexibly – in particular in times of crisis – without having to adapt the underlying regulations.

Internal risk management processes within banks are subject to constant adaptation, also in times of crisis. On 26 October 2020, BaFin launched the consultation on its draft version for the sixth amendment to the MaRisk. Unfortunately, a number of basic concerns of the banking industry, that had been expressed beforehand, were not taken into account. By way of example, the draft version provides for expanding the scope of application for specific requirements for systemically important financial institutions to include so-called ‘large and complex financial institutions’. According to the draft, these institutions must observe the Basel requirements regarding risk data aggregation and must not combine their compliance function with risk control tasks.

On 29 May 2020 the European Banking Authority (EBA) published its Guidelines on Loan Origination and Monitoring, which are set to be implemented in Germany with the seventh amendment to MaRisk as from April 2021. There is reason to fear that implementation of these Guidelines will be difficult, since they are not sufficiently principles-based. BaFin agreed under the ‘comply-or-explain’ principle to apply these Guidelines by 30 June 2022, whereby a decision to forego the application must be explained by the relevant authority. Should the implementation of these Guidelines via MaRisk fail due to being overly detailed and not sufficiently principles-based, the Guidelines would also apply directly to the less significant banks.

Our Position

• We believe it indispensable that supervisory practice be principles-based, as the coronavirus crisis has vividly confirmed. The supervisory authority should emphasise that the principle of proportionality – proven in Germany – should not be allowed to fail due to overly-narrow provisions. We further expect the supervisory authority to continue to translate European requirements appropriately into its administrative practice.

• We do not consider it justified to burden large institutions that are not classified as systemically important with additional risk data aggregation requirements. Even the ECB regards these precepts as a mere guide for its ongoing supervisory activities to encourage implementation at important institutions while safeguarding proportionality.

• We advocate that institutions of all sizes should continue to be able to combine their compliance function with other functions of the second line of defence. Size should not play a role here, in order that reasonable synergies can be leveraged, e.g. for managing non-financial risks. Such a limitation is not rooted in the EBA Guidelines on Internal Governance.

• We would like to highlight that institutions must optimise their value chain for profitability. The regulatory restrictions of outsourcing solutions, which are being constantly intensified, are increasingly hampering these efforts. It is our belief that supervised entities that act as service providers for the institutions and certified service providers should receive preferential treatment to facilitate outsourcing management.
The revision of the Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR), officially began on 17 February 2020 with the consultation published by the European Commission. Previously we, together with the German Banking Industry Committee (GBIC) had presented numerous positions in need of amendment to the German Ministry of Finance (BMF).

On 24 July 2020, the EU Commission brought forward the revision of part of the MiFID II rules within the scope of the so called Capital Markets Recovery Package (MiFID Quick Fix). Reducing bureaucratic requirements will allow investment firms and banks to free up resources to cope with the consequences of the COVID-19 pandemic, and help companies raise capital on the financial markets. The alleviations particularly include exemptions from certain information requirements for transactions executed with professional clients and eligible counterparties, as well as the switch to client information being provided in electronic format. In addition, corporate bonds with make-whole clauses are to be exempted from the product governance regime. Last but not least, we proposed to suspend the quarterly reporting requirements for trading venues (best execution reports). Adoption of the Quick Fix is scheduled for year-end 2020.

MiFID II/MiFIR will be further revised in 2021, with new, comprehensive requirements already evident. Specifically, these concern reporting requirements or pre- and post-trade transparency (key word: consolidated tape).

The pending revision of MiFID II and MiFIR is equally important for both investors and the financial sector. The MiFID Quick Fix within the Capital Markets Recovery Package brought forward one part of this review.

Our position

- We welcome the MiFID Quick Fix and the objective to simplify the securities business by reducing bureaucratic requirements for banks and investors. That applies in particular to the exceptions intended for transactions with eligible counterparties and professional clients, where further exemptions and the waiver of so-called ‘opt-in’ rights of professional clients would be preferable.

- We welcome the proposed exemption of corporate bonds with make-whole clauses from the product governance requirements. In our opinion, said bonds should also be exempted from the PRIIPs Regulation and the corresponding documentation requirements. We continue to advocate exemption from the product governance regime for other ‘plain-vanilla’ financial instruments such as equities and bonds, with potential exceptions not being limited to execution-only business. This business model is virtually non-existent in Germany.

- We welcome the planned suspension of trading venues’ quarterly reporting. Suspending investment firms’ annual execution reports would also be preferable. Both pieces of information have proven hardly relevant for the market, but are very costly.

- We oppose the introduction of a comprehensive consolidated tape. The poor experience gained with the new MiFIR transparency rules (especially pre-trade transparency for non-equities, best execution reports), resulting in enormous, yet hardly usable data collections, make it difficult to see any benefit in a further data collection centre (consolidated tape). Any relief achieved for institutions by introducing the amendments of the MiFID Quick Fix would then be thwarted by negative consequences elsewhere.
A second coronavirus wave has hit Europe. Many companies are faltering as they enter the winter term, having to resort to existing deposits and credit lines with banks to a considerable extent. Once again it is paramount to help as many companies as possible with an otherwise sound business model through this second phase of the crisis.

Corporate credit demand has posted another increase, according to the Bank Lending Survey (BLS), conducted amongst German banks and published by the German Bundesbank on 27 October 2020. This is especially evident in the German economy, with its strong SME presence that benefits only to a limited extent from the ECB’s purchase programmes for capital markets-refinanced companies. An inadequate, sluggish or overly expensive credit supply could put the German economy at risk, or inflict unnecessary damage.

As was the case during the first wave of the pandemic, banks again are at the risk of not only being a part of the solution, but also a victim of the crisis – if corporates and institutional investors transfer their term deposits to current accounts, or withdraw them completely.

At the same time, the ongoing economic impact of the pandemic – and the fact that the hoped-for upswing has not materialised – will continue to put pressure on corporate credit quality. Numerous companies could then fall out of the Bundesbank’s collateral framework. In this case, banks would be unable to exchange existing and new loans for central bank liquidity with the Bundesbank. Given the lack of alternatives, banks would then be forced to manage their credit books with an even more cautious and price-sensitive approach.

The banks’ aim is to support those corporate clients that offer a sound business model with the necessary funding, but whose credit quality has been adversely affected by the measures taken to contain the pandemic. Companies must not be put under additional pressure through bank lending that is inadequate, too slow or overly expensive.

A sustainable economic recovery requires adjustments to the Bundesbank’s refinancing programmes.

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**OUR POSITION**

- We advocate support for the credit supply to the economy from the Bundesbank, via Germany’s banks, to the best of its abilities – and, as a first step, lifting the time limitation on refinancing programmes.
- We advocate the further implementation of the Correspondent Central Banking Model (CCBM), as this would make it easier to provide funding to institutions. In particular, implementing the programme with the Banque de France is overdue.
- We advocate that, with regard to the eligibility of credit claims from corporates (also within the scope of the existing loan submission programme) – both the speed and predictability of acceptance decisions by the Bundesbank should be optimised – and that internal ratings of the institutions or banking networks become applicable. Especially companies of the German Mittelstand, the driving force of Germany’s industrial base, generally do not have a rating from one of the major credit rating agencies (e.g. Moody’s, Fitch, S&P).
Against the background of the current digital challenges emanating from the COVID-19 crisis and the resulting acceleration in the provision of digital services, it is becoming increasingly important to amend competition law. How the law is set out in the digital area will have an impact on the overall framework for a significant part of the economy and the functioning of digital ecosystems in Germany and Europe.

On 9 September 2020, the German government approved the draft bill for the 10th amendment to the German Act against Restraints of Competition, providing a focused, proactive and digital "Competition Law 4.0", also dubbed the "GWB Digitalisation Act". The law in question has been under debate in the German parliament since the end of October 2020. The new law will seek to implement the EU directive on strengthening Member States’ competition authorities. It includes changes to the investigative powers of the competition authorities, and the penalties for violating competition laws. Competition authorities’ proceedings will be speeded up and will include ordering interim measures, holding oral hearings, and granting access to files. The draft bill is expected to be made law by 4 February 2021.

In addition, the existing regulatory system for competition law in Germany is being tightened up in certain areas with the modernisation of abuse control under competition law, the establishment of the concept of "intermediary power" and the revision of the "Essential Facilities Doctrine". A new element will be introduced to enable more effective control over the digital companies that are of paramount significance for competition across markets. A right to data access under competition law will be introduced in cases where access to data is of particular importance from a competition point of view. Additionally, an intervention mechanism to reduce competition issues caused by market "tipping" will be included.

In future, companies will, under certain conditions, be entitled to a decision by Germany’s antitrust authority (the Federal Cartel Office or Bundeskartellamt) within six months.

**OUR POSITION**

- **We** welcome the amendment’s objective of creating an appropriate regulatory framework, for digital markets in particular. In light of the ongoing coronavirus crisis, there is a strong need for clear competition rules for digital service providers.
- **We** welcome the newly created entitlement for companies to receive a decision from the Bundeskartellamt. We believe, however, that the requirements, namely a substantial legal or economic interest in such a decision, are too high.
- **We** particularly regard the harmonised definition across the EU of what constitutes a relevant market as an important basic requirement for the practical application of this new competition law.
- **We** fundamentally support the demands for equal access to interfaces and services provided by major digital providers. We believe that, in order to create new ecosystems, it is necessary for providers to be able to charge market-based fees for access to data and services to support investment and innovation. This forms the basis for the success of Open Banking and Open Data. In order to access interfaces, standard interface accesses and templates need to be defined and applied. The compulsory use of proxy accesses encourages the tipping effect.
- **We** welcome the fact that a legislative reference to uniform technical standards and formats will mean that openness to competition, which is desirable from the point of view of competition law, can actually have the desired effect. Harmonisation of the competition law framework for the entire EU internal market is subsequently necessary in order to avoid creating legislative arbitrage.
In its Retail Payments Strategy, the EU Commission has announced the mandatory introduction of instant payments, since coverage in the European Union pursuant to the SEPA Regulation will not be achieved even after November 2020. Specialist institutions that have not taken up instant payments to date, such as development and promotional banks, focus their business activities on their development/promotional mandate, through targeted programmes. Releasing development and promotional banks from the obligation of supporting instant payments is not in contradiction to the rollout necessary across the European Union for banks to offer viable services. The EU Commission is now examining which specialist institutions will be exempt from an instant payment obligation.

Which payment instrument or payment type suits best depends on the needs of the market. For some purposes, it may be an instant payment, for others it may be a standard transfer. For companies, it may be an instant or standard batch file transfer. Instant execution of a payment and application of an immediate value date are not standard requirements, and they are neither necessary from a business point of view nor sensible from a technical point of view. Accessibility for instant transfers in Europe is currently limited; this must change. TIPS (TARGET Instant Payments Settlement) is to serve as a central hub for all clearing houses and direct participants, ensuring that instant payments become reachable all over Europe.

With all direct TARGET participants set to be obliged to open a TIPS account, settling instant payments becomes more complex, in particular for large institutions already connected to a commercial clearing house, as various clearing accounts will be required. This creates indirect pressure on banks to switch from their commercial clearing provider to the public TIPS system. Market distortions could be the result. The Berlin Group is a pan-European initiative for the standardisation of open banking transactions. The banking industry has an interest in setting up a premium API system that is based on selected transactions of the Berlin Group. Such a system would create opportunities for banks and businesses, laying the groundwork for a European ecosystem of financial services. At the same time, the EU Commission has announced that a new legislative proposal for an open finance framework, which is set to go beyond the scope of PSD2, will be presented by mid-2022.

**Current Positions on the Regulation of Banks and the Financial Markets**

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Germany and Europe’s future global competitive positioning will be dependent on the successful progress of digitalisation. In this, the regulatory environment and successful market initiatives are paramount.

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**Our Position**

- We call for specialist institutions such as development and promotional banks to be exempted from a mandatory introduction of instant payments. Payments traffic must not be further regulated, and must be oriented towards market needs. Instant payments can complement other payment methods. The TIPS system launched by the Eurosystem for clearing instant payments should not force TARGET participants who are already connected to TIPS via a clearing house to add another TIPS account. This would be a market-based approach that creates accessibility and meets the requirements of the SEPA Regulation. The planned access of non-banks to infrastructures that are subject to the EUR Settlement Finality Directive (such as TARGET) must not endanger stability. We caution against less regulated market participants receiving access to these major infrastructures.

- We call for the regulatory open finance framework to not restrain functioning market initiatives. Providers of data and services must be able to charge a non-regulated fee to companies that gain an economic advantage, calculated at arm’s length. This is a prerequisite for fair competition and for investments in innovative open banking and open data infrastructures.

- We support the amalgamation of banking payment systems into a single offer for all payment channels. This requires the support of policymakers and competition authorities. A pan-European payments solution requests a stable regulatory environment that supports sustainable business models.

- We call for less regulatory intervention in the market so that European payment systems suffer no disadvantage as they compete with international platforms and banks.
Cyber resilience and information security are central supervisory and legal requirements for institutions and ICT infrastructures in the financial sector. To ensure that business operations run smoothly, secure IT operations and comprehensive contingency management are particularly important.

Up until the end of November 2020, the German Federal Financial Supervisory Authority (BaFin) will be consulting on its amendment to the 'Supervisory Requirements for IT in Financial Institutions' (BAIT), with which the European Banking Authority’s (EBA) provisions regarding ICT and security risk management in particular are being implemented – for example in the new chapters 'Operational information security' and 'IT contingency management'. Since spring 2020, the supervisory authority and the associations of the German Banking Industry Committee (GBIC) have been intensively and continuously exchanging views on the BAIT amendment in BaFin’s expert panel on information technology. Within the scope of the public consultation, the GBIC is now aiming to submit a final joint statement.

The 'Cybersecurity Act' was adopted as early as in 2018 in the EU; it aims to improve cybersecurity via certifications, for example for cloud services. At the end of September 2020, the European Commission submitted a legislative proposal on digital operational resilience as part of its Digital Finance Package, including numerous detailed regulations on ICT security risk management (incl. testing), on incident management and reporting, and on ICT contingency management, all of which are to be further specified for an implementation into Regulatory Technical Standards (RTS) by the EBA. The draft regulation also stipulates a supervisory framework for critical ICT service providers, such as major cloud providers. All in all, the EU Commission aims to harmonise existing and supplementary regulations on improving cyber resilience and ICT security risk management in the financial sector. In particular, the future participation of national supervisory authorities such as BaFin in supervision and supervisory practice also plays an important role within the regulations.

**Our Position**

- We generally advocate clear requirements providing simplification – at a European and national level – particularly for ICT security risks and IT outsourcing. We therefore also support the certification of selected IT products or services (for example, through the optional certification of cloud services in the case of outsourcing). However, we reject the obligatory certification of (security-relevant) products and services. This would limit the selection of products available.
- We call for a consistent application of the principle of proportionality, as set out in MaRisk and BAIT; this also includes application within the supervisory authority's auditing practice.
- We would like to point out that the planned regulations in the European Commission's legislative proposal on digital operational resilience go significantly beyond the harmonisation target, and that the principle of proportionality is no longer given real consideration. The planned regulations would apply equally to all banks, without any differentiation.
- We advocate a clear legal framework, to comprehensively include national supervisory authorities in future supervision and supervisory practice, in the European Commission’s draft regulation on operational resilience. Only the national competent authorities are capable of adequately assessing individual circumstances and connections.
- We welcome the European Commission’s plan to establish a supervisory framework for critical ICT service providers, especially for major international cloud service providers. This framework should definitely be accompanied by supervisory relief for financial institutions, e.g. by the service providers’ clear obligation to provide proof that in rendering their services they are complying with all requirements.
Ever since the Libra private sector currency project was announced in 2019, there has been growing debate about the introduction of a digital euro. There can be no doubt that the use of smart contracts, for example, is essential for ensuring the further development of financial services and business models in the European financial sector. European digital central bank money, or central bank digital currency (CBDC), should also be seen as a competitive counterbalance to Libra and other international digital currency projects. In October 2020, the ECB launched a public consultation to help it decide whether to adopt a digital euro, based on its recent “Report on a digital euro”. The report sets out the requirements for a digital euro and the framework for digital central bank money, and will be used as a starting point for developing an ECB concept which may be implemented in the future. A decision will be taken midway through 2021 as to whether and in what form a digital euro project will be launched. A Bundesbank working group – involving private and public-sector banks – will assess various models for a digital euro through to the end of 2020. The ECB is looking into the possible direct issuance of a digital euro to end-users using a payment function. A concrete variant of a digital euro has not yet been defined. In view of the potential risks for financial and monetary stability, the German Bundesbank believes that, for the time being, token-based cash should be implemented exclusively in digital form for use by citizens and businesses for their retail payments.

As part of its "Digital Finance Package", the European Commission published a proposed regulatory framework for markets in crypto-assets at the end of September 2020. It aims to create a clearly defined legal framework for harmonising the regulation of crypto-assets across the EU. The draft bill contains regulations for what is so far a largely unregulated area and, following the "same risk, same rules" approach, also sets out clear requirements on the issuance of "stablecoins" in the EU. According to the draft, the regulations are expected to enter into force 18 months following publication in the Official Journal, which means from the end of 2022.

**Our Position**

- **We** are committed to a digital euro where banks have a clearly defined role to play in order to minimise potential risks while maintaining the ECB’s supervisory role.
- **We** believe that it is necessary to preserve the current dual monetary system of cash and wholesale central bank deposits even if a digital euro were to be adopted. This would allow banks to continue to offer custody of client funds and safeguard credit supply. Another option is to make digital cash directly usable for those using programme platforms and smart contracts.
- **We** are extremely wary about the ECB’s discussions on CBDC account management for (retail) clients. The ECB should not get involved in retail banking services, given its central role in maintaining financial and monetary stability.
- **We** support the creation of a clearly defined legal framework for harmonising the regulation of crypto-assets across the EU.
- **We** fully support the proposed use of future regulated crypto-asset instruments without a separate license for CRR institutions, as set out in the EU’S draft legislation to regulate crypto-assets. This should also apply to institutions operating under a similar supervisory framework, such as those that are subject to the German Banking Act and not to the CRR. This means that in the future, German development and promotional banks should likewise be able to use appropriate instruments without encountering any additional hurdles.
- **We** underline the importance of the exemptions from the scope of the proposed legislation to regulate crypto-assets, such as the exemption for financial instruments as defined in the Markets in Financial Instruments Directive (MiFID), since its provisions are both comprehensive and sufficient. It is essential that any overlap or “duplication of regulation” is avoided.
In August 2020, the German government published a proposal on the introduction of electronic securities (eWpG), which aims to modernise German securities law and to generally open up German legislation to electronic securities. In a first step, implementation of the proposal is limited to electronic bearer bonds, whereby paper-based certificates will be replaced by digital securities entered into the electronic securities register. The eWpG does not aim to abolish traditional securities; they will co-exist with electronic securities. Under certain conditions, and without difficulty, it should be possible to convert traditional securities into electronic securities by entering them into an electronic securities register. Likewise, the reverse procedure is to be possible.

Electronic securities registers can be maintained centrally or decentralised. Central securities registers should only be managed by approved central securities depositories. Electronic securities will be issued by way of collective registration. Transfers of these electronic securities will continue to be recorded in the traditional book entries, and managed by the securities depository as a trustee. In decentralised securities registers, bearer bonds are issued and managed via distributed ledger or blockchain technology. Regulation of electronic securities will be technology-neutral and be subject to established supervisory legislation. The supervisor in charge will be the German Federal Financial Supervisory Authority (BaFin).

We dealt with the regulation of electronic securities early on, and in autumn 2019 we drafted a VÖB position paper that formed the basis of initial discussions between VÖB, the Federal Ministry of Justice and Consumer Protection, the Federal Ministry of Finance and the Hesse Ministry of Finance. The proposal implements various VÖB demands. In particular, the gradual implementation of digital securities, starting with bearer bonds and adding equities and investment fund units at a later point, can be traced back to our VÖB position paper. In September 2020, as part of the German Banking Industry we drafted a joint statement and worked to ensure that this statement took a positive stance on the draft law.

**OUR POSITION**

- **We** expressly support the legislative proposal. Electronic securities have already been established in various neighbouring countries, such as France and Luxembourg. The German financial sector should also be able to make use of electronic securities.
- **We** aim to achieve a swift implementation of the legislative proposal: we therefore call for equities and fund units to be digitalised at a later stage – contrary to fund industry requests – since this would require time-consuming and comprehensive reforms, e.g. of the German Securities Deposit Act (DepotG).
- **We** welcome the technology-neutral structure, which leaves room for future technological innovations without having to amend the law.
- **We** believe that maintaining traditional paper-based securities alongside digital securities is the right way to move forward, providing flexibility and ensuring a smooth transition.

The German Federal Ministry of Justice and Consumer Protection and the German Ministry of Finance published a draft bill on the introduction of electronic securities in August 2020; in a first step, bearer bonds will be digitalised.
The EU Commission sees the COVID-19 pandemic as a “sustainability crisis”, which is why the pandemic features prominently in the Commission’s renewed sustainable finance strategy expected for late 2020. Consultation on this renewed strategy commenced in spring of 2020.

The aim of sustainable financial management is to further channel capital flows into socially responsible and environmental investments, to better manage sustainability risks and to integrate environmental, social and governance (ESG) aspects more effectively into decision-making processes. The EU regulation on sustainable finance centres around the Taxonomy, an EU-wide classification system that entered into force in July 2020 and will be applicable as from 2022.

The requirements for the integration of ESG factors in the investment process, including their disclosure (applicable as from spring 2021) and the structure of sustainability benchmarks entered into force in December 2019.

ESMA also consulted on requirements for including ESG factors when providing investment advice. A Delegated Act amending MiFID II accordingly is expected for the near future. The EU Commission has also consulted proposals for an EU Green Bond Standard. The EU Ecolabel for green financial products is set to follow. How to define sustainability-related risks – and their inclusion within the capital adequacy regime and the Supervisory Review and Evaluation Process (SREP) – is the subject of intensive discussion. In December 2019, the German Federal Financial Supervisory Authority (BaFin) issued a Guidance Notice on Dealing with Sustainability Risks; in May 2020, the ECB published its Guide on Climate-related and Environmental Risks for consultation. The EU Commission plans to publish a proposal on the review of non-financial reporting requirements by no later than early 2021. Regarding disclosure requirements for companies, the Taxonomy Regulation was faster: it is applicable to non-financial statements already for the 2021 financial year. In the first quarter of 2021, the EBA will also conduct a consultation procedure concerning the Implementing Technical Standards (ITS) on the Pillar 3 disclosure of prudential information on ESG risks. Last but not least, the EU Commission plans to adopt a legislative proposal on sustainable corporate governance in 2021, and has published a questionnaire in preparation thereof.

12 Sustainable finance

What needs to be done: integrate market-based solutions in a European context – implement a pragmatic taxonomy for green finance products, embedding this into risk management using a measured approach.

The requirements for the integration of ESG factors in the investment process, including their disclosure (applicable as from spring 2021) and the structure of sustainability benchmarks entered into force as early as December 2019.

OUR POSITION

• We are in favour of taking sustainability considerations into account in long-term economic stimulus programmes that are launched to support the German economy, not least against the background of the current COVID-19 crisis. This applies especially to strengthening healthcare as well as the establishment of climate-friendly infrastructures and key industries.

• We are convinced that a single classification system and uniform standards for sustainable financial products will help increase transparency for investors, reduce ambiguities for issuers, and contribute to market growth and financial stability in the long term.

• We advocate consideration of the special characteristics of the German credit market as well as of SMEs when defining the transparency obligations that banks will have to fulfil under the Taxonomy. Thresholds may dramatically increase viability.

• We welcome the EBA’s proposal of a sequenced, harmonised approach to ESG factors. Only then should possible requirements for the SREP be considered. In this context, we advocate longer implementation periods. Capital relief for green loans must be granted solely on the basis of measurably low risks. We deem the Federal Government’s idea for guarantees for sustainable funding worth considering.

• We believe that ESG disclosure that is not product-specific belongs in the annual non-financial statement as a general rule. The extent of this disclosure should follow the risk management. Principles-based global disclosure standards should be striven for.

• We are convinced that a sector-specific transition period, together with economic, environmental and fiscal policy support, are necessary to bring about a lasting change in the economy.
In order to mitigate the impact of the coronavirus crisis, relief programmes have been set up to support the economy. The German Federal Financial Supervisory Authority (BaFin) has stressed on several occasions that it is essential to ensure effective action against crime, in particular money laundering and terrorist financing, even during the coronavirus crisis.

Particular emphasis is being placed within this context on coronavirus emergency aid, whereby the application process presented significant potential for abuse. Under the current law, simple (subsidy) fraud does not yet constitute a money laundering offence under section 261 of the German Criminal Code (StGB). For a money laundering offence to have been committed, the unlawful use of emergency aid must relate specifically to commercial or gang fraud. In future, it will be sufficient for an asset to derive from any criminal offence, irrespective of whether it is committed on a commercial scale, or involving gang fraud. This is the aim of the draft bill recently published by the Federal Ministry of Justice in order to combat money laundering. Due to the elimination of the list of predicate offences, the scope of money laundering will be considerably extended. In the future, banks in particular will have to check even more comprehensively than before within the framework of their money laundering prevention whether individual facts are related to money laundering and thus trigger the obligation to submit a suspicious transaction report to the FIU. In addition to the pandemic situation and the reform of section 261 of the German Criminal Code, the Wirecard scandal has not been without consequences as far as anti-money laundering prevention is concerned. The draft bill of the Financial Market Integrity Strengthening Act (FISG) prepared in response to the Wirecard case also results in adjustments to the German Anti-Money Laundering Act (GwG) and the German Tax Code (AO). The FIU will be given powers to automatically access basic tax data. The explanatory memorandum to the proposed law states: "The data gathered will be used for further analysis of individual suspect reports and subsequent evaluation. This data, taken together with the other information available, will allow the FIU to identify any links with money laundering and terrorist financing, and to assist the relevant national authorities more effectively in the investigation, prevention and prosecution of money laundering and terrorist financing".

We welcome this closer exchange with the supervisory authority – especially in light of the current coronavirus crisis. It has enabled us to react quickly and to discuss and publish our recommendations for dealing with AMLA obligations with our members.

We welcome the establishment of the Anti Financial Crime Alliance (AFCA) and the initiative to create a practical exchange of information. In our view, however, such an exchange is only useful if the AFCA also addresses the current issue of subsidy fraud during the period of COVID-19.

We would therefore also like to see supervision at national level specify the regulations for preventing money laundering among credit institutions, by providing a supplement to the interpretation and application guidance. As a member of the German Banking Industry Committee (GBIC), we are involved in compiling this supplement as well as drawing up more specific regulations for our member organisations.
The German Federal Ministry of Justice and Consumer Protection published the draft bill on 21 September 2020 and the Government published its draft on 14 October 2020. The new law is scheduled to enter into force on 1 January 2021, as it is intended to follow on directly from the end of the COVID-19 suspension period on 31 December 2020, when the waiver of the obligation to file for solvency ceases to apply.

The key element of the draft bill is the establishment of a restructuring framework, intended to enable the pre-insolvency restructuring of companies, and which can be invoked in the event of impending insolvency.

The draft bill provides for significant interventions which affect the rights of creditors, notably financial creditors. Among other things, it will allow mutual contracts to be terminated by courts responsible for restructuring proceedings in cases where the adjustment of such contracts is necessary to implement the restructuring framework, and creditors are not willing to adjust or terminate them on a voluntary basis.

Moreover, such a court may in future order a stay of enforcement for a period of up to three months, which would also cover transfers and assignments by way of security.

The provision still included in the Ministerial draft bill, allowing companies that are insolvent as a result of COVID-19 access to the restructuring plan, no longer appears in the Government draft.

Our Position

- We are particularly in favour of postponing the entry into force of the new law, which is scheduled for 1 January 2021. It is not feasible for the credit institutions concerned to implement this legislation in the prescribed period because of the considerable legal, procedural and technical adjustments required. Delaying the entry into force would also be permissible under the EU Directive on preventive restructuring frameworks.

- We also oppose the possibility provided for in the draft bill to make contract adjustments at the expense of creditors on the basis of the restructuring framework. This would lead to a further rise in the barriers to business lending. In addition, the duration of the stay of enforcement provided for in the draft bill should be in line with banking supervision regulations.

- We are also committed to ensuring that the financial measures provided for in the draft bill on restructuring are accompanied by performance-related measures. If this were not the case, the long-term restructuring of companies would be put at risk.
The coronavirus crisis also poses major challenges for public-sector employers, requiring them to make use of the German state-funded Kurzarbeit short-time work benefit – an agreement between employer and employee that the employee will work for a reduced amount of time ‘temporarily’.

The German Federal Staff Representation Act (BPersVG) as well as the Bavarian, Baden-Württemberg and Hesse State Staff Representation Act (LPersVG), for example, do not have a co-determination right and thus no power to regulate the staff council to introduce short-time working. The consequence is that short-time working cannot be effectively introduced at departmental level under collective law, as is possible, for example, under the German Works Constitution Act (BetrVG).

The coronavirus crisis has shown that a continuation of these different legal situations regarding short-time work in the BetrVG, the BPersVG and the LPersVG is factually beyond comprehension, since the public-law employers and their employees also make the same contributions to financing the statutory short-time work compensation as companies and employees within the scope of the BetrVG application.

In order to be able to protect jobs in public-sector institutions, as it were, all departments and business units must therefore be given the same opportunities to introduce short-time work schemes.

Following the onset of the coronavirus crisis, one encouraging aspect is the legislator’s rapid response to staff council elections, which were originally scheduled to take place by 31 May 2020. The amendments to the Federal Personnel Staff Representation Act and the associated election regulations retroactive to 1 March 2020 mean that it is now possible to hold staff council elections by postal vote, or to postpone them until 31 March 2021; the current staff council will remain in office until the new elections are held in accordance with the regulations.

This gives the electoral boards more options for action and allows them to decide how the elections will be conducted, depending on how far advanced they are in organising the elections. This helps minimise the possibility of contesting staff council elections in the light of the existing pandemic. Furthermore, the newly introduced facility for company bodies to hold meetings and pass resolutions by video or telephone conference is also welcomed.

**OUR POSITION**

- We are committed to ensuring that the lack of authority to effectively introduce short-time working through service agreements in the state staff representation laws and the Federal Staff Representation Act is resolved as quickly as possible by state and federal legislators. This would mean that public-sector employers would be placed on an equal footing with those employers who apply the BetrVG when introducing short-time working through a works agreement (or service agreement), as is already the case in some German states, such as Lower Saxony and Saarland.
- We welcome legislative adjustments concerning the use of technical aids for meetings and adoption of resolutions by company bodies. We feel that recent experience has clearly shown that using technical aids such as video and telephone conference systems has already proved successful and will continue to be necessary in 2021. This will enable company bodies to continue to operate in the future without the need for face-to-face meetings, and would represent a modern legislative framework. From a technical point of view, however, care must be taken to ensure that third parties do not take note of the content of such meetings and that there are no recordings available. We would welcome these adjustments to the BetrVG to also be applied accordingly throughout all LPersVG and BPersVG.
Landesbanken and DekaBank

DekaBank
Deutsche Girozentrale
Total assets:
€97.3 billion
→ www.deka.de

NORD/LB Norddeutsche Landesbank Girozentrale
Total assets:
€139.6 billion
→ www.nordlb.de

SaarLB Landesbank Saar*
Total assets:
€14.7 billion
→ www.saarlb.de

BayernLB
Total assets:
€226.0 billion
→ www.bayernlb.de

Landesbank Baden-Württemberg
Total assets:
€256.6 billion
→ www.lbbw.de

Landesbank Hessen-Thüringen Girozentrale
Total assets:
€207.0 billion
→ www.helaba.de

* Consolidated financial statements in accordance with the German Commercial Code (local GAAP – “HGB”).
Source: Handelsblatt, own representations
S&P Global Market Intelligence database: Consolidated financial statements (in accordance with IFRS) as at 31 December 2019; Association of German Public Banks (Bundesverband Öffentlicher Banken Deutschlands, VÖB)
As at: June 2020
Promotional banks in Germany

1. Landesförderinstitut Mecklenburg-Vorpommern – Division of NORD/LB
   Total assets: €1.2 billion (2019)
   → www.lfi-mv.de

2. Investitionsbank des Landes Brandenburg
   Total assets: €13.7 billion (2019)
   → www.ilb.de

3. Sächsische Aufbaubank – Förderbank
   Total assets: €7.0 billion (2019)
   → www.sab.sachsen.de

4. Investitionsbank Schleswig-Holstein (IB.SH)
   Total assets: €20.6 billion (2019)
   → www.ib-sh.de

5. Hamburgische Investitions- und Förderbank
   Total assets: €5.6 billion (2019)
   → www.ifbhh.de

6. Bremer Aufbau-Bank GmbH
   Total assets: €1.0 billion (2019)
   → www.bab-bremen.de

7. Investitions- und Förderbank Niedersachsen – NBank
   Total assets: €4.3 billion (2019)
   → www.nbank.de

8. Investitionsbank Berlin
   Total assets: €18.2 billion (2019)
   → www.ibb.de

9. Investitionsbank Sachsen-Anhalt – Anstalt der NORD/LB
   Total assets: €1.6 billion (2019)
   → www.ib-sachsen-anhalt.de

10. LfA Förderbank Bayern
    Total assets: €21.8 billion (2019)
    → www.lfa.de

11. Bayerische Landesbodenkreditanstalt
    Total assets: €21.4 billion (2019)
    → www.bayernlabo.de

12. NRW.BANK
    Total assets: €149.2 billion (2019)
    → www.nrwbank.de

13. Investitions- und Strukturbank Rheinland-Pfalz (ISB)
    Total assets: €8.3 billion (2019)
    → www.isb.rlp.de

14. SIKB Saarländische Investitionskreditbank AG
    Total assets: €1.6 billion (2019)
    → www.sikb.de

15. L-Bank, Staatsbank für Baden-Württemberg
    Total assets: €77.6 billion (2019)
    → www.l-bank.de

16. Wirtschafts- und Infrastrukturbank Hessen – legally-dependent institution within Landesbank Hessen-Thüringen Girozentrale
    Total assets: €24.9 billion (2019)
    → www.wibank.de

17. Thüringer Aufbaubank
    Total assets: €3.5 billion (2019)
    → www.aufbaubank.de

Banks at Federal level

KfW Banking Group
Total assets: €506.0 billion (2019)
→ www.kfw.de

Landwirtschaftliche Rentenbank
Total assets: €90.9 billion (2019)
→ www.rentenbank.de

Source: Annual reports of the promotional banks, as published on the respective websites.
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