Current positions on the regulation of banks and the financial markets
VÖB in Europe

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

**BONN**
- Regular exchange of views with BaFin
- Registered office of VÖB-Service GmbH subsidiary

**BRUSSELS**
- EU Liaison office with 8 staff
- Regular contact with the European Parliament and the European Commission
- Member of the European Association of Public Banks (EAPB)

**FRANKFURT/MAIN**
- Regular exchange of views with Deutsche Bundesbank, the German Federal Financial Supervisory Authority (BaFin), and the European Central Bank (ECB)
- 5 press conferences per year
- 8 members are based in Frankfurt

**LONDON**
- Regular contact with the International Accounting Standards Board (IASB)

**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

OCTOBER 2019
Dear readers,

If you expect appropriate decisions, you will have to make your point – clearly and concisely. As the voice of German public banks – and therefore one of the top associations of the German banking sector – we are thus committed to providing comprehensive, transparent and factual information. Our mission is to inform readers about the most important legislative initiatives as well as regulatory requirements, on a regular and timely basis. Yet we also clearly voice our views and opinions, in order to successfully represent the common interests of our 61 members, on a national and international level – and to support decision-making by politicians and regulators in a results-oriented and hands-on manner. We want to play our part in ensuring that Germany’s financial markets are client-focused, powerful, and competitive. This vision of who we are also characterises our “Current Positions on the regulation of banks and the financial markets”, where we highlight the implementation of Basel IV in Europe or the discussions on the European Deposit Insurance Scheme (EDIS). We are also advocating for the principle of proportionality to play a stronger role in the further development of banks’ internal risk management.

I hope you will find our Current Positions interesting reading. Together with my colleagues, I will be happy to answer any questions you may have.

Yours sincerely,
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The Basel Committee on Banking Supervision (BCBS) concluded its work on finalising the Basel III regime (now commonly referred to as “Basel IV”) in December 2017. The new regulations are set to apply from 1 January 2022. For this to happen, they have yet to be transposed into European law. The European Commission is expected to present legislative proposals in June of 2020.

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 are accounted for by the so-called output floor, which raises the capital requirements of banks using internal methods to at least 72.5 per cent of the value calculated using regulatory standard approaches. For German banks, additional capital requirements are estimated considerably higher than expected at around 20 percentage points.

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 impact in particular on 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** note with concern that the EBA’s assessments confirm that Basel IV will call into question the competitiveness of the European banking industry. This would have negative consequences for the financing of the real economy. To avoid disproportionate burdens for European banks, sound judgement should be applied to the transposition of Basel IV into European law. Furthermore, characteristics specific to European banks should be taken into consideration. This is particularly the case for the output floor.

- **We** believe that in addition to the leverage ratio, the output floor should be implemented as a second backstop for risk-based capital requirements in the EU. This would reduce the negative impact of the floor. In addition, the standardised approaches for measuring risk should also be geared to a greater degree to 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 supporting factor for SME lending, or the continuation of the EU practice on the treatment of property 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** continue to advocate that the new regulations on the treatment of claims on banks should not impede the development and promotional business. The advanced internal ratings-based approach (A-IRBA) as well as the so-called country of origin principle in the standardised approach should therefore be retained.
2 Discussion concerning the European Deposit Insurance System (EDIS)

In November 2015, the European Commission submitted a proposal for establishing a European Deposit Insurance Scheme (EDIS) as a third pillar of the European Banking Union. The plan is for EDIS to be introduced gradually by 2024; starting with a reinsurance scheme, it will be developed into a co-insurance and ultimately a full insurance system. This would apply to deposit guarantee schemes and the related credit institutions within the banking union. Moreover, the proposal calls for the establishment of a Deposit Insurance Fund (DIF), to be funded from contributions of credit institutions.

In June 2016, the Committee on Economic and Monetary Affairs (ECON) agreed not to start specific political negotiations until sufficient progress had been made on the risk reduction measures. In November 2016, a draft report was presented to the EU Parliament’s Committee on Economic and Monetary Affairs (ECON), which is chiefly responsible for this issue. The draft report suggests a significant dilution of the Commission’s proposal. A decision has not yet been reached on the draft report, due to diverging positions. At the start of October 2017, the Commission published a communication on completing the Banking Union.

Compared to its original proposal, it proposed a slightly modified approach, based on a two-phase model. The aim of “full communitisation” of the deposit insurance scheme was retained. The European Council formed an ad hoc working group to discuss the technical details of EDIS in parallel to this. The Eurogroup finally created a High Level Working Group (HLWG) in November 2018, which discussed the architecture of the Banking Union with a significantly broader mandate than before. According to the report of the HLWG of June 2019, its mandate has been extended by six months. In preparation for the political discussions, the HLWG has to submit a final report by December 2019. In the view of other member states, the previous positions against a European Deposit Insurance Scheme, especially those of the German Ministry of Finance, seem to have softened slightly. Therefore, at this point in time, it cannot be ruled out that negotiations on the European Deposit Insurance Scheme will gather pace again.

Our Position

- We maintain our objections to the European 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 reject any communitisation of national deposit protection schemes at a EU level, as proposed by this draft regulation.

- We do not see a legal basis for the EU Commission’s concrete 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.”
Internal risk management processes within banks are subject to constant adaptation. The requirements set out by the European Banking Authority (EBA) impact upon BaFin’s Minimum Requirements for Risk Management in Banks (MaRisk) in particular. A sixth amendment to MaRisk is planned for 2020. The subject of this amendment includes, among other things, the EBA guidelines on the management of non-performing and forborne exposures, as well as on outsourcing.

The draft EBA guidelines on loan origination and monitoring might also be included in the next version of the MaRisk. However, certain requirements would have to be fulfilled for this to be the case: firstly, the final version of these guidelines would need to be available by the end of the first quarter of 2020 at the latest. Even though the EBA is planning to publish it by the end of 2019, timely completion of this document is by no means guaranteed. Germany’s comments were already very comprehensive. Similar predictions can be made about the feedback from other European countries. Provided the EBA publishes the new guidelines in a timely manner, their inclusion in MaRisk depends on whether they are adequately based upon principles. In this respect, recent statements made by the EBA should be met with a certain degree of scepticism.

The German supervisory authority has pointed out repeatedly that, notwithstanding their formal implementation, banks should use the EBA guidelines to provide additional orientation. Under the ‘comply-or-explain’ principle, whereby a decision to forego the application must be authorised by the relevant authority, German supervisors generally agree to apply the EBA guidelines in their administrative practice. Should the implementation of the guidelines via MaRisk fail, for example, due to being overly detailed and not principles-based, the guidelines would also apply directly to the less significant banks.

Bank-internal risk management processes must also take account of the supplementary documents that substantiate specific issues. This concerns, for example, the guidelines on the regulatory assessment of banks’ internal concepts of risk-bearing capacity, and the planned guidance note on handling sustainability risks.

**OUR POSITION**

- **We** believe that a principles-based supervisory approach is indispensable in light of the heterogeneous nature of the banking sector. The German supervisory authority should emphasise the importance of proportionality vis-à-vis the EBA.
- **We** assume that many of the less significant banks would be overwhelmed if the detailed EBA guidelines were to apply directly to them. We therefore expect the German Federal Financial Supervisory Authority (BaFin), in collaboration with Deutsche Bundesbank, will continue to insist on an adequate interpretation of European provisions.
- **We** would welcome the supervisory authority taking up all foreseeable relevant adaptations in the next amendment to the MaRisk. It is our belief that an incomplete adjustment made under time pressure, as appears to be the case in the upcoming revision, does not make sense in view of the implementation activities that banks would be required to carry out in this respect.
- **We** would like to point out that banks need to operate profitably also in times of extremely low interest rates and negative economic prospects. To achieve this, it is particularly important for banks to be able to optimise their own value chain, without being thwarted by regulatory provisions that are too far-reaching. We believe the regulatory restrictions on outsourcing solutions, which are being constantly intensified, are increasingly hampering these efforts.
- **We** advocate that privileged treatment be applied to regulated entities operating as service providers for the banks. This approach could be extended in a similar fashion to certified service providers, thus simplifying outsourcing management.

3  Development of banks' internal risk management process
4 MiFID II / MiFIR Review

The revised Markets in Financial Instrument Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR) both provide for an impact assessment to be carried through. After consulting the European Securities and Markets Authority (ESMA), the European Commission shall submit a relevant report to the European Parliament and the European Council by 3 March 2020. The focus of said impact assessment lies, inter alia, on the requirements regarding the disclosure of fees, commissions and non-monetary benefits, pre- and post-trade transparency as well as reporting requirements.

With regard to MiFIR, ESMA published a consultation on 12 July 2019 concerning the development of prices for pre- and post-trade data. As regards the impact of MiFID II, ESMA published a call for evidence on 17 July 2019, to highlight the impact of the regulatory provisions on cost transparency and inducements among the market participants. In anticipation of the upcoming review of MiFID II and MiFIR, the German Federal Ministry of Finance (BMF) had already carried out a consultation in spring of 2019 on the experiences of market participants and the impact of the regulation. The results were published on 27 August 2019 in two BMF position papers, which addressed the criticism we had conveyed. They also called for decision-making options for retail customers, for example, concerning the communication of cost information regarding business transactions conducted over the phone. The permanent representation of the Federal Republic of Germany in the European Union held a conference on MiFID II / MiFIR in Brussels in conjunction with this on 26 September 2019.

OUR POSITION

• **We** support greater differentiation of the individual customer groups within MiFID II. Currently, too many obligations aimed at protecting retail clients also apply to professional clients and eligible counterparties.

• **We** therefore request an exemption from the ex-ante as well as the ex-post cost information requirement for eligible counterparties and professional clients and suggest not to apply the cost transparency provisions to transactions with these customer groups. An exemption should also include further information requirements, which do not bring any benefits for these customer groups but instead represent a bureaucratic burden. This applies in particular to the customer information about the investment firm and its services, the financial instruments and proposed investment strategies, and execution venues.

• **We** ask, in the context of the reporting obligations, for clarifications with regard to securities transfer, corporate actions and subscription rights.

• **We** are committed to aligning the rules for the use of post-trade transparency waivers throughout Europe. The hotchpotch of different national rules that currently exists should be eliminated, thus avoiding false signals being given to the markets and adverse impacts on the liquidity of the respective financial instruments.
Germany and Europe's future global competitive positioning will be dependent on the successful progress of digitalisation. Digital payments are key to new ecosystems, business models and banking services. In order to strengthen the digital single market and competition in Europe, the European Central Bank (ECB) is driving the conceptual and functional description of European interfaces (API Access Schemes) via the Euro Retail Payments Board (ERPB). The ERPB founded the Working Group on API Access Scheme in November 2018 under the direction of the ECB. The focus is on payments and value-added services. Services, such as personal finance management, credit applications, purchase of bank products or horizontal applications (such as digital identification services) could be taken into consideration.

The European standardisation of electronic payment requests (request-to-pay), the electronic invoicing (Electronic Invoice Presentment and Payment, EIPP) and real-time transfers (SEPA Instant Payments) can strengthen Europe's sovereignty and are crucial for the further development of digital ecosystems. We support the creation of uniform standards through the European Payment Council (EPC), and via standardisation initiatives such as the Berlin Group on API and Open Banking. The use of proxy look-up services can simplify account data input by customers for mobile payments and in online banking in the future, by linking mobile phone numbers and e-mail accounts. This will boost competition and cooperation between banks and FinTechs on new platform-based solutions, and offer alternatives to the solutions of global BigTechs.

From the bank interface to “public” open banking

Source: Okta, own representations

Our Position

- We call on politicians and regulators to support innovation-enhancing technologies and European activities, allowing banks to use them in an uncomplicated manner. BigTechs will have to facilitate access to their interfaces, too. This is the only way to enable fair competition, whilst promoting infrastructural innovation and investment.
- We support the amalgamation of all banking payment systems into a single market offer. We need above all the support of antitrust authorities for this to succeed. A pan-European payment solution will only be successful if it constitutes a viable business model for all participants and there is no need to create a completely new ’green-field’ solution to this end.
- We support the fact that the definition of the requirements for an API Access Scheme within the meaning of a European open banking approach (open data) is to be harmonised for all sectors. This needs to be expanded to other sectors via the open data approach, to facilitate business in ecosystems and to create a level playing field for all market participants. However, investments in open banking/open data strategies will only succeed if, contrary to the regulatory practice of PSD2, those providers who profit from the access to data and services may be charged for the service.
- We would like to note that market initiatives aiming to develop easy-to-use and advanced API and open banking standards must not be thwarted by legal initiatives. Legislation undermining the viability of these business models may increase costs, resulting in higher customer fees and reduced incentives to invest in modern infrastructures.
6 Supervisory requirements for bank’s IT environment

In 2018, the European Central Bank (ECB) and the European Banking Authority (EBA) launched an initiative called TIBER-EU (“Threat Intelligence-based Ethical Red Teaming”) with the aim of making banks more resilient to cyberattacks. This kind of ethical hacking comprises an ordered attack on the infrastructures of the institutions. Deutsche Bundesbank is coordinating the German implementation of TIBER-EU together with the Federal Financial Supervisory Authority (BaFin). Institutions are invited to participate voluntarily. The “Cybersecurity Act”, which includes measures for improving cybersecurity with the aid of a cybersecurity certification, was already agreed in the EU at the end of 2018. At the end of March, the German Federal Ministry of the Interior, Building and Community (BMI) presented a bill for the Second IT Security Act (IT-SIG 2.0). The German Federal Office for Information Security (BSI) is to be given new duties and extensive authorisation. Furthermore, special requirements for operators of critical infrastructure (‘KRITIS’ operators) should also apply beyond these in the future. These shall include a declaration of ‘trustworthiness’ by the manufacturers of core components in the KRITIS operation, as well as a ‘voluntary IT security identifier’. A result of the inter-ministerial coordination is expected around the turn of the year. The outcome of the EBA consultation on the guidelines for information and communications technology (ICT) and security risk management, which ended in March 2019, is still pending. In February 2019, EBA published guidelines on outsourcing to harmonise requirements on outsourcing throughout Europe. BaFin has formulated its Supervisory Requirements for IT in Financial Institutions (BAIT), thus specifying the requirements of the German Banking Act and the Minimum Requirements for Risk Management – among others, in areas such as IT governance, control and operations as well as cybersecurity and information security. MaRisk and BAIT are expected to be adjusted in accordance with EBA’s new outsourcing guidelines. BaFin has announced a 10th chapter of BAIT – on IT emergency management in financial institutions – which is scheduled for presentation in the fourth quarter of 2019.

OUR POSITION

• We demand a continuous review of the existing regulation on an European and national level. Any opportunity to ease the regulatory burden on banks should be seized.
• We are in favour of a regulation based on foresight, considering all factors and potential implications. This is the only way for TIBER-EU or IT-SIG 2.0 to ultimately contribute to better cybersecurity.
• We generally support European initiatives for the establishment of common European IT safety standards and supervisory practices that are aimed at improving cybersecurity. German standards can serve as point of reference, given that they are already well-developed in important areas, e.g. requirements for IT information security (risk) management (BAIT).
• We advocate clearly-worded and simplifying requirements – at a European and national level – for IT outsourcing. We therefore also support the certification of selected IT products or services (for example, through the optional certification of cloud services when these are outsourced). However, we reject the obligatory certification of (security-relevant) products and services as this would limit the available product choice.
• We demand that the principle of proportionality, as set out in MaRisk and BAIT, be applied throughout, with a corresponding harmonisation and review of the auditing practice.
The 4th EU Anti-Money Laundering Directive already contains important provisions to combat money laundering and terrorist financing, such as use of the transparency register to identify the “beneficial owner”. In addition, obliged entities under the German Anti-Money Laundering Act (Geldwäschegesetz – “GwG”) have to meet stricter requirements with regard to customer onboarding as well as customer due diligence.

In response to the terrorist attacks in Europe in recent years, legislators agreed to amend the EU Anti-Money Laundering Directive. In July 2018, the 5th EU Anti-Money Laundering Directive entered into force and has to be transposed into national law by the member states by January 2020. This means that in Germany the GwG, which was last amended on 26 June 2017, must be adjusted again. Besides widening the scope of the group defined as obliged entities and providing for public access to the transparency register, the new Directive focusses on combating terrorist financing, extending the powers of the Financial Intelligence Units (FIUs) and dealing with high-risk countries. Similarly, for the future, it is envisaged that platforms for the exchange of virtual currencies (crypto currency exchanges) and providers of electronic wallets for virtual currencies will also fall within the scope of the GwG. Furthermore, it also defines additional minimum requirements for dealing with financial transactions with risk / non-EU countries.

The 5th EU Anti-Money Laundering Directive already contains a number of amendments to the national GwG. In addition, the government draft of the amended GwG, published in May 2019, includes amendments which in some cases draw on the Federal Financial Supervisory Authority’s (BaFin’s) current administrative practice and guidance on its application.

The German Banking Industry Committee (GBIC) has issued a statement on the government draft. The GBIC (which unites the central associations of the German banking sector) is particularly critical of the changes to the transparency register, business relationships and transactions relating to high-risk states. The GBIC has also voiced its criticism regarding the proposed extension of the list of fines and the necessary – yet probably absent – amendments to the punitive effect of SARs.

**Our Position**

- We believe it is necessary to strengthen measures to combat money laundering. This means, in particular, encouraging greater cooperation among member states.
- We demand that BaFin specify the requirements for the prevention of money laundering by publishing guidance on interpretation and application.
- We would therefore also like to see the national supervisory authority 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 GBIC, we are working on putting together this supplement as well as developing more specific regulations for our member organisations.
- We expect the national supervisory authority to continue an open dialogue so that regulatory reforms are carried out in accordance with practical realities.
- We take a critical view of any amendments made to the national government’s draft GwG because obliged entities are still working on adjusting their systems to ensure compliance with the requirements of the 4th Anti-Money Laundering Directive. Besides that, we consider that German law exceeds the provisions of the Directive in several aspects, while disregarding urgently needed changes.
The German Federal Ministry of Justice and Consumer Protection (BMJV) published a draft bill at the end of August 2019 for a law to combat corporate crime. The law would create an independent right to impose corporate sanctions (the Corporate Sanctions Act – Gesetz zur Sanktionierung von verbandsbezogenen Straftaten – “VerSanG”). The VerSanG is aimed at companies, associations and institutions under public law involved in business, collectively referred to as “associations”.

In the event of suspicion that a sanctionable offence is being committed, i.e. an organisation’s managers commit an association related offence or if the offence could have been prevented by appropriate precautions, the public prosecutor’s office, as the competent authority, is obliged to investigate (principle of legality). In addition to the executive board or senior management, other persons exercising high-level responsibilities – e.g. members of a supervisory board or those exercising other supervisory responsibilities in a managerial position – are also deemed to be management personnel. Actions committed both in Germany and abroad may be sanctioned.

The sanction ceiling is as high as €10 million; for large corporations with annual sales of more than €100 million, the maximum fine is extended to up to 10 percent of annual sales. As a last resort, an association may be dissolved. In the event of a conviction, there is the option to publish the conviction; in addition, an official sanctions register for associations is set to be introduced.

Sanctions applicable to a specific organisation may also be imposed against its legal successor(s). If an organisation ceases to exist, the sanction may also be imposed on those companies that have formed an economic unit with the organisation, or which have taken over material assets.

The VerSanG would place considerable importance on internal compliance measures and internal investigations. A compliance management system that is lacking or possesses inadequate compliance measures may adversely affect the level of the sanction. However, internal investigations conducted by the organisation may be taken into consideration in order to mitigate the severity of the sanction.

**OUR POSITION**

- We have doubts as to whether the provisions contained within the draft bill meet the legal requirement of certainty. The scope of application of the provisions relating to the sanctioning of associations and the responsible persons are unclear, and the consequences cannot be adequately assessed.
- We are cautious as to whether there is actually a need for legislative action beyond the sanctions for companies prescribed by the Administrative Offences Act (OWiG).
- We do not consider the distinction between the penalty system for individuals and that for sanctions against associations to be sufficiently clear. The link to sanctions under special banking provisions is also unclear.
- We would like to point out that internal investigations can raise a number of questions with regard to labour and data protection law. We believe that there is possible conflict between the employees’ rights against self-incrimination and a company’s interests in clarifying and mitigating sanctions.
The European Commission published a legislative package in April 2018, entitled “New Deal for Consumers”, aimed at further strengthening consumer rights in the EU and simplifying law enforcement. The legislative package includes a proposal for a Directive of the European Parliament and of the Council on collective actions seeking to protect the collective interests of consumers, and repealing Directive 2009/22/EC. The proposed rules will permit “qualified representative entities” (QREs) to bring collective actions to stop or prohibit infringements of European laws, such as consumer rights, and to seek compensation for losses sustained as a result of breaches, on behalf of consumers across member states.

A final position is still outstanding for this critical part of the legislative package, because the possibility of a European collective redress action has been – and remains – a highly controversial issue. Following publication of the draft law, several member states initially expressed concerns about its underlying legality. An Opinion of the Legal Service of the European Council has now addressed these concerns. At the beginning of December 2018, the European Parliament adopted the rapporteur’s report, which contains a number of compromise proposals on the Commission’s draft law. Consensus is yet to be reached within the relevant working group of the Council. However, following the compromise proposal presented by the Finnish Presidency in July 2019, an agreement is likely to be reached. It is therefore likely that a general approach will be adopted before the end of this year, and that trilogue negotiations will take place not later than at the start of the German Council Presidency, in the second quarter of 2020.

**OUR POSITION**

- **We** still see no need for an EU collective action and demand, as long as Brussels sticks to the proposal, that the EU collective action be based on the German concept of model declaratory action.
- **We** therefore call for the Member States to be given at least the option of choosing whether they want to implement the EU collective action in national law as an action for performance or an action for declaratory relief.
- **We** believe it is essential that consumers have the opportunity to make a conscious choice as to whether or not to participate in a collective action (opt-in). We therefore reject an opt-out clause. This is particularly necessary in the case of cross-border actions.
- **We** are committed to ensuring that those entities that take over the litigation for consumers (qualified entities) are subject to strict requirements that prevent abuse and pursuit of individual economic interests. The courts responsible must ensure that these requirements are met, as a precondition for bringing an action.
- **In addition,** it is imperative for us that the defendant entities do not receive punitive damages. If amounts awarded by a court in an EU collective action are not claimed in full, they must be refunded to the defendant entity.
Sustainable Finance is one of the European Commission’s key projects. The aim of sustainable financial management is to channel capital flows into social and environmental investments, to better manage sustainability risks and to integrate environmental, social and governance (ESG) factors more effectively into decision-making processes. In March 2018, the EU Commission released an action plan on financing sustainable growth as a response to the final report of their High-Level Expert Group. Initial legislative proposals followed in May 2018. A key element is the proposal for a regulation on the establishment of a unified classification system (so called “EU taxonomy’) on what can be considered an environmentally sustainable economic activity. Due to its complexity, it is still being negotiated at a political level. The trilogue is expected to begin in autumn 2019. The requirements on how institutional investors integrate ESG factors in their investment policies and risk processes, including their disclosure (Disclosure Regulation) and the characteristics of sustainability benchmarks (Benchmark regulation), will be published at the end of 2019. The European Securities and Markets Authority (ESMA) proposed guidelines on disclosure requirements, which are applicable to credit ratings including ESG factors. The consultation ended in March 2019. ESMA also consulted on requirements for including ESG factors when providing investment advice. As expected, a Delegated Act amending MiFID II accordingly will follow in late autumn 2019. The Commission’s Technical Expert Group has also submitted proposals for an EU Green Bond Standard. The EU Ecolabel for green financial products is set to follow in 2020. How to define sustainability-related risks – based on ESG criteria and their inclusion within the capital adequacy regime and the Supervisory Review and Evaluation Process (SREP) – is the subject of critical discussion. The EBA is expected to focus on assessing ESG factors. BaFin plans to publish a guidance notice on how to manage sustainability risks. Disclosure of ESG risks is also a requirement of the EU Capital Requirements Regulation (CRR). This amendment – as well as the revision of the EU Commission’s non-binding guidelines on the publication of non-financial information published in June 2019 – results from the recommendations of the Financial Stability Board’s Task Force on Climate-related Financial Disclosures (FSB TCFD). The TCFD recommendations on the integration, management and disclosure of climate-relevant data should also be adopted when the CSR Directive will be amended.

OUR POSITION

- We are convinced that common classifications and standards for sustainable financial products will enhance transparency for investors, reduce uncertainty among issuers, and contribute to long-term market growth and financial stability.
- We believe that it is right to focus, first and foremost, on the environmental dimension when developing a taxonomy. We are in favour of taking market initiatives into account and are opposed to over-regulation, in order to enable this market segment to flourish and become firmly established.
- We welcome the proposal by the EBA to approach the topic in a staged process: only when a common approach regarding ESG factors is in place, should consideration be given to setting out possible guidelines for the SREP. Regulatory capital relief for green loans must be granted solely on the basis of measurably lower risks.
- We believe that ESG-related, non-product-specific disclosures to stakeholders should be made in a transparent and consistent manner in the annual Non-Financial Statement.
- We regard the mandatory inclusion of ESG criteria in advisory services and management of financial portfolios through the amendment of the MiFID II Delegated Regulation as premature. Prior to this, ESG criteria would have to be standardised in order to enable investment alternatives to be compared. Also, new investment advisory processes were only introduced as part of MiFID II, which would now have to again be adjusted, at considerable cost. Investor requirements regarding the cost and effort of their investments should also be taken into account.
- 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 May 2018, the European Commission proposed a multiannual financial framework (MFF) for the period extending from 2021 to 2027, with a budget of €1,135 billion. The current investment priorities should continue to be promoted and new challenges mastered at the same time. The agreement on the MFF is expected at the earliest by the end of 2019. Nonetheless, negotiations on the individual EU promotional programmes that come into force as of 2021 are taking place. In terms of cohesion policy, the Commission intends to place a stronger focus on “European added value”. The relative GDP per capital should remain the most important factor in determining which regions are eligible for assistance. Other factors, such as climate change and unemployment, should also be taken into account. As part of this new legal framework, the Commission seeks to ensure more effective links with other EU programmes. Administrative costs should be reduced as a result of greater synergies and of aligned implementation rules across all funds. At the same time, management and control systems should be simplified. Building on the European Fund for Strategic Investments (EFSI), the InvestEU programme is expected to be established from 2021 onwards.

InvestEU consists of the InvestEU Fund, the InvestEU Advisory Hub and the InvestEU Portal (project database), and allows for mixed financing solutions with other European programmes and instruments. The Fund brings together the multitude of EU financial instruments currently available to support investment in the EU. Via an EU budgetary guarantee, funding for additional investments in the four thematic windows “sustainable infrastructure”, “research, innovation and digitization”, “SMEs” and “social investment and skills” can be facilitated. Besides the EIB group, other national and regional promotional banks are expected to get direct access to the EU budgetary guarantee.

11 EU funding policy post-2020

Continue successful structural and SME support policies post-2020.

In May 2018, the European Commission proposed a multiannual financial framework (MFF) for the period extending from 2021 to 2027, with a budget of €1,135 billion. The current investment priorities should continue to be promoted and new challenges mastered at the same time. The agreement on the MFF is expected at the earliest by the end of 2019. Nonetheless, negotiations on the individual EU promotional programmes that come into force as of 2021 are taking place. In terms of cohesion policy, the Commission intends to place a stronger focus on “European added value”. The relative GDP per capital should remain the most important factor in determining which regions are eligible for assistance. Other factors, such as climate change and unemployment, should also be taken into account. As part of this new legal framework, the Commission seeks to ensure more effective links with other EU programmes. Administrative costs should be reduced as a result of greater synergies and of aligned implementation rules across all funds. At the same time, management and control systems should be simplified. Building on the European Fund for Strategic Investments (EFSI), the InvestEU programme is expected to be established from 2021 onwards.

InvestEU consists of the InvestEU Fund, the InvestEU Advisory Hub and the InvestEU Portal (project database), and allows for mixed financing solutions with other European programmes and instruments. The Fund brings together the multitude of EU financial instruments currently available to support investment in the EU. Via an EU budgetary guarantee, funding for additional investments in the four thematic windows “sustainable infrastructure”, “research, innovation and digitization”, “SMEs” and “social investment and skills” can be facilitated. Besides the EIB group, other national and regional promotional banks are expected to get direct access to the EU budgetary guarantee.

EU financial instruments bundled under InvestEU

Source: European Commission, own presentation

Our Position

- **We** are in favour of an all-region approach to cohesion policy, also beyond 2020.
- **We** are convinced that in order to achieve the best possible funding outcomes, we need to be able to use development instruments in a flexible manner. A tailor-made development programme can only be achieved through the use of a mix of instruments, including grants, loans, guarantees, equity capital and other financial instruments, in order to account for specific regional structural features.
- **We** advocate a general simplification of the eligibility criteria for structural funds.
- **We** support the EU Commission’s intention to introduce simplified management and control systems for programmes with a “good track record”.
- **We** are committed to ensuring that promotional banks will be able to continue offering promotional programmes based on EU guarantee facilities beyond 2020 to ensure continuous and reliable support.
- **We** call for InvestEU financial products to be set up in a way that allows for flexibility (e.g. regarding risk taking) and combinability. This corresponds with the different interests of intermediaries, hence this allows for an optimized support in particular of small and medium-sized enterprises.
- **We** are in favour of providing the interested promotional banks with direct and indirect access to the EU budget guarantee, in a non-discriminatory way and without entailing excessive bureaucratic burden. Our proven national promotional structures must be taken into account.
## Promotional banks in Germany

<table>
<thead>
<tr>
<th>Bank Name</th>
<th>Total Assets (€) 2018</th>
<th>Website</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landesförderinstitut Mecklenburg-Vorpommern – Division of NORD/LB</td>
<td>€1.4 billion</td>
<td><a href="http://www.lfi-mv.de">www.lfi-mv.de</a></td>
</tr>
<tr>
<td>Investitionsbank des Landes Brandenburg</td>
<td>€13.4 billion</td>
<td><a href="http://www.ilb.de">www.ilb.de</a></td>
</tr>
<tr>
<td>Sächsische Aufbaubank – Förderbank</td>
<td>€7.51 billion</td>
<td><a href="http://www.sab.sachsen.de">www.sab.sachsen.de</a></td>
</tr>
<tr>
<td>Investitionsbank Schleswig-Holstein (IB.SH)</td>
<td>€20.0 billion</td>
<td><a href="http://www.ib-sh.de">www.ib-sh.de</a></td>
</tr>
<tr>
<td>Hamburgische Investitions- und Förderbank</td>
<td>€5.4 billion</td>
<td><a href="http://www.ifbhh.de">www.ifbhh.de</a></td>
</tr>
<tr>
<td>Bremer Aufbau-Bank GmbH</td>
<td>€1.06 billion</td>
<td><a href="http://www.bab-bremen.de">www.bab-bremen.de</a></td>
</tr>
<tr>
<td>Investitions- und Förderbank Niedersachsen – NBank</td>
<td>€3.81 billion</td>
<td><a href="http://www.nbank.de">www.nbank.de</a></td>
</tr>
<tr>
<td>Investitionsbank Berlin</td>
<td>€17.74 billion</td>
<td><a href="http://www.ibb.de">www.ibb.de</a></td>
</tr>
<tr>
<td>Investitionsbank Sachsen-Anhalt – Anstalt der NORD/LB</td>
<td>€1.73 billion</td>
<td><a href="http://www.ib-sachsen-anhalt.de">www.ib-sachsen-anhalt.de</a></td>
</tr>
<tr>
<td>LfA Förderbank Bayern</td>
<td>€21.07 billion</td>
<td><a href="http://www.lfa.de">www.lfa.de</a></td>
</tr>
<tr>
<td>Bayerische Landesbodenkreditanstalt</td>
<td>€22.40 billion</td>
<td><a href="http://www.bayernlabo.de">www.bayernlabo.de</a></td>
</tr>
<tr>
<td>NRW.BANK</td>
<td>€149 billion</td>
<td><a href="http://www.nrwbank.de">www.nrwbank.de</a></td>
</tr>
<tr>
<td>Investitions- und Strukturbank Rheinland-Pfalz (ISB)</td>
<td>€8.33 billion</td>
<td><a href="http://www.isb.rlp.de">www.isb.rlp.de</a></td>
</tr>
<tr>
<td>SIKB Saarländische Investitionskreditbank AG</td>
<td>€1.56 billion</td>
<td><a href="http://www.sikb.de">www.sikb.de</a></td>
</tr>
<tr>
<td>L-Bank, Staatsbank für Baden-Württemberg</td>
<td>€69.61 billion</td>
<td><a href="http://www.l-bank.de">www.l-bank.de</a></td>
</tr>
<tr>
<td>Wirtschafts- und Infrastrukturbank Hessen – legally-dependent institution</td>
<td>€24.1 billion</td>
<td><a href="http://www.wibank.de">www.wibank.de</a></td>
</tr>
<tr>
<td>Thüringer Aufbaubank</td>
<td>€3.8 billion</td>
<td><a href="http://www.aufbaubank.de">www.aufbaubank.de</a></td>
</tr>
<tr>
<td>KfW Banking Group</td>
<td>€485.8 billion</td>
<td><a href="http://www.kfw.de">www.kfw.de</a></td>
</tr>
<tr>
<td>Landwirtschaftliche Rentenbank</td>
<td>€90.2 billion</td>
<td><a href="http://www.rentenbank.de">www.rentenbank.de</a></td>
</tr>
</tbody>
</table>

*Annual report of the development and promotional bank (as published on the respective website).

Source: S&P Global Market Intelligence, 2017 annual reports of the promotional banks (consolidated financial statements in accordance with the German Commercial Code (HGB) or IFRS), Association of German Public Banks (Bundesverband Öffentlicher Banken Deutschlands, VÖB).

Details on the volumes of promotional loans refer to the development and promotional banks which are members of VÖB.

Updated: July 2019
Landesbanken and DekaBank

DekaBank
Deutsche Girozentrale
Total assets:
€100.444 billion (2018)
→ www.deka.de

NORD/LB Norddeutsche Landesbank Girozentrale
Total assets:
€154.012 billion (2018)
→ www.nordlb.de

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

BayernLB
Total assets:
€220.227 billion (2018)
→ www.bayernlb.de

Landesbank Baden-Württemberg
Total assets:
€241.214 billion (2018)
→ www.lbbw.de

Landesbank Hessen-Thüringen Girozentrale
Total assets:
€162.968 billion (2018)
→ 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; data based on consolidated financial statements (in accordance with IFRS) as at 31 December 2018; Association of German Public Banks (Bundesverband Öffentlicher Banken Deutschlands, VÖB)
Updated: April 2019