



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

**OPINION OF THE EUROPEAN CENTRAL BANK**  
**of 7 April 2017**  
**on the amendment of Financial Supervisory Law**  
**(CON/2017/11)**

**Introduction and legal basis**

On 15 February 2017 the European Central Bank (ECB) received a request from the German Federal Ministry of Finance for an opinion on an Act on the Amendment of Financial Supervisory Law in connection with establishing the legal foundations for being able to take measures in the future when deemed necessary in response to threats to the stability of the financial system and for amending the transposition of the Directive on credit agreements for consumers relating to residential immovable property (hereinafter the 'draft law').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the sixth indent of Article 2(1) of Council Decision 98/415/EC<sup>1</sup>, as the draft law relates to (1) rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets and (2) the specific tasks conferred upon the ECB concerning the prudential supervision of credit institutions under Article 127(6) of the Treaty. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

**1. Purpose of the draft law**

- 1.1 According to its explanatory memorandum, the draft law is intended to (1) implement recommendations of the German Financial Stability Council aiming to create the legal basis for macro-prudential tools for regulating the granting of new loans for the construction or purchase of residential immovable property, (2) increase legal certainty with respect to the assessment of the creditworthiness of mortgage borrowers in connection with the transposition of the Directive (EU) 2014/17 of the European Parliament and of the Council<sup>2</sup>, and (3) transpose certain information duties required by the Benchmark-Regulation (EU) 2016/1011.
- 1.2 In order to counteract potential risks to the stability of the national financial system, the draft law sets out the legal basis for instruments that would enable the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin) to impose certain minimum

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<sup>1</sup> Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

<sup>2</sup> Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34).

standards upon lenders in connection with the granting of new loans for the construction or acquisition of residential property, such as (1) an upper limit for the ratio between the sum of all debt resulting from a residential property financing transaction and the market value of the residential property (loan-to-value ratio – LTV), (2) a maximum time limit for the repayment of certain parts of a loan, or, in the case of loans due for repayment at the end of their term, a maximum maturity (amortisation requirement), (3) an upper limit upon the total servicing of all debts in proportion to the borrower's income (debt-service-to-income – DSTI) or, where the borrower is not a natural person (e.g., a company), a lower limit upon the proportion of the borrower's inflows of funds to the borrower's debt servicing obligation within a specific time frame (debt-service coverage ratio – DSCR) and (4) an upper limit for the ratio of overall indebtedness to the borrower's income (debt-to-income ratio – DTI).

- 1.3 In the event that these macroprudential instruments should be applied for financial stability purposes, BaFin shall also specify (1) which proportion of a credit institution's new lending business for residential property within a specific period shall not be subject to the restrictions that have been established (free quota) and (2) the loan amount up to which one or more restrictions do not apply (*de minimis* threshold), with an upper limit for the share of the loan volume that may be issued under the *de minimis* threshold in relation to the total amount of new residential immovable property lending business during a specific period.
- 1.4 Exemptions apply to the issuing of loans (1) for the expansion, modification or renovation of residential property already owned by the borrower, (2) for measures, for which social housing funding under the Housing Allowance Act (*Wohnraumförderungsgesetz*) or in accordance with the relevant provisions under the regional law of the Federal State concerned has been approved, (3) for projects, in respect of which loans have already been granted to the same borrower prior to the restrictions referred to in paragraph 1.1 being established, insofar as the total amounts of such new loans does not exceed the amount remaining after amortisations of the previous loan financing granted prior to the restrictions being established (follow-up financing).
- 1.5 In order to avoid regulatory arbitrage and distortions of competition, the scope of the draft law extends to all commercial lenders active in the residential property market, i.e. credit institutions, insurance undertakings and investment companies.
- 1.6 The Federal Ministry of Finance is empowered to issue a regulation for each of these commercial lenders' sectors that specifies (including, but not limited to) (1) the definitions of loans and residential immovable property, including loans that will not be subject to the instruments, (2) the upper limits, time periods and the calculation of ratios and other relevant parameters, (3) the free quotas and the *de minimis* threshold, (4) the regular review of the measures, and (5) details regarding the collaboration between BaFin and Deutsche Bundesbank in connection with the application of this provision.
- 1.7 The Federal Ministries of Finance and Justice are also empowered to issue a regulation containing guidelines on the criteria and methods to assess the creditworthiness of residential immovable property loans which contains in particular (1) factors relevant for the assessment whether borrowers are likely to meet their obligations under a loan agreement and (2) applicable procedures for the collection and verification of information.

## 2. Observations

- 2.1 The ECB welcomes the intention to increase legal certainty with respect to the assessment of the creditworthiness of mortgage borrowers in order to avoid unjustified restrictions in the granting of mortgage loans in Germany.
- 2.2 The ECB also welcomes that recommendations made by the German Financial Stability Council aiming to create macro-prudential tools regarding the granting of new loans for the construction or purchase of residential property will be implemented by amending the relevant financial supervisory legislation. Imbalances in the residential immovable property sector that could result from overvaluation of residential property accompanied by excessive credit provision can have significant negative implications for financial stability and the real economy. Against this background, the core objectives of the draft law seem appropriate, namely to create instruments that enable the BaFin to impose certain minimum standards upon lenders in connection with the issuance of new residential mortgage loans, with a view to strengthening the resilience of the financial system and to counteracting the cyclical build-up of systemic risks, when deemed necessary.<sup>3</sup> The objectives are also in line with the principles set out in the European Systemic Risk Board's Recommendation on intermediate objectives and instruments of macro-prudential policy<sup>4</sup>, in particular with regard to the objective to mitigate and prevent excessive credit growth and leverage.
- 2.3 From a financial stability perspective, the ECB welcomes the implementation of a legislative framework for borrower-based measures in all euro area countries.<sup>5</sup> The measures contained in the draft law enabling BaFin to create macro-prudential tools to counteract potential risks to the stability of the national financial system seem appropriate to the extent that they aim at promoting responsible borrowing and lending, enforcing market discipline, reducing credit risk and increasing the transparency of credit institutions' activities. The ECB understands that in line with recommendation of the German Financial Stability Council, the draft law establishes a legal basis for imposing certain minimum standards upon lenders in connection with the granting of new loans. The four different instruments envisaged by the draft law will allow the BaFin to either activate only one, a combination of or all instruments depending on the circumstances jeopardising financial stability. This enables the BaFin to respond in a flexible and proportionate way in relation to potential risks to financial stability. A thorough quantitative impact assessment is, however, important to verify the effect and appropriateness of the draft law, as well as a regular review of the DSTI, DSCR, DTI and LTV ratios to take into account the implications of changes in macroeconomic and financial conditions. The scale of exemptions from the scope or specific provisions should be proportionate to the overall objective to be achieved, which is to curb excessive lending for the construction and purchase of residential property and prevent over-indebtedness<sup>6</sup>

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<sup>3</sup> See also paragraph 2.1 of Opinion CON/2016/18 on mortgage amortisation requirements.

<sup>4</sup> Recommendation of the European Systemic Risk Board of 4 April 2013 on intermediate objectives and instruments of macro-prudential policy (ESRB/2013/1) (OJ C 170, 15.6.2013, p. 1).

<sup>5</sup> See also "Governing Council statement on Macroprudential Policies" of 15 December 2016.

<sup>6</sup> See paragraph 2 of Opinion CON/2016/8.

- 2.4 The draft law requires the BaFin to inform the ECB of its intention to issue a decision of general application (*Allgemeinverfügung*), specifying the macroprudential instruments referred to in paragraph 1.1. In addition, the ECB expects the Ministry of Finance to consult the ECB in accordance with Article 127(4) of the Treaty on a draft regulation addressing the matters referred to in paragraph 1.6 above, and the Federal Ministries of Finance and Justice will inform the ECB of their intention to issue a regulation on the criteria and methods to assess the creditworthiness of residential immovable property loans, as referred to in paragraph 1.7 above.
- 2.5 In view of the existing framework on the collection of financial data relevant e.g. for consumer lending, and in the absence of a targeted legal provision, there is a need to fully ensure the availability of harmonised data on all types of relevant commercial lenders whose lending for the construction or purchase of residential property is subject to the instruments when activated, e.g. for impact assessment purposes.
- 2.6 In particular with regard to setting the ratios specified in paragraph 1.2 above, the decision of general application (*Allgemeinverfügung*) should be simple, easily applicable by both commercial lenders and borrowers and easy to understand. These criteria should also be ensured in relation to potential regional limitations.

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

Done at Frankfurt am Main, 7 April 2017.

*[signed]*

*The President of the ECB*

Mario DRAGHI