



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 8 January 2020

on measures limiting macroprudential risks in residential property loans

(CON/2020/1)

Introduction and legal basis

On 27 November 2019 the European Central Bank (ECB) received a request from the German Ministry of Finance for an opinion on a draft regulation on the implementation of measures to limit macroprudential risks in the residential property construction and acquisition loan sector (hereinafter the 'draft regulation').

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 third and sixth indents of Article 2(1) of Council Decision 98/415/EC¹, as the draft regulation relates to the Deutsche Bundesbank and to rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets.

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 regulation

- 1.1 According to its explanatory memorandum, the draft regulation sets out detailed rules specifying new measures available to the *Bundesanstalt für Finanzdienstleistungsaufsicht* (BaFin, Federal Financial Supervisory Authority) to impose certain minimum standards upon lenders to limit macroprudential risks from residential property construction or acquisition loans, including provisions on cooperation between BaFin and the Deutsche Bundesbank in the adoption of these measures. The draft regulation aims to provide commercial lenders with legal certainty in relation to these new measures and the opportunity to prepare for their application, irrespective of which instruments are applied in the future.
- 1.2 As regards cooperation between BaFin and the Deutsche Bundesbank, the draft regulation provides that the Deutsche Bundesbank must notify BaFin immediately if it concludes on the basis of its financial stability analyses that due to a systemic risk in the residential property construction or acquisition loan sector, the functioning of the financial system may be disrupted or financial stability jeopardised. In light of this notification and/or its own observations, BaFin may decide to draft a general administrative order (*Allgemeinverfügung*) containing specific measures. Any

¹ 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).

imposition of restrictions requires close collaboration between BaFin and the Deutsche Bundesbank, and restrictions must be calibrated in agreement with the Deutsche Bundesbank. The Deutsche Bundesbank also is required to assist BaFin with the review which BaFin has to conduct at least every six months where restrictions are in place in order to determine if, and to what extent, systemic risks still exist and if the related measures are still required.

- 1.3 Section 48u of the Law on banking², Section 308b of the Law on insurance supervision³ and Section 5(8a) of the Investment Code⁴ authorise BaFin to impose certain minimum standards upon lenders in connection with the granting of new loans for the construction or acquisition of residential property, including an upper limit regarding the ratio between the amount of the loan and the value of the immovable property (the loan-to-value (LTV) ratio) and the specification of a period of time within which a specific proportion of the loan must be repaid, or, in the case of loans due for repayment on a due date at the end of the term, a maximum term (amortisation requirement). The draft regulation provides definitions that influence the scope of application of any measures to be taken. The draft regulation also provides detailed instructions on how to apply the loan-to-value ratio and the amortisation requirement.
- 1.4 Section 48u of the Law on banking provides that, if measures are applied, BaFin must specify in its general administrative order which proportion of a credit institution's new lending business for residential property within a specific period is not subject to the restrictions established ('the free quota'). For this purpose the draft regulation clarifies that this is a uniform free quota applicable to all lenders, and specifies further details regarding its application.
- 1.5 The Law on banking provides that, if measures are applied, BaFin must specify in its general administrative order the loan amount up to which one or more restrictions do not apply ('the *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 of a single lender during a specific period. The *de minimis* threshold specified by BaFin must be at least EUR 50 000, but may be higher. Therefore the possibility to grant loans without restrictions by reference to the *de minimis* threshold is capped both in terms of the absolute amount and by the upper limit on the maximum possible percentage of such loans in relation to all new residential property loans granted by a single lender. The draft regulation further specifies that the *de minimis* limit applies to the total sum of loans advanced to a single borrower to finance residential property.
- 1.6 The Law on banking provides that, if measures are applied, BaFin must specify in its general administrative order the value of the property up to which a loan is exempt from the restrictions provided that the loan claims of the lender are secured by a mortgage or land charge on the residential property not exceeding 80 percent of the value of the property ('the lower threshold') or not exceeding 60 percent of the value of the property ('the higher threshold'). The lower threshold must be at least EUR 200 000 and the higher threshold must be at least EUR 400 000. In order to

2 *Kreditwesengesetz.*

3 *Versicherungsaufsichtsgesetz.*

4 *Kapitalanlagegesetzbuch.*

prevent circumvention of this threshold, the draft regulation further specifies that the total sum of loans granted must be taken into account. In addition, the draft regulation clarifies that, for this purpose, the mortgage lending value, which is the current value of the residential property determined in accordance with the requirements of Section 22 of the Solvency Regulation⁵, has to be taken into account. The explanatory memorandum further clarifies that the purpose of the exceptions for these loans is to establish legal certainty that well-secured property loans are not subject to restrictions.

2. General observations

- 2.1 The ECB welcomes the fact that legal certainty is increased with respect to possible restrictions imposed upon lenders in connection with the granting of new loans for the construction or acquisition of residential property.
- 2.2 The ECB recalls that, in its opinion on the amendment of German financial supervisory law⁶, it welcomed the creation of macroprudential tools regarding the granting of new loans for the construction or purchase of residential property. 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 regulation seem appropriate, namely to further specify instruments that enable 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. These objectives are also in line with the principles set out in the European Systemic Risk Board's Recommendation on intermediate objectives and instruments of macroprudential policy⁷, 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. The measures contained in the draft regulation enabling BaFin to create macroprudential 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. 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 LTV ratio 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

⁵ *Solvabilitätsverordnung*.

⁶ See paragraph 2.2 of Opinion CON/2017/11. All ECB opinions are available on the ECB website at www.ecb.europa.eu.

⁷ 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).

- 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-indebtedness⁸.
- 2.4 The draft amendment to the Law on banking on which the ECB was consulted in 2017 included (1) the LTV, (2) the 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). Of these four measures only two, the LTV and the amortisation requirement, were finally adopted. As previously noted by the ECB, the four different instruments originally envisaged would allow BaFin to either activate only one or a combination of or all these instruments, depending on the circumstances jeopardising financial stability. The availability of a comprehensive set of borrower-based measures, including the income-based measures, would enable BaFin to respond in a flexible and proportionate way in relation to potential risks to financial stability⁹.
- 2.5 As previously noted, there is still a need to 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 the regular monitoring of financial stability risks and impact assessment purposes¹⁰.
- 2.6 As previously noted, the general administrative order should be simple, easily applicable by both commercial lenders and borrowers and easy to understand¹¹.
- 2.7 The ECB welcomes the role that is assigned to the Deutsche Bundesbank under the draft regulation. The Deutsche Bundesbank is well positioned to provide data and expertise in the sector of residential property loans. Both Recital 24 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council¹² and the Recommendation of the European System Risk Board on the macroprudential mandate of national authorities¹³ refer to the fact that the ECB and the national central banks should play a leading role in macroprudential oversight, given their expertise and existing responsibilities in the area of financial stability.
- 2.8 As a national macroprudential authority, the Deutsche Bundesbank is already responsible for macroprudential tasks in order to maintain the stability of the banking system¹⁴. The draft law does not confer genuinely new tasks on the Deutsche Bundesbank, but rather specifies certain new macroprudential tools that the Deutsche Bundesbank may use when discharging its

⁸ See paragraph 2.3 of Opinion CON/2017/11.

⁹ See paragraph 2.3 of Opinion CON/2017/11.

¹⁰ See paragraph 2.5 of Opinion CON/2017/11.

¹¹ See paragraph 2.6 of Opinion CON/2017/11.

¹² Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

¹³ Recommendation of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities (ESRB/2011/3) (OJ C 41, 14.2.2012, p. 1).

¹⁴ See Section 1 of the Law on the monitoring of financial stability of 28 November 2012 (Bundesgesetzblatt I p. 2369).

macroprudential responsibilities. Consequently, there is no conferral of new tasks on the Deutsche Bundesbank which must be assessed for compliance with the prohibition of monetary financing.

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

Done at Frankfurt am Main, 8 January 2020.

[signed]

The President of the ECB

Christine LAGARDE