**L-Bank to escape ECB supervision in the end**

What the *Landeskreditbank Baden-Württemberg – Förderbank (L-Bank)* could not achieve through ABoR, or through the courts, it has achieved through political means: as of end-2020, it will be exempted from prudential supervision by the ECB.

The amendments to *CRD IV* which were adopted on 20 May and published in the *Official Journal* on 7 June 2019 (*CRD V*)

provide for an exemption from the application of CRD for all *Landesbanken* in Germany. CRD V’s amendment to CRD IV ensures that L-Bank, and its peers, will no longer be subject to the application of this Directive.

It is unclear whether this implies that *Landesbanken* will no longer qualify as ‘CRR institutions’ under the German supervision act (*Kreditwesengesetz*) as the definition of ‘credit institution’ in the CRR is not amended. But *Landesbanken* will no longer be eligible for ECB supervision. For supervision of the ECB to apply, a bank must be a credit institution *and not exempted in the SSM Regulation*.

Even though, as said, it is likely that L-Bank will remain a credit institution, the exemption of Article 2(5) of CRD IV will apply: Article 1, second paragraph, *SSM Regulation* specifies that “institutions referred to in Article 2(5) of [CRD IV] are excluded from the supervisory tasks conferred on ECB in accordance with Article 4 of this Regulation”. The effective date for the application of CRD V is 29 December 2020, a day after the ultimate date for transposition of the directive into national law.

René Smits, 13 June 2019

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1 On 8 May 2019, the European Court of Justice confirmed the judgment of the General Court of 16 May 2017 in Case T-122/15 (*Landeskreditbank Baden-Württemberg – Förderbank v ECB*); Case C-450/17 P; ECLI:EU:C:2019:372.


3 Article 4(1)(1) CRR is not amended by *CRR2*, the amending regulation also published in the *Official Journal* of 7 June: Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012, OJ L 150/1. Article 4(1)(1) *CRR* reads as follows: “‘credit institution’ means an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account”; see: https://eba.europa.eu/regulation-and-policy/single-rulebook/interactive-single-rulebook/toc/504/article-id/2404;jsessionid=EDDBDFCDC3E0DE1F718CB1BE46036B8.

4 Which reads as follows: “The institutions referred to in Article 2(5) of [CRD IV] are excluded from the supervisory tasks conferred on ECB in accordance with Article 4 of this Regulation.”; emphasis added in the quote in the text.

5 Article 2(1) *Directive 2019/878*. 