

L-Bank escapes ECB supervision in the end

What the *Landeskreditbank Baden-Württemberg – Förderbank (L-Bank)* could not achieve through ABOR, or through the courts¹, it has achieved through political means: it is 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](#))² provide for an exemption from the application of CRD for all promotional banks 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.

'5. This Directive shall not apply to the following:

(5) in Germany, the "Kreditanstalt für Wiederaufbau", "Landwirtschaftliche Rentenbank", "Bremer Aufbau-Bank GmbH", "Hamburgische Investitions- und Förderbank", "Investitionsbank Berlin", "Investitionsbank des Landes Brandenburg", "Investitionsbank Schleswig-Holstein", "Investitions- und Förderbank Niedersachsen – NBank", "Investitions- und Strukturbank Rheinland-Pfalz", "Landeskreditbank Baden-Württemberg – Förderbank", "LfA Förderbank Bayern", "NRW.BANK", "Saarländische Investitionskreditbank AG", "Sächsische Aufbaubank – Förderbank", "Thüringer Aufbaubank", undertakings which are recognised under the "Wohnungsgemeinnützigkeitsgesetz" as bodies of State housing policy and are not mainly engaged in banking transactions, and undertakings recognised under that law as non-profit housing undertakings; (...)'

A publication from the *Bundesbank*³ specifies the date from which the exemption has applied: 27 June 2019. Pursuant to the German Banking Act (*Kreditwesengesetz*), the exempted promotional banks will nonetheless continue to be governed by CRR rules. But the promotional banks no longer are eligible for ECB supervision since, for supervision of the ECB to apply, a bank must be a credit institution *and not exempted in the SSM Regulation*.

The exemption of Article 2(5) of CRD IV applies: 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".⁴

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](#).

² Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures, OJ L 150/253, 7 June 2019.

³ [The European banking package – revised rules in EU banking regulation](#), *Bundesbank*, Monthly Report, June 2019, pp. 31 ff.

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.

The effective date for the application of national law transposing CRD V is 29 December 2020, a day after the ultimate date for transposition of the directive into national law.⁵ The exemption for the German promotional banks applied with direct effect, as of the twentieth day after CRD5's publication in the *Official Journal*.

René Smits, 17 January 2020

⁵ Article 2(1) [Directive 2019/878](#).