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28 November 2012

Financial markets

Act on the Monitoring of Financial Stability (Finanzstabilitätsgesetz)

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Date of signature: 28 November 2012

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Section 1

Safeguard of financial stability

(1) In Germany, the Deutsche Bundesbank shall contribute to the preservation of the stability of the financial system (financial stability) in particular by

1. analysing the factors relevant to financial stability and identifying risks which may impair financial stability,

2. preparing annually a report on the state and development of financial stability and making it available to the Financial Stability Committee for the purposes of fulfilling its reporting obligation under section 2 subsection (9),
3. making proposals to the Financial Stability Committee to issue warnings under section 3 subsection (1) and recommendations under section 3 subsection (2), and
4. evaluating the implementing measures under section 3 subsection (4), second sentence, and notifying the Financial Stability Committee of its assessment.

(2) The powers of the Deutsche Bundesbank under other provisions shall remain unaffected. Section 12 of the Bundesbank Act shall apply accordingly.

Section 2

Financial Stability Committee

(1) To strengthen cooperation on financial stability, a Financial Stability Committee shall be established at the Federal Ministry of Finance.

(2) The tasks of the Financial Stability Committee shall include in particular to

1. discuss the factors relevant to financial stability,
2. strengthen the cooperation of the institutions represented in the Committee in the event of a financial crisis,
3. deliberate on the handling of warnings and recommendations from the European Systemic Risk Board,
4. report annually to the Deutscher Bundestag in accordance with subsection (9), and
5. issue warnings and recommendations under section 3 subsections (1) and (2) as well as publish them under section 3 subsection (5).

(3) The Financial Stability Committee shall consist of

1. three representatives of the Federal Ministry of Finance, of whom one person shall be dispatched as the chair and one as the deputy chair of the Committee,
2. three representatives of the Deutsche Bundesbank, and
3. three representatives of the Federal Financial Supervisory Authority (BaFin).

The chair of the Management Committee of the Federal Agency for Financial Market Stabilisation shall be a non-voting advisory member of the Committee. The stated institutions shall appoint a deputy for each representative.

(4) The Financial Stability Committee is to be convened by the chair once every quarter. Every member may, for good cause, request that the Committee be convened at short notice. The chair may have third parties attend the meetings. The Committee shall adopt its rules of procedure by mutual consent.

(5) Unless otherwise provided, resolutions of the Financial Stability Committee shall require a simple majority. Decisions on warnings and recommendations and the publication thereof under section 3 subsection (5) are to be taken unanimously. Decisions under the second sentence may not be taken against the votes of the representatives of the Deutsche Bundesbank in attendance.

(6) The deliberations of the Financial Stability Committee shall be confidential. This shall not entail a restriction on the general reporting activities of the Committee and its members concerning the meetings and the work of the Committee.

(7) The persons stated in section 9 subsection (1), first sentence, of the Banking Act, in section 8 subsection (1) of the Securities Trading Act, in section 22 subsection (1) of the Securities Prospectus Act, in section 9 subsection (1) of the Securities Acquisition and Takeover Act, in section 4 subsection (1) of the Capital Investments Act, in section 303 subsection (1), first and second sentences, of the Insurance Supervision Act^{*}, in section 6 of the Payment Services Supervision Act, in section 5b of the Investment Act, in section 32 of the Bundesbank Act and in section 3b subsection (1) of the Financial Market Stabilisation Fund Act shall, for the purposes of performing functions in the Financial Stability Committee, be exempt from their respective confidentiality requirements.

(8) The chair of the Management Committee of the Federal Agency for Financial Market Stabilisation shall provide information to the Steering Committee within the meaning of section 4 subsection (1), second sentence, of the Financial Market Stabilisation Fund Act; in particular, the chair shall regularly inform the Steering Committee about the development of financial stability and about the resolutions and other decisions of the Financial Stability Committee.

(9) The Financial Stability Committee shall report annually to the Deutscher Bundestag about the state and development of financial stability and about its activity under this Act.

Section 3

Warnings and recommendations

(1) In warnings to certain addressees, the Financial Stability Committee may point out risks which may impair financial stability. The warnings shall be substantiated in detail.

(2) In recommendations to certain addressees, the Financial Stability Committee may identify those measures it believes are suitable and necessary for the addressees to implement in order to avert risks to financial stability.

(3) The Federal Government, BaFin or another public agency in Germany may be the addressee of a warning or recommendation.

(4) The addressees of a recommendation shall, within a reasonable period, notify the Financial Stability Committee about the way in which the addressee intends to implement the recommendation. The addressee shall inform the Committee regularly about the progress of the implementation. Insofar as the addressee does not intend to implement a recommendation, the addressee must substantiate this in detail.

(5) The Financial Stability Committee may publish the warnings and recommendations. The Committee shall inform the respective addressee in advance concerning the planned publication of a recommendation and give the addressee opportunity to comment.

Section 4

Deutsche Bundesbank's cooperation with BaFin

(1) The Deutsche Bundesbank and BaFin shall give notification of all of the information, especially observations, findings and assessments, which are required on the part of BaFin for the performance of its respective supervisory functions and on the part of the Deutsche Bundesbank for the performance of its functions as regulated in this Act. BaFin and the Deutsche Bundesbank shall, by mutual consent, settle the details regarding the transmission of this information. The persons stated in section 9 subsection (1), first sentence, of the Banking Act, in section 8 subsection (1) of the Securities Trading Act, in section 22 subsection (1) of the Securities Prospectus Act, in section 9 subsection (1) of the Securities Acquisition and Takeover Act, in section 4 subsection (1) of the Capital Investments Act, in section 303 subsection (1), first and second sentences, of the Insurance Supervision Act, in section 6 of the Payment Services Supervision Act, in section 5b of the Investment Act, in section 32 of the Bundesbank Act and in section 6 shall, to this extent, be exempt from their respective confidentiality requirements.

(2) The exchange of information under subsection (1) shall encompass the transmission of personal data which are strictly required for the performance of the functions stated in subsection (1), first sentence, of the recipient. In order to perform their functions stated in subsection (1), first sentence, BaFin and the Deutsche Bundesbank may agree that the data stored by both agencies may be mutually accessed by means of an automated procedure. In other respects section 7 subsections (4) and (5) of the Banking Act shall apply accordingly.

Section 5

Obligations to give notification; empowerment to issue statutory instruments

(1) Financial corporations within the meaning of Annex A, Chapter 2, number 2.32 to 2.67 of Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community (OJ L 310 of 30.11.1996, p. 1) domiciled in Germany shall, if requested to do so, notify the Deutsche Bundesbank of those economic and commercial data which it needs in order to perform its functions stated in this Act. Economic and commercial data within the meaning of the first sentence shall mean all data which provide greater insight into the state and development of the financial situation of the financial corporations as well their commercial activity. Such data shall include in particular balance sheet figures, information on off-balance-sheet business operations at both the

individual company and group level, information about the group structure and structural data, information about bilateral links and about risk management as well as figures on solvency and liquidity. Such data may also cover personal data insofar as this is strictly required for the performance of the functions stated in this Act. The Deutsche Bundesbank shall only request the data insofar as it is unable to obtain the data through the exchange of information with other authorities as well. The request must be made in writing and must state the legal basis, the data to be transmitted and the purpose of collecting the data as well as set an appropriate time limit for the transmission.

(2) The Federal Ministry of Finance shall, in agreement with the Deutsche Bundesbank and by way of statutory instrument which does not require the consent of the Bundesrat, state the data which the Deutsche Bundesbank should be able to collect under subsection (1). In particular, the statutory instrument shall issue more detailed provisions on

1. the group of parties obligated to give notification of the respective data,
2. the nature, scope, point in time and form of the details, the permitted data media, means of transmission and data formats as well as
3. the detailed arrangements for the collection, processing and use of personal data as well as the time limit for deleting or making personal data anonymous.

Section 6

Confidentiality requirement

The members of the Financial Stability Committee and persons employed by the institutions represented in the Financial Stability Committee and acting to implement this Act, as well as persons under section 2 subsection (4), third sentence, may not, without authorisation, disclose or use facts which have become known to them in the course of their activity, even if they are no longer in said employment or their activity or membership in the Financial Stability Committee has ended. This shall also apply to other persons who, by way of official reporting, obtain knowledge of the facts referred to in the first sentence. In other respects, section 9 subsection (1), fourth to eighth sentences, and subsection (2) of the Banking Act shall apply accordingly. Section 2 subsection (6), first sentence, shall remain unaffected.

Footnotes

¹ This translation of the Gesetz zur Überwachung der Finanzstabilität (Finanzstabilitätsgesetz – FinStabG) is provided by the Language Services Division of the Deutsche Bundesbank. Only the German text of this Act is authentic.

* This reference already accounts for amendments to the Insurance Supervision Act arising from Article 1 the Tenth Act Amending the Insurance Supervision Act (Bundesrat Printed Document No. 90/12).

More on this topic

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