

Federal Ministry of Finance draft
Draft Act Supplementing the Act on Tax-Related Provisions concerning
the Withdrawal of the United Kingdom of Great Britain and Northern
Ireland from the European Union¹

of ...

The Bundestag has adopted the following Act:

Article 1

Amendment of the Insurance Supervision Act²

The Insurance Supervision Act of 1 April 2015 (Federal Law Gazette I, p. 434), most recently amended by Article 6 of the Act of 17 August 2017 (Federal Law Gazette I, p. 3214), is to be amended as follows:

1. In the table of contents, the following wording is to be inserted after the reference to section 66:
“Section 66a Transitional arrangement for the EU’s passporting regime”.
2. The following section 66a is to be inserted after section 66:

“Section 66a

Transitional arrangement for the EU’s passporting regime

In the event that the United Kingdom of Great Britain and Northern Ireland withdraws from the European Union at midnight on 29 March 2019 without having concluded an agreement on withdrawal from the European Union and the European Atomic Energy Community pursuant to Article 50(2), second sentence, of the Treaty on European Union, the Supervisory Authority may determine, in order to protect policyholders and the beneficiaries of insurance benefits, that sections 61 to 66 and section 169 are to be applied accordingly, exclusively for purposes of winding up insurance contracts that were concluded before the time of the withdrawal, for a period of up to 21 months following the time of withdrawal, to insurance undertakings based in the United Kingdom of Great Britain and Northern Ireland that on 29 March 2019 operate in Germany via a branch in Germany or by providing cross-border services pursuant to section 61 (1), first sentence, and section 169 (1), first sentence, and that for this period the provisions of Part 2, Chapter 1, Division 7, Subdivision 3 are not to be applied to these undertakings. The order may also be issued and publicly announced by means of an administrative act of general application without a prior hearing.”

3. In section 310 (2), a comma and the wording “section 66a” are to be inserted after the wording “sections 20, 36”.

¹ This working translation of the *Entwurf eines Gesetzes zur Änderung finanzaufsichtsrechtlicher Vorschriften zur Regelung der Folgen des Ausscheidens des Vereinigten Königreichs aus der Europäischen Union* is provided by the Language Service of the Federal Ministry of Finance. Only the German text of this Act is authentic.

² *Versicherungsaufsichtsgesetz*

Article 2

Amendment of the Banking Act³

The Banking Act, as published on 9 September 1998 (Federal Law Gazette I, p. 2776), which was most recently amended by Article 8 of the Act of 10 July 2018 (Federal Law Gazette I, p. 1102), is to be amended as follows:

4. The table of contents is to be amended as follows:

a) The title of section 25a is to be worded as follows:

“Section 25a Special governance duties, provisions for material risk takers and authorisation to issue ordinances”.

b) The title of section 25n is to be worded as follows:

“Section 25n Classification as a major institution”.

c) The title of section 64m is to be worded as follows:

“Section 64m Interim provision for the Act amending the Banking Act”.

5. Section 1 (21) is to be worded as follows:

“(21) Material risk takers are members of staff whose professional activities have a material impact on the risk profile of an institution.”

6. Section 25a is to be amended as follows:

a) The title is to be worded as follows:

“Section 25a Special governance duties, provisions for material risk takers and authorisation to issue ordinances”.

b) Subsection (5a) is to be worded as follows:

“(5a) Section 9 (1), second sentence, of the Protection Against Dismissal Act (*Kündigungsschutzgesetz*) applies to material risk takers in major institutions whose annual fixed remuneration exceeds three times the amount set by the contribution assessment ceilings for the statutory pension scheme as referred to in section 159 of the Sixth Book of the Social Security Code (*Sechstes Buch Sozialgesetzbuch*), and who do not hold posts as managing directors, managers, or similarly senior positions, and who are authorised to hire or dismiss employees independently, under the proviso that the employer’s request to terminate the employment does not require a justifying reason. Section 14 (1) of the Dismissal Protection Act remains unaffected.”

c) The following subsections (5b) and (5c) are to be added after subsection (5a):

“(5b) A major institution shall determine on its own responsibility the material risk takers on the basis of a risk analysis. In any case, as a minimum, the criteria pursuant to Articles 3 and 4 of Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution’s risk profile (OJ L 167, 6 June 2014, p. 30), which was amended by Delegated Regulation (EU) 2016/861 of 18 February 2016 (OJ L 144, 1 June 2016, p. 21) have to be applied. The institution must inform the members of staff concerned that they have been identified as material risk takers. The risk analysis must be documented in writing or electronically and regularly updated. Exceptions pursuant to Article 4 (2) of the Delegated Regulation (EU) 604/2014 require the approval of the management body (*Geschäftsleitung*) and notification of the administrative or supervisory board (*Verwaltungs- oder Aufsichtsorgan*).

³ Kreditwesengesetz

(5c) The applications which must be submitted to the supervisory authority pursuant to Article 4 (5), first sentence, of Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile (OJ L 167, 6 June 2014, p. 30) must be submitted immediately, and at the latest six months after the end of the financial year."

7. Section 25n is to be worded as follows:

"Section 25n

Classification as a major institution

(1) An institution is deemed major as referred to in section 25a (5a) if its balance sheet total on the balance sheet dates for the last three completed financial years reached or exceeded an average of €15 billion, unless the institution provides proof to the supervisory authority pursuant to section 1 subsection (5) of the Banking Act that it is not major on the basis of a risk analysis pursuant to subsection (5).

(2) The following are deemed major institutions as referred to in subsection (1):

1. Institutions which fulfil one of the conditions pursuant to Article 6 (4), subparagraph 2 of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29 October 2013, p. 63; OJ L 218/82 of 19 August 2015),
2. Institutions which could potentially trigger systemic risk pursuant to section 20 (1), third sentence, of the Restructuring and Resolution Act (*Sanierungs- und Abwicklungsgesetz*) and
3. Financial trading institutions pursuant to section 25f (1).

(3) The supervisory authority pursuant to section 1 (5) may classify an institution whose balance sheet total on the relevant balance sheet dates for the last three completed financial years did not reach an average of €15 billion as a major institution as referred to in subsection (1) if this is necessary given the institution's remuneration structure as well as the nature, scale, complexity, risk content and international scope of its business activities. The classification of an institution as a major institution is necessary in particular if

1. the institution has a high level of off-balance items, especially derivative instruments,
2. the institution operates to a significant extent as an originator, sponsor or investor of securitisation transactions or avails itself of a securitisation special purpose entity pursuant to Article 4 (1) no 66 of Regulation (EU) No 575/2013 for this purpose,
3. the institution has large positions in the trading book pursuant to Article 4 (1) no 86 of Regulation (EU) No 575/2013 or
4. the remuneration structures within the institution feature a large percentage of variable remuneration components in overall remuneration.

(4) If an institution belonging to a group is classified as a major institution as referred to in subsection (1), all other institutions belonging to the same group whose balance sheet totals on the balance sheet dates for the last three completed financial years reached or exceeded an average of €15 billion are also classified as major institutions.

- (5) The risk analysis must take particular account of the institution's size, its remuneration structure and the nature, scale, complexity, risk content and international scope of its business activities as well as subsection (3), second sentence, nos. 1–4. The risk analysis must be plausible, comprehensive and comprehensible to third parties. It must be conducted on an annual basis and documented in writing or electronically.”
8. In section 49, a comma and the wording “section 53b (12)” are to be inserted after the wording “section 48u (1) and (7)”.
9. The following subsection (12) is to be added to section 53b:
- “(12) In the event that the United Kingdom of Great Britain and Northern Ireland withdraws from the European Union at midnight on 29 March 2019 without having concluded an agreement on withdrawal from the European Union and the European Atomic Energy Community pursuant to Article 50(2), second sentence, of the Treaty on European Union, the Supervisory Authority may determine, in order to prevent disadvantages for the capacity of financial markets to function or for their stability, that the provisions of subsections (1) to (9) are to be applied accordingly, fully or partially, for a period of up to 21 months following the time of withdrawal, to companies based in the United Kingdom of Great Britain and Northern Ireland that on 29 March 2019 conduct banking business or provide financial services in Germany through a branch in Germany or by providing cross-border services pursuant to subsection (1). The first sentence only applies to financial transactions that are completed after 29 March 2019 insofar as these transactions are closely connected to transactions that existed at the time of withdrawal.”
10. The following section 66m is to be inserted after section 64l:

“Section 64m

Interim provision for the Act amending the Banking Act

Section 25a (5a) in the version applicable on [insert: day of entry into force pursuant to Article 2 of this Act] is applicable for the first time to dismissals received eight months after [insert: day of entry into force pursuant to Article 2 of this Act].”

Article 3

Entry into force

This Act enters into force on the day after its promulgation.