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THE REFORM OF THE SAVINGS BANK SYSTEM IN FRANCE – A MODEL FOR OTHER COUNTRIES?

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Up to the end of the twentieth century, the French banking industry consisted of four distinct groups of large banks. In addition to the large private banks comprising Banque Nationale de Paris, Société Générale and Paribas, which were major players in the corporate and foreign business, the government-owned banks Crédit Lyonnais¹ and Post Office Savings Bank were of considerable importance for the retail banking. However, the retail banking was largely dominated by the cooperative banks Crédit Agricole, Banques Populaires and Crédit Mutuel. The fourth mainstay of French banking was traditionally represented by the savings banks.

In 2000, the French savings banks entered a new phase of their development. Following a fundamental reform of the law relating to their operation, they abandoned their traditional legal form and were converted to cooperatives.

The following article will initially look at the development of the savings bank system in France up to the year 2000 and will then, on this basis, show the essential aspects of the reform and the resulting structures of the savings banks institutions. Finally, it will be asked whether the reform of the French savings banks institutions may offer an appropriate model for a reform of their German counterparts.

The development of the savings bank system in France

From the founding of the first savings bank in 1818 until after the Second World War, the business of French savings banks (*caisses d'épargne et de prévoyance*) consisted solely of collecting the sav-

ings of local citizens in savings accounts and subsequently forwarding them to the public authorities for financing the government. The savings banks thus assumed the unilateral function of capital collection points for the state.²

Not until the 1970s did the activities of the savings banks expand to other bank business. At that time, they were granted the legal authorization to operate a lending business and run current accounts independently, albeit to a limited degree.

The law which reformed the savings banks in 1983³ finally allowed them to carry out all banking business for private individuals, but the corporate client business continued to be closed to them. Furthermore, the law annulled the legal form, in force since 1835 for the savings banks, of charitable bodies (in private law); they now acquired the legal form, hitherto unknown in France, of non profit-making financial institutions. With this step, the legislators made allowance for the fact that the savings banks had no profit-seeking shareholders who had to be paid interest from their annual surplus; rather, their operating result merely had to ensure the continued existence of the savings banks.

Numerous mergers then took place between the savings banks so that they could continue to operate successfully in the credit business by becoming large enough to be competitive. Their number dropped from around 460 to 35 within a mere decade. Relevant legislation accompanied their reorganization and in 1991 another reform bill came onto the law books⁴ which adapted their internal organization to their larger size.

The current structure of the savings bank system in France

Concerns arose within the French savings bank group that the uniqueness of the legal form of non-profit financial institutions granted to the savings banks by the reform of 1983 could lead to their isolation in the radically changing bank landscape. These concerns were the principal trigger for the efforts to give them a “modern” and generally rec-

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¹ The privatization of Crédit Lyonnais took place in stages beginning in 1999.

² See Duet, p. 38 ss.

³ Law no. 83-557 of July 1, 1983 on the reform of the savings banks, Journal Officiel (JO) of July 2, 1983, p. 2007.

⁴ Law no. 91-635 of July 10, 1991 modifying law no. 83-557 of July 1, 1983 on reforming the savings banks, JO of July 11, 1991, p. 9023.

ognized constitution. This wish of the savings bank group was satisfied by the reform law of June 25, 1999⁵ which converted the savings banks to cooperatives with effect from January 1, 2000.⁶ As a result, they have lost the character of an independent bank group and now reinforce the cooperative sector, which has consequently gained considerably in importance compared to the private and public banks.

The legal framework regulating the activities of the savings banks had previously remained almost unchanged for 160 years. At the end of the twentieth century, however, the reforms of the years 1983, 1991 and 1999 changed it radically within a period of only 16 years and gave the savings bank group a fundamentally new character.

Since the reform of 1999, 34 regional savings banks and a national bank of the savings banks have been responsible for running the banking business. The national bank works together with the regional savings banks within a closely linked framework with various responsibilities. The associative tasks are carried out centrally by a national association of the savings banks. In addition, the savings bank group consists of around 450 local savings companies at its disposal since 1999. These are not involved in the financial business but are closely associated with the savings banks in a legal and practical sense.

The local savings companies

The local savings companies operate under a cooperative form of law like the savings banks. They form the lowest and, in terms of numbers, the largest unit within the savings bank group in France. Although not independent institutions, they are invariably attached to the savings bank in the region in which they operate. In this way, several savings companies are attached to each savings bank, but with varying numbers in each case.

The savings companies do not conduct any banking business. Their principal function is to hold all the shares of the savings banks to which they are attached. For the law permits only the savings companies to be members of the savings banks. In con-

trast, other interested parties such as the savings banks clients and employees as well as local authorities are prohibited from being direct members of the savings banks by acquiring their shares. However, they may acquire shares in the savings companies, which in turn use all the funds obtained in this way to obtain shares in the savings banks. As a result, the importance of a savings companies to its savings bank is proportional to the volume of its shares which it invests publicly. Clearly, the more funds that a savings companies acquires through the sale of its shares, the more shares it may in turn draw from its regional savings bank. The local savings companies thus act as the connecting link between the savings banks and the numerous (indirect) investors, and relieve the savings banks from the need to coordinate and support the latter.

The local savings companies have been the target of considerable criticism since their establishment in 1999. This is directed especially at the fact that their existence gives the savings bank group an unusual and clumsy structure compared with the traditional cooperative banks. For in the latter, the members of the cooperative participate directly in the banks without any intermediate agents. As a result, the avowed aim of the savings bank group to participate without restrictions in a widely familiar and usual (cooperative) legal form has not been completely achieved by the reform of 1999. Moreover, the criticism also attacks the high administrative costs caused by the existence of numerous savings associations/companies at local level.⁷ Against this background, it would in principle be a logical step to abolish the local savings companies and transfer their responsibilities to the savings banks. It remains to be seen if the keenness of the legislators to undertake reforms which began two decades ago in the sphere of savings banks will be sufficiently sustained in the next few years to carry out this step.

The regional savings banks

The 34 savings banks are large and mutually independent regional institutions which have operated as cooperatives since the beginning of the year 2000. As already outlined, the local savings companies have the exclusive right to be members of a regional savings bank, which consequently has a comparatively small circle of members, averaging about thirteen.

⁵ Law no. 99-532 of June 25, 1999 relative to savings and financial security, JO of June 29, 1999, p. 9487. See also Klein, p. 211 ss.

⁶ The law granted the banks a period of more than four years to carry out this conversion, i.e. by the end of 2003.

⁷ On the criticism levelled against them, see Moster, p. 551.

From the viewpoint of business policy, the reform law of 1999 eliminated the last hurdle which had hitherto prevented the savings banks from conducting business with companies listed on the stock exchange. Regional savings banks can now carry on all banking business stipulated in the law on currency and finance⁸, with anyone, without exception. However, their business continues to focus on accepting customer deposits into savings accounts (via a booklet known as livret A) and to forward them to a public financial institute, the Caisse des Dépôts et Consignations (CDC)⁹, to finance the building of subsidised housing. Unlike the savings accounts run by the other financial institutions, the livrets A reserved to the savings banks have the peculiarity that the repayment of client deposits is traditionally guaranteed by the state. This guarantee, criticised by the competitors as competition-distorting, is a major reason for the enormous popularity of the livret A.

In their business activities, the savings banks must observe a number of basic principles which have changed little over the years. Thus they must – in broad conformity with the regulations applicable to German savings banks – observe the regional principle which obliges each bank not to extend its business activities beyond the region assigned to it to that of other savings banks. They are also obliged by law to serve the common good and to perform certain public functions. The aim is that they should have a positive influence on the willingness of the population to save, on the situation of the labour market and on the general level of education. Moreover, the savings banks should ensure that no-one is excluded from using the banking and financial services. Part of their surplus must be used as a so called “social dividend” to finance local economic and social projects – for instance in the domain of environmental protection.

Although the savings banks do perform significant public functions, the government assumes no liability for them – with the exception of the guarantee for the livret A already mentioned. In particular, therefore, French savings banks are subject neither to a liability for the debts of the saving banks (“Anstaltslast”)¹⁰ nor a guaranty obligation (“Gewährträgerhaftung”)¹¹ by the public authori-

ties, which are characteristic of German savings banks.

The first signs of future change are already apparent for both the regional savings banks and their local savings companies. Thus concrete indications already suggest that the number of regional savings banks will decline further in the near future as a result of mergers. This is because the business area of some savings banks is likely to be too limited for them to achieve satisfactory operating results in the long term in a tougher and increasingly international competitive climate. It is consequently realistic to assume that the present number of savings banks, namely 34, will be pruned to between only 20 and 25 large ones after a further wave of mergers.

The National Bank of the savings banks

In order to strengthen the savings bank group at national level by focusing their energies, the reform law of 1999 created the National Bank of the savings banks with headquarters in Paris. This has become the legal successor to two supreme institutions which had previously exercised the functions of a central bank as well as acting as the coordinating body for the savings bank group. In addition to its activity as a general commercial bank responsible for key customers, therefore, the National Bank now acts as the central bank of the savings banks, administers their liquid funds and supports their refinancing programs. But it also possesses extensive representational and monitoring powers as the head of the savings bank group. Moreover, it administers a guaranty and solidarity fund which assures the solvency of the savings banks. The National Bank has the legal form of a public limited company in which the savings bankgroup as well as the CDC are majority shareholders.

The National Association of the savings banks

The National Association, as the second supreme body of the savings bank group, only came into

⁸ Monetary and financial code, legislative part, annex to administration order no. 2000-1223 of December 14, 2000, JO of December 16, 2000.

⁹ On the traditionally close relations between the savings banks and the CDC, see Priouret, p. 29 ss.

¹⁰ The liability assumed by the public authorities for the debts of the savings banks obliges these authorities to make appropriate financial provision to ensure that the banks can perform their functions in a regular manner.

¹¹ The guaranty obligation obliges the public authorities to be responsible for the liabilities of the savings banks vis-à-vis their external creditors. For the liability assumed by the public authorities for the debts of the savings banks and their guaranty obligation in German law, see also Schlierbach/Püttner, p. 138 ss.

being on the basis of the 1999 reform law. The 34 savings banks are the sole (mandatory) members of the National Association, which was set up as a registered association, so that it is a body reserved exclusively to these institutions. The association acts principally as a forum for the exchange of ideas and the formation of opinions. However, it also shares the responsibility with the National Bank of the savings banks vis-à-vis third parties to represent the common interests of the savings banks, especially in dealing with the public sector, and to intensify the links between the savings bank group and other European savings bank organisations. As the National Association has limited decision-making powers, however, it plays only a subordinate role compared with the National Bank of the savings banks. Against this background, it remains to be seen whether the association succeeds in creating its own profile alongside the pow-

erful National Bank in the long run and in justifying its existence as a second supreme body.

Reflections on a reform of the German savings bank system on the French model

In various European countries – such as Italy, Spain and Austria – far-reaching reforms of the savings banks are currently being discussed for various reasons. Similarly to the situation prevailing in France, the idea is that radical structural reforms will enhance the competitiveness of the savings banks and avoid competitive distortions. In view of these common objectives, it makes good sense to determine whether and how far the structure assigned to the French savings banks by the reform of 1999 is transferable to these countries and can act as a model for them.

Comparing the structural features of French and German savings banks

Structural feature	France	Germany
Proprietor	Directly: the local savings associations. Indirectly: clients, employees of the savings banks, local authorities	Local public authorities
Structure of the savings bank organization	Tripartite (approximately 450 local savings associations, 34 regional savings banks, National Bank of the savings banks)	Tripartite (519 local savings banks, 12 regional state banks, DekaBankDeutsche Girozentrale)
Coordinating function	National Bank of the savings banks	State banks and DekaBank Deutsche Girozentrale
Validity/Application of the regional principle	Yes	Yes
Performance of public functions	Yes	Yes
Charitable status	Yes	Yes
Public welfare oriented distribution of profits	Yes (up to a third of the annual profits)	Yes (the amount varies in the individual Federal states)
Liability assumed by the public sector	No	Yes, but in modified form after July 18, 2005
Guaranty obligation by the local authorities	No, but state guarantee of "livret-A" savings	Yes, but to be abolished by July 18, 2005
Number of retail customers	Approximately 26 million (corresponding to almost 50% of the population)	Approximately 36 million (corresponding to about 45% of the population)
Number of branches – per million inhabitants – total	Approximately 87 Approximately 4,700	Approximately 225 Approximately 18,000
Number of employees – per savings bank (average) – total	1,235 Approximately 42,000	540 Approximately 280,000

The common points existing in significant domains, above all as regards the tripartite structure of the organization, the obligation to observe the regional principle¹² and to promote public affairs are briefly contrasted in the table below. Despite all existing differences of scale, it would therefore also be conceivable to take the current structure of the French savings banks in many respects as a model for a future reform of the German savings bank system.

Indications of an impending radical reform of the German savings bank system come particularly from the controversial discussions which have for some years now centred on certain basic principles of the German savings bank system operating under public law. This applies especially to their legal form, the regional principle, the liability assumed by public authorities for their debts and the guaranty obligation. Although some of these discussions have been initiated and conducted by the savings bank organization itself, most of them originate from politicians at state and European level as well as competitors and banking and legal experts. However, they tend to be based on the – admittedly variously motivated – wish to abolish the traditional structural features of the savings bank system.

The structural debates initiated by the savings bank organization itself aim to consolidate their own market position. In contrast, state political circles often seek ways, in view of the general shortfalls in public funds, to increase the profits of the savings banks which flow to the local authorities in order to boost their coffers. There have even been suggestions to privatize the savings banks in order to reduce the national debt by means of the revenues released from their sale. Finally, private commercial banks have successfully attempted to abolish the competitive advantages of the savings banks due to the liability assumed by public authorities for their debts and the guaranty obligation. They have been supported by the European Commission and argue that these arrangements are incompatible with European subsidy law. The liability assumed by the public sector and the guaranty obligation must now be adapted to the EU's subsidy law or be abolished by July 18, 2005.

The various tensions to which the German savings banks operating under public law are currently

exposed as regards the maintenance of their key structural features can lead to significant changes in the mid term. These could, in view of the current status of discussions, even go so far as to abolish these savings banks and to privatize them by conversion into public limited companies, foundations¹³ or cooperatives – these legal forms being most frequently mentioned in the discussions.

In such a case, weighty reasons would support conversion of the German savings banks into registered cooperatives on the French model.

German savings banks and cooperative credit institutions already possess numerous common features. Both are integrated into a tripartite financial association cooperating on the basis of a division of labour and exhibit a decentralized structure operating on the regional principle. In addition, both have a similar customer base consisting largely of private individuals as well as small and mid-sized businesses.

The German law on cooperatives, which forms the special legal framework for the activities of the (registered) cooperatives, represents another factor of considerable importance for the choice of legal form: it is distinguished by granting them a comparatively large discretionary scope, notably absent from German stock corporation law. In many respects, it offers the cooperatives the possibility of regulating matters outside the law, in a manner tailored to their individual needs, in their statutes. Their members are thus accorded extensive freedom to grant themselves their own legal constitution within the framework of the autonomy granted by their statutes as a supplement to the cooperative law and to structure their cooperative in accordance with their ideas. Against this background, the conversion of the German savings banks into cooperatives would give them the opportunity to retain a large number of their characteristic peculiarities simply by drawing up their statutes accordingly.

However, savings banks operating under public law cannot be converted to cooperatives in Germany on the basis of the prevailing law. As the public legal form of the savings banks is anchored in the state law on these institutions, the legislators

¹² For the regional principle in savings bank law, see Stern/Nierhaus, p. 156 ss.

¹³ To this extent, reference is regularly made to the savings banks in Austria, Spain and Italy, which are based on the model of a foundation.

in the states and – to a lesser degree – the federal legislators as well, would have to create the legal basis for such a conversion. In so doing, they could also make use of the know-how and experience already gained in France in conjunction with the reform of 1999 in the following key domains:

- The legal and actual conversion of the savings banks into cooperatives,
- The use of the revenues accruing from the sale of the shares of the cooperative savings banks,
- The corporate aim of the cooperative savings banks,
- The composition of the members of the cooperative savings banks and the future influence of the local authorities on them,
- The internal organisation and administration of the cooperative savings banks.¹⁴

Thanks to the existing close business relationships between them, the French savings banks would certainly welcome joining their German counterparts in cross-border economic exchanges based on a common – namely a cooperative – legal form.

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¹⁴ See Klein, p. 376 ss.