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Sustainable Architecture for Finance in Europe (<https://safe-frankfurt.de/>)

## SAFE Finance Blog

### Building Loan Saving Contracts: Decision of BGH Raises Questions

03/02/2017

Tobias Tröger: Decision also applicable to saving schemes?



Tobias Tröger (<https://safe-frankfurt.de/research/researchers/researchers-details/showauthor/56-troeger.html>), SAFE Professor of Economic Law, Civil Law and Legal Theory at Goethe University Frankfurt, warns about the consequences of the recent decision of the Federal Supreme Court (BGH) which allows building societies to cancel existing loan saving contracts. Tröger criticizes in an article of the weekly newspaper Frankfurter Allgemeine Sonntagszeitung of 26 February that an exceptional right to cancel existing contracts is “economically counterproductive”. He raises the question if the BGH decision applies to saving schemes, too.

On 21 February, the highest court of civil law in Germany granted building societies the right to cancel contracts which have reached maturity more than ten years ago. Tröger argues that if institutions were allowed to terminate contracts due to an unfavorable interest environment, “moral hazard” will arise

because they have no incentive anymore to consider interest rate risk in their contracts.

In September 2016, Tröger and his research fellow Thomas Kelm had already argued in an essay (<https://beck-online.beck.de/Dokument?vpath=bibdata%2Fzeits%2Fnjw%2F2016%2Fcont%2Fnjw.2016.2839.1.htm&showParallelFundstellenReadab>) in the Neue Juristische Wochenschrift that mass cancellation of building loans saving contracts was “legally not justified.” The two legal scholars claimed that institutions were not allowed to terminate contracts in accordance with §489 I No. 2 BGB. A need for action would only arise if a threatening default of a large number of institutions occurred and, thus, a risk for financial stability. However, according to Tröger, the current situation does not show any of such signs. Also, in case of financial instability supervisory law would apply rather than civil law, the authors explain, which means that the Federal Financial Supervisory Authority (BaFin) would have to come into action to assess possible systemic consequences.

About 30 million building loan saving contracts exist in Germany, about 250,000 have already been cancelled.

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Keywords: Household Finance ([https://safe-frankfurt.de/news-latest/safe-finance-blog/search-result-blog.html?tx\\_news\\_pi1%5BoverwriteDemand%5D%5Bcategories%5D=182&cHash=219248e328a909c6ab29dc8885f8d](https://safe-frankfurt.de/news-latest/safe-finance-blog/search-result-blog.html?tx_news_pi1%5BoverwriteDemand%5D%5Bcategories%5D=182&cHash=219248e328a909c6ab29dc8885f8d)) Building Societies (<https://safe-frankfurt.de/news-latest/safe-finance-blog/tag/building-societies.html>), Low Interest Rates (<https://safe-frankfurt.de/news-latest/safe-finance-blog/tag/low-interest-rates.html>), Saving (<https://safe-frankfurt.de/news-latest/safe-finance-blog/tag/saving.html>)



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### Leibniz Institute for Financial Research SAFE

Theodor-W.-Adorno-Platz 3  
60323 Frankfurt am Main

Phone: +49 69 798 30080  
Fax: +49 69 798 30077  
Email: [info@safe-frankfurt.de](mailto:info@safe-frankfurt.de)

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