

Ruling of the Federal Court of Justice of 13 April 2010 on bonus savings plans (XI ZR 197/09)

On 13 April 2010, the Federal Court of Justice issued a [press release](#) (available in German only) on its ruling on bonus savings plans. The plaintiff had based calculations on the basic savings rate (see explanation below).

The Federal Court of Justice refers to the use of one of the Deutsche Bundesbank's reference interest rates: "Instead, the reference interest rate must be based on the **interest rates on long-term savings deposits** published in the Deutsche Bundesbank's Monthly Reports, which are close to the 20-year maturity taking account of the savings process, and the contractual rate of interest must be adjusted in line with each change and the changes must be made on a monthly basis, in line with the monthly publication of the Bundesbank reports". However, the press release later states that "The matter has been referred back to the appeal court for the latter to carry out further investigations into the appropriate reference interest rate".

For the MFI interest rate statistics, the Deutsche Bundesbank has, since January 2003, collected data from German banks on the interest rates for new business for [households' deposits with an agreed maturity of over 2 years \(SUD104\)](#) or [deposits redeemable at notice of up to three months \(SUD105\)](#) and [of over three months \(SUD106\)](#).

The interest rate for each individual deposit category surveyed is calculated as a volume-weighted average rate of interest, including not only "market" conditions but also favourable interest rates that institutions grant to employees and large customers, for instance.

The interest rates for the new business categories "Deposits with an agreed maturity" are calculated as volume-weighted average rates across all new agreements concluded during the reporting month. The categories "Deposits redeemable at notice" contain savings deposits (pursuant to section 21 (4) of the Credit Institution Accounting Regulation (*Verordnung über die Rechnungslegung der Kreditinstitute*)) as well as other related products, including instruments bearing higher rates of interest such as growth savings accounts or volume-dependent graduated interest rate agreements. The interest rate is calculated as a volume-weighted average rate on outstanding amounts at the end of the month, ie not only pure new business.

In July 2003 the Bundesbank's interest rate statistics were superseded by the new MFI interest rate statistics, the German contribution to the harmonised MFI interest rate statistics in the countries participating in the European monetary union. Since the two sets of statistics differ in their methodology, **the statistical results of both sources can be compared with each other only on a very restricted basis.**

The Bundesbank's former interest rate statistics measured the interest rates most frequently agreed upon for new business with domestic non-banks as well as extensions of and changes to earlier interest rate agreements in a two-week (mid-month) reporting period. The interest rates for savings deposits were calculated as the unweighted arithmetic average of the reported interest rates within the spread. The spread was ascertained by eliminating the highest 5% and the lowest 5% of interest rates.

The term "basic savings rate" originally referred to the interest rate for "savings deposits at statutory notice". This interest rate was governed by the Deposit Rates Regulation (*Habenzinsverordnung*), which was rescinded in 1967. In common parlance, this term was subsequently used to denote the average interest rate on savings deposits at statutory period of notice – a three-month notice period from July 1993 onwards – which was calculated as part of the Bundesbank's former interest rate statistics.

Starting in November 1996, the savings deposits used for the basic savings rate were termed [savings deposits with minimum rates of return, with agreed notice of 3 months \(SU0022\)](#).

Since 2003, the MFI interest rate statistics include [savings deposits with minimum rates of return, with agreed notice of 3 months \(SU0022\)](#) under [households' deposits redeemable at notice of up to 3 months \(SUD105\)](#).

Further information on the Bundesbank's former interest rate statistics and the current MFI interest rate statistics can be found in the Monthly Report article ["The new MFI interest rate statistics – methodology for collecting the German data"](#) and ["Comparison of the German MFI interest rate statistics \(new business\) with the Bundesbank's former survey of lending and deposit rates"](#).