

Mr Mario Monti, Commissioner for Competition, and

Mr Caio Koch-Weser, State Secretary in the German Ministry of Finance,

reached in Brussels on 1<sup>st</sup> March 2002 the following

## **Understanding about the orientation of legally independent special credit institutions in Germany:**

### **I. Scope of application**

This understanding concerns legally independent special credit institutions in Germany, which benefit from State guarantees like Anstaltslast and/or Gewährträgerhaftung and/or refinancing guarantees (referred to in the following as “special credit institutions”<sup>1</sup>) and refers to advantages to these special credit institutions relevant under the State aid rules resulting from these State guarantees<sup>2</sup>.

### **II. Principles for German special credit institutions**

The activities of special credit institutions aim at supporting the structural, economic and social policies and the public tasks of their public owners in accordance with their public mission. It must be taken care that special credit institutions are only entrusted with promotional tasks in compliance with the State aid rules of the Community. The fulfilment of promotional tasks shall be governed by the respect of the prohibition of discrimination under Community law.

This understanding is without prejudice to the examination of these activities under the Community State aid rules vis-à-vis the beneficiaries. It is also without prejudice to the application of other provisions of the Treaty and to the international obligations of the Community concerning State aid and other subsidies.

**The advantages for special credit institutions immanent to the State guarantees Anstaltslast and/or Gewährträgerhaftung and/or refinancing guarantees may be used in the following areas:**

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<sup>1</sup> Legally independent special credit institutions are for instance:

- a) Bremer Aufbau-Bank GmbH
- b) Deutsche Ausgleichsbank
- c) Hamburgische Wohnungsbaukreditanstalt
- d) Investitionsbank des Landes Brandenburg
- e) Kreditanstalt für Wiederaufbau (KfW)
- f) Landeskreditbank Baden-Württemberg – Förderbank
- g) Landwirtschaftliche Rentenbank
- h) LfA Förderbank Bayern / Bayerische Landesanstalt für Aufbaufinanzierung
- i) Thüringer Aufbaubank.

<sup>2</sup> See in detail recommendation of the Commission of appropriate measures concerning the system of Anstaltslast and Gewährträgerhaftung of 8.5.2001. The understanding does therefore not refer to channelling through grants as well as trusteeship and administration activities from public funds.

#### 1) Fulfilment of public promotional activities:

The public promotional tasks of the special credit institutions, e.g. the raising and/or channelling of State financial support, consist in the implementation and administration of promotional measures at the request of the State in precisely described promotional areas, in particular financing of SMEs, risk capital, environment-friendly investment, technology, innovation, infrastructure, housing as well as internationally agreed promotional programmes (e.g. CIRR, LASU, etc.) and co-operation with developing countries. The public promotional tasks must be described in concrete terms in the relevant legal provisions.

For the implementation of their public promotional tasks special credit institutions may use all instruments at their disposal, in particular the principle of channelling through funds to beneficiaries via commercial banks (Durchleitungsprinzip) and financing in consortia. Addressees of their promotional measures can be all persons and entities of private and public legal form.

For the fulfilment of their public promotional tasks special credit institutions may only engage in services and other activities (e.g. treasury management, risk management and consultancy on their promotional activities), which are directly in connection with the fulfilment of their tasks; trade in securities, deposited funds business and giro account business are allowed to special credit institutions only for their own account and only to the extent that they are directly in connection with their public promotional tasks.

2) Participation in projects in the interest of the Community, which are co-financed by the European Investment Bank or similar European financing institutions.

3) Granting of loans and other forms of financing to the Federal State, Länder, municipalities and special purpose associations of public legal form (öffentlich-rechtliche Zweckverbände).

4) Measures with a purely social character, e.g.:

- Granting of loans to employees and members of statutory organs of the special credit institution;
- Granting of loans as a financing contribution in the framework of the promotion of social housing by the State for households, which cannot bear the financial burden for adequate housing without State support, in particular considering their income. The social criteria for the beneficiaries are precisely defined by the subsidising entities;
- Financing of social institutions, which provide social services for persons, which fulfil certain conditions defined by the legislator (e.g. rehabilitation and integration of handicapped persons, support for children and youth, social care);
- Financing, which the special credit institution grants at the request of the State on the basis of a law or a State directive to persons, which fulfil the conditions laid down in provisions of social law (e.g. educational situation, unemployment, low income or wealth, handicaps).

5) Export financing outside the European Union, the European Economic Area and countries with the official status of a candidate for accession to the European Union, as far as this is in compliance with international trade agreements, which bind the Community, in particular the WTO-agreements. Hereby the following principles apply:

(1) Participation of special credit institutions in financing consortia at the request and under the leadership of one or several credit or financing institutions may not occur at conditions more favourable to the undertaking or less favourable to the special credit institution than the conditions which are granted to the undertaking by other credit or financing institutions participating in the consortium. This condition is not fulfilled if the request and/or leadership is made by a special credit institution or a financing institution, if the special credit institution directly or indirectly in relation to this financing institution:

- a) holds the major part of the undertaking's subscribed capital, or
- b) controls the majority of the votes attaching to shares issued by the undertakings, or
- c) can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.

The financing share of special credit institutions must not go beyond 50 % unless the participating underwriters agree on a higher share for the special credit institutions in individual cases, but in any event not exceeding 75 %.

(2) For participation of special credit institutions in financing consortia at their own initiative and/or under their own leadership the following cumulative conditions must be fulfilled:

- Collaboration with at least one co-lead-arranger, which must not be a special credit institution or a financing institution, if the special credit institution directly or indirectly in relation to this financing institution:
  - a) holds the major part of the undertaking's subscribed capital, or
  - b) controls the majority of the votes attaching to shares issued by the undertakings, or
  - c) can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.
- The beneficiary is not granted more favourable conditions than by other credit or financing institutions participating in the consortium, nor is the special credit institution accepting less favourable conditions than the other credit or financing institutions,
- The maximum total share of the special credit institution does not exceed 25 %, unless the participating underwriters agree in an individual case on a higher share for the special credit institution(s), but in any event not exceeding 50 %.
- Willingness of the special credit institution to work together in consortia with all credit or financing institutions established in the EU.

(3) The special credit institution may act on its own only under the following conditions:

- if a country in OECD-minimum risk category 7 is concerned, or
- if a country in OECD-minimum risk category 5 or 6 is concerned, which is also mentioned in part 1 of the DAC-list, and if the financing volume is below € 50 million and the running period of the financing is longer than 4 years.

### **III. The treatment of State guarantees after expiry of the implementation periods**

III.1. The use of advantages for special credit institutions immanent to the State guarantees Anstaltslast and/or Gewährträgerhaftung and/or refinancing guarantees remain in compliance with the State aid rules of Community law if the activities of special credit institutions fall under the areas listed under point II. and if the conditions mentioned there respectively are fulfilled and if the legally binding specification of activities is achieved according to the time limits for implementation fixed under point IV.

- III.2. Activities of special credit institutions, which do not fall under the areas listed under point II. and/or do not fulfil the conditions respectively mentioned there, must be discontinued or hived off to a legally independent undertaking without public support. In the latter case, as a result and amongst others, refinancing means, guarantees and other services of the special credit institution in favour of the hived off undertaking and those of the hived off undertaking to the special credit institution must be remunerated in conformity with the market rules.
- III.3. Activities, which do in an isolated case (im Einzelfall) not fall under the areas listed under point II. and/or do not fulfil the conditions listed there and which are concluded after the end of the time limits for implementation mentioned under point IV., will be treated according to the general State aid rules. This has the legal consequence that the advantages immanent to the State guarantees will be treated as recoverable new aid in relation to the respective activity.
- III.4. The legal consequence specified under point III.3. does not affect the continuance of the State guarantees as such.

#### **IV. Engagements and time limits for implementation**

- IV.1. The legislative specification of activities of special credit institutions in compliance with point II. is to be completed by the Bund and the Länder concerned by 31<sup>st</sup> March 2004.
- IV.2. For activities, which do not fall in the areas listed under point II. and/or which do not fulfil the conditions respectively listed there, the decision on whether to discontinue them/hive them off must be taken by 31<sup>st</sup> March 2004 and the legislative basis must be created for this by the same date. The discontinuation/hiving off must enter into effect by 31<sup>st</sup> December 2007.
- IV.3. The non-respect of the engagement contained in point IV.1. leads to the situation that as of 1<sup>st</sup> April 2004 the advantages for special credit institutions immanent to Anstaltslast and/or Gewährträgerhaftung and/or refinancing guarantees will be treated as recoverable new aid.
- IV.4. The non-respect of the engagement contained in point IV.2. leads to the situation that as of 1<sup>st</sup> April 2004 or, respectively, 1<sup>st</sup> January 2008 the advantages for special credit institutions immanent to Anstaltslast and/or Gewährträgerhaftung and/or refinancing guarantees will be treated as recoverable new aid.
- IV.5. The question of proper implementation (in particular completeness and timeliness) and the respect of the understanding is to be assessed independently for each special credit institution.

#### **V. Engagement as regards tax advantages**

As far as the special credit institutions covered by this understanding benefit, in addition to State guarantees like Anstaltslast and/or Gewährträgerhaftung and/or refinancing guarantees, also from tax advantages, the Federal Government takes care that these advantages are dealt with in compliance with the principles of this understanding and with the Community State aid rules.

## **VI. Further steps**

- VI.1. The German authorities shall inform the Commission respectively by the end of each year about the respective state of the implementation efforts.
- VI.2. As soon as possible after conclusion of this understanding Mr Monti will report to the Commission the results of this meeting.

Brussels on 1<sup>st</sup> March 2002