

Brussels, 28 February 2002

Germany agrees on the implementation of the understanding with the Commission on State guarantees for Landesbanken and Savings Banks

After intensive talks today in Brussels, Competition Commissioner Mario Monti and State-Secretary Caio Koch-Weser from Germany's Federal Ministry of Finance accompanied by Finance Ministers Peer Steinbrück (Nordrhein-Westfalen), Kurt Faltlhauser (Bavaria), Gerhard Stratthaus (Baden-Württemberg) and by the President of the German Savings Banks Association, Dietrich Hoppenstedt, reached conclusions that should clear the road to rendering the German system of State guarantees for public law credit institutions compatible with the State aid rules of the EC Treaty. The conclusions spell out the key measures for implementing the understanding reached between the German Authorities and the Commission on 17 July 2001 regarding the principles of a solution concerning the two forms of guarantees, "Anstaltslast" and "Gewährträgerhaftung", to Landesbanken and savings banks. Mr Koch-Weser confirmed that all necessary legislation both at the Federal and at Länder level will be in place by the end of 2002.

The German authorities will now notify to the Commission the final draft legal texts implementing the agreement. These texts are also being submitted to the Länder Parliaments for adoption before the end of the year. As to the Commission, Mr Monti will propose a decision on Landesbanken, and savings banks by the end of March, in order to amend the Commission decision of 8 May 2001 which had set in motion the current process. In line with Community State aid procedures, the new decision will lay down in detail the measures to be taken by Germany, as accepted by the Commission, for the system of Anstaltslast and Gewährträgerhaftung. It would be followed by close monitoring of their correct implementation.

Background

On 8 May 2001, the European Commission adopted a decision proposing to the German Government so-called "appropriate measures" in order to make the guarantee system of Anstaltslast and Gewährträgerhaftung compatible with the State aid rules of the EC Treaty.

In July 2001, the German authorities fully accepted the proposed appropriate measures, on the basis of an understanding between Commissioner Monti and State-Secretary Koch-Weser on the key principles of a solution as well as on the process and the timing, including transitional arrangements.

ANNEXES

1. Today's Conclusions

Conclusions on Anstaltslast and Gewährträgerhaftung following the understanding on Landesbanks and savings banks of 17.7.2001

Mr Mario Monti, Commissioner for Competition, and

Mr Caio Koch-Weser, State Secretary in the German Ministry of Finance, Mr Kurt Faltlhauser, Minister of Finance of Bavaria, Mr Peer Steinbrück, Minister of Finance of Northrhine-Westphalia, Mr Gerhard Stratthaus, Minister of Finance of Baden-Württemberg and Mr Dietrich Hoppenstedt, President of the German savings banks' association, for the Federal Republic of Germany,

reached in Brussels on 28 February 2002 the following conclusions. All engagements mentioned have to be made by 15 March 2002. For the other measures, the timetable established in the understanding of 17 July 2001 applies. The original time limit to submit the necessary legal measures to the respective legislative bodies fixed 31st December 2001 is postponed to 31st March 2002; in motivated exceptional cases this time limit can be extended to 31st May 2002 at the latest. At any rate, a preliminary report on the status of the legislative efforts has to be submitted to the Commission by 15 March 2002:

A) Replacement of Anstaltslast and abolishment of Gewährträgerhaftung

For the replacement of Anstaltslast and the abolishment of Gewährträgerhaftung, at least the following elements shall be contained:

In the legal text itself:

- 1) Anstaltslast is replaced by the following provisions.
- 2) The owner supports (unterstützt) the savings bank/Landesbank in the fulfilment of its tasks according to the following principles/provisions.
- 3) There is no obligation of the owner to provide the savings bank/Landesbank with funds, nor is there a right (claim) of the savings bank/Landesbank against the owner.
- 4) The savings bank/Landesbank is responsible for its liabilities with all its assets.
- 5) The responsibility (Haftung) of the owner of a Landesbank is limited to its statutory capital./The owner of the savings bank is not responsible (haftet nicht) for its liabilities.
- 6) All Landesbanks and savings banks must be able to go insolvent [to be reached by abolishment of Länder provisions based on § 12(1) No 2 Insolvency Code].
- 7) Any existing provisions on Anstaltslast and Gewährträgerhaftung, which contradict the above, are to be deleted.

In the recitals (Gesetzesbegründungen):

In addition to explanations of the provisions in the legal text, the following must appear:

As far as the owner provides the savings bank/Landesbank with means, this occurs only according to the State aid discipline of the Community.

In separate engagements by the German authorities:

1) The German authorities engage themselves by a separate letter that they will notify any future provision of funds to savings banks/Landesbanks to the Commission, in case it contains State aid.

2) The German Federal and Länder authorities engage themselves by a separate letter that in the future no use will be made of the enabling clause in federal law to exempt from the insolvency procedures Anstalten under the supervision of Länder for public banks covered by the understanding of 17 July 2001.

B) Grandfathering of Gewährträgerhaftung

The following provisions are to be put into the legal text, corresponding explanations are to be provided in the recitals:

“The owners of the savings banks and the ... Landesbank at 18.7.2005 are responsible for the honouring of all liabilities of the respective institution existing at this date.

For the liabilities agreed by 18.7.2001 this applies without time limits; for those agreed afterwards until 18.7.2005, this applies only if their maturity does not go beyond 31.12.2015.

The owners will immediately honour their obligations from Gewährträgerhaftung vis-à-vis the creditors of liabilities agreed until 18.7.2005 as soon as they have stated, when these liabilities come due, in due manner and in writing that the creditors of these liabilities cannot be satisfied out of the assets of the institution.

Liabilities of the ... Landesbank or savings banks from their own Gewährträgerhaftung or of comparable responsibilities or those resulting from membership in a savings banks association are founded and come due in the sense of sentences 1 and 2 at the same time as a liability secured by such responsibility.

Several owners are collectively responsible, in their internal relationships according to their shares [or: according to the provisions in the by-law of the institution.]”

C) Institutional security funds (Institutssicherungsfonds)

The German authorities engage themselves by a separate letter to abolish any obligation of owners or other public bodies to provide financial means to institutional security funds (Institutssicherungsfonds) of savings banks associations in the Länder, where this is applicable, with a clear timetable along the lines of the understanding of 17.7.01.

Subsequently, the necessary measures will be taken in accordance with this engagement.

D) Free savings banks

The German authorities engage themselves by a separate letter to abolish any obligation of public bodies to provide financial means to so-called free savings banks (e.g. Frankfurter Sparkasse) with a clear timetable along the lines of the understanding of 17.7.2001.

Subsequently, the necessary measures will be taken in accordance with this engagement.

Brussels, on 28 February 2002

2. Agreement of 17.07.01

Understanding on Anstaltslast and Gewährträgerhaftung

Mr Mario Monti, Commissioner for Competition, and

Mr Caio Koch-Weser, State Secretary in the German Ministry of Finance, Mr Kurt Faltlhauser, Minister of Finance of Bavaria, Mr Peer Steinbrück, Minister of Finance of Northrhine-Westphalia, Mr Gerhard Stratthaus, Minister of Finance of Baden-Württemberg and Mr Dietrich Hoppenstedt, President of the German savings banks' association, for the Federal Republic of Germany,

reached in Brussels on 17 July 2001 the following understanding:

1. "Platform-model"

1.1. The German authorities confirm that all Landesbanken and Sparkassen, including their subsidiaries in public law form, will adopt the so-called "platform-model".

1.2. The "platform-model" consists in the abolishment of Gewährträgerhaftung and the replacement of Anstaltslast, as it exists now, in line with what is specified under 2.

2. Principles of changes as regards the system of Anstaltslast and Gewährträgerhaftung

2.1. Gewährträgerhaftung shall be abolished.

2.2. Anstaltslast, as it exists now, shall be replaced in order to comply with the following principles:

a) The financial relationship between the public owner and the public credit institution shall be not different from a normal commercial owner relationship governed by market economy principles, just as between a private shareholder and a limited liability company.

b) Any obligation of the public owner to grant economic support to the public credit institution and any automatism of economic support granted by the owner to the public credit institution shall be excluded. There shall be no unlimited liability of the owner for the liabilities of the public credit institution. There shall be no declaration of intent nor guarantee to ensure the existence of the public credit institution (no "Bestandsgarantie").

c) The public credit institutions shall be subject to the same insolvency rules as private credit institutions, putting their creditors in the same position as creditors of private credit institutions.

d) These principles shall be without prejudice to the possibility of the owner to grant economic support in conformity with the State aid rules of the EC Treaty.

2.3. Explicit legal change in line with the above shall be made in all laws in Germany governing public credit institutions, which are on the platform, regardless of whether Anstaltslast is now explicitly prescribed in the law or not.

3. Commitment of implementation

3.1. The German authorities offered the commitments

(i) that the Federal and all Länder authorities shall submit not later than 31.12.2001 to their legislative bodies the proposals for the necessary legal measures according to what is laid down in 1. and 2. above and

(ii) that all necessary legal measures shall be definitively adopted not later than 31.12.2002.

These deadlines allow in particular the municipalities (cities, counties, communes) as owners of the Sparkassen an appropriate time for discussion within the framework of the democratic process of implementation.

3.2. The purpose of the commitments under 3.1. shall be to ensure the proper implementation of the appropriate measures laid down in the Commission's recommendation of 8.5.2001 and facilitate an early adaptation of the public law credit institutions to the new legal and economic framework.

3.3. Commissioner Monti welcomes these commitments which will be part of the draft decision he will submit to the Commission to amend the Commission's decision of 8.5.2001 adopting a recommendation of appropriate measures.

3.4. It is understood that non-compliance with these commitments by the Federal Republic or one or more Länder shall constitute the non-compliance with the Commission decision amending its decision of 8.5.2001 with respect to the non-complying Federal Republic, Land or Länder and shall have as legal effects that the state aid element involved in Anstaltslast and Gewährträgerhaftung shall be treated as new state aid as of 1.1.2003.

4. Transitional arrangement

Liabilities existing at 18.7.2001, the date of acceptance by the German authorities of the Commission's recommendation of 8.5.2001, will continue to be covered by Gewährträgerhaftung until their maturity runs out. The decision amending the Commission's decision of 8.5.2001 will contain a transitional period which will last until 18.7.2005 and during which Anstaltslast and Gewährträgerhaftung can be maintained in their present form. As of the final date of this transitional period any liability existing by then and created after 18.7.2001 will continue to be covered by Gewährträgerhaftung under the condition that its maturity does not go beyond 31.12.2015.

5. Further steps

5.1. The German authorities shall at the latest on 18.7.2001 give their unequivocal and unconditional acceptance of the appropriate measures as recommended in the Commission's decision of 8.5.2001.

5.2. As soon as possible after reception of such acceptance Mr Monti will report to the Commission the results of this meeting.

6. Commissioner Monti and the German delegation are convinced that with the implementation of these principles the economic activities of the Landesbanken and Sparkassen will become compatible with the Community law.

Brussels on 17.7.2001