

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 Faltthäuser, 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 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 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 this commitment 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 and reporting

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