

EU AGREE PLAN ENDING STATE AID TO PUBLIC BANKS

(The following is a reformatted version of an electronic press release sent by the European Commission)

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.

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