Subject: State aid No E 10/2000 – Germany
State guarantees for public banks in Germany

Sir,

First Part: General provisions for all public credit institutions benefiting from Anstaltslast and/or Gewährträgerhaftung and/or refinancing guarantees

1. History

On 21.12.1999 the European Banking Federation filed a complaint against Anstaltslast and Gewährträgerhaftung. This complaint was supplemented by detailed information on 27.7.2000 and 15.11.2000.

As provided for in Article 17 (1) of the Regulation (EC) No 659/1999, the Commission obtained from the German authorities information on the existing aid scheme of Anstaltslast and Gewährträgerhaftung and entered into consultations with the German authorities on the assessment and possible consequences to be drawn.

On 26.1.2001 the Commission services sent a letter according to Article 17 (2) of the Procedural Regulation to your authorities, informing your authorities of their preliminary view that the existing aid scheme of Anstaltslast and Gewährträgerhaftung is not compatible with the Common Market and giving your authorities the opportunity to submit their comments within a period of one month. After extension of the deadline, your authorities submitted their answer by letter dated 11.4.2001.

On 8.5.2001, the Commission adopted a recommendation of appropriate measures in order to adapt the existing aid scheme of State guarantees for public credit institutions in Germany to

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comply with the State aid rules of the EC Treaty, of which receipt was acknowledged on 11.5.2001 by your authorities. The Commission proposed to the Federal Republic of Germany the following appropriate measures pursuant to Article 88 (1) EC and Regulation (EC) No 659/1999, Article 18:

(i) that the Federal Republic of Germany takes any legislative, administrative and other measures necessary to eliminate any State aid within the meaning of Article 87 (1) EC resulting from the system of Anstaltslast and Gewährträgerhaftung and granted to public law credit institutions, or to render such aid compatible with the common market within the meaning of Article 87 EC, or in conformity with the rules provided for in Article 86 (2) EC;

(ii) that any such aid is eliminated or rendered compatible with effect from 31.3.2002 unless the Commission agrees (for all public law credit institutions or for certain undertakings or groups of undertakings) to a later date or to later dates, should that be considered objectively necessary and justified by the Commission in order to allow an appropriate transition for the undertaking or undertakings in question to the adjusted situation; and

(iii) that the Federal Republic of Germany communicates the relevant measures adjusting the aid scheme to the Commission as soon as possible and in any event no later than 30.9.2001.

Subsequently, a number of discussions took place between the Commission and your authorities, and supplementary information was provided by your Government.

On 17.7.2001, Commissioner Mario Monti concluded with State-Secretary Caio Koch-Weser, the Finance Ministers of Baden-Württemberg, Bavaria and Northrhine-Westphalia, Gerhard Stratthaus, Kurt Faltlhauser and Peer Steinbrück, and the President of the German savings banks association, Dietrich Hoppenstedt, an understanding on Anstaltslast and Gewährträgerhaftung as regards Landesbanken and savings banks.

The understanding of 17 July 2001 provides for a 4-year transitional period, which lasts from 19 July 2001 to 18 July 2005. During this period the two existing guarantees may remain in place. After that, on the basis of the so-called “platform-model”, one guarantee (Anstaltslast) will be replaced by a normal commercial owner relationship governed by market economy principles, implying no obligation of the State to support the bank any more. The other guarantee (Gewährträgerhaftung) will be abolished.

However, Gewährträgerhaftung can be maintained (grandfathered) also after 18 July 2005 to protect creditors along the following lines:
- For liabilities existing at 18 July 2001, Gewährträgerhaftung can be maintained without any limits until they mature.
- For liabilities created between 19 July 2001 and 18 July 2005, Gewährträgerhaftung will only be maintained for those maturing before the end of 2015. Otherwise, for those maturing after 2015, Gewährträgerhaftung will not be grandfathered.

According to the Commission recommendation of 8 May 2001, your authorities have to submit to the Commission by 30 September 2001 the concrete measures they intend to take in order to make the guarantee system compatible with the rules of the Treaty. In the understanding, your authorities engaged themselves to submit by the end of 2001 the necessary legal measures to the relevant federal or Länder legislative bodies and to adopt them by the end of 2002. In case of non-compliance with the deadline for adoption by the Federal State or a Land, the State aid elements contained in the guarantees will be treated as new aid from beginning of 2003 for banks falling under the legislation of the respective Land.
or the Federal State. Consequently, the State aid element could be recovered from these banks with effect from 2003.

Your authorities unconditionally and unequivocally accepted the proposal for appropriate measures by letter of 18.7.2001. Accordingly, they submitted on 27.9.2001 concrete proposals for implementing the understanding, which were subsequently subject to further discussions between the Commission and your authorities.

Two issues could not be solved until the end of the year 2001: firstly, the elements to be put in the legal texts, recitals or separate engagements of your authorities to ensure the replacement of Anstaltslast, and, secondly, the exact content of the grandfathering of Gewährträgerhaftung concerning liabilities agreed during the transitional period (from 19 July 2001 to 18 July 2005).

Your authorities failed to submit the draft legal amendments to all respective legislative bodies by the deadline of 31.12.2001. Discussions between the Commission and your authorities continued until the end of February 2002.

On 28 February 2002, Commissioner Mario Monti, State-Secretary Caio Koch-Weser, the Finance Ministers of Baden-Württemberg, Bavaria and Northrhine-Westphalia, Gerhard Stratthaus, Kurt Faltlhauser and Peer Steinbrück, and the President of the German savings banks association, Dietrich Hoppenstedt reached conclusions on the two major issues (elements for the replacement of Anstaltslast and exact content of the grandfathering of Gewährträgerhaftung) and two other new issues, which were discovered after the conclusion of the understanding of 17.7.2001. These two new issues concern, firstly, a subsidiary obligation (Nachschusspflicht) in some Länder for owners of savings banks to provide institutional security funds (Institutssicherungsfonds) with financial means, and, secondly, State guarantees to so-called free savings banks, e.g. Frankfurter Sparkasse. The conclusions constitute an agreement on the elements of the legal texts, the recitals and separate engagements to be made by your authorities.

The conclusions provide that the separate engagements mentioned have to be made by your authorities 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.

On 1st March 2002, Commissioner Mario Monti and State-Secretary Caio Koch-Weser reached understanding also on the German special credit institutions: They may continue to benefit from the State guarantees to the extent that they are 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. Another public task, which will also in the future be allowed under the umbrella of the State guarantees, is participation in financing of projects in the interests of the Community, which are co-financed by the European Investment Bank or similar European financing. In addition, special credit institutions can keep activities of purely social character, financing of the State and municipalities, and export financing outside the EU, the European Economic Area and candidate countries, which is in line with the WTO-rules and other relevant international obligations binding for the Community. The understanding is without prejudice to the examination of these activities under the Community State aid rules vis-à-vis the beneficiaries.
The understanding of 1st March 2002 provides that your authorities will have to specify public tasks clearly in the relevant laws by the end of March 2004. Commercial activities will have to be discontinued or isolated from the State guarantees by a split into a legally independent undertaking without State support. This has to be implemented by the end of 2007.

All open substantive and procedural issues have therefore been solved.

The understandings and conclusions reached are hereby transformed into a Commission decision, which amends the Commission recommendation of 8 May 2001 with effect as of 31st March 2002.

2. Description of the guarantees

Anstaltslast is considered as a general principle of law and says that the guarantor ("Gewährträger") is obliged to secure the economic basis of the Anstalt, to maintain it functioning for the complete duration of its existence and to cover possible financial gaps through the use of subsidies or other appropriate means. Bankruptcy is practically impossible. Anstaltslast is creating, from a strictly legal point of view, only a liability in the inner relationship ("Innenverhältnis"). Anstaltslast is limited neither in time nor in amount. The Anstalt does not pay a remuneration for the guarantee.

Gewährträgerhaftung is not considered as a general principle of law but requires an explicit legal basis. It is defined as a direct liability, bases on statute or by-laws, on the part of a regional authority or an association under public law with respect to the creditors of a public law credit institution for all of its obligations. Gewährträgerhaftung therefore creates the obligation for the guarantor ("Gewährträger") to step in in the case of insolvency or liquidation of the credit institution. It creates direct claims of the creditors of the credit institution against the guarantor, who can, however, only be called in if the assets of the credit institution are not sufficient to satisfy the creditors. Gewährträgerhaftung is limited neither in time nor in amount. The credit institution does not pay a remuneration for the guarantee.

3. Characterisation of the measure as an aid scheme

The Commission takes the view that the measure under review constitutes an aid system within the meaning of Article 88 (1) EC, that is, an aid scheme as defined in Regulation (EC) No 659/1999, Article 1 (d). The Commission refers in this respect to the recommendation of appropriate measures of 8.5.2001, which was accepted by your Government on 18.7.2001, and which outlines in detail the characterisation of the measure as an aid scheme.

4. Position of your Government

The Commission refers in this respect to the recommendation of appropriate measures of 8.5.2001, which was accepted by your Government on 18.7.2001, and which outlines in detail the position of your Government.

5. Ownership and legal form of a company

The Commission refers in this respect to the recommendation of appropriate measures of 8.5.2001, which was accepted by your Government on 18.7.2001, and which outlines in detail the position of your Government.
6. Aid within the meaning of Article 87 (1) EC

The Commission refers in this respect to the recommendation of appropriate measures of 8.5.2001, which was accepted by your Government on 18.7.2001, and which outlines in detail the characterisation of Anstaltslast and Gewährträgerhaftung as aid within the meaning of Article 87 (1) EC.

7. Existing aid within the meaning of Article 88 (1) EC

The Commission refers in this respect to the recommendation of appropriate measures of 8.5.2001, which was accepted by your Government on 18.7.2001, and which outlines in detail the characterisation of Anstaltslast and Gewährträgerhaftung as existing aid within the meaning of Article 88 (1) EC.

8. Compatibility of the aid

The Commission refers in this respect to the recommendation of appropriate measures of 8.5.2001, which was accepted by your Government on 18.7.2001, and which analyses in detail the questions related to the compatibility of the aid scheme Anstaltslast and Gewährträgerhaftung under Article 87 (2) and (3) EC.

9. Article 86 (2) EC

The Commission refers in this respect to the recommendation of appropriate measures of 8.5.2001, which was accepted by your Government on 18.7.2001, and which analyses in detail the conditions of applying Article 86 (2) EC to the aid scheme Anstaltslast and Gewährträgerhaftung.

10. Conclusions

The Commission refers in this respect to the recommendation of appropriate measures of 8.5.2001, which was accepted by your Government on 18.7.2001, and which gives details on the conclusions, in particular on how the current situation needs to be changed.

11. Proposal for appropriate measures

The Commission refers in this respect to the recommendation of appropriate measures of 8.5.2001, which was accepted by your Government on 18.7.2001, and which further specifies measures to be taken and their timeframe. The recommendation provides that the Commission can agree (for all public law credit institutions or for certain undertakings or groups of undertakings) to a later date or to later dates than originally established, should that be considered objectively necessary and justified by the Commission in order to allow an appropriate transition for the undertaking or undertakings in question to the adjusted situation.

Following the recommendation of appropriate measures, the Commission and your Government discussed intensively what exact measures to take for the credit institutions or groups of credit institutions concerned, and in what timeframe they would have to be implemented by your Government. As regards Landesbanks and savings banks, the result of these discussions was laid down in an understanding on 17.7.2001 and in conclusions on 28.2.2002. As regards special credit institutions, the result was laid down in an understanding on 1.3.2002.
These documents specify in detail the proposal for appropriate measures of 8.5.2001 and are taken up below – for Landesbanks and savings banks – in the second part and – for special credit institutions – in the third part.

Second part: Concrete measures to be taken for Landesbanks and savings banks

This second part gives the content of the understanding between Commissioner Mario Monti and representatives of your Government of 17.7.2001 and of the conclusions between the same representatives of 28.2.2002 on Landesbanks and savings banks. In order to allow an appropriate transition for the undertaking or undertakings in question to the adjusted situation the Commission considers objectively necessary and justified the following concrete measures, which have to be taken for Landesbanks and savings banks:

1. "Platform-model"

1.1. 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.
2.4. 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].

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 your authorities:**

1) Your authorities engaged themselves by a separate letter dated 15.3.2002 that they will notify any future provision of financial means to savings banks/Landesbanks to the Commission, in case it contains State aid.

2) Your Federal and Länder authorities engaged themselves by a separate letter dated 15.3.2002 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.

3. **Institutional security funds (Institutssicherungsfonds)**

Your authorities engaged themselves by a separate letter dated 15.3.2002 to abolish any obligation of owners or other public bodies to provide financial means to institutional security funds (Nachschusspflicht in Institutssicherungsfonds) of savings banks associations in the Länder, where this is applicable, following the timeframe in point 5. below. Subsequently, the necessary measures will be taken in accordance with this engagement.

4. **Free savings banks**

Your authorities engaged themselves by a separate letter dated 15.3.2002 to abolish any obligation of public bodies to provide financial means to so-called free savings banks (e.g.
Frankfurter Sparkasse) following the timeframe in point 5. below. Subsequently, the
necessary measures will be taken in accordance with this engagement.

5. Commitment of implementation

5.1. Your authorities offered the commitments

(i) that the Federal, all Länder and municipal authorities or any other competent public
entities shall submit not later than 31.3.2002 to their legislative bodies the proposals for
the necessary legal measures according to what is laid down in points 1. to 4. above,
following a preliminary report on the status of the legislative efforts submitted to the
Commission on 15.3.2002. In motivated exceptional cases this time limit can be
extended to 31st May 2002 at the latest; and

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

5.2. The purpose of the commitments under 5.1. 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.

5.3. Non-compliance with these commitments by the Federal Republic or one or more
Länder shall constitute the non-compliance with this decision 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.

6. Transitional arrangement

a) Liabilities existing at 18.7.2001, the date of acceptance by your authorities of the
Commission's recommendation of 8.5.2001, will continue to be covered by
Gewährträgerhaftung until their maturity runs out. This decision hereby establishes 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.

b) 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/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

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 (ordnungsgemäß) and in writing that the
creditors of these liabilities cannot be satisfied out of the assets of the institution.
Liabilities of the Landesbank/savings banks from their own Gewährträgerhaftung or of comparable responsibilities or those resulting from membership in a savings banks association are agreed and come due in the sense of the foregoing three sentences 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) As regards grandfathering of Gewährträgerhaftung, the Commission underlines for clarification that the procedure in question must be strictly observed. In particular, non-payment by the respective institution to creditors, when the liability concerned comes due, is not as such a sufficient condition for the right of creditors to payment by the owner(s). Only as soon as this procedure is correctly accomplished by the owners having stated in due manner (ordnungsgemäß) and in writing that the creditors of these liabilities cannot be satisfied out of the assets of the institution, creditors of the liabilities concerned have a right to payment against the owners. Owners may only deviate from the agreed above procedure to the extent that this is required by the protection of legitimate expectations.

Any advance declaration of owners or other public entities to third parties that they would take any action with respect to the credit institution or its creditors, which goes beyond the agreed above procedure for triggering Gewährträgerhaftung and which has de facto the same or similar effects as Anstaltslast and Gewährträgerhaftung to be replaced/abolished in line with the above, would constitute a new form of guarantee and therefore new State aid to be notified in advance to the Commission.

Third part: Concrete measures to be taken for special credit institutions

This third part gives the content of the understanding between Commissioner Mario Monti and representatives of your Government of 1.3.2002. In order to allow an appropriate transition for the undertaking or undertakings in question to the adjusted situation the Commission considers objectively necessary and justified the following concrete measures, which have to be taken for special credit institutions:

1. Scope of application

This decision concerns legally independent special credit institutions in Germany, which benefit from the State guarantees Anstaltslast and/or Gewährträgerhaftung and/or refinancing guarantees (referred to in the following as “special credit institutions”1) and refers to

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1 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) Landesbank Baden-Württemberg – Förderbank
   g) Landwirtschaftliche Rentenbank
   h) LfA Förderbank Bayern / Bayerische Landesanstalt für Aufbaufinanzierung
   i) Thüringer Aufbaubank.
advantages to these special credit institutions relevant under the State aid rules immanent to these State guarantees.

2. 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 decision 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 Anstaltlast and/or Gewährträgerhaftung and/or refinancing guarantees may be used in the following areas:

a) 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.

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

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2 See in detail recommendation of the Commission of appropriate measures concerning the system of Anstaltlast and Gewährträgerhaftung of 8.5.2001. The following does therefore not refer to channelling through grants as well as trusteeship and administration activities from public funds.
c) 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).

d) 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).

e) 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.

3. The treatment of State guarantees after expiry of the implementation periods

3.1. 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 2. 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 4.

3.2. Activities of special credit institutions, which do not fall under the areas listed under point 2. 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.

3.3. Activities, which do in an isolated case (im Einzelfall) not fall under the areas listed under point 2. 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 4., 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.

3.4. The legal consequence specified under point 3.3. does not affect the continuance of the State guarantees as such.
4. Engagements and time limits for implementation

4.1. The legislative specification of activities of special credit institutions in compliance with point 2. is to be completed by the Bund and the Länder concerned by 31st March 2004.

4.2. For activities, which do not fall in the areas listed under point 2. and/or which do not fulfill the conditions respectively listed there, the decision on whether to discontinue them/hive them off must be taken by 31st March 2004 and the legislative basis must be created for this by the same date. The discontinuation/hiving off must enter into effect by 31st December 2007.

4.3. The non-respect of the engagement contained in point 4.1. leads to the situation that as of 1st 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.

4.4. The non-respect of the engagement contained in point 4.2. leads to the situation that as of 1st April 2004 or, respectively, 1st 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.

4.5. 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.

5. Engagement as regards tax advantages

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

6. Further steps

Your authorities shall inform the Commission respectively by the end of each year about the respective state of the implementation efforts.

Fourth part: Acceptance of amendment to recommendation of appropriate measures

Your Government is requested to inform the Commission in writing that the Federal Republic of Germany accepts, in accordance with its previous engagements indicated above, pursuant to Regulation (EC) No 659/1999, Article 19 (1), unconditionally and unequivocally this amendment to the proposal for appropriate measures in its entirety within two weeks from receipt of this proposal. In case of acceptance, this amendment to the recommendation of appropriate measures will in its entirety take effect as of 31.3.2002. In case of non-acceptance, the Commission will proceed in accordance with the rules laid down in Regulation (EC) No 659/1999, Article 19 (2).

If this letter contains confidential information that should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to
agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://europa.eu.int/comm/sg/sgb/state_aids/.

Your request should be sent by registered letter or fax to:

Commission of the European Communities
Competition DG
State aid Grefé
Rue Joseph II, 70
B - 1000 Bruxelles/Brussel
Fax: +32-2-296.12.42

In all your correspondence, please specify the name of the case and the case number.

Yours faithfully,

For the Commission

Mario MONTI
Member of the Commission