
Changes to legislation: There are currently no known outstanding effects for the Commission Decision of 18 February 2004 on restructuring aid implemented by Germany for Bankgesellschaft Berlin AG (notified under document number C(2004) 327) (Only the German text is authentic) (Text with EEA relevance) (2005/345/EC), ANNEX. (See end of Document for details)

ANNEX⁽¹⁾

Article 2(1)(a)

Germany will ensure will that the notified restructuring plan, as last amended in accordance with the Federal Government communication of 29 January 2004, will be implemented, including all the undertakings contained in Article 2(1), in line with the timetable indicated therein. As regards those elements of the restructuring plan in respect of which no deadline is indicated, they are to be implemented forthwith and, in any event, in sufficient time to allow the deadlines specified to be met.

Article 2(1)(b)

Germany will ensure that the *Land* of Berlin introduces an open, transparent and non-discriminatory tendering procedure as soon as the annual accounts of Bankgesellschaft Berlin AG for 2005 have been approved and completes the procedure by 31 December 2007.

The buyer must:

- be independent of the *Land* and must not be connected to BGB AG or Berliner Bank within the meaning of Article 11 of Commission Block Exemption Regulation No 2790/1999⁽²⁾ regarding vertical agreements,
- be in a reasonable position to satisfy all the necessary conditions imposed by the relevant competition and other authorities for the acquisition of the holding in BGB AG, and
- be capable on the basis of its financial strength, and in particular its rating, to guarantee the bank's solvency in the long run.

In applying the review clause contained in Article 2(2) to the undertaking to sell, the Commission will take due account of the supply-side conditions and the situation on capital markets.

Article 2(1)(c)

Germany will ensure that, for balance-sheet purposes, the BGB group will, in accordance with the rules set out below, sell or liquidate by 31 December 2005 at the latest all holdings in real estate service companies that are covered by the risk shield of 16 April 2002.

By 31 December 2004 the *Land* and the bank will definitively determine those holdings in real estate service companies that appear suitable for sale to third parties. These holdings are to be sold by way of a transparent, open and non-discriminatory tendering procedure.

Holdings in real estate service companies that are neither liquidated nor sold to third parties by the balance-sheet date of 31 December 2005 will be acquired by the *Land* of Berlin on market terms. The purchase price will be determined by 31 March 2005 on the basis of a valuation carried out by an independent auditor commissioned by the *Land*, with a subsequent review by an independent auditor appointed by the bank. This will take place on the basis of recognised valuation procedures. In the event of a divergence between the two valuations and in the absence of agreement between the contracting parties, the value will be determined by a third expert to be appointed by the Institut der Wirtschaftsprüfer in Deutschland e.V. (German Auditors Institute). The independent value assessments will be sent to the Commission by 31 July 2005 at the latest.

The business of the real estate service companies that are to be transferred to the *Land* or wound up will be confined to the orderly management of the risks covered by the detailed agreement. The bank will invest in those companies to the extent necessary for that activity.

In order to avoid a heavy land transfer tax burden, a remaining holding of not more than 6 % in Immobilien- und Baumanagement der Bankgesellschaft Berlin GmbH (IBG) may remain

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within the Bankgesellschaft group. The group will not, however, have any influence over the management of IBG. Moreover, Immobilien und Beteiligungen Aktiengesellschaft (IBAG) can remain within the Bankgesellschaft group following the change of trade name and re-orientation of the Work#out#Competence Center as the holding company for the companies on the so# called negative list⁽³⁾ (companies excluded from the risk shield) in which the Bankgesellschaft group has shares. Apart from its function as the holding company for the companies on the negative list for the orderly administration and winding-up of the risks resulting from these companies and as the Work#out#Competence Center in connection with the liquidation of real estate financing, IBAG will, however, no longer carry on any real estate service business.

Article 2(1)(d)

Germany will ensure that, by 1 January 2005 at the latest, the development business of Investitionsbank Berlin (IBB), an unincorporated institution, which has to date been managed as a department of Landesbank Berlin (LBB), will be transferred to a new and independent development bank of the *Land* of Berlin.

The IBB special reserve of Landesbank Berlin will be used, to the extent possible on 1 January 2004, to provide capital for the new development bank and will, therefore, be hived off from Landesbank, without the core#capital ratio (tier one) within the Bankgesellschaft group (following the hiving#off of IBB) falling below 6 %, but not for an amount of more than EUR 1,1 billion.

The part of the IBB special reserve that may still be necessary to provide capital for the Bankgesellschaft group in accordance with the above paragraph will be injected into LBB by the *Land* of Berlin directly or indirectly as a contribution in kind (which may, however, not exceed EUR 1,1 billion) in the form of one or more dormant holdings ranking as core capital. A claim by the *Land* of Berlin on LBB for the transfer of the corresponding part of the special reserve can be created and will then be injected into the dormant holdings.

The dormant holdings bear interest at normal market rates. In this connection, when the contract to set up the dormant companies is signed, a mark#up on a reference interest rate determined according to the comparable core#capital instruments traded on the market will be calculated on the basis of the long#term rating of LBB, taking into account the discontinuation of institutional and guarantor liability (*Anstaltslast* and *Gewährträgerhaftung*) and in compliance with the contractual form of the dormant holdings. The comparability of the core#capital instruments will be determined on the basis of the contractual rules for those instruments and the rating of each issuer.

Article 2(1)(e)

Germany will ensure that the Bankgesellschaft group will sell the Berliner Bank department of LBB as an economic entity, inclusive at least of the trade name (and all related intellectual property rights), all private, corporate and other customers associated with the business carried on under the trade name Berliner Bank, the branches and the front#office staff. The effective date for the number of customers, branches and front#office staff is 31 December 2003, taking into account the planned implementation of the restructuring plan notified to the Commission in accordance with Article 2(1)(a) and natural business fluctuations, i.e. increases and decreases in the number of customers, staff, assets and liabilities, that are based on individual decisions (such as the relocation of customers or employees and dissatisfaction with the previous bank or employer) and not influenced by the bank. Other assets or staff may be included in the sale as appropriate. A trustee will closely monitor compliance with these conditions. The tendering procedure must be open, transparent and non#discriminatory and must be started in 2005. It must be completed by 1 October 2006 so that the sale can take effect by 1 February 2007 at the latest.

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Within three months of receipt of this decision, Germany will propose to the Commission a suitable trustee mandate and an independent trustee who will be required by law to observe professional secrecy and who will, at the expense of Germany, monitor the proper course of the sale and ensure in particular that the bank continues to restructure Berliner Bank in a sound business manner, invest in it and do nothing that will reduce its value, above all by transferring private or corporate customers or sales personnel to Berliner Sparkasse or to any other part of the Bankgesellschaft group. The trustee will take up his work without delay after having been commissioned. If the trustee discovers any irregularities, the Commission is to be notified immediately.

The buyer must be independent of Bankgesellschaft Berlin and must have the financial resources, proven expertise and incentives to maintain and develop Berliner Bank as a viable and active economic force in competition with Bankgesellschaft Berlin and other competitors. This does not rule out incorporation of Berliner Bank into the buyer's company and corporate identity.

The amendments to the mid-term financial plan of 29 January 2004 that are necessary for the implementation of this commitment will be submitted forthwith by Germany to the Commission for approval.

General provisions governing implementation and reporting

- (a) Germany will not amend the notified restructuring plan of 29 January 2004, which takes account of all the undertakings given in Article 2(1) of this decision, without the prior approval of the Commission.
- (b) Germany will ensure that the divestments and sales provided for in Article 2(1)(b), (c) and (e) take place according to transparent procedures that will be open to any potential domestic or foreign buyer. The sales conditions must not contain any clause that inappropriately restricts the number of potential bidders or is tailored to a specific potential bidder. Germany will ensure that those divestments and sales are adequately publicised. With the exception of sales in accordance with Article 2(1)(c), this will take place via publication in at least one international press medium that is available throughout the Community in English. As far as the law permits, bidders will be afforded direct access to all the necessary information in the due diligence procedure. The buyers will be selected on the basis of economic criteria. The proceeds from the bank's sales will be used in full to finance the bank's restructuring plan, in so far as they do not accrue to the *Land* of Berlin under the detailed agreement of 16 April 2004 (Annex 25 to the notification).
- (c) Germany will ensure that the performance of all the undertakings set out in Article 2 can be verified at any time by the Commission or by an expert acting for it until such time as they have been carried out. It will ensure unrestricted access for the Commission to any information necessary for the monitoring of the implementation of this decision. The Commission may, with the consent of Germany, seek explanations and clarifications directly from the bank. Germany and the bank will cooperate fully in any enquiries made by the Commission or by a consultant acting for it.
- (d) Each year until 2007 (inclusive) Germany will send a progress report to the Commission. The report must give the details of the sales and closures of subsidiaries and departments in accordance with Article 2(1) of this decision, with an indication of the date of sale or closure, the book value as at 31 December 2003, the purchase price, all profits and losses in connection with the sale or closure and the details of the measures still to be taken to implement the restructuring plan. The report must be submitted by the supervisory board of Bankgesellschaft Berlin AG within one month

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of BGB group's annual accounts being approved for the relevant financial year, and in any event at the latest by 31 May of each year.

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- (1) The following summarises the contents of the commitments communicated by Germany on 6 February 2004. The original German text of the communication contains the wording relevant for this decision.
- (2) [OJ L 336, 29.12.1998, p. 21.](#)
- (3) Annexes 4.1, 11.1, 22.1, 29.1, 37.1.2 and 44.1 to the detailed agreement of 16 April 2002; Annex 25 to the notification.

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