

Commission Decision of 25 July 2012 on measure SA.34440 (12/C) implemented by Luxembourg concerning the sale of Dexia BIL (notified under document C(2012) 5264) (Only the French text is authentic) (Text with EEA relevance) (2012/836/EU)

- Article 1 The measure comprising the sale of Dexia BIL does not...
- Article 2 This Decision is addressed to the Grand Duchy of Luxembourg....
- Signature

Changes to legislation: There are currently no known outstanding effects for the Commission Decision of 25 July 2012 on measure SA.34440 (12/C) implemented by Luxembourg concerning the sale of Dexia BIL (notified under document C(2012) 5264) (Only the French text is authentic) (Text with EEA relevance) (2012/836/EU). (See end of Document for details)

- (1) With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union ('TFEU'). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty, where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of 'Community' by 'Union', 'common market' by 'internal market' and 'Court of First Instance' by 'General Court'. The terminology of the TFEU is used throughout this Decision.
- (2) [OJ C 146, 12.5.1998, p. 6](#), and [OJ C 210, 1.9.2006, p. 12](#).
- (3) C(2008) 7388 final.
- (4) In this Decision, 'Dexia' and 'the Dexia group' refer to Dexia SA and all of its subsidiaries.
- (5) [OJ C 181, 4.8.2009, p. 42](#).
- (6) [OJ C 305, 16.12.2009, p. 3](#).
- (7) [OJ L 274, 19.10.2010, p. 54](#).
- (8) [OJ C 38, 11.2.2012, p. 12](#).
- (9) Decision published on DG Competition's website: http://ec.europa.eu/competition/state_aid/cases/243124/243124_1306879_116_2.pdf
- (10) Decision of 31 May 2012 in Case SA.26653, restructuring of Dexia, not yet published.
- (11) Decision of 31 May 2012 in Cases SA.33760, SA.33764, SA.33763, additional restructuring measures for Dexia – temporary guarantee, not yet published.
- (12) Decision of 6 June 2012 in Cases SA.34925, SA.34927, SA.34928, increase in the temporary guarantee ceiling, not yet published.
- (13) The press release is available on the Dexia group website: http://www.dexia.com/FR/Journaliste/communiqués_de_presse/Pages/Entree-en-negociation-exclusive-pour-la-cession-de-Dexia-Banque-Internationale-a-Luxembourg.aspx
- (14) [OJ C 137, 12.5.2012, p. 19](#).
- (15) Decision of 3 April 2012 in Case SA.34440 Sale of Dexia BIL, [OJ C 137, 12.5.2012, p. 19](#).
- (16) Confidential information [...].
- (17) *Équité du prix de cession de BIL à Precision Capital/Éléments préliminaires en l'état actuel des négociations* dated 10 December 2011.
- (18) (i) The discounted cash flows to equity method on the basis of the cash flow distributable to shareholders, subject to compliance with the core tier 1 regulatory ratios. (ii) The price to book ratio method, on the basis of excess profitability in relation to the cost of capital. (iii) The comparable listed companies method.
- (19) *Équité du prix de cession de BIL à Precision Capital/Éléments préliminaires en l'état actuel des négociations* dated 10 December 2011.
- (20) See in particular the judgment of 19 October 2005 in Case T-324/00 *CDA Datentraeger Albrecht v Commission* [2005] ECR II-4309, paragraph 93: '... the Commission's argument that the scope of the recovery order in Article 2 of the contested decision is justified on the ground that the joint venture and its successors belong to a group of linked undertakings within which there are internal mechanisms for transferring assets must be rejected. It is clear from the findings set out in the contested decision that, in this case, the transfer mechanisms existing within that group were used only to the detriment of that venture and not for its benefit. It cannot therefore be claimed that, on the ground that it belonged to that group, the joint venture actually benefited from aid of which it was not the recipient.'
- (21) See in particular the judgment of 20 September 2001 in Case C-390/98 *Banks* [2001] ECR I-6117, paragraph 78: '... where a company which has benefited from aid has been sold at the market price, the purchase price reflects the consequences of the previous aid, and it is the seller of that company that keeps the benefit of the aid. In that case, the previous situation is to be restored primarily through repayment of the aid by the seller.'

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- (22) Dexia BIL, with almost 40 branches in the Grand Duchy, is the third largest bank in the Luxembourg market, and holds approximately [5-15] % of deposits, [5-15] % of loans and some [5-15] % of assets under management in the private banking sector.
- (23) Even though the board had ratified exclusive negotiations with Precision Capital on 9 and 10 October 2011, the formal period of exclusivity did not begin until 23 October 2011 with the signing of a letter of intent.
- (24) [...].
- (25) Joined Cases C-328/99 and C-399/00 [2003] ECR I-4035.
- (26) Commission Decision of 17 September 2008, State Aid N 321/2008, N 322/2008 and N 323/2008 – Greece – Sale of certain assets of Olympic Airlines/Olympic Airways Services. [OJ C 18, 23.1.2010, p. 9](#). Judgment in Joined Cases T-415/05, T-416/05 and T-423/05 *Olympic Airlines v Commission*, paragraph 135.
- (27) Commission Decision of 12 November 2008, State Aid N 510/2008. Sale of assets of the airline Alitalia, [OJ C 46, 25.2.2009, p. 6](#).
- (28) Case T-123/09 *Ryanair v Commission*, paragraphs 155 and 156, not yet reported.

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