II

(Non-legislative acts)

DECISIONS

COMMISSION DECISION

of 20 December 2011

on the State aid C 40/2009 and C 43/2008 for the restructuring of WestLB AG

(notified under document C(2011) 9395)

(Only the German text is authentic)

(Text with EEA relevance)

(2013/245/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) [1] thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments [2],

Whereas:

I. PROCEDURE

(1) By Decision of 12 May 2009 in case C 43/2008 [3] (hereinafter called "the May 2009 Decision"), the Commission conditionally approved a EUR 5 billion risk shield for WestLB AG [4] (hereinafter called "WestLB"), the Landesbank of North Rhine-Westphalia, on a portfolio of structured securities (hereinafter called "the Phoenix portfolio"), referring to a restructuring plan submitted on 30 April 2009 (hereinafter called "the April 2009 restructuring plan").

(2) On 23 September 2009, Germany notified to the Commission additional aid to WestLB in the form of a temporary risk shield for tranches of the Phoenix portfolio in the amount of EUR 6,4 billion and committed to notify a revised restructuring plan.

(3) By Decision of 7 October 2009 in case N 531/2009 [5] the Commission decided that the temporary risk shield was compatible with the internal market as rescue aid.

(4) On 10 December 2009, Germany notified a support measure for WestLB in the form of an asset transfer to the newly created Erste Abwicklungsanstalt (hereinafter called "the EAA"). That measure is hereinafter called

(1) With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the 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.

(2) OJ C 66, 17.3.2010, p. 15; OJ C 23, 25.1.2011, p. 9.

(3) Commission Decision of 12 May 2009 in case C 43/2008, *Restructuring of WestLB AG*, OJ L 345, 23.12.2009, p. 1.

(4) The WestLB group consists of WestLB AG (hereinafter called "WestLB") and affiliated companies, including Westdeutsche ImmobilienBank AG and WestLB Mellon Asset Management Holdings Limited. A considerable number of the documents supplied by Germany to the Commission, such as the restructuring plan of 30 June 2011, the *Eckpunktevereinbarung* and the commitments given by Germany, sometimes speak of and/or refer to the WestLB group. In this Decision the Commission therefore does not differentiate between WestLB AG and the WestLB group, but rather takes WestLB AG – as the holding company of its subsidiaries – as *pars pro toto*. The same approach was taken in the May 2009 Decision.

(5) Commission Decision of 7 October 2009 in case N 531/2009, *Assumption of risk for WestLB*, OJ C 305, 16.12.2009, p. 4.

"the first asset transfer". At that stage, Germany also submitted a modified restructuring plan for WestLB (hereinafter called "the December 2009 restructuring plan"). The first asset transfer replaced the measure notified on 23 September 2009 and rendered the Decision of 7 October 2009 otiose.

(5) By Decision of 22 December 2009 in case C 40/2009 [1] (hereinafter called "the December 2009 Decision"), the Commission temporarily approved the first asset transfer for a period of six months for reasons of financial stability. By the same Decision, the Commission opened a formal investigation under Article 108(2) of the Treaty on the Functioning of the European Union (TFEU) because of doubts regarding the compatibility of that measure with the internal market.

(6) In December 2009, the Commission engaged Société Générale, Bangert Research and Professor Wim Schoutens as experts to evaluate the impaired assets that WestLB had transferred to the EAA.

(7) On 1 February 2010, Germany submitted remarks on the reasoning underlying the December 2009 Decision.

(8) By Decision of 22 June 2010, in case N 249/2010 [2] (hereinafter called "the June 2010 Decision"), the Commission extended the temporary approval of the first asset transfer for reasons of financial stability until the final decision on the first asset transfer and the December 2009 restructuring plan had been taken.

(9) On 29 October 2010, the Commission provided Germany with a detailed valuation report on the assets that were the subject matter of the first asset transfer.

(10) On 5 November 2010, the Commission adopted a decision to extend the formal investigation procedure regarding the first asset transfer in case C 40/2009 [3] (hereinafter called "the November 2010 Decision"). In the November 2010 Decision the Commission expressed further doubts regarding the compatibility of the first asset transfer with the internal market.

(11) In November 2010, the German authorities submitted comments which were supplemented on 21 December 2010. The Commission received no comments from other interested parties.

(12) On 21 December 2010, the Commission decided to postpone the date by which Westdeutsche ImmobilienBank AG [4] (hereinafter called "WestImmo") had to stop writing new business [5].

(13) On 15 February 2011, Germany submitted a modified restructuring plan for WestLB (hereinafter called "the February 2011 restructuring plan").

(14) On 15 April 2011, Germany submitted to the Commission a progress report of the divestiture trustee who had been appointed pursuant to the May 2009 Decision and a new restructuring plan for WestLB (hereinafter called "the new restructuring plan").

(15) On 23 June 2011, all important details of the winding-down of WestLB and of the burden-sharing between its shareholders were agreed between Germany's Federal Agency for Financial Market Stabilisation (hereinafter called "the FMSA"), all shareholders of WestLB and the EAA (the agreement is hereinafter called "the *Eckpunktevereinbarung*") [6].

(16) On 30 June 2011, Germany transmitted a final version of the new restructuring plan based on the *Eckpunktevereinbarung* to the Commission (that final version is hereinafter called "the June 2011 restructuring plan").

(17) On 28 October 2011, Germany requested the Commission to defer until 29 February 2012 WestLB's obligation to stop new business, because the May 2009 Decision requires WestLB to cease new business as of 1 January 2012. That request was submitted on a protective basis, in the event that the May 2009 Decision has not been replaced by a new decision by 1 January 2012.

(18) On 28 October 2011, Germany submitted detailed information about a further state aid measure for WestLB, in the form of a second asset transfer to the EAA (that measure is hereinafter called "replenishment").

(1) Commission Decision of 22 December 2009 in case C 40/09 (ex-N 555/09), *Additional aid for WestLB AG related to spin-off of assets*, OJ C 66, 17.3.2010, p. 15. That Decision replaces the Decision of 7 October 2009 in case N 531/2009.

(2) Commission Decision of 22 June 2010 in case N 249/10, Prolongation of temporary authorisation of additional aid for WestLB AG related to the spin-off of assets, OJ C 230, 26.8.2010, p. 3.

(3) Commission Decision of 5 November 2010 in case C 40/2009, *WestLB Extension of Investigation*, OJ C 23, 25.1.2011, p. 9.

(4) Westdeutsche ImmobilienBank AG is WestLB's largest subsidiary and a significant provider of real estate financing in Germany.

(5) Commission Decision of 21 December 2010 in case MC 8/2009, *WestLB divestments*, not yet published.

(6) That agreement is reflected in a document called "Eckpunktevereinbarung zum Restrukturierungsplan der WestLB" signed by all shareholders, the EAA and the FMSA on 29 June 2011.

(19) On 21 November 2011, Germany submitted updated information on the June 2011 restructuring plan.

(20) On 1 December 2011, Germany submitted information on the amount of temporary short-term liquidity assistance that may be provided to WestLB up to 30 June 2012.

(21) On 8 December 2011, Germany submitted a final catalogue of commitments to the Commission.

(22) On 13 December 2011, Germany confirmed the intended take-over of an entity named Verbundbank, which will be carved out from WestLB in the context of the latter's restructuring, by Helaba Landesbank Hessen-Thüringen (hereinafter called "Helaba").

II. **FACTS**

1. *THE BENEFICIARY*

(23) The beneficiary is WestLB. WestLB is the Landesbank of North Rhine-Westphalia with registered offices in Düsseldorf. Its shareholders are the Savings Banks Association of Westphalia-Lippe (hereinafter called "SVWL"), the Savings Banks and Giro Association of the Rhineland (hereinafter called "RSGV"; SVWL and RSGV are collectively called "the savings banks associations"), the *Land* of North Rhine-Westphalia (hereinafter called "NRW") and the two regional associations of the Rhineland (hereinafter called "LVR") and Westphalia-Lippe (hereinafter called "LWL"). The Sonderfonds Finanzmarktstabilisierung (hereinafter called "SoFFin"), which is managed by the FMSA, has invested a silent participation in WestLB AG.

(24) The main financial data of WestLB are summarised in the following table:

Table 1

Main financial data of WestLB

	31.12.2008	31.12.2009	31.12.2010	30.6.2011
Balance Sheet Figures (billion EUR)				
Total assets	288,1	242,3	191,5	160,4
Equity	3,8	3,7	4,1	4,2
Bank Regulatory Capital Ratios (SolvV)				
Core capital in billion EUR	5,7	5,3	5,5	4,9
Own funds in billion EUR	8,9	7,6	7,7	7,3
Risk-weighted assets in billion EUR	88,5	83,0	48,6	45,4
Core capital ratio in %	6,4	6,4	11,4	10,7
Overall ratio in %	10,1	9,1	15,9	16,0
Employees				
Number of employees	5 957	5 214	4 712	4 622
Full-time employees	5 663	4 971	4 473	4 376

(25) WestLB serves as the central institution for the savings banks and as a link to the financial markets for the regionally operating savings banks in NRW and Brandenburg. It offers a broad range of products and services, including lending, customised structured finance, capital markets business, asset management, and transaction services to its German and international clients which include corporates, as well as institutional and public-sector clients.

(26) The focus of WestLB's business activities has changed over the years. While it was initially limited to its function of a central giro institution for the savings banks, WestLB has turned more and more into an investment bank. Since 2001, when its public mission activities were separated from its economic businesses, WestLB has been undergoing restructuring [1].

(27) More recently, large investments in structured securities, partly booked in special purpose vehicles that had not been consolidated before 2007, caused significant losses and resulted in surging capital requirements, despite the relaxation of accounting standards that was adopted as a response to the financial crisis. Therefore, Germany and WestLB's shareholders granted the Phoenix risk shield in 2008 [2] and agreed in November 2009 on the establishment of a bad bank, the EAA, to which a nominal amount of around EUR 77.5 billion of assets and capital of approximately EUR 3 billion were transferred.

[1] See the Commission Decision of 20 October 2004 on aid from Germany for Westdeutsche Landesbank - Girozentrale (WestLB), now WestLB AG, OJ L 307, 7.11.2006, p. 22, and the Commission Decision of 14 December 2007, OJ C 4, 9.1.2008, p. 1.

[2] See the Commission Decision in case NN 25/2008 of 30 April 2008, OJ C 189, 26.7.2008, p. 3.

2. *THE AID MEASURES*

a. THE FIRST SET OF MEASURES – THE RISK SHIELD FOR THE PHOENIX PORTFOLIO

(28) In 2008, WestLB transferred a portfolio of structured securities to a special purpose vehicle ("SPV") called Phoenix Light, a private limited company established under Irish law, ring-fencing securities [1] with a total nominal volume of approximately EUR 23 billion off WestLB's balance sheet. The SPV was secured by guarantees of WestLB's shareholders which were given on 8 February 2008 to cover actual payment defaults of up to EUR 5 billion (hereinafter called "the risk shield for the Phoenix portfolio") and which were approved by the May 2009 Decision [2]. The risk shield consisted of two separate guarantees:

— a guarantee covering claims against Phoenix Light of up to EUR 2 billion, for which all shareholders of WestLB are liable in proportion to their respective shareholdings,

— and a subordinated guarantee issued only by NRW, covering further claims against Phoenix Light of up to EUR 3 billion.

b. THE SECOND SET OF MEASURES – THE FIRST ASSET TRANSFER TO THE EAA

(29) On 24 November 2009, Germany and WestLB's shareholders agreed on the details of the establishment of a bad bank called Erste Abwicklungsanstalt under the German Law on the Fund for Stabilisation of the Financial Markets (Finanzmarktstabilisierungsfondsgesetz - "FMStFG") in order to ring-fence a portfolio of risk positions and non-strategic business units. WestLB's shareholders met and formally approved the necessary contractual agreements on 11 December 2009.

(30) The first asset transfer measure [3] comprised a EUR 3 billion capital injection, further guarantees from WestLB's shareholders and an asset transfer which was to take place predominantly by way of a spin-off. In addition, the EUR 5 billion Phoenix risk shield was not terminated but transferred to the EAA. If the risk shield had not been transferred, the EAA would have needed an additional EUR 5 billion of capital in order to take over the Phoenix portfolio.

i) ***The capital injection of SoFFin into WestLB***

(31) The establishment of the EAA had to be preceded by a capital injection of EUR 3 billion by SoFFin into WestLB (hereinafter called "the capital injection"). That capital injection was made in three instalments, on 23 December 2009 (EUR 672 million), 4 January 2010 (EUR 1.5 billion) and 30 April 2010 (EUR 828 million). The capital was provided in the form of a non-callable silent participation, optionally convertible into ordinary shares after 1 July 2010. According to the terms agreed upon, SoFFin may not become majority shareholder of the company.

(32) The contractual terms of the silent participation provide for a remuneration of 10 % per annum if WestLB shows a sufficient year-end profit according to HGB [4]. In the case of a year-end loss, however, no remuneration will be paid and the silent participation will participate pari passu in the losses. Since the silent participation was injected, WestLB has either been loss-making (in 2009) or posted no year-end profits (in 2010) according to HGB. As a result, no remuneration has been paid to date and the silent participation has participated in the losses with approximately EUR 1 million.

ii) ***The guarantees by the shareholders***

(33) The establishment of the EAA involves a guarantee from the WestLB's shareholders to cover further losses incurred by the transferred assets. In fact, all losses by the EAA that go beyond the transferred capital must, pursuant to the FMStFG, be covered by the shareholders of WestLB and the FMSA.

(34) To that end the shareholders of WestLB provided an explicit guarantee in the total amount of EUR 1 billion, divided between NRW (EUR 482 million), the savings banks associations (EUR 501 million), and LVR and LWL (EUR 17 million). Moreover, regarding any additional loss coverage WestLB's shareholders agreed to cap the obligation of RSGV and WLSGV for further loss compensation to an amount of EUR 4 billion. Taking into account the EUR 501 million guarantee given by the savings banks associations, the maximum loss participation of RSGV and WLSGV is therefore capped at EUR 4,5 billion. In order to raise the EUR 4 billion, RSGV and WLSGV are permitted to build up adequate reserves for that obligation over a period of

(1) The Phoenix Light portfolio essentially consists of structured securities, commercial papers, medium-term notes and income and capital notes of three investment vehicles: Greyhawk, Harrier, and Kestrel. The distribution of the EUR 23 billion portfolio by security type can be summarised as follows: EUR 11,7 billion US and European collateral debt obligations, EUR 5,5 billion commercial mortgages, EUR 4,3 billion residential mortgages, EUR 1,7 billion other. 80 % of the securities are AAA-rated, based on S&P ratings of 31 December 2007.

(2) For details see the May 2009 Decision.

(3) For details see the December 2009 Decision, OJ C 66, 17.3.2010, p. 24, which approved the measure for six months.

(4) HGB is the abbreviation for *Handelsgesetzbuch*; it is the German GAAP.

25 years. Any losses exceeding both the equity of the EAA and the guarantees given will be borne by the FMSA and NRW [1].

iii) ***The first asset transfers***

(35) The transfer of the toxic and non-strategic assets (and liabilities) took place in two steps. In a first step, securities (in particular mezzanine notes and other structured securities) with a total book value of approximately EUR 6,2 billion and liabilities with a book value of approximately EUR 5,5 billion were transferred [2] to the EAA by way of a spin-off that was recorded in the commercial register on 23 December 2009. In a second step, the remainder of the ring-fenced portfolio was spun off or synthetically transferred to the EAA on 30 April 2010 [3].

(36) The transaction was structured in such a way that WestLB benefited from retroactive effects of the transfer. The book values of the securities transferred on 23 December 2009 were determined based on the effective spin-off date of 31 December 2008/1 January 2009, while the book values of the remainder of the portfolio transferred on 30 April 2010 were determined based on the effective spin-off date of 31 December 2009/1 January 2010.

(37) The portfolio covers assets with a notional amount of EUR 77 billion (book value as of 31 December 2009 of EUR 68,117 billion [4]), containing a diverse range of lending products, plain vanilla bonds [5], structured securities and derivatives. The portfolio also includes grandfathered liabilities in the amount of EUR 22,1 billion (book value according to the "*Spaltungsvertrag*"). Three main types of assets were transferred into the EAA:

— the "*structured securities portfolio*", containing the EUR 22,9 billion "Phoenix" portfolio, the EUR 2,8 billion "European Super Senior" tranches portfolio and EUR 3,4 billion of other asset-backed securities (hereinafter called "ABS");

— the "*securities portfolio*", containing EUR 17,7 billion of bonds, some of which are hedged by credit default swaps (CDS) in so-called "negative basis trades" [6];

— the "*lending portfolio*" of loans and (off-balance-sheet) loan commitments with a total notional amount of around EUR 30,6 billion inherited from various activities and branches of WestLB.

In addition, the assets were partly swapped (an interest rate and/or currency swap being attached to the security or loan) and some outright CDS positions were transferred, constituting the derivative part of the portfolio.

(38) While some of the assets, their issuers, counterparts or submarkets could be categorised as impaired, for a significant portion that was not the case. Germany classified EUR 4,2 billion (around 6 % of all assets) as "liquid", implying they belonged to markets that are not impaired [7].

(39) At its inception, the capital of the EAA consisted of net assets totalling EUR 3,267 billion. Those assets were composed of EUR 3 billion in capital and EUR 267 million arising from an internal liability coming from credit-linked notes (CLNs) within the European Super Senior tranches portfolio.

(40) As regards the management of assets, the EAA signed a service agreement with WestLB for a period of three years. Under that agreement WestLB provides portfolio management services to the EAA whose main objective is to wind down over time the entire portfolio and to minimise risks. Initially WestLB has acted as an exclusive counterparty to the EAA for funding purposes and derivatives.

iv) ***Asset valuation***

(41) Germany valued both parts of the ring-fenced portfolio, the first part with 30 September 2009 as a reference date and the second part with 31 March 2010 as a reference

(1) That risk assumption of NRW, RSGV and WLSGV is clearly displayed and publicly communicated in the EAA's first annual report, see annual report of EAA Erste Abwicklungsanstalt, financial year 2009/2010, p. 7.
(2) In fact, different transfer paths were chosen for the designated positions, i.e. spin-off, sub-participation, guarantee and sale, in order to account for different laws, regulations and tax regimes of the respective countries and supervisory authorities. Regardless of the path chosen, the economic risk of the assets and liabilities passed from WestLB to the EAA in full.
(3) See the letter of 22 February 2010 "PEG Master COB 31 Dec 2009" with updated, modified and extended versions up until 7 May 2010.
(4) Approximately EUR 6 billion of that amount consists of EUR- and USD-denominated "mezzanine notes", which were transferred first. Germany refers to that first transfer often as the "Kleine Aida", as opposed to the remaining EUR 62 billion ("Große Aida").
(5) A so-called plain vanilla bond is a bond with no unusual features, paying a fixed rate of interest and redeemable in full on maturity.
(6) Negative Basis Trade means a position in which a trader buys a bond and buys credit default swap protection on the same issuer name, where the credit default swap spread (premium to be paid) is less than the bond spread. A negative basis is relatively rare to observe, and carries default risks against the credit protection seller.
(7) Letter from Germany of 7 May 2010.

date (for an overview see Table 2). Germany stated that the real economic value (hereinafter called "REV") of the combined portfolios was EUR 62,727 billion, which is EUR 5,389 billion lower than their combined book values [1]. That calculation was confirmed both by Blackrock [2] and by Deutsche Bundesbank [3] to be sufficiently conservative. For the quantification of the amount of state aid involved, Germany deducted from the REV shortfall (EUR 5,389 billion) the EAA's initial capitalisation [4] (EUR 3,267 billion, that amount being the difference between book values of assets and liabilities) and thereby arrived at the amount of EUR 2,123 billion as the net difference between the transfer value and the REV.

(42) Like Germany, the Commission focused on the net difference between transfer values and REVs of assets and liabilities transferred (hereinafter called the "transfer delta") for its calculation of the amount of state aid involved.

(43) The Commission reviewed the valuation submitted by Germany, making use of external experts, namely Société Générale, Bangert Research and Professor Wim Schoutens. The outcome of that review, which is described in detail in the November 2010 Decision [5], led to the conclusion that, when adopting a prudent view, the transfer delta is EUR 1,606 billion higher than that stated by Germany (EUR 5,389 billion). In other words the REV is EUR 6,949 billion below the transfer value [6]. The experts found, mainly at the sub-portfolio level, differences in the REV assessment of certain bonds (for the entire securities portfolio about EUR 600 million) due to a diverging assessment as to the impairment of those markets. For instance, contrary to WestLB, the experts considered several vanilla bond markets to be functioning markets so that the market value was considered to be the REV. Secondly, differences were found regarding the loans WestLB had transferred (in the entire lending portfolio of EUR 1 billion), on the basis of serious discrepancies in its loss-given-default (LGD) assessment. Large differences were also found in certain sub-categories of the structured securities portfolio but their net effect seemed to even out.

(44) Germany further submitted potential mitigating factors and arguments to show that the transfer delta was less than zero.

The following Table taken from the November 2010 Decision summarises the findings per sub-portfolio.

Table 2

Findings regarding the first asset transfer as indicated in the November 2010 Decision

				Germany's Position		Commission's Position
Portfolio of Assets being transferred		Dec Book Value (TV)	WestLB Dec REV "inferred"	WestLB Dec REV - TV "inferred"	EU expert Dec REV estimate	EU expert Dec REV-TV estimate
Structured Securities' Portfolio	Phoenix	22 764	20 323	(2 441)	19 786	(2 978)
	European Super Seniors	2 918	1 751	(1 167)	2 276	(642)
	Other ABS	3 188	3 182	(6)	3 178	(10)
Securities' Portfolio	Bonds	16 501	16 323	(178)	15 762	(739)
	Banque D'Orsay Portfolio	2 749	2 733	(16)	2 770	21
	CDS & Derivatives	(65)	(45)	20	(102)	(37)

[1] Letter from Germany of 8 July 2010.
[2] Interim Reports by Blackrock and the "Finale Version inklusive aller Hauptportfolio Aktiva" by Blackrock dated 12 May 2010, received by the Commission on 18 May 2010.
[3] Letter from Germany of 16 June 2010.
[4] According to Germany's comment submitted on 22 December 2010, the EAA's initial seed capital in cash amounted to only EUR 100 000. The majority of equity resulted from the split-off.
[5] The experts have elaborated at length their methodology to arrive at an REV for each of the assets in their final report. For a detailed description of all findings see the Commission Decision of 5 November 2010 in case C 40/2009, *WestLB Extension of Investigation*, OJ C 23, 25.1.2011, p. 16, recitals 37 et seq.
[6] For certain sub-portfolios, such as the European Super Senior ABS tranches, the Commission's experts took a less conservative view than WestLB itself. If they had always used WestLB's own assessment as the maximum value, the total difference would have been EUR 573 million higher.

				Germany's Position		Commission's Position
Portfolio of Assets being transferred		Dec Book Value (TV)	WestLB Dec REV "inferred"	WestLB Dec REV - TV "inferred"	EU expert Dec REV estimate	EU expert Dec REV-TV estimate
Lending Products	Drawn Positions	20 061	18 666	(1 395)	17 807	(2 254)
	Undrawn Commitments	—	(205)	(205)	(310)	(310)
Total		68 116	62 727	(5 389)	61 167	(6 949)
Source		22-Feb-10	8-Jul-10	8-Jul-10	23-Sep-10	23-Sep-10
Mitigation factors						
Capital of the EAA (difference between transfer values of assets and liabilities)				3 267		3 267
Transfer of Grandfathered Liabilities				882		not applicable
Future cash flows of transferred portfolio				880		not applicable
Transfer of Credit Linked Notes				268		268
Adjustment for undrawn committed lines				205		not applicable
Adjustment for discounting expected losses				75		not applicable
Total "Transfer Delta" = Transfer Price - REV - Mitigation				**– 188**		**3 414**

c. THE THIRD SET OF MEASURES – THE LIQUIDATION MEASURES

(45) The June 2011 restructuring plan sets out an orderly winding down of WestLB for which a number of additional support measures will be required. Germany envisages the transfer of the remaining assets and liabilities of WestLB to the EAA; the replacement of capital, assumption of operating costs and liquidation costs for WestLB or its renamed successor (hereinafter called "SPM bank") as the case may be; and appropriate measures to ensure liquidity during the transformation phase.

i) ***The second asset transfer to the EAA***

(46) The June 2011 restructuring plan provides for an additional transfer of all remaining assets and liabilities, including risk-bearing off-balance sheet items and derivatives, from WestLB to the EAA (hereinafter called the "second asset transfer"). All those assets and liabilities of WestLB that have neither been sold to third parties nor became part of the Verbundbank will be taken over by the EAA by 30 June 2012 [1]. After the transfer WestLB will no longer hold banking assets at its own risk (except for investments related to SPM bank's equity.

(47) The overall portfolio has been discussed with the Commission and thereafter been submitted by the Germany on the basis of detailed figures, which can be summarised as follows:

Table 3

Findings regarding the second asset transfer (billion EUR)

Portfolio [1]	HGB book value	Portfolio market values	Difference
Assets	[120-150] (*)	[120-150]	[0,8-1,3]
Liabilities	[120-150]	[120-150]	[0,2-0,5]
Total			**[1,0-1,8]**

[1] Including Verbundbank assets and liabilities. The values take hedge accounting effects according to HGB into account.
(*) Confidential information

(48) As regards the market values of the assets and liabilities which will be the subject matter of the second asset transfer to the EAA, Germany has stated that their respective market values, if assessed on an individual basis, are higher than those indicated in Table 3. Germany has in particular set out that the individual market values of the assets added up to EUR [120-150] billion, and those of the liabilities to EUR [120-150] billion. Germany argues that WestLB's remaining

[1] The technical part of the transfer may take place after 30 June 2012. The replenishment will be based on the principles set out in applicable legal framework in the FMStFG, which allows for such subsequent replenishment of the EAA. In order for the FMSA to authorise a replenishment there must be, among other things, disclosure of all risks inherent to the assets and liabilities and a detailed wind-up plan for the transferred assets. The portfolios for the Verbundbank and the second asset transfer to the EAA will be ultimately disclosed in the half-year financial statements of WestLB on 30 June 2012 and will be legally or at least economically transferred immediately thereafter.

portfolio has already been cleaned by the first asset transfer and only contains assets that are priced at recoverable values. In particular, Germany confirmed that the portfolio only contains securities and derivatives that were priced at their respective market values or loans and other financial instruments for which no established markets exist and that were hence priced on a Discounted Cash Flow method. The portfolio contains only a very limited amount of assets (less than EUR 1 billion) that would classify as international public finance or international sovereigns.

(49) However, after discussion with the Commission Germany submitted that for some parts of the portfolio, i.e. the loan portfolio and similar illiquid assets of approximately EUR [40-70] billion, a portfolio effect has to be taken into consideration, in view of the sheer size of the overall portfolio. If WestLB actually had to sell the whole portfolio on the market before 30 June 2012, excessive supply would push down the individual market values. In that case, based on the information received, Germany submitted that the portfolio market values should be calculated by discounting the individual market values by [2-5]%.

(50) According to the June 2011 restructuring plan, the second asset transfer to the EAA may include assets from WestImmo, which will transfer assets to the EAA in order to improve its own marketability. WestImmo will continue only business that is eligible for German covered bonds (*Pfandbriefe*) under the name "Pfandbriefbank" (that being a preliminary working title). In order to implement that concept, a large part of WestImmo's asset and liabilities may be carved out and transferred to the EAA in the first half of 2012. The carve-out portfolio will amount to approximately EUR [5-10] billion, including – on a sub-portfolio level – an unsecured commercial real estate portfolio, a portfolio with assets in Japan, and a bond and retail mortgage loan portfolio of EUR [2-4] billion that has already been transferred to the EAA synthetically in the context of the first transfer and is currently used as collateral in the covered bonds pool. After the transfer WestImmo will be a much smaller bank holding assets of approximately EUR [16-23] billion at inception. If WestImmo cannot be sold by 30 June 2012 those remaining assets will also be transferred to the EAA. They have therefore to be considered in addition to the amount identified in recital 51.

(51) In detail, the carve-out portfolio which has been discussed with the Commission and thereafter been submitted by Germany on the basis of detailed figures, can be summarised as follows.

Table 4

Valuation of WestImmo assets of the carve-out portfolio (billion EUR)

Portfolio	HGB book values	Market values	Difference
International Real Est.	[3,5-4,0]	[3,0-4,0]	[0,1-0,4]
German Real Estate	[1,1-1,6]	[1,1-1,6]	[0,01-0,05]
FI Portfolio	[0,7-1,3]	[0,5-1,25]	[0,1-0,3]
Total	**[5,3-6,9]**	**[4,6-6,85]**	**[[0,3-0,8]**

(52) Germany submitted a detailed explanation of why the valuation of the assets in the WestImmo carve-out portfolio should be considered to be sufficiently prudent. It claimed that 1) about one third of the portfolio consists of short-term positions; 2) the underlying collaterals structure is solid; and 3) the collateral valuation has been recent.

(53) Moreover, WestLB intends to sell the WestImmo Pfandbriefbank before 30 June 2012. However, if that proposed sale does not occur, the complete assets and liabilities of WestImmo would need to be transferred to the EAA. The estimated risk-adjusted book value (including the carve-out portfolio) is EUR [20-26] billion as of June 2011. That portfolio consists mainly of commercial real estate and retail mortgages. Germany submits that large parts of the initial portfolio has already been covered by the selection procedure for the first asset transfer so that the remaining part is clean and thus has a market value equal to the book value. Moreover, the commercial real estate portfolio is mainly used for issuing covered bonds and thus has a market value that is sufficient to match the transfer value.

(54) Finally, Germany submits that for the transfer of the WestImmo assets and the second transfer of assets from WestLB, their REV should be equal to their transfer values.

ii) ***The additional capital instrument for SPM bank***

(55) Pursuant to the *Eckpunktevereinbarung* NRW will take full ownership of and responsibility for WestLB as of 30 June 2012. Because WestLB will pay back to SoFFin EUR 1 billion of SoFFin's silent participation in WestLB in the course of the restructuring, that part of the capital will need to be replaced. NRW has committed to provide

an additional capital instrument in line with the *Eckpunktevereinbarung* [1] in the amount of EUR 1 billion for that purpose (hereinafter called "the additional capital instrument for SPM bank").

iii) ***Assumption of further operating costs and liquidation costs of SPM bank***

(56) The June 2011 restructuring plan sets out two different business cases for WestLB/SPM bank, one for a scenario that is described as base case, the other for a scenario that is described as bad case. The base case estimates that overall losses for operating and liquidating SPM bank over a five-year period (*Transformationskosten*), including the assumption of pension liabilities, will amount to EUR [3-6] billion. The bad case, which is based on different assumptions regarding staff reductions, the amount of depreciation required on buildings and IT investments, pension liabilities, and other exit costs, estimates that total losses over the five-year period will amount to EUR [4-7] billion. NRW takes full ownership of and responsibility for WestLB. Both the base case and the bad case scenario imply that the EUR 1 billion capital instrument provided by NRW will be consumed. In the bad case scenario NRW would have to provide additional funds, in line with the *Eckpunktevereinbarung*.

iv) ***Commitment to provide liquidity support during the restructuring period***

(57) The June 2011 restructuring plans also sets out that current liquidity is to be maintained during the restructuring period by the savings banks, NRW and the EAA. If additional liquidity support is necessary during the restructuring period until 30 June 2012, WestLB, its shareholders, and the EAA will in line with the *Eckpunktevereinbarung* agree upon suitable measures for the provision of liquidity during the transformation phase. According to information submitted by Germany on 1 December 2011, the use of the additional liquidity assistance […] in the case of a stress scenario.

3. *RESTRUCTURING PLANS*

a. INTRODUCTION

(58) Germany has submitted several restructuring plans to the Commission that have dealt with different state aid measures and different restructuring concepts. A first set of documents, which covered only the EUR 5 billion risk shield, resulted in the April 2009 restructuring plan [2].

(59) The two key elements of the April 2009 restructuring plan [3] were a reduction of the balance sheet of WestLB from EUR 250 billion to EUR 125 billion (including the divesture of several assets such as WestImmo) and the refocusing and de-risking of all activities, followed by a sale of WestLB in an open, transparent and non-discriminatory tendering procedure. If such a sale was not achieved, WestLB would have to stop new business after 2011. Although WestLB's shareholders mandated a divestiture trustee as well as an investment bank with the sales process and publically launched a tender for WestLB on 30 September 2010, the tender procedure did not result in offers that WestLB's shareholders considered acceptable from an economic point of view.

(60) New restructuring plans were submitted in December 2009 [4] and February 2011. The February 2011 restructuring plan indicated a further downsizing of the bank to a balance sheet of about EUR 80 billion but no claw back payments. A final restructuring plan was notified in June 2011. Germany has explicitly confirmed that the February 2011 restructuring plan has been withdrawn. In the present Decision only the June 2011 restructuring plan will therefore be examined.

b. THE JUNE 2011 RESTRUCTURING PLAN

(61) The June 2011 restructuring plan is based on four key elements:

(a) in the course of 2011 and before 30 June 2012 at the latest, the so-called Verbundbank activities – i.e. those business activities that are focused on cooperation with the regional savings banks – will be carved out in order to accommodate the resulting Verbundbank in the network of the savings banks. Helaba has indicated its willingness to take over the Verbundbank;

(b) sales efforts for all other parts of WestLB will be continued as long as a sales agreement is possible before 30 June 2012;

[1] "Das Land NRW tritt im Gegenzug mit EUR 1 Mrd. zusätzlicher und möglichst nachrangiger Haftung in die WestLB ein. Die zusätzliche Haftung des Landes NRW entsteht an derjenigen Rangstelle in der SPM Bank, die mindestens erforderlich ist, um die aufsichtsrechtlichen Anforderungen in der SPM Bank mit Blick auf die Teilrückzahlung der Stillen Einlage des FMS zu erfüllen."

[2] For details see the Commission Decision of 12 May 2009 in case C 43/2008, *Restructuring of WestLB AG*, OJ L 345, 23.12.2009, recitals 28 to 43.

[3] See the Commission Decision of 12 May 2009 in case C 43/2008, *Restructuring of WestLB AG*, OJ L 345, 23.12.2009, recitals 34 et seq.

[4] For details see the Commission Decision of 5 November 2010 in case C 40/2009, *WestLB Extension of Investigation*, OJ C 23, 25.1.2011, recitals 55 et seq.

(c) on 30 June 2012 the EEA will take over those portfolios which have not been assigned to the Verbundbank, have not been taken over by the members of the savings banks finance group and have not been sold by 30 June 2012 by WestLB to third parties, and after 30 June 2012 WestLB will not engage in new banking business (except for business in connection with asset management) and will be transformed into a servicing platform including a run-down vehicle that holds legacy positions commercially transferred to or hedged by the EAA, that deals with redundancies, and provides asset management services (called SPM bank);

(d) a part of SPM bank (hereinafter called "the servicing company") that provides asset management services to the EAA, the Verbundbank and third parties will be hived off.

(62) The plan can roughly be summarised as follows:

Table 5

Basic structure targeted by the June 2011 restructuring plan

Current structure < 30 June 2011	Target structure > 30 June 2012
WestLB Balance sheet size: EUR 160 billion RWA: 88,5 billion (in 2008, see table 1) Equity: EUR 4 billion Employees: 4 400 shareholder: NRW 48 %, regions 2 %, Savings banks: 50 %	**SPM bank holding** Balance sheet size: tbc (assets synthetically transferred to EAA) RWA: < 1 billion Employees: 4 400, < 400 in 2016 either in holding or operating company Equity: […] Shareholder: NRW 100 %
WestImmo and other subsidiaries of WestLB	➔ **Subsidiary = SPM operating company** Balance sheet size: tbc (assets synthetically transferred to EAA) Employees: see holding
	➔ **Subsidiary = SPM servicing company** Balance sheet size: EUR < 1 billion Employees: max 1 000 in 2016 To be sold by 2016
	Transfer of the Verbundbank to Helaba Balance sheet size: EUR 40-45 billion Equity: EUR 1 billion by savings banks Employees: ~ 400 shareholder: transfer to Helaba
	Sale of assets by 30 June 2012 In particular WestImmo (Pfandbriefbank) Balance sheet size WestImmo: EUR [16-23] billion
EAA – bad bank as of April 2010 Nominal volume: EUR 77,5 billion (October 2011: 53) Equity: EUR 3 billion Stakeholders: NRW 48 %, regions 2 %, savings banks associations 50 %	**EAA (replenished) – the bad bank** Balance sheet size: ~ EUR [100-250] billion Equity: Equity as of 06/2012 plus additional capital for the loss-free round-down of the assets transferred on 30.6.2012 Stakeholders: NRW 48 %, regions 2 %, savings banks associations 50 %

i) ***Verbundbank***

(63) The Verbundbank business activities will be carved out to form an entity that is merged with another bank. During the procedure leading to the adoption of the present Decision, the savings banks have given up their earlier intention to establish a new bank on a stand-alone basis. The Verbundbank will act as a service provider and central bank to saving banks in NRW and Brandenburg, and employ approximately 400 former employees of WestLB. It may for a transitional period contract some services provided by WestLB/SPM bank.

(64) The Verbundbank will have a low risk business model. It will offer services and products to the savings banks and their clients, to medium-sized corporates, and to public entities and institutional clients. Its products will mainly comprise corporate finance and plain vanilla capital market activities. Amongst the key financial figures of the Verbundbank are risk-weighted assets in the amount of EUR 8,3 billion and a balance sheet total in the range of EUR 40 to EUR 45 billion. At inception the Verbundbank will be equipped with capital of EUR 1 billion in order to have a regulatory equity ratio of 12 %. The capital will be provided by the savings banks associations in NRW (50 %) and the savings banks association at national level (DSGV – 50 %) ([1]). Its liabilities will consist of deposits by savings banks, bonds and covered bonds as well as deposits from institutional investors. The major part of the funding will be provided through members of the savings banks finance group.

(65) After submission of the June 2011 restructuring plan Landesbank Helaba indicated its readiness to take over the Verbundbank activities. On 12 December 2011 Helaba in principle concluded positively on a due diligence of a selected portfolio of assets and liabilities from WestLB and reiterated its willingness to take over the Verbundbank by mandating its executive board to enter into concrete negotiations on the integration of Verbundbank business ([2]). An integration of the Verbundbank into either Helaba or the savings banks sector was organised by the savings banks associations after it had become evident that the profitability of the Verbundbank – if run on a stand-alone basis – could be expected to be rather low, with a return on equity ranging from [2.0-3.0]% to [4.0-5.0]%. Reduced overhead costs and synergies stemming from the integration of the Verbundbank activities into Helaba or the savings banks sector would improve the expected profitability and bring it to an acceptable level.

([1]) If the Verbundbank is taken over by Helaba, the savings banks associations will thus become shareholders in Helaba.

([2]) Joint press release of 12.12.2011 by the State of Hessen, the State of Thuringia and the savings banks association of Hessen and Thuringia "Board of owners gives the green light".

ii) ***Sale or transfer of assets***

(66) As regards those parts of WestLB that do not qualify for the Verbundbank carve-out, the June 2011 restructuring plan sets out that as many parts as possible will be sold by 30 June 2012 (signing of the contracts). That process has been synchronised with the ongoing sales activities which had already been initiated to comply with the conditions of the May 2009 Decision. […].

(67) WestLB put up for sale larger entities such as the Corporates & Structured Finance and Capital Markets divisions which are WestLB's key revenue drivers, including smaller entities such as the Corporates, Structured Finance, Equity Markets, Debt Markets and Custodian Services business units, which can all be bought along with their respective electronic data processing systems and infrastructure, if required.

(68) WestLB will evaluate offers based on a range of criteria, including the sales price and respective adjustment clauses, the effects of a sale on WestLB's balance sheet and profit & loss statement, the soundness of the offers as regards, for example, financing concepts and transaction experience of the buyer, legal aspects of a transaction, and the replenishment of the EAA.

(69) On 30 June 2012 all of WestLB's assets and liabilities that have not yet been sold or have not been transferred to the Verbundbank will be transferred to the EAA. The applicable legal framework ([3]) allows for a subsequent replenishment of the EAA, provided that – among other things – sufficient equity is available, all inherent risks of the assets are disclosed and a detailed wind-down plan has been submitted.

(70) The transfer methods for the second asset transfer will follow those which were already applied in December 2009 and April 2010 when the first two tranches of WestLB's first asset transfer were transferred to the EAA. Again, the split-off will be the preferred transfer method, and only if other appropriate transfer methods such as sale or sub-participation are not legally or technically possible or entail commercially unreasonable risks will a physical transfer be replaced by a synthetic transfer of underlying risks.

(71) The aim of the transfer is to ensure that WestLB or SPM bank, as the case may be, will not engage in new banking

([3]) FMStFG §8a.

business (except for business written in connection with its servicing activities) and will no longer be exposed to any credit or market risk on own account to be covered by a regulatory minimum of equity on the basis of the currently applicable regulatory framework ([1]).

(72) As regards the valuation of assets and liabilities, the transfer will take place at risk-adequate book values, meaning […].

iii) ***SPM bank***

(73) After 30 June 2012 WestLB will not engage in new banking business (except for business written in connection with its servicing activities) and will give up its brand name WestLB and be rebranded SPM bank (preliminary working title). WestLB will be transformed into a unit which for winding down purposes holds legacy positions commercially transferred to the EAA and takes care of the remaining staff, and a servicing platform which will only provide asset management services.

(74) […].

(75) Essentially SPM bank will become a holding company (hereinafter called "SPM bank holding") that is planned to have two subsidiaries, SPM Betriebsgesellschaft and SPM Servicegesellschaft, a servicing company (hereinafter called "the servicing company").

(76) Assets that can not be physically transferred to the EAA for tax, legal or regulatory reasons will only be synthetically transferred. Such assets will be held on the balance sheets of SPM bank holding or of SPM Betriebsgesellschaft, but not of SPM Servicegesellschaft.

(77) After completion of the replenishment, WestLB or SPM bank, as the case may be, will not hold any risk-weighted assets for credit and market risks ([2]) and only a comparatively small amount of risk-weighted assets in order to cover regulatory capital requirements for purely operational risks (less than EUR 1 billion, if calculated on a Basic Indicator Approach) ([3]).

(78) SPM Betriebsgesellschaft will hold the remaining pension obligations towards WestLB's current and former employees. The main task of SPM holding/SPM Betriebsgesellschaft will be to reduce staff from the current level of approximately 4 400 employees to 1 400 in 2016, of which 1 000 will be in the servicing company, and to shut down dispensable locations and systems. SPM Betriebsgesellschaft will provide only basic non-core services, e.g. maintenance of buildings and offices.

(79) The servicing company will be spun off between 1 January 2012 and 31 December 2014 to provide asset management services for WestLB's remaining assets and liabilities. The fact that portfolios of assets have been transferred to the EAA (and the Verbundbank) creates a need for asset management services, as neither the EAA nor the Verbundbank can carry out the servicing of the portfolios on their own. The servicing company will offer those services to the EAA (and the Verbundbank) at usual commercial rates. All limitations on the business model of the servicing company (see also recitals 80 to 85) will end after the sale of the servicing company.

(80) SPM holding or its subsidiaries will hold all banking licences that are still required for their activities. Germany commits that the scope and the number of banking licences is, however, restricted to the minimum necessary for the provision of asset management services.

(81) Significant parts of the EAA portfolios are and will have to remain booked in overseas branches. As of 31 October 2011, WestLB had exposures in New York of approximately EUR [5-15] billion, in London of approximately EUR [15-25] billion, and in Asia of approximately EUR [5-10] billion. A physical transfer to the EAA of those portfolios was in the context of the first asset transfer for tax, legal or regulatory reasons either not possible or economically unreasonable and therefore could only happen synthetically. Those assets will be held by SPM holding or SPM Betriebsgesellschaft, partly in overseas branches or subsidiaries. Germany explains that overseas branches or subsidiaries cannot immediately be closed, but commits that SPM holding or SPM Betriebsgesellschaft will close all oversees branches or subsidiaries before the end of 2016, unless the closure is prevented by reasons of bank regulatory requirements.

(82) Moreover, the servicing company will need to adequately service those portfolios. In order to preserve know-how for asset management, the servicing company will run a branch in New York, in London, and in one location in Asia. Approximately one-third of the employees expected to work for the servicing company will work in one of the overseas branches. The Commission thus understands that after a sale of the servicing company, SPM bank will

([1]) The scenario ignores potential risk-weighted assets under Basel II.5 and Basel III.

([2]) The scenario ignores potential risk weighted assets under Basel II.5 and Basel III.

([3]) The requirement to hold risk-weighted assets in order to cover regulatory capital requirements for purely operational risks is laid down in the Solvabilitätsverordnung. The coverage for operational risks cannot be transferred to another entity. WestLB currently makes use of an Advanced Measurement Approach (AMA) in order to calculate the required amount of RWAs for its operational risks; due to the fundamental differences between the business model of WestLB and that of SPM bank, it is intended to change the calculation method from a sophisticated AMA approach back to a Basic Indicator Approach, which, however, needs to be approved by the regulatory supervisor.

after 2016 no longer have any overseas branches or subsidiaries, unless individual closures are prevented by reasons of bank regulatory requirements.

(83) The servicing company will not only to be spun off but will also be sold subsequently, by 2016 at the latest. In order to facilitate the sale of the servicing company, SPM bank may during the period from 2012 and 2014 enter into contracts for the provision of asset management services for portfolios of third parties, i.e. portfolios that are not related to former portfolios of WestLB. The proceeds from those activities, however, must not exceed [40-60]% of the total gross revenues of the servicing company. That limitation will end after the sale of the servicing company.

(84) The servicing company is expected to generate a moderate return on sales of approximately [8-12]% which should be just sufficient to enable its marketability [1]. The profit-and-loss calculation on which the profitability of the servicing company was assessed points out that until 2016 significant cost cuttings have to be achieved [2].

(85) If, however, SPM bank does not sell the servicing company by 31 December 2016, Germany commits that the servicing company will be wound down. In that case all existing contractual obligations will be terminated by 31 December 2017, which is the final date for the phase-out period of the servicing company (if not sold).

4. *COMMITMENTS BY GERMANY*

(86) In addition to the June 2011 restructuring plan Germany has submitted a catalogue of commitments (see the Annex to the present Decision), which can be summarised as follows:

a) BRAND NAME

— As regards the brand name WestLB, Germany commits that the brand name WestLB will no longer be used after 30 June 2012 (a three-month grace period may apply if it proves necessary for technical reasons).

b) VERBUNDBANK

— Germany commits that the Verbundbank's business activities are restricted to what has been listed in the June 2011 restructuring plan until 31 December 2016, unless the Verbundbank is merged with another Landesbank before 31 December 2016.

— Germany commits that NRW will in future not buy any shares of the Verbundbank or provide any other form of financial support to it.

— Germany commits that a stand-alone spin-off of the Verbundbank will no longer be pursued and that the Verbundbank's assets and liabilities will be taken over by the savings banks sector before 30 June 2012.

— Germany commits that all parties will implement the obligations resulting from the *Eckpunktevereinbarung* without modification or delay, so that, based particularly on the subject of the transaction and the assessment that the entity has a company value of zero, sufficient transaction security is ensured and the disposal of the Verbundbank takes place by 30 June 2012t.

— Germany commits that Landesbank Hessen-Thüringen (Helaba) intends, in the event of a favourable outcome to the due diligence, to be available to take over the Verbundbank

c) SPM BANK

— Germany commits that SPM bank will limit its activities to the following services:

i) Servicing of portfolios of the EAA, the Verbundbank and third parties, if needed, including workout management, clearing of securities, processing and utilization, credit evaluation, credit management and credit surveillance, credit risk controlling, regulatory reporting, management of collaterals of corporates including the respective data management, management of market risks, IT and back-office services, funding, hedging, cash-management, financial reporting, controlling, compliance, and management of participations.

ii) In the case of assets that have been transferred synthetically to the EAA, the EEA can as part of its winding down strategy also carry out, in particular, extensions, sales or securitisations of such assets; in these cases SPM bank will operate only on behalf and by order of the EAA [3].

[1] According to the information that Germany provided on 21 November 2011.

[2] In particular […] has to be adjusted in order to achieve the required competitiveness.

[3] The Commission understands that point (a) will be performed by the servicing company while SPM bank will serve as a holder and counterparty for the assets of the EAA that have only been synthetically transferred.

— Germany has provided a description of required banking licences and a commitment that all other banking licences will be returned by 31 December 2012.

— Germany commits that in SPM bank the workforce will be reduced from the current level of 4 400 to 1 000 in the servicing company in 2016. Indicative numbers have been given for the targeted staff counts in the course of that reduction.

— Germany commits that SPM bank will respect certain conditions when it offers services to third parties. The volume of third party business must not exceed [40-60]% of its total gross revenues. Third party contracts will only be provided by a separate entity (the servicing company that will have to be carved out) which will hold a banking licence limited to the minimum required.

— Germany commits that the servicing company will be sold by 31 December 2016. Third party contracts with maturities that extend beyond 2017 are permitted if the contract provides the client with a termination right for capacity reasons (with effect as of 31 December 2017).

— If the sale of the servicing company does not take place by the due date, Germany will ensure that with effect from 31 December 2017 all activities of the servicing company will be stopped or transferred. If the sale of the servicing company is successful all limitations on the business activities of the servicing company will be lifted.

— Germany commits that the following services will, in particular, not be provided by SPM bank: proprietary trading, emission of certificates of all kinds, project finance and trade financing, asset-based finance, securitisations and syndicated loans, and international corporate banking. For synthetically transferred assets guaranteed by the EAA, SPM bank is the lender of record, which may require SPM bank to extend loans, to sell loans or perform securitisations, but it may only do so if those actions are requested by the EAA.

— Germany commits that SPM bank will offer its asset management services only at fair market prices, and that the rates offered will be sufficient to cover the full costs of the servicing company.

— Germany commits that SPM bank will after 2016 no longer have any overseas branches or subsidiaries, unless individual closures are prevented by reasons of bank regulatory requirements. However, the servicing company may have one overseas branch in London, one in New York and a third in Asia in order to have local expertise at its disposal, to cover time zones, to reduce operational risks and to be capable of competing.

— Germany commits that SPM bank will be part of the monitoring by a trustee.

d) EAA

— Germany commits that, after an extension and prolongation of the EAA service contract until 31 December 2016, the EEA will procure its required asset management services in line with the commitment on commercial pricing and by way of a public tender.

e) MONITORING

— Germany commits to supply detailed quarterly reports to the Commission on the measures taken on the basis of an understanding reached between the Commission and Germany on 16 December 2011.

III. OPENING OF THE FORMAL INVESTIGATION UNDER ARTICLE 108(2) TFEU

1. *THE DECEMBER 2009 DECISION*

(87) With the December 2009 Decision, the Commission had raised doubts under Article 108(2) TFEU regarding the compatibility of the asset relief measures examined in that decision with the communication from the Commission on the treatment of impaired assets in the Community banking sector [1] (hereinafter called "the Impaired Assets Communication"). Moreover, in the Commission's opinion, the restoration of viability, adequate burden-sharing and the mitigation of distortion of competition caused by the (additional) aid had not been convincingly demonstrated in line with the Commission communication on the return to viability and the assessment of the restructuring measures in the financial sector in the current crisis under the State aid rules [2] (hereinafter called "the Restructuring Communication").

(88) The Commission indicated that it was not only investigating the new aid stemming from the transfer of assets into the EAA but also had to reconsider the aid authorised under the May 2009 Decision [3].

[1] OJ C 72, 26.3.2009, p. 1.
[2] OJ C 195, 19.8.2009, p. 9.
[3] See the Commission Decision of 22 December 2009 in case C 40/09 (ex-N 555/09), *Additional aid for WestLB AG related to spin-off of assets*, OJ C 66, 17.3.2010, p. 15, recital 71.

(89) The Commission also indicated doubts regarding an adequate own contribution of the savings banks, considering that the savings banks' obligations stemming from the asset relief measure were capped and that the capital necessary to establish the EAA was raised only from Germany but not from the savings banks [1].

(90) Germany was required to provide a revised restructuring plan taking into account the full amount of state aid granted, comprising adequate remuneration and additional in-depth restructuring.

2. *THE NOVEMBER 2010 DECISION*

(91) By the November 2010 Decision the Commission extended the procedure because of increased doubts regarding the compatibility of the first asset transfer with the Impaired Assets Communication and the compatibility of the December 2009 restructuring plan, which failed to demonstrate that it is apt to restore the viability of the beneficiary as well as to ensure adequate burden-sharing and mitigate the distortions of competition caused by the aid.

(92) In particular regarding the first asset transfer the Commission raised doubts regarding the eligibility of the impaired assets. It concluded on the existence of state aid and the amount of aid and assessed the amounts as being such that the aid would be incompatible with the Impaired Assets Communication if not clawed back or made up through additional restructuring pursuant to point 41 of the Impaired Assets Communication.

(93) In the November 2010 Decision, the Commission considered the aid amount attributable to the first asset transfer to be around EUR 6,9 billion, as established by its experts. That amount is calculated as the difference between the transfer value and the market value of the assets (around EUR 11 billion) [2], corrected by the initial equity provided to the EAA (around EUR 3,3 billion) [3], by the book values of certain credit-linked notes (around EUR 0,3 billion) [4], and by a deduction for the transfer of grandfathered liabilities (around EUR 0,9 billion) [5].

(94) The Commission further endorsed the transfer delta as found by its experts, i.e., the net difference between transfer values and REVs of assets and liabilities. It considered that the transfer delta amounts to EUR 3.4 billion, once equity and credit factors are corrected for [6]. Regarding the securities portfolio the Commission noted that in order to find the claimed asset classes to be impaired [7], further evidence would have been needed to conclude that markets for those assets would indeed have been dysfunctional, in absence of any buyers and sellers. Moreover, on the basis of its decision-making practice it agreed with the experts that the discount factors that WestLB had applied to establish the REV were too low, resulting in an excessively high end result for the REV. The Commission further concurred with the experts' finding that, due to insufficiently conservative LGD assumptions, the REV of the lending portfolio was around EUR 1,0 billion below WestLB's estimate. The Commission noted that the figures were compared at sector level in line with the Commission's decision-making practice [8]. Furthermore the Commission reconsidered other mitigating factors submitted but decided that there was no basis to take them into account for the REV assessment.

(95) Moreover, the Commission expressed doubts as to the management of the impaired assets as they were still administered by WestLB. Furthermore, the Commission deduced from the fact that the EAA had recorded a loss of EUR 1 billion shortly after its establishment that losses could have already been incurred at the date of the

(1) See the Commission Decision of 22 December 2009 in case C 40/09 (ex-N 555/09), *Additional aid for WestLB AG related to spin-off of assets*, OJ C 66, 17.3.2010, p. 15, recital 76.

(2) Commission Decision of 5 November 2010 in case C 40/2009, *WestLB Extension of Investigation*, OJ C 23, 25.1.2011, p. 9, recital 74.

(3) Commission Decision of 5 November 2010 in case C 40/2009, *WestLB Extension of Investigation*, OJ C 23, 25.1.2011, p. 9, recital 90.

(4) Commission Decision of 5 November 2010 in case C 40/2009, *WestLB Extension of Investigation*, OJ C 23, 25.1.2011, p. 9, recital 91.

(5) Commission Decision of 5 November 2010 in case C 40/2009, *WestLB Extension of Investigation*, OJ C 23, 25.1.2011, p. 9, recital 98. EUR 6,6 billion as EUR (11,0 billion – 3,3 billion – 0,3 billion – 0,9 billion), accounting for a rounding error of EUR 0,1 billion. That calculation was not made explicitly in the November 2010 Decision and the assessment of the total aid amount was not made. Since then, on the basis of the final expert report, a more accurate assessment of the transferred portfolio market value was made.

(6) Commission Decision of 5 November 2010 in case C 40/2009, *WestLB Extension of Investigation*, OJ C 23, 25.1.2011, p. 9, recital 93.

(7) "Impaired assets" is not meant in its strict accounting sense, but refers to assets belonging to a dysfunctional (impaired) market, where because of the absence of willing buyers and sellers, market prices do not relate to a long-term prudently assessed real economic value.

(8) Commission Decision of 17 December 2009 in case N422/2009, *Royal Bank of Scotland*, OJ C 119, 7.5.2010, p. 1, Commission Decisions of 26 February 2010 in case N725/2009, *NAMA*, OJ C 94, 14.4.2010, p. 10, and of 3 August 2010 in case N331/2010, *Valuation of Assets under NAMA*, OJ C 37, 5.2.2011, p. 3.

transfer. That caused doubts as to whether the relevant assets fell within the scope of point 32 of the Impaired Assets Communication.

(96) Germany was again required to provide a revised restructuring plan taking into account the additional aid granted to WestLB and dealing with the shortcomings indicated in that decision.

IV. **POSITION OF GERMANY**

(97) Germany does not dispute that the measures constitute state aid within the meaning of Article 107(1) TFEU.

1. *REGARDING THE FIRST ASSET TRANSFER TO THE EAA*

(98) Germany disputes some findings regarding the first asset transfer to the EAA.

a. APPLICABILITY OF THE IMPAIRED ASSETS COMMUNICATION

(99) First, Germany reiterates its position of 2 February 2010, claiming that the Impaired Assets Communication is not applicable to the first asset transfer to the EAA. Germany argues that WestLB is in fact carrying the burden of the impaired asset measure, as WestLB transfers equity to the EAA. Referring to the May 2009 Decision, Germany claims that, in line with footnote 8 in recital 16 of that Decision, the Impaired Assets Communication is not applicable when a measure is being carried out by public shareholders in their capacity as owners.

b. ESTABLISHING THE REAL ECONOMIC VALUE OF THE FIRST ASSET TRANSFER

(100) Second, Germany claims that the Commission made errors in assessing the transferred assets and the application of scaling factors.

(101) While it claims that the Commission's assessment was in general too conservative, it elaborates on individual points for the individual asset classes "Structured Securities", "Other Securities" and "Credit Portfolio".

(102) As regards the "Structured Credit" portfolio, Germany claims that the WestLB valuation methodology, criticised by the Commission, was considered to be acceptable by Deutsche Bundesbank. Furthermore, it pointed out that BlackRock Solutions, the company that was mandated as Germany's expert, established a higher REV for the portfolio than WestLB itself, which indicates that a sufficiently conservative approach was taken by WestLB.

(103) For the "Other Securities" portfolio, Germany claims that the main differences between the valuation assessments stem from the discussion as to whether a market value is applicable. While WestLB proffered its own (mainly liquidity-based) criteria to determine whether a market is impaired, Germany criticises the Commission's experts for having insufficiently explained their finding that almost all assets belonged to unimpaired markets. As an example, Germany refers to sovereign bonds that make up a large portion of the securities portfolio and claims that falling market prices at the end of 2009 were an indication of market impairments.

(104) For the valuation for the "Credit Portfolio", Germany states that the Commission's experts' opinion – which was drawn up without access to the detailed credit documentation – cannot be used to contradict the WestLB values. It criticises in particular a lack of transparency regarding the assessment parameters used, inherent contradictions, and an excessively conservative approach by the Commission's experts. Germany claims that the parameters used in the Committee of European Banking Supervisors (CEBS) stress tests should be applied, not those used by the Commission's experts. Germany particularly criticised one of the stress scenarios, in which the Commission's experts used a 70 % probability-of-default assumption and 30 % LGD assumption.

(105) Finally, Germany addressed the doubts on eligibility by arguing that the first EAA annual report (30 June 2010) is not an indication of existing portfolio losses. It rebuts the Commission's doubts that the expected losses in the EAA structure were underestimated, arguing that the EAA's actual risk provisioning amount is mainly driven by the Phoenix portfolio. That amount was in fact EUR [0,5-1,5] billion lower than what was budgeted in the run down plan. Therefore, the EAA's treatment of provisioning did not contradict WestLB's assessment of expected losses.

c. MITIGATING FACTORS

(106) Finally, Germany claims that the valuation of the transferred portfolios must take mitigating factors into account, in particular regarding (i) the transfer of grandfathered liabilities, (ii) future cash flows, (iii) undrawn committed lines, and (iv) discounting of expected losses.

(107) As regards grandfathered liabilities, Germany claims that by transferring such liabilities [1] to the EAA WestLB foregoes an economic advantage of EUR 882 million that needs to be taken into account.

(108) As regards future cash flows, Germany claims that, by transferring the portfolios to the EAA, WestLB foregoes future cash flows (interest payments etc.) amounting to EUR 880 million that also should be taken into account.

(109) As regards undrawn committed lines, Germany claims that a correction is necessary for the transfer of undrawn committed lines to the EAA, as their potential risks have been included in the calculation of the REV, while their potential earning power has not been included in the overall assessment.

(110) As regards discounting of expected losses, Germany claims that the valuation of the portfolios should be based on discounted expected losses, as the conflicting concept of prudence has already been sufficiently applied when the REV was calculated.

2. *REGARDING THE ADVANTAGE FOR THE SAVINGS BANKS*

(111) Germany commented on the doubts that additional illegal aid might have been provided to the savings banks as follows:

(112) First, Germany sets out that WestLB's shareholders, among whom are the savings banks, were not obliged to establish a bad bank but rather did so based on an autonomous decision.

(113) Second, Germany points out that the FMStFG does not lay down an unlimited obligation to compensate for losses. The obligation to compensate for losses is rather restricted to the equivalent amount of equity invested into the beneficiary bank. Germany claims that the FMStFG allows for a contractual allocation of the loss compensation obligation that deviates from an equity-based pro-rata allocation, in order to take different financial capacities into account.

(114) Finally Germany argues that the savings banks, having assumed the obligation to compensate for potential losses stemming from the EAA of up to EUR 4,5 billion, have taken an adequate share of the burden.

V. **ASSESSMENT OF AID TO WESTLB**

(115) The assessment of the restructuring aid to WestLB has to consider all aid granted to WestLB since 2008, as the aid granted after the May 2009 Decision has been granted for the same restructuring process that was approved under the May 2009 Decision. However, given the significant increase of aid and the changes made to the restructuring plan, a new assessment of the entire aid under the June 2011 restructuring plan is required.

1. *STATE AID WITHIN THE MEANING OF ARTICLE 107(1) TFEU*

(116) According to Article 107(1) TFEU, any aid granted by a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

(117) The qualification of a measure as state aid requires that the following conditions are met: a) it must be financed by a Member State or through state resources; b) it must grant an advantage liable to favour certain undertakings or the production of certain goods; c) the measure must distort or threaten to distort competition; and d) the measure must have the potential to affect trade between Member States.

(118) The Commission maintains its view that those conditions are met for all measures, as it will explain below, even allowing for the fact that WestLB will discontinue its banking activities, because WestLB is still conducting economic activities such as asset management services. Given that those activities are still pursued in a context of international competition, the Commission considers that those measures have the potential to distort competition and also may affect trade between Member States [2].

a. THE RISK SHIELD FOR THE PHOENIX PORTFOLIO

(119) The Commission already established in the May 2009 Decision that the risk shield constitutes state aid. Germany has clarified that the risk shield still takes effect on the equity part of the Phoenix portfolio which has been transferred to the EAA.

[1] Grandfathered liabilities, issued before 18 July 2005, continue to benefit from the statutory guarantees of *Anstaltslast* and *Gewährträgerhaftung* and hence include a refinancing advantage.

[2] Commission Decision of 29 June 2011 in cases SA.32504 (2011/N) and C 11/2010 (ex N 667/2009), *Anglo Irish Bank and Irish Nationwide Building Society*, recital 102, not yet published.

b. THE CAPITAL INJECTION

(120) The Commission already concluded in its December 2009 Decision that the capital injection of EUR 3 billion constitutes state aid within the meaning of Article 107(1) TFEU.

c. THE ADDITIONAL CAPITAL INSTRUMENT FOR SPM BANK

(121) According to the June 2011 restructuring plan NRW will issue an additional instrument in favour of SPM bank in the amount of EUR 1 billion in order to replace the part of WestLB's equity [1] that is going to be paid back to SoFFin. As the additional instrument for SPM bank is a replacement of capital it must also be fully loss absorbing, otherwise the regulator would not accept such a transaction. The new instrument must thus constitute capital as well. That capital is given by NRW and thus stems from State resources. It has the effect of covering up a capital shortage of an individual bank and amounts hence to a selective advantage to SPM bank. Given that SPM bank will be active in a sector in which undertakings from other Member State are present, that measure is likely to distort competition and to affect trade between Member States. It is thus state aid, as is confirmed by the analysis of similar capital measures [2].

d. THE ADDITIONAL LOSS COVERAGE BY NRW FOR SPM BANK

(122) According to the June 2011 restructuring plan, NRW will take over the losses for operating and liquidating SPM bank over a five-year period, as well as assume all pension liabilities. The overall losses that SPM bank will accumulate over its operating lifespan are assumed to range between EUR [3-6] billion in the base case scenario and EUR [4-7] billion in the bad case scenario. Those losses must be covered by the […]. The commitment to take over losses generated by SPM bank is therefore similar to a capital injection ranging between EUR [100-700] million and EUR [0,5-2,0] billion. As with the additional capital instrument for SPM bank, the additional loss coverage also covers SPM bank's capital shortage and provides it with a selective advantage since there is nothing to indicate that the bank could obtain such capital on the market. As the measure stems from NRW, it is provided from State resources. Given the characteristics of the banking sector set out in recital 118, the measure is apt to distort competition and to affect trade between Member States. Hence it constitutes state aid.

(1) Invested by SoFFin in the form of a silent participation.

(2) See the Commission Decision in case NN 25/2008 of 30 April 2008, OJ C 189, 26.7.2008, p. 3.

e. THE FIRST ASSET TRANSFER

(123) The Commission already concluded in its December 2009 Decision that the impaired asset relief measure in the form of the establishment of a bad bank constitutes state aid [3].

(124) It does not agree with Germany in so far as the latter argues that the Impaired Assets Communication should not be applied. Instead, it recalls its decision-making practice to the effect that in the Impaired Assets Communication the Commission provided guidance on the treatment under Article 107(3)(b) TFEU of asset relief measures adopted by Member States on the basis that "Impaired assets correspond to categories of assets on which banks are likely to incur losses. The Commission considers that the IAC must cover any kind of support measures targeting impaired assets and subsequently providing effective asset relief to the recipient institution because the IAC defines asset relief as any measure whereby a bank is dispensed from the need for severe downward value adjustments of certain asset classes" [4]. The first asset transfer also falls into that category of measures, as it frees WestLB from facing the consequences of a downward adjustment of the value of its assets. Germany has in fact previously confirmed that WestLB would not have complied with regulatory minimum capital requirements any longer had it not been shielded by the state support measure [5].

(125) As regards its temporal scope, the Impaired Assets Communication must be applied to the asset transfer. The Commission recalls that it has to apply the law and guidelines in force at the time of the adoption of a decision, irrespective of the time at which the aid measures were designed or notified [6]. In fact, in the context of the current financial crisis the Commission has previously applied the Impaired Assets Communication to measures notified before the publication of the communication [7].

(126) The Commission has not changed that assessment, notwithstanding the objection made by Germany that it had not applied the Impaired Assets Communication in the May 2009 Decision. Although it might have been

(3) See the Commission Decision of 18 July 2011 in case SA.28264 (C 15/2009, ex N 196/2009), *Hypo Real Estate*, not yet published, recital 71; the Commission Decision of 20 September 2011 in case C 29/2009, *HSH*, not yet published, recital 153; and the Commission Decision of 15 December 2009 in case C17/2009, *LBBW*, OJ L 188, 21.7.2010, p. 10, recital 44.

(4) Commission Decision of 20 September 2011 in case C 29/2009, *HSH*, not yet published, recital 153.

(5) See recital 6 of the Commission Decision of 5 November 2010 in case C 40/2009, *WestLB Extension of Investigation*, OJ C 23, 25.1.2011, p. 9.

(6) See Case C-334/07 P *Commission* v *Freistaat Sachsen* [2008] ECR I-9465, paragraph 53, where the Court of Justice confirmed that a notified measure should be assessed under the rules applicable at the date of the decision.

(7) See the Commission Decision in case C 9/2009, *Dexia*, OJ L 274, 19.10.2010, p. 54, recital 153, and the Commission Decision of 20 September 2011 in case C 29/2009, *HSH*, not yet published, recital 155.

erroneous not to have applied the Impaired Assets Communication at that point in time, there is no legitimate expectation by Germany that such an approach would continue. In any event, the reasoning in the May 2009 Decision was to accept the nominal amount of the guarantee as the aid amount, which is not uncommon for impaired asset guarantees [1]; however, if that approach were to be applied in the present case, it would result in an amount that exceeded by far the aid amount established by the Impaired Assets Communication.

(127) The main issue thus remains the establishment of the amount of aid. According to point 39 of the Impaired Assets Communication, aid is granted by an impaired asset measure in so far as the transfer value exceeds the market value of the total portfolio.

(128) In the November 2010 Decision the Commission calculated a preliminary aid amount of EUR 11 billion which did not consider mitigating factors. To that end, the Commission made an assessment of a likely market value for assets that were not trading in the market and relied on expert advice. However, the Commission has been able, through in-depth analysis of the portfolio relying on the details of the final expert report, to refine its assessment.

(129) Table 6 provides an overview of the market value, listed by sub-portfolio:

Table 6

Market value of the first asset transfer (billion EUR)

Portfolio of Assets being transferred		Dec Book Value (TV)	Commission's Market Value Estimate
Structured Securities' Portfolio	Phoenix	22 764	*13 200*
	European Super Seniors	2 918	*1 750*
	Other ABS	3 188	*2 900*
Securities' Portfolio	Bonds	16 501	(722)
	Banque D'Orsay Portfolio	2 749	23 749
	CDS & Derivatives	(65)	(102)
Lending Products	Drawn Positions	20 061	*17 355*
	Undrawn Commitments	—	*(748)*
	Total	**68 116**	**52 887**

(130) For the Securities portfolio as well as the ABS sub-portfolio of the Structured Securities portfolio, market values were either readily available or could be derived from valuations of proximity assets that had readily available market values (EUR 18,430 billion (that figure has been disaggregated: EUR 15,762 billion + EUR 2,770 billion – EUR 0,102 billion = EUR 18,430 billion)) and EUR 2,9 billion respectively).

(131) For the lending portfolio, a severe stress scenario [2] was used as a market value proxy resulting in a EUR 748 million discount on undrawn commitments (total EUR 16,607 billion, that figure has been disaggregated: EUR 17,355 billion – EUR 0,748 billion = EUR 16,607 billion).

(132) For the European Super Seniors sub-portfolio, the original WestLB estimate of expected principal losses is deemed to be very conservative and close to a market value calculation. As a result, the WestLB-inferred REV for the ESS portfolio could be used as a market value estimate (EUR 1,750 billion) [3]. As regards the Phoenix Portfolio, which is a structured security with a complicated waterfall pay-off structure, an approximation of the market value can be made as follows: first, the mark-to-market (hereinafter called "MtM") of the underlying collateral was deemed to be around 54 % (EUR 12,375 billion). Taking into consideration the available cash (EUR 1,325 billion to be added) and the likely cash outflows (about EUR 0,5 billion in an adverse, MtM-like scenario, to be subtracted), the market value can be estimated at approximately EUR 13,2 billion [4].

(133) If one compares the total amount (EUR 52,887 billion) to the transfer value (EUR 68,116 billion), the aid amount is established, from which some mitigating factors have to be deducted. The mitigating factors are the above-mentioned (recital 93) EUR 3,267 billion for

(1) Commission Decision in case C 29/2009, *HSH*, not yet published, recital 157.

(2) See the Commission's experts' report WestLB AIDA Case C40/2009 REV Assessment Executive Summary, p. 22 (referring to Scenario 4A, with a credit conversion factor of 1).

(3) See the Commission's experts' report WestLB Aida Final Detailed Analysis Report, p. 29 (Main findings) and see Table 2, column 2.

(4) See the Commission's experts' report WestLB Aida Final Detailed Analysis Report, pp. 12 and 16 (MtM Table).

the EAA's capital; EUR 882 million through foregoing grandfathered liabilities; and EUR 268 million through the transfer of Credit-Linked Notes inside the Phoenix structure. Therefore the state aid amount totals EUR 10,812 billion, i.e. EUR 15,229 billion - EUR 4,417 billion.

(134) That aid amount includes the guarantees provided by the WestLB shareholders to cover the losses of the EAA (see recitals 33 to 40) because those guarantees will replace the engagement that the Bund has given by acquiring the assets from WestLB via the EAA. It should be recalled that pursuant to the FMStFG the Bund must be compensated by the shareholders for any losses crystallising in the future. Hence that liability of the Bund is in fact being replaced by a liability of the WestLB shareholders internally. However, that replacement does not have any effect vis-à-vis the beneficiary and to treat those guarantees as a separate source of aid would amount to double counting of the support. Those guarantees therefore do not increase the aid amount in the first asset transfer to the EAA.

f. THE SECOND ASSET TRANSFER - REPLENISHMENT OF THE EAA

(135) The second transfer concerns the potential replenishment of the EAA with all of WestLB's current assets and liabilities. It has to be borne in mind that only the transfer of the WestImmo carve-out portfolio to the EAA is certain to take place, while the transfer of assets and liabilities linked to the Verbundbank and Pfandbriefbank is merely a possibility. Furthermore, WestLB has put all its divisions and business units up for sale, and as a result related assets and liabilities may still be divested at market prices before 30 June 2012 and hence not be transferred to the EAA. The following assessment is, however, based on the precautious assumption that as of 30 June 2012, all of WestLB's current assets and liabilities will be transferred to the EAA.

(136) In the case of WestImmo, a carve-out portfolio with assets and liabilities of around EUR [5,3-6,9] billion (HGB book value) will be spun off and transferred to the EAA. The market value has been established as indicated in Table 4 above. The Commission has assessed the figures for the market value and finds the explanation why that amount should be considered sufficiently prudent plausible. Therefore it establishes the difference between transfer values and market values, i.e. the aid amount, for the WestImmo part of the second asset transfer to be EUR [300-800] million.

(137) In addition, Germany submits that, if WestImmo, freed of the carve-out portfolio, cannot be sold as Pfandbriefbank but has to be transferred to the EAA, its transfer value would be equal to its market value. That submission seems plausible, given that Pfandbriefbank has deliberately been released from impaired assets.

(138) In the case of WestLB, assets and liabilities of around EUR [120-150] billion (HGB book value) will be spun off. The portfolio market values have been established to be EUR [1,0-1,8] billion lower than their HGB book values, as indicated in Table 3 at recital 52. The Commission has assessed the figures for the market value of the remaining WestLB assets and liabilities. It did not identify any inconsistencies in the market valuation. In fact, the Commission recalls that WestLB has been freed from impaired assets in the context of the first asset transfer, and that the resulting capital relief was quite large. Hence it does not seem surprising that the quality of the portfolio and so its market value is much better than that of the first transfer. Therefore the Commission accepts that the portfolio market values of the assets and liabilities are in total EUR [1,0-1,8] billion lower than the transfer values (HGB book values), and that the aid amount for the WestLB-part of the second asset transfer is hence equal to EUR [1,0-1,8] billion.

(139) In total, the market values of the second asset transfer are EUR [1,3-2,6] billion lower than their transfer values. The total aid amount for the second asset transfer is hence EUR [1,3-2,6] billion.

g. PROVISION OF LIQUIDITY SUPPORT BY THE WESTLB SHAREHOLDERS IN THE FIRST HALF OF 2012

(140) Once all assets of WestLB have been transferred into the EAA, the EAA will take care of their funding. Up to 30 June 2012 (that is, until the transfer takes place) the shareholders of WestLB will provide any liquidity support that is needed in order to ensure that the transfer of assets to the EAA occurs. That measure can be considered as an integral part of the overall liquidation scenario, because it merely shields the transformation period in case market turbulence occurs before 30 June 2012. It nevertheless constitutes an additional temporary advantage to WestLB ([1]), which […]. Given the status of the WestLB shareholders as public authorities or entities under the ultimate control of public authorities to whom any decision to grant liquidity in the context of the transformation would be imputable, the measure stems from state resources. As explained in recital 118, the characteristics of the banking sector in Germany are such that the provision of such an advantage would be apt to distort competition and also to affect trade between Member States. As a result, the provision of liquidity support by the WestLB shareholders in the first half of 2012 constitutes state aid.

([1]) The Commission has approved liquidity support under various schemes, see the Commission Decision of 20 March 2009 in case N637/2008, *Liquidity scheme to the financial sector in Slovenia*, OJ C 143, 24.6.2009, p. 2, and the Commission Decision of 14 January 2010 in case NN68/2009, *Liquidity scheme for Hungarian banks*, OJ C 47, 26.2.2010, p. 16.

h. CONCLUSION

In sum, WestLB has obtained the following state aid measures:

Table 7

Summary of aid measures

Capital or capital-like measures	Aid element (billion EUR)
The risk shield for the Phoenix portfolio	5
The capital injection in the context of the first asset transfer	3
The additional capital instrument for SPM bank	1
The additional loss coverage by NRW for SPM bank	[0,5-2,0]
The first asset transfer	10,812
The second transfer - replenishment of the EAA with WestImmo assets and liabilities (carve-out portfolio)	[0,3-0,8]
The second transfer - replenishment of the EAA with WestLB assets and liabilities	[1,0-1,8]
Total	[21,6-24,4]
Percentage of aid, compared with EUR 88,5 billion of RWAs (as of 30.12.2008)	[24,4-27,6]%
Liquidity measures	[…]

2. *COMPATIBILITY OF THE AID WITH THE INTERNAL MARKET*

a. APPLICATION OF ARTICLE 107(3)(b) TFEU

(141) Article 107(3)(b) TFEU empowers the Commission to find that aid is compatible with the internal market if it is intended "to remedy a serious disturbance in the economy of a Member State". The Commission has acknowledged that the global financial crisis can create a serious disturbance in the economy of a Member State and that measures supporting banks are apt to remedy that disturbance. That assessment has been confirmed in the Commission communication *The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition* [1] (hereinafter called "the Recapitalisation Communication"), the Impaired Assets Communication and the Restructuring Communication. The Commission still considers that requirements for state aid to be approved pursuant to Article 107(3)(b) TFEU are fulfilled in view of the reappearance of stress in financial markets. The Commission confirmed that view by adopting in December 2010 a Communication that prolongs until 31 December 2011 the application of state aid rules to support measures in favour of banks in the context of the financial crisis [2]. The Commission has since extended the application of those rules beyond 31 December 2011 [3].

(142) In respect of the German economy that analysis has been confirmed in the Commission's approval of various measures undertaken by the German authorities to combat the financial crisis, in particular in the approval and prolongations of the German rescue package [4].

(143) An uncontrolled breakdown of a bank such as WestLB could directly affect the financial markets and thus the entire economy of a Member State. In the light of the current fragile situation of the financial markets, the Commission continues to base its assessment of state aid measures in the banking sector on Article 107(3)(b) TFEU.

b. COMPATIBILITY OF THE IMPAIRED ASSET MEASURES

(144) For the reasons explained in recitals 125 and 126, the compatibility of the first asset transfer to the EAA has to be assessed on the basis of the Impaired Assets Communication. The compatibility assessment focuses on whether the asset transfer takes place above the market value but without exceeding the real economic value as defined in point 40 of the Impaired Assets Communication. In order for the aid measure to be compatible the transfer value should, according to point 41 of the Impaired Assets Communication, not exceed the REV and the transfer delta would be zero. The following assessment focuses first on the amount of the transfer delta (see recitals 144 to 159). If the transfer delta is not zero, i.e. it is above the REV, it should be reimbursed or clawed back (see recitals 161 and 162).

(1) OJ C 10, 15.1.2009, p. 2.

(2) Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C 329, 7.12.2010, p. 7.

(3) Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C 356, 6.12.2011, p. 7.

(4) Commission Decision of 27 October 2008 in case N512/2008, *German bank rescue scheme*, OJ C 293, 15.11.2008, p. 2, amended by the Commission Decision of 12 December 2008 in case N625/2008, *German bank rescue scheme*, prolonged by the Commission Decision of 22 June 2009 in case N 330/2009, OJ C 160, 14.7.2009, p. 4 and by the Commission Decision of 23 June 2010 in case N 222/2010, OJ C 178, 3.7.2010, p. 1.

i) ***Compatibility of the first asset transfer to the EAA***

(145) Regarding the first asset transfer to the EAA, Germany disputed the establishment of the REV. Its comments aim at contradicting the finding in the November 2010 Decision that there is a transfer delta amounting to EUR 3.414 billion. The Commission has assessed the comments of Germany. The results of that analysis can be summarised as follows:

— As regards the valuation in general

(146) As regards the overall valuation exercise, determining the REV of the assets to be transferred, the Commission maintains that its evaluation was not too conservative but was in accordance with point 37 of the Impaired Assets Communication. Point 37 of the Impaired Assets Communication obliges the Commission to apply a correct and consistent approach to asset valuation, including assets that are more complex and less liquid, so as to prevent undue distortions of competition. The Commission has explained in the November 2010 Decision that its approach is in line with existing decision-making practice. The approaches taken by other bodies such as CEBS are certainly credible, but they are not relevant for that exercise.

(147) The Commission remains unconvinced that the approach proposed by WestLB is in line with state aid decision-making practice. The Commission indeed notes that the Bundesbank has not confirmed the REV proposed by WestLB but instead criticised both the methodology and parameter use of WestLB [1]. That critical stance contradicts Germany's claim that WestLB's methodology is in general a "recognised technical expertise". The Commission therefore maintains that WestLB's methodology deviates from usual case practice [2].

— As regards the valuation at the level of sub-portfolios

(148) A regards the valuation in detail, first, regarding the "Structured Securities" portfolio, the Commission notes that no great divergences exist. In fact, the Commission's REV for the entire asset class lies very close to that as assessed by WestLB. The Commission has refrained from using conservative assumptions where to do so would validate or reject individual portfolio valuations. Instead, it followed its experts' advice to re-assess WestLB's overly conservative approach for the "European Super Senior" sub-portfolio. The Commission has examined the detailed expert report, which included a review of the main asset sub-categories (ABS CDOs [3], other CDOs [4], US RMBS [5], US CMBS [6], US ABS [7], EUR ABS [8] and Financials), and found the methodologies and results used to be consistent with other cases, such as those mentioned in the opening decision.

(149) Second, regarding the Lending Portfolio, the Commission does not accept Germany's claim regarding lack of transparency and inconsistencies in the valuation of its experts. It recalls that it has tried to give guidance as to the appropriateness of certain methodologies for assessing the REV. For instance, the Commission recommended a large sample asset re-underwriting of the loan portfolio in order to assess the appropriateness of the existing rating systems, the resulting probabilities-of-default (PDs) and the LGDs. Germany has not followed that recommendation. The Commission also emphasised that, as explained in point 41 of the Impaired Assets Communication, it had to use sufficiently prudent LGD and PD stresses. In line with the Commission's decision-making practice, a transfer of assets must be assessed based on the REV of the assets. In conclusion, the Commission confirms its previous assessment that the valuation must be corrected by around EUR 1 billion

(150) Third, for the "Securities Portfolio" the Commission agrees with Germany that the differences stem from the assumption of whether the markets concerned are impaired. In fact, the question could also be whether that part of the portfolio should be considered eligible under the Impaired Assets Communication at all. It could be argued that, although some flexibility could be envisaged by allowing banks to be relieved of assets not primarily involved at the first stages of the financial crisis, assets that cannot be considered impaired at the time of transfer should not be covered by a relief programme. On that view, asset relief should not act as a form of open-ended insurance against the consequences of the recession. On the other hand, the off-loading of large, multi-billion-euro-sized portfolios might trigger precisely the distortion of those markets. To strike a balance between the objective of maintaining financial stability and the need to prevent distortions of competition, the Impaired Assets Communication allows for the transfer of those assets. However, because the

(1) Specific criticism as to methodology can be found in the Bundesbank reports, see Erster Teil des Berichts (Phase I) über die Prüfung nach §6 FMStFG bei der WestLB AG, Düsseldorf (5.10.2009); Zweiter Teil des Berichts (Phase I) über die Prüfung nach §6 FMStFG bei der WestLB AG, Düsseldorf (5.10.2009); Bericht (Phase II) über die Prüfung nach §6a bzw. §8a FMStFG bei der WestLB AG, Düsseldorf (26.11.2009).

(2) November 2010 Decision, recital 83.

(3) ABS CDOs stands for asset backed securities collateral debt obligations.

(4) Other CDOs stands for other collateral debt obligations.

(5) US RMBS stands for US residential mortgage backed securities.

(6) US CMBS stands for US commercial mortgage backed securities.

(7) US ABS stands for US asset backed securities.

(8) EUR ABS stands for EUR asset backed securities.

market for those assets is fully functional (i.e. unimpaired), the REV will be equal or approximately equal to the market value.

(151) While WestLB assesses the existence of a functioning market on the basis of a pure liquidity criterion, the Commission remarks [1] that the starting point for an assessment of market impairment is a comparison with a well-functioning market for the particular asset. In a normally functioning market a transaction is executed between a willing buyer and a willing seller. The notion of a willing buyer and seller implies that the transaction is voluntary and therefore free of compulsion.

(152) The Commission's experts have provided transparent criteria for a normal functioning market, which are endorsed by the Commission [2]. While adequate liquidity or tight bid offer spreads indicate a functioning market, the reverse is not necessarily true. For instance, a privately placed security, issued by a solvent and stable issuer, might not be liquid. Nevertheless, if needed, a competitive market bid, close to a mark-to-model value computed from liquid proximity securities, could easily be obtained. Therefore, the criteria proposed by WestLB are too narrow to assess the normal functioning of a market.

(153) It should be remarked that the misattribution of unimpaired assets as impaired assets is per se not a problem for the determination of the REV. One would expect that the REV calculated for such asset positions would be close to the market value of the asset, provided that a suitable method and calibration is used. Any REV calculation method should broadly converge to the market price, when a particular market is not impaired. Indeed, the instances of misattribution represent a test of the suitability of the REV calculation method and parameters used.

(154) As regards Germany's claim that certain sovereign bond markets were impaired at the end of 2009, the Commission observes that criteria indicating a functioning market were fulfilled at that time. Instead, specific sovereign submarkets showed evidence of impairment near the end of the second quarter of 2010 [3] and beyond, notably with interventions at ECB and other European levels. Nevertheless, it was not the case on 31 December 2009 or on 31 March 2010, which were the two reference dates used in the valuation exercise.

(155) The Commission therefore maintains its view that WestLB used either a wrong valuation methodology or applied the wrong parameters in its valuation methodology, so that the valuation must be corrected by around EUR 600 million.

(156) In conclusion, the Commission finds the REV assessment for each of the three sub-portfolios as indicated in the experts' report to be valid and consistent with its decision-making practice. As a result, the Commission deems the difference between the transfer value and the REV of the assets in the portfolio to be EUR 6,949 billion [4].

(157) In the November 2010 Decision the Commission expressed doubts whether all of the assets were eligible for the transfer. The Commission took statements in EAA's first annual report as evidence that in some assets losses had already been incurred at the date of the transfer, although such assets would not fall within the scope of point 32 of the Impaired Assets Communication. However, Germany subsequently provided additional information and explained the amount of risk provisioning made by the EAA and the amount of losses that had been incurred in the assets transferred to the EAA. Those explanations were plausible and allay the Commission's concerns. There is therefore no need to make further corrections relating to a non-eligibility of assets.

— **Mitigating factors**

(158) The Commission also does not accept mitigating factors beyond those already accepted in the November 2010 Decision. It also already accepted the compensatory effects of the equity injection (EUR 3,267 billion) and

(1) See the Commission's experts' report, WestLB AIDA – Case C40/2009 – REV Assessment Final Report (Société Générale, Dirk Bangert, Professor Wim Schoutens), p. 76, which was endorsed by the Commission.

(2) Indications that markets are functioning normally are: A liquid market with medium to high volumes of transactions; tight bid-offer spreads; the perception that bids and offers could be obtained, if requested; a number of established participants in the market; the absence of structural restrictions on the market's operation; or the issuer not being subject to credit events or heightened concerns about credit quality. Indications that market operation is impaired are: No or very few market transactions; "thin" markets and low volumes; wide bid-offer spreads, bid only or offer only indications; for a prolonged time bids or offers cannot be obtained; few established participants in the market, some of which may consider leaving the market; structural restrictions on the market's operation; "market manipulation"; and an issuer being subject to credit events.

(3) The experts' report mentions May 2010 (e.g. p. 86) as the date when the Sovereign Crisis effectively materialised.

(4) Finally, it should be noted that in line with the November 2010 opening decision (see recital 105) an adjustment of the REV as proposed by Germany due to the difference between the effective date of the valuation of the assets and its transfer is not inappropriate. Germany had claimed that, when calculating the REV in March 2010, which would have been the reference date for the April 2010 transfer, it can do so by applying the ratio of the REV of December 2009 to book value of December 2009 and multiply that ratio by the book value of March 2010. According to the Commission's experts, while a change in the transfer value might have occurred any such intermediate amortisation of the portfolio was caused primarily by unproblematic assets. Therefore, it would be without impact for the REV and any adjustment would lead to an overestimation of the REV of the remaining portfolio and must thus be rejected.

the CLN notes (EUR 268 million) [1], as indicated in Table 2 at recital 44. Moreover, the Commission invited Germany to engage the Bundesbank to comment on the compensatory effects and have any proposed alteration in the portfolio valuation verified and confirmed by a regulatory authority such as the Bundesbank, in line with guidance from the Impaired Assets Communication. No such verification and confirmation by the regulatory authority has taken place.

(159) Regarding the grandfathered liabilities, the Commission notes that the valuation of liabilities is per se not discussed in the Impaired Assets Communication. It needed therefore to assess how to deal with a transfer that mixed assets and liabilities as was done in this case. While the Commission recognises the potential economic disadvantage of transferring low-yielding liabilities, it had to strike a balance between compatible amounts on the asset side and the amounts on the liability side. As a result, while the Commission has taken the effect of grandfathered liabilities into account when assessing the total aid amount (see recital 133) the Commission does not consider it applicable in the assessment of REV.

(160) Regarding the positive future results for the transferred assets, the Commission does not follow Germany's argument and insists that, once assets have been transferred, future profits should no longer be taken into account. That methodology of establishing the REV of the lending portfolio is in line with the Commission's decision-making practice [2].

(161) Regarding undrawn committed lines, the Commission confirms that an undrawn committed line can indeed carry a zero book value. That possibility does however not exclude that an undrawn committed line can have a negative REV contribution. The drawing of the line is not excluded, because contractually it cannot be avoided. Therefore, the fact that a line is not yet drawn will thus not change the REV even if such positions have zero book value.

(162) Regarding discounting expected losses, the Commission observes that by discounting the expected losses WestLB simply alters its own valuation approach, and moreover does so without support from the Bundesbank. Germany thereby contradicts its own REV estimate but does not provide any additional arguments against the Commission's opinion.

(163) In sum, as the REV has been endorsed above and is in line with points 40 and 41 of the Impaired Assets Communication, the Commission therefore does not consider the expected losses or any of the other three mitigating factors advanced by Germany in its comments as relevant for the REV assessment.

— **Asset management**

(164) The Commission's doubts as to the proper management of the impaired assets in the wake of the asset transfer have been allayed. The Commission had reservations that WestLB was to continue to manage the impaired assets, as a bank should concentrate on new activities and avoid any conflict between running down and new activities. However, as WestLB/SPM bank will after 30 June 2012 no longer conduct any new banking activities, but only asset management services, the Commission's doubts have been assuaged.

Conclusion

(165) To conclude, having considered all additional potentially mitigating factors and arguments submitted by Germany, the Commission's doubts have not been allayed. Therefore, it continues to consider the transfer delta to be equal to EUR 3,414 billion.

ii) ***Claw back***

(166) According to point 41 of the Impaired Assets Communication, in order to mitigate the distortions of competition stemming from a transfer of the assets above the value that is considered acceptable to make up for the market failure at the relevant time, the transfer delta should be returned by the bank. If such a repayment is not immediately possible then it should be achieved over time in the form of a claw back. Where even such a repayment through a claw back is not possible without leading to technical insolvency, the distortion of competition needs to be compensated by in-depth restructuring, which can go as far as liquidation [3].

(167) WestLB indicated in its restructuring plan presented in February 2011 that it wasn't even able to pay back the EUR 3,4 billion from the first asset transfer to the EAA without jeopardising its viability. In addition, there is unlikely to be a sale of WestLB if a potential buyer had to repay the EUR 3,4 billion to Germany. In consequence, Germany has submitted the June 2011 restructuring plan which provides for a liquidation of WestLB within 12 months. The Commission considers that the liquidation of WestLB is sufficient to make up for the distortions of competition. Therefore, subject to the requirement that the liquidation plan is credible, which will be assessed in section c, the Commission

(1) Commission Decision of 5 November 2010 in Case C 40/2009, *WestLB Extension of Investigation*, OJ C 23, 25.1.2011, p. 27, recitals 109 et seq.

(2) Commission Decision of 17 December 2009 in case N422/2009, *Royal Bank of Scotland*, OJ C 119, 7.5.2010, p. 1.

(3) See the Commission Decision of 20 September 2011 in case C 29/2009, *HSH*, not yet published, recital 189, and the Commission Decision of 22 February 2010 in case C17/2009, *LBBW*, OJ L 188, 21.7.2010, recitals 59 et seq.

finds the aid to be in line with the Impaired Assets Communication and compatible with the internal market on the basis of Article 107(3)(b) TFEU.

iii) ***Compatibility of the replenishment***

(168) The transfer of the second tranche must also in principle be assessed under the Impaired Assets Communication. However, the Commission considers, on the basis of the June 2011 restructuring plan, that the result of such an assessment would no longer have an impact. Any additional distortions of competition resulting from a transfer delta in respect of the second tranche would in any event be mitigated by the liquidation envisaged in the June 2011 restructuring plan. Therefore, in the current exceptional situation, the Commission considers that, where the entire aid amount can already be considered compatible under point 41 of the Impaired Assets Communication, it can abstain from an in-depth assessment of the valuation, i.e. a calculation of the REV.

(169) The transfer of assets is thus compatible because the potential distortions of competition are mitigated by the liquidation of WestLB and hence in line with point 41 of the Impaired Assets Communication.

c. COMPATIBILITY OF THE RESTRUCTURING/LIQUIDATION AID

(170) The Commission must assess the compatibility of all aid measures on the basis of its guidelines for dealing with banks in the financial crisis, in particular the Restructuring Communication and the Commission communication *The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis* [1] (hereinafter called “the Banking Communication”).

(171) The Commission notes that the June 2011 restructuring plan needs to ensure the compatibility of the aid measures indicated in Table 7.

(172) Those measures amount to a total aid amount of EUR [21,6-24,4] billion, which is equivalent to an aid amount in relation to RWA as of 31 December 2009 of [24,4-27,6]%. That amount of aid must be considered a very large proportion of the beneficiary’s size and thus requires in-depth restructuring or liquidation. Moreover, the restructuring plan also needs to consider the additional distortions of competition stemming from the a priori incompatible amount of aid identified by the transfer delta. The proposed restructuring or liquidation must be adequate to address that distortion.

(173) The June 2011 restructuring plan meets the criteria set out in the Restructuring Communication. Point 21 of the Restructuring Communication states that an orderly winding down or the auctioning off of a failed bank should be considered where a bank cannot credibly return to long-term viability. The Banking Communication provides for a procedure within the framework of which such an orderly winding down should take place [2]. A controlled liquidation of that kind may be applied in individual cases after rescue aid has been given to an individual financial institution when it becomes clear that the latter cannot be restructured successfully.

(174) In order for liquidation aid to be compatible with Article 107(3)(b) TFEU, the liquidation aid has, according to the Commission’s decision-making practice [3], to satisfy the following three general conditions:

(i) it should be demonstrated that the aid enables the bank to be effectively wound down in an orderly fashion, while limiting the aid amount to the minimum necessary in view of the objective pursued [4];

(ii) appropriate burden sharing should be ensured, in particular by excluding shareholders from receiving benefit of any aid in the context of the controlled winding-down procedure [5];

(iii) in order to avoid undue distortions of competition, the liquidation phase should be limited to the period strictly necessary for the orderly winding down. As long as the beneficiary financial institution continues to operate, it should not pursue any new activities, but merely continue the ongoing ones. The banking licence should be withdrawn as soon as possible [6].

(1) OJ C 270, 25.10.2008, p. 8.

(2) See points 43 to 50 of the Banking Communication. In order to enable such orderly exit, liquidation aid may be considered compatible, when for instance needed for a temporary recapitalisation of a bridge bank or structure or satisfying claims of certain creditor classes if justified by reasons of financial stability. For examples of such aid and conditions under which it was found compatible, see the Commission Decision of 1 October 2008 in case NN 41/2008 UK, *Rescue aid to Bradford & Bingley*, OJ C 290, 13.11.2008, p. 2, and the Commission Decision of 5 November 2008 in case NN 39/2008 DK, *Aid for liquidation of Roskilde Bank*, OJ C 12, 17.1.2009, p. 3.

(3) See the Commission Decision of 1 October 2008 in case NN 41/2008 UK, *Rescue aid to Bradford & Bingley*, OJ C 290, 13.11.2008, p. 2, and the Commission Decision of 6 June 2011 in case SA. 32634, *Rescue aid to Amagerbanken*, not yet published, recital 52.7.

(4) See point 48 of the Banking Communication.

(5) See point 46 of the Banking Communication.

(6) See point 47 of the Banking Communication.

i) ***Demonstration of an orderly winding down***

(175) The Commission considers the June 2011 restructuring plan to represent an orderly winding-down scenario for WestLB which is based upon a burden-sharing agreement among the bank's shareholders. The June 2011 restructuring plan takes into account in particular the fact that other market-oriented possible solutions for WestLB which might have been less costly or less distortive have already been explored for more than two years without success. An uncontrolled liquidation procedure, on the other hand, would pose a threat to financial stability; that risk is better addressed by the orderly winding-down scenario. The June 2011 restructuring plan allows the Commission to assess the winding-down process and the potential competitive impact of the state measures involved therein.

(176) The most important criterion for the classification as winding-down scenario is that the bank will stop all banking activities and remains in business only to run down the existing portfolios but not contract any new business.

(177) The stopping of banking activities should be ensured inter alia by a sale or transfer of all of a bank's remaining assets and liabilities, so that only a rump would remain where that is necessary to assist in the run-down of existing assets in particular to ensure a value-preserving wind-down of its portfolios.

(178) On the basis of the June 2011 restructuring plan, WestLB will transfer all its banking assets either to the savings banks or to the EAA. Therefore by 30 June 2012 the bank will remain with almost no risk-weighted assets. The remaining bank will, according to the commitments provided by Germany, no longer use its brand name "WestLB" but will be rebranded “SPM bank” within a period of not more than three months. Moreover, the bank will no longer continue banking activities on its own account but merely be a service provider for the EAA and to a limited amount eventually for third parties. Therefore significant and irreversible steps have been laid out in the restructuring plan, which mark an irrevocable exit from the market for the majority of WestLB's former activities within 12 months.

(179) Second, in line with the requirement set out in point 47 of the Banking Communication, the liquidation phase is limited to the period strictly necessary for the orderly winding down in order to avoid undue distortions of competition. Although the winding down of WestLB will take several years, it can still be considered to be limited to the shortest period possible. Only the servicing company will engage in competition, offering a limited amount of asset management services to third parties. Germany has committed that the servicing company will be sold before 31 December 2016. The transformation period until 31 December 2016 is required to allow management to reorganise the organisational structures within SPM bank, to carve out the servicing company and to establish at least a short track-record in order to attract potential investors. SPM bank itself will remain responsible for assets that cannot be physically transferred to the EAA, and so its lifespan is therefore driven by the maturity of those assets. The value-preserving wind-down of the portfolios should take until 2028, and that time period cannot be shortened. However, serving as a holder of assets is as such not an economic activity so that it is without effect on competition. While the reduction of the workforce in SPM bank will take some years to reach the target size of 1 000 employees, that reduction in workforce is still in line with the reduction of the activity level of SPM bank, given that the reorganization of SPM bank will be a labour-intensive process even if banking activities are no longer pursued. In sum, all those processes can be deemed to be limited to the shortest period possible.

(180) The third criterion is that the bank should not continue its activities in the market except for selling its assets, making sure that only an insignificant part of the former bank activities will as such stay in the market.

(181) Some activities associated together as the Verbundbank will be taken over by Helaba. The Verbundbank activities represent in terms of balance sheet size less than 20 % of WestLB's former balance sheet (the Verbundbank portfolio will represent a balance sheet size of EUR 45 billion at maximum, compared with WestLB's total balance sheet of EUR 288 billion in 2008). In terms of staff size the Commission notes that less than 10 % of WestLB's former staff will continue working in the carved-out Verbundbank sector (approximately 400 employees in the Verbundbank sector, compared with WestLB's initial staff of 5 661 employees in 2008). Moreover, it should be noted that the Verbundbank will be carved out through a hive-off of assets and liabilities and not be transferred as a fully-fledged bank. As the transaction does thus not concern WestLB but only a small part of its assets and liabilities, the transaction cannot be considered a significant sale of the bank.

(182) Moreover, the Commission has no indication that the requirements of point 49 of the Banking Communication are not fulfilled, according to which a transaction should take place on market terms and maximise the sales price for the assets and liabilities involved. In that regard the Commission notes that WestLB had set up an unsuccessful sales process that aimed to maximise the sales

price for all its assets and liabilities. However, WestLB did not receive any acceptable offers. Furthermore the company value of the Verbundbank activities, which include assets, liabilities, and an organisational structure with approximately 400 employees, is being reviewed by several external auditors on the basis of well-established valuation methods. Germany commits that the Verbundbank activities, which will either be taken over by Helaba or the savings banks sector, will have a company value of zero, in line with the *Eckpunktevereinbarung*. In fact, unlike other sales processes in liquidation cases [1], the divestment of the Verbundbank activities by WestLB will not require any additional payments by public authorities. The Commission can therefore not see any undue benefit to the entity that will take over the Verbundbank activities and therefore concludes that neither Helaba nor the savings banks obtain any aid arising from the divestment of the Verbundbank activities.

(183) In any event, the rules for a sale of the entire bank envisaged in points 17 onwards of the Restructuring Communication are, even if they do not apply in this case [2], also met in the present case. The rules for such a sale require meeting the following criteria: restoring viability, burden sharing and mitigating distortions of competition. The divestment to Helaba meets those criteria. First, Helaba should be able to ensure viability of the transferred bank, given that the Verbundbank – compared with Helaba – is rather small in terms of balance sheet size and headcount, and has only a small impact on the profitability of the merged entity. On the other hand the merger should lead to savings in relation to those costs that would prevent a positive assessment of the Verbundbank on a stand-alone basis [3]. Second, burden sharing is ensured because the WestLB shareholders will not receive any proceeds from the sale but instead lose their capital in WestLB. Third, as the activities of WestLB will be reduced to less then 20 % of those of the bank as it originally existed, the Commission's decision-making practice is not to require any additional compensatory measures for such a sale [4].

(184) In addition, the Commission has no reason to assume that the Verbundbank as a bundle of assets can be seen as the economic successor of WestLB. Helaba is neither the legal successor of WestLB nor has the Verbundbank any significant functional identity with WestLB. Helaba does thus not meet the criteria for establishing the existence of a continuing economic entity which the Commission has used in order to establish whether state aid has been extended to a firm which continues the activity of the original firm [5].

(185) Finally, it is also ensured that the aid is limited to the minimum necessary. In particular, a transfer of assets to the EAA will only take place if they cannot be sold to private parties. Moreover, the additional injection of capital into SPM bank is necessary to cover for the expected run-down costs. Finally, the liquidity support can be considered an integral part of the overall liquidation scenario, because it merely shields the transformation period in case market turbulence occurs before 30 June 2012. The liquidity support thereby ensures that the orderly liquidation procedure will not turn into a disorderly wind-down before 30 June 2012.

ii) ***Own contribution and burden sharing***

(186) The second part of the assessment concerns burden sharing. Point 46 of the Banking Communication states that in the context of liquidation particular care has to be taken to minimise moral hazard, notably by excluding shareholders and possibly certain types of creditors from receiving the benefit of any aid in the context of a controlled winding-down procedure. In the cases of Northern Rock [6] and HRE [7], burden sharing was achieved by nationalisation. As in those cases, the shareholders here will lose all their equity. Moreover, WestLB's shareholders, as well as SoFFin as the principal provider of hybrid capital, will take individual responsibility for the different parts into which WestLB is to be split and provide additional capital.

(1) See the Commission Decision of 25 January 2010 in case N 194/2009 UK, *liquidation aid to Bradford & Bingley*, OJ C 143, 2.6.2010, p. 22, and the Commission Decision of 25 January 2010 in case NN 19/2009 UK, *Dunfermline Building Society*, OJ C 101, 20.4.2010, p. 8.

(2) That provision is in fact displaced by point 49 of the Banking Communication in the context of a liquidation procedure.

(3) It seems unlikely that the expected RoE of the Verbundbank, ranging from 2.2 % to 4.5 %, would have been sufficient to establish its viability as a stand-alone entity. The Commission in recent decisions has typically considered a RoE range of 8-10 % to be appropriate. See the Commission Decision of 18 July 2011 in case SA.28264 (C 15/2009, ex N 196/2009), *Hypo Real Estate*, not yet published, recital 111; the Commission Decision of 29 September 2010 in case C 32/09 (ex NN 50/09), *Sparkasse KölnBonn*, OJ L 235, 10.9.2011, p. 12, recital 82; the Commission Decision of 23 June 2011 in case SA.32745 (2011/NN), *Kommunalkredit Austria AG*, OJ C 239, 17.8.2011, p. 2, recital 80; and the Commission Decision of 23 May 2011 in case SA.31154 (N 429/10), *Agricultural Bank of Greece*, OJ C 317, 29.10.2011, p. 5, recital 77.

(4) Commission Decision of 28 October 2009 in case C 14/2008, *Northern Rock*, OJ L 112, 5.5.2010, p. 57, recitals 154–156.

(5) See the Commission Decision of 2 June 1999 in case 2005/536/EC, *Seleco SpA*, OJ L 227, 7.9.2000, p. 24. That absence of economic succession is particularly evident from the purpose of the transfer, which was not to continue to operate cleansed parts of WestLB, but to find a safe haven for certain liabilities of the savings banks and to take over some of the burden for winding down parts of WestLB. Indeed the business objective of the Verbundbank is to focus on those products that are relevant for the cooperation with the savings banks (mainly loans to SMEs as well as simple capital market products) and differs substantially from the current business objective of WestLB. Finally, if the Verbundbank is transferred to Helaba there is also no identity of the shareholders apart from the savings banks associations, which become a minority shareholder in Helaba in return for the capital provided.

(6) Commission Decision of 28 October 2009 in case C 14/2008, *Northern Rock*, OJ L 112, 5.5.2010, p. 38.

(7) Commission Decision of 18 July 2011 in case SA.28264 (C 15/2009, ex N 196/2009), *Hypo Real Estate*, not yet published.

(187) In fact, the savings banks have accepted to take responsibility for the Verbundbank activities and will raise capital for that purpose, and NRW has accepted to take the major part of the burden, assuming all operating costs and liquidation costs of SPM bank. Furthermore, SoFFin has also accepted to take a significant part of the burden by leaving two thirds of its silent participation in WestLB, thereby very likely foregoing the repayment of its investment. Therefore the overall agreement takes sufficiently into account both the respective burden-sharing capacities of the parties as well as the degree to which they were formerly involved in setting the bank's strategy and their degree of influence on the bank's corporate governance.

iii) ***Limiting distortions of competition***

(188) The liquidation plan ensures a limitation of distortions of competition of WestLB, as it will disappear from the market by 30 June 2012. Thereafter, WestLB will be turned into an entity without banking activities that will together with the EAA run down the assets.

(189) Moreover, undue distortions of competition in liquidation are avoided by ensuring that WestLB after 30 June 2012 continues to operate only as long as necessary for the winding down and will not pursue any new activities, but will merely phase out existing activities. In the present case, that principle is implemented by withdrawing those parts of the banking licence of WestLB that are not required for the holding of assets or provision of asset management services as soon as possible, and by 31 December 2012 at the latest.

(190) As regards SPM bank's intention to spin off a servicing company, offering asset management services to third parties and thereby entering into competition with other providers of that kind of service, the Commission notes that such a step is proposed in order to reduce the state aid in WestLB after 30 June 2012. In fact, NRW, which is responsible for SPM bank, has taken the largest burden of the WestLB shareholders. A reduction of SPM bank's operating cost by offering services to third parties can thus be justified.

(191) Moreover, the servicing company's potential to distort competition is ring-fenced by several commitments by Germany. First, third party contracts may only be provided by a separate entity of SPM bank that holds a banking licence limited to the minimum required and that is going to be sold by 31 December 2016. Second, the nature of the services that SPM bank may provide has been substantiated by an exhaustive list of eligible activities. In that context Germany commits that all banking licences of WestLB that are not required for the provision of asset management services will be returned by 31 December 2012. Third, the workforce in SPM bank will be considerably downsized in the course of its restructuring and it will not exceed 1 000 employees in 2016, which is less than 20 % of WestLB's initial staff of 5 661 employees in 2008. Fourth, the volume of third party business that the servicing company of SPM bank may acquire on the market must not exceed [40-60]% of its overall revenues, which is an effective cap on its business perspective. Fifth, Germany commits that SPM bank will offer its asset management services only at fair market prices, and that the rates offered are sufficient to cover the full costs of the separate entity. Finally, Germany commits that, if the servicing company providing asset management services to third parties cannot be sold by 31 December 2016, SPM bank will be wound up as well. The combination of those restrictions ensures that only a small part of the former activities stays in the market and has very limited potential to distort competition.

(192) Moreover, the servicing company should be sufficiently profitable. Documentation submitted by Germany indicates that there is a realistic chance to make the servicing company sufficiently profitable, in particular after adjustment of the […]. If the intended cost-saving measures are implemented and business opportunities are developed, there is a chance that the servicing company will attract market investors.

(193) The commitments given by Germany sufficiently ensure that SPM bank will not continue to offer services on the market if its activities turn out to be less profitable than anticipated so that it cannot be sold in 2016.

d. CONCLUSION

(194) The Commission therefore concludes that the June 2011 restructuring plan represents an orderly winding-down scenario for WestLB which, in view of the commitments set out in the Annex to the present Decision, fulfils all the relevant criteria of the Restructuring Communication and the Banking Communication and thus ensures compatibility of the aid measures indicated in Table 7. The Commission's doubt indicated in the opening decisions as regards the compatibility of the additional aid have therefore been allayed.

(195) In the course of the present Decision, the Commission has had to also consider the measures granted under the May 2009 Decision. That decision and its corresponding April 2009 restructuring plan did not cover the aid provided subsequently nor was the April 2009 restructuring plan apt to ensure the requisite viability, burden sharing and limitation of distortions of competition that would make the subsequent aid compatible. Therefore the Commission had requested in the December 2009

and November 2010 Decisions a new comprehensive restructuring plan. Such a plan was submitted in June 2011 and replaced all previous plans. Moreover, that plan transformed what had previously been envisaged as the restructuring of WestLB into a liquidation process. As indicated in recital 194, the June 2011 restructuring plan is able to ensure compatibility of all the aid provided between 2008 and 2012 to WestLB. Consequently, the May 2009 Decision has become otiose and should be repealed. That repeal should also extend to all of the commitments and obligations submitted in the context of the May 2009 Decision.

VI. **ADVANTAGE TO THE SAVINGS BANKS**

(196) The Commission's doubts have been allayed that the savings banks have not adequately participated in the burden sharing and benefited extraordinarily from the asset relief measure.

(197) First, the Commission's concern that the savings banks were under an obligation to contribute to the recapitalisation of WestLB could not be substantiated; the savings banks had in fact not undertaken such a special obligation.

(198) Second, the Commission observes a good deal of burden sharing that makes up for the limitation of the exposure of the savings banks to EUR 4,5 billion. Admittedly, the obligation to compensate for losses that may occur at the resolution of the EAA has to some extent been alleviated for the savings banks, as their obligation has been capped at EUR 4.5 billion. However, the savings banks were under no obligation to transfer the assets to the EEA in the first place and had indeed some contractual freedom to arrange for the liability for the losses internally. Even so, since the December 2009 Decision the savings banks have undergone significant burden sharing and lost all their capital in WestLB. Therefore, there is no more reason to pursue the case against the savings banks in that respect.

(199) Finally, it should also be noted that no advantage can be observed in favour of any members of the savings banks associations beyond the liquidation of WestLB. In particular the transfer of assets to Helaba as well as the provision of capital to Helaba in exchange for the receipt of Helaba shares can be seen as part of the liquidation of WestLB and has been arranged only for that purpose. Even if it constituted state aid, it would be compatible with the internal market in the context of the provision of liquidation aid to WestLB,

HAS ADOPTED THIS DECISION:

Article 1

1. The measures which Germany implemented and is planning to implement for WestLB consisting of:

a) the 2009 EUR 5 billion risk shield for the Phoenix portfolio;

b) the 2010 EUR 3 billion capital injection in the context of the first asset transfer;

c) the 2010 first asset transfer to Erste Abwicklungsanstalt with an aid amount of EUR 10,812 billion;

d) the 2012 second transfer to Erste Abwicklungsanstalt with an aid amount of EUR [1,3-2,6] billion;

e) the 2012 additional capital instrument for SPM bank of EUR 1 billion;

f) the 2012 additional loss coverage of EUR [0,5-2,0] billion by *Land* NRW for SPM bank; and

g) the provision of liquidity support by the WestLB AG shareholders in the first half of 2012 […] constitute state aid.

2. The aid referred to in paragraph 1 is compatible with the internal market in the light of the commitments set out in the Annex.

Article 2

Germany shall ensure that, from the notification of this Decision, detailed quarterly reports are submitted to the Commission on the measures taken to comply with it.

Article 3

The Commission Decision of 12 May 2009 in case C43/2008 is hereby repealed.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 20 December 2011.

For the Commission
Joaquín ALMUNIA
Vice-President

ANNEX

1. **Company name:** Germany undertakes that WestLB AG, the Verbundbank, the SPM bank and any (successor) company of the WestLB group will no longer use the name 'WestLB' after 30 June 2012, unless technical obstacles delay that change of name by up to three months. That exclusion applies also to any use of the word 'WestLB' as part of another name.

2. In respect of the **Verbundbank**, Germany undertakes that:

   a) A stand-alone solution will not be pursued for the Verbundbank.

   b) As set out under II.2 of the framework agreement of 23 June 2011 (i.e. the *Eckpunktevereinbarung*), responsibility for the Verbundbank will be transferred from WestLB to the savings bank associations and savings bank finance group by 30 June 2012 at the latest. The limitation of the business activities and scope described in the restructuring plan notified on 30 June 2011 will apply during the whole restructuring period, i.e. until 31 December 2016. This commitment will cease if a subsequent solution is found, such as the sale of the Verbundbank or its incorporation into another (Landes-) bank (particularly in the case of 2c)).

   c) Subject to a positive outcome of due diligence, Landesbank Hessen-Thüringen (Helaba) intends to make itself available as a 'docking partner' for the Verbundbank.

   d) All parties will implement the commitments under the framework agreement unchanged and on time so as to ensure sufficient transactional certainty, in particular with regard to the object of the transaction and 'zero company value', and transferral of the Verbundbank will be implemented by 30 June 2012 at the latest (1).

   e) The company's value will be established on time by the auditor and all parties will respect the result on the basis of the framework agreement of 23 June 2011.

   f) The *Land* NRW will in future not have any ownership position in the Verbundbank, acquire shares in it or otherwise financially support it. Any transfer of the giro centre function (*Girozentralfunktion*) by the *Land* NRW will not be deemed as support in this respect.

   The above commitments will remain subject to the conditions and effectiveness requirements set out in section VIII of the framework agreement of 23 June 2011.

3. In respect of the **SPM bank** (the renamed successor of WestLB), Germany undertakes that:

   a) The restructuring will be supervised for the entire period up to the end of 2016 with the help of a monitoring trustee and the implementation will be reported on in quarterly reports. There will be a separate agreement between the Federal Government, the *Land* of NRW, WestLB and the Commission for appointing, and specifying the tasks of, the monitoring trustee as from 30 June 2012.

   b) The SPM bank will focus exclusively on asset management, will no longer operate as a universal bank and will perform banking transactions only as part of its asset management activities.

   In this context, asset management means that the SPM bank may offer the following services:

      i. general portfolio management/control including workout management, liquidation and sale, credit risk analysis, credit risk processing and supervision;

      ii. credit risk controlling, regulatory reporting, operational risk, management of market risks;

      iii. credit administration, management and supervision of securities, general maintenance and administration of the securities database;

      iv. back office (group operations) including collateral management;

      v. funding, hedging, cash management;

      vi. financial reporting, controlling;

      vii. corporate centre functions, such as law, compliance, money laundering prevention, administration of holdings, safekeeping of relevant documents, auditing, project management tasks;

(1) The general understanding of the parties is that the portfolios to be hived off to the Verbundbank and the EAA will be included in WestLB's half-yearly financial statement for 2012 and only transferred immediately thereafter.

viii. management of the bond pool if no buyer is found for the planned transfer of the bond business in WestLB to the Verbundbank/WestImmo;

ix. IT services in the context of the above activities and as part of the provision of the operative platform;

x. similar asset management activities not expressly mentioned.

The business activities of the SPM bank do not include, in particular, proprietary trading, the issuing of any kind of certificate or other underwriting activities, the financing of projects and commercial transactions, asset-based finance, securitisation and syndicated loan activities, and international corporate banking. As part of its liquidation strategy, the first winding-up institution (EAA) may extend, sell or securitise the assets synthetically transferred to it. In such cases, the SPM bank will act exclusively on behalf of and under the authority of the EAA.

c) For the business activities of the SPM bank, on the basis of currently available information only the following partial authorisations will be required under the Banking Act (KWG):

i. the acceptance of funds from others as deposits or of other repayable funds from the public (Article 1(1)(1) KWG) ([1]);

ii. the operations mentioned in the second sentence of Article 1(1) of the Pfandbrief Act (Article 1(1)(1a) KWG);

iii. the granting of money loans and acceptance credits (lending business; Article 1(1)(2) KWG) ([2]);

iv. the purchase and sale of financial instruments in the credit institution's own name for the account of others (Article 1(1)(4) KWG);

v. the safe custody and administration of securities for the account of others (Article 1(1)(5) KWG);

vi. the assumption of guarantees and other warranties on behalf of others (Article 1(1)(8) KWG);

vii. the execution of cashless payment and clearing operations (Article 1(1)(9) KWG);

viii. the activities of a central counterparty within the meaning of paragraph 31 (Article 1(1)(12) KWG).

The Commission will be informed immediately if other compulsory partial authorisations should be required under the KWG.

As soon as possible and by 31 December 2012 at the latest, the partial authorisations for the current universal banking licence that are no longer required will be returned or the current banking licence will be transformed into an appropriately limited banking licence ([3]).

The need for banking licences for foreign operations and WestLB AG subsidiaries must still be analysed in connection with sub-project 3 on the 'sale of sub-areas' and the final means of transfer to the EAA of unsold portfolios.

d) With regard to third-party business: the *Land* of NRW will convert WestLB into a service and portfolio management bank ('SPM bank') for bank portfolios, which may consist of several companies. In addition, the servicing of third-party portfolios business may be hived off to a service company and sold. WestLB staff numbers will be reduced from the current 4 400 to a maximum of 1 000 in the service company by 31 October 2016.

To enable a subsequent sale, the SPM bank may during the period from 1 January 2012 to 31 December 2014 also take over servicing with regard to third-party portfolios (i.e. third-party business outside WestLB portfolios) up to a maximum of [40-60]% of the SPM bank's gross revenues. Where this is the case, the servicing business must be hived off by 31 December 2014 to a subsidiary of the SPM bank, which will receive a substantive banking licence only to the extent necessary for servicing and which must be completely sold by 31 December 2016.

The named subsidiary of the SPM Bank, viz. the service company, may likewise carry out servicing for the EAA, the Verbundbank and other WestLB portfolios.

([1]) Germany would clarify that this partial authorisation is necessary only on account of ECB access and the winding up of existing business. Therefore, no active business will be conducted on this basis and there will be no competitive presence in the market.
([2]) Germany would clarify that this partial authorisation is necessary only on account of the credit positions synthetically transferred to the EAA where the SPM bank is legally party to the credit contract. Therefore, no active business will be conducted on this basis and there will be no competitive presence in the market.
([3]) Upon request the Commission may agree to a more far-reaching arrangement.

The sale of the service company must be notified in advance to the Commission and requires its approval. If no such sale is possible by 31 December 2016, the service company will be gradually wound up. In such a case, it will immediately cease to acquire further third-party business and will exclusively fulfil its remaining contractual commitments. The service company's business may not be transferred back to the SPM bank or to other subsidiaries or locations of the SPM bank. In the event of the service company being wound up, customers who had concluded a servicing contract with the service company before 31 December 2016 may take over the service company's staff and infrastructure.

Service contracts of the service company which are valid beyond 31 December 2017 are permitted if the contract grants the customer a termination right, effective at 31 December 2017 at the latest, should the supplier (the service company) not have provided an adequate service or be unable to demonstrate the required capacity for the remaining period of the contract. If the planned sale is not successful, the service company will not have the required capacity for the remaining period of the contract. If privatisation fails, the German authorities will ensure that, with effect from 31 December 2017, either the service company ceases its activities or all shares are wound up, e.g. by means of a transfer.

e) The SPM bank/its subsidiaries will offer their services, including to third-parties, only at market prices. The price structure of the service company must also cover overall costs (full cost allocation). Overheads will be allocated to individual contracts in line with the business case for the service company sent to the Commission on 21 November 2011.

f) The SPM holding/SPM operating company will close its foreign operations as soon as possible, at the latest by 31 December 2016, unless regulatory requirements mean an operation must be maintained beyond 31 December 2016. The Commission's agreement to a location being maintained must be obtained without delay. The Commission may require an appropriate form of proof, for example a legal opinion, showing that regulatory requirements make this necessary. Irrespective of this, to fulfil its asset management function, the service company will be represented in New York, London and Asia for reasons of local expertise, coverage of time zones, reduction of operational risks and competitiveness.

g) The limitations specified for the service company will no longer apply in the case of a complete sale of the service company.

4. In respect of the **servicing of the first winding-up institution**, Germany undertakes that any expansion or extension of the service contract until 31 December 2016 will respect the principles under 3e) and that subsequently the contract will be properly put out to tender and the termination rights under 3d) above will be provided for.