STATE AIDS (BANKING): THE GERMAN BANKS CASE

Subject: State aids

Industry: Banking

Parties: German Public Law Credit Institutions

Source: Commission Statement IP/01/665, dated 8 May 2001

(Note. This is the next step in the previously reported case in which, after complaints from other banks, the Commission is challenging the German system of public support for public credit institutions.)

After intensification in the recent months of the contacts with the German Government on the system of State guarantees for public law credit institutions, the Commission has adopted a decision, proposing to the German Government appropriate measures to render the guarantee system compatible with the State aid rules of the EC Treaty. The German Government is requested to submit by the end of September of this year its proposals for the changes to be made. The decision is the logical next step within the procedure, which started with a letter from the Commission services on 26 January, stating the preliminary opinion of the Commission that the guarantee system constituted existing State aid which is not compatible with the common market. The European Banking Federation had filed a complaint on 21 December 1999. The complaint refers, as examples, to Westdeutsche Landesbank, Stadtsparkasse Köln and Westdeutsche Immobilienbank, but is targeted at the whole system of guarantees.

Today's formal decision confirms that the guarantee system has to be considered as State aid within the meaning of the Treaty: the measures are based on State resources and favour certain groups of undertakings, they distort competition and affect trade within the Community. However, since the system existed already when the EC Treaty entered into force in 1957 the aid qualifies as existing aid for which the Commission can demand only changes for the future: it cannot act retroactively. The German Government now has two months to accept the Commission's request to adapt the system. It then has until the end of September of this year to submit detailed proposals on how to achieve compatibility with the State aid rules of the Treaty. Therefore, the German Government largely keeps the choice of specific solutions, provided they are in conformity with Community law. Under the Commission decision, compatibility should be achieved by 31 March 2002. Recently, the German Government announced that it would be willing to modify the guarantee system considerably. Such change would take place on the basis of a "platform model", which provides for abolishing or modifying the guarantees in a way which would make State interventions subject to Commission control. Within this "platform model" the German Government intends to allow for individual solutions for particular banks. ■