State aid N 639/2008 – Germany Guarantee for IKB

European Commission
Subject: State aid N 639/2008 – Germany
Guarantee for IKB

Sir,

1. PROCEDURE

(1) On 16 December 2008 Germany notified to the Commission a measure in favour of IKB Deutsche Industriebank AG. A further exchange of information on individual aspects of the aid took place by email.

2. DESCRIPTION OF THE AID

2.1. The beneficiary

(2) The beneficiary is IKB Deutsche Industriebank AG (‘IKB’), a private, medium-sized, listed German bank with its headquarters in Düsseldorf. Its main shareholder is LSF 6 Europe Financial Holdings, L.P. Dallas, USA (‘Lone Star’), which owns around 90.8% of its shares. Lone Star acquired this stake after IKB had to be restructured because of its financial difficulties following the crisis in the US mortgage market in the summer of 2007. Before the restructuring operation IKB was active in corporate banking, structured financing, real-estate financing and portfolio investment. On 31 March 2007 it had a balance-sheet total of EUR 63.5 billion, taking into account all of its off-balance-sheet activities.
2.2 The restructuring decision of 21 October 2008

IKB got into difficulties as a result of its extensive investments in international structured loan portfolios. It then faced an acute liquidity and income crisis which threatened its existence. Its biggest shareholder at that time, the Kreditanstalt für Wiederaufbau (‘KfW’), and the German Government took a number of measures to rescue the bank, including the setting-up of a risk shield, injections of capital and loans. In a letter dated 15 January 2008 Germany notified the Commission of these measures as rescue and restructuring aid. The Commission opened a formal investigation procedure and on 21 October 2008 adopted a decision (‘the restructuring decision’) in which it found that the aid granted by Germany to IKB was compatible with the common market. Among other things Germany undertook to ensure that the plan for restructuring IKB, as communicated to the Commission by Germany on 25 September 2008, would be fully implemented by 30 September 2011.

The aim of the restructuring plan is to stabilise IKB’s financial situation in order to restore its long-term viability by reducing its risk exposure and concentrating on its core business. Under the plan, IKB is to focus on corporate banking for medium-sized clients, while the structured finance business will be maintained only in so far as it is necessary for the corporate banking business. The plan also confirms the bank’s exit from portfolio investment activities.

To secure the required liquidity, the restructuring plan sets out a list of measures consisting of liquidity facilities from KfW and on asset-based refinancing of around EUR 7 billion. EUR 2.5 billion is to be generated from capital market instruments alone.

2.3 Events since the restructuring decision

As the state of the financial markets deteriorated drastically after September 2008 and more and more state-backed securities were issued by competing credit institutions, IKB, which was in the process of refocusing its business, found it increasingly difficult to obtain in the financial markets the liquidity it needed to implement the restructuring plan.

As the bank has only small deposits it relies on refinancing in the interbank and capital markets to maintain its business activities. Given the widespread malfunctioning of the interbank and capital markets at present, it appears impossible for the bank to obtain liquidity on acceptable terms.

In order to create a sustainable mechanism for overcoming the current cash-flow difficulties experienced by financial institutions and to strengthen the stability of the German financial market, Germany adopted the Financial Market Stabilisation Fund Act (Finanzmarkstabilisierungsfondsgesetz – FMStFG) on 18 October 2008. To

---

1 For details, see the Commission decision of 21 October 2008 in Case C 10/2008 – State aid implemented by Germany for the restructuring of IKB Deutsche Industriebank AG, not yet published.
2 See OJ C 76, 27.3.2008, p. 5.
3 See Articles 1 and 2 of the Commission decision of 21 October 2008 in Case C 10/2008 – State aid implemented by Germany for the restructuring of IKB Deutsche Industriebank AG, not yet published.
4 For further details on the recovery plan and the restructuring and compensatory measures for IKB, see the Commission decision of 21 October 2008 in Case C 10/2008 – State aid implemented by Germany for the restructuring of IKB Deutsche Industriebank AG, not yet published.
5 The Commission approved this aid scheme by decision N 512/2008 on 27 October 2008. On 11 December 2008 Germany notified the Commission of amendments to the aid scheme concerning inter
achieve its aims the FMStFG provides for the possibility of recapitalisation of companies, the temporary assumption of risk and the provision of guarantees for liabilities. A special financial market stabilisation fund (Sonderfonds Finanzmarktstabilisierung - SoFFin) was set up to implement these measures\(^6\).

(9) On 27 November 2008 IKB applied for guarantees to be taken over by SoFFin. The application was approved by SoFFin on 12 December 2008. Germany has explained that SoFFin will assume the guarantee for liabilities only once the Commission has adopted a positive decision.

2.4 The new measure

(10) To bridge its liquidity gap, IKB receives a guarantee of up to EUR 5 billion from SoFFin, in accordance with Section 6 of the Financial Market Stabilisation Fund Order (Finanzmarktstabilisierungsfondsverordnung) read together with Section 2 FMStFG, for the issuance of bonds by IKB. In concrete terms SoFFin provides IKB with a guarantee framework of up to EUR 5 billion.

(11) IKB intends to use the guarantee to issue bearer bonds with a maturity of up to 36 months but no longer than 31 December 2012. IKB is also considering using the guarantee as a secure platform for issuing commercial paper with a maturity of 90 to 364 days.

(12) The liabilities to be secured must have arisen only after 17 October 2008 and the bonds issued before 12 June 2009. If the Commission approves the FMStG once again, the final date can be put back to 31 December 2009.

(13) In return for providing the guarantee framework SoFFin receives from IKB a commitment fee of 0.1% p.a. based on the maximum amount. This basis for calculation is reduced by the sum of the nominal amount of all guarantees issued for IKB which are still outstanding.

(14) As remuneration for assuming specific guarantees, IKB will pay SoFFin a fee of 0.5% p.a. for all outstanding guarantees with a term of up to one year and a fee of 0.5% p.a. for guarantees with a term of over one year, plus an interest surcharge based on IKB’s 5-year CDS spread (to be determined according to the European Central Bank’s recommendations of 20 October 2008). SoFFin is entitled to adjust these terms, subject to certain conditions.

3. COMMENTS FROM GERMANY

(15) The German authorities notified the measure as aid to remedy a serious disturbance in the economy of a Member State within the meaning of Article 87(3)(b) of the EC Treaty. In particular Germany argued that the form of the aid (a guarantee) was already covered by the Commission decision of 12 December 2008 and it was therefore unclear whether there was any obligation to notify the aid in this case individually, which it did purely as a precaution. Germany considers that the Communication from the Commission on the application of State aid rules to measures taken in relation to

\(^{6}\) For details, see the Commission decision of 12 December 2008 in Case N 625/2008 Rescue package for financial institutions in Germany, not yet published (‘Commission decision of 12 December 2008’).
financial institutions in the context of the current global financial crisis\(^7\) (‘the Banking Communication’), which forms the basis for the Commission decision of 12 December 2008, settles the question of the compatibility of such measures once and for all and precludes any reference to other communications.

(16) According to Germany, SoFFin carried out the mandatory assessment of IKB’s importance for the stability of the financial markets, taking into account relevant criteria such as the balance-sheet total and the level of deposits. IKB was regarded as a systemically relevant bank because of its importance for the stability of both the financial markets and medium-sized businesses. The fee charged for the guarantee was in line with the market rate. No serious cross-border distortion of competition was expected, as credit institutions in other Member States were also being given access to capital or guarantees. Finally, because IKB was required to reduce its balance-sheet total under the restructuring decision, it could not use the guarantee or the outside capital obtained with the help of the guarantee for the purpose of expanding its business activities.

(17) Germany has given a commitment that the notified measure meets the conditions laid down in Section 6 FMStFG for the granting of guarantees and the relevant conditions of the Commission decision of 12 December 2008. In particular, Germany maintains that, as the beneficiary of the guarantee, IKB is a ‘solvent’ company which has ‘adequate’ own funds. IKB currently has a Tier 2 ratio of 9.81\(^%\).\(^8\)

(18) Germany points out that, despite the rescue and restructuring measures, IKB is in a difficult cash-flow situation, which is entirely the result of the crisis in the financial markets, i.e. the widespread failure of the interbank and capital market since the insolvency of Lehman Brothers. IKB’s need for liquidity therefore has external causes. The German authorities confirm IKB’s statement that the measure does not replace any payments which would in fact have been made by the owners, i.e. Lone Star, or by KfW in the context of the restructuring plan.

4. ASSESSMENT OF THE AID

4.1. Existence of aid

(19) The Commission agrees with the German authorities that the notified measure constitutes state aid to IKB within the meaning of Article 87(1) of the EC Treaty.

(20) Under Article 87(1) of the EC Treaty, 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 common market.

(21) Given that IKB operates in the financial sector and is therefore subject to intense international competition, any advantage conferred on it from state resources is likely to affect intra-Community trade and distort competition. Since the aid was granted by SoFFin, state resources are involved and the measure must be attributed to the State.

---


\(^8\) Situation at 31 October 2008.
In particular, the aid measure confers a selective advantage, as no market investor would grant such a guarantee in the present circumstances.  

4.2 **Existence of new aid that has not yet been approved**

The measure cannot yet be considered to have been approved. Even if it falls under the financial aid scheme, it must be notified individually pursuant to paragraph 70 of the Community guidelines for rescuing and restructuring firms in difficulty (‘the guidelines’), which states that ‘any aid actually granted… during the restructuring period, including aid granted in accordance with an approved scheme, must be notified individually to the Commission to the extent that the latter was not informed thereof at the time of its decision on the restructuring aid.’

The Commission does not regard the Banking Communication as a special regulation that might override these procedural rules, especially since the Communication itself contains no procedural rules.

IKB had already received aid from state resources in the context of the restructuring decision. However, at the time when the decision was adopted, the Commission had not been informed of the need for the measure notified on 16 December 2008. It was therefore not an integral part of that decision.

Nevertheless, the guarantee was made available and granted in connection with the financial aid scheme which the Commission has already approved as compatible with the common market. The Commission has no reason to doubt the German authorities’ view that the notified measure meets all the conditions and requirements of the guarantee component of the financial aid scheme. The Commission therefore considers that the notified measure is in principle compatible with the common market under Article 87(3)(b) of the EC Treaty and requires individual examination only in so far as is necessary to verify that the aid is compatible with the guidelines.

4.3 **Compatibility of the measures under the rescue and restructuring guidelines**

The Commission must examine in the light of paragraph 70 of the guidelines whether the financial rescue aid is consistent with the conditions set out in the guidelines, as required by paragraph 20 thereof. This means that, although other rescue and restructuring aid may be granted in the context of a restructuring operation, it must nevertheless be compatible with the guidelines.

The Commission would refer to its statements in the restructuring decision that, following the restructuring measures, IKB would develop positively ‘even in a
worst-case scenario’, that its business model ‘worked’ and that its business plan was ‘sound’ and - in the Commission’s view - based on ‘realistic’ assumptions.

(29) Despite the restructuring under way, IKB has faced increasing liquidity problems since October 2008 as a result of the widespread failure of the interbank and capital markets triggered by the insolvency of Lehman Brothers. In practice this means that IKB cannot obtain from the market the degree of refinancing initially envisaged. The Commission considers that this need for liquidity is the result of external developments, the nature of which could not have been anticipated at the time when the restructuring plan and the restructuring decision were drawn up. The guarantee framework of up to EUR 5 billion also serves to secure this liquidity, which was originally to be obtained from the capital markets, and hence to ensure implementation of the restructuring plan. The measure is therefore necessary to restore IKB’s viability.

(30) The guarantee is also limited to the minimum necessary. Germany confirms that the guarantee has been verified and found to be necessary by SoFFin and initially restricted to EUR 5 billion for six months.

(31) Moreover, the Commission considers that financial rescue aid within the meaning of the Banking Communication is generally of a specific type, stems from a particular crisis and is temporary in nature. In the case of guarantees in particular it is a non-structural measure which in principle, i.e. provided it is not called on, requires no restructuring plan. This applies to all banks affected by the crisis. No other rule can therefore be applied to companies which have already received restructuring aid, as in any event the sole purpose here is to help a company implementing a restructuring plan that has already been approved to overcome an unforeseeable external event. Accordingly, a guarantee that meets the criteria of the Banking Communication should not be seen as having any further implications even as part of an ongoing restructuring exercise under the guidelines.

(32) Lastly, the Commission has no reason to suppose that the aid is a covert new restructuring measure that should have been set out as an additional measure in connection with the restructuring plan. As mentioned above, the measure is a response to external developments which could not be anticipated at the time when the restructuring plan and the restructuring decision were drawn up. This is particularly evident from the fact that the measure does not replace any payments which would in fact have been made by the owners, i.e. Lone Star, or by KfW in the context of the restructuring plan.

(33) In view of all the above considerations, the Commission concludes that the measure must be regarded as compatible in the context of the financial aid scheme, as it is also compatible with the common market in the light of the rescue and restructuring guidelines.

5. DECISION

The Commission concludes that the measure constitutes state aid within the meaning of Article 87(1) of the EC Treaty which must be notified individually.
The Commission considers that the aid meets the conditions for compatibility with the common market under Article 87(3)(b) of the EC Treaty. It therefore raises no objections to the measure.

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

http://ec.europa.eu/community_law/state_aids/index.htm

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

European Commission  
Directorate-General for Competition,  
State aid Registry  
Rue de la Loi/Wetstraat, 200  
B - 1049 Brussels, Belgium  
Fax: (32-2) 296 12 42

Yours faithfully,

For the Commission

Neelie KROES  
Member of the Commission