II

(Non-legislative acts)

DECISIONS

COMMISSION DECISION (EU) 2015/657

of 5 February 2013

on State aid granted by Germany and Austria to Bayerische Landesbank (Case SA.28487 (C 16/09, ex N 254/09))

(notified under document C(2013) 507)

(Only the German text is authentic)

(Text with EEA relevance)

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) thereof,

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

Having called on Member States and other interested parties to submit their comments pursuant to those provisions ([1]),

Whereas:

1. PROCEDURE

(1) On 4 December 2008 the German authorities notified the Commission of measures to assist Bayerische Landesbank ('BayernLB' or 'the bank') in the form of a risk shield of EUR 4,8 billion and a capital injection of EUR 10 billion. By Decision of 18 December 2008 ('the Rescue Decision', Case N 615/08) the Commission authorised those measures on the basis of Article 107(3)(b) of the Treaty ([2]) for a period of 6 months, or, in the event that a credible and substantiated restructuring plan for the bank was submitted within those 6 months, until the Commission reached a decision upon the plan ([3]).

(2) In December 2008, BayernLB's subsidiary Hypo Group Alpe Adria ('HGAA') received EUR 700 million from BayernLB, and another EUR 900 million in Tier 1 capital from Austria on the basis of the Austrian emergency bank support scheme ([4]). On the basis of the same Austrian scheme, HGAA also received guarantees of EUR 1,35 billion for bond issues under a debt issuance programme.

(3) On 29 April 2009 Germany notified a restructuring plan for BayernLB to the Commission. On the same date Austria submitted a viability plan for HGAA.

([1]) OJ C 134, 13.6.2009, p. 31; OJ C 85, 31.3.2010, p. 21; and OJ C 266, 1.10.2010, p. 5.
([2]) With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union (TFEU). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.
([3]) Commission Decision of 18 December 2008 in Case N 615/08 *BayernLB* (OJ C 80, 3.4.2009, p. 4).
([4]) Commission Decision of 9 December 2008 in Case N 557/08 Measures under the Law on the stability of the financial markets and on strengthening the interbank market for credit institutions and insurance companies in Austria (OJ C 3, 8.1.2009, p. 2) last prolonged until 30 June 2011 by the Commission Decision of 16 December 2010 in Case SA.32018 (2010/N) (OJ C 20, 21.1.2011, p. 3).

(4) By letter dated 12 May 2009, the Commission informed Germany and Austria that it had decided to initiate the procedure provided for in Article 108(2) of the Treaty in respect of the measures to assist BayernLB and HGAA: the Commission doubted whether the restructuring aid to BayernLB was compatible with the internal market, and in particular whether the restructuring plan was likely to restore BayernLB's viability ('the opening decision') ([5]). Furthermore, the Commission questioned whether HGAA was fundamentally sound, and consequently doubted whether the Austrian aid to HGAA was compatible with Article 107(3)(b) of the Treaty ([6]).

(5) HGAA was nationalised on 23 December 2009. That measure was authorised by the Commission in a decision adopted on 23 December 2009 ('the HGAA Rescue Decision', Cases C 16/09 and N 698/09) ([7]). In the same decision the Commission extended the proceedings to include additional aid granted by Austria to HGAA which in the Commission's view needed to be taken into account when assessing the restructuring plan for BayernLB. The Commission made a temporary finding that the measures were compatible with the internal market on the basis of Article 107(3)(b) of the Treaty pending the submission to the Commission of a coherent and credible restructuring plan for HGAA.

(6) A revised restructuring plan for HGAA was submitted on 16 April 2010, and on 22 June 2010 the Commission further extended the formal investigation, on the grounds that the revised plan did not ensure the restoration of HGAA's viability and did not provide for a proper sharing of the burden of restructuring or proper measures to mitigate the distortion of competition that would be caused. Pending the conclusion of its examination of the restructuring plan for HGAA, the Commission prolonged the authorisation of the aid that it had found compatible with the internal market on a temporary basis in the HGAA Rescue Decision ([8]).

(7) On 7 February 2011 the Commission informed Austria and Germany that Case N 698/09, concerning HGAA ([9]), would be split procedurally from Case C 16/09, concerning BayernLB. The present Decision relates only to Case C 16/09.

(8) The Commission engaged external experts to assess the risk shield which was authorised temporarily in the Rescue Decision, and to carry out a valuation of the portfolio of assets that the risk shield was to cover. After discussions with the bank and the German authorities, the experts delivered a final report on 16 November 2009.

(9) Germany provided projections of profit and loss accounts for each area of business and each legal entity on 6 April 2011. On 13 April 2011 Germany provided details of projected assets per business area and of projected liabilities per source of funding. At the same time, Germany provided projected margins per business area for assets, and per source of funding for liabilities. Additional information was provided through frequent exchanges of correspondence: in particular, information was provided on 15, 21 and 22 June 2011 which included capital planning until 2019, incorporating the projected effects of Basel III on the capital structure ([10]). Updated financial projections were provided on 27 September 2011 which included updated profit data and updated capital planning. Additional information on reductions in business was provided on 13 and 20 October 2011, and additional information on the financial projections and the risk shield was provided on 4, 5 and 6 June 2012. Updated financial projections including profit and loss account projections per business area, capital planning projections and information on funding requirements were provided on 6 June 2012. In what follows, references to the financial projections of the restructuring plan refer to the financial information supplied on 6 June 2012, or, where the information provided on 6 June 2012 did not involve any updates, to financial information provided earlier.

(10) The aid measures and the restructuring plan for BayernLB were discussed by the German authorities and the Commission departments in a series of meetings, teleconferences and other information exchanges between May 2009 and June 2012.

(11) Germany confirmed that for the purpose of the calculation of capital it expected that the accounts would be audited in accordance with the International Financial Reporting Standards ('IFRSs') from 1 January 2013 onward.

([5]) Case C 16/09 (OJ C 134, 13.6.2009, p. 31).
([6]) The impact on the bank of the aid granted to HGAA will be the subject of a separate decision.
([7]) OJ C 85, 31.3.2010, p. 21.
([8]) OJ C 266, 1.10.2010, p. 5.
([9]) Subsequently referred to as Case SA.32554 (09/C) *Restructuring aid for Hypo Group Alpe Adria*.
([10]) Basel III is the international regulatory framework for banks developed by the Basel Committee on Banking Supervision: it comprises a set of reform measures to strengthen the regulation, supervision and risk management of the banking sector.

(12) In the course of the investigation intensive discussion took place between the German authorities, the financial regulator, the owners of the bank and the bank itself with respect to the restructuring plan and a possible repayment schedule.

(13) On 15 June 2012, Germany informed the Commission of an e-mail message received on 14 June 2012 from the German financial supervisory authority (the Bundesanstalt für Finanzdienstleistungsaufsicht—'BaFin'), in which BaFin said that it would not accept that the nominal value of zero-interest loans provided by Bayerische Landesbodenkreditanstalt ('BayernLabo') should be classed as capital under the draft Capital Requirements Regulation ([11]), even though the bank's auditor had given the opinion on 12 April 2012 that under the IFRSs the loans should indeed as a rule be counted at nominal value. This question does not affect the treatment of capital under the Generally Accepted Accounting Principles ('GAAPs') in accordance with the German Commercial Code (*Handelsgesetzbuch*).

(14) On 6 June 2012 Germany notified an amended restructuring plan for BayernLB, which was supplemented by submissions of 12 June and 13 July 2012.

(15) Information on an indicative allocation per business area of additional risk position reductions was provided on 20 June 2012.

(16) On 27 June 2012 Germany provided the Commission with an indicative repayment schedule.

(17) On 28 June 2012 Germany notified a catalogue of commitments for BayernLB.

(18) On 25 July 2012, the Commission adopted a final decision with respect to the notified restructuring aid ('the 2012 Restructuring Decision'). The 2012 Restructuring Decision is vitiated by a legal defect, because it was addressed to Austria in a language other than the official language of the country, although Austria had not agreed that the authentic version should be in anything other than German. The Commission therefore needs to adopt a new decision to replace the 2012 Restructuring Decision. The 2012 Restructuring Decision contains some errors that could have been dealt with in a corrigendum (in recitals 13, 29, 30, 48, 72, 77, 81, 108, 163, 200, 207 and 210; in Tables 5, 10, 11 and 12; in the references to EUR/USD in Annex I; and in point 29(2) of Annex I and point 2 of Annex II). Correction of those errors does not affect the assessment of the facts that the Commission made in the 2012 Restructuring Decision. The present Decision will therefore rectify the errors.

2. THE FACTS

1. **Description of the beneficiary** ([12])

(19) BayernLB is a German Landesbank with its headquarters in Munich. Through a holding company, BayernLB Holding AG, it is owned indirectly by the *Land* of Bavaria (Freistaat Bayern), which has a stake of approximately 94 %, and the Association of Bavarian Savings Banks (Sparkassenverband Bayern, 'the savings banks association'), which has approximately 6 % ([13]).

(20) In 2008, the year of the granting of the capital injection (see section 2.2(a)) and the risk shield (see section 2.2(b)), the BayernLB group, including BayernLabo, LBS and BayernLB's subsidiaries, had a consolidated balance sheet total of EUR 422 billion, with risk positions amounting to EUR 198 billion ([14]) and around 20 000 employees. At the end of 2008, BayernLB recorded losses of around EUR 5 billion. The events that led to the rescue measures described in sections 2.2(a) and (b) of this Decision are explained in detail in the Rescue Decision.

([11]) Proposal for a Regulation of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms, COM(2011) 452 final. On 20 July 2011, the Commission adopted a legislative package to strengthen the regulation of the banking sector. That package, known as the CRD IV Package, would replace the current capital requirements directives (Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (OJ L 177, 30.6.2006, p. 1) and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (OJ L 177, 30.6.2006, p. 201)) with one directive and a regulation, which is the draft Capital Requirements Regulation referred to above.

([12]) A detailed description is given in the opening decision, p. 2.

([13]) Before the 2008 rescue measures the *Land* of Bavaria and the Savings Banks Association owned a 50 % share each.

([14]) BayernLB uses the term 'risk positions' (*Risikopositionen*) in line with the term used by the regulator for the calculation of capital ratios. In the December 2011 stress test the European Banking Authority referred to BayernLB's risk positions as 'risk weighted assets' (RWAs). In this Decision the Commission will refer to these assets as 'risk positions' or 'RWAs'.

Table 1

Key figures 2007-2011 (in EUR million, unless stated otherwise)

Group (in EUR million)	2007	2008	2009	2010	2011
	actual	actual	actual	actual	actual
Net interest income	2 170	2 670	2 561	1 942	1 963
Net fee income	380	584	434	265	262
Result from hedging	27	– 136	98	53	106
Trading result	– 238	– 2 138	887	1 043	341
Net income from investments & Impairments	– 336	– 1 924	– 1 444	– 332	– 206
Other net income	133	141	461	1	– 37
Total income	2 136	– 803	2 997	2 972	2 429
Loan loss provisions	– 115	– 1 656	– 3 277	– 696	– 548
Total expenses	– 1 765	– 2 620	– 2 125	– 1 462	– 1 456
Expenses for bank levy	0	0	0	– 51	– 74
Restructuring expenses	0	– 87	– 361	124	– 16
NET INCOME BEFORE TAX	255	– 5 166	– 2 765	885	334
TAX	– 80	– 191	– 328	– 294	– 269
NET INCOME	175	– 5 358	– 3 093	590	65
Cost income ratio (incl. bank levy) in %	83	– 326	71	51	63
Assets	415 639	421 666	338 818	316 354	309 144
Regulatory risk positions	188 888	197 650	135 788	123 950	118 425
Total Income/risk positions (in bps)	131	57	327	267	223
Average number of staff (in units)	17 891	19 405	17 764	10 383	10 064

(21) BayernLB is an international commercial bank. The regional focus of the bank's business is on Germany and selected European countries. BayernLB is also present in major financial centres such as New York, London, Paris and Milan.

(22) BayernLB's main subsidiaries are Deutsche Kreditbank AG ('DKB'), Landesbausparkasse Bayern ('LBS'), Bayerische Landesbodenkreditanstalt ('BayernLabo'), MKB Bank Zrt ('MKB', a Hungarian subsidiary), and, until its nationalisation by Austria at the end of 2009, HGAA.

(23) HGAA is an international finance group with a balance sheet in 2008 of EUR 43 billion and risk weighted assets ('RWAs') of EUR 32,8 billion. The HGAA group holding company is Hypo Alpe-Adria-Bank International AG ('HAAB Int'), based in Klagenfurt, Austria. Until the nationalisation of HGAA, BayernLB owned a 67,08 % stake in the group.

(24) MKB is a leading universal bank in Hungary with a focus on large corporates and high net worth individuals. It serves approximately 350 000 retail and mid-size corporate customers as well as around 3 000 large corporate and institutional customers.

(25) LBS is an institution (*Anstalt*) within BayernLB which is independent from an organisational and economic point of view, but has no legal personality. Because it is an institution within BayernLB, the owners are identical, namely the *Land* of Bavaria and the savings banks association.

(26) LBS cooperates with the Bavarian savings banks, which, inter alia, serve as its distribution channel, and has a leading position in the State-subsidised mortgage savings business in Bavaria.

(27) LBS has a share of approximately 42 % of the market for new mortgage savings contracts. At 31 December 2011 it had a balance sheet of EUR 11 billion, deposits of EUR 9,7 billion and outstanding building loans of EUR 1,9 billion. In 2011 it had pre-tax income of EUR 68 million.

(28) BayernLabo is a development institution within BayernLB; it was founded in 1884 for the purpose of financing infrastructure projects. In 1972 it merged with Bayerische Gemeindebank to form Bayerische Landesbank Girozentrale, which subsequently became BayernLB. BayernLabo is independent from an organisational and economic point of view, but is legally dependent; it is an institution governed by public law within BayernLB, and is covered entirely by a 100 % guarantee (*Gewährträgerhaftung*) provided by the *Land* of Bavaria. Its annual accounts are fully integrated into the accounts of BayernLB.

(29) Originally, BayernLabo managed funds from the *Land* of Bavaria as a trustee; the funds were to be used for social housing purposes. The cash value of a part of those social housing loans was valued in the early 1990s and the *Land* injected the sum into BayernLabo as an earmarked special-purpose contribution (*Zweckeinlage*). The special-purpose contribution amounts to EUR 612 million, which remains constant over time.

(30) BayernLabo's capital must be used to promote social housing, and is not available for the commercial business of BayernLB, which is to say that it cannot be used to fulfil the regulatory capital requirements for loans or other assets.

(31) BayernLabo's capital is currently remunerated in the following way. For the special-purpose contribution, BayernLB has to pay the *Land* a minimum remuneration of [2-5] (*) %, unless BayernLB as a whole makes a loss. For the loss-absorbing function of the rest of BayernLabo's capital, BayernLB has to pay a remuneration of [0-1] % to BayernLabo. That remuneration was accepted as appropriate in Commission Decision 2006/739/EC ([15]). In order to ensure that BayernLabo's capital can continue to be considered capital of the highest quality for BayernLB (Tier 1), the restructuring plan has adjusted the level of capital and the form of remuneration (see recital 81).

2. **The aid measures**

(a) *The capital injection*

(32) In December 2008, BayernLB obtained a Tier 1 capital injection of EUR 10 billion from the *Land* of Bavaria ([16]), consisting of a silent participation (*stille Einlage*) in the amount of EUR 3 billion and preference shares in the amount of EUR 7 billion. The coupon for the silent participation is set at 10 % of the nominal value and is non-cumulative. The preference shares are to be remunerated at 10 % with a preferential right to profits during the restructuring phase. That preferential right to profits will end once the claw-back is complete and the *Land*'s silent participations are paid back in full. Dividend payments are non-cumulative.

(*) Business secret

([15]) Commission Decision 2006/739/EC of 20 October 2004 on State Aid implemented by Germany for Bayerische Landesbank — Girozentrale (OJ L 307, 7.11.2006, p. 81).

([16]) For a detailed description of the capital injection see the Rescue Decision, recitals 13 ff.

(33) The savings banks association did not participate in the share capital increase. Consequently, its 50 % stake in BayernLB was reduced to 6 % ([17]).

(b) *The EUR 4,8 billion risk shield*

(34) The *Land* of Bavaria provided a risk shield of EUR 4,8 billion on a portfolio of asset-backed securities (ABSs) with a nominal value of EUR 21 billion ([18]).

(35) The risk shield protects BayernLB against losses stemming from BayernLB's ABS portfolio, and the guarantee thus provided prevents further write-downs. A declaration to that effect was made by the *Land* on 19 December 2008. The ABS portfolio had a nominal value of EUR 19,589 billion at the reference date of 31 December 2008.

(36) BayernLB's ABS portfolio contains underlying securities of several kinds. Residential mortgage-backed securities (RMBSs), both prime and subprime, constitute about half of the total portfolio. Other major securities in the portfolio include commercial mortgage-backed securities (CMBSs), collateralised debt obligations (CDOs) and other ABSs related to commercial and consumer receivables.

(37) The *Land* of Bavaria guarantees EUR 4,8 billion, which, however, becomes effective only if and to the extent that the loss exceeds a sum of EUR 1,2 billion to be borne by BayernLB (the 'first loss piece'). Subtracting the first loss piece of EUR 1,2 billion from the nominal value of EUR 19,589 billion gives a transfer price of EUR 18,389 billion.

(38) The duration of the risk shield is linked to the maturity of the securities in the ABS portfolio. The guaranteed securities were reduced from around EUR 19,6 billion in December 2008 to EUR 11,9 billion in December 2011. According to updated projections of 31 March 2012, the portfolio will be reduced to EUR 7 billion by September 2014. The priority is to minimise losses, but it is uncertain what the level of market prices will be in 2014, so that it is not yet clear whether at that time a sale of the remaining portfolio (which is in principle sought) will in fact be be feasible, that is to say economically reasonable ([19]).

Valuation of the shielded assets

(39) The portfolio was valued in two steps. First, an early warning tool was used to flag the individual deals (green, yellow, red) in order to detect distressed or impaired deals. With the help of the tool an internal rating was produced: deals that had a yellow or red flag were typically downgraded. The internal rating was then mapped to Moody's public rating. That public rating was then used in Moody's CDOROM ([20]) version 2,4 to arrive at an estimate of the expected loss on the full portfolio and the relevant tranches.

(40) On the basis of that methodology the real economic value (REV) of the ABS portfolio at the time of the approval of the measures was estimated by the Commission's experts at 83,87 % of the nominal value of EUR 19,589 billion, that is to say EUR 16,429 billion. In an e-mail message of 14 December 2009 Germany stated that it would not be seeking further analysis of the expected loss. When a transfer price of EUR 18,389 billion is compared to a real economic value of EUR 16,429 billion, there is a a difference of EUR 1,96 billion.

(41) The capital relief effect of the measure at the time the risk shield was implemented was determined to be EUR 1,28 billion.

(42) The accuracy of the method and the underlying calculations used to determine the capital relief effect was confirmed by BaFin in a letter dated 9 April 2010.

([17]) An expert opinion given by Ernst & Young on 14 January 2010 regarding the value of BayernLB at 18 December 2008 concluded that the savings banks association's stake was [< 5] %. Given the pending State aid procedure, no formal decision was taken on the stake held by the savings banks association.

([18]) For a detailed description of the risk shield see the Rescue Decision, recitals 20 ff.

([19]) As explained in recital 23 of the Rescue Decision, the size of the portfolio was to have been reduced below EUR [4-6] billion within 6 years from the granting of the guarantee. According to the notification, the remaining portfolio was to be sold on the market thereafter, with the agreement of the guarantor. The Bavarian authorities and the bank accordingly expected that the duration of the guarantee would most likely not exceed 6 years.

([20]) CDOROM is a Monte Carlo simulation model used to calculate the expected loss on tranches of a given static portfolio of assets. It is used by rating analysts at Moody's Investors Services to assign ratings to static synthetic CDOs. Similar models and methodologies have been used to assess expected losses for other impaired assets measures.

Remuneration of the risk shield and claw-back

(43) BayernLB revised the remuneration for the risk shield (including a claw-back payment) retroactively, with effect from 1 January 2010, from 50 basis points to a yearly fee of EUR 200 million, consisting of:

(i) a basic fee of 6,25 % on the initial capital relief effect of EUR 1,28 billion at 31 December 2008, that is to say EUR 80 million per annum;

(ii) an additional fee of 3,75 % on a part of the guarantee amounting to EUR 2 billion, that is to say EUR 75 million per annum, until 2015;

(iii) a special fee of EUR 45 million per annum until 2015.

(c) *The liability guarantees*

(44) BayernLB received liability guarantees given by the German Financial Market Stabilisation Fund (Sonderfonds Finanzmarktstabilisierung—'SoFFin') under the Financial Market Stabilisation Act (*Finanzmarktstabilisierungsgesetz*), which was approved by the Commission in its decision on the German rescue package for credit institutions ([21]). Those guarantees amounted to EUR 15 billion, of which EUR 5 billion was used for an issue in January 2009, while the remaining EUR 10 billion were returned unused to the guarantor on 16 October 2009, whereupon SoFFin reduced the guarantee to EUR 5 billion. On 23 January 2012, the last tranche of the liability guarantees granted by SoFFin was redeemed.

(d) *The funding guarantee for liquidity granted by Austria*

(45) In December 2008, following large write-downs and losses, HGAA received EUR 700 million from BayernLB and EUR 900 million in Tier 1 non-voting capital ([22]) from Austria on the basis of the Austrian emergency bank support scheme ([23]).

(46) In 2009, BayernLB and HGAA commissioned an outside report on HGAA's credit risk. That report found that the expected losses would reduce the Tier 1 capital ratio to below 4 % by the end of 2009.

(47) Following the Austrian financial market supervisory authority's ultimatum to the shareholders to take the necessary decisions for a recapitalisation of HGAA by 11 December 2009, Austria acquired all the shares for the symbolic price of one euro ([24]). BayernLB renounced all its shareholder's rights including its claims in respect of EUR 300 million in Tier 2 capital in HGAA ([25]). In the event that further capital measures were needed to enable HGAA to fulfil the regulatory minimum capital requirements, it was also agreed that any further capital injection would be split between BayernLB and Austria in a proportion of 3:1. However, any additional capital supplied by BayernLB on that basis would reduce the EUR [500-550] million in funding that BayernLB had provided to HGAA, on which it had renounced its rights as part of the HGAA rescue operation.

(48) In order to ensure HGAA's liquidity, BayernLB reissued a liquidity line amounting to EUR [350-600] million that had run out on 4 December 2009. Furthermore, it was agreed that the existing intra-group funding of EUR 2,638 billion from BayernLB to HGAA would remain with HGAA until the end of 2013. In 2014, BayernLB would leave funding amounting to EUR [650-700] million with HGAA, and in 2015 it would leave EUR [350-400] million. In the event that HGAA was split up or another economically comparable measure was taken that did not ensure the viability of HGAA, the exposure was guaranteed by Austria.

([21]) See the Commission Decision of 27 October 2008 in Case N 512/08 *Rescue package for credit institutions in Germany,* replaced by the Commission Decision of 12 December 2008 in Case N 625/08 *Rescue package for financial institutions in Germany,* prolonged by the Commission Decision of 22 June 2009 in Case N 330/09 (OJ C 160, 14.7.2009, p. 4), and by the Commission Decision of 23 June 2010 in Case N 222/10 (OJ C 178, 3.7.2010, p. 1), reactivated by the Commission Decision of 5 March 2012 in Case SA.34345 (12/N) (OJ C 108, 14.4.2012, p. 2), last prolonged by the Commission Decision of 29 June 2012 in Case SA.34897 (12/N), not yet published.

([22]) The form of capital used, *Partizipationskapital,* carries no voting rights.

([23]) See footnote 4.

([24]) This measure and the accompanying measures were authorised by Commission Decision of 23 December 2009, see footnote 7.

([25]) The rescue of HGAA by Austria under the above conditions meant that BayernLB had to write down the full book value of HGAA, amounting to EUR 2,3 billion, and to renounce receivables from HGAA for funding already provided amounting to EUR 825 million.

(e) *The BayernLabo capital transferred to BayernLB*

(49) A significant part of the reserves of BayernLabo, amounting to EUR 1 billion, is to be be transferred to the reserves of the core bank, BayernLB, without any consideration or remuneration.

3. **The restructuring plan notified by Germany**

(a) *Description of the business model*

(50) BayernLB has drawn up a restructuring plan to set out its return to viability by 31 December 2015. The plan envisages substantial changes to BayernLB's business model and provides for a strategic realignment of the bank. The new business model is characterised by reduced risk and a stronger focus on regional business and sustainability on the funding and lending sides. It provides for a significant reduction of the activities of BayernLB and a concentration on core activities, core products and core regions, through such things as the closure or divestiture of business centres, subsidiaries and shareholding, and the discontinuation of areas of business.

(51) A main feature of the restructuring strategy is the distinction between core and non-core activities in the business segments. It is BayernLB's objective to separate from all non-core activities.

(52) In order to implement the strategic separation between core and non-core activities, BayernLB has established a restructuring unit where most non-core activities are bundled. In that way, BayernLB can focus on future tasks in its core activities without having to deal with the phasing out of the non-core activities.

(53) BayernLB will focus its business on three core business areas:

(i) core business area 1: corporates, small and medium-sized businesses (*Mittelstand*) ([26]) and private customers;

(ii) core business area 2: real estate, savings banks, public authorities and BayernLabo;

(iii) core business area 3: markets.

Core business area 1: corporates, small and medium-sized businesses (Mittelstand) and private customers

(54) In the corporates business area, the target group is enterprises with headquarters in Germany and a turnover of at least EUR 1 billion. Business hitherto conducted at foreign branches, especially local activities, will be reduced, and limited to customers with a link to Germany ([27]), to whom BayernLB will in particular offer corporate banking products, especially credit facilities, and structured finance products, consisting of export and trade financing, leasing and project financing.

(55) Regarding small and medium-sized businesses, BayernLB will target Bavarian enterprises with a turnover between EUR 50 million and EUR 1 billion, family-run businesses, and other German enterprises in specific regions where the bank is already present, such as North Rhine-Westphalia via its Düsseldorf branch. In regions without local branches the bank will focus on enterprises with a turnover of EUR 100 million to EUR 1 billion. Besides credit facilities, the bank will, inter alia, offer products in the fields of export and trade financing, documentary business, interest and currency management, derivatives, financial investment, monetary transactions and leasing. The bank will also provide products to enterprises with a turnover below EUR 50 million via the savings banks.

(56) Through its subsidiary DKB, BayernLB will be active in the business areas retail banking, infrastructure, and commercial customers. In retail banking, DKB will offer bank accounts, credit cards and other products (financing, investment) via direct banking. In infrastructure, DKB will, in particular, target entities providing services of general interest and healthcare institutions. Lastly, DKB will target commercial customers in selected industries such as agriculture, food, environmental technology, tourism, and legal and tax services.

([26]) The Union definition of small and medium enterprises (SMEs) is not the same as what is understood by *Mittelstand* in Germany, here translated 'small and medium-sized businesses'; for purposes of this Decision, *Mittelstand*—'small and medium-sized businesses'—refers to businesses with a turnover of up to EUR 1 billion.

([27]) See definition of 'link to Germany' in Annex I, point 6.

Core business area 2: real estate, savings banks, public authorities and BayernLabo

(57) With regard to real estate, BayernLB will focus on German clients. It will, however, also provide services to international clients with a link to Germany. With regard to commercial real estate, the bank will provide portfolio financing, housing promotion, development and inventory financing, and financing of real estate funds. With regard to residential real estate, the bank will provide services for housing enterprises and building financing. In the context of managed real estate, the bank will focus on financing care homes and health care property.

(58) BayernLB will continue to cooperate with Bavarian and, to a lesser extent, other German savings banks. The bank will provide products complementing the savings banks' own products and act as the savings banks' central bank.

(59) In the public authorities segment, BayernLB will offer various financing products and other services related, for example, to public-private partnership projects. BayernLB will not offer new credit products to public authorities outside Bavaria except for liquidity management. In addition, public-private partnership, project and export financing can still be offered if this is in the interest of customers with a link to Germany.

(60) Through its subsidiary BayernLabo, BayernLB will be active in providing government-funded financing for residential real estate projects in Bavaria. BayernLabo will target private customers, businesses that create or modernise housing in Bavaria, and public authorities. Furthermore, BayernLabo will offer financing products to public authorities and consortia set up by public authorities. That business will, however, be limited to the region of Bavaria.

Core business area 3: markets

(61) BayernLB will provide treasury products (commodities, short-term interest rates, fixed-income derivatives, foreign exchange), capital markets products (fixed income, structured products for retail certificates, structured interest products, shares execution) and funding products (international loans, domestic funding). The bank will offer these products to financial institutions and institutional customers such as insurance companies, trusts and churches. This business area will be limited to activities in connection with the bank's clients: proprietary trading will be abandoned, except for treasury activities. Furthermore, credit business with other banks will be cut back substantially.

(b) *Reduction of business activities*

(62) BayernLB has already closed its offices in Beijing, Tokyo, Montreal, Mumbai, Kiev, Hong Kong and Shanghai. The bank's international presence will be limited to the offices in Paris, New York, London and Milan, which have already been substantially downsized.

(63) The bank will sell several of its subsidiaries. In particular, it will sell LBS to the savings banks association. The purchase price of EUR 818,3 million is based on an expert report provided by two valuation experts on 30 May 2012 and reflects the value of LBS at 30 June 2012. Germany argues that that the savings banks are the main distribution channel for LBS products, and that in determining a price a normal private investor would apply a discount for such a market risk. That argument was not taken into account in the expert report. For this reason the Commission has not insisted on an open tender, as it considered it unlikely that such a tender would have resulted in higher proceeds than a sale to the savings banks association on the basis of the expert report.

(64) In addition, the bank will terminate its business in Eastern Europe (the '*Osteuropa*' segment), and will in particular sell its Hungarian subsidiary MKB Bank. In the initial restructuring plan BayernLB had targeted a sales date of […] for MKB. Because of the political and economic uncertainty in Hungary ([28]) and the impact thereof on MKB's financial data, BayernLB came to the conclusion that it was unlikely to be able to sell MKB in the short term, and decided to postpone the divestment of MKB from […].

(65) Furthermore, BayernLB will permanently reduce risks in its remaining core business areas. It will abandon businesses which are highly dependent on the development of capital markets, for example proprietary trading, asset-backed securities and transaction-related acquisition financing. It will greatly reduce funding- and risk-intensive business with international clients, and engage in such business only where there is a clear link to Germany.

([28]) In particular against the background of the recently introduced bank levy, which is not assessed on the basis of earnings, and the Foreign Currency Loan Repayment Law, both of which are the object of several complaints with the Commission.

(66) With regard to the corporates business area, corporate business and project financing for customers without a link to Germany will be abandoned.

(67) Real estate business in foreign offices with customers without a link to Germany will be terminated.

(68) Furthermore, credit business with banks will be extensively reduced, and dedicated proprietary trading will be abandoned.

(69) Altogether the bank undertakes to reduce its balance sheet to EUR 239,4 billion in 2015, from EUR 421,7 billion in 2008. On a 2008 like-for-like basis a balance sheet reduced to EUR 239,4 billion corresponds to EUR 206 billion, which is a reduction of 51 %.

(c) *Regional focus*

(70) At the end of 2010, 58 % of the credit exposure of BayernLB was located in Germany and 74 % in Europe (geographic region). The main currency exposures of BayernLB are the US dollar, the pound sterling and the Swiss franc (see Table 2); 24 % of the assets of the bank were denominated in currencies other than the euro at the end of 2010.

Table 2

Foreign currency denominated assets and liabilities end 2010

	ASSETS	LIABILITIES
CHF	12 994	9 384
GBP	14 752	11 736
USD	33 913	23 169
Other currencies	14 690	14 942

(71) Of the dollar-denominated assets, [30-50] % were booked in the restructuring unit at the end of 2010. At the end of 2010 BayernLB's New York office held [30-50] % of the dollar-denominated assets and the London office held [50-70] % of the sterling-denominated assets.

(72) In its corporates business area, BayernLB provides project finance loans in addition to loans to companies. At the end of 2010, out of EUR [23-29] billion of loans booked in this business area, corporate loans represented EUR [9-14] billion; the remaining EUR [12-17] billion were composed mainly of project finance and other structured finance loans. The project finance loans generated significant exposure to non-EU countries. Out of the outstanding stock of project finance loans, only [2-5] % were located in Germany at the end of 2011; the three biggest exposures by country were the United States, the United Kingdom and [a Middle Eastern country]. Out of the new loans generated in New York between 2009 and 2011 only [12-15] % related to projects in which a German client of the bank was participating, compared to [55-60] % of project finance loans generated over the same period in Europe, the Middle East and Africa ('EMEA').

(73) In order to focus the bank more on its core market in Bavaria and Germany, the bank has therefore agreed to restrict its business to clients with a link to Germany, and to significantly limit its international business, as indicated in detail in the commitments provided by Germany.

(d) *Capital-enhancing measures*

(74) In the course of the investigation intensive discussion took place between the German authorities, the financial regulator, the owners of the bank and the bank itself with respect to the amended restructuring plan and a possible repayment schedule.

(75) It is undisputed that under Basel III silent participations (except State aid) will not be acknowledged as Tier 1 capital, and will thus no longer be fully recognised as regulatory capital from 2013 on.

(76) Individual Bavarian savings banks currently hold EUR [700-750] million in silent participations in BayernLB; […] ([29]). Those silent participations have no maturity, and will therefore remain in the bank unless they are paid back at the initiative of the bank.

(77) The savings banks association has agreed with the bank that all the silent participations without a specified maturity that are held by individual savings banks will be paid back […] and will immediately be reinvested in BayernLB Holding by the saving banks association, via a capital increase ([30]).

(78) In addition, the savings banks association will inject a further EUR [22-62] million into BayernLB Holding. The new shares to be held by the savings banks association will be determined according to the value of BayernLB Holding assessed by the IdW S1 standard developed by the German institute of certified public accountants, Institut der Wirtschaftsprüfer ('IdW'). The savings banks association's stake may not exceed 25 %, to ensure that it remains below the blocking minority, which is 25 % + 1 vote.

(79) The silent participation of EUR 3 billion that is held by the *Land* of Bavaria will lose its status as full regulatory Tier 1 capital in 2018. Bavaria has publicly stated that it wants to recover the EUR 3 billion silent participation from BayernLB. However, BayernLB has been reluctant to redeem the silent participation, for fear of endangering its regulatory capital buffer. BaFin has told the Commission verbally that it considers that a bank needs not only a 9 % core Tier 1 ratio as defined by the European Banking Authority ('EBA') but also a substantial buffer, which should amount at least to between 0,5 and 1 % depending on the business model of the bank.

(80) Moreover, after applying a crisis scenario in line with the June 2011 EBA stress test, the bank concluded that it would be wise to have a buffer of this kind. The regulator welcomed this prudent approach. For this reason Germany has not been able to propose any solution to the Commission showing how the silent participation could be redeemed.

(81) BaFin has signalled that BayernLabo's capital [might be handled differently] in the future. BayernLB therefore intends to transfer a significant part of BayernLabo's reserves (EUR 1 billion) to the core bank. The special-purpose contribution (see recitals 29 and 31), however, will remain with BayernLabo, and will continue to be used for BayernLabo's legally imposed housing promotion work. The capital remaining in BayernLabo will be upgraded so that it can be recognised as EBA core capital, being fully loss-absorbing and remunerated by way of dividends.

(e) *Description of the financial planning*

(82) The assumptions used in the financial planning, the regulatory treatment, the projected key figures, profitability per business area and projections in respect of MKB are presented below in recitals 83 ff.

— Assumptions

(83) For GDP and currency forecasts in the short term (that is to say the period 2012-2013), BayernLB uses a methodology which is based on weighted forecasts from international institutions, short-term forecasts from private forecasters, and input from BayernLB's own in-house research department. BayernLB bases its long-term GDP forecasts beyond 2013 on the assumption that the economy will tend to grow in line with its long-term potential. BayernLB's forecasts for internal planning purposes are as a rule. conservative. Minor deviations from the figures forecast by other institutions can occur due to rounding (for example, 2013 euro area forecasts: IMF: 0,9 %, BayernLB and Commission: 1 %).

(84) BayernLB's dollar forecast rests on the assumption that the dollar will […] in 2013. In 2015-16, the dollar will […] vis-à-vis the euro. According to BayernLB, this will be the result of expected […] in US public finances and the exchange rate […] purchasing power parity (PPP), which the Organisation for Economic Cooperation and Development (OECD) estimated to be USD 1,25 per euro in 2011. As inflation in the US is expected to be higher than in the euro area, PPP should in BayernLB's view be close to USD 1,30 in 2016.

(85) For interest rates, BayernLB's projections start from the current very low interest rate environment. BayernLB assumes a gradual return to normal from the current low levels towards fair value levels; it bases this view on growth forecasts, inflation forecasts and statements regarding expected monetary policy.

([29]) As a result of BayernLB's losses in the past years, the loss-participating silent participations of the savings banks were written down from their nominal value of EUR [770-810] million to EUR [700-750] million.

([30]) Alternatively, the silent participations may be converted into shares, instead of being first repaid and then reinjected.

(86) The German authorities have provided the Commission with information showing that BayernLB's GDP forecasts are very close to the consensus of major international institutions such as the International Monetary Fund (IMF) and the Commission.

(87) The latest update of the projections, dating from June 2012, is based on a set of assumptions established in May 2012. In these updated financial projections of June 2012 BayernLB has changed a number of macroeconomic assumptions, and in particular adjusted its forecast to the current very low interest rates (see Table 3).

Table 3

Key assumptions of financial projections

Year	2012 (%)	2013 (%)	2014 (%)	2015 (%)
5-year interest rates (previous planning)	[…]	[…]	[…]	[…]
5-year interest rates (June 2012 update)	[…]	[…]	[…]	[…]
EUR/USD	[1,10-1,60]	[1,10-1,60]	[1,10-1,60]	[1,10-1,60]

(88) BayernLB has also made a number of negative adjustments to its earnings projections for company-specific reasons. For instance, it has used more cautious tax projections (i.e. a higher effective tax rate), increased its operational costs to reflect an unfavourable ruling of the Federal Labour Court (*Bundesarbeitsgericht*), and updated its cross-currency hedge results to reflecting the position at the end of 2011 ([31]).

(89) BayernLB has provided an analysis of the sensitivity of its financial projections to a variation of the US dollar, Swiss franc and sterling exchange rates. According to the information provided, net interest income is most sensitive to variations in dollar exchange rates. The net interest income projections tend to decrease for higher euro/dollar exchange rates and increase for lower euro/dollar exchange rates.

— Financial projections

(90) Germany has provided detailed financial projections for asset volumes, margins and risk positions per business area, and also for funding per source of refinancing with the respective margins.

(91) The key figures of the restructuring plan are presented in Table 4.

Table 4

Key financial figures of the restructuring plan

Group (in EUR million)	2012	2013	2014	2015	2016
	plan	plan	plan	plan	plan
Net interest income	[…]	[…]	[…]	[…]	[…]
Net fee income	[…]	[…]	[…]	[…]	[…]
Result from hedging	[…]	[…]	[…]	[…]	[…]
Trading result	[…]	[…]	[…]	[…]	[…]
Net income from investments & Impairments	[…]	[…]	[…]	[…]	[…]
Other net income	[…]	[…]	[…]	[…]	[…]

([31]) For the sake of completeness, it should be mentioned that there were also two positive revision effects, as a result firstly of an update of the expected effects of Basel III (EUR […]) and secondly of an update of the planning of the restructuring unit (EUR […] million).

Group (in EUR million)	2012	2013	2014	2015	2016
	plan	plan	plan	plan	plan
Total income	[2 300-2 800]	[2 300-2 800]	[2 300-2 800]	[2 300-2 800]	[2 300-2 800]
Loan loss provisions	[…]	– […]	[…]	[…]	[…]
Total expenses	[…]	[…]	[…]	[…]	[…]
Expenses for bank levy	[…]	[…]	[…]	[…]	[…]
Restructuring expenses	[…]	[…]	[…]	[…]	[…]
NET INCOME BEFORE TAX	[0-500]	[500-1 000]	[500-1 000]	[500-1 000]	[700-1 200]
TAX	[…]	[…]	[…]	[…]	[…]
NET INCOME	[0-500]	[200-700]	[200-700]	[400-900]	[400-900]
Cost/income ratio (incl. bank levy) in %	[60-75]	[50-60]	[50-60]	[45-55]	[45-55]
Assets	[250 000-280 000]	[250 000-280 000]	[240 000-270 000]	[220 000-250 000]	[220 000-250 000]
Regulatory risk positions	[…]	[…]	[…]	[…]	[…]
Total income/risk positions (in bps)	[…]	[…]	[…]	[…]	[…]
Average number of employees (in units)	[…]	[…]	[…]	[…]	[…] (**)
Return on equity (RoE) based on a 10% capital ratio (*)	**[0-5] %**	**[3-8] %**	**[3-8] %**	**[3-8] %**	**[5-10] %**

(*) In its calculations of return on equity (RoE) BayernLB assumes a 10% capital ratio.
(**) Including MKB which is to be divested by […] at the latest; omitting MKB's staff, […].

(92) In the December 2011 EBA stress test, BayernLB's EBA core Tier 1 capital ratio stood at 10 %. Over the restructuring period the bank will generate increasing profits.

— Business areas projections and profitability

Table 5

Business areas projections and profitability

Business area	RoE after tax (*)			RWAs (EUR billion)		Change in RWAs
	2011 (%)	**2012** (%)	**2016** (%)	**2011**	**2016**	**2011-2016** (%)
Corporates and small and medium-sized businesses	8,3	[3-8]	[5-10]	27,3	[29-31]	+ [6-14]
DKB	4,7	[3-8]	[5-10]	31,1	[38-41]	+ [21-31]

Business area	RoE after tax (*)			RWAs (EUR billion)		Change in RWAs
	2011 (%)	**2012** (%)	**2016** (%)	**2011**	**2016**	**2011-2016** (%)
Real estate	9,8	[3-8]	[5-10]	9,7	[13-15]	+ [33-42]
Savings banks and association	[15-50]	[10-35]	[10-35]	0,7	[1-3]	+ [50-200]
Markets	4,0	[(– 10)-(– 5)]	[0-5]	20,3	[14-16]	[(– 31)-(– 21)]
BayernLabo	85	[115-120]	[75-80]	0,6	[0,6-0,8]	+ [0-33]
Group (**)		**[1-5]**	**[5-10]**	**118,4**	**[95-105]**	**[(– 20)-(– 11)]**
Discontinued activities						
Restructuring unit	5,6	[(– 5)-(0)]	[(– 13)-(– 5)]	12,1	[1,5-2]	[(– 100)-(– 75)]
LBS	25,3	[…]	[…]	2,1	[…]	[…]
MKB	– 40,4	[(– 20)-(– 15)]	[…]	7,2	[…]	[…]

(*) In its calculations of return on equity (RoE) BayernLB uses EBA core capital as an approximation of equity, and assumes an EBA core capital ratio of 10 %. The assumption of a 10 % EBA core capital ratio has no distorting effect on the comparative profitability analysis presented here.

(**) The data in this row refer to the whole BayernLB group and include business areas which are not shown separately in the rows above

— Funding

(93) In June 2011 Germany provided the funding plan for BayernLB set out in Table 6. This breakdown dates from before the bank committed to additional reductions in its balance sheet which would bring its balance sheet total to around EUR 240 billion in 2015.

Table 6

Funding plan

	2010	2015	absolute change
Secured liabilities to banks	[…]	[…]	[…]
Unsecured liabilities to banks	[…]	[…]	[…]
of which: Depot A	[…]	[…]	[…]
Liabilities to non-banks	[…]	[…]	[…]
of which: corporate deposits	[…]	[…]	[2-8]

	2010	2015	absolute change
Securitised liabilities	[…]	[…]	– […]
of which: mortgage bonds (Pfandbriefe)	[…]	[…]	[…]
Of which: Depot B	[…]	[…]	[1-5]
Provisions for liabilities and charges	[…]	[…]	[…]
Subordinated liabilities	[…]	[…]	[…]
Own funds	[…]	[…]	[…]
Trading liabilities	[…]	[…]	[…]
Other	[…]	[…]	[…]
Total	[…]	[…]	[…]

(94) BayernLB has provided the information set out in Table 7 showing changes over the restructuring period in its securitised and non-securitised pre-crisis State-guaranteed grandfathered ([32]) liabilities.

Table 7

Maturity profile of grandfathered liabilities

Stock	In EUR billion
31.12.2010	58,3
31.12.2011	46,7
31.12.2012	41,4
31.12.2013	32,8
31.12.2014	23,6
31.12.2015	1,6

(95) Germany has provided extensive information on alternative sources of funding which are available to BayernLB. The information relates in particular to collateral that is eligible for the issue of covered bonds but not listed in the funding plan provided. Such collateral is available at the level of DKB and could provide an alternative cheap source of funding. Germany has also provided information on incremental issuance capacity on the international markets.

([32]) *Gewährträgerbehaftete* liabilities.

— MKB

(96) The Foreign Currency Loan Repayment Law ([33]) enacted by the Hungarian authorities in autumn 2011 was a major factor in MKB's net loss for the year of EUR 382 million.

(97) As MKB's earnings outlook has been permanently impaired by the early repayment of foreign currency loans and the continuing difficult environment, BayernLB wrote down its stake in MKB by EUR 576 million in its accounts, in line with German accounting standards.

(98) In the first quarter of 2012, BayernLB contributed EUR 200 million to a capital increase for MKB. Via intra-group funding BayernLB has an exposure to MKB estimated to be around EUR […] billion at the end of 2012.

— EBA stress test

(99) In the EBA capital exercise of December 2011, BayernLB's core Tier 1 ratio according to the EBA criteria ('the EBA core Tier 1 ratio' or 'the core Tier 1 ratio') stood at 10 %. Taking into account the composition of BayernLB's sovereign portfolio, the EBA concluded that BayernLB did not need any specific sovereign capital buffer for its exposures in the European Economic Area.

— Regulatory assumptions

(100) The financial planning is based on the assumption that in 2013 there will be a changeover in the reference accounting standards used for calculating regulatory capital ratios, from the Generally Accepted Accounting Principles (GAAPs), in accordance with the German Commercial Code (*Handelsgesetzbuch*), to the International Financial Reporting Standards (IFRSs).

(101) The use of the IFRSs would give rise to a number of changes in BayernLB's regulatory capital, which are factored into the projections. A decisive impact of the changeover relates to interest-free loans (State-subsidised loans) provided by BayernLabo in the context of residential construction and urban development ([34]). Under the Commercial Code these loans are recorded at their discounted value (which is below nominal value, because the loans pay no interest). Under the IFRSs, as confirmed by BayernLB's auditor, the loans would be accounted for at their nominal value. The difference would generate capital at the level of BayernLabo and consequently at the level of BayernLB. The impact of that change amounts to EUR 967 million at 31 December 2011.

(f) *Additional risk position reduction*

(102) Germany undertakes to reduce further risk positions of EUR 10 billion by 2017 in a profit-neutral way in which any reduction in income would be offset by a corresponding reduction in costs. The reductions may be achieved by optimising the calculation of risk positions or by reducing assets in specified business areas.

(103) By way of illustration BayernLB has provided the following segment-by-segment breakdown of the EUR 10 billion reduction as compared with the risk position projections in the restructuring plan: additional reductions of EUR […] billion in corporates/small and medium-sized businesses, EUR […] billion in DKB, EUR […] billion in real estate, EUR […] billion in markets, and EUR […] billion in the restructuring unit.

(104) By way of illustration Germany has provided two possible scenarios for achieving the additional EUR 10 billion risk position reduction. Germany and BayernLB consider those scenarios achievable.

Scenario 1 — Risk position reductions consisting of EUR […] billion through reductions in business and EUR […] billion through optimisation

(105) In a first scenario, Germany presents the impact of risk position reductions consisting of EUR […] billion through reductions in business and EUR […] billion through optimisation, shown in Table 8.

([33]) MKB provided retail customers with loans in foreign currency—Swiss francs and euros—to fund the purchase of a property, usually their own home. However, the Swiss franc appreciated so much over time that the cost of servicing the debt in a foreign currency far outweighed the advantage of raising a loan in a currency with significantly lower interest rates than the domestic currency. To ease the burden on borrowers, the Hungarian parliament passed the Foreign Currency Loan Repayment Law in September, giving private individuals the right to repay their foreign currency mortgage loans at a rate far below the market exchange rate.

([34]) BayernLabo has a mandate to provide subsidised loans in its capacity as BayernLB's development bank.

Table 8

Scenario 1

Group (in EUR million)	2016	Delta resulting from reduction EUR 10 billion risk positions	2016
	Restructuring plan		After additional reduction
Total income	[…]	[…]	[…]
Loan loss provisions	[…]	[…]	[…]
Total expenses	[…]	[…]	[…]
NET INCOME BEFORE TAX	[…]	[…]	[…]
RoE (*) (22 % tax)	[5-10] %	[…]	[7-12] %
Risk positions	[…]	[…]	[…]

(*) In its calculations of return on equity (RoE) BayernLB uses EBA core capital as an approximation of equity, and assumes an EBA core capital ratio of 10 %.

Scenario 2 — Risk position reductions consisting of EUR […] billion risk position reduction through business reductions and EUR […] billion reduction through optimisation

(106) In a second scenario Germany presents the impact of risk position reductions consisting of EUR […] billion through reductions in business and EUR […] billion through optimisation, shown in Table 9.

Table 9

Scenario 2

Group (in EUR million)	2016	Delta resulting from reduction EUR 10 billion risk positions	2016
	Restructuring plan		After additional reduction
Total income	[…]	[…]	[…]
Loan loss provisions	[…]	[…]	[…]
Total expenses	[…]	[…]	[…]
NET INCOME BEFORE TAX	[…]	[…]	[…]
RoE (*) (22 % tax)	[5-10] %	[…]	[7-12] %
Risk positions	[…]	[…]	[…]

(*) In its calculations of return on equity (RoE) BayernLB uses EBA core capital as an approximation of equity, and assumes an EBA core capital ratio of 10 %.

(107) According to the bank, the precise profile of the decrease in risk positions over the period cannot be established at this stage, because the reductions can be achieved either through optimisation or through reductions in business.

4. **Repayment schedule**

(108) At the Commission's request the bank calculated the repayment schedules set out in Tables 10 and 11, factoring in the risk position reduction of EUR 10 billion from 2017. The bank took into account all secondary effects of the repayment, in particular payments of interest on the silent participation. Moreover, the repayment schedule is based on the prudent assumption that the regulator will not recognise the capital generated by inclusion in the capital of BayernLabo loans at nominal value in the supervisory core capital under the IFRSs (Table 10). However, Germany has given a commitment that if the regulator were to recognise all or parts of those loans as supervisory core capital, they would be taken into account in the schedule for the repayment of the corresponding part of the claw-back from 2013 as indicated in Table 11.

Table 10

Hypothetical repayment schedule excluding additional capital potentially generated by nominal-value accounting of BayernLabo loans under IFRSs (in EUR million)

Year	2013	2014	2015	2016	2017	2018	2019	TOTAL
Periodic claw-back payments	480 (*)	120	120					**720**
Claw-back	[…]	[…]	[…]	[…]	[…]	[…]	[…]	**1 240**
Silent participations repayment without additional agreed reductions	[…]	[…]	[…]	[…]	[…]	[…]	[…]	**[3 000]**
Repayment through additional reductions	[…]	[…]	[…]	[…]	[…]	[…]	[…]	
Cumulative (claw-back and Bavaria silent participations)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	

(*) Including retroactive claw-back payments beginning 2010.

Table 11

Hypothetical repayment schedule including additional capital of […] potentially generated by nominal-value accounting of BayernLabo loans under IFRSs (in EUR million)

Year	2013	2014	2015	2016	2017	2018	2019	TOTAL
Periodic claw-back payments	480 (*)	120	120					**720**
Claw-back	[…]	[…]	[…]	[…]	[…]			**1 240**
Silent participations repayment without additional agreed reductions	[…]	[…]	[…]	[…]	[…]			**[3 000]**
Repayment through additional reductions	[…]	[…]	[…]	[…]	[…]			
Cumulative (claw-back and Bavaria silent participations)	[…]	[…]	[…]	[…]	[…]			

(*) Including retroactive claw-back payments beginning 2010.

5. **Commitments provided by Germany**

(109) Germany has undertaken to ensure that the original restructuring plan submitted on 29 April 2009, as last amended by Germany's communications of 6 and 12 June 2012, is implemented in full, including the commitments set out in Annex I to this Decision and the conditions set out in Annex II to this Decision, and in accordance with the timetable laid down in those annexes.

3. **SUMMARY OF THE OPENING DECISION AND ITS EXTENSION**

(110) In the opening decision the Commission expressed doubts as regards the following:

(i) the calculation of the amount of aid and the remuneration of the risk shield;

(ii) whether the restructuring plan was likely to restore the bank's long-term viability;

(iii) whether the measures to address any distortion of competition occasioned by the aid were sufficient and effective;

(iv) whether the aid was limited to the necessary minimum and whether the burdens were properly shared by the owners of the bank.

(111) At the time the risk shield was implemented, Germany submitted that the amount of aid involved in the risk shield amounted to EUR 1,6 billion. In the opening decision the Commission raised doubts as to the correctness of the calculation of the scale of the aid, in particular in the absence of any assessment of the market value of the ABS portfolio, and stressed that the remuneration of 50 basis points was significantly below what a market investor would expect.

(112) Furthermore, the Commission doubted the assumptions underlying the restructuring plan and was concerned about the viability of the bank's subsidiaries HGAA and MKB. The Commission observed that no clear commitment had been given to sell HGAA, MKB and Banque LB Lux SA by […].

(113) In the Commission's view the envisaged reduction in the balance sheet and the RWAs was not sufficient to address the distortion of competition, as a considerable part of that reduction would be necessary in any case for the restoration of viability.

(114) The Commission said that it expected further measures of a behavioural or structural nature to further mitigate distortions of competition, and in that context mentioned in particular a possible divestiture of LBS.

(115) Regarding the requirement to limit the aid to the minimum, the Commission observed that no clear proposals had been put forward regarding burden sharing by shareholders.

(116) The HGAA Rescue Decision extended the formal investigation procedure to aid provided by Austria to HGAA in December 2009. The Commission wondered whether those measures might constitute additional aid to BayernLB. The Commission observed that the rescue of HGAA and the resulting need to write down the book value might pose a threat to the viability of BayernLB. BayernLB had agreed to sell HGAA in time as a measure to limit any distortion of competition, but the sale of HGAA could not be considered a measure to limit distortion of competition, as the sale appeared to be necessary for BayernLB's viability. The Commission expressed doubts as to whether the overall level of measures proposed by BayernLB for limiting distortions of competition was sufficient.

4. **COMMENTS FROM GERMANY**

(117) Germany did not dispute that the capital injection, the risk shield and the guarantees provided constituted State aid. Germany argued that the BayernLabo capital transferred to BayernLB did not constitute State aid because the transfer served the sole purpose of repaying part of the aid received and reducing BayernLB's capital. And BayernLB had already had the benefit of BayernLabo's capital before the transfer, so that in any event the amount of any aid would be less than the amount transferred.

(118) In the context of the discussion on the real economic value of the ABS portfolio at 31 December 2008 and the Commission's conclusion, based on the expert report, that the real economic value was 83,87 % of the nominal value, Germany indicated that it would not be requesting a new and comprehensive re-valuation. Furthermore, Germany accepted the market value of EUR 11,753 billion, which was 60 % of the nominal value.

(119) Germany disputed that the entire difference of EUR 1,96 billion between the transfer price and the real economic value ought to be clawed back. In particular, the claw-back did not need to be paid in […], as the bank had not got an adequate capital buffer. For the same reason, Germany disagreed with the suggested pace of the repayment of the silent participations.

5. ASSESSMENT OF THE AID TO BAYERNLB

(120) The assessment of the restructuring aid has to consider all aid granted to BayernLB since 2008.

1. Existence of State aid

(121) According to Article 107(1) of the 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 internal market.

(122) For a measure to constitute State aid the following conditions have to be met: the measure must be financed through State resources; it must confer an advantage on certain undertakings or the production of certain goods; that advantage must be selective; and the measure must distort or threaten to distort competition and have the potential to affect trade between Member States. Those conditions must all be met before a measure can be characterised as State aid.

(123) The Commission maintains its view that those conditions are indeed met by all the aid measures, as it will explain below in sections (a) to (e).

(a) *The recapitalisation by the Land of Bavaria*

(124) The Commission established in the Rescue Decision that all the conditions set out in recital 122 were fulfilled. The reinforcement of BayernLB's capital by EUR 10 billion therefore constitutes State aid ([35]). No private investor would have provided such funds to a firm in difficulty on any terms. The aid component of the capital injection into the bank must consequently be the nominal value of that recapitalisation. In line with the Commission's decision-making practice ([36]), therefore, the amount of the aid is equal to the nominal value of the capital injection, namely EUR 10 billion.

(b) *The risk shield*

(125) Here too the Commission established in the Rescue Decision that all the conditions in Article 107(1) of the Treaty were fulfilled. The risk shield therefore constitutes State aid. That analysis has, in the meantime, been confirmed by the Commission communication on the treatment of impaired assets in the Community banking sector ('the Impaired Assets Communication') ([37]), which provides specific guidance on the application of the State aid rules to asset relief measures. By doing so it ensures equal treatment under the State aid rules of asset relief measures introduced by the Member States.

(126) Although the measure at issue predates the adoption of the Impaired Assets Communication, the Commission has to apply the law and guidelines in force at the time its decision is adopted, irrespective of the time at which the aid measures were designed or notified ([38]). In the current financial crisis the Commission has already applied the Impaired Assets Communication to measures notified before the Communication was published ([39]).

([35]) See footnote 3.

([36]) See Commission Decision 2009/775/EC of 21 October 2008 on State aid measure C 10/08 (ex NN 7/08) implemented by Germany for the restructuring of IKB Deutsche Industriebank AG (OJ L 278, 23.10.2009, p. 32, recital 77); Commission Decision of 18 November 2009 in Case N 428/09 *Lloyds* (OJ C 46, 24.2.2010, p. 2); Commission Decision of 20 May 2010 in Case N 256/09 *Ethias* (OJ C 252, 18.6.2010, p. 5); Commission Decision of 4 November 2009 in Case C 32/09 *Sparkasse KölnBonn* (OJ C 2, 6.1.2010, p. 1).

([37]) OJ C 72, 26.3.2009, p. 1.

([38]) 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.

([39]) See Commission Decision 2010/606/EU of 26 February 2010 on State aid C 9/09 (ex NN 49/08, NN 50/08 and NN 45/08) implemented by the Kingdom of Belgium, the French Republic and the Grand Duchy of Luxembourg for Dexia SA (OJ L 274, 19.10.2010, p. 54, recital 153); Commission Decision of 20 September 2011 in Case C 29/09 HSH, not yet published, recital 155.

(127) The risk shield provided by the *Land* of Bavaria falls within the scope of the Impaired Assets Communication. Paragraphs 32 and following of the Communication set out the main principles guiding the identification of eligible assets and their classification into categories ('baskets'). BayernLB's ABS portfolio contains several types of underlying securities. RMBSs, both prime and non-prime, constitute about half of the total portfolio. Other major components of the portfolio include CMBSs, CDOs and other ABSs related to commercial and consumer receivables. All those forms of asset-backed securities are listed in Table 1 of Annex III to the Impaired Assets Communication, and therefore constitute assets eligible for an asset relief measure.

(128) According to paragraph 39 of the Impaired Assets Communication, the amount of the aid in an asset relief measure is the difference between the price at which the assets are transferred and their current market price. The transfer price here is the nominal value of EUR 19,589 billion minus the first loss piece of EUR 1,2 billion, giving EUR 18,389 billion. The market value of the portfolio is around EUR 11,8 billion ([40]). The difference between the transfer price and the market value is thus equal to or above the amount of losses covered by the second-loss guarantee (EUR 4,8 billion). Accordingly, the guarantee must be considered to be State aid in its entirety. The amount of aid in the provision of the risk shield is therefore EUR 4,8 billion.

(c) *The liability guarantees*

(129) The liability guarantees for an amount of EUR 15 billion provided by SoFFin on the basis of the German rescue package ([41]) constitute State aid.

(d) *The Austrian rescue measures*

(130) First, the operation to rescue HGAA in December 2009 proved to be advantageous to the BayernLB group, as the bank would otherwise have had to recapitalise its subsidiary HGAA itself ([42]). However, following the nationalisation of HGAA by Austria, BayernLB has relinquished its shareholding in HGAA; HGAA no longer forms part of BayernLB, and is the subject of separate State aid proceedings. This Decision is without prejudice to those proceedings.

(131) Second, in the course of the nationalisation of HGAA Austria granted a funding guarantee of EUR 2,638 billion directly to BayernLB. The measure was clearly financed out of State resources. Without the nationalisation of HGAA and the granting of the guarantee BayernLB would probably have lost a large part of its funding. HGAA was in a distressed situation and the State guarantee relieved BayernLB from credit risk in proportion to the level of distress of HGAA. It thus constitutes an economic advantage to BayernLB. Given that BayernLB is active in several Member States in the financial sector, a field which is open to intense international competition, the advantage must be considered as having the potential to affect trade in the internal market and to distort competition. Therefore the State guarantee given Austria for the funding that BayernLB left in HGAA constitutes State aid to BayernLB.

(e) *BayernLabo capital transferred to BayernLB*

(132) In its Decision of 20 October 2004 in the case of *Bayerische Landesbank—Girozentrale* ([43]), the Commission found that the transfer of State resources (outstanding claims on housing promotion loans) to BayernLB via BayernLabo in the years 1994 and 1995 constituted aid which had increased BayernLB's equity capital. The Commission concluded that the transfer constituted aid on the basis of the market investor principle, as no market economy investor would have transferred capital under the same conditions, especially in view of the agreed remuneration for the transferred resources, which the Commission deemed to be too low. From 5 March 2004, however, following an amendment to BayernLB's constitution, the transferred assets could no longer underpin BayernLB's competitive business, and could serve only as a guarantee. In its Decision the Commission considered that the amendment meant that the capital no longer constituted State aid from that date onwards. The Commission concluded, however, that until that date the difference between the previously agreed remuneration which it deemed too low and the appropriate remuneration did constitute illegal aid which needed to be recovered.

([40]) 60 % of the nominal value, see recital 26 of the opening decision.
([41]) See footnote 21.
([42]) In this connection Germany argued that the objective had always been a financial restructuring of HGAA even in the event that Austria had not stepped in.
([43]) See footnote 15.

(133) In order to strengthen its capital base BayernLB will now rebook to the core bank a part of BayernLabo's revenue reserve that is no longer needed for BayernLabo's business. This means that part of the capital or the the fruits of the capital that previously could not be used to underpin BayernLB's commercial business will change its character, and will no longer serve only as a guarantee in the event of insolvency. That alteration departs from the capital's initial purpose, which was to act as a buffer in an insolvency scenario. The transfer of the capital from BayernLabo to the core bank puts an end to the limitation on its use, and BayernLB may use the capital without restriction. BayernLB will no longer remunerate BayernLabo or the *Land* of Bavaria for that right. In consequence, when the *Land* of Bavaria definitively releases the capital to BayernLB, BayernLB will receive an advantage from the *Land*. Given that BayernLB is active in several Member States in the financial sector, a field which is open to intense international competition, that advantage must be considered as having the potential to affect trade in the internal market and to distort competition. Therefore the transfer of EUR 1 billion of capital from BayernLabo to BayernLB constitutes State aid.

(f) *Conclusion as to the total amount of aid*

(134) The total amount of aid granted to BayernLB by Germany through the reinforcement of capital (the EUR 10 billion capital injection in the 2008 rescue operation, the transfer of EUR 1 billion BayernLabo capital in 2012, and the risk shield of EUR 4,8 billion) is EUR 15,8 billion. That amount represents around 8 % of BayernLB's risk-weighted assets in 2008 (EUR 198 billion). Additionally, BayernLB received up to EUR 17,638 billion via liquidity guarantees granted by Germany and Austria.

2. **Compatibility of the aid**

(a) *Application of Article 107(3)(b) of the Treaty*

(135) Under Article 107(3)(b) of the Treaty, State aid may be considered to be compatible with the internal market if it serves 'to remedy a serious disturbance in the economy of a Member State'. In its approval of the German rescue package the Commission acknowledged that there was a threat of serious disturbance in the German economy and that State support of banks was likely to remedy that disturbance. Although the economy has been recovering slowly since the beginning of 2010, stress has recently reappeared in the financial markets, and the Commission still considers that the requirements for State aid to be approved pursuant to Article 107(3)(b) of the Treaty are fulfilled. In December 2011 the Commission confirmed this view when it adopted a communication 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 ([44]), in which it prolonged the application of those provisions.

(136) The collapse of a bank which is considered by a Member State to be of systemic importance, such as BayernLB, 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 therefore continues to base its assessment of State aid measures in the banking sector on Article 107(3)(b) of the Treaty.

(b) *Compliance of the impaired asset measure with the Impaired Assets Communication*

(137) In the opening decision the Commission raised doubts as regards the compatibility of the risk shield. Those doubts need to be assessed in the light of Article 107(3)(b) of the Treaty on the basis of the Impaired Assets Communication, to establish whether the assets qualify for relief under paragraph 32 of the Communication.

Management of assets

(138) Paragraph 46 of the Impaired Assets Communication stipulates that while it is a matter for the Member States to choose the most appropriate model for relieving banks from impaired assets, nevertheless, in order to prevent conflicts of interest and facilitate the beneficiary bank's focus on the restoration of viability, it is necessary to ensure clear functional and organisational separation between the bank and its impaired assets, notably as to their management, staff and clientele.

(139) Although the *Land* of Bavaria provides a guarantee shielding BayernLB against losses stemming from its ABS portfolio, all of the shielded assets remain on BayernLB's balance sheet.

([44]) OJ C 356, 6.12.2011, p. 7.

(140) The Commission accepts that a complete segregation of the assets covered and of the staff managing them could, in the case of a guarantee of such a size as the risk shield, be difficult and potentially damaging to the objective of minimising the expected losses. Hence, there is no requirement for portfolio managers to be dedicated exclusively to the management of covered assets or otherwise to keep covered assets separated from the bank's other assets.

(141) Furthermore, the Commission considers that Germany has put in place adequate safeguards to prevent conflicts of interest and to ensure that losses on the covered assets are reduced to the minimum ([45]). In particular, BayernLB has set up an internal Restructuring Unit to which several portfolios have been transferred. The Restructuring Unit has taken charge of reducing these portfolios and also oversees reductions of business activities in BayernLB's other units. The Restructuring Unit is functionally and organisationally separated from BayernLB's other units ([46]).

Valuation of the shielded portfolio

(142) The Commission engaged external experts to conduct a valuation of BayernLB's ABS portfolio. The Commission's team of experts established the real economic value (REV) of BayernLB's ABS portfolio, in line with the Commission's decision-making practice, at 83,87 % of the nominal value. The real economic value amounts to EUR 16,429 billion.

Full ex ante transparency and disclosure

(143) In accordance with point 20 of the Impaired Assets Communication, applications for aid should be subject to full transparency and disclosure of impairments by eligible banks on the assets which are to be covered by the relief measures, based on adequate valuation, certified by recognised independent experts and validated by the relevant supervisory authority. Detailed information about the shielded portfolio has been provided to the Commission. The capital relief effect of EUR 1,28 billion was confirmed by BaFin in April 2010. The Commission is therefore satisfied that this criterion is fulfilled.

Burden sharing

(144) The principle of burden sharing established in the Impaired Assets Communication requires that banks bear the losses associated with impaired assets to the maximum extent. Therefore, the assets should, in principle, be transferred at a price that is equal to or below the REV. That can, for instance, be achieved through a prior write-down bringing the value of the assets to the REV. Paragraph 24 of the Communication states that where it is not possible to achieve full burden sharing *ex ante*, the bank should be requested to contribute to the loss or risk coverage in the form of claw-back clauses or by a clause of 'first loss' to be borne by the bank.

(145) In this case, the impaired assets relief took place without a prior write-down to the REV of the ABS portfolio. Burden sharing was to be achieved, however, by a first-loss piece of EUR 1,2 billion retained by BayernLB.

(146) The Commission has established that the REV was 83,87 % of the nominal value, amounting to EUR 16,429 billion. Thus the transfer price of EUR 18,349 billion is, after deducting the first loss, EUR 1,960 billion above the REV. In accordance with paragraph 41 of the Impaired Assets Communication, this amount, the 'transfer delta', should be clawed back from BayernLB, either immediately or at least over time.

(147) A claw-back requires that the beneficiary bank reimburses the entire amount above the REV that is covered by the guarantee. If no full claw-back is possible, far-reaching measures will be needed to limit distortion of competition. However, the Commission does not see any reason why a full claw-back would not be possible in the case at issue.

(148) The Commission notes that BayernLB is now prepared to pay an additional premium of 3,75 % on a part of the guarantee amounting to EUR 2 billion, that is to say EUR 75 million a year, and a special fee of EUR 45 million a year, giving a total of EUR 120 million a year for 6 years until 2015. That arrangement would amount to an annual claw-back payment of EUR 120 million.

(149) This leaves a remainder of EUR 1,24 billion to be paid over time (the claw-back of EUR 1,96 billion less the six annual payments of EUR 120 million referred to in recital 148). BayernLB claims that it will not be able to pay that amount (see recital 119).

([45]) See Annex I, point 3.
([46]) See recitals 52 and 71.

(150) However, the Commission considers that a claw-back of a nominal amount of EUR 1,96 billion by 2019 is feasible. According to paragraph 41 of the Impaired Assets Communication, a partial claw-back should be allowed only if the full claw-back would result in the technical insolvency of BayernLB. However, the Commission does not believe that that would happen if the claw-back payments were stretched over time, even beyond the restructuring period. Such an approach does not conflict with paragraph 41 of the Communication, which refers not to payment within a specific period but to payment 'at a later stage'. This interpretation is in line with the established decision-making practice ([47]). Therefore the Commission considers that the burden-sharing requirement in the Impaired Assets Communication would be respected if a full claw-back were to be achieved by 2019.

Remuneration

(151) In recital 78 to the opening decision the Commission emphasised that the remuneration of 50 basis points being paid by the bank at the time was significantly below the price a market investor would expect.

(152) The German authorities have, in the meantime, given a commitment that BayernLB will pay a remuneration of 6,25 % on the capital relief effect. Such remuneration is in line with the levels approved in earlier Commission decisions ([48]).

(153) On the basis of the above, BayernLB would need to pay 6,25 % on a capital relief effect of EUR 1,28 billion. BayernLB has agreed to pay a basic premium of 6,25 % on the capital relief of EUR 1,28 billion, that is to say EUR 80 million a year, starting from 1 January 2010 […].

Conclusion on the compatibility of the risk shield

(154) Given that BayernLB pays an adequate remuneration, amounting to EUR 80 million a year, for the asset guarantee, and on the condition that Germany will fully claw back the excess part of the transfer difference, amounting to EUR 1,96 billion, so as to bring the transfer price into line with the REV, the asset guarantee on the ABS portfolio can be considered to be compatible with the internal market. In order to achieve a full claw-back, the conditions in Annex II to this Decision need to be met. In the light of those considerations the doubts indicated in the opening decision have been allayed.

(c) *Compatibility of the restructuring aid*

(155) All the measures that the Commission has identified as State aid were taken in the context of the restructuring of BayernLB. In this Decision the Commission should examine all those measures, including the measure taken by Austria. The rules applicable to the granting of restructuring aid to financial institutions in the current crisis are set out in the Commission communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules (the 'Restructuring Communication') ([49]). The Restructuring Communication states that in order to be compatible with the internal market under Article 107(3)(b) of the Treaty, the restructuring of a financial institution in the context of the current financial crisis must lead to the restoration of the viability of the bank, must include a sufficient contribution of the recipients' own (burden sharing) and limit aid to the minimum necessary, and must include adequate measures to limit the distortion of competition.

(156) When the Commission analyses the restructuring of a bank in the context of the current financial crisis, it looks at aid measures which improve the capital situation of the bank. It is not the Commission's practice in its decisions to examine liquidity assistance or funding guarantees in detail and beyond the contribution they can be expected to make to overall restructuring. In this light the Commission takes the view that the liability and funding guarantees provided by Germany and Austria are compatible with the internal market.

([47]) See for example Commission Decision 2010/395/EU of 15 December 2009 on State aid C 17/09 (ex N 265/09) by Germany for the restructuring of Landesbank Baden-Württemberg (OJ L 188, 21.7.2010, p. 1).

([48]) See the *LBBW* Decision, recitals 64 and 65. According to the law as it stands, regulatory capital must include a minimum of 50 % Tier 1. In other words, in order to meet the regulatory capital requirements the own funds or regulatory capital required can consist of a minimum 50 % Tier 1 and of a maximum 50 % Tier 2 capital. According to the European Central Bank's recommendation on recapitalisations of 20 November 2008, there is a difference of 1,5 % for the pricing of Tier 1 and Tier 2 capital, and a reduction of 150 basis points for the remuneration of Tier 2 capital is consequently appropriate. Assuming, in line with the Recapitalisation Communication, that 7 % is an appropriate remuneration for unfunded Tier 1 capital, Tier 2 capital should be remunerated at 5,5 %. The average of the two rates is 6,25 %.

([49]) OJ C 195, 19.8.2009, p. 9.

Aid limited to the minimum

(157) According to the Restructuring Communication, restructuring aid should ensure that the bank can return to viability but should be limited to the minimum necessary to achieve that result. In recital 99 to the opening decision, the Commission said that the restructuring plan contained no far-reaching proposals for limiting the aid to the minimum.

(158) BayernLB has obtained a capital injection of EUR 10 billion, which is clearly the most received by any of the German Landesbanken. In the EBA stress test of December 2011 BayernLB's EBA core Tier 1 ratio stood at 10 %. Among the 13 German financial institutions taking part in the stress test exercise, BayernLB was the fourth-best capitalised: it was better capitalised than all the other German banks which had received State aid ([50]) with the exception of HRE, and better capitalised than the other large banks which had received no capital assistance, such as Deutsche Bank and Helaba Landesbank Hessen-Thüringen. If there were to be no redemption of any of the capital, any excess capital provided as State aid could be used by BayernLB to compete aggressively at the expense of other banks, in particular other Landesbanken, outside its former geographic business area ([51]). A limitation of the capital is therefore necessary to limit distortions of competition.

(159) In addition, if BayernLB did not have to use its capital rationally it would be shielded from competitive pressure. It would be in a position to allocate capital sub-optimally, which would, in the long run, result in below-average returns. Such over-capitalisation could be used to absorb losses from imprudent investments and permit ineffective credit-risk control. It would therefore not create the right incentive structure for ensuring a return to viability. Moreover, excessive capitalisation would also prevent the bank from generating a competitive RoE ([52]).

(160) Despite these difficulties, Germany has not offered a solution that would allow excess capital to be redeemed.

(161) However, the capital increase consists of a capital injection of EUR 7 billion and a silent participation of EUR 3 billion. The silent participation is a redeemable instrument. Furthermore, it was provided before the Basel III rules were agreed upon, and will not qualify as EBA capital once the Basel III rules are implemented. Because it bears a 10 % coupon, the silent participation will in the medium term become an economically expensive source of funding, and will limit BayernLB's profit distribution capacity, which in turn makes the bank unattractive for any new capital investors.

(162) In addition, according to the restructuring plan, the bank intends to make profits throughout the restructuring period. Those profits would not be distributable, given that BayernLB is in restructuring. When this is considered in parallel with the risk position reduction projected in the restructuring plan, it can be expected that the capitalisation of the bank will increase each year, which will improve its ability to repay. Moreover, Germany has committed to an additional risk position reduction beyond the reduction projected in the restructuring plan, which would free an additional 10 % of the capital of BayernLB.

(163) On that basis, the Commission requested the German authorities to provide a schedule for the repayment of the EUR 3 billion silent participation before 2018, when it ceases to satisfy all the requirements to be recognised as core capital for supervisory purposes. In response the German authorities provided the repayment scenarios indicated in Table 10 — Hypothetical repayment schedule excluding additional capital potentially generated by nominal-value accounting of BayernLabo loans.

(164) The Commission considers that the aid can be limited to the minimum necessary through the repayment of the silent participation of EUR 3 billion as indicated in Table 10. That repayment is appropriate in the light, first, of the projections of the bank and, second, of the latest regulatory requirements, which call for a capitalisation above 9 % core Tier 1 capital plus a buffer (which will also be the case under the Basel III rules). On that basis, subject to the condition of the repayment detailed in Annex II, the Commission considers that the restructuring aid is limited to the minimum necessary required for restoring viability.

([50]) Such as Commerzbank AG, Landesbank Baden-Württemberg (LBBW), HSH Nordbank AG and NordLB.
([51]) In 2011, for instance, BayernLB opened a branch in Düsseldorf.
([52]) The RoE indicated in Table 4 has been calculated on the basis of a capital ratio of 10 %, but this would not materialise if BayernLB did not repay any capital. It therefore misrepresents the level of RoE achievable in the absence of repayment.

(165) The Commission notes that especially as regards BayernLabo the repayment schedule is based on particular accounting and regulatory treatment assumptions although there is in fact some uncertainty as to the applicable framework. Should the assumptions change, the repayment should be in accordance with Table 11.

(166) The Commission will assess the viability of the bank on the basis of the repayment schedule and the contribution by the bank and its shareholders.

Restoring long-term viability

(167) In assessing a restructuring plan the Commission needs to determine whether the bank is able to restore long-term viability without State aid (section 2 of the Restructuring Communication). The opening decision raised doubts in that respect.

(168) According to the Restructuring Communication, long-term viability is achieved when a bank is able to compete for capital in the marketplace on its own merits in compliance with the relevant regulatory requirements. To do so the bank must cover all its costs and provide an appropriate return on equity, taking into account its risk profile. Long-term viability further requires that any State aid received is either redeemed over time, as envisaged at the time the aid is granted, or is remunerated according to normal market conditions, thereby ensuring that any form of additional State aid is terminated. The return to viability should derive from internal measures and be based on a credible restructuring plan, and should identify the causes of the bank's difficulties and weaknesses and explain how the restructuring operation will remedy them. In particular, successful restructuring entails withdrawal from all activities which would remain structurally loss-making in the medium term.

(169) The Commission finds that this requirement is met, as the restructuring plan provides for a significant reduction in the bank's capital market activities both in volume and complexity, and reduces the bank's foreign activities to focus on the area where its main expertise lies, primarily commercial banking for retail customers and small and medium-sized business customers situated in its regional home markets.

(170) point 13 of the Restructuring Communication requires that the restructuring plan should be based on assumptions which are compared with appropriate sector-wide benchmarks, adequately amended to take account of the new elements of the current crisis in financial markets, and should incorporate an adequate stress level.

(171) The Commission observes that the figures that BayernLB has provided are aligned with international benchmarks. The macroeconomic forecasts are in line with those of international institutions, and the foreign exchange market estimates can be considered conservative. BayernLB's EUR/USD projections incorporate a weaker dollar in 2016 than suggested by the purchasing power parity level; this suggests that BayernLB's dollar earnings have been translated into euros in a conservative manner. Relatively high projections of the EUR/USD exchange rate tend to have a negative impact on the projected net income, because BayernLB has more assets denominated in dollars than liabilities ([53]). The projected levels of the dollar compared to the euro are below the current levels of the EUR/USD exchange rate and the levels of the forward curve.

(172) According to the sensitivity analysis provided by BayernLB (recital 89) the profits of the bank would increase if a stronger dollar were assumed in the projections. That increase can be explained by the fact that BayernLB has more assets in USD than liabilities and therefore, if the dollar is stronger, the euro equivalent of the net interest it receives in dollars is higher. Given that BayernLB assumes a weaker dollar than the financial markets expect, as reflected in the forward curve, the assumption can be considered stress-proof.

(173) The Commission also observes that BayernLB adjusted its projections to incorporate the negative impact of a number of company-specific elements (the ruling of the Federal Labour Court, MKB in Hungary, foreign exchange hedging costs, and the tax rate). This confirms that the bank's financial forecasts are prudent and take sufficient account of possible stress.

(174) The financial projections submitted on 6 June 2012 project a gradual return to profitability through a moderate increase in income accompanied by cost-cutting. The projected levels of income are in line with levels achieved in the past. In particular, the projected levels of income on risk positions (which represents the income-generating capacity of the assets adjusted for risk) are in line with projections by peers of BayernLB. The projections in

([53]) See Table 4.

Table 4 are lower than the levels achieved in 2009 and 2010 ([54]). The Commission therefore considers the income projections to be prudent. All the components of income, and in particular fee income, are projected in line with levels achieved in the past.

(175) BayernLB's projections expect the loss provisions in lending business to decrease over the restructuring period, which is consistent with the assumed medium-term return to economic growth. BayernLB projects a [15-30] % decrease in costs over the restructuring period, leading to an end cost/income ratio of [30-60] %. That level is in line with those of other aided banks ([55]). The Commission considers that an improvement of the cost/income ratio is necessary for the return to viability. Given the business model of BayernLB, which does not operate retail branches (retail branches tend to increase the cost/income ratios of retail banks), the historical levels of the cost// income ratio cannot be considered sustainable.

(176) In respect of funding, the challenge facing the Landesbanken over the medium term is the replacement of State-guaranteed grandfathered debt. Grandfathered debt constitutes a cheap source of funding for the Landesbanken which cannot be replaced at the same cost. At the end of 2010 BayernLB had EUR 58 billion of grandfathered debt outstanding. Virtually all of that debt will mature by the end of 2015. The Commission notes that the maturing grandfathered liabilities are more than compensated for by the balance sheet reduction of EUR 70 billion projected by BayernLB in June 2011.

(177) Further additional reductions offered by the bank led to a commitment on the part of the German authorities that the balance sheet would be reduced to EUR 240 billion in total. The funding plan presented in June 2011 presented a number of weak points in terms of the credibility of the availability of certain sources of funding. First, the plan relied on an assumption that corporates' deposits would increase by EUR [2-8] billion, an increase of […] % over the 2010 level. Second, the Depot B funding obtained through savings banks was projected to increase by EUR [1-5] billion, a […] % increase over the 2010 level. Those concerns have been addressed by an additional reduction of EUR [3-10] billion achieved through additional reductions in funding-intensive business areas (real estate, corporates and project finance). Furthermore, BayernLB has provided credible information on the available alternative funding sources, in particular its capacity to issue more covered bonds (*Pfandbriefe*).

(178) The Commission also takes a positive view of the decreased reliance on unsecured funding from the inter-bank market, as illustrated in Table 6.

(179) point 13 of the Restructuring Communication indicates that long-term viability is achieved when the bank is able to provide an appropriate return on equity, taking into account its risk profile. In the absence of repayment the bank would not be able to generate a sufficient RoE to be competitive in the market for capital. After restructuring, the bank would generate an RoE of [5-10] %, assuming a 10 % capital ratio. The RoE calculations in Table 4 assume a capital ratio of 10 %, which was the EBA core Tier 1 ratio recorded by the EBA for BayernLB in the December 2011 capital exercise. It is also the ratio used by BayernLB to present the RoE in its projections (see Table 4). However, in the absence of repayment, the capital ratio of the bank would be substantially higher (as explained in recital 159, the capital ratios of BayernLB could have been increased from the 10 % December 2011 level on the basis of projections of profits sustained throughout the period only if such profits were to be retained), so that the RoE would be lower than that projected.

(180) Through the additional reductions of EUR 10 billion in risk positions committed to by Germany, combined with the repayment schedule laid down in Annex II, the level of the RoE is re-established at around [7-12] % in 2016. That improvement of the RoE is possible because of the profit-neutral way in which the additional risk position reduction will be achieved, as committed to by Germany. The feasibility of such profit-neutral reductions has been shown to be plausible on the basis of two illustrative scenarios which the bank might implement.

(181) However, the reductions can achieve the viability requirement of sufficient profitability only as long as the capital generated is used to repay the excess capital of the bank. The level of RoE achieved at the end of the restructuring period is in line with projections by BayernLB's peers ([56]).

([54]) See Table 1.
([55]) See for example Decision 2012/477/EU.
([56]) Decision 2010/395/EU, where the Member State gives a commitment that the bank aims at an RoE after tax of at most 10 to 12 %; Decision 2012/477/EU, where the bank is expected to reach 6,9 % in 2014; and Commission Decision of 25 July 2012 in Case SA.34381 (2012/N) *NordLB*, where the bank is expected to reach 7,3 % in 2016, not yet published.

(182) The repayment schedule set out in Annex II achieves full repayment of the silent participations, which would otherwise have burdened the profitability of the bank. Those silent participations would have to be remunerated at a much higher rate than the RoE of the bank, and they will no longer qualify as supervisory capital under the Basel III rules. A full repayment is achieved under the restructuring plan submitted, while the capitalisation of the bank is kept at comfortable levels.

(183) The level of RoE has to be analysed in the light of the bank's risk profile. BayernLB has, in the past, been active outside Germany. In particular in the corporates business, BayernLB lent to parties without any link to a home BayernLB client, and for projects that did not offer any substantial collateral. Project financing focused on foreign projects for which the only guarantee of payment was the expected future cash flows from the project financed.

(184) Germany has committed to strict limits in terms of risk positions in international activities in those business areas. Germany has also undertaken to confine the bank's business to clients with a link to its home market, based on clear definitions, in order to limit credit exposures to clients without a client relationship based on the regional business model of the bank. The refocusing of the activities of the bank will lead to a reduction of the relative level of risk. Against that background the projected RoE of around [7-12] % can be considered acceptable.

(185) point 13 of the Restructuring Communication also requires that the bank should be sufficiently capitalised at the end of the restructuring operation. On the basis of prudent valuation, therefore, the current and prospective capital adequacy should be in line with the applicable supervisory regulations ([57]). The Commission has established that the assumptions can be considered prudent, and that they allow for a proper range of stress in line with point 13 of the Restructuring Communication. Furthermore, the capital projections supplied at the Commission's request are based on a repayment schedule that demonstrates that the current and the prospective capital adequacy levels are at the levels indicated by the regulator that are mentioned in recital 79. They therefore meet the latest regulatory requirement, which calls for a capitalisation above 9 % EBA core Tier 1 capital plus a buffer. They thus also ensure compliance with the Basel III rules.

(186) The Commission does not see a need to cater for any additional stress. First, the EBA calculations for the 9 % capital exercise considered only sovereign stress, which in the case of BayernLB is not significant. In the June 2011 EBA stress test, moreover, macro and individual stress were applied only to a ratio of 5 % EBA core Tier 1 capital. The Commission currently has no indication that the EBA would now require a stress test combining the approaches of the two exercises. Nor has such a combination been required in the assessment of the restructuring of any other German banks. Instead BaFin has merely asked banks to comply with the 9 % EBA core Tier 1 capital requirement ([58]). Today, therefore, the Commission can only work on the basis that the capital adequacy that will be required is the same as in the December 2011 capital exercise plus an additional buffer, as indicated in recital 79. That assumption is even more reasonable as foreseeable stresses specific to the bank and the macro-economic environment are already factored into the projections.

(187) In any event, the Commission acknowledges the role of the financial supervisor. The Commission accepts that the annual instalment repayment obligation in Annex II is subject to regulatory approval. The instalment payments under that repayment schedule are thus conditional upon approval by BaFin. If BaFin prohibits or does not approve repayment of an instalment, the Commission accepts that the corresponding obligation to repay that amount is deferred. However, if a repayment of the amount initially deferred is not approved the following year, or is again prohibited, the implementation of the restructuring plan will be compromised, and Germany will therefore need to submit a modified restructuring plan to the Commission.

(188) The mere fact that the supervisory authority prohibits or does not authorise the repayment cannot automatically dispense the bank from the repayment obligation: it requires action by the bank. If the bank cannot repay while meeting all the requirements imposed by the regulator, additional capital should in principle be freed through further RWA reduction. In addition, any delay will in general require additional compensatory measures ([59]). The Commission therefore insists on the principle that in the modified restructuring plan Germany must provide additional compensatory measures. This is reflected in point 4 of Annex II.

([57]) See point 11 of the Restructuring Communication.
([58]) Decision SA.34381 (2012/N).
([59]) See Commission Decision of 30 March 2012 in Case SA.34539 (2012/N) *Commerzbank*, not yet published.

(189) However, it should be noted that if regulatory capital requirements were in future to go substantially beyond the level envisaged in this Decision, the Commission might have to conduct a proportionate assessment of the kind indicated in the third sentence of point 14 of the Commission Communication 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 ([60]); this might possibly necessitate only a limited additional measure of restructuring.

(190) Under the Restructuring Communication it has also to be assessed whether the restructuring plan addresses any existing or potential weaknesses in the corporate governance structure. The Commission finds that the restructuring plan comprises significant changes in the bank's legal structure and corporate governance which will make BayernLB less vulnerable to potential undue influence by shareholders and permit better corporate oversight.

(191) The measures to be implemented will ensure that BayernLB will not be different from its competitors in terms of its constitution, its internal policies and procedures, or the role and composition of its governing bodies. There are sufficient safeguards against business decisions being taken on the basis of considerations other than commercial ones. Additionally, the quality of corporate oversight is substantially enhanced. There is a clearer and more stringent differentiation of the respective roles of the different bodies (shareholders' meeting, supervisory board and executive board) and the professionalism of the supervisory board will benefit from the inclusion of independent experts and the introduction of a 'fit and proper' test which every board member will have to pass.

(192) The corporate governance framework is compatible with the requirements for private businesses and extends to the implementation of the (voluntary) German corporate governance code.

(193) The bank's shareholders' meeting will have the standard powers of a shareholders' meeting, without any additional influence. In line with the corporate governance code, half of the members of the supervisory board will be independent. Qualitative requirements ensuring a minimum qualification of newly appointed supervisory board members introduced by BaFin, the German regulator, are to be applied to all members of the board. During the restructuring period, the chairman of the supervisory board will be an independent member. An audit and risk committee will also be introduced, and will operate in line with best corporate governance practices.

(194) Overall, therefore, BayernLB's restructuring plan of is likely to restore its long-term viability.

The bank's own contribution

(195) The Restructuring Communication states that, in order to keep the aid to a minimum, banks should first use their own resources to finance the restructuring and that the costs associated with the restructuring should be borne not only by the State but also by those who invested in the bank. In the opening decision the Commission noted that the scope of the divestitures proposed as the bank's own contribution remained vague.

(196) In the meantime Germany has given a commitment that BayernLB will sell [40-70] subsidiaries or holdings by the end of the restructuring period. The bank has already sold the majority of those subsidiaries and expects to have completed all sales by […] at the latest. The financial holdings to be sold are listed in point 11 of Annex I and in Annex III, and include LBS Bayern, MKB and Banque LB Lux SA, which are amongst BayernLB's largest subsidiaries. The revenues generated and any profit made will be used to cover restructuring costs and will help to ensure that the aid is kept to the minimum.

(197) Moreover, in order to ensure that over the restructuring period the owners of the bank play as large a part as possible in the reconstitution of an adequate capital base, Germany has given a commitment that the bank will retain dividends and will not pay coupons, other than any it is legally obliged to pay, until the end of the restructuring period, or beyond if the *Land*'s silent participation is not repaid by then. This will ensure, in line with point 26 of the Restructuring Communication, that BayernLB does not use State aid to remunerate its own funds if there are insufficient profits to make such payments. The prolonged ban on dividends and hybrid coupons will also help BayernLB to comply with the repayment schedule.

([60]) See footnote 44.

(198) Another aspect concerns the savings banks association, which did not participate in the 2008 rescue measures even though it was a shareholder in BayernLB. Because it did not participate in the rescue, the savings banks association's stake has been significantly diluted, but it has in the meantime agreed to various additional contributions.

(199) First, the savings banks currently hold individual silent participations totalling about EUR [770-810] million, as explained in recital 76, and in order to improve the quality of the capital of the bank and to ensure that the capital provided by the savings banks continues to count as EBA core Tier 1 capital, the savings banks have agreed to buy back these silent participations […]. The savings banks association will reinject EUR [810-840] million in equity, thus increasing its stake in BayernLB ([61]). The savings banks will thereby lose their entitlement to more reliable interest payments, while the dividend ban means that they will not receive corresponding dividend payments over the medium term.

(200) Second, the savings banks association has agreed to purchase LBS for a fair price of EUR 818,3 million by the end of 2012. In the determination of the price the savings banks association has not applied a discount to take into consideration the fact that the savings banks are the main distribution channel for LBS products, as a private investor might well have done.

(201) As a result of all these measures the shareholding that was initially diluted to 6 % will rise significantly, potentially up to 25 %.

(202) Finally, it should be noted that Germany will claw back the entire part of the asset guarantee above the REV. The sharing of burdens by the bank and its shareholders can therefore be considered appropriate; the doubts raised in that respect in the opening decision have been allayed.

Measures limiting distortions of competition

(203) Finally, the Restructuring Communication requires that the restructuring plan should include measures limiting distortions of competition. Such measures should be tailor-made to address the distortions on the markets where the beneficiary bank operates after restructuring. The nature and form of such measures depend on two criteria: first, the amount of the aid and the conditions and circumstances under which it was granted, and, second, the characteristics of the markets on which the beneficiary is to operate. Furthermore, the Commission must take into account the extent of the beneficiary bank's own contribution and burden sharing over the restructuring period.

(204) In the opening decision, the Commission considered the proposed measures to address distortions of competition to be insufficient. The updated restructuring plan provides for further such measures.

(205) The aid in this case amounts to about EUR 15,8 billion in of capital assistance: it comprises the recapitalisation, amounting to EUR 10 billion, the risk shield of EUR 4,8 billion, and the transfer of EUR 1 billion BayernLabo capital to BayernLB. The figure does not include the liquidity guarantees provided by SoFFin, amounting to around EUR 15 billion (of which EUR 5 billion were used) ([62]) and the guarantees provided by Austria for the funding of EUR 2,638 billion that BayernLB had agreed to leave in HGAA. The aid amount of EUR 15,8 billion is equivalent to 8 % of the risk weighted assets after the measures (risk positions of EUR 198 billion in 2008). The amount increases further if it is taken to include the EUR 2,638 billion in guarantees that the bank obtained from Austria and the EUR 15 billion it obtained from SoFFin (of which EUR 5 billion were actually used). The amount of aid being granted to the beneficiary is thus very large. In order to limit potential distortions of competition, the measures necessary will be appreciable, even when account is taken of the appropriate scale of the bank's own contribution and the sharing of burdens by the beneficiary and its shareholders over the restructuring period.

(206) In the new restructuring plan the projected balance sheet reduction has therefore been considerably increased by comparison with the initial plan. On the basis of the assets at the end of 2008, BayernLB will reduce its balance sheet by 51 %, from EUR 421,7 billion to EUR 206 billion (EUR 239,4 billion in 2015).

(207) To that end, BayernLB is prepared to divest a significant number of domestic and foreign subsidiaries, and to reduce its portfolio of holdings substantially. Those divestments need to be completed by […]; otherwise the relevant subsidiaries or associated companies must stop new business [after …]. An overview of the largest divestments is given in Table 12.

([61]) Alternatively, the silent participations may be converted into shares, rather than being first repaid and then reinjected.
([62]) See recital 44.

Table 12

Divestment of major holdings

Name	Balance sheet, EUR billion (*)	RWAs, EUR billion (*)
HGAA	44,6	[30-35]
MKB	10,8	[7-10]
SaarLB	20,6	[6-9]
LB (Suisse)	1,2	[0-1]
LBLux	11,8	[4-7]
LBS	[8-12]	[2-5]
GBW AG	2,1	[0-2]

(*) in 2008 figures

(208) These divestments include all of the bank's international credit institutions. The divestment of HGAA, which already seemed in need of restructuring aid in 2008, has contributed to the restoration of the viability of BayernLB. However, even if HGAA is left out of account for the purposes of quantifying measures to limit the distortion of competition, the balance sheet reduction is still 45 % (EUR (421,7 — 44,6 =) 377,4 billion compared with EUR 206 billion).

(209) Furthermore, BayernLB will reduce the number of its international branches or representation offices by seven, and the remaining branches in London, Paris, New York and Milan will be substantially downsized.

(210) Overall, the Commission considers that this reduction of the total balance sheet of the bank by more than half is appropriate given the distortions of competition stemming from the large amount of aid received. The reduction is in line with the Commission's practice in its decisions in relation to other Landesbanken ([63]).

(211) In addition to those far-reaching structural measures, BayernLB has also agreed to several behavioural constraints. The bank has given a commitment to observe, during the restructuring period, a cap of EUR 500 000 on staff remuneration (fixed and variable), a ban on acquisitions, and a dividend ban. The restrictions on the remuneration of staff will automatically be prolonged (though for the salary cap they will be somewhat less stringent) until the the silent participation and the claw-back have been repaid in full, which is not likely to happen before 2019. These measures create an incentive for repayment and preclude the bank from acquiring competing businesses, which prevents non-organic growth of BayernLB funded by the aid.

(212) In addition, BayernLB will limit its remaining international business activities in corporates, project finance and real estate significantly, in scope and absolute volume, as indicated in Annex I. This will leave free capacity for other players in BayernLB's core markets.

(213) Germany has also given a commitment that BayernLB will abandon a number of activities such as shipping and aviation. Public finance outside Bavaria will likewise be stopped.

(214) Taking into account this mix of diverse measures, and in view of the finding set out above that the bank's own contribution and burden sharing are appropriate, the Commission considers that there are sufficient safeguards to limit potential distortions of competition despite the high amount of aid BayernLB is receiving.

Implementation and monitoring

(215) Section 5 of the Restructuring Communication states that in order to enable the Commission to verify that the restructuring plan is being implemented properly regular reports will have to be submitted. The first report should be submitted not later than 6 months after the approval of the restructuring plan. For this purpose Germany should appoint a monitoring trustee and provide twice-yearly monitoring reports.

([63]) Decision 2012/477/EU, where there was no complete claw-back but the balance sheet was reduced by 60 %.

(216) The individual repayments are subject to agreement by the German regulator BaFin. If the bank does not meet the targets set out in the repayment schedule, point 4 of Annex II requires Germany to notify a modified restructuring plan to the Commission. Such a fresh notification should in principle include additional measures to limit distortions of competition.

(217) The Commission acknowledges that the additional reduction in risk positions referred to in point 33 of Annex I is made to ensure that BayernLB can repay the remainder of the silent participations in 2017. The Commission has based its assessment on the reductions in risk positions that have been committed to for each area of business within the ranges indicated in point 33 of Annex I and their secondary effects per business area. If, in the implementation of the plan, BayernLB identifies areas of optimisation which affect the ranges indicated, in view of new regulatory or macroeconomic developments, Germany should notify the deviation in ranges to the Commission, unless the changes in the reductions of each area of business area are no greater than [10-15] % in 2017, remain within the overall volume defined in point 33 of Annex I, and are without prejudice to the viability of BayernLB as described in the restructuring plan. In the event of a fresh notification, the Commission will consider whether the changes contribute to maximising the capital relief effect while minimising negative secondary effects, and consequently do not affect the viability of the bank.

Conclusion regarding the restructuring

(218) In the light of the projections of the bank and taking account of the latest regulatory requirements, which will require a capitalisation above 9 % core Tier 1 capital plus a buffer, and of the Basel III rules, the Commission takes the view that the restructuring measures, including Germany's commitments, are likely to restore BayernLB's long-term viability and make up for the distortions of competition brought about by the aid measures. Subject to the conditions in regard to the repayment of part of the aid measures and the claw-back, the restructuring plan also provides for the aid to be limited to the minimum necessary and for the bank to make an adequate contribution of its own. Provided that the repayment requirement in Annex II is met, therefore, the restructuring aid can be considered compatible with the internal market in accordance with Article 107(3)(b) TFEU.

6. **ADVANTAGE TO THE SAVINGS BANKS ASSOCIATION**

(219) The Commission's concerns that the savings banks association has profited by the rescue measure without properly sharing the burden have also been alleviated. In the opening decision the Commission indicated that in the course of the formal investigation it might assess the correctness of the valuation of BayernLB and the accuracy of the calculation of the savings banks association's remaining stake. Subsequently the Commission sent an information request to Germany concerning the savings banks association's contribution to the rescue. In the meantime a sufficient level of burden sharing has been achieved by the conversion of the silent participations of the savings banks and the subsequent injection by the savings banks association of capital that increases its shareholding. Moreover, the Commission has not found any irregularities in the valuation of the bank that formed the basis for the allocation of shares in 2008. There is consequently no reason to examine further any doubts concerning the savings banks association in that respect.

CONCLUSIONS

(220) In view of the commitments given by Germany regarding the restructuring and the conditions laid down in Annex II in regard to the repayment of parts of the aid measures and the claw-back, the Commission concludes that the risk shield is in line with section 5 of the Impaired Assets Communication, that the restructuring aid is limited to the minimum necessary and distortions of competition are sufficiently addressed, and that the restructuring plan submitted is likely to restore BayernLB's long-term viability. The restructuring aid should therefore be found compatible with the internal market pursuant to Article 107(3)(b) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The Commission Decision of 25 July 2012 on State aid granted by Germany and Austria to Bayerische Landesbank (Case SA.28487 (C 16/09, ex N 254/09)) is repealed.

Article 2

1. The following measures constitute State aid within the meaning of Article 107(1) TFEU:

(a) the recapitalisation of Bayerische Landesbank by the *Land* of Bavaria, in the amount of EUR 10 billion;

(b) the second-loss guarantee in the form of a risk shield granted to Bayerische Landesbank by the *Land* of Bavaria, in the amount of EUR 4,8 billion;

(c) the liability guarantees granted to Bayerische Landesbank by Germany, in the amount of EUR 15 billion;

(d) the funding guarantee granted to Bayerische Landesbank by Austria, in the amount of EUR 2,638 billion; and

(e) the transfer of EUR 1 billion in capital in Bayerische Landesbodenkreditanstalt from the *Land* of Bavaria to Bayerische Landesbank.

2. The State aid referred to in paragraph 1 is compatible with the internal market, in the light of the commitments set out in Annex I and Annex III and subject to the conditions set out in Annex II.

Article 3

Germany shall ensure that the restructuring plan submitted on 6 June 2012 and supplemented on 12 June 2012 is implemented in full, including the commitments set out in Annexes I and III and the conditions set out in Annex II, in accordance with the schedule set out in those Annexes.

Article 4

Germany shall inform the Commission within 2 months of notification of this Decision of the measures taken to comply with it.

Article 5

This Decision is addressed to the Federal Republic of Germany and to the Republic of Austria.

Done at Brussels, 5 February 2013.

For the Commission
Joaquín ALMUNIA
Vice-President

ANNEX I

A. **GENERAL COMMITMENTS**

1. **[Restructuring phase]** The restructuring phase will end on 31 December 2015. The following commitments apply during the restructuring phase unless the individual commitment states otherwise. Where a repayment under points 2 and 3 of Annex II is made only after that date, points 4, 6-8, 18-22, 24, 25, 27 and 28 of this Annex I will continue to apply until the bank has fulfilled all its payment obligations, but in no case beyond 31 December 2018.

2. **[Trustee]** The full and proper implementation of all the commitments and conditions set out in this list will be continuously and thoroughly monitored and checked in detail by a suitably qualified monitoring trustee that is independent of BayernLB. The arrangements concerning the appointment and duties of the monitoring trustee will be set out in a separate agreement.

3. **[Core bank and restructuring unit]** BayernLB has set up an internal restructuring unit to handle the reduction of certain portfolios on its own responsibility and also to monitor the other reduction measures taken by business areas and subsidiaries across the entire group. In functional and organisational terms, the internal restructuring unit is separate from the ongoing business areas of the core bank and subsidiaries (together, 'the core business') and is accounted for as a separate segment.

B. **REDUCTION OF BALANCE SHEET TOTAL/RESTRICTION OF BUSINESS ACTIVITIES**

4. **[Reduction of balance sheet total—group]** BayernLB undertakes to reduce its balance sheet assets to around EUR 239,4 billion ([1]) by 31 December 2015 ([2]) by closing locations abroad, selling holdings and restricting its business activities. To ensure that monitoring can proceed smoothly, any change in the EUR/USD exchange rate will be disregarded as long as the rate does not fall below the following: [1,05-1,25] for 2012, [1,05-1,25] for 2013, [1,05-1,25] for 2014, and [1,05-1,25] for 2015 ([3]). If the EUR/USD rate falls below these levels the bank may, after informing the monitoring trustee, adjust the target balance sheet total taking account of the exchange rate drop by the full difference compared with the planned rate, provided that the Commission does not object to the adjustment in writing, giving adequate reasons for the objection.

5. **[Reduction of balance sheet total—restructuring unit]** The total balance sheet assets of the restructuring unit will be reduced to around EUR [7,5-10] billion by 31 December 2015. Subject to point 4, which will apply mutatis mutandis, any overrun with respect to this sum will be disregarded in so far as it is due to a decrease in the EUR/USD exchange rate below the rate referred to in the second sentence of point 4.

6. **[Restriction of business activities—core business]** In the core business of the following business areas, the following restrictions will be observed, the aim being that only business with a link to Germany should be conducted. The term 'with a link to Germany' means that (i) the customer or its parent or a significant subsidiary has its registered office in Germany; or (ii) the business involves financing for trade or financing relating to exports involving […] risk insurance (e.g. an export credit agency), and the customer receiving the financing is an offtaker of a customer with a link to Germany as defined at (i) above; or (iii) the project to be financed is located in Germany, or one or more customers with a link to Germany as defined at (i) above are involved in the project either as offtakers of the goods or raw materials to be produced or as users by virtue of purchase or transfer-of-use contracts, or hold at least a [15-50] % ownership share in the project company, or have undertaken to supply more than [30-70] % of the supplies for the project that are to be financed; or (iv) in the international real estate business, the customer holds substantial German assets in its portfolio.

   (a) **[Project finance]** BayernLB will ensure that, from [the date from which this commitment is to be acted upon, i.e. 25 September 2012], the RWAs ([4]) of project financing activities in the core business, i.e. financing for special-purpose vehicles where credit is actually geared to the cashflow-based performance of the special-purpose vehicle or investment, do not exceed a ceiling of EUR [3-4] billion, in accordance with the modified restructuring plan.

([1]) In 2008 values this corresponds to a reduction to a balance sheet total of around EUR 206 billion.
([2]) If the restriction under this point applies beyond the year 2015 in accordance with point 1, the value of the balance sheet total will be indexed each year using the following formula: […].
([3]) BayernLB is planning for the following EUR/USD exchange rates: [1,10-1,60] for 2012, [1,10-1,60] for 2013, [1,10-1,60] for 2014 and [1,10-1,60] for 2015. After 2015 the figures for the EUR/USD exchange rate will be supplemented, if necessary, from the bank's plans applicable at that time.
([4]) The abbreviation 'RWA' used in the German version of points 6, 7 and 11 refers to the German term *Risikoaktiva,* which is one component of risk positions but does not include operational risk positions, market risk positions, and RWA equivalent or credit value adjustments from hedging transactions carried out for the customer.

(b) **[International real estate]** BayernLB will ensure that, as from [the date from which this commitment is to be acted upon, i.e. 25 September 2012], the RWAs of international real estate business in the foreign locations in its core business (business with international real estate customers, i.e. financing with a link to Germany as defined in points 6(i) and (iv) in the context of the structuring on normal market terms of commercial real estate transactions including special-purpose vehicles), do not exceed a ceiling of EUR [0,5-1] billion, in accordance with the modified restructuring plan.

(c) **[Corporate banking]** BayernLB will ensure that, as from [the date from which this commitment is to be acted upon, i.e. 25 September 2012], the RWAs in the area of corporate banking (financing of large corporates) in its core business do not exceed a ceiling of EUR [9-12] billion, in accordance with the modified restructuring plan.

BayernLB will not conduct any business from the business areas referred to in (a), (b) and (c) in other business areas in order to circumvent the specified risk assets ceilings. In the event of any doubt, the classification of activities under the business areas referred to above and the planning data will follow the restructuring plan ([1]).

7. **[Overruns]** With respect to the RWA ceilings laid down in point 6(a) to (c):

(a) A change in the EUR/USD exchange rate compared with the plan outlined in point 4 will be disregarded as long as the rate does not fall below the following: [1,05-1,25] for 2012, [1,05-1,25] for 2013, [1,05-1,25] for 2014 and [1,05-1,25] for 2015 ([2]). If the EUR/USD exchange rate falls below these levels the bank may, after informing the monitoring trustee, adjust the RWA ceilings taking account of the exchange rate drop by the full amount of the difference compared with the RWA ceilings set out in point 6(a) to (c). The Commission may object to the adjustment in writing, giving adequate reasons for the objection.

(b) An increase in the RWAs due to a change in the regulatory requirements concerning the calculation of RWAs or a change in national or international accounting rules compared with the present situation will be disregarded, provided the Commission, after being consulted, does not object.

8. **[Closure of business activities]** The following areas no longer form part of the core business and will be closed:

(a) Asset-backed securities

No investments will be made in tranched asset-backed securities or tranched loans that involve an underlying pool of obligations or that have a structure that leverages risk. Securitisation of financing operations by the bank itself in its own interest for the purposes of refinancing and/or balance sheet management and the purchase/financing of non-tranched receivables portfolios of core customers via transaction-related securitisation platforms continue to be admissible.

(b) Transaction-related secured lending/acquisition finance without a link to Germany

The bank will no longer be involved in transaction-related secured lending or acquisition finance with no link to Germany, i.e. the debt-financed acquisition of undertakings involving a large proportion of borrowed funds to cover the purchase price that are secured solely or mainly against the target business and its assets.

(c) Ship and aircraft financing

The bank will no longer offer asset-based financing for ships and aircraft, i.e. financing for the acquisition of these assets where the ship or aircraft acquired constitutes the main collateral. Aircraft financing is exempted from this discontinuance if it is 100 % covered by ECAs and the credit is geared solely to the export credit insurance and not to the underlying asset itself (pure export finance).

([1]) If the RWA restrictions under point 6 remain in force beyond the year 2015 in accordance with point 1, the RWA ceilings laid down in point 6(a) to (c) will be indexed each year using the following formula: […].

([2]) BayernLB is planning for the following EUR/USD exchange rates: [1,10-1,60] for 2012, [1,10-1,60] for 2013, [1,10-1,60] for 2014 and [1,10-1,60] for 2015. After 2015 the figures for the EUR/USD exchange rate will be supplemented, if necessary, from the bank's plans applicable at that time.

(d) Core bank business with public authorities outside Bavaria

BayernLB will cease new credit business with towns, municipalities and associations of municipalities outside Bavaria. This does not include liquidity management measures. Financing for public-private partnerships, project and export financing in the interest of customers with a link to Germany where a public authority is the customer (offtaker) continue to be admissible.

C. **CLOSURE OF LOCATIONS/DIVESTMENT OF SHAREHOLDINGS**

9. **[Locations]** The following BayernLB locations set up as branches or representative offices were closed on the dates indicated:

Location	Date
Beijing	2009
Tokyo	2009
Montreal	2009
Mumbai	2009
Kiev	2010
Hong Kong	2010
Shanghai	2010

10. Existing business that was not wound up by the date of closure of the locations listed in point 9 has been transferred or has been running down since that time upon the maturity of the underlying business. No new business will be accepted.

11. **[Sales of holdings]** BayernLB will sell the holdings listed below and in Annex III on the best terms obtainable and in their entirety by the dates specified (date of signing), or has already sold the holding on the date shown.

Name	Place	Shareholding (%)	Balance sheet/RWA ([1])	Target date
Banque LB Lux SA	Luxembourg	100 ([2])	6 441,3/[…]	[…]
DKB Immobilien AG	Berlin	100		2012 ([3])
KGE Kommunalgrund ([4])	Munich	100		[…]
Stadtwerke Cottbus GmbH	Cottbus	74,9		[…]
[…]	[…]	[…]		[…]
GBW AG ([5]) ([6])	Munich	91,93		[…]
Landesbank Saar	Saarbrücken	75	[…] ([7])	2010 ([8])
LB(Swiss) Privatbank AG	Zürich	50		2009
MKB Bank Zrt (group)	Budapest	89,89	9 360,9/[…]	[…]
DekaBank	Frankfurt am Main	3,09		2011
Deutsche Lufthansa AG	Cologne	1,98		2013

Name	Place	Shareholding (%)	Balance sheet/RWA (1)	Target date
KGAL GmbH & Co. KG	Grünwald	30 (9)		[…]
LBS Bayern (10)	Munich	100	[…]/[…]	2012

(1) Situation at 31 December 2011.
(2) In preparation for its sale of Banque LB Lux SA, BayernLB has acquired Helaba's 25% stake in Banque LB Lux SA, and has sold its holding in LB(Swiss) Privatbank AG to Helaba, which already holds the other 50% in LB(Swiss) Privatbank AG. The sales agreement to this effect was signed on 23 October 2009; the transaction closed on 21 December 2009.
(3) Closed on 27 March 2012.
(4) Not consolidated.
(5) The purchaser of this holding may be obliged to observe and maintain the social guidelines applicable in the GBW group and additional social requirements laid down in comparable transactions.
(6) As required by the European Commission, the shares in GBW AG will be sold under a tender procedure based on competition principles. The German Federal Government takes note of the fact that an acquisition by the *Land* of Bavaria under a tender procedure could lead to an investigation of further State aid.
(7) Book value in December 2011.
(8) On 22 June 2010 BayernLB sold a 25,2% share of SaarLB's share capital to the *Land* of Saarland, with the result that SaarLB no longer constitutes a BayernLB affiliate under Section 271(2) of the Commercial Code. […].
(9) Including shares held via KGAL Verwaltungs-GmbH.
(10) Not a holding in the technical sense.

12. If any holdings entail any debt financing ('intra-group funding') by BayernLB whose duration may extend beyond the date of sale, and BayernLB cannot divest these holdings together with the corresponding debt financing or otherwise receive a guarantee for the debt financing still outstanding, the sale of the holdings may be postponed for a maximum of […] until no later than […] (1).

13. BayernLB may postpone the sale of the holdings listed above for a maximum of […] until no later than […] (1) if after binding offers have been secured it becomes clear that the price that would be obtained in the transaction would be lower than the current book value of the holding in the individual financial statements drawn up by BayernLB in accordance with the German Commercial Code, or would produce losses in the consolidated financial statement in accordance with the IFRS accounting standards.

14. Subject to the Commission's approval, BayernLB may postpone a sale of the holdings listed for a maximum of […] until no later than […] (1) if it shows that, because of the macroeconomic circumstances, a sale is not possible or is possible only under 'fire sale' conditions.

15. BayernLB may postpone the full sale of its remaining shares in a holding for a maximum of […] until no later than […] (2) if it shows that by the target date, for economic or legal reasons, it was able to divest itself only of the controlling majority of the holding, and that it did indeed do so.

16. The proceeds of the sale of BayernLB's holdings, in so far as they outstrip the book value, and result in the planned income statement being exceeded, will be used entirely to finance BayernLB's restructuring plan und will thus be repaid to the *Land* of Bavaria under point 3 of Annex II.

17. Existing business in respect of holdings that have not been sold within the deadline indicated will be allowed to expire after that deadline upon the maturity of the underlying business. No new business will be accepted.

D. **OTHER BEHAVIOURAL OBLIGATIONS/CORPORATE GOVERNANCE**

18. **[Advertising]** BayernLB will not use the granting of the aid measures or any advantages over competitors arising therefrom for advertising purposes.

19. **[Restriction of external growth]** There will be no expansion of business activities through the acquisition of control over other firms with a sales price of more than EUR [0-2 million] without the Commission's approval ('no external growth'). Debt-to-equity swaps and other routine credit management measures are not considered to be an expansion of business activities unless carried out with the intention of circumventing the restriction of growth referred to in the first sentence.

(1) MKB is a special case […].
(2) MKB is a special case […].

20. **[Trading for own account]** BayernLB will end dedicated proprietary trading. This means that BayernLB will carry on only trading activities indicated in its trading book that are necessary either (a) for accepting, transferring and executing its customers' sales and purchase orders and hedge instruments directly related thereto (i.e. trading with financial instruments as a service, up to a value measured in value at risk for market price changes of EUR [0-50] million/1 day, 99 % confidence) or (b) for liquidity and ALM management (interest, foreign exchange, management of the liquidity reserve, management of collateral for secured refinancing operations) or (c) for the economic transfer of balance sheet items to the restructuring unit or to third parties. Under no circumstances will BayernLB carry on business activities that serve purely to make a profit apart from the purposes mentioned in (a), (b) or (c) above.

21. **[Assurances on corporate governance]** The management board (*Vorstand*) of BayernLB is independent in the daily and operational management of business and its sole duty is to the company. Neither the board of directors (*Verwaltungsrat*) nor the general meeting may issue instructions to it. Supervision and monitoring will be concentrated in the board of directors (which will in future be known as the supervisory board (*Aufsichtsrat*)); for business of fundamental importance the general rules under the law on public limited companies regarding the approval of the supervisory board (*Zustimmungsvorbehalt*) will apply. In addition, BayernLB is subject to legal supervision by its legal supervision authority and banking supervision by BaFin and the Bundesbank.

    The existing board of directors of BayernLB will be transformed into a slimmed-down supervisory board with still greater involvement of external members. The following measures will be taken by 30 June 2013:

    (a) All members of the supervisory board must be fit and proper persons within the meaning of the first sentence of § 36(3) of the German Banking Act (*Kreditwesengesetz* — KWG). Members are fit and proper persons if they are reliable and have the expertise required to perform supervisory functions, and to assess and monitor BayernLB's business transactions.

    (b) Half the seats allocated to shareholders on the supervisory board will be filled by external expertise.

    (c) Until the end of the restructuring phase the supervisory board will be chaired by a person who is a member of the board in accordance with point 21(b) ('external expertise'). Thereafter the chairperson will be chosen in accordance with the procedure laid down in German or European law on public limited companies.

    (d) It is also specified here that the seats allocated to shareholders will no longer be filled automatically on the basis of a person's position among the shareholders (elimination of members 'by birth').

    (e) The supervisory board will establish an audit committee and a risk committee. The provisions of points 21(a) to (d) will apply by analogy.

    (f) It is specified that the business of the Landesbank will be conducted in accordance with commercial principles, while at the same time taking account of its assigned tasks.

22. The 'arm's length' principle typical of relations between a company and its shareholders applies to the relationship between bank and owners. Excluding any repayment of the aid granted, assets may be distributed to the owners only in the form of balance-sheet profit, capital reductions and proceeds of liquidation; structural measures in connection with dependent institutions within BayernLB remain unaffected.

23. **[Remuneration of bodies, employees and essential agents]** BayernLB will verify the incentive effect and appropriateness of its remuneration systems and ensure, within the possibilities under civil law, that they do not result in exposure to undue risks, are oriented towards sustainable, long-term company objectives, and are transparent. The total remuneration to board members and senior management will be restricted to an appropriate level. A cash remuneration (*monetäre Vergütung*) exceeding EUR 500 000 a year will in principle be considered inappropriate. The restriction referred to in the second and third sentences will continue to apply until BayernLB has paid a total of EUR […] million in accordance with points 2 and 3 of Annex II. Otherwise the restriction referred to in the second and third sentences will continue to apply except that a cash remuneration exceeding EUR […] a year will be considered inappropriate in principle until BayernLB has completed the one-off claw-back payment under point 2 of Annex II and payments totalling EUR […] million under point 3 of Annex II ([1]).

24. Within the possibilities under civil law, BayernLB will remunerate its bodies, employees and essential agents in line with the following principles:

    (a) BayernLB's employees and essential agents may not receive any inappropriate salaries, salary components, bonuses, or any other inappropriate benefits;

([1]) After informing the monitoring trustee, the bank may adjust the maximum limit for the annual cash remuneration in point 23 in line with inflation in Germany.

(b) the remuneration of board members and senior management of BayernLB will be restricted to an appropriate level (see point 23 above), particular account being taken of

— the relevant person's contribution to BayernLB's economic position, especially in the context of previous business policies and risk management, and

— the necessity of a market-oriented salary so as to be able to employ particularly suitable persons who can achieve sustainable economic growth.

25. **[Other rules of conduct]** BayernLB's commercial policy will be prudent, sound and oriented towards sustainability. For this purpose, BayernLB will in particular establish a funding plan on a yearly basis and steer its business strategy accordingly. In the context of its lending and investing, BayernLB will take into account the borrowing requirements of the economy, in particular the requirements of small and medium-sized businesses, by applying terms that are in line with market practice and appropriate from a supervisory/banking point of view.

26. **[Transparency]** During the implementation of the Decision, the Commission will have unlimited access to all information necessary for monitoring its implementation. The Commission may ask BayernLB to provide explanations and clarifications. Germany and BayernLB will cooperate fully with the Commission in response to any request in connection with the monitoring and implementation of this Decision.

27. **[No servicing of hybrid capital]** BayernLB will adhere to a ban on the servicing of hybrid capital. BayernLB will service hybrid capital (such as silent participations (*stille Einlagen*) and profit participation certificates (*Genussscheine*)) only if it is obliged to do so even without a release of reserves (*Rücklagen*) or of the special item referred to in Section 340 f and g of the Commercial Code. […].

28. **[Dividend ban]** BayernLB will adhere to a dividend ban in order to meet its payment commitments. BayernLB will not pay dividends in the period until and including the financial year ending 31 December 2018. Payments under points 2 and 3 of Annex II remain unaffected.

E. CONTRIBUTION BY THE BAVARIAN SAVINGS BANKS

29. **[Conversion of silent participations and acquisition of LBS Bayern]** The Bavarian savings banks are prepared to share the burden of restructuring BayernLB to the tune of EUR 1,65 billion by acquiring LBS and converting their silent participations (*stille Einlagen*).

The sum is made up as follows:

(a) **Acquisition of LBS**: The Bavarian savings banks association will acquire LBS in full for a price of EUR 818,3 million. The date of the purchase (transfer of ownership and payment of the purchase price) will be […]. BayernLB is entitled to the proceeds (*Ertrag*) for the 2012 business year.

(b) **Conversion of silent participations**: All silent participations of unlimited duration held by the savings banks in BayernLB will be repaid at the nominal value of around EUR [770-810] million. At the same time the Bavarian savings banks association will inject capital of EUR [810-840] million into BayernLB Holding AG. The repayment of the silent participations and the capital increase will take place no earlier than […] and no later than […]. The new shares of the savings banks association will be determined on the basis of the business valuation of BayernLB Holding AG calculated in accordance with valuation standard IDW S1 at the time of the capital increase. The stake held by the savings banks association will in any event be restricted to a maximum of 25 % and thus will continue to remain below the blocking minority, which is 25 % + one vote [1].

F. BAYERNLABO

30. **[BayernLabo capital]** Having regard to changes in the supervisory requirements under the law as regards the capital adequacy of banks (Basel III) and analogous remarks from BaFin, the arrangements concerning BayernLabo's equity will be adapted to the extent required by the Capital Requirements Regulation ('CRR') to ensure that BayernLabo's equity capital as shown in the IFRS group accounts for BayernLB represents hard core capital under the new CRR requirements. The remuneration will be transformed into a CRR-compliant remuneration as on share capital (i.e. dividends); the restriction limiting equity capital to underpinning the business of BayernLabo will be lifted. A sum of EUR 1 billion, which according to the current plans for BayernLabo is not necessary for continuing business operations to the same extent as hitherto, will be transferred to the account of the core bank. The legal earmarking (*Zweckbestimmung*) of the remaining assets in BayernLabo (including special-purpose assets (*Zweckvermögen*) and the corresponding special-purpose contribution (*Zweckeinlage*)) will remain unchanged, so that the statutory task of promotion (*Förderauftrag*) can be continued without restriction.

[1] Alternatively the silent participations may be converted into shares, instead of being first repaid and then reinjected.

G. **REMUNERATION OF THE GUARANTEE/CLAW-BACK**

31. **[Remuneration of the guarantee/claw-back]** The agreement concluded between the *Land* of Bavaria and BayernLB on 19 December 2008 on the provision of a guarantee (the 'guarantee agreement') will be amended or supplemented in order to give effect to the following commitments, which are based on the understanding that the difference between the transfer price and the real economic value of the portfolio secured by the guarantee agreement comes to EUR 1,96 billion.

32. **[Total premium]** The bank will pay an total annual premium of EUR 200 million for the guarantee retroactively from 1 January 2010. This total premium consists of the following:

    (a) a basic premium of 6,25 % on the initial capital relief effect (at 31 December 2008) of EUR 1,28 billion, i.e. EUR 80 million a year;

    (b) an additional annual premium of 3,75 % on a part of the guarantee totalling EUR 2 billion, i.e. EUR 75 million a year, until 2015; and

    (c) a special payment of EUR 45 million a year until 2015.

H. **REPAYMENT OF BAVARIA'S SILENT PARTICIPATION OF EUR 3 BILLION**

33. **[Further reduction of risk positions]** In order to repay the entire silent participation of the *Land* of Bavaria by 2017, BayernLB undertakes to reduce its risk positions by a further EUR 10 billion by 2017, broken down by business segments as follows, a divergence of a maximum of [10-15] % per segment being disregarded as long as a total reduction of EUR 10 billion is achieved ([1]):

    — corporates, small and medium-sized businesses and private customers: […] %;

    — real estate, savings banks and associated firms: […] %

    — markets: […] %

    — restructuring unit: […] %

    If these measures result in any further reduction of business, it will not be counted towards the reduction in the balance sheet pursuant to point 4. If the abovementioned reduction in risk positions should lead to the loss of revenue, the bank will offset this loss by reducing costs as appropriate.

    At the beginning of the business year […], the bank undertakes to conduct a 'mid-term review' of the implementation of this commitment, based on the reports of the monitoring trustee. If on the occasion of the mid-term review the Commission determines that BayernLB is likely to miss the target reduction of risk positions by the end of the business year 2017, BayernLB will have to notify this change afresh, unless it is due to new regulatory or macroeconomic developments.

([1]) As presented to the Commission on 14 June 2012; for further information, see the explanations in the restructuring plan, section 6.20.2.

ANNEX II

CONDITIONS

1. **[Repayments]** BayernLB must (where appropriate via BayernLB Holding AG) make a one-off payment of EUR 1,24 billion to the *Land* of Bavaria (the 'one-off claw-back payment') and repay the EUR 3 billion in equity it received as aid in the form of a silent participation in 2008/2009 (the 'aid repayment').

2. The one-off claw-back payment of EUR 1,24 billion will be made in the following tranches:

   […]

   If the relevant supervisory authority decides that the equity resulting from the entry in the balance sheet of the nominal value of BayernLabo's special-purpose assets (*Zweckvermögen*) is to be recognised in full or in part as core Tier 1 capital for supervisory purposes, the succeeding tranche of the one-off claw-back payment will be increased by that amount and the further payment schedule will be adjusted in accordance with Table 11.

3. The aid repayment of EUR 3 billion will be made in the following tranches:

   […]

   The remaining parts of the silent participation of EUR […] million will be repaid to the *Land* of Bavaria by 2017 by releasing the capital on the basis of point 33 of Annex I.

4. **[Deferral of the payment obligation]** If the supervisory authority prohibits BayernLB from making a payment under point 2 or fails to give its consent to repayment under point 3, the repayments provided for in those points must be suspended. In that event the corresponding obligation to pay those amounts must be deferred until the supervisory authority approves or does not prohibit the relevant repayment. If repayment of the amount initially deferred is not approved in the following year or is again prohibited, the Federal Government of Germany will notify a modified restructuring plan to the Commission which, in principle, must contain additional compensatory measures, such as a further balance sheet reduction.

ANNEX III

FURTHER REDUCTION IN HOLDINGS

BayernLB has also sold or will sell the following holdings in accordance with point 11 of Annex I on or by the date indicated ([1]):

	Holding	Percentage holding (%)	Completed/ planned exit
1	gewerbegrund Holding GmbH i.L.	100,0	2008
2	Hypo Alpe-Adria-Bank International AG (HGAA)	67,1	2009
3	Kraftwerksgesellschaft Völklingen Geschäftsführ.-GmbH	38,0	2009
4	SCI du 203 Faubourg Saint Honoré	100,0	2009
5	Vulcain Energie	10,0	2009
6	Bayerische Beamtenkrankenkasse AG	1,0	2010
7	Bayerische Landesbrandversicherung AG	1,0	2010
8	Bayerische Versicherungsverband Vers.-AG	1,0	2010
9	BayernLB Corporate Advisers GmbH i.L.	100,0	2010
10	Central 1 Credit Union	0,0 (*)	2010
11	Coast Capital Savings Credit Union	0,0 (*)	2010
12	Credit Union Central of British Columbia	0,0 (*)	2010
13	Energy & Commodity Services GmbH i.L.	100,0	2010
14	Envision Credit Union	0,0 (*)	2010
15	Gulf and Fraser Fisherman's Credit Union	0,0 (*)	2010
16	GZ-Holdinggesellschaft mbH i.L.	100,0	2010
17	Island Savings Credit Union	0,0 (*)	2010
18	IZB Soft Verwaltungs-GmbH & Co. KG	25,1	2010
19	Meridian Credit Union	0,0 (*)	2010
20	MKB Általános Biztosító Zrt.	25,0	2010
21	Schlemmermeyer GmbH & Co. KG	20,0	2010
22	Valley First Credit Union	0,0 (*)	2010
23	MKB Életbiztosító Zrt.	25,0	2010
24	Vancouver City Savings Credit Union	0,0 (*)	2010

([1]) Some of the holdings to be divested (marked **) are marketable only to a limited extent, either because the bank does not have unrestricted disposal of the shares or because the only potential purchasers are other members of the company and the success of the exit strategy depends on their cooperation (e.g. STR Brennerschienentransport or European Energy Exchange).

	Holding	Percentage holding (%)	Completed/ planned exit
25	Münchner Gesellschaft für Stadterneuerung mbH	3,5	2010
26	North Shore Credit Union	0,0 (*)	2010
27	Westminster Savings Credit Union	0,0 (*)	2010
28	BLB-Grundbesitz-Verwaltungsges. mbH i.L.	100,0	2011
29	German Centre (Shanghai) Limited i.L.	100,0	2011
30	IZB Soft-Beteiligungs-GmbH	25,1	2011
31	Groupement d'Interet Economique (GIE) Spring Rain	100,0	2011
32	[…].	[…]	[…]
33	[…]	[…]	[…]
34	[…]	[…]	[…]
35	[…]	[…]	[…]
36	Mietdienst Ges. f. Investitionsgüterleasing mbH & Co.	5,0	2012
37	[…]	[…]	[…]
38	First Calgary Savings & Credit Union Ltd	0,0 (*)	2012
39	First West Credit Union	0,0 (*)	2012
40	Interior Savings Credit Union	0,0 (*)	2012
41	KSP Unternehmensverwaltungsgesellschaft mbH i.L.	43,0	2012
42	[…]	[…]	[…]
43	[…]	[…]	[…]
44	[…]	[…]	[…]
45	[…]	[…]	[…]
46	[…]	[…]	[…]
47	[…]	[…]	[…]
48	[…]	[…]	[…]
49	[…]	[…]	[…]
50	Siacon GmbH i.L.	50,0	2013
51	[…]	[…]	[…]

(*) Rounding error, minority shareholding