



Press and Information

General Court of the European Union  
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Judgment in Case T-427/12  
Austria v Commission

**The General Court confirms that the guarantee granted by Austria to BayernLB in the context of its restructuring concerning BayernLB's credit lines in favour of Hypo Group Alpe Adria constitutes State aid which is nevertheless compatible with EU law**

*It therefore rejects the action brought by Austria against the decisions of the Commission*

By decisions of 25 July 2012<sup>1</sup> and of 5 February 2013,<sup>2</sup> the Commission approved the restructuring of Bayerische Landesbank (BayernLB). It found that certain measures<sup>3</sup> of the Free State of Bavaria and of Germany in favour of that German commercial bank<sup>4</sup> and a financing guarantee in the amount of €2.638 billion granted by Austria to BayernLB constituted State aid within the meaning of EU law, but that such State aid was compatible with the internal market having regard to the undertakings made by Germany and subject to the obligations imposed by the Commission.

Austria brought an action for the annulment of those decisions in so far as they concerned the financing guarantee of €2 638 000 000. It claimed that it never had the intention of granting State aid to BayernLB. It claimed, in particular, that the Commission wrongly concluded that there had been State aid. In the event that the Court should find that there had, in fact, been such State aid, it claimed that the State aid should be declared incompatible with the internal market.

In today's judgment, **the General Court dismisses the action.**

The General Court states that BayernLB held 67.08% of the shares in the Austrian financial group Hypo Group Alpe Adria (HGAA)<sup>5</sup> until the latter's emergency nationalisation at the end of 2009. In December 2009, Austria nationalised HGAA so that measures could be taken in the light of the precarious financial situation of that bank. Against that background, 100% of HGAA's shares were transferred by the shareholders to Austria for the nominal consideration of one euro per shareholder. In the sales contract concluded between Austria and BayernLB, the latter agreed that its existing credit lines relating to the internal financing of the group, for an amount of more than €2 600 000 000 in favour of HGAA, would remain in HGAA's accounts until the end of 2013. As a result, BayernLB received a guarantee from Austria that the amount would be reimbursed so that BayernLB reduced the risk that it would face in the event of HGAA's (future) insolvency.

<sup>1</sup>Commission Decision C (2012) 5062 final of 25 July 2012 on State aid granted by the Federal Republic of Germany and the Republic of Austria to BayernLB (SA.28487 (C 16/2009 ex N 254/2009)). See also Commission press release IP/12/847 of 25 July 2012.

<sup>2</sup>Commission Decision (EU) 2015/657 of 5 February 2013 on State aid granted by Germany and Austria to [BayernLB] (Case SA.28487 (C 16/09, ex N 254/09)) (OJ 2015, L 109, p. 1), which was drafted in German and which repeals the decision of 25 July 2012 drafted in English.

<sup>3</sup>Namely the recapitalisation in the amount of € 10 billion and the general guarantee of € 4.8 billion granted by the Free State of Bavaria, € 15 billion in liquidity guarantees granted by Germany and the transfer of the share capital held by the Free State of Bavaria in Bayerische Landesbodenkreditanstalt to BayernLB.

<sup>4</sup>BayernLB's shareholders are – indirectly through BayernLB Holding AG – the Free State of Bavaria in the amount of approximately 94% and Sparkassenverband Bayern (Association of savings banks of Bavaria) in the amount of approximately 6%.

<sup>5</sup>The parent company, Hypo Alpe-Adria-Bank International AG, has its seat in Klagenfurt (Austria). The banking activity of HGAA consists, in particular, in loans, services payments, export and deposit credit documentation, but also in the sale of investment products and the management of portfolio investments. HGAA operates in the Adriatic Ionian Region.

**According to the General Court, the Commission did not err in law in finding that the benefit conferred on BayernLB constituted State aid and that it was compatible with its communication on restructuring measures<sup>6</sup> and, therefore, with the internal market. The General Court finds, in particular, that the action pending before the Handelsgericht Wien, which concerns BayernLB's acquisition of HGAA in 2007, has no effect on the issue of whether the measure at issue constitutes State aid.**

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**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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*The [full text](#) of the judgment is published on the CURIA website on the day of delivery*

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<sup>6</sup>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 (OJ 2009, C 195, p. 9).