

**Changes to legislation:** *There are currently no known outstanding effects for the Commission Decision of 29 September 2010 on State aid C 32/09 (ex NN 50/09) implemented by Germany for the restructuring of Sparkasse KölnBonn (notified under document C(2010) 6470) (Only the German text is authentic) (Text with EEA relevance) (2011/526/EU), ANNEX. (See end of Document for details)*

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## ANNEX

European Commission — Financial Crisis Taskforce

DG Competition

Rue Joseph II/Jozef II-straat 70

1000 Brussels

Belgium

**Case C 32/09 — Sparkasse KölnBonn**

COMMITMENTS TOWARDS THE EUROPEAN COMMISSION

Pursuant to Article 7(3) of Council Regulation (EC) No 659/99<sup>(1)</sup>, as amended, Germany hereby provides the following commitments concerning Sparkasse KölnBonn in order to enable the European Commission ('the Commission') to find the recapitalisation of Sparkasse KölnBonn compatible with the internal market by decision under Article 107(3)(b) of the Treaty on the Functioning of the European Union.

The commitments are to take effect on the date of the decision's adoption.

This text is to be interpreted within the general framework of EU law and with reference to Regulation (EC) No 659/99, and also taking into consideration the Decision to which the commitments are attached.

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## ANNEX I

### Section A —

#### Commitments

1. **Corporate governance:** The Federal Government and Sparkasse KölnBonn undertake that Sparkasse KölnBonn will make the following amendments to its corporate governance:
  - (a) The number of external members of the Supervisory Board is to be increased from the current two members to four as of 1 January 2011. The total number of Supervisory Board members is to be restricted to 18.
  - (b) The Supervisory Board of Sparkasse KölnBonn is to appoint only the following committees in future and to reduce their members to the number stipulated no later than on 1 January 2011.
    - Accounting committee (seven members)
    - Risk committee (six members)
    - Main committee (three members)
  - (c) The Strategy committee and the Investment committee are to be abolished no later than on 31 December 2010 and 31 December 2011 respectively.
  - (d) All members of the Supervisory Board are to possess the abilities stipulated in the first sentence of §36(3) of the German Banking Act.
  - (e) With effect from 1 January 2011 the Management Board of Sparkasse KölnBonn is to tighten the guidelines for investment decisions as follows: The Management Board will be able to take investment decisions only if there is unanimity and — in the case of investments over a nominal value of EUR [2-5] million — following a due diligence check involving an auditor, if necessary.
2. **Proprietary trading:** Sparkasse KölnBonn is to cease trading for its own account. This means that Sparkasse KölnBonn is only to carry out transactions that either
  - (a) are necessary to receive, transmit and carry out its clients' orders to buy and sell; or
  - (b) help the savings bank perform liquidity or risk management.

Under no circumstances is Sparkasse KölnBonn to create positions on its own account, unless they arise because Sparkasse KölnBonn, for example, does not carry out certain customer orders straight away. Positions of this kind and the liquidity/risk management positions are allowed only if they do not jeopardise the Bank's viability and/or liquidity. Sparkasse KölnBonn is therefore to limit the market risk of its trading portfolio to EUR [3-5] million (Value at Risk at a confidence level of 99 %).

3. **Lending to the economy:** Through its lending and investment activities, conducted under normal market conditions that meet supervisory and banking industry requirements, Sparkasse KölnBonn is to meet the borrowing needs of the business sector, particularly of SMEs.
4. **Reduction of large and cash credit exposures**

As part of its reorientation, Sparkasse KölnBonn is to gradually reduce its large credit exposures in the area of corporate banking in order to reduce the associated risks. The measures include,

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among other things, limiting the credit lines, requesting additional collateral or transferring risks to other credit institutions.

By the end of 2013 Sparkasse KölnBonn is to reduce its large credit exposures by EUR [900-1 100] million, of which EUR [400-550] million should already be achieved by the end of 2010. Cash credits granted to institutional clients, who are not connected to the Cologne-Bonn region, are to be reduced by EUR [800-900] million by the end of 2013.

5. **Price leadership ban:** Until 31 December 2014 Sparkasse KölnBonn is not, without the prior authorization of the Commission, to offer more favourable prices on the relevant markets for deposit-taking [...] and for long-term mortgage loans [...] than its best-priced competitor among the top 10 market players in terms of market share<sup>(2)</sup> in the relevant market.
6. As soon as Sparkasse KölnBonn becomes aware that it is offering more favourable prices than its best-priced competitor, it will immediately adjust its prices accordingly.
7. **Dividend and coupon ban:** Germany undertakes, with regard to coupon payments and call options on capital instruments, that
  - (a) Sparkasse KölnBonn or any other of its entities is not to use the capital or reserves of Sparkasse KölnBonn to pay any coupons on capital instruments, unless (a) there is a legal obligation to do so, or (b) where the payment of the relevant coupon will be covered by the current profits of Sparkasse KölnBonn. In the case of doubts as to the existence of a legal obligation or sufficient current profit for the purpose of this commitment, Sparkasse KölnBonn is to submit the proposed coupon payment to the Commission for approval;
  - (b) No entity of Sparkasse KölnBonn is to exercise a call option in respect of these hybrid capital instruments if Sparkasse KölnBonn's total regulatory capital would be reduced as a result.

During the implementation of the restructuring plan, until 31 December 2014 at the latest, Sparkasse KölnBonn is to pay coupon on and avoid loss absorption by the subordinated capital only if it is obliged to do so, and provided it does not require the release of reserves and of the special items pursuant to §340 f and g of the Commercial Code.

8. **Acquisition ban:** Upon the Decision coming into effect, Sparkasse KölnBonn is not to acquire more than 20 % of the shares in other financial institutions during a period of 3 years. Other participation transactions that are not related to Sparkasse KölnBonn's original customer business in its business model may still be carried out, provided they do not jeopardise the Sparkasse's viability and have been approved by the European Commission. In addition, Sparkasse KölnBonn is to refrain from acquiring participations that are not necessary for its core business, or that entail excessive risks.
9. **No reference to state support in advertising:** Sparkasse KölnBonn is not to use the European Commission's authorisation of the measures, which the European Commission has assessed as constituting State aid, or other competitive advantages resulting therefrom, for advertising purposes.

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## Section B —

### The business to be divested

10. Sparkasse KölnBonn is to sell the following participations (referred to together as the business to be divested), in so far as they have not already been sold, by no later than the dates indicated and at the best possible prices. This should enable the essential, valuable elements of the current business to be retained until they are put up for sale.

Participation	To be sold by no later than
Golfclub Gut Lärchenhof GmbH	Already sold in 2009
TA Triumph Adler AG	Already sold in 2009
RW Holding AG	Already sold in 2009
S ProFinanz Versicherungsmakler GmbH	Already sold in 2009
Schufa Holding AG	Already sold in 2009
Sparkassen Servicegesellschaft für Zahlungssysteme und elektronische Vertriebskanäle mbH & Co KG	Assets sold/Liquidation by the end of 2010
[...]	[...]
Campus Grundstückentwicklungs GmbH	Assets already sold/liquidation in 2011
[...]	[...]
[...]	[...]
[...]	[...]
neue leben Pensionsverwaltung AG	End of 2010
[...]	[...]
[...]ª	[...]
[...]ª	[...]
<b>a</b> [...].	
<b>b</b> [...].	

11. In order to avoid undue distortions of competition, Sparkasse KölnBonn undertakes to sell, or procure the sale of the above-mentioned businesses to be divested as going concerns under the terms of sale approved by the Commission in accordance with the procedure described in paragraph 26. Sparkasse KölnBonn undertakes to enter into a final, binding purchase agreement for the sale of the business to be divested within the first divestiture period<sup>(3)</sup>. If Sparkasse KölnBonn has not entered into such an agreement by the end of the first divestiture period,

- (a) the deadline will be extended by a further [...] if Sparkasse KölnBonn can prove that [...] Sparkasse KölnBonn undertakes to enter into a final, binding purchase agreement [...] within the extended divestiture period for the sale of the business to be divested;
- (b) if Sparkasse KölnBonn has not entered into such an agreement by the end of the extended divestiture period, it is to grant the divestiture trustee an exclusive mandate

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to sell the business to be divested within the trustee divestiture period<sup>(4)</sup>. The procedure for the nomination of the divestiture trustee, and his duties are set out in Annex III.

12. The commitment to divest will be considered fulfilled if Sparkasse KölnBonn enters into a final, binding purchase agreement by the end of the period under paragraph 10 or of the extended period under paragraph 11 with a buyer that fulfils the conditions in paragraphs 25 and 26, and if the transfer of the business to be divested is effected no later than 6 months after the conclusion of the purchase agreement.
13. Sparkasse KölnBonn is to sell the following participations by no later than 31 March 2011 to the city of Cologne, a company connected with the city of Cologne or a third party:
  - [...]
  - [...]
  - [...]
  - [...]
  - [...]
  - [...]
  - [...]
  - [...]
  - [...]
  - [...]
  - [...]
14. The individual transactions with the city of Cologne are to be carried out under normal market conditions. For this purpose, the current market value of the sales object at the time of transfer is to be determined by an independent expert. The monitoring trustee is to monitor the individual transactions.

In the context of the transaction it is also permitted to transfer the assets and business activities of a company, instead of the company in question, if this serves the intended business purpose.

15. An auditing company is to verify the valuation of the assets and the contractually agreed general business data on behalf of the purchaser.
16. Before the transaction takes place, the monitoring trustee is to be informed of its details.
17. In order to maintain the structural effect of the commitments, Sparkasse KölnBonn may not, for a period of [...] after they become effective, acquire direct or indirect influence over the whole or part of the business to be divested, unless the Commission has previously found that the structure of the market has changed to such an extent that protecting the business to be divested from such influence is no longer necessary in order to render the restructuring measures compatible with the internal market.
18. In the future Sparkasse KölnBonn is to grant no more than [30-60] % of the financing to its subsidiaries that are to be divested. An exception is made for existing loans until the due date under the loan agreement.
19. The profits from the sale of Sparkasse KölnBonn's participations are to be used entirely to fund the restructuring plan.

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## Section C —

### Divestment-related commitments

*Preservation of the viability, marketability and competitiveness of the business to be divested*

20. From the date on which the commitments become effective until transfer, Sparkasse KölnBonn is to preserve, in accordance with good business practice, the economic viability, marketability and competitiveness of the business to be divested and is to minimise as far as possible any risk that may reduce its competitive potential. Sparkasse KölnBonn undertakes, in particular
- (a) not to carry out any activity that might have an adverse impact on the value, management or competitiveness of the business to be divested, or that might alter the nature and scope of its activity, its industrial or commercial strategy or its investment policy;
  - (b) to make available sufficient resources for the development of the business to be divested, on the basis of and by implementing the existing business plans;
  - (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all key personnel to remain with the business to be divested.

*Hold-separate obligations of Sparkasse KölnBonn towards the business to be divested*

21. Sparkasse KölnBonn undertakes, from the date on which the commitments become effective until transfer, to keep the business to be divested separate from the businesses it is retaining and to ensure that the managers of the subsidiaries who are operating the business to be divested have no involvement in the management of any business retained and vice versa.
22. Until the transfer, Sparkasse KölnBonn is to assist the monitoring trustee in ensuring that the business to be divested is managed as a distinct and saleable entity.

*Non-solicitation clause*

23. Sparkasse KölnBonn undertakes, subject to the customary limitations, not to solicit the key personnel transferred with the business to be divested for a period of 12 months after closure, and will ensure that the affiliated undertakings do not solicit them either.

*Due diligence*

24. In order to enable potential purchasers to carry out a reasonable due diligence check of the business to be divested, Sparkasse KölnBonn undertakes, subject to the customary confidentiality assurances and depending on the stage of the divestiture process, to:
- (a) provide potential purchasers with sufficient information on the business to be divested;
  - (b) give potential purchasers sufficient information on and reasonable access to the personnel.

## Section D —

### The purchaser

25. In order to ensure the immediate restoration of effective competition,
- (a) the purchaser must be independent of and unconnected to Sparkasse KölnBonn. This does not apply, however, to the sale of [...], [...] and the participations listed

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- in paragraph 13 to the responsible municipalities, their affiliated companies, and members of the Sparkassen financial group;
- (b) the purchaser must have the financial resources, proven expertise and incentive to maintain and develop the business to be divested as a viable and active competitive force in competition with Sparkasse KölnBonn and other competitors;
- (c) in the light of the information available to the Commission, the purchaser must not give rise to prima facie competition concerns, nor to a risk that the fulfilment of the commitments will be delayed, and can, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the business to be divested.
26. As soon as Sparkasse KölnBonn reaches an agreement with a purchaser, it is to submit a fully documented and reasoned proposal, including a copy of the final agreement, to the Commission and the monitoring trustee. Sparkasse KölnBonn must be able to demonstrate to the Commission that the purchaser meets the relevant requirements and that the business to be divested is being sold in a manner consistent with the commitments. The Commission is to verify that the purchaser meets the relevant requirements and that the business to be divested is being sold in a manner consistent with the commitments.

## Section E —

### Other commitments

27. **Early partial repayment and partial conversion of the certificates of participation:** The Federal Government and Sparkasse KölnBonn hereby commit to the following successive and integrated measures for improving Sparkasse KölnBonn's core capital ratio:
- (a) Zweckverband Sparkasse KölnBonn (Sparkasse KölnBonn special-purpose association) will purchase by 31 December 2011, to be effective as of 1 January 2011, a first tranche of EUR 150 million in certificates of participation of the Rheinische Sparkassen-Förderungsgesellschaft and convert them into an instrument recognised as regulatory core capital (tier 1 capital).
- (b) By 31 December 2011 Sparkasse KölnBonn will repurchase a second tranche of EUR 150 million in certificates of participation of the Rheinische Sparkassen-Förderungsgesellschaft, provided that this is compatible with Sparkasse KölnBonn's risk-bearing capacity and has been approved by the Federal Financial Supervisory Agency.
28. Germany undertakes that the conditions of the partial conversion and partial repurchase of the certificates of participation will be formulated in such a way that further State aid is ruled out.
29. **Reduction of the total assets:**

In addition to the measures already carried out to reduce the total assets, Sparkasse KölnBonn undertakes to reduce other assets (large-scale lending activities, short-term lending, investments) by EUR [2,5-4] billion by the end of 2014. On the other hand, however, Sparkasse KölnBonn is to develop its core business activities (in particular, regional retail and corporate lending) while ensuring that the net total assets do not exceed EUR [25-30] billion at the end of

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2014. In line with this, the Sparkasse KölnBonn's risk weighted assets are not to exceed EUR [16-19] billion at the end of 2014.

30. The complete and correct implementation of all the conditions contained in this document is to be fully monitored on an ongoing basis and checked in detail by an adequately qualified and independent monitoring trustee. The appointment and duties of the monitoring trustee are laid down in Annex II.

...

Duly authorised for and on behalf of

[Indicate the name of the MS]



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## ANNEX II

### APPOINTMENT AND DUTIES OF THE MONITORING TRUSTEE

#### I. The Monitoring Trustee

1. The Federal Republic of Germany shall appoint a Monitoring Trustee.
2. The Monitoring Trustee shall be one or several natural or legal person(s) independent of Sparkasse KölnBonn who will be approved by the Commission and appointed by the Federal Republic of Germany, and will have the duty to monitor whether Sparkasse KölnBonn complies with its obligations towards the Commission and implements the restructuring plan.
3. The Monitoring Trustee must be independent of Sparkasse KölnBonn and must possess the necessary qualifications to carry out its mandate, for example as an investment bank, consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Monitoring Trustee shall be remunerated by Sparkasse KölnBonn, which shall not impede the independent and effective fulfilment of its mandate.

#### II. Appointment of the Monitoring Trustee

##### *Proposal by the Federal Republic of Germany*

4. No later than 4 weeks after the date of delivery of the Decision, the Federal Republic of Germany shall submit for the Commission's approval the names of two or more persons as Monitoring Trustees and shall indicate which of those is its first choice. The proposal must contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 3 and shall include:
  - (a) the full terms of the proposed mandate together with all the provisions necessary to enable the Monitoring Trustee to carry out its duties in accordance with these commitments;
  - (b) the outline of a work plan describing how the Monitoring Trustee intends to carry out its assigned tasks.

##### *Approval or rejection by the Commission*

5. The Commission shall have the discretion to approve or reject the proposed Monitoring Trustees and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfil its obligations. The Monitoring Trustee shall be appointed within 1 week of the Commission's approval, in accordance with the mandate approved by the Commission.

##### *New proposal by the Federal Republic of Germany*

6. If all the proposed Monitoring Trustees are rejected, the Federal Republic of Germany shall, within 1 week of being informed of the rejection, submit the names of at least two other persons or institutions, in accordance with the conditions and according to the procedure in paragraphs 1 and 5.

##### *Monitoring Trustee nominated by the Commission*

7. If all further proposed Monitoring Trustees are also rejected by the Commission, the Commission shall nominate a Monitoring Trustee(s), whom the Federal Republic of Germany shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

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### III. The duties of the Monitoring Trustee

8. It is to be the duty of the Monitoring Trustee to ensure compliance with the conditions and obligations attached to the Decision and guarantee implementation of the restructuring plan.

#### *Duties and obligations of the Monitoring Trustee*

9. The Monitoring Trustee shall
- (i) propose to the Commission within 4 weeks of appointment a detailed work plan describing how it plans to monitor compliance with the commitments towards the Commission and implementation of the restructuring plan;
  - (ii) oversee the ongoing management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness;
  - (iii) monitor compliance with all obligations towards the Commission and implementation of the restructuring plan;
  - (iv) propose measures, which the Monitoring Trustee considers necessary to ensure compliance by the Federal Republic of Germany with all commitments towards the Commission, in particular the preservation of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
  - (v) submit to the Commission, Sparkasse KölnBonn and the Federal Republic of Germany within 30 days after the end of each half year the draft of a written report in German or English. The report shall cover the Monitoring Trustee's fulfilment of its obligations under the Mandate, compliance with all conditions and obligations and the implementation of the restructuring plan. All recipients of the draft report shall be able to submit their observations within 5 working days. Within 5 working days of receipt of the comments, the Monitoring Trustee shall prepare a final report and submit it to the Commission, taking into account, if possible and at his sole discretion, the comments submitted. The Trustee will also send a copy of the final report to the Federal Republic of Germany and to Sparkasse KölnBonn. Should the draft report or the final report contain any information that must not be disclosed to Sparkasse KölnBonn or the Federal Republic of Germany, Sparkasse KölnBonn or the Federal Republic of Germany shall only be provided with a non-confidential version of the draft report or the final report. The Monitoring Trustee shall submit no version of the report to the Federal Republic of Germany and/or Sparkasse KölnBonn before submitting it to the Commission.
10. The Commission can give the Monitoring Trustee instructions or directions in order to ensure that the commitments towards the Commission are met and the restructuring plan implemented.
11. For the duration of the mandate, the cities of Cologne and Bonn and Sparkasse KölnBonn shall undertake to give instructions to the Monitoring Trustee only following the approval of the Commission.
12. The Federal Republic of Germany shall provide for all such cooperation, support and information which the Monitoring Trustee may reasonably require in order to perform its tasks. The Monitoring Trustee shall have unlimited access to the books, records, documents, managers and other staff members, to files, locations and technical

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information of Sparkasse KölnBonn or the Divestment Business, which are necessary in order to perform its tasks in accordance with the obligations.

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### ANNEX III

#### **APPOINTMENT AND DUTIES OF THE DIVESTITURE TRUSTEE**

##### **I. The Divestiture Trustee**

1. The Federal Republic of Germany shall appoint a Divestiture Trustee.
2. The Divestiture Trustee shall be one or several natural or legal person(s) independent of Sparkasse KölnBonn who will be approved by the Commission and appointed by the Federal Republic of Germany, and will have the duty to divest the Divestment Business in accordance with the obligations towards the Commission.
3. The Divestiture Trustee must be independent of Sparkasse KölnBonn and must possess the necessary qualifications to carry out its mandate, for example as an investment bank, consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Monitoring Trustee shall receive normal market remuneration from Sparkasse KölnBonn that does not impede the independent and effective fulfilment of its mandate.

##### **II. Appointment of the Divestiture Trustee**

###### *Proposal by the Federal Republic of Germany*

4. If Sparkasse KölnBonn has not entered into a binding sale and purchase agreement 1 month before the end of the extended Divestiture Period, the Federal Republic of Germany will submit for the Commission's approval two or more persons as Divestiture Trustees and shall indicate which of those is its first choice. The proposal must contain sufficient information for the Commission to verify that the proposed Divestiture Trustee meets the conditions laid down under paragraph 3, and must in particular include:
  - (a) the full terms of the proposed mandate together with all the provisions necessary to enable the Divestiture Trustee to fulfil its duties in accordance with these commitments;
  - (b) the outline of a work plan describing how the Divestiture Trustee intends to carry out its assigned tasks.

###### *Approval or rejection by the Commission*

5. The Commission shall have the discretion to approve or reject the proposed Divestiture Trustees and to approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil its obligations. The Divestiture Trustee shall be appointed within 1 week of the Commission's approval, in accordance with the mandate approved by the Commission.

###### *New proposal by the Federal Republic of Germany*

6. If all the proposed Divestiture Trustees are rejected, the Federal Republic of Germany shall, within 1 week of being informed of the rejection, submit the names of at least two other persons or institutions, in accordance with the conditions and according to the procedure in paragraphs 1 and 5.

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### *Divestiture Trustee nominated by the Commission*

7. If all further proposed Divestiture Trustees are also rejected by the Commission, the Commission shall nominate a Divestiture Trustee(s), whom the Federal Republic of Germany shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

### **III. The duties of the Divestiture Trustee**

8. It shall be the duty of the Divestiture Trustee to fulfil the conditions and obligations laid down in the Decision regarding the business to be divested. The Divestiture Trustee shall prepare and carry out the purchase so that a sale and purchase agreement is signed [...]. The Divestiture Trustee shall be authorised to carry out the sale of the Divestment Business on behalf of Sparkasse KölnBonn, without being subject to instructions, [...].
9. The Divestiture Trustee shall
- (i) propose to the Commission within 4 weeks of appointment a detailed plan of work describing how it plans to fulfil the conditions and obligations in the Decision regarding the business to be divested; it shall in particular present a concept for the divestiture and an assessment as to which divestiture strategy is the most promising;
  - (ii) shall sell the divestment business to a buyer [...], in so far as the Commission has not raised any objections regarding the buyer or the final binding sale and purchase agreement within 4 weeks of these being made known. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale. The Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale;
  - (iii) take on the other duties which are conferred on the Divestiture Trustee in the Decision;
  - (iv) propose such measures as it considers necessary to ensure compliance by the Federal Republic of Germany with all commitments towards the Commission, in particular the preservation of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
  - (v) submit to the Commission comprehensive monthly reports in English or in German on the development of the divestment procedure. These reports shall be submitted no later than 15 days after the end of each month. At the same time Sparkasse KölnBonn or the Federal Republic of Germany shall receive non-confidential versions of the report.
10. To prepare and carry out the divestiture, the Divestiture Trustee shall in particular provide the following services:
- (i) examining different options for the divestiture; a detailed proposal taking account of the framework conditions for the structuring and concluding of the sale procedure;
  - (ii) compiling the necessary marketing documents on the participation of Sparkasse KölnBonn concerned (in particular the sales memorandum, teasers, and other presentations which are necessary or beneficial for a sale process). These are to be given to interested parties by way of initial information on the pending sale;
  - (iii) in close agreement with the Sparkasse: preparing the content and logistical coordination of the due diligence process;

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- (iv) identifying potential purchasers and contacting the decision-making bodies of these interested parties. For legally binding reasons with regard to the interests of secrecy and in line with the requirement for a non-discriminatory sale, a potential purchaser will, at the request of the Sparkasse, be denied access to the due diligence information (the burden of proof lying with the Sparkasse), whereby this right must be exercised within 3 working days following receipt of the list of potential purchasers;
  - (v) collecting and examining sales offers made by interested parties; support with the evaluation of these offers;
  - (vi) conducting sales negotiations with selected interested parties and preparing the conclusion of the contract.
11. The Divestiture Trustee will be given all the necessary powers of attorney with which the Sparkasse or the subsidiaries it controls will authorise the Divestiture Trustee to complete and carry out the divestiture. The powers of attorney include the power to issue sub-delegated powers in order to carry out and complete the divestiture correctly.
  12. The powers of attorney in question shall be maintained until the divestiture is fully completed. The powers of attorney and all sub-delegated powers shall come to an end at the end of the Divestiture Trustee's mandate.
  13. The Divestiture Trustee is authorised to commission further advisers to support it in the sale process. As soon as consultancy costs exceed the overall sum of EUR [...], the agreement of Sparkasse KölnBonn is required. If Sparkasse KölnBonn refuses to give its agreement, the Commission instead may, after consulting Sparkasse KölnBonn, approve the commissioning of advisers. Only the Divestiture Trustee can give the advisers instructions or directions.
  14. The Divestiture Trustee has to involve the European Commission in each exchange with the Sparkasse, the Träger (responsible public institution) or Germany or to inform these immediately about the exchange.
  15. The Träger and Sparkasse KölnBonn shall undertake to support the Divestiture Trustee, to cooperate with it and to provide it with all the information it requires or requests in order to carry out and duly fulfil this mandate. To this end, the Divestiture Trustee shall have access, within legally permissible limits and during normal working hours, to all documents, books and the management or other staff of Sparkasse KölnBonn.
  16. Where considered necessary by the Sparkasse and the Träger for the proper execution of the divestiture, they shall allow the Divestiture Trustee access on request to any information or documents available only to them. This applies in particular to each version of the restructuring plan agreed with the European Commission.
  17. The Sparkasse shall undertake to exempt the Divestiture Trustee from all claims for damages from third parties, which arise during or in connection with the execution of the mandate. This shall exclude damages based on a breach of obligation on the part of the Divestiture Trustee. Should the Divestiture Trustee be informed of claims which might lead to payment obligations on the part of the Träger or Sparkasse KölnBonn, the Divestiture Trustee shall immediately notify this.
  18. The Divestiture Trustee shall be obliged to provide services always with the due care of a prudent businessman. Should there nevertheless be a breach of duty, the Divestiture Trustee shall only be liable towards the Sparkasse, the Träger or Germany to provide compensation for damages if the Divestiture Trustee or its bodies, employees or

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assistants have intentionally or through gross negligence brought about the reason for the liability in so far as the key contractual obligations are not affected. The Divestiture Trustee shall also be liable for breaching such obligations through simple negligence but only in the amount of typical and foreseeable damages. Liability for loss of anticipated profits shall be excluded.

19. The Commission may give the Divestiture Trustee instructions or directions in order to guarantee that the conditions and obligations in relation to the Divestment Business are fulfilled.
20. The cities of Cologne and Bonn and Sparkasse KölnBonn shall undertake not to give the Divestiture Trustee instructions for the duration of the mandate.

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- (1) [OJ L 83, 27.3.1999, p. 1.](#)
- (2) [...].
- (3) Period from the Decision's entry into force until the dates stated in paragraph 10.
- (4) [...].



**Changes to legislation:**

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