

Press release

The Erste Abwicklungsanstalt successfully defends itself in the cum-ex legal dispute with Portigon AG

No obligation to assume liability for cum-ex tax liabilities of more than EUR 1 billion

Düsseldorf, 12 December 2023

The Erste Abwicklungsanstalt AöR (EAA) has defended itself successfully in the legal dispute with Portigon AG. In its decision of 5 December 2023, the Federal Court of Justice rejected Portigon AG's complaint against non-admission. The judgement by the Higher Regional Court of Frankfurt am Main (OLG) of 21 December 2022 in favour of the EAA is therefore final and Portigon AG's claim for exemption from cum-ex tax liabilities of the former WestLB AG is definitively unsuccessful.

"This decision by the Federal Court of Justice has averted the biggest single risk for the EAA," Christian Doppstadt, member of the EAA Managing Board, was very pleased to report. "The Managing Board would like to thank the EAA's employees and our legal advisors at Linklaters for their extensive work and tremendous commitment that contributed to this outcome," Doppstadt continued.

The OLG already followed the EAA's line of defence and, having interpreted the spin-off agreement, found that the parties had never agreed to a transfer of tax burdens from cum/ex transactions of the former WestLB to the EAA. The Federal Court of Justice has now also confirmed the OLG's non-admission of the appeal. Following some four years of legal proceedings, it is now clear that Portigon AG is liable for the cum-ex tax liabilities of its legal predecessor WestLB AG.

Enquiries:

EAA Press Office: 0211 91345 790

For more information, visit www.aa1.de

The EAA is a financially and organisationally independent public law institution. It was established in 2009 with a view to helping stabilise the financial markets. In accordance with its charter, its mission is to wind up risk positions taken over from the former WestLB in such a way as to minimise losses.

The EAA has taken over positions totalling approximately EUR 200 billion, which it accomplished in two stages: The “first fill” in 2009/2010 comprised loans and securities with a notional volume of EUR 77.5 billion. The second transfer, or “replenishment”, took place in 2012 and comprised loans, securities (banking portfolio) and derivatives (trading portfolio) in the amount of EUR 124.4 billion.

Being a public law institution, the EAA has a bankruptcy-remote structure and funds itself independently in the capital market. Thanks to the loss compensation duties of the State of NRW, the North Rhine-Westphalian savings bank and regional associations and the Financial Market Stabilisation Fund laid down in its charter, the EAA can issue securities on favourable terms. The EAA nevertheless plans to complete the wind-up activities in 2027 at least “with a black zero” - i.e. without taking advantage of the loss compensation duties. Shareholders in the EAA are the state of North Rhine-Westphalia (approx. 48.2%), the two North Rhine-Westphalian savings banks and giro associations (both approx. 25%) and the two Regional Associations of North-Rhine Westphalia (each approx. 0.9%).