EN

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8.4.2009
COM(2009) 164 final

REPORT FROM THE COMMISSION

STATE AID SCOREBOARD
- SPRING 2009 UPDATE –

SPECIAL EDITION ON STATE AID INTERVENTIONS IN THE CURRENT FINANCIAL AND ECONOMIC CRISIS

TABLE OF CONTENTS

INTRODUCTION

This special edition of the State aid Scoreboard provides an overview of State aid measures[1] undertaken by EU Member States in the context of the current financial and economic crisis and reviewed by the Commission until 31 March 2009 as well as an overview of the Commission's coordinating action in setting out general principles governing these aid measures.

The world economy is currently experiencing its severest financial and economic crisis in almost a century, with the European economy not being spared. For the first time since 1945, the world economy as a whole is shrinking. The EU' latest interim forecasts for 2009 – 2010[2] estimate real EU GDP to fall by almost 2 % in 2009 in both the EU and the Euro area, although growth is projected to remain positive in nine Member States. GDP growth is expected to turn moderately positive in 2010, to around 0.5 % in both the EU and the Euro area, as macroeconomic policies take effect in gradually stabilising economies around the world.

In the EU, the crisis has prompted action on many levels – national governments, the European Central Bank (ECB) and the Commission. All have been working closely together to protect savings, ensure financial stability, maintain a flow of affordable credit for business and households and put in place a better system of governance for the future.

In this process, State aid control as an integral part of the EU's competition policy plays a central role. Since the beginning of the current crisis, the Commission's interventions have contributed positively to maintaining financial stability while preserving incentives for appropriate risk taking and competition in the future. In the absence of a comprehensive pan-European supervisory, regulatory and legal framework for the financial sector, EU State aid policy provided the framework to allow swift implementation of national measures in a coordinated manner while ensuring the integrity of the Single Market.

The Commission approached the resolution of the financial crisis in three steps: the 'Banking Communication'[3] adopted on 13 October 2008 provided an appropriate European framework to allow rescue operations in order to stop or prevent runs on financial institutions. In a second step, the 'Recapitalisation Communication' of 5 December 2008[4] identified a set of standards and safeguards allowing Member States to recapitalise banks in order to ensure adequate levels of lending to the economy. This need arose in view of the widespread reluctance even of fundamentally sound banks to continue lending at usual volumes and conditions in the context of the current uncertainties. The third step is the clean-up phase of financial institutions' balance sheets by removing toxic assets and underperforming loans. The

---

[1] The notion of aid is defined in Article 87 (1) of the EC Treaty and has been developed in the case law of the European Court of Justice. Further guidance is provided, in particular by references to case law, in the Commission notice on the enforcement of State aid law by national courts adopted on 25 February 2009.

[2] European Commission, Directorate General for Economic and Financial Affairs, Interim Forecast, January 2009.

[3] Communication from the Commission – The application of the State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis, OJ C 270, 5.10.2008, p. 8–14.

[4] Communication from the Commission– The recapitalisation of financial institutions in the current financial crisis: limitation of the aid to the minimum necessary and safeguards against undue distortions of competition, OJ C 10, 15.1.2009, p. 2-10.

'Impaired Assets Communication' of 25 February 2009[5] provides the framework for this phase which may in many cases require restructuring and is an essential step with regard to restoring confidence in the financial sector and the economy as a whole.

The State aid rules in place before the recession already provided a good framework to tackle the impact of the financial crisis on the real economy, by targeting 'smart' investments – in particular in favour of SME, training, R&D, risk capital, environment protection and energy saving – and restricting the use and negative effects of rescue aid. The autumn 2008 update of the State aid Scoreboard shows that Member States positively respond to these possibilities. On average, 80 % of Member States' public support subjected to State aid control was in 2007 targeted to horizontal objectives, compared with around 50 % in the mid-1990s, with increasing spending on R&D and environmental aid including energy saving.[6] The additional facilities under the "Temporary Community framework for State aid matters to support access to finance in the current financial and economic crisis" issued on 17 December 2008[7] provide a flexible complementary framework, allowing Member States to take additional measures in response to the recession within a time-limited window, should general measures or State aid under normal rules not be sufficient.

The pivotal role of State aid control has in particular been recognised by the Presidency's Conclusions of the Brussels European Council of 19/20 March 2009. As regards the financial sector, the European Council calls on the Member States "to act in a coordinated manner, in line with the guidelines provided by the Commission communication of 25 February 2009 and in full respect of competition rules"[8] as further measures may be necessary for restoring the functioning of credit markets and facilitating the flow of lending to the real economy, including by dealing with impaired banking assets on the basis of full disclosure to supervisory authorities.[9]

The European Council further concluded that "measures taken by Member States to support the real economy and employment should be implemented in a timely, targeted and temporary manner, while respecting the following guiding principles: promoting openness within the Internal Market and vis-à-vis third countries; ensuring non-discrimination of products and services from other Member States; ensuring consistency with long-term reform objectives."[10]

The crisis was initially triggered in mid 2007 by problems with sub-prime mortgage lending in the US that impacted heavily on other financial markets, leading to a loss of confidence between financial institutions and in particular to a freeze of interbank lending. These first events and the subsequent deterioration into a systemic crisis of the entire banking sector in the autumn 2008 were already subject of a first analysis in the autumn 2008 edition of the State Aid Scoreboard.[11] It reviewed the Member States' and the Commission's first responses to the crisis, including the unprecedented recourse to Article 87 (3) (b) of the EC Treaty by the Commission in the 'Banking Communication' issued on 13 October 2008 in response to the widening of the financial crisis. This provision allows for a flexible but controlled framework for aid to remedy the serious disturbance in the economy of a Member State and

---

5 Communication from the Commission on the Treatment of Impaired Assets in the Community banking sector, of 25 February 2009, OJ C 72, 26.3.2009, p. 1.

6 Report from the Commission- State aid Scoreboard- Autumn 2008 Update. COM (2008) 751 final of 17 November 2008, p.30.

7 OJ C 16, 22.1.2009 p. 1-9.

8 Point 2 of the Presidency's Conclusions of the Brussels European Council 19/20 March 2009.

9 See section 3. on The need to coordinate support to financial institutions: The Commission's Communications.

10 Point 10 of the Presidency's Conclusions of the Brussels European Council 19/20 March 2009.

11 Part Five of the Autumn 2008 Scoreboard, State aid related to the financial crisis, p. 51 – 54.

has been part of the State aid rules since the entry into force of the EEC Treaty in 1958. With one exception,[12] this provision has so far not been applied, not even during the recession phases in the 1970s and early 1980s.

The autumn 2008 Scoreboard also reported on the first signs of spill-over of the turmoil in the financial markets to the real economy and the consensus that Member States have to coordinate their response to the crisis, also in order to avoid any short-term fix involving a subsidy race between Member States. It summarised the events triggering the crisis as well as the first responses of the Member States and the Commission to build confidence, promote financial stability and bring the real economy back on track.

As additional background, the *Jacques de Larosière*-Report to the European Council[13] not only outlines ways to repair the crisis – regarded by the recent Presidency Conclusions as a basis for action[14] – but also looks into the causes of the crisis, in particular macro-economic causes, issues of risk management, the role of credit rating agencies and possible corporate governance and regulatory, supervisory and crisis management failures.

The present document is divided into seven main sections. Section 1 deals with early rescue cases and describes the standard procedure of rescuing and restructuring enterprises. Section 2 is focused on the worsening of the crisis. Section 3 relates to the need to coordinate support and the recent Commission's Communications related to the financial sector: the 'Banking Communication', the 'Recapitalisation Communication', and the 'Impaired Assets Communication'. Section 4 provides an overview on the measures adopted by Member States in support of financial institutions. Section 5 turns to the real economy and briefly sets out the Commission's 'Temporary Framework' related to State aid in the real economy sectors. Section 6 discusses the procedures that were established in order to ensure rapid decision making. Finally, Section 7 provides conclusions.

This report only deals with preliminary figures and can only give a broad overview of the maximum volumes of guarantees and other measures that governments have announced to provide. In particular, the report does not discuss the State aid component of the measures in place. Furthermore, the report cannot include information which is subject to confidentiality obligations.

Finally, regular readers of the Scoreboard will notice the changed format of this spring edition, which includes the usual special focus, but does not include updates on other State aid areas. These are now published online only.[15] However, the autumn editions of the report will continue to give a full account of State aid policy in the European Union. This Scoreboard and previous editions can be consulted on the European Commission Competition Directorate General's website.

1. EARLY CASES: APPLICATION OF THE STANDARD RULES ON RESCUE AND RESTRUCTURING AID

When European financial markets were first affected by the problems with sub-prime mortgage lending in the US, some European banks encountered severe difficulties due to their

---

12 See Fifth Report on Competition policy (1975), April 1976, par. 133 for general comments and Seventeenth Report on Competition Policy (1987), 1988, par.186 and 187, referring to Greece.

13 The High Level Group on Financial Supervision in the EU, chaired by Jacques de Larosière, Report, Brussels 25 February 2009; see also the 2008 OECD Financial Market Trends publication "The Current Financial Crisis: Causes and Policy Issues".

14 Point 5 of the Presidency's Conclusions of the Brussels European Council 19/20 march 2009.

15 http://ec.europa.eu/competition/state_aid/studies_reports/studies_reports.html.

exposure to collateralised debt obligations (CDOs) or because of their inherently unsustainable business model. In order to prevent insolvency of several banks, and potential contamination or negative spill over, Member States intervened with the adoption of the first rescue measures in favour of individual banks.

The Commission tackled the individual cases during the first phase according to Article 87 (3) (c) of the EC Treaty and the *Community Guidelines on State aid for rescuing and restructuring firms in difficulty* ('R&R Guidelines').[16]

Basic principles under the R&R Guidelines

Rescue aid is a temporary assistance to keep a firm in financial difficulties afloat for the time needed to work out a restructuring and/or a liquidation plan. It must in principle be given in the form of loans or guarantees lasting no more than six months and it should be restricted to the minimum necessary to keep the firm in business for the rescue period.

Restructuring aid, on the other hand, is based on a feasible, coherent and far-reaching plan to restore a firm's long-term viability. It usually involves different elements such as the reorganisation and rationalisation of the firm's activities on a more efficient basis, the restructuring of those existing activities that can be made competitive again, diversification towards new and viable activities, financial restructuring (capital injections, debt reduction) and the adoption of measures to limit distortion of competition. Restructuring aid is not aimed at making good past losses without tackling the reasons for those losses. Repeated rescue or restructuring aids for the sole purpose of keeping firms artificially alive are not allowed.

In very exceptional cases, firms in difficulty may be allowed to take certain urgent structural measures to halt or reduce a worsening of the financial situation in the rescue phase, such as the closing of business activities. The beneficiary may undertake urgent measures, even of a structural nature, such as an immediate closure of a branch or other forms of abandoning loss-making activities.

Initially, the financial institutions affected by the crisis were directly exposed to a significant amount of CDOs and/or had funded this through short term wholesale financing which had dried up after the summer of 2007. That was the case of the *German IKB*[17] and *Sachsen LB*.[18] Germany essentially granted a liquidity facility to *Sachsen LB* and a risk shield to *IKB* without which both banks would not have been able to continue their business. These measures were notified in January 2008 and the Commission, after formal investigation, concluded that the aid had been limited to the minimum necessary and was accompanied by a significant own contribution by the beneficiary. Additionally, compensatory measures were put in place to minimise potential distortions of competition created by the aid.

Depending heavily on wholesale funding, including issuing mortgage-backed securities, covered bonds and medium and short term unsecured funding, UK mortgage lender *Northern Rock*[19] became a victim of the crisis in September 2007. The Commission considered that the guarantees granted by the UK authorities could be authorised as rescue aid until a restructuring plan was drawn up. In April 2008 the Commission decided to open a formal investigation on the restructuring aid, which is currently under assessment.[20]

In 2008, the situation deteriorated further with the fall of *Bear Stearns*. European central banks addressed the liquidity crisis by injecting high amounts of liquidity into the financial markets. However, also the market value of portfolio investments decreased significantly and banks required more capital in order to back up the assets in their balance sheets. Banks thus needed to strengthen their capital base and issued new capital instruments. *WestLB*[21] was also

---

16 OJ C 244, 1.10.2004, p. 2.
17 Case C10/2008, Restructuring aid to *IKB* (decision 21.10.2008).
18 Case C9/2008, Restructuring aid to *Sachsen LB* (decision 4.6.2008).
19 Case NN70/2007, *Northern Rock* (decision 5.12.2007).
20 Case C14/2008, Restructuring aid to *Northern Rock* (under assessment).
21 Case NN25/2008, *WestLB* (decision 17.7.2008).

faced with the downgrades of the structured portfolio in its balance sheet and established with the help of its owners a risk shield of € 5 billion for its most impaired assets, thereby freeing it from the obligation to provide the required capital. Upon notification, the Commission authorised the risk shield for six months or until approval of a restructuring plan. *WestLB* notified such plan after six months and the Commission decided to open formal a investigation. The plan is currently under assessment.[22]

In July 2008, Denmark communicated the measures taken to rescue *Roskilde Bank*.[23] However, the rescue aid approved by the Commission did not take effect and Denmark adopted a package of measures to liquidate the entity in an orderly manner whereby full creditor protection was granted. It was approved in November 2008, under the Guidance Communication on state aid to overcome the financial crisis.

State aid implemented by Germany for *Sachsen LB*, C9/2008 (ex NN 8/2008)

The case originated with the US subprime crisis in which *Sachsen LB* and in particular one of its off-balance conduits, *Ormond Quay*, was caught. In August 2007, the refinancing market completely dried up and *Ormond Quay* was unable to refinance itself any longer. As *Sachsen LB* could not provide the credit facilities it had pledged, a pool of *Landesbanken* and the savings banks association committed to provide liquidity assistance of around € 17 billion.

Sachsen LB was sold to *Landesbank Baden-Württemberg (LBBW*) on 26 August 2007 with effect from 1 January 2008. A structured investment portfolio of € 17.5 billion, including *Ormond Quay*, was excluded from the sale and transferred into a newly created special investment vehicle, the "*Super SIV*". In order to enable the Super *SIV*'s financing, the Free State of Saxony granted a guarantee over an amount of € 2.75 billion.

Germany considered that the measures complied with the market economy investor principle and notified the measure as "no aid" for reasons of legal certainty. It also indicated as a precaution that the measures should in any event qualify as rescue and restructuring aid compatible with the common market.

The Commission carried out an in-depth investigation in order to ensure that the German measures should they constitute State aid, are limited to the minimum necessary and meet all other requirements under the R&R Guidelines in order to exclude any undue distortion of competition.

In its final decision, the Commission concluded that a market economy investor would not have granted the liquidity measure at stake. It could however be regarded as rescue aid compatible with the common market as it was limited to 6 months and did not exceeded the minimum necessary to keep the bank afloat until the restructuring plan could be implemented.

The state guarantee in the context of the sale of *Sachsen LB* to *LBBW* was regarded as structural in nature and hence assessed in the context of a restructuring plan. The Commission concluded that the restructuring plan would allow restoring the long-term viability of *Sachsen LB*. Moreover, the aid was also limited to the minimum and accompanied by a significant own contribution in line with the targets indicated in the R&R Guidelines, *i.e*. above 50 % of the restructuring costs.

Finally, compensatory measures were included to mitigate as far as possible any adverse effects of the aid on competitors and to avoid repeating the mistakes of the past. In particular, *LBBW* committed to sell or liquidate *Sachsen LB Europe plc* (a subsidiary which had been in charge of *Sachsen LB*'s international structural investments) and its participation in *East Merchant GmbH* (a subsidiary which was a key player in *Sachsen LB*'s structured finance activities). Moreover, Germany and *LBBW* gave the commitment that *Sachsen Bank* would abandon proprietary trading and international real estate activities by the end of 2011. The aim of the plan was to reduce the dependence of *Sachsen LB* on profits from capital markets and in particular from the "asset management and structured products" business segment.

22 Case C43/2008, *WestLB* risk shield (under assessment).

23 Case NN36/2008, *Roskilde Bank* (decision 31.7.2008).

2. WORSENING OF THE CRISIS: DIFFICULTIES IN THE APPLICATION OF THE STANDARD RULES ON RESCUE AND RESTRUCTURING AID

As the crisis of confidence among banks dramatically worsened in mid-September 2008 with the bankruptcy of *Lehman Brothers*, the financial crisis entered in a phase marked by very serious problems of prominent American and European banks and the efforts of governments to rescue distressed financial institutions. Essentially, the insolvency of *Lehmann Brothers* had ended a phase of an implicit rescue guarantee to banks which are 'too big to fail'. This meant that banks stopped lending to each other.

By September 2008, *Bradford and Bingley*,[24] the UK mortgage bank, fell into difficulties and the UK authorities designed a package of measures to ensure financial stability, protect retail depositors and support the orderly winding down of the company while its retail deposit book was sold to *Abbey National* after a competitive process. The Commission was in contact with the UK authorities to provide support in the design of measures that could comply with competition rules. The Commission decision demonstrated that State aid control contributes to financial stability while keeping distortions of competition to a minimum. At the same time, deposits of individual customers remained fully protected. In this case, the Commission went to the limit of what can be approved as rescue aid under the R&R Guidelines as the winding down of the company and the sale of the deposit book to a competitor constituted a structural measure. This could exceptionally be justified in view of the tensions in the financial market and the need to protect *Bradford and Bingley*'s creditors. Also *Hypo Real Estate*[25] faced a liquidity crisis due to its short-term refinancing strategy. A number of German banks together with the German Federal government provided loan guarantees. The Commission authorised the rescue measure under the commitment to present a restructuring plan.

The general erosion of confidence within the banking sector in October 2008 led to serious difficulties to access liquidity. The crisis had become systemic and equally affected financial institutions whose difficulties stemmed exclusively from the general market conditions which had severely restricted access to liquidity. It thus became doubtful whether the R&R Guidelines were still providing an appropriate framework to tackle the crisis, as the crisis hit also banks that could normally not be considered as 'companies in difficulties'. Furthermore, urgent structural action became necessary in many cases.

The table below provides information on the state of play of pending restructuring plans from the first two phases.

---

24 Case NN41/2008, Rescue aid to *Bradford & Bingley* (decision 1.10.2008).

25 Case NN44/2008, Rescue aid to *Hypo Real Estate* (decision 2.10.2008).

Table 1: Early cases: pending restructuring plans

Member State	Case number	Financial Institution	Commission decision date	Submission of restructuring plans due
Germany	C43/2008	WestLB	30/04/2008	08/08/2008 Decision to open formal investigation: Restructuring plan currently under assessment
Germany	NN44/2008	Hypo Real Estate Holding	02/10/2008	Restructuring plan submitted on 01/04/2009
The United Kingdom	C14/2008	Northern Rock	05/12/2007	17/03/2008 Decision to open formal investigation: Restructuring plan currently under assessment
The United Kingdom	NN41/2008	Bradford and Bingley	01/10/2008	Restructuring plan submitted on 27/03/2009

3. THE NEED TO COORDINATE SUPPORT TO FINANCIAL INSTITUTIONS: THE COMMISSION'S COMMUNICATIONS

In autumn 2008, the deepening financial crisis increasingly affected the European financial sector. Several Member States began to set up general schemes in order to support the financial sector and to ensure financial stability. In October 2008, the Heads of State and Government agreed to implement national rescue packages for the European banking sector, with a view to safeguarding the stability of the sector, restoring the normal functioning of wholesale credit markets and underpinning the supply of credit to the real economy. In this context, the Commission offered to issue guidance on how Member States can take measures to support banks whilst avoiding excessive distortions of competition, in line with EU State aid rules. The Commission has played an important role in containing the crisis and in supporting coordination between Member States.

On 13 October 2008 the Commission issued the Communication on the '*application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis*' (the 'Banking Communication').[26] In this Communication, the Commission sets out how Member States can best support financial institutions in the current financial crisis whilst respecting EU State aid rules and thus avoiding undue distortions of

[26] OJ C 270, 25.10.2008, p. 8–14.

competition. In particular, the Commission guidance focused on State guarantees which had been widely announced by Member States at the time and which implied the danger of negative spill-overs in particular by attracting funds to 'first mover' states.

In this context, Art 87 (3) (b) of the EC Treaty was considered to be an appropriate legal basis for State intervention. It stipulates that the Commission may allow State aid ‘to remedy a serious disturbance in the economy of a Member State’. Critically and to an unprecedented extent,[27] by referring to Art 87 (3) (b) of the EC Treaty, the Commission acknowledged the exceptional circumstances and the systemic risks inherent to the financial crisis.[28] This was particularly evident in cases of schemes that concerned rescue measures for the entire banking sector of a Member State.

It seemed arbitrary to allow the application of Article 87 (3) (b) of the EC Treaty in case Member States were taking action as regards the entire sector or big systemic banks, while smaller banks would still need to revert to Article 87 (3) (c) of the EC Treaty. Therefore, the Banking Communication introduces a common approach to apply Article 87 (3) (b) of the EC Treaty to schemes and individual cases. Moreover, it introduced the principle that under Article 87 (3) (b) of the EC Treaty banks should in principle not be treated better than under rescue aid, implying that also banking rescue aid should normally be limited to six month and followed up by a restructuring plan. The most important differences were that beneficiaries did not need to be in difficulty and structural measures were in principle allowed.

However, the Banking Communication emphasizes that Art 87 (3) (b) of the EC Treaty requires a restrictive interpretation of what can be considered a serious disturbance of a Member State's economy.[29] The use of Art 87 (3) (b) of the EC Treaty cannot be envisaged as a matter of principle in crisis situations in other individual sectors in the absence of a comparable risk that they have an immediate impact on the economy of a Member State as a whole.

---

27 Indeed, the provision has been applied only once previously in the 1980s in the case of Greece.

28 In its Presidency Conclusions of the Brussels European Council 15/16 October 2008, the Council stated that 'in the current exceptional circumstances, European rules must continue to be implemented in a way that meets the need for speedy and flexible action. The European Council supports the Commission's implementation, in this spirit, of the rules on competition policy, particularly State aids, while continuing to apply the principles of the single market and the system of State aids.'

29 The Court of First Instance has repeatedly stressed that Article 87 (3) (b) of the EC Treaty needs to be applied restrictively and must tackle a disturbance in the entire economy of a Member State ; of Cf. Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen and Volkswagen AG Commission* [1999] ECR II-3663, para. 167. Confirmed in Commission Decision in case C 47/1996, *Crédit Lyonnais*, OJ 1998 L 221/28, point 10.1, Commission Decision in Case C28/2002 *Bankgesellschaft Berlin*, OJ 2005 L 116, page 1, points 153 *et seq* and Commission Decision in Case C50/2006 *BAWAG*, not yet published, points 166. See Commission Decision of 5 December 2007 in case NN 70/2007, *Northern Rock*, ABl. C 43 of 16.2.2008, p. 1, Commission Decision of 30 April 2008 in case NN 25/2008, *Rescue aid to WestLB*, ABl. C 189 of 26.7.2008, p. 3, Commission Decision of 4 June 2008 in Case C9/2008 *SachsenLB*, not yet published.

The "Banking Communication" of 13 October 2008[30]

The Banking Communication focuses mainly on guarantees covering liabilities of financial institutions. Moreover, it also concerns recapitalisation measures, controlled winding-up of financial institutions and other forms of liquidity assistance. For all these types of aid, the general conditions for aid to be in compliance with the EU State aid rules as set out in the Communication are:

- Non-discriminatory access in order to protect the functioning of the Single Market by making sure that eligibility for a support scheme is not based on nationality;
- State commitments to be limited in time in such a way as to ensure that support can be provided as long as it is necessary to cope with the current turmoil in financial markets but will be reviewed and adjusted or terminated as soon as improved market conditions so permit;
- State support to be clearly defined and limited in scope to what is necessary to address the acute crisis in financial markets while excluding unjustified benefits for shareholders of financial institutions at the taxpayer's expense;
- An appropriate contribution of the private sector by means of adequate remuneration and the coverage by the private sector of at least a significant part of the cost of assistance granted;
- Sufficient behavioural rules for beneficiaries which prevent an abuse of State support, like for example expansion and aggressive market strategies on the back of a state guarantee;
- An appropriate follow-up by structural adjustment measures for the financial sector as a whole and/or by restructuring individual financial institutions that had to rely on State intervention other than guarantees.

The Commission action resulted in the prevention or correction of measures that could be either discriminatory or harmful to other Member States and banks; it was then complemented by the guidance on pricing issued by the European Central Bank for guarantees in favour of Eurosystem banks.

Pursuant to the Banking Communication, the Commission approved a number of recapitalisation schemes and individual recapitalisation measures based on the principles laid down in the Communication. These measures, besides attracting funds to 'first mover' states could imply the danger of other negative spill over e.g. distortions of competition due to non-market remunerations in case of bank recapitalisation. An increasing number of banks faced problems of capital adequacy. In order to free the necessary capital, i.e. to deleverage, even fundamentally sound banks were constrained in further lending which would bind additional capital. In order to prevent a passing on of the credit crunch to the real economy, banks therefore had to be incited not to deleverage but to seek capital from the state.

Hence, an increasing number of Member States saw the necessity of 'precautionary' recapitalisation of banks in view of the market pressure for higher capital buffers and in order to ensure lending to the real economy. Since the schemes varied considerably from Member State to Member State, both Member States – in particular around the ECOFIN Council of 2 December 2008 – and potential beneficiary institutions called for more detailed guidance on the compatibility of specific forms of recapitalisation.

The Commission responded on 5 December 2008 with the publication of a Communication on the '*Recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition*' (the 'Recapitalisation Communication').[31] While the Banking Communication already recognizes that recapitalisation is one of the key measures for restoring financial stability, the Recapitalisation Communication gives detailed guidance on the conditions under which specific forms of recapitalisation would be acceptable under State aid rules. Several national schemes and individual measures were assessed on this basis.

30 OJ C 270, 25.10.2008, p. 8–14.
31 OJ C 10, 15.1.2009, p. 2-10.

The "Recapitalisation Communication" of 5 December 2008[32]

The guiding principles of the Communication are in line with the ones set out in the Banking Communication. Particular emphasis is put on the avoidance of undue distortions of competition which have to be balanced with the overall objective of restoring financial stability. Two specific principles are particularly emphasised:

(1) Remuneration close to market prices as a way to limit competition distortions;

(2) Temporary character of recapitalization, with incentives for State capital redemption favouring an early return to normal functioning of the market.

Concerns about undue distortions of competition are also reflected in the distinction drawn between the treatment of fundamentally sound, well-performing banks on the one hand and distressed, less-performing banks on the other.

When determining the adequate entry level price of recapitalisations, the Communication refers to the recommendations of the ECB of 20 November 2008 based on a corridor for rates of return for beneficiary banks which, notwithstanding variations in their risk profile, are fundamentally sound financial institutions. The Communication complemented this guidance to include conditions other than remuneration rates and deals with the terms under which distressed, less-performing banks may have access to public capital. In particular, the Communication deals with:

- Remuneration (based on ECB recommendations): The price for the capital should reflect the type of capital chosen, an appropriate benchmark risk-free interest rate, and the individual risk profile of the bank.
- Incentives for State capital redemption: The pricing mechanism needs to carry a sufficient incentive to keep the duration of State involvement to a minimum, for example through a remuneration rate that increases over time.
- Competition distortion: The Communication stresses the need for safeguards against possible abuses and distortions of competition in recapitalisation schemes. In particular, its irreversible nature can trigger a later expansion of the beneficiary bank at the expense of the non-beneficiary banks in the same or other Member States. The guidelines therefore stipulate that any capital injection must be kept to the minimum. In addition, claw back mechanisms or better fortunes clauses were also recommended to consider.
- Review: Six months after their introduction, Member States should submit a report to the Commission on the implementation of the measures taken.

Towards the end of 2008, the market value of portfolio investments had decreased further and several Member States announced their intention to complement their existing support measures by providing some form of relief for impaired bank assets. Indeed, beyond guarantees and capital injections, asset relief measures may be needed in order to remove uncertainty as to the location and size of losses from impaired assets, which is one of the main root causes of the continuing lack of confidence in the financial sector.

In this context the Commission responded on the 25 February 2009 with the adoption of a Communication *on the Treatment of Impaired Assets in the Community Banking sector* (the "Impaired assets Communication").[33] The Communication took account of the recommendations of the ECB and has been discussed with Member States. It complements and refines the Banking Communication in relation to principles that must be followed by asset relief measures, in a similar vein as the recapitalisation communication detailed the application of the general principles to recapitalisation of banks.

The design of the asset relief schemes, be it asset purchase, swap, guarantee or hybrid models, is the responsibility of Member State. A coordinated approach is however necessary in order to:

(i) accelerate bank recovery and promote a return to normal market conditions;

32 OJ C 10, 15.1.2009, p. 2-10.

33 Communication from the Commission on the Treatment of Impaired Assets in the Community banking sector, of 25 February 2009, OJ C 72, 26.3.2009, p. 1.

(ii) reduce the risk of fragmenting the Internal Market;

(iii) minimise the economic and budgetary cost of State intervention and avoid a subsidy race between Member States; and

(iv) minimise the inherent competition distortions between aided and non-aided banks, between Member States, and between aided institutions with different degrees of problems, and to tackle moral hazard.

The "Impaired Assets Communication" of 25 February 2008[34]

The Impaired Assets Communication sets up the following principles which asset relief measures should generally apply:

- full transparency and disclosure of impairments, which has to be done prior to government intervention;
- coordinated approach to the identification of assets eligible for asset relief measures through development of eligible categories of assets ("baskets");
- coordinated approach to valuation of assets ex-ante, based on common principles such as valuation based on real economic value (rather than market value), certified by independent experts and validated by banking supervisory authorities;
- parallel viability review of the bank's activities and balance sheet with a view to assessing its present and prospective capital adequacy and viability;
- validation by the Commission of the valuation of the assets, in the framework of the State aid procedures on the basis of uniform assessment criteria;
- adequate burden-sharing of the costs related to impaired asset between the shareholders, the creditors and the State;
- adequate remuneration for the State, at least equivalent to the remuneration of State capital;
- coverage of the losses incurred from the valuation of the assets at real-economic-value by the bank benefiting from the scheme;
- aligning incentives for banks to participate in asset relief with public policy objectives, through an enrolment window limited to six months during which the banks would be able to come forward with impaired assets;
- management of assets subject to relief so as to avoid conflicts of interests;
- appropriate restructuring including measures to remedy competition distortion, following a case by case assessment and taking into account the total aid received through recapitalisation, guarantees or asset relief, with a view to the long-term viability and normal functioning of the European banking industry.

The Commission approval for asset relief measures will be granted for a period of six months, and is conditional on the commitment to present details of the valuation of the impaired assets, as well as viability assessment and restructuring plan for each beneficiary institution within 3 months from its accession to the asset relief programme. Depending on the individual situation of each beneficiary, appropriate restructuring may include measures to remedy competition distortions, taking into account *i.a*. the total aid received through recapitalisation, guarantees or asset relief measures, with a view to ensuring that the bank in question can return to long-term viability and perform their normal lending functions without State support.

The first cases are currently under examination.

---

34 Communication from the Commission on the Treatment of Impaired Assets in the Community banking sector, of 25 February 2009, OJ C 72, 26.3.2009, p. 1.

4. MEASURES ADOPTED BY MEMBER STATES IN SUPPORT OF FINANCIAL INSTITUTIONS: SCHEMES AND *AD HOC* CASES

Since the Commission adopted the Banking and Recapitalisation Communications, 23 schemes have been approved: 12 guarantee schemes, 5 recapitalisation schemes, 5 schemes combining several measures and one fund for the acquisition of financial assets.

Finland, Ireland, Latvia, the Netherlands and Portugal have notified to the Commission guarantee schemes only while France, Denmark, Italy, Slovenia and Sweden notified guarantee schemes in the first place and shortly thereafter also recapitalisation measures. Another group of Member States which includes Austria, Germany, Hungary, Greece and the United Kingdom opted for designing schemes combining several measures (guarantee, recapitalization, other forms of equity interventions, etc). In addition, the United Kingdom has recently approved an additional guarantee scheme to support lending to business. Finally, Spain notified first a fund for the acquisition of financial assets and later on a guarantee scheme.

Denmark, France, Italy, Germany, Sweden, Finland and the United Kingdom have further notified amendments to the original schemes in place which have been approved by the Commission.

Schemes approved under the current exceptional circumstances require special follow up by Member States and the Commission in order to terminate them as soon as the economic situation so permits. As a general rule, Member States must carry out a review at least every six months and report back to the Commission on the results of such review. This means that the first wave of reviews will reach the Commission as from April 2009.

This review will also concern restructuring plans which Member States committed to present for individual financial institutions in certain cases. During the upcoming months, the Commission will examine them in detail on their merits. In its assessment, attention will be focused on three central pillars: restoring of long-term viability of beneficiaries, the private contribution to the coverage of restructuring costs (aid limited to the minimum) and measures to minimize competition distortions.

In addition to the general schemes, 10 Member States have adopted *ad hoc* individual interventions in favour of certain financial institutions.

Interventions of Member States in support of financial institutions: schemes and *ad hoc* measures

The total maximum volume of crisis measures so far approved by the Commission, schemes and *ad hoc* measures taken together, entails amounts of around € 3,000 billion.[35] This corresponds to around 24% of the EU GDP.[36] This figure represents the overall maximum amount of guarantee umbrellas, rescue and restructuring packages and other measures set up by Member States. It should not be mistaken as the State aid element of the measures. The aid impact of these measures can only be assessed *ex post* in future scoreboard editions depending on the actual implementation of the measures

The following overview shows which type of measures have so far been taken by individual Member States that decided to intervene in support of financial institutions.

Member State	Guarantee schemes	Recapitalisation schemes	Schemes combining several measures	Other measures	Recent *ad hoc* Interventions
Belgium					x
Bulgaria					
Czech Republic					
Denmark	x	x			
Germany			x		x
Estonia					
Ireland	x				x
Greece			x		
Spain	x			x	
France	x	x			x
Italy	x	x			
Cyprus					
Latvia	x				x
Lithuania					
Luxembourg					x
Hungary			x		
Malta					
Netherlands	x				x

35 See footnotes 38 and 50.

36 It represents around 26 % of the aggregated GDP of the 18 concerned Member States.

Austria			x		
Poland					
Portugal	x				x
Romania					
Slovenia	x	x			
Slovakia					
Finland	x				x
Sweden	x	x			x
United Kingdom	x		x		

4.1. Guarantee schemes covering the liabilities of financial institutions

Guarantee schemes might constitute an effective tool in contributing to financial stability and to maintaining credit supply to businesses. However, as for other types of support measures, they must be designed so as to avoid undue distortive effects on neighbouring markets and the internal market as a whole. In its analysis of the measures the Commission has focussed on three elements. First, on eligibility criteria, to avoid discrimination; second, on pricing, to make sure that prices come as close as possible to the market price and reflect the beneficiaries' risk profiles and third, on safeguards to minimize distortions of competition.

So far, the Commission has approved guarantee measures in 16 Member States[37] (see table 2). The volumes indicated in the table represent the maximum level of guarantees foreseen in the scheme and authorised by the Commission and it should therefore not be mistaken as the volume of aids actually granted by Member States in reality. The table also provides information on this maximum guarantee volume expressed as a percentage of GDP and the share of the financial intermediation in the GDP. The approximate maximum volume of guarantees authorised by the Commission amounts to € 2,300 billion.[38]

---

37 Guarantee schemes and schemes combining guarantee with other measures.

38 This amount does not take into account guarantee schemes for Italy and Ireland for which there are no an *ex-ante* estimations of the volume (see footnotes 40 and 42).

Table 2: Guarantees schemes reviewed by the Commission until 31 March 2009: maximum volume of guarantee by country

Member State	Volume of guarantees (billion Euro)	Volume of guarantees as % of GDP (2008)*	Size of financial sector in % GDP (2006)*
Denmark	580.00[39]	259.27	5.3
Germany	400.00	16.30	4.8
Ireland	See footnote[40]	-	10.2
Greece	15.00	6.56	4.5
Spain	200.00[41]	19.39	4.7
France	265.00	14.22	5.0
Italy	See footnote[42]	-	4.8
Latvia	4.24[43]	20.00	6.8
Hungary	4.95[44]	5.09	4.5
Netherlands	200.00	35.00	6.7
Austria	90.00[45]	33.29	5.4
Portugal	20.00	12.92	7.5

39 The total volume of guarantees under the scheme was originally estimated at € 500 billion. Later, the scheme was modified to include additional guarantees of € 80 billion.

40 Although the total amount of the guarantee could not be identified ex ante, the Irish scheme is limited in its material and temporal scope. The scheme covers, for the period from 30 September 2008 to 29 September 2010, liabilities existing at close of business on 29 September 2008 or at any time thereafter, up to 29 September 2010, in respect of retail and corporate deposits, interbank deposits, senior unsecured debt, asset covered securities, dated subordinated debt excluding any intra-group borrowing and any debt due to the European Central Bank arising from Eurosystem monetary operations institution. No call may be made under the guarantee after 29 September 2010.

41 Initial volume of € 100 billion that can be increased to € 200 billion.

42 Under the Italian scheme, a State guarantee can be provided until 31 December 2009 on liabilities of Italian banks issued after 13 October 2008 and until 31 December 2009. Subordinated debt, guaranteed bank bonds, structured instruments or complex products, or products with a derivative component are explicitly excluded from the eligibility for the guarantee, and so is regulatory capital. Only liabilities with residual maturity of no less than three months and no more than five years are eligible and those with a maturity longer than 3 years cannot exceed 25 % of the total value of the liabilities covered by the State guarantee. In addition, the scheme includes a ceiling for each beneficiary bank.

43 Limit established : 20 % GDP (exchange rate of 20 February 2009).

44 1500 HUF (exchange rate of 18 February 2009).

45 Part of the € 90 billion (€ 15 billion) can be used for other measures than guarantees (recapitalisation, loans).

Slovenia	12.00	20.67	4.9
Finland	50.00	28.06	2.6
Sweden	150.00	46.20	3.7
United Kingdom	294.26[46]	15.75	8.4[47]
Total	*2285.45*[48]	-	-

* Source and definition: Eurostat

As guarantee schemes are only temporary emergency measures to address the symptoms of the crisis, they must be followed, as appropriate, by adjustment measures. In particular, when a guarantee is activated in favour of an individual financial institution, the measure must be followed by an appropriate restructuring or liquidation of the beneficiary.

Guarantee scheme for banks in Ireland (NN48/2008)

On 30 September 2008, the Irish Minister for Finance announced a government decision to guarantee all deposits and debts of six Irish banks and their subsidiaries located abroad. The Commission immediately contacted the Irish authorities requesting modification of any discriminatory aspects of the measure. On 3 October the Irish authorities formally notified the scheme. After close cooperation between the Commission and the Irish authorities, the Irish government modified certain aspects of the scheme in order to make it non-discriminatory, maintain the integrity of the Internal Market in financial services and to bring it fully in accordance with State aid rules.

The principal feature of the scheme is the provision of a State guarantee on all existing and new liabilities of eligible banks issued between 29 September 2008 and 28 September 2010.

The initial announcement that only 6 Irish banks were eligible for the guarantee presented a serious risk of large outflow of capital from non-eligible competitors operating in Ireland. On 9 October 2008 the Irish Government confirmed, at the Commission's insistence, that the guarantee scheme would be available to all banks with subsidiaries or branches in Ireland with a significant and broad based footprint in the domestic economy. Further changes to the scheme included specific safeguards on commercial conduct and competitive behaviour of covered banks in order to prevent the use of the guarantee by the beneficiaries to unduly expand their activities to the detriment of competitors, and close monitoring and reporting on the use of the scheme. Again, it was due to the Commission's rapid interventions that securing financial stability was achieved and the integrity of the Internal Market maintained at the same time. The Commission authorised the measure on 13 October 2008 under Article 87 (3) (b) of the EC Treaty.

4.2. Recapitalisation schemes

Capital injections can be used by Member States with the view to preserving the stability and proper functioning of financial markets. The nature, scope and conditions of recapitalisation schemes vary considerably. When assessing these measures, the Commission pays particular attention to the entry criteria and the treatment of banks with different risk profiles and levels of solvency. Other elements such as the objective of recapitalisation, soundness of the beneficiary bank, and exit incentives, in particular with a view to the replacement of State capital by private investors, are also analysed by the Commission.

46 This amount corresponds to two different schemes: Case N507/2008 approved on 13.10.2008 (£ 250 billion exchange rate of 18 February 2009) and Case N111/2009 approved on 24.3.2009 ((£ 10, exchange rate of 25 February 2009)

47 2005 data.

48 See footnote 38.

So far, the Commission has approved recapitalisation measures[49] in 11 Member States amounting to a total volume of around € 275 billion.[50] In addition, a*d hoc* recapitalisation measures have also been approved by the Commission which are analysed in Section 4.3.

Table 3: Recapitalisation schemes reviewed by the Commission until 31 March 2009: maximum volume by country

Member State	Volume of recapitalisation (billion Euro)	Volume of recapitalization schemes as % of GDP (2008)*
Denmark	13.50	6.03
Germany	80.00	3.26
Greece	5.00	2.19
Spain[51]	30-50	2.91 - 4.85
France	21.50	1.15
Italy	15-20	1.00 – 1.33
Hungary	1.04	1.07
Austria	15.00	5.55
Slovenia	12.00[52]	20.67
Sweden	4.80[53]	1.48
United Kingdom	63.00[54]	3.37
Total	*273.84*[55]	-

* Source: Eurostat

Six months after the introduction of the measure taken, Member States should submit a report to the Commission on the implementation of the approved schemes, providing details on the banks that have been capitalised, the amounts received, the use of the capital and other related information. Individual recapitalisation measures taken in conformity with a recapitalisation scheme approved by the Commission do not require an individual notification. Nevertheless, on top of the six-month review, some Member States committed to submit to the Commission information on each recapitalisation at the moment when it takes place. In the context of the six-months review, Member States should propose a path towards exit from reliance on State capital and an assessment of the bank's business model with a view to appreciating the banks' risk profile and viability or, for banks which are not fundamentally sound, a restructuring plan.

4.3. Recent *ad hoc* cases (outside schemes)

In addition to the schemes approved under the Banking and Recapitalisation Communications, some Member States have adopted *ad hoc* interventions in favour of

49 Recapitalisation schemes and schemes combining recapitalisation with other measures.

50 The amount has been calculated taking into account the upper levels in the Spanish and Italian schemes. To avoid double count, it does not take into account the volume of the Slovenian recapitalisation schemes (see footnote 52). Volumes indicated in table 3 represent the maximum level foreseen in the scheme and authorised by the Commission and it should therefore not be mistaken as the volume of aids actually granted by Member States in reality.

51 Fund for the Acquisition of Financial Assets; the Spanish scheme does not represent a classical recapitalisation scheme, although it might produce effects similar to recapitalisation.

52 The overall budget of the guarantee and the liquidity schemes is capped at € 12 billion.

53 50 billion SEK.

54 £50 billion.

55 See footnote 50.

individual financial institutions amounting to a total volume of around € 400 billion.[56] State aid to individual undertakings in difficulties is normally assessed according to the R&R Guidelines. However, *ad hoc* interventions by Member States in the present systemic crisis have been assessed under Article 87 (3) (b) of the EC Treaty. The table below provides information on these recent individual rescue measures.

Table 4: Recent individual rescue measures reviewed by the Commission until 31 March 2009

Beneficiary	**Case number**	**Member State**	**Type of measure**	**Volume (billion Euro)**	**Commission decision date**
Dexia	NN49/2008 NN50/2008 NN45/2008 C 9/2009	Belgium France Luxembourg Belgium/ France/ Luxembourg	Guarantee Guarantee[57]	150 16.9	19/11/2008 13/03/2009
Fortis	N574/2008 NN42/2008 NN46/2008- NN53a/2008	Belgium Belgium Luxembourg Netherlands	Guarantee Recapitalisation	150 7	19/11/ 2008 03/12/2008
KBC	N602/2008	Belgium	Recapitalisation	3.5	18/12/2008
Ethias group	NN57/2008	Belgium	Recapitalisation	1.5	12/02/2009
Bayern LB	N615/2008	Germany	Guarantee Recapitalisation	4.8 10	18/12/2008
Nord/LB	N655/2008	Germany	Guarantee	20[58]	22/12/2008
IKB	N639/2008[59]	Germany	Guarantee	5	22/12/2008
Sicherungsein-richtungsgesell-schaft deutscher Banken	N17/2009	Germany	Guarantee	6.7	21/01/2009
Anglo Irish Bank	N9/2009	Ireland	Recapitalisation	1.5	14/01/2009
Bank of Ireland	N149/2009	Ireland	Recapitalisation	3.5	26/03/2009
Parex Banka Latvia	NN68/2008 NN3/2009	Latvia	Guarantee Recapitalisation Liquidity	0.775 0.2 bn LVL 1.5 bn LVL	24/11/2008 11/02/2009

[56] This amount does not take into account the measure in favour of Kaupthing Bank for which the budget is not available at this stage. Nor does it take into account the measure in favour of IKB (see footnote 59).

[57] On the same data, the Commission has opened formal investigation to analyse whether the restructuring plan for the *Dexia group* will restore the long term viability.

[58] 10 per year in 2009 and 2010.

[59] Application of the German support scheme for financial institutions.

ING	N528/2008	Netherlands	Recapitalisation	10	13/11/2008
Aegon	N569/2008	Netherlands	Recapitalisation	3	27/11/2008
SNS Reaal/New	N611/2008	Netherlands	Recapitalisation	0.750	10/12/2008
Banco Privado Português S.A.	NN 71/2008	Portugal	Guarantee	0.450	13/03/2009
Kaupthing Bank	NN2/2009	Finland	Guarantee	See footnote[60]	21/01/2009
Carnegie Investment Bank	NN64/2008	Sweden	Liquidity	5 bn SEK	15/12/2008
Total				*393.29*[61]	

Member States' recourse to *ad hoc* interventions in favour of individual banks is either due to the absence of a general scheme available to the bank at the moment it entered into difficulties, or to the fact that, for various reasons, the bank was not eligible for aid under the general scheme. For example, individual measures were taken in favour of *Dexia, Fortis, KBC, Ethias, and Parex Banka Latvia* due to the lack of general schemes available at the moment when the banks entered into difficulties. Similarly, the recapitalisation interventions in favour of *Anglo Irish Bank, ING, Aegon, SNS Reaal/New, Carnegie Investment Bank and Bank of Ireland* were needed in the absence of recapitalisation schemes in the relevant Member States (only guarantee schemes were available). Conversely, *Kaupthing Bank, Bayern LB and Nord/LB* did not fall under the scope of the respective guarantee schemes while the guarantee granted to *IKB*, although it was in line with the German support scheme for financial institutions, required individual notification because the bank was under restructuring. The individual intervention for the *Sicherungseinrichtungsgesellschaft Deutscher Banken* was also justified because the eligibility conditions of the scheme in place in Germany were not fulfilled by this financial institution.

Where relevant, a subsequent restructuring plan or a liquidation plan has to be submitted for the Commission's assessment and approval within 6 months after the rescue measure was adopted. This means that the restructuring plans will reach the Commission as from March 2009.

On 31 March 2009, the Commission approved a temporary back-up facility for illiquid assets for a period of six months that the Netherlands intend to grant in favour of *ING*. This clearance, based on the Impaired Assets Communication, ensures financial stability of the bank while the Commission continues to investigate the aid package and expects *ING* to submit a restructuring plan shortly (C10/2009, ex N138/2009).

5. REAL ECONOMY AND FINANCIAL CRISIS: THE 'TEMPORARY FRAMEWORK'

Towards the end of 2008, the financial crisis has severely affected the real economy. Banks de-leveraged and became much more risk-averse than in previous years. As a result, even healthy companies started to experience difficulties with access to credit. Some Member States reacted with State capital injection to financial institutions, not primarily to rescue them but rather to prevent credit supply restrictions and limit the pass-on of the financial markets'

[60] Guarantee against legal risks. Budget not available at this stage.
[61] See footnote 56.

difficulties to the real economy. A serious downturn started to affect the wider economy and Member States announced national recovery plans to get their economies through the credit squeeze.

Indeed, most European economies are now 'officially' in recession (two consecutive quarters of negative growth). Europe is facing a period where consumer confidence, consumption and investment are shrinking sharply, households are under pressure and businesses' order books are down. The forecasts for the EU economy for 2009 are negative with rising unemployment across Europe.

In early November 2008, the European Union's Heads of State and Government agreed on the need for a coordinated response to the crisis. The Commission responded with the *European Economic Recovery Plan*,[62] a plan intended to contain the scale of the downturn, to stimulate demand and confidence, and to boost long-term competitiveness. It proposes a counter-cyclical macro-economic response to the crisis in the form of an ambitious set of actions to support the real economy. Some of the proposed measures include State aid. The challenge for the Community is to avoid public interventions which would undermine the objective of a level playing field for European companies and avoid protectionism disrupting the Internal Market.

Some Member States may be tempted to adopt protectionist measures to safeguard their domestic industries at the potential expense of others. This entails the risk of escalation, Member States outbidding each other to attract economic activities, ultimately leading to a subsidy race. Past experience shows that individual action of this kind is not effective and could seriously damage the Internal Market.

As a result of the substantial modernisation of the State aid rules over the last years,[63] Member States currently dispose of an appropriate framework to better target public support towards sustainable goals such as stimulating research, development and innovation, making risk capital available to SMEs and start-ups, training, regional development and environmental protection. In addition, Member States are now in a position to grant no less than 26 different types of State aid without having to notify individual measures to the Commission and with minimum administrative burden. In the current economic situation Member States should use these possibilities to the full.

However, in view of the dimension of the crisis and the difficulties to find credit faced by all type of companies (SMEs and large companies), the Commission adopted the *Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis*[64] (the 'Temporary Framework') granting Member States additional ways to deliver finance to enterprises affected by the credit squeeze.

These additional possibilities are justified to remedy a serious disturbance in the economy and may be declared compatible with the common market on the basis of Article 87 (3) (b) of the EC Treaty.

The Temporary Framework of 17 December 2008[65]

The temporary measures are applicable until the end of 2010 and pursue two objectives:

---

62 Communication from the Commission to the European Council, A European Economic Recovery Plan; COM(2008) 800 of 26 November 2008.

63 DG Competition ´s State aid reform web page.

64 OJ C 16, 22.1.2009 p. 1-9. The consolidated version, integrating the amendments adopted by the Commission on 25 February 2009, is published in OJ C 83, 7.4.2009, p. 1-15.

65 OJ C 16, 22.1.2009 p. 1-9. The consolidated version, integrating the amendments adopted by the Commission on 25 February 2009, is published in OJ C 83, 7.4.2009, p. 1-15.

- to unblock bank lending to companies and thereby guarantee continuity in their access to finance; and
- to encourage companies to continue investing in the future, in particular in a sustainable growth economy including the development of green products.

The specific aid instruments that will assist Member States to meet those objectives include:

- a lump sum of aid up to € 500,000 per company;
- State guarantees for loans at a reduced premium;
- aid in the form of subsidised interest rate applicable to all type of loans;
- subsidised loans for the production of green products involving the early adaptation to or going beyond future Community product standards.

In addition to the new measures, the Framework provides for:

- a temporary derogation from the risk capital guidelines in order to increase the tranche of finance per target SME (from € 1.5 million to € 2.5 million) and a reduction of the minimum level of private participation (from 50 % to 30 %); and
- a simplification of the requirements of the *Export Credit Communication*[66] to use the exemption that allows temporarily non-marketable risks to be covered by the state.

The Commission is in favour of a horizontal approach which benefits the whole economy. Consequently, the Commission holds that the proposed aid instruments are the most appropriate ones to achieve the general objectives and that there is no need to single out a sector. Accordingly, apart from the exclusion of fisheries and primary agricultural production from the limited amount of aid the Framework makes no such distinction.

On 25 February 2009,[67] after having gained some experience with the application of the Temporary Framework, the Commission has introduced some further technical adjustments.

In particular, with respect to the conditions of compatibility for guarantees, the Commission has adopted a new grid which adjusts the guarantee safe-harbours according to different levels of collateralisation. Moreover, in addition to the reduction of the annual guarantee premium of 2 years, the revised safe-harbour premiums contained in the grid could be applied for another 8 years without reduction.

The Commission has ensured swift decisions in cases where the notifications were complete and the conditions of the Temporary Framework respected. So far, the Commission has authorized 24 measures under the Temporary Framework:

- 8 schemes for aid up to € 500,000 per company proposed by Germany, France, Latvia, Luxembourg, Hungary, Portugal, the United Kingdom and Austria;
- 4 schemes for subsidized loan interests in Germany, Hungary and France;
- 3 risk-capital schemes in Germany, France and Austria;
- 3 schemes offering reduced interest loans to businesses investing in the production of green products in France, the United Kingdom and Spain;
- 6 guarantee measures in Belgium, Germany, France, Luxembourg, Hungary and the United Kingdom.

---

66 OJ C 281, 17.9.1997, p. 4.

67 Communication from the Commission - Amendment of the Temporary framework for State aid measures to support access to finance in the current financial and economic crisis of 25 February 2009. The consolidated version, integrating the amendments adopted by the Commission on 25 February 2009, is published in OJ C 83, 7.4.2009, p. 1-15.

Table 5: Overview of measures reviewed by the Commission under the Temporary Framework until 31 March 2009

Member State	EUR 500.000 per under-taking	Guarantee	Reduced-interest rate loans	Reduced-interest rate loans for green products	Risk capital aid	Simplification of requirements of the Export Credit Communication
Belgium		N117/2009 20/03/2009				
Germany	N668/2008 30/12/2008	N27/2009 27/02/2009	N661/2008 30/12/2008 N38/2009 19/02/2009		N39/2009 3/02/2009	
Spain				N140/2009 30/03/2009		
France	N7/2009 19/01/2009	N23/2009 27/02/2009	N15/2009 04/02/2009	N11/2009 03/02/2009	N119/2009 16/03/2009	
Latvia	N124/2009 19/03/2009					
Luxembourg	N99/2009 27/02/2009	N128/2009 11/03/2009				
Hungary	N77/2009 24/02/2009	N114/2009 10/03/2009	N78/2009 24/02/2009			
Austria	N47a/2009 20/03/2009				N47d/2009 26/03/2009	
Portugal	N13/2009 19/01/2009					
United Kingdom	N43/2009 04/02/2009	N71/2009 27/02/2009		N72/2009 27/02/2009		

Regarding the aid instruments chosen in the aid measures, all intervening Member States except Belgium, Spain and Portugal selected multiple instruments, e.g. grants, interest subsidies, loans and guarantees.

Special reference to the car sector

The automotive sector has been hit particularly hard by the current economic crisis. The Commission responded by a Communication on EU support to fight the crisis in the automotive sector on 25 February 2009.[68] It defends a proactive stance to support the industry, soften negative effects and, in particular ensure long-term competitiveness. It sets various measures to improve access to credit, to clarify the rules for granting state aid in the particular circumstances, to boost the demand for new vehicles through coordinated national action, to minimise social costs and retain the skilled workforce and to defend fair competition in open markets. The Commission suggests a new partnership with industry,

68 Communication from the Commission- Responding to the crisis in the European automotive industry, COM(2009) 104 final of 25 February 2009.

trade unions and Member States in the context of the *CARS 21* process to accompany the common crisis response.

For any measures boosting *demand*, the Commission has organised the exchange of best practises and proposed common principles on which car scrapping schemes should be based.[69]

On the *supply side*, much of the public support should be covered by horizontal policy instruments applicable to industry as a whole and should be met through a combination of European and Member State level action. The European Investment Bank is expected to approve € 3.8 billion worth of automotive sector projects in March while additional projects in the pipeline add up to a total of € 6.8 billion.

Moreover, several of the schemes approved by the Commission under the Banking and Recapitalisation Communications may also benefit the financial branches of the car manufacturers.

In the State aid area, the Temporary Framework for the real economy as described above remains an important State aid instrument also in the car sector. Under the Framework, the car sector (together with other sectors) can benefit from various forms of aid, such as: State guarantees, subsidized loans, subsidized loans for green products which targets in particular the production of "green" cars going beyond the Community standards, "small amounts of aid"[70] and risk capital aid for SMEs.

As regards State aid to the car industry, so far, Member States have mostly notified these support measures under general schemes, including schemes under the Temporary Framework. By way of example, the Commission approved a French scheme (N23/2009) under which France can provide state guarantees to loans to various industrial sectors. The Commission has, likewise, approved a UK scheme (N71/2009) and a German scheme (N27/2009) under which the car industry (as well as other industries) can benefit from support in the form of State guarantees. As regards the subsidized loans to "green products", the Commission approved a UK scheme (N72/2009), a French scheme (N11/2009) and a Spanish scheme (N140/2009)providing for subsidized interest rates on loans for green products going beyond the Community standards. In addition, the Commission has approved several schemes under which Member States can grant small amounts of aid to, among other, the car sector (see above table 5).

The position of the Commission has been clear and strong as regards certain attempts to implement protectionist measures in the car industry. Since France announced its planned aid to the automotive sector which originally raised concerns concerning State aid and Internal Market rules, the Commission has stated without ambiguity that any aid granted under such requirements could not be regarded as compatible. Intensive contacts between the Commission and the French authorities have been fruitful and France committed to avoid any condition contrary to Internal Market rules.[71]

---

69 Already in July 2008, the Commission issued a communication inviting Member States to promote green public procurement in order to boost demand for cleaner and more fuel efficient vehicles. Communication from the Commission "Public procurement for a better environment", COM(2008) 400 final of 16 July 2008.

70 Aid up to € 500 000 per company for the next two years to relieve them from current difficulties with the access to credit. If a company has already received *de minimis* aid prior to the entry into force of the Temporary Framework or will so during the validity of the Temporary Framework, the sum of the aid received under the Temporary Framework and *de minimis* aid received under the *De Minimis* Regulation must not exceed € 500 000 between 1 January 2008 and 31 December 2010.

71 See MEMO 09/90 of 28 February 2009.

Special reference to the air transport sector

The current crisis also affected the air transport sector which was already struggling with consistently high crude prices during the first half of the year.

In January 2009, the Commission approved rescue aid in the form of State loan guarantee in favour of *Austrian Airlines* (NN72/2008), which allowed the company to raise financing in the market despite the credit squeeze and to keep operating until the Commission takes a position on its privatisation plan. The decision was taken on the basis of the R&R Guidelines.

The public tender procedure carried out by the Greek authorities to sell certain assets of *Olympic Airlines* and *Olympic Airways Services* prior to the liquidation of the two undertakings was not successful, given the financial and economic situation. Few bidders were forthcoming and most lacked financial credibility. In March, the Commission considered that the intention of the Greek authorities to carry out the sale by means of direct negotiations with interested parties did not raise State aid concerns as this was likely to be the value-maximising solution (N83/2009). The decision was taken on the basis of Article 87 (1) of the EC Treaty.

6. PROCEDURES

Financial crisis

In its response to the financial crisis, the Commission is aware of the importance of delivering quick decisions in close cooperation with Member States in order to contribute to restoring financial stability and to providing legal certainty. This is why the Commission has adopted decisions on emergency rescue measures in short time periods. In contrast, when assessing restructuring plans, the Commission must ensure that the envisaged restructuring is capable of restoring the long-term viability, that state support is limited to the minimum necessary and decide whether compensatory measures should be put in place to minimise potential distortions of competition created by the aid. The analysis of State interventions of such magnitude might require longer time than certain emergency rescue measures.

The early experiences in 2007 and the first half of 2008 showed that the Commission can deal with cases in a rapid, efficient and flexible way. A swift assessment of support measures to financial institutions was particularly necessary in view of the considerable impact of the crisis on individual financial institutions and the interdependence between them, requiring immediate measures to avoid a melt-down of the entire financial sector. However, the deepening financial crisis required a further streamlining of the processes.

The 'Banking Communication' sets out the steps the Commission took in order to ensure the swift adoption of decisions upon complete notification, if necessary within 24 hours and over a weekend. In particular, the following arrangements were put in place:

- Simplified consultation procedure within DG Competition and quicker consultation of other services;
- Use of an urgent written procedure or a temporary empowerment of a Member of the Commission;
- Simplified linguistic requirements.

The Member States' agreement to be notified of decisions in one of the working languages of the Commission has also helped to speed up the procedures. In addition, Member States' cooperation is necessary for the Commission to guarantee swift decision making. Experience has shown that early informal contacts and the involvement of the Commission at an early stage contribute significantly to the adoption of decisions within short timeframes.

During the last quarter of 2008, 18 decisions on banking schemes and 16 decisions on individual banking cases were adopted. In particular, looking at the 22 banking schemes decided[72] until March 2009, the Commission took in 9 cases its decision in less than a week.[73]

Real Economy

Accelerated procedures apply also to measures under the recently adopted Temporary Framework. Accordingly, the Commission has set up the necessary arrangements, similar to those adopted for the banking sector, so that notifications based on the Temporary Framework can be dealt with rapidly provided that Member States supply all relevant information. Any measures proposed must be notified to the Commission in the regular way.

Furthermore, in order to provide guidance on the application of the Temporary Framework in practice, the Commission has set up an Economic Crisis Team (comp-economic-crisis-team@ec.europa.eu) to serve as a first point of reference for all stakeholders. More information may be found on the DG Competition website.

For other urgent measures falling outside the scope of the Temporary Framework but linked to the financial and real economy crisis, the Commission has also applied, insofar as possible, accelerated procedure.

7. CONCLUSIONS

It should be noted that figures that appear in this report and particularly those referring to guarantees and recapitalisation measures should not be taken as the State aid element of the measure. The aid impact of these measures can only be assessed in later editions, depending on the actual use of the measures.

The Commission has been playing and will continue to play a key role in coordinating Member States' action in view of maintaining a level playing field, preserving the integrity of the common market and fighting harmful protectionism. It will ensure that new support schemes comply with the EC Treaty State aid rules and it will monitor measures already reviewed by the Commission to ensure they are implemented in compliance with Commission's decisions and the EC Treaty. The Commission will continue to closely monitor the situation in the market and review Member States support measures in order to ensure that they are designed in a way to limit as much as possible competition distortions and to keep the single market functioning.

In addition, the Commission has particularly emphasized that support measures must be designed considering the medium-to-long term perspective, in particular that of swiftly returning to a competitive environment. Support measures should target the new market failures (such as the credit squeeze), with the objective and effect of boosting economic growth and not perpetuating economic inefficiency and failed business models. State aid should be focused on long-term competitiveness through support for research, development and innovation, for green products and measures to tackle climate change and for skills-enhancing measures reinforcing labour flexibility in the Common Market.

Finally, the Commission will support restructuring processes in the context of State aid monitoring. Restructuring and possibly managed liquidation will be necessary to enable

---

72 Modifications to the original schemes are not taken into account.
73 Average duration from notification to decision: 17 days.

viable companies to emerge from the crisis. In particular, State aid to banks has to be accompanied by restructuring to address previous defects in their business models, to ensure ongoing utility as a means of channelling credit to the economy and to reach long term viability. Similarly, companies operating in the "real" economy facing structural problems will need to undertake necessary restructuring to restore long-term viability.

ANNEX 1: WHERE TO FIND INFORMATION ON STATE AIDS

For weekly updates on the latest developments in State aid, see DG Competition's e-News on http://ec.europa.eu/comm/competition/state_aid/newsletter/index.html. E-News features information on new legislative texts and proposals, decisions of the European Commission and the Courts of the European Union and other state aid-related documents and events.

For more detailed information on State aid policy developments, facts and figures, see DG Competition's State aid Scoreboard, published twice a year in spring and autumn on

http://ec.europa.eu/comm/competition/state_aid/studies_reports/studies_reports.cfm