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Subject: State aid NN 36/2008 – Denmark - Roskilde Bank A/S

Sir,

- (1) The Danish authorities contacted the Commission on 11 July 2008 concerning the measures taken in order to provide Roskilde Bank, which was in difficulties, with the necessary liquidity.
- (2) The Danish authorities sent documents containing background information on 15 July 2008, 17 July 2008, 18 July 2008, 23 July 2008 and 24 July 2008. The Commission sent a request for additional information to Denmark on 17 July 2008 and 23 July 2008. The Danish authorities officially notified the measures to the Commission on 21 July 2008, and the notification was registered on 22 July 2008.

2 DESCRIPTION OF THE MEASURE

2.1 The beneficiary

- (3) Roskilde Bank A/S is Denmark's eighth largest bank with, as of 31 March 2008, a balance-sheet total of DKK 42.9 billion (approximately EUR 5.7 billion), which is expected to be reduced to DKK 42.1 billion as of 30 June 2008. As the name implies, the bank is based in the city of Roskilde. During the first quarter of 2008, interest and dividend income represented DKK 237 million, and the bank had a net profit of DKK 77 million. Roskilde Bank was established in 1884 to meet the increasing demand from local citizens and business people who wished to take care of their banking transactions locally. From then onwards, the bank grew organically and set up new branches in the county of Roskilde. In the 1980s, it established DanFinans Leasing, a subsidiary operating in the real estate market. In the 1990s, by way of Totalkredit, Roskilde Bank entered the mortgage credit market. In 1996 it took over a small savings bank, Ringsted Sparekasse. From 2000 onwards, Roskilde Bank continued to expand and established a number of new branches, now also outside the county of Roskilde, including in Copenhagen.
- (4) Roskilde Bank's business strategy has been focused on having full advisory competence, i.e. being able to provide an advisory service on savings, investments, mortgages, pensions, insurance and other significant aspects of household economy

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and corporate economy, and on being able to offer a well-established product range comprising traditional lending and deposits, and products such as mortgage loans, investment funds and insurance policies provided on a commission basis. The bank has had a strong profile in corporate banking in the whole Greater Copenhagen area.

- (5) The bank has a diversified loan portfolio spread over many sectors with, however, a relatively strong focus on real estate. At the end of 2007, the three largest sectors in the loan portfolio were real estate (45%), retail (28%), and financing and business services (9%). The loan book grew by 33% after 2006.

2.2 Roskilde Bank's financial difficulties and the events triggering the measures

- (6) Roskilde Bank has been subject to intensified supervision by the Danish Financial Supervisory Authority since November 2006 because of the bank's heavy exposure in the real estate market. In November 2006, an inspection visit resulted in the solvency requirement being increased to an amount over and above that reported by the bank. After a warning concerning its low liquidity cover, another inspection was carried out in 2007, which showed shortcomings in credit risk management and the need for certain write-downs.
- (7) In November 2007 Roskilde Bank launched a new strategy plan – Strategy 2010 – in order to reduce the risks to which it was exposed. The main elements of Strategy 2010 were (i) a reduction of the bank's exposure in the mortgage and real estate market, and (ii) a focus on risk management. A reduction in the bank's exposure in the real estate sector had been initiated, but as a consequence of the fact that several client relationships established many years ago contained significant commitments, it was possible only slowly to reduce exposure.
- (8) The recent turmoil in the financial markets and, not least, the crisis in the Danish real estate market has led to severe adverse developments in a number of Roskilde Bank's larger client relationships. A number of developers (customers) have gone bankrupt, and the house prices have fallen. Analysts expect real estate prices in Denmark to decrease this year and next by 10%.
- (9) On 1 July 2008 Moody's Investors Service reduced Roskilde Bank's rating. The bank's financial-strength rating was reduced from C to C-, which caused a corresponding decrease in the credit rating of the bank's long-term deposits from A1 to A2. Moody's carried out this downgrade because they considered that the bank's exposure in the real estate sector represented over 40% of the total loans and guarantees and that a significant portion of these commitments was concentrated on a small number of large customers. Additionally, Moody's noted that Roskilde Bank's loan portfolio had grown very rapidly in recent years – with volume increases of 38% in 2007 and of over 50% in 2006 and 2005 – thus reducing the seasoning of the loan book¹. The assets were assessed as still being, overall, of good quality, but impaired due to the growing number of problem loans. At the end of March 2008, problem loans accounted for 1.4% of the overall loans, compared with 0.7% at the end of 2006.

¹ The seasoning of the loan book refers to the remaining length of time during which payments have to be made to service the loan. If there are a number of loans with long remaining payment periods, the rating agency normally expects the bank's proportion of non-performing loans to increase and its financial situation to deteriorate.

- (10) While preparing the half-year interim accounts for 2008, Roskilde Bank's management found that write-downs on loans had to be made on a significantly larger scale than had originally been thought necessary. However, the value and scope of the write-downs was not yet fully known. The management feared that – in conjunction with the increased need for write-downs – the recent downgrade by Moody's and the extensive media attention could potentially cause liquidity problems, which might lead to a run on the bank.
- (11) The bank's management investigated the possibility of raising additional share capital, but had to conclude that it would not be possible to carry out such a capital increase as it would not be possible to have the increase underwritten. In this context, it should be noted that Roskilde Bank's shares, traded at the OMX Copenhagen, had, by 11 July 2008, fallen by 78% in the course of the year, i.e. by six times as much as the OMX Copenhagen 20 Index (down 13%). Negotiations with a range of potential buyers of Roskilde Bank were initiated. However, these negotiations have not yet led to any actual bid.
- (12) In view of the above-mentioned problems, on 10 July 2008 Roskilde Bank contacted the Danish authorities and the Danish National Bank and requested the necessary (emergency) liquidity. The Danish National Bank agreed to provide such liquidity, having received support from the Danish Government and financial sector, which provided a guarantee to cover potential losses on the part of the Danish National Bank (see below).
- (13) After the Danish National Bank had provided a liquidity facility, Roskilde Bank continued to estimate the write-downs it would have to effect on its loans. On 14 July 2008 it made it publicly known that these write-downs were expected to amount to approximately DKK 893 million (EUR 120 million²) for the first half of 2008. Consequently, Roskilde Bank announced an expected loss after tax for the first half of 2008 of DKK 392 million (EUR 53 million). This announcement led Moody's further to downgrade the bank to D (financial-strength rating) and A3 (long-term deposits rating).

2.3 The measure

2.3.1 The Danish National Bank's liquidity facility, entering into force on 11 July 2008

- (14) The emergency liquidity assistance was provided by the Danish National Bank in the form of a loan. This was provided for an unlimited amount, but the drawdowns under the facility were expected not to exceed DKK 15-20 billion (EUR 2.0-2.6 billion), as was also communicated by the Minister for Economic and Business Affairs to the Finance Committee of the Danish Parliament on 18 July 2008.
- (15) The facility may be terminated by the Danish National Bank at any time without notice; a final repayment date was not specified. Nevertheless, Roskilde Bank has committed itself to using its best endeavours to sell (a part of) its business within no more than six months from the date of entry into the loan agreement with the Danish National Bank. Furthermore, if Roskilde Bank were to find itself in circumstances covered by Section 246 of the Financial Business Act (which sets out

² The exchange rate as of 14 July 2008 was EUR 1 = DKK 7.4607

the steps to be taken in a situation in which a credit institution does not meet the capital requirements of the Act), it has undertaken, at the request of the Danish National Bank, to sell its business to a buyer designated by the Danish National Bank, unless it finds a buyer within the time-limit set by the Danish Financial Supervisory Authority for compliance with the solvency requirement, and provided that this buyer is willing to pay a better price and repay the loan from the Danish National Bank.

- (16) The facility may be used only to cover the liquidity that is at any time necessary for carrying on Roskilde Bank's day-to-day activities. The facility cannot be used to invest in new activities or to behave aggressively in commercial markets. The Danish authorities have explained that the use of the term 'day-to-day activities' also means that Roskilde Bank is not permitted to use the credit facility to engage in new, more extensive credit facilities or to engage in active marketing to attract new depositors or borrowers.
- (17) Each drawdown of the funds requires the cash-flow budget for the next 14 days to be verified and approved by an independent auditor appointed by the Danish Government (Price Waterhouse Coopers), and to be approved by the Danish National Bank. The auditor is to verify, in particular, whether the budgeted needs comply with the condition that the liquidity facility may be used only for the day-to-day activities of the business and not for investing in new activities or behaving aggressively in commercial markets.
- (18) The rate of interest for the liquidity facility is variable and currently amounts to 6.6%. It is fixed at two percentage points above the Danish National Bank's ordinary rate for loans (4.6% at present). Also, it is one percentage point above the rate of the special loan facility (seven-day liquidity assistance) that the Danish National Bank has made available since May 2008 (5.6% currently). It is above the reference rate for rescue aid in Denmark³.
- (19) In principle, the Danish National Bank provides liquidity assistance only against sufficient collateral, which Roskilde Bank will not be able to provide. Therefore, the liquidity facility is secured by two guarantees. Any potential loss to the Danish National Bank is covered for up to DKK 750 million by Det Private Beredskab, which is an association created by the Danish Bankers Association. Any further loss will be covered by a state guarantee.

2.3.2 Guarantee for potential losses granted by Det Private Beredskab on 11 July 2008

- (20) In relation to the loan agreement entered into by the Danish National Bank and Roskilde Bank, entering into force on 11 July 2008, 'Det Private Beredskab til afvikling af nødlidende banker, sparekasser og andelskasser' (hereinafter 'Det Private Beredskab') has agreed to provide a guarantee to the Danish National Bank covering its potential losses under the above-mentioned loan agreement.
- (21) Det Private Beredskab's guarantee is provided for an amount up to DKK 750 million (approximately EUR 100 million). No fee has had to be paid for the guarantee. It is an indemnity bond, meaning that Det Private Beredskab is to make its payment under the guarantee as soon as Roskilde Bank does not comply with its obligation to repay the loan to the Danish National Bank, regardless of whether insolvency proceedings

³ The reference rate for rescue aid in Denmark as of 1 July 2008 is 5.81%, which is the sum of the base rate of 4.81% as of 1 July 2008 and 100 basis points according to the Communication from the Commission on the revision of the method for setting the reference and discount rates, OJ C 14, 19.1.2008, p. 6.

against Roskilde Bank have been initiated. This guarantee will remain in force for as long as Roskilde Bank had any outstanding debts towards the Danish National Bank.

2.3.3 State guarantee for potential losses

- (22) On 11 July 2008 the Danish authorities agreed to make good the losses that the Danish National Bank might suffer in relation to the liquidity facility provided to Roskilde Bank.
- (23) In order to provide such a guarantee, the Treasury needed the approval of the Finance Committee of the Danish Parliament. Consequently, a corresponding proposed change (bill) to the supplementary appropriations act for 2008 was presented by the Minister for Economic and Business Affairs to the Finance Committee on 13 July 2008, and was revised on 18 July 2008. After approval by Parliament, expected at the latest at the beginning of August 2008, the government guarantee will enter into force with retroactive effect as of 11 July 2008.
- (24) The guarantee will be provided for an unlimited amount and without a final maturity date. Likewise, no fee has to be paid for the guarantee. The government guarantee will be activated only once all Roskilde Bank's equity and subordinated capital have been lost and once the Danish National Bank has incurred losses of more than DKK 750 million. The state guarantee will cover possible losses exceeding this amount, since the first DKK 750 million of losses for the Danish National Bank will be covered by the guarantee that has been provided by the Danish financial sector (see point 2.3.2 for more details).

3 ASSESSMENT

3.1 State aid

- (25) Article 87(1) of the EC Treaty lays down that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market.
- (26) The Commission considers that the liquidity facility provided by the Danish Central Bank, the guarantee provided by Det Private Beredskab and the guarantee provided by the Danish Government all form part of one measure. Indeed, they were the result of discussions between the parties concerned (i.e. the Ministry of Economic and Business Affairs, the Financial Supervisory Authority, the Danish Bankers' Association and the Danish National Bank), which resulted in a single rescue package consisting of the liquidity facility made available by the Danish National Bank, which itself required the provision of guarantees. This is also confirmed by the official press release, which presented the measures as a single package (see the common press release of the Danish National Bank and the Financial Supervisory Authority (Finanstilsynet) of 10 July 2008⁴, and the press release of the Ministry of Economy of 11 July 2008⁵). At the same time, it is also necessary, for the purposes of the Commission's assessment, to examine the different elements of the package.

⁴ [https://www.nationalbanken.dk/DNDK/Presse.nsf/side/PresseDNN20086965/\\$file/DNN20086965.pdf](https://www.nationalbanken.dk/DNDK/Presse.nsf/side/PresseDNN20086965/$file/DNN20086965.pdf)

⁵ <http://www.oem.dk/sw22324.asp>

3.1.1 The guarantee provided by Det Private Beredskab and the part of the liquidity facility covered by this guarantee

- (27) The liquidity facility provided by the Danish National Bank to Roskilde Bank was covered by guarantees from Det Private Beredskab (for losses up to DKK 750 million) and from the Danish State (for losses above DKK 750 million, activated only when all equity and other subordinated capital have been lost).
- (28) As regards the guarantee provided by Det Private Beredskab, the Commission notes that the latter is an association set up on 13 June 2007 by the 137 members of the Danish Bankers' Association, including Roskilde Bank. The Danish authorities have explained that all members of the Danish Bankers' Association are private financial institutions.
- (29) Under the agreement setting up Det Private Beredskab, its members are obliged to commit funds to this association and transfer them on request. Members' guarantees in relation to Det Private Beredskab were set at DKK 750 million at the time the association was set up. During any calendar year, the members cannot be obliged to pay more than DKK 750 million (approximately EUR 100 million) to Det Private Beredskab, unless otherwise unanimously decided by the committee of representatives. The total contribution from members in a given year may not exceed DKK 1 500 million (approximately EUR 200 million).
- (30) Det Private Beredskab's supreme authority is the committee of representatives, which consists of all the members of the Danish Bankers' Association's board of directors. The Commission notes in this context that the Danish Bankers Association's board of directors is chosen each year by the members of the association from amongst themselves. They are hence the representatives of private banks. The committee of representatives adopts the articles of association, which they may amend by unanimous agreement. Det Private Beredskab is managed on a day-to-day basis by the board of directors. It is also the board of directors that decides whether the association should participate in the winding-up or transfer of a bank in distress and also decides on the amount of the contribution and the conditions thereof. The board consists of four members from the Deposit Guarantee Fund's board of Directors, two of whom represent the private banks and the other two of whom are economic/accounting and legal experts. The board of directors normally takes its decisions by simple majority, but a decision to provide aid cannot be taken if the two representatives from the private banks are opposed to such a decision. Furthermore, a contribution decision needs to be taken in accordance with the rules laid down in the association's statute. These rules provide that the funds or the guarantee that Det Private Beredskab provides to a bank in distress cannot be higher than the loss that the Deposit Guarantee Fund would have suffered if the bank in distress had gone bankrupt. In this particular case, the Danish authorities have confirmed that Det Private Beredskab members' exposure under the Deposit Guarantee Fund would have been many times higher than under this guarantee.
- (31) No banks are obliged by law to become members of the Danish Bankers' Association, and not all banks choose to become members. By joining Det Private Beredskab, members commit themselves to complying with its statute. Members of Det Private Beredskab can also leave the association. When Det Private Beredskab was set up, the members of the Bankers Association adopted an establishment act whereby Det Private Beredskab is an association funded exclusively by contributions from those

banks that have voluntarily become members of Det Private Beredskab. Given that Det Private Beredskab is based exclusively on the voluntary membership of private institutions, that the members of its highest authority come from the private sector, that the members from the private banks have the right of veto in the decision-making body and that the commitment assumed by Det Private Beredskab's members is nothing like so large as their potential commitment under the Deposit Guarantee Fund, the Commission considers that no state resources are involved in the financing of the guarantee provided by Det Private Beredskab to the Danish National Bank on 11 July 2008.⁶ The guarantee provided by Det Private Beredskab does not constitute state aid within the meaning of Article 87(1).

- (32) In assessing the part of the liquidity facility that is covered by the guarantee from the private sector, the following elements are relevant. As regards the criterion of state resources, it should be observed that the Danish State is the sole shareholder of the Danish National Bank, through its Ministry of Finance. The Danish National Bank has to be considered a public authority/body. Whether the use of state resources can be imputed to the State does not therefore have to be shown separately. In addition, it must, however, be noted that the measure was taken in a coordinated action with the State. Under these circumstances, the liquidity facility made available by the Danish National Bank includes state resources. As regards the selectivity criterion, this must be considered to have been met, since the measure is an *ad hoc* measure to the advantage of one beneficiary, i.e. Roskilde Bank. Furthermore, the measure cannot be designated a general measure, since, in granting the liquidity facility, the Danish National Bank went beyond the established framework. It also had significant discretion in deciding whether to provide such assistance to the beneficiary at issue and, if so, under what conditions. In view of the characteristics of the banking market, the liquidity facility must also be regarded as being able to distort competition and affect intra-Community trade. With regard, however, to the criterion of whether or not an advantage is afforded, account has to be taken of the fact that the liquidity facility was provided at an interest rate that is two percentage points higher than the Danish National Bank's lending rate. Furthermore, the private association guaranteed the liquidity facility for losses of up to DKK 750 million. The private sector's guarantee provides highly secure coverage for the Danish National Bank's exposure in connection with the liquidity facility. Det Private Beredskab is to pay up if Roskilde Bank does not meet its obligation to repay the loan under the loan agreement concluded between the Danish National Bank and Roskilde Bank, regardless of whether insolvency proceedings against Roskilde Bank are initiated. The Commission considers, therefore, that this part of the liquidity facility does not contain any advantage. Rather, the Danish National Bank and the State have acted as a prudent market economy lender would do.
- (33) Consequently, the Commission considers that the part of the liquidity facility provided by the Danish National Bank up to the amount of DKK 750 million, which is guaranteed by Det Private Beredskab, does not grant any advantage using state resources and does not therefore constitute state aid within the meaning of Article 87(1) of the EC Treaty.

⁶ See also Case C-345/02 *Pearle* [2004] ECR I-7139.

3.1.2 The government guarantee and the part of the liquidity facility covered by this guarantee

- (34) The Danish authorities admit that the guarantee granted by the Treasury to the Danish National Bank may contain elements of state aid.
- (35) The government guarantee was granted without a fee and for an unlimited amount. Even though the Danish authorities do not expect the guarantee to be called upon, the risk they are taking would not have been acceptable to a private investor. Consequently, the government guarantee confers a selective advantage, provided from state resources, on Roskilde Bank, and it must be regarded as having the potential to distort competition and affect intra-Community trade. Therefore, the government guarantee constitutes state aid within the meaning of Article 87(1) of the EC Treaty.
- (36) The part of the liquidity facility covered by the state guarantee provides Roskilde Bank with a selective advantage, obtained with the help of state resources. State resources are involved because the measure was granted by the Danish National Bank (see para. (32) above). The Danish National Bank acted in coordination with the Government. The state guarantee was necessary in order for the Danish National Bank to be able to make the liquidity facility available. The Danish State has significant exposure arising from this part of the liquidity facility, and there is the potential loss of state resources. In particular, Roskilde Bank obtains an unlimited liquidity facility, for which it does not need to pledge any collateral. This loan is guaranteed by an unlimited state guarantee, for which Roskilde Bank does not pay any fee. Given that Roskilde Bank is in financial difficulties, it would not under normal market conditions have been able to obtain funding of a similar amount and without adequate collateral. Therefore, the part of the liquidity facility covered by the state guarantee confers an advantage on Roskilde Bank, provided with the help of state resources.
- (37) In view of the characteristics of the banking sector, the liquidity facility covered by the government guarantee must also be assumed potentially to affect competition and intra-Community trade.
- (38) Consequently, the part of the liquidity facility over and above the amount of DKK 750 million, granted on 11 July 2008 by the Danish National Bank to Roskilde Bank constitutes, together with the state guarantee covering it, state aid within the meaning of Article 87(1) of the EC Treaty.

3.2 Compatibility of the aid with the common market

3.2.1 Compatibility under Article 87(3)(b) of the EC Treaty

- (39) According to Article 87(3)(b) of the EC Treaty, aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State may be considered to be compatible with the common market.

- (40) The first part of this exemption is not applicable to the case at hand. With regard to compatibility under the second part of Article 87(3)(b), it is normally the Commission's view that aid benefiting one operator or one sector only cannot be granted for the purpose of addressing the kind of situation targeted by this exemption.
- (41) In the present case, the Commission considers that it is appropriate to assess the aid granted to Roskilde Bank under Article 87(3)(c) of the EC Treaty. It is noted that, in their notification, the Danish authorities also express the view that Article 87(3)(c) and the Community guidelines on state aid for rescuing and restructuring firms in difficulty are the correct legal basis for assessing the compatibility of the aid in this case.

3.2.2 Compatibility under Article 87(3)(c) of the EC Treaty and the 2004 Rescue and Restructuring guidelines

- (42) According to Article 87(3)(c) of the EC Treaty, aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, may be considered to be compatible with the common market. In the present case, the compatibility of the measures with Article 87(3)(c) has to be assessed on the basis of the 2004 Community guidelines on state aid for rescuing and restructuring firms in difficulty⁷ ('the Guidelines').

Eligibility of the company

- (43) The Guidelines first require the company concerned to qualify as a firm in difficulty. A 'firm in difficulty' is defined in section 2.1 of the Guidelines. The Danish authorities have confirmed that Roskilde Bank is indeed a firm in difficulty. They argue that, although it has not been established that Roskilde Bank satisfies the conditions in point 10(a)-(c) of the Guidelines, the bank was in very serious financial difficulty on 10 July 2008, and thus clearly fulfilled the conditions in point 11 of the Guidelines.
- (44) When the management of the bank realised that it was necessary to effect extraordinary large write-downs of a number of significant loans and guarantees, particularly in connection with property development projects, it feared that public disclosure of this might result in a run on the bank. The management reported that, although, after the necessary write-downs, the bank would still comply with the legislative requirements concerning solvency and the solvency requirements calculated by the bank itself, it was urgently necessary to find a solution in the form of an injection of new capital or of a merger/reconstruction. The bank's management explored the possibility of raising additional capital but came to the conclusion that this was impossible. Attempts to sell all, or parts of, the bank have also so far been unsuccessful. The bank's management therefore decided to seek a solution in collaboration with the authorities and the management of the Danish Bankers' Association, and this led to the measures described above.
- (45) In order to substantiate the description of Roskilde Bank as a bank in difficulty, the Danish authorities have submitted statements from the Danish Financial Supervisory

⁷ OJ C 244, 1.10.2004, p. 2.

Authority and Roskilde Bank's accountants, KPMG, and Roskilde Bank's half-yearly accounts. The Danish Financial Supervisory Authority stated that, given the urgency of the matter, it was unable directly to verify the bank's risk estimate. It found no reason to question the management's assessment of the need for write-downs in the accounts and the potential further risks of losses. The Danish Financial Supervisory Authority, the Danish National Bank and the Ministry of Economic and Business Affairs shared the bank's view that there would be a significant risk of a run on the bank should the bank's financial difficulties become public knowledge. In its statement, the Financial Supervisory Authority concluded that the combination of circumstances clearly showed that, on 10 July 2008, Roskilde Bank would not have been able to recover through its own resources, with funds obtained from its shareholders or with funds drawn from the market and that the conditions set out in points 9 and 11 of the Guidelines were satisfied.

- (46) Subsequent events have confirmed the need for a rapid injection of liquidity. From 11 July 2008, when the bank's position was publicly disclosed, until 16 July 2008, depositors withdrew a net amount of DKK 2.493 billion from the bank.
- (47) Furthermore, Moody's downgraded Roskilde Bank's financial-strength rating from C to C- on 1 July 2008 and to D on 16 July 2008.
- (48) According to Roskilde Bank's half-year report, the write-downs are estimated to amount to approximately DKK 893 million (approximately EUR 120 million). The net loss after tax in the first half of 2008 is estimated at DKK 392 million (approximately EUR 53 million).
- (49) Moreover, Roskilde Bank is neither a new bank nor part of a larger business group.
- (50) Based on the above, the Commission considers Roskilde Bank to be a firm in difficulty within the meaning of the Guidelines.

Compatibility assessment of the conditions for rescue aid

- (51) Point 25 of the Guidelines sets out five conditions that have to be met in order for the Commission to consider a measure as constituting compatible rescue aid.
- (52) First, according to point 25(a) of the Guidelines, the rescue aid must consist of liquidity support in the form of loan guarantees or loans. In addition, an exception may be made in the case of rescue aid in the banking sector⁸, in order to enable the credit institution in question to continue temporarily carrying on its banking business in accordance with the prudential legislation in force. Notwithstanding this, aid granted in a form other than loan guarantees or loans fulfilling the conditions set out in point 25 (a), must fulfil the general principles applying to rescue aid and must not consist in structural financial measures related to the bank's own funds.
- (53) In the present case, the form of the measures complies with the above requirement. The liquidity facility is provided in the form of loans to Roskilde Bank, pursuant to the terms of the Loan Agreement concluded between the Danish National Bank and Roskilde Bank. The state guarantee will cover any loss that the Danish

⁸ See footnote to point 25(a) of the Guidelines

National Bank might suffer as a non-subordinated creditor under the Loan Agreement and that exceeds DKK 750 million.

- (54) Furthermore, point 25(a) of the Guidelines requires that the loan be granted at an interest rate at least corresponding to those that apply to loans to healthy firms and, in particular, to the reference rates set by the Commission. The Commission notes that the interest rate for the liquidity facility is set at the Danish National Bank's lending rate (currently 4.6%) with the addition of two percentage points (making a rate of 6.6%). In addition, this interest rate is higher than the reference rate for Denmark, since it is more than 100 basis points higher than the base rate for Denmark as per 1 July 2008 (4.81%), in accordance with the Commission Communication on the revision of the method for setting the reference and discount rates⁹. As regards the state guarantee, since it is linked to the loan agreement, the same arguments as for the loan conditions apply.
- (55) Point 25(a) of the Guidelines also requires that any loan must be reimbursed and any guarantee must come to an end within a period of not more than six months after the disbursement of the first instalment to the firm.
- (56) As regards duration, the loan agreement may be terminated at any time without notice by the Danish National Bank. It does not contain any specific termination date. In the case of the state guarantee, no formal termination date has been set. However, since the Danish authorities have undertaken in their notification, in accordance with point 25(c) of the Guidelines, to submit to the Commission no later than six months after the loan agreement took effect, i.e. after 11 July 2008, a restructuring plan or liquidation plan or proof that the loans have been fully reimbursed and the state guarantee terminated, the Commission considers that these measures fulfil the requirements concerning time limits in the Guidelines¹⁰.
- (57) Second, according to point 25(b) of the Guidelines, rescue aid must be warranted on the grounds of serious social difficulties and have no unduly adverse spill-over effects on other Member States.
- (58) The aid measure is provided in order to prevent the potential negative consequences pertaining to Roskilde Bank's specific financial difficulties. The bank has 105 000 customers, 32 805 shareholders, 655 employees and 26 branches, which would be immediately affected if it suspended payments or commenced insolvency proceedings. A run on the bank would have serious social and economic consequences.
- (59) The aid does not have unduly adverse effects on other Member States. Pursuant to the loan agreement, Roskilde Bank may use the loan only for its day-to-day activities, and it cannot invest in new activities or behave aggressively in commercial markets. The control mechanism of the loan agreement ensures that Roskilde Bank does not draw on the credit facility in ways that may have adverse spill-over effects on other Member States. The high level of the interest rate means that Roskilde Bank will draw on the credit facility only when all other, less costly, sources of liquidity have been exhausted. The board of directors of Roskilde Bank has committed itself to using its best endeavours to realise a sale of the bank, or part of it, within six months at the

⁹ OJ C 14, 19.1.2008, p. 6.

¹⁰ See paragraph 45 of the Commission Decision regarding Northern Rock (NN 70/2007, United Kingdom). C(2007) 6127 final, OJ C 43, 16.2.2008, p. 1.

latest, unless it fully repays the loan to the Danish National Bank. Moreover, the fact that Det Private Beredskab has decided to grant Roskilde Bank a guarantee to maintain stability in the sector suggests that the Danish banking sector does not consider that the loan and the guarantee agreement will produce detrimental effects.

- (60) The Commission considers therefore that the conditions set out in point 25(b) of the Guidelines are met.
- (61) Third, in line with point 25(c) of the Guidelines, the Danish authorities have undertaken to submit to the Commission, no later than six months after 11 July 2008, a restructuring plan or liquidation plan or proof that the loan has been reimbursed in full and/or that the guarantee has been terminated.
- (62) Fourth, point 25(d) of the Guidelines requires that the rescue aid must be restricted to the amount needed to keep the firm in business for the period during which the aid is authorised. Since the liquidity facility is constructed in such a way that, on each occasion, Roskilde Bank receives only the liquidity it needs for the following two weeks, as approved by an independent auditor, it must be assumed that the bank is in no position to behave aggressively on the market. This is in line with the Guidelines, where the liquidity needs for up to six months are considered the minimum amount necessary.
- (63) In addition, a number of other elements ensure that Roskilde Bank does not make more use of the credit facility than is necessary to prevent a run on the bank. First, the credit facility can be used only to maintain Roskilde Bank's present activities and cannot be used to invest in new activities or behave aggressively in commercial markets. Second, the high interest rate means that Roskilde Bank will draw on the credit facility only after all other, less costly, options have been exhausted. Third, the board of directors has committed itself to using its best endeavours to sell all, or a part of, the bank within no more than six months unless the bank fully repays the loans to the Danish National Bank. The Commission therefore considers that there are sufficient guarantees that the aid amount is indeed limited to the strictly necessary minimum and that this condition is met.
- (64) Fifth, the condition in point 25(e) of the Guidelines is satisfied, since Roskilde Bank has never before received rescue or restructuring aid.

Conclusion on compatibility

- (65) Based on the foregoing assessment, the Commission has concluded that the aid measures constitute compatible rescue aid.

4 DECISION

- (66) The Commission has concluded that the guarantee provided by Det Private Beredskab and the portion of the liquidity facility covered by the guarantee from Det Private Beredskab do not constitute state aid, whereas the remainder of the liquidity facility covered by the state guarantee, together with the state guarantee, constitute state aid pursuant to Article 87(1) of the EC Treaty. As the aid measures constitute a single package and as part of that package was put into effect in breach of Article 88(3) of the EC Treaty, they constitute unlawful state aid.
- (67) As these measures are, however, compatible with the common market as rescue

aid pursuant to Article 87(3)(c) of the EC Treaty, the Commission raises no objection against them.

- (68) The Commission expects the Danish authorities to respect their commitment to submit to the Commission, no later than six months after 11 July 2008, a credible and substantiated restructuring plan or liquidation plan or documentation showing that the aid granted has been repaid in full and that the state guarantee has been terminated.
- (69) The Commission emphasises that the aid has been authorised until 11 January 2009 or, where the Danish authorities have submitted a credible and substantiated restructuring plan within that period, until the Commission has reached a decision on the plan. The Commission would remind the Danish authorities that it will require any aid to be reimbursed to the extent that the measure remains in force beyond the approved period and that this is found not to be compatible with the common market.
- (70) If this letter contains confidential information that must not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission has not received a reasoned request for confidentiality by that deadline, you will be deemed to have agreed to the disclosure to third parties of the content of this letter and to the publication of the full text of the letter in the authentic language on the internet site:
http://europa.eu.int/comm/secretariat_general/sgb/state_aids.

Any request for confidentiality should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State aid Registry
Rue de la Loi/Wetstraat, 200
B-1049 Brussels
Fax No: (+32)-2-296.12.42

Yours faithfully,
For the Commission

Neelie KROES
Member of the Commission