PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION POLICY

COMMISSION

STATE AID — FRANCE, BELGIUM, LUXEMBOURG

State aid C 9/09 (ex NN 49/08, 50/08 and 45/08) — Aid to Dexia in the form of guarantees for bonds and certain assets, 'liquidity assistance' and a capital increase — Belgium, France, Luxembourg

Invitation to submit comments pursuant to Article 88(2) of the EC Treaty

(Text with EEA relevance)

(2009/C 181/09)

By letter of 13 March 2009, reproduced in the authentic language on the pages following this summary, the Commission notified Belgium, France and Luxembourg of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty concerning the above mentioned aid.

Interested parties may submit their comments on the measures in respect of which the Commission is initiating the procedure within one month of the date of publication of this summary and the following letter, to:

European Commission
Directorate-General for Competition
State Aid Registry
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Fax +32 22961242

These comments will be communicated to Belgium, France and Luxembourg. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

SUMMARY

1. PROCEDURE

1. By decision of 19 November 2008, the Commission decided not to raise any objections to the liquidity assistance operation and the guarantee for Dexia bonds. The Commission considered these measures to be rescue aid and therefore compatible with the common market on the basis of Article 87(3)(b) of the Treaty, and authorised the measures for a period of six months from 3 October 2008, specifying that after that time the Commission would have to re-evaluate the aid as a structural measure.

2. A restructuring plan was notified to the Commission by France on 16 February 2009, by Luxembourg on 17 February 2009 and by Belgium on 18 February 2009.

2. FACTS

3. The recipient of the aid is Dexia, a financial group active in the banking and insurance sectors, listed on the Euronext Paris and Euronext Brussels stock exchanges; on 30 June 2008 its market capitalisation was EUR 11,7 billion. Dexia was formed in 1996 by the merger of France's Crédit Local and Belgium's Crédit Communal. It specialises in loans to local authorities but also has 5,5 million private customers, mainly in Belgium.

4. Like the rest of the world banking industry, since September 2008 Dexia has been facing an acute financial crisis marked by a shortage of liquidity and a sustained increase in its cost. In 2008, the authorities in Belgium, France and Luxembourg (the Member States) introduced a number of measures to assist Dexia, including a capital increase of EUR 6,4 billion underwritten by the Member States and Dexia's historical shareholders, a mechanism for guaranteeing bonds issued by Dexia, and liquidity assistance (LA) provided by the Banque Nationale de Belgique in cooperation with the Banque de France. The Member States undertook at the time to submit a restructuring plan for the Dexia Group, within six months of 3 October 2008, setting out measures to ensure its

long-term viability. Moreover, Dexia, through its American subsidiary Financial Security Assurance (FSA), is also one of the leading players in credit enhancement. This activity has been particularly hard hit by the crisis in the US property market and, since the first quarter of 2008, FSA has sustained losses which have been steadily revised upwards ever since. FSA's extremely difficult position has therefore forced Dexia to consider a number of scenarios with a view to limiting its exposure through its subsidiary, namely liquidation, a gradual rundown of activities, or sale. It was this last option that was finally chosen and a sale agreement was concluded with Assured Guaranty on 14 November 2008.

5. A restructuring plan was accordingly notified to the Commission by France on 16 February 2009, by Luxembourg on 17 February 2009 and by Belgium on 18 February 2009. This plan covers:

— the sale of FSA,

— a reduction in the scale of financing of local authorities and companies (public and wholesale banking), on the one hand, and financial markets (treasury and financial markets), on the other,

— a reduction in the group's risk profile, especially in terms of liquidity,

— a 15 % reduction in cost base over three years,

— behavioural measures (such as the elimination of the variable components of the remuneration of members of the management committees of Dexia and its principal subsidiaries).

6. France, Belgium and Luxembourg propose to maintain the bond-guarantee and liquidity assistance measures during the restructuring period, if necessary until October 2010.

7. France and Belgium also propose to guarantee the assets in FSA's financial products (FP) portfolio up to a total amount of USD 16,9 billion, excluding assets with a total nominal value of USD 4,5 billion covered by Dexia directly. According to the Belgian and French authorities, the state guarantee is an essential precondition for any agreement for the sale of FSA.

3. ASSESSMENT

8. The Commission has concluded that the capital increase and the guarantee of Financial Security Assurance's financial products (FP) portfolio (the FSA measure) constitute State aid to Dexia within the meaning of Article 87(1) of the EC Treaty, as do the bond guarantee and the liquidity assistance measure.

9. Given (i) the importance of the sale of FSA to Dexia's restructuring plan, (ii) the greater cost to the bank of the other possible options (liquidation of FSA or gradual rundown of its activities) and (iii) the need for the sale of FSA to be accompanied by a guarantee from the Belgian and French States, the Commission has decided, in accordance with point 16 of the Community Guidelines on state aid for rescuing and restructuring firms in difficulty (the guidelines) [1], not to raise any objection to the guarantee as such, the asset portfolio it covers, and the level of losses incurred by Dexia under the guarantee. It considers it to be a necessary, appropriate and proportionate structural measure which must be implemented as a matter of urgency even before the restructuring plan is examined.

10. However, the Commission has also examined the FSA measure in the light of its Communication on the Treatment of Impaired Assets [2] and is unable, on the basis of the information provided, to confirm that the valuation of the assets guaranteed complies with the methodological principles set out in the Communication. It is also unable to decide at this stage whether the States' remuneration is adequate.

11. The Commission is unable to accept that the restructuring plan notified on 16, 17 and 18 February and the associated measures (capital increase and extension of the duration of the guarantee for Dexia bonds and of the LA operation authorised by the decision of 19 November 2008), are compatible with the EC Treaty, particularly in the light of the guidelines.

12. While recognising the advantages of reducing the size of Dexia's balance sheet, the Commission has reservations regarding the ability of the restructuring plan to ensure Dexia's long-term viability. Firstly, it would appear that the FSA FP portfolio retained by Dexia could continue to be a burden in the future on the results of the group, which despite the Member States' guarantee will continue to bear a sizeable tranche of first losses. Moreover, a reduction in the differential between Dexia's resources and its long-term liabilities (liquidity gap) is crucial to the group's long-term viability. However, the reduction in this gap is based on assumptions regarding the sale of assets (notably government bonds) and the taking of additional deposits which, given the current state of the market, are insufficiently realistic. Thus, it is not clear from an examination of the restructuring plan that Dexia will in future be able to find sources of long-term financing. In particular, the Commission doubts whether maintaining the fee for the guarantee for Dexia bonds with a maturity of less than one month at 25 basis points can provide the group

[1] OJ C 244, 1.10.2004, p. 2.

[2] Communication from the Commission on the Treatment of Impaired Assets in the Community Banking Sector (25.2.2009).

with stable sources of financing, despite being compatible with the recommendations of the European Central Bank [1].

13. Further, the Commission has doubts as to the compatibility of the measures proposed as part of the restructuring plan with the obligation for recipient undertakings to offset aid granted by measures designed to prevent excessive distortion of competition. Specifically, Dexia is planning to increase its production of loans to the public sector in certain markets, including Belgium, where its market share is already very large. The Commission also has reservations about the possibility of accepting certain activity-reduction measures, such as the sale of FSA, as a compensatory measure, since they appear necessary to restore the group's viability.

14. In addition, Dexia's participation in the restructuring costs, while significant, remains conditional on the group's ability to liquidate certain assets, notably its portfolio of government bonds. However, the substantial volume of this portfolio and the current state of the market are such that an orderly disposal of these bonds will not be possible. The Commission also has doubts about the inclusion of the new drop in turnover as part of Dexia's real contribution within the meaning of the guidelines.

[1] Recommendations of the Governing Council of the European Central Bank on government guarantees for bank debt (20.10.2008).