



EUROPEAN CENTRAL BANK

EUROSYSTEM

**LEGAL WORKING PAPER SERIES**

**NO 8 / JULY 2009**

B EZB EKT EKP

2000

**NATIONAL RESCUE  
MEASURES IN  
RESPONSE TO THE  
CURRENT FINANCIAL  
CRISIS**

by Ana Petrovic and Ralf Tutsch

R006B2



EUROPEAN CENTRAL BANK

EUROSYSTEM



## LEGAL WORKING PAPER SERIES

NO 8 / JULY 2009

# NATIONAL RESCUE MEASURES IN RESPONSE TO THE CURRENT FINANCIAL CRISIS

by Ana Petrovic  
and Ralf Tutsch<sup>1</sup>



In 2009 all ECB publications feature a motif taken from the €200 banknote.

This paper can be downloaded without charge from <http://www.ecb.europa.eu> or from the Social Science Research Network electronic library at [http://ssrn.com/abstract\\_id=1430489](http://ssrn.com/abstract_id=1430489).

<sup>1</sup> The authors are lawyer-linguists in the Legal Services of the European Central Bank (ECB). They may be contacted by e-mail: [ana.petrovic@ecb.europa.eu](mailto:ana.petrovic@ecb.europa.eu); [ralf.tutsch@ecb.europa.eu](mailto:ralf.tutsch@ecb.europa.eu). The authors would like to express their gratitude to Antonio Sáinz de Vicuña, Director General of the ECB's Legal Services, and Petra Senkovic, Assistant General Counsel/Head of the National Law Section, for their support in the preparation of this paper. In addition the authors would like to acknowledge the significant contribution made by their colleagues to this paper, and in particular would like to thank the country rapporteurs of the ECB legal services, namely Dr. Bernd Fletzberger, Sandrine Letocart, Ivo Karshev, Phoebus Athanassiou, Zdenek Foit, Jørgen Muldgaard, Järvi Kotkas, Anni Pasanen, Bernadette Ehlers, Ann-Kathrin Wahl, Triantafyllos Karmaniolas, Asimina Koutsoukou, Afroditi Tialiou, Tamás Zahorszky, Erika Csongrádi, Niall Lenihan, Adele Kendall Larsen, Laura Fabiani, Antonio Luca Riso, Marcis Apinis, Rūta Šmažienė, Onenne Partsch, Bernadette Muscat, Paul Edwin Hoyer, Sarah Vandendriessche, Krzysztof Wilczyński, Maria da Graça Peres, Ana-Maria Georgescu, Sergiu-Ionuț Dirvaru, Milan Vetrak, Metoda Paternost-Bajec, Lea Volovec, Ignacio Sánchez-Román, Olof Dandanelle, Charles Hagon, Anne McNamara and Paul Skidmore.

© European Central Bank, 2009

**Address**

Kaiserstrasse 29  
60311 Frankfurt am Main, Germany

**Postal address**

Postfach 16 03 19  
60066 Frankfurt am Main, Germany

**Telephone**

+49 69 1344 0

**Website**

<http://www.ecb.europa.eu>

**Fax**

+49 69 1344 6000

*All rights reserved.*

*Any reproduction, publication and reprint in the form of a different publication, whether printed or produced electronically, in whole or in part, is permitted only with the explicit written authorisation of the ECB or the author(s).*

*The views expressed in this paper do not necessarily reflect those of the European Central Bank.*

*The statement of purpose for the ECB Working Paper Series is available from the ECB website, <http://www.ecb.europa.eu/pub/scientific/wps/date/html/index.en.html>*

ISSN 1830-2688 (print)

ISSN 1830-2696 (online)

# CONTENTS

Foreword	4
Abstract	5
Introduction	6
Country chapters	
Austria	9
Belgium	13
Bulgaria	17
Cyprus	18
Czech Republic	19
Denmark	19
Estonia	25
Finland	27
France	30
Germany	35
Greece	41
Hungary	44
Ireland	46
Italy	50
Latvia	54
Lithuania	56
Luxembourg	59
Malta	60
The Netherlands	60
Poland	63
Portugal	65
Romania	68
Slovakia	68
Slovenia	70
Spain	73
Sweden	76
The United Kingdom	79
Appendices	86
European Central Bank Legal Working Paper Series	102



## FOREWORD

The current financial crisis is unprecedented and has dramatically shown the weaknesses of global interconnected financial markets, especially concerning the underestimation and underpricing of risk. These weaknesses have been and remain to be addressed by European legislators, both in the short term and in the long term.

With regard to long-term measures to counter the crisis, a review of the regulatory and supervisory framework for the financial sector is vital. It has become obvious that better coordination of supervision at a European level is required. Here, both macro- and micro-prudential supervision must be addressed.

With regard to macro-prudential supervision, i.e. supervision of the financial system as a whole, the report of the de Larosière group envisages that the ECB will play a central role. Indeed, the ECB is at the heart of the ESCB, collecting, pooling and analysing all the information crucial for the assessment of the banking sector, which is an essential element for decision-making in the supply of liquidity to the euro markets. Becoming macro-supervisor is, therefore, a natural development of its monetary functions, which requires an enhancement of its means and tools, and a clear and legally sound stability mandate.

As a macro-supervisor, the ECB will need to interact in a cooperative way and in both directions with the micro-supervisors, whose EU-wide dimension needs an important overhaul of existing structures.

This paper deals with the short-term measures taken by EU Member States to counter the immediate effects of the crisis, as adopted from October 2008 onwards. The intention is to provide a detailed overview of such rescue measures.

With regard to the measures adopted in response to the crisis, the ECB has played a guiding role, for example, through the adoption of its Recommendations on guarantee and recapitalisation schemes and the Guiding principles on bank asset support schemes. The ECB's Directorate-General Legal Services has also provided guidance in assessing the legal implications of the crisis measures, in particular, by taking the lead role in preparing the ECB's opinions issued in response to consultation requests from the Member States.

With regard to the challenges identified above, reform of worldwide financial sector legislation has only yet started. This paper is intended to serve as a useful tool for prospective legislative activities in this field.

*Antonio Sáinz de Vicuña*  
*Director General of the ECB's Legal Services*

## **ABSTRACT**

Faced with one of the most severe financial crises in history, the European and national authorities have introduced a number of short-term measures aimed at stabilising the financial system and avoiding spillover to the wider economy.

This legal working paper provides a comprehensive overview of the financial crisis measures introduced by the 27 EU Member States from 1 October 2008 through 1 June 2009. A general overview of the individual Member State's rescue schemes as well as details on state guarantee schemes, recapitalisation measures, state loans, the acquisition of impaired assets and nationalisation (where applicable) is set out for each Member State. In addition, individual measures with regard to individual banks are included in the country chapters. Appendix I provides an overview of the deposit-guarantee schemes of the Member States in the form of a chart. Relevant European Central Bank opinions and non-consultation letters can be found in Appendix II and Appendix III contains a table summarising the Member States measures.

## INTRODUCTION<sup>2</sup>

The aim of this paper is to provide a comprehensive overview of national rescue measures adopted by the EU Member States in response to the current global financial crisis, with a view to stabilising their financial systems and avoiding spillover to the wider economy. Such a response has become necessary in the face of one of the most severe financial crises in history. This paper takes into account measures adopted by Member States from 1 October 2008 to 1 June 2009.

By way of background, there are a number of factors considered to be inherently responsible for the current financial crisis. These include: (i) macroeconomic issues such as low interest rates in the United States that helped create a widespread housing bubble filled by insufficiently regulated mortgage lending and securitisation financing techniques; (ii) poor risk management by issuers of structured financial products; (iii) the underestimation by credit rating agencies of the credit default risks of instruments collateralised by subprime mortgages; (iv) corporate governance failures in financial firms, where the complex nature of financial products was not understood properly; and (v) regulatory, supervisory and crisis management failures<sup>3</sup>.

One of the main reasons for the crisis has been the rapid deterioration of the US financial sector and its subsequent effects in Europe. This crisis has led to the significant weakening of the financial situation of a number of financial institutions and is being felt throughout the world as a result of the increasingly interconnected global economy. Financial institutions have faced a crisis of confidence that has led to strong disturbances on the interbank market and a severe drop in stock and commodity markets. The crisis of confidence dramatically worsened in September 2008 on account of the insolvency of Lehman Brothers, as a result of which banks practically ceased lending to each other. In October 2008, even fundamentally sound financial institutions were facing serious difficulties in accessing liquidity. The sheer depth of the crisis reached by this event required unprecedented intervention on the European and national level.

### *European measures to combat the crisis*

The Member States reacted to this crisis by introducing a number of emergency measures ranging from State guarantee schemes to nationalisation provisions. The guarantee schemes are aimed at ensuring the supply of liquidity to the financial system and increasing the level of guarantees for bank deposits (or temporarily providing guarantees for all deposits) in order to prevent ‘bank runs’. The recapitalisation measures were introduced to strengthen the capital base of fundamentally sound financial institutions, improve the functioning and stability of the banking system as a whole and ensure proper financing to the wider economy. In addition, liquidity positions of these financial institutions have been enhanced through the provision of loans. A number of Member States have introduced measures aimed at relieving financial institutions of impaired assets, whereby the State directly takes over the risks inherent in the assets or transfers them to ‘bad banks’. Finally, a number of Member States have resorted to nationalisation of distressed financial institutions, with a view to restructuring and re-entry into the market.

---

<sup>2</sup> The information set out in this paper is compiled from a number of sources, most of which are external to the European Central Bank (ECB), and therefore the authors can not confirm the completeness or accuracy of the information provided. The responsibility for any errors and omissions in this paper rests solely with the authors.

<sup>3</sup> This brief overview draws on the Report of 25 February 2009 from the high-level group on financial supervision in the EU, chaired by Jacques de Larosière (hereinafter the ‘de Larosière report’), which contains detailed information on the causes of the current financial crisis and steps to be taken in the area of future European financial regulation and supervision. It is available on the European Commission’s website at [ec.europa.eu/internal\\_market/finances/docs/de\\_larosiere\\_report\\_en.pdf](http://ec.europa.eu/internal_market/finances/docs/de_larosiere_report_en.pdf).

It is estimated that the EU governments have committed more than EUR 3 trillion to bail out credit institutions with guarantees or cash injections in the wake of the global financial crisis.

### *The role of the EU*

The measures taken by the Member States to support the financial sector and to ensure financial stability were subject to close coordination on the European level. Here, the Council of the European Union, the European Commission and the ECB played a prominent role.

At the Economic and Financial Affairs Council (Ecofin) meeting on 7 October 2008, common principles to guide governmental actions were adopted. According to these principles:

- interventions should be timely and the support should in principle be temporary;
- the interests of taxpayers should be protected;
- existing shareholders should bear the due consequences of the intervention;
- governments should be in a position to bring about a change of management;
- management should not retain undue benefits;
- governments may have, *inter alia*, the power to intervene in remuneration;
- legitimate interests of competitors must be protected, in particular through the State aid rules;
- negative spillover effects should be avoided.

On 12 October 2008, the Heads of State of the euro area issued a ‘Declaration on a concerted European action plan of the euro area countries’<sup>4</sup> (hereinafter the ‘Declaration’), in which they agreed on common principles to be followed by the EU and euro area governments, central banks and supervisors to avoid national measures adversely affecting the functioning of the single market and other Member States. This coordinated approach includes initiatives aimed at ensuring appropriate liquidity, facilitating the funding of banks by various means, providing additional capital resources to financial institutions and recapitalising distressed banks. The European Council endorsed these principles for all Member States on 16 October 2008.

The Commission, in the absence of a comprehensive pan-European supervisory, regulatory and legal framework for the financial sector, provided for coordinating principles by issuing guidance on compliance by financial sector support schemes with State aid rules, the subsequent Commission Communications specifically targeting recapitalisation measures<sup>5</sup> and the treatment of impaired assets<sup>6</sup>, and support to the real economy<sup>7</sup>. Further, the Commission examined, under State aid rules, the national rescue packages introduced by the Member States, as well as national rescue measures with regard to specific financial sector entities and issued individual decisions.

The ECB’s expertise was widely relied on in this respect by the Commission and the Member States. First, the ECB issued recommendations on the fee structure with regard to guarantees<sup>8</sup>,

---

<sup>4</sup> Available on the French Presidency website at [www.ue2008.fr](http://www.ue2008.fr).

<sup>5</sup> Communication from the Commission - The recapitalisation of financial institutions in the current financial crisis: limitations of aid to the minimum necessary and safeguards against undue distortions of competition (OJ C 10, 15.1.2009, p. 2).

<sup>6</sup> 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).

<sup>7</sup> Temporary Community framework for State aid measures to support access to finance in the current economic and financial crisis (OJ C 83, 7.4.2009, p. 1).

<sup>8</sup> See Recommendations of the Governing Council of the European Central Bank on government guarantees for bank debt of 20 October 2008, (hereinafter the ‘ECB Recommendation on Guarantees’) as published on the ECB’s website at [www.ecb.europa.eu](http://www.ecb.europa.eu) (section ‘Publications’).



recapitalisation measures<sup>9</sup> and impaired assets<sup>10</sup>, which were endorsed by the Commission in its Communications and by Member States in their national measures. Second, the ECB evaluated the national legislative measures to counter the crisis in the framework of its advisory role by issuing opinions on these legislative projects.

### *The Member States*

The individual Member States were affected by the crisis in different ways, depending on their banking system structure and economic situation. Therefore, apart from reforming their deposit-guarantee schemes<sup>11</sup>, not all of the Member States put in place measures countering the crisis, and remarkable differences exist among the Member States that introduced such measures, both with regard to the instruments made available, the amounts released and whether any of the measures have actually been used. Most Member States reacted already in October 2008 with a set of measures; other Member States responded only thereafter.

However, there are also some common points; by far the majority of the Member States introduced a guarantee scheme in order to enhance confidence in the lending sector. Also, recapitalisation measures were introduced by a large number of Member States in order to help credit institutions overcome the crisis. As regards the acquisition of impaired assets, a number of the Member States have put in place measures to relieve credit institutions of such assets.

### *The way forward*

The crisis also revealed regulatory shortcomings on the European and national level with regard to the financial sector. The de Larosière report presents ways to overcome the crisis. These ways forward include a new regulatory agenda, stronger coordinated supervision and effective risk management procedures.

### *Structure of this paper*

This paper is structured in such a way that each of the chapters provides a summary of an individual Member State's measures, and in particular, focuses on guarantee schemes, recapitalisation measures, loans to banks, the acquisition of impaired assets and nationalisation (where applicable). The paper also contains three Appendices. Instead of addressing national deposit-guarantee schemes in the body of the text, we have chosen to provide this information in the form of a chart for ease of comparability (see Appendix I). In addition, relevant ECB opinions and non-consultation letters can be found in Appendix II and Appendix III contains a table summarising the Member States measures.

---

<sup>9</sup> See Recommendations of the Governing Council of the European Central Bank on the pricing of recapitalisations of 20 November 2008, as published on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu) (section 'Publications').

<sup>10</sup> See Guiding principles for bank asset support schemes of 25 February 2009, as published on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu) (section 'Publications').

<sup>11</sup> This reform took place in the framework of Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay (OJ L 68, 13.3.2009, p. 3).

## AUSTRIA

The Austrian Government adopted a number of measures to help stabilise the financial markets, including the provision of guarantees, recapitalisation and State loans, as well as legislation on nationalisation<sup>12</sup>. These measures came into effect on 27 October 2008.

### 1. STATE GUARANTEES

#### 1.1 The State guarantee scheme

State guarantees are based on two separate legal acts. Under the IBSG, the Minister for Finance may provide guarantees for bonds issued by credit institutions and insurance companies to a maximum amount of EUR 75 billion<sup>13</sup>. Within this scheme, EUR 4 billion are guaranteed for liabilities of and losses incurred by *Oesterreichische Clearingbank AG*<sup>14</sup> (OeCAG), a newly established clearing house to facilitate the refinancing of banks on the interbank market. The FinStaG authorises the Minister for Finance to guarantee liabilities of credit institutions or insurance companies to a maximum amount of EUR 15 billion<sup>15</sup>.

##### *Eligible institutions*

Eligible under this scheme are Austrian credit institutions and insurance companies.

##### *Eligible liabilities*

Guarantees may be provided for sureties and similar assumptions of liability in relation to liabilities and losses of OeCAG, notes issued by OeCAG and by eligible institutions.

##### *Issue and maturity*

State guarantees under the IBSG may be issued until 31 December 2009. The FinStaG is generally open-ended. However, Austria gave a commitment to the European Commission not to take measures under the IBSG and the FinStaG after 30 June 2009 unless the Commission approves a prolongation of the Austrian State aid scheme. The maximum maturity of the instruments is three years, and in exceptional cases five years.

##### *Conditions*

Conditions for State guarantees include fees and interest based on market conditions<sup>16</sup>, a sustainable business policy and an adequate capital ratio. Furthermore, institutions are obliged

<sup>12</sup> These measures are based on the Intermarket Support Act (*Interbankmarktstärkungsgesetz* (IBSG)), BGBl. I 2008/136, the Law on financial market stability (*Finanzmarktstabilitätsgesetz* (FinStaG)) BGBl. I 2008/136 and amendments to the Law of 2000 on ÖIAG (*ÖIAG Gesetz 2000*), the Law on banking (*Bankwesengesetz*), the Law on the stock exchange (*Börsegesetz*), the Law on the Financial Markets Authority (*Finanzmarktaufsichtsbehördengesetz*) and the Federal Law of 2008 on finance (*Bundesfinanzgesetz 2008*). The aid scheme was approved by the Commission in its Decision of 9 December 2008 in Case No N 557/08 *Austrian scheme* (OJ C 3, 8.1.2009, p. 2). Additional information is available on the Federal Ministry of Finance's website at [english.bmf.gv.at/Ministry/IBSG-FinStaG\\_EN.pdf](http://english.bmf.gv.at/Ministry/IBSG-FinStaG_EN.pdf).

<sup>13</sup> In the meantime, the Minister for Finance proposed State guarantees for Austrian institutions for a total amount of EUR 10 billion. Under the draft law the amount committed to the Interbank Market Enhancement Scheme is reduced from EUR 75 to EUR 65 billion.

<sup>14</sup> See the OeCAG's website at [www.clearingbank.at](http://www.clearingbank.at).

<sup>15</sup> This maximum amount also includes the funds available for recapitalisation, i.e. the amount available for guarantees is the amount not used for recapitalisation measures under the FinStaG.

<sup>16</sup> The fee provisions comply with the ECB Recommendation on Guarantees. They envisage a fee of 0.5 % if the duration does not exceed one year. In all other cases the fee is calculated on the basis of the lower of the following values plus a surcharge of 0.5 % per year of the liability range that has been granted: (i) the median

to provide lending to corporate and individual customers based on market conditions. Internal compensation schemes must be reviewed. Dividends may only be paid to a limited extent. Maintenance of jobs is also a condition, as well avoiding the distortion of competition.

## 1.2 Individual guarantee measures

**Erste Bank Group AG**<sup>17</sup> was granted guarantees in the amount of EUR 6 billion; so far, it received guarantees of EUR 4 billion and CHF 75 million (approximately EUR 49.7 million).

**Kommunalkredit AG**<sup>18</sup> was granted guarantees in the amount of EUR 5.2 billion and CHF 250 million (approximately EUR 165.7 million).

**Oesterreichische Clearingbank AG**<sup>19</sup> was granted a guarantee in the amount of EUR 4 billion.

**Österreichische Volksbanken AG**<sup>20</sup> was granted guarantees in the amount of EUR 3 billion; so far, it received guarantees of EUR 2 billion.

**Raiffeisen Zentralbank Österreich AG**<sup>21</sup> was granted guarantees in the amount of EUR 4.25 billion.

**Hypo Alpe-Adria-Bank International AG**<sup>22</sup> was granted a guarantee in the amount of EUR 1.35 billion which has not been drawn yet.

## 2. RECAPITALISATION

### 2.1 The recapitalisation scheme

The Austrian recapitalisation measures are based on the FinStaG. To carry out these measures, a separate entity, *Finanzmarkteteiligung AG* (FIMBAG), was established. It is a wholly-owned subsidiary of *Oesterreichische Industrieholding AG* (ÖIAG), the State-owned investment and privatisation agency. FIMBAG is responsible for the implementation of agreements between the Federal Minister for Finance and the respective institutions. The scheme allows for a total of EUR 15 billion for recapitalisation and other measures under the FinStaG (plus any additional amount not used under the IBSG guarantee scheme).

#### *Eligible institutions*

Austrian credit institutions and insurance companies are eligible for recapitalisation.

#### *Eligible instruments*

Recapitalisation can take the following forms: a guarantee of liabilities, an assumption of liability vis-à-vis eligible institutions, a grant of loans, the provision of own funds, the acquisition of shares and partnership interests or convertible bonds and the acquisition of

---

of the credit default swap (CDS) spread for debt instruments of the beneficiary with a five-year term in the reference period from 1 January 2007 until 31 August 2008; (ii) the median of the CDS-spread for debt instruments of the beneficiary's rating category with a five-year term in the reference period from 1 January 2007 until 31 August 2008, on the basis of a sample of large banks in the euro area as defined by the Eurosystem.

<sup>17</sup> Details of the guaranteed notes are available on the Federal Ministry of Finance's website at: [http://www.bmf.gv.at/Finanzmarkt/ManahmenpaketzurSic\\_9175/aBelebungdesInterba\\_9176/BundeshaftungfrWert\\_9183/start.htm](http://www.bmf.gv.at/Finanzmarkt/ManahmenpaketzurSic_9175/aBelebungdesInterba_9176/BundeshaftungfrWert_9183/start.htm). All currencies are converted to euro using the interbank rate of 1 June 2009.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

assets of the respective entity by way of merger pursuant to Section 235 of the Law on companies (*Aktiengesetz*).

### **Timing**

For the limits on timing see the section above on guarantees.

### **Conditions**

Recapitalisation is subject to the following conditions: (i) a fee or interest; (ii) the beneficiary institution's business model must be sustainable; (iii) funds are to be provided in particular to SMEs and mortgage loans must be provided to private households; (iv) limitations on the remuneration of directors, employees and third parties; (v) minimum capital requirements; (vi) limits on dividend distributions; (vii) preservation of jobs; (viii) no distortion of competition; and (ix) provisions on the scope of information to be provided.

With regard to participation capital, the conditions applying to beneficiary institutions depend on whether the respective institution is sound or distressed. Sound banks are required to pay interest subject to market conditions and of at least 9.3 % annually. That fee may be reduced to 8 % under certain conditions. During the term of the measure, dividend payments to existing shareholders may not exceed 17.5 % of the distributable profits before allocation of reserves unless private investors have subscribed to the capital increase at a rate of at least 30 %. For distressed banks, the fee required amounts to at least 10 %<sup>23</sup>. However, no participation capital has been provided to distressed institutions as at 1 June 2009. Any participation acquired must be reprivatised as soon as the capital market reasonably allows.

## **2.2 Individual recapitalisation measures under the FinStaG**

The Government purchased participation capital securities of:

**Erste Group Bank AG**<sup>24</sup> on 10 March 2009 in the amount of EUR 1 billion,

**Hypo Alpe Adria AG**<sup>25</sup> on 23 December 2008 in the amount of EUR 900 million,

**Österreichische Volksbanken AG**<sup>26</sup> in March 2009 in the amount of EUR 1 billion, and

**Raiffeisen Zentralbank Österreich AG**<sup>27</sup> in March 2009 in the amount of EUR 1.75 billion.

<sup>23</sup> For further information see the Commission Decision in Case No N 557/08, above footnote 12.

<sup>24</sup> See the Erste Group press release available on its website at: [www.erstegroup.com/sPortal/ebgroup\\_en\\_0196\\_ACTIVE/Downloads/Investor\\_Relations/Blocked\\_Info\\_en/P\\_C\\_Ad\\_hoc\\_090429\\_en.pdf](http://www.erstegroup.com/sPortal/ebgroup_en_0196_ACTIVE/Downloads/Investor_Relations/Blocked_Info_en/P_C_Ad_hoc_090429_en.pdf). The Government agreed to purchase a second tranche of participation capital securities of up to EUR 224 million as of 28 May 2009 to the extent that such participation capital has not been purchased by the public in a combined offer by Erste Group Bank AG. Further, Erste Group is required to grant loans amounting to at least EUR 3 billion to commercial and private customers during the following three years.

<sup>25</sup> See Hypo Alpe Adria press release available on its website at: [www.hypo-alpe-adria.com/115/com\\_cms/group/home.nsf?OpenDatabase&KEY=610&END](http://www.hypo-alpe-adria.com/115/com_cms/group/home.nsf?OpenDatabase&KEY=610&END). Conditions include interest payments of 8 %. Hypo Alpe Adria may propose a buyer for the State's participation capital; it is obliged to repay 110 % of the capital and to grant loans to consumers and SMEs amounting to at least EUR 1.8 billion within the following three years. Furthermore, Hypo Alpe Adria must submit a cost efficiency programme and a report on the sustainability of its business model to the Minister for Finance. No bonus may be paid to managers for 2008 and subsequent years unless the State receives full dividend payments. No dividend payments exceeding 17.5 % of the distributable profits may be distributed to shareholders.

<sup>26</sup> See the Volksbanken press release available on its website at: [www.volksbank.com/m101/volksbank/m101\\_oevag/en/presse/details/090326\\_ps\\_kapital\\_pinkl.jsp?loclink=/m101/volksbank/m101\\_oevag&locincl=/m101\\_oevag](http://www.volksbank.com/m101/volksbank/m101_oevag/en/presse/details/090326_ps_kapital_pinkl.jsp?loclink=/m101/volksbank/m101_oevag&locincl=/m101_oevag). Conditions include interest payments of 9.3 % and an obligation to provide loans to companies and private individuals to the amount of at least EUR 2 billion during the following three years.

<sup>27</sup> See the Raiffeisen Group press release available on its website at:



**Kommunalkredit AG**<sup>28</sup> was granted a FinStaG guarantee in the amount of EUR 1.2 billion and **Constantia**<sup>29</sup> was granted a guarantee in the amount of EUR 400 million for receivables.

### 3. STATE LOANS

See the section above on recapitalisation.

### 4. NATIONALISATION

#### 4.1 Nationalisation scheme

The FinStaG also provides for nationalisation under certain circumstances. According to this legislation, the Minister for Finance, in consultation with the Federal Chancellor, is authorised to expropriate the shareholders of a credit institution where this is required to protect the national economy from severe disruption.

#### *Eligible institutions*

Institutions that may be subject to nationalisation include Austrian credit institutions and insurance companies where there is a risk that they cannot fulfil their obligations to creditors and the recapitalisation or loan measures mentioned above are inadequate or cannot be implemented in time.

#### *Timing*

Any participation acquired under the FinStaG must be reprivatised as soon as the capital market reasonably allows.

#### *Conditions*

Nationalisation is permitted subject to the payment of adequate compensation, which will be specified in implementing legislation. At the request of the owners, the Federal Minister for Finance will determine the amount of compensation. That decision will be suspended if the owner applies to the courts for a reassessment of the compensation. The entity will be reprivatised once the purpose of the measure has been achieved, taking due account of the capital market situation.

#### 4.2 Individual measures taken under the FinStaG

The Government nationalised **Kommunalkredit AG**<sup>30</sup> on 5 January 2009 by acquisition of 99.78 % of the shares for a symbolic price of EUR 2.

---

[www.rzb.at/eBusiness/rzb\\_template1/1026359884948-1026359885014\\_478916087539236341-478916087539236341-NA-NA-EN.html](http://www.rzb.at/eBusiness/rzb_template1/1026359884948-1026359885014_478916087539236341-478916087539236341-NA-NA-EN.html). Conditions include interest payments of 8 % and the obligation to provide loans to companies and private individuals to the amount of at least EUR 2 billion during the following three years.

<sup>28</sup> See Kommunalkredit press release: [http://www.kommunalkredit.at/uploads/Bilanzpresse1engl\\_2943\\_EN.pdf](http://www.kommunalkredit.at/uploads/Bilanzpresse1engl_2943_EN.pdf). This measure took effect on 24 April 2009.

<sup>29</sup> See the FMA press release, available at: [http://www.fma.gv.at/cms/site/EN/presseaussendung\\_detail.html?channel=CH0055&doc=CMS1224229412313](http://www.fma.gv.at/cms/site/EN/presseaussendung_detail.html?channel=CH0055&doc=CMS1224229412313). This measure took effect on 27 October 2008.

<sup>30</sup> See the Kommunalkredit press release available on its website at: [www.kommunalkredit.at/uploads/PRAussendung\\_031108\\_KA\\_en\\_n\\_2641\\_EN.pdf](http://www.kommunalkredit.at/uploads/PRAussendung_031108_KA_en_n_2641_EN.pdf).



## BELGIUM

In the context of a financial crisis, Belgian legislation provides, under a number of measures adopted under the same enabling clause, for the possibility to grant a State guarantee to cover various types of liabilities. Individual recapitalisation measures have been implemented on a case-by-case basis and are based on legislation existing prior to the current crisis.

### 1. STATE GUARANTEES

#### 1.1 The State guarantee schemes

The guarantee schemes have their legal basis in Article 117 *bis*, first subparagraph, of the Law of 2 August 2002 on the supervision of the financial sector and on financial services<sup>31</sup> (hereinafter the ‘Law on supervision and financial services’). This provision empowers the King to adopt Royal Decrees establishing schemes to grant State guarantees with regard to a set of liabilities listed in Article 117 *bis*<sup>32</sup>; the actual State guarantee is granted either directly under such Royal Decrees or by means of further implementing Ministerial Decrees. Article 117 *bis* entered into force on 9 October 2008. The amount committed to the scheme is not specified in the Law on supervision and financial services. However, the Royal Decrees

<sup>31</sup> *Wet betreffende het toezicht op de financiële sector en de financiële diensten/Loi relative à la surveillance du secteur financier et aux services financiers, Belgisch Staatsblad/Moniteur belge*, 4 September 2002, p. 39121. This provision was introduced by the Law of 15 October 2008 on measures promoting financial stability and in particular establishing a State guarantee for the provision of credit and other operations in the context of financial stability (*Wet houdende maatregelen ter bevordering van de financiële stabiliteit en inzonderheid tot instelling van een staatsgarantie voor verstrekte kredieten en andere verrichtingen in het kader van de financiële stabiliteit/Loi portant des mesures visant à promouvoir la stabilité financière et instituant en particulier une garantie d’État relative aux crédits octroyés et autres opérations effectuées dans le cadre de la stabilité financière (Belgisch Staatsblad/Moniteur belge*, 17 October 2008, p. 55634)). It is the legal basis for: (i) the Royal Decree of 16 October 2008 on the supervision of the financial sector and on financial services (*Koninklijk besluit tot uitvoering van artikel 117bis van de wet van 2 augustus 2002 betreffende het toezicht op de financiële sector en de financiële diensten/Arrêté royal pris en exécution de l’article 117bis de la loi du 2 août 2002 relative à la surveillance du secteur financier et aux services financiers, (Belgisch Staatsblad/Moniteur belge*, 20 October 2008, p. 55869)), which entered into force on 9 October 2008; and (ii) the Royal Decree of 10 December 2008 on the guarantee for certain risks assumed by financial institutions (*Koninklijk besluit betreffende de waarborg van bepaalde risico’s aangegaan door financiële instellingen/Arrêté royal relatif à la garantie de certains risques assumés par des institutions financiers, (Belgisch Staatsblad/Moniteur belge*, 19 December 2008, p. 67231)), which entered into force on 19 December 2008, whose scope was extended by a Royal Decree of 26 April 2009 (*Koninklijk besluit tot wijziging van het koninklijk besluit van 10 december 2008 betreffende de waarborg van bepaalde risico’s aangegaan door financiële instellingen/Arrêté royal modifiant l’arrêté royal du 10 décembre 2008 relatif à la garantie de certains risques assumés par des institutions financières, (Belgisch Staatsblad/Moniteur belge*, 7 May 2009, p. 35489)).

The scope of Article 117 *bis* was extended by the Law of 14 April 2009 amending the Law on supervision and financial services (*Wet tot wijziging van de wet van 2 augustus 2002 betreffende het toezicht op de financiële sector en de financiële diensten/Loi modifiant la loi du 2 août 2002 relative à la surveillance du secteur financier et aux services financiers, (Belgisch Staatsblad/Moniteur belge*, 21 April 2009, p. 32106)). It entered into force on 14 April 2009. The following individual measures were adopted on the basis of the amended Article 117 *bis*: (i) the Royal Decree of 14 April 2009 granting State guarantees for certain transactions related to the rescue of Fortis (*Koninklijk besluit tot toekenning van een Staatswaarborg aan bepaalde operaties in verband met de redding van Fortis/Arrêté royal octroyant une garantie d’État à certaines opérations relatives au sauvetage de Fortis, (Belgisch Staatsblad/Moniteur belge*, 21 April 2009, p. 32110)) and (ii) the Royal Decree of 14 April 2009 granting a State guarantee for certain loans taken by the *Gemeentelijke Holding/Holding Communale* (*Koninklijk besluit tot toekenning van een Staatswaarborg aan bepaalde leningen van de Gemeentelijke Holding/Arrêté royal octroyant une garantie d’État à certains emprunts du Holding communale (Belgisch Staatsblad/Moniteur belge*, 21 April 2009, p. 32108)).

<sup>32</sup> It is applicable in the event of ‘a sudden crisis on the financial markets or of a serious threat of systemic crisis’ and empowers the King to adopt a set of measures (including Royal Decrees establishing a State guarantee) ‘in order to limit the scale or effects of such crisis’.

adopted on the basis of this Law may either establish a ceiling for the guarantee<sup>33</sup> or provide that such ceiling be defined in further implementing legal acts.

### ***Eligible institutions***

Eligible for guarantees are credit institutions, financial holding companies and investment firms incorporated under Belgian law, as well as other financial institutions belonging to a group over which the Banking, Finance and Insurance Commission (*Commissie voor het Bank-, Financier- en Assurantiewezen/Commission bancaire, financière et des assurances*) exercises consolidated supervision. In addition, the *Gemeentelijke Holding N.V./Holding Communal S.A.* is also eligible.

### ***Eligible liabilities***

Under the umbrella provision of Article 117 *bis* of the Law on supervision and financial services, schemes may be established to grant a State guarantee to cover the following liabilities: (i) the liabilities or certain claims of supervised institutions; (ii) repayment of partnership shares held by natural persons in a cooperative company; (iii) losses incurred by supervised institutions on certain assets and liabilities taken on by entities whose business is to acquire and manage assets held by such supervised institutions; and (iv) the liabilities of the *Gemeentelijke Holding N.V./Holding Communal S.A.*

This provision was first applied to establish a scheme to grant a State guarantee covering the liabilities of supervised institutions vis-à-vis other credit institutions entered into between 9 October 2008 and 31 October 2009, provided that such liabilities mature at the latest on 31 October 2011<sup>34</sup>. It appears that this covers all of the financing raised by a beneficiary institution in order to obtain refinancing from credit institutions and institutional counterparties. The second scheme established under this provision is set out in the Royal Decree of 10 December 2008 (as amended by the Royal Decree of 26 April 2009) and covers commitments from such supervised entities aimed at covering losses or risks of losses on financial assets held by subsidiaries of supervised entities, or an undertaking by the entity to buy, in certain circumstances, financial assets held by its subsidiaries, provided these commitments and the State guarantee can contribute to avoiding the entity or its subsidiaries from being exposed to a serious need for additional liquidity, due in particular to a downgrading of their rating.

### ***Issue and maturity***

The Royal Decree of 16 October 2008 provides that the State guarantee it establishes covers liabilities entered into between 9 October 2008 and 31 October 2009, provided that such liabilities mature at the latest on 31 October 2011. The Royal Decree of 14 April 2009 (Holding Communal) specifies that the guarantee it establishes expires on 15 May 2009.

### ***Conditions***

The Royal Decree of 16 October 2008 and the Royal Decree of 10 December 2008 provide that the guarantees covered by these legal acts are subject to the conditions that: (i) the entity takes measures aimed at supporting its financial situation, solvency and liquidity, or commits

---

<sup>33</sup> The Royal Decree of 14 April 2009 (Holding Communal) provides that the principal amounts covered by the guarantee shall not exceed EUR 400 million. The Royal Decree of 14 April 2009 (Fortis) also places limits on the principal amounts that are covered by the guarantee, i.e. EUR 8.715 billion in total when the individual limits for the guarantees provided for in the Royal Decree are added together. These guarantees also cover interest on the principal amounts.

<sup>34</sup> Royal Decree of 16 October 2008.

itself to taking such measures, and (ii) the granting of the guarantee is justified in the interests of the Belgian economy and by the need to protect all depositors.

The various schemes provide that certain conditions attached to the guarantee, including pricing, are to be determined in further implementing acts. Only the Royal Decree of 14 April 2009 (Holding Communal) defines directly the remuneration for the State guarantee and provides for: (i) a set-up fee of 0.70 % of the principal amounts covered by the guarantee; and (ii) a guarantee fee of 1 % of the principal amounts covered by the guarantee, payable quarterly.

## 1.2 Individual guarantee measures

The **Dexia** group (composed principally of Dexia S.A., the parent company which is incorporated under Belgian law, Dexia Banque Belgique, Dexia Crédit Local de France S.A. and Dexia Banque Internationale Luxembourg) was granted a guarantee by Belgium, France and Luxembourg to a total amount of EUR 150 billion<sup>35</sup>. On 9 October 2008, the three Governments agreed to create a joint guarantee mechanism, which is covered 60.5 % by Belgium (36.5 % by France and 3 % by Luxembourg), to ensure Dexia's access to financing. An operational memorandum of 18 December 2008 supplemented the guarantee agreement by providing for daily monitoring of the guaranteed amounts, as well as a system of eligibility certificates in relation to guaranteed bond issues<sup>36</sup>.

The amount of Dexia's liabilities guaranteed by Luxembourg, France and Belgium totalled some EUR 90.9 billion as at 29 May 2009.

In addition, the Commission authorised a guarantee extended by Belgium and France to cover potential losses on a USD 16.5 billion (approximately EUR 11.7 billion) portfolio held by Dexia's US subsidiary, FSA<sup>37</sup>, above a first loss of USD 4.5 billion (approximately EUR 3.2 billion) to be borne by Dexia against the commitment that the two Governments would receive preference shares if the guarantee had to be realised (see the chapter on France).

**Fortis**<sup>38</sup> was granted a State guarantee in the amount of EUR 150 billion. Further guarantees were granted to Fortis in the context of its sale to BNP Paribas, where Belgium notably offered to provide guarantees on a new EUR 1 billion loan from Fortis Bank to Fortis Holding and on financial liabilities of Fortis Holding towards Fortis Bank. Belgium also agreed to

<sup>35</sup> Commission Decision of 19 November 2008 in Case No NN 49/08 *Dexia* (not yet published in the *Official Journal of the European Union (OJ)*). The guarantee covers the financing raised by the beneficiaries with credit institutions and institutional depositors (thus including interbank financing), as well as bonds and debt securities issued by Dexia to institutional investors, provided they mature before 31 October 2011. The fee is expected to be in line with the ECB Recommendation on Guarantees. Dexia also undertook to limit the increase of its balance sheet total and not to offer remuneration on deposits from the public that would be amongst the three most attractive returns offered by the 10 banks with the largest market share for deposits from the public in each of the three Member States concerned. On 13 March 2009, the Commission decided to commence an in-depth investigation into Dexia's restructuring (Decision of 13 March 2009 in Case No C 9/09 (not yet published in the OJ)).

<sup>36</sup> The aggregate guaranteed amount and data on certified bond issues together with other relevant information is available on the Nationale Bank van België/Banque Nationale de Belgique's website at [www.nbb.be/DOC/DQ/warandia/index.htm](http://www.nbb.be/DOC/DQ/warandia/index.htm).

<sup>37</sup> Commission Decision of 13 March 2009, above footnote 35.

<sup>38</sup> Commission Decision of 19 November 2008 in Case No N 574/08 *Guarantee Fortis* (OJ C 38, 17.2.2009, p. 2). The guarantee covers any type of financing of an amount above EUR 25 000 that matures before 31 October 2011 and is entered into or issued no later than six months after the entry into force of the Ministerial Decree establishing the guarantee (this period can only be extended with the Commission's approval). The guarantee is subject to a fee largely in line with the ECB Recommendation on guarantees. Fortis further undertook to limit the increase of its balance sheet, to refrain from predatory pricing on the retail market and to refrain from advertising the State guarantee.

provide Fortis Bank with a mezzanine guarantee on the structured credit portfolio retained by Fortis Bank<sup>39</sup>.

## 2. RECAPITALISATION

No generally applicable framework for recapitalisations has been adopted. Recapitalisation measures were taken only on an individual basis.

Concerning **Dexia**, in addition to the guarantees referred to above, a recapitalisation measure was initiated by Belgium, France and Luxembourg following a decision of Dexia's Board of Directors on 30 September 2008, in the amount of EUR 6.4 billion<sup>40</sup>; the Belgian tranche is in the amount of EUR 3 billion<sup>41</sup> (the French tranche is also EUR 3 billion and the Luxembourg tranche EUR 376 million). Dexia's capital increase was completed on 3 October 2008.

On 28 September 2008, **Fortis Bank**<sup>42</sup> was subject to a recapitalisation measure by Belgium, Luxembourg and the Netherlands with a value of EUR 11.2 billion. The Belgian Government invested EUR 4.7 billion in Fortis Bank N.V./S.A. in exchange for a 49 % stake in the company. At the same time, the Netherlands invested EUR 4 billion in Fortis Bank Nederland Holding in exchange for a 49 % stake, and Luxembourg invested EUR 2.5 billion in Fortis Banque Luxembourg S.A. by way of a mandatory convertible loan, converted on 15 December 2008. On 5 October 2008, Belgium acquired an additional stake of 50 % in Fortis Bank S.A./N.V. for EUR 4.7 billion, increasing its total shareholding to 99.93 %.

**KBC** was subject to two recapitalisation measures worth EUR 3.5 billion<sup>43</sup> and 3.5 billion<sup>44</sup>, respectively. A third measure which combines elements of recapitalisation and a State guarantee was decided in May 2009<sup>45</sup>. The **Ethias group** was recapitalised with EUR 1.5 billion<sup>46</sup>.

---

<sup>39</sup> This was approved by the Commission in its Decision of 12 May 2009 in Case No N 255/09 *Fortis* (not yet published in the OJ). See the Royal Decree of 14 April 2009 (Fortis).

<sup>40</sup> Commission Decision of 19 November 2008, above footnote 38.

<sup>41</sup> Divided between the Federal (EUR 1 billion) and regional governments (EUR 500 million from the Flemish community, EUR 350 million from the Walloon community, EUR 150 million from the Région de Bruxelles-Capitale) together with the participation of institutional shareholders (Holding Communal, Arcofin and Ethias to the amount of EUR 1 billion).

<sup>42</sup> Commission Decisions of 3 December 2008 in Cases No: (i) NN 42/08 *Fortis*; (ii) NN 46/08 *Fortis banque Luxembourg S.A.*; and (iii) NN 53a/08 *Restructuring aid to Fortis Bank S.A./N.V.* (OJ C 80, 3.4.2009, pages 7, 7 and 8, respectively).

<sup>43</sup> Commission Decision of 18 December 2008 in Case No N 602/08 *KBC* (OJ C 109, 13.5.2009, p. 4). The securities were subscribed by the *Federale Participatie- en Investeringsmaatschappij N.V./Société fédérale de Participations et d'Investissements S.A. d'intérêt public*, a public law entity fully owned by the Belgian State. The State support was also made conditional upon KBC's commitment to uphold its lending policy to the real economy as well as its dividend policy and to maintain its Tier 1 solvability ratio at a minimum of 6 %.

<sup>44</sup> On 22 January 2009, the Flemish region decided to participate in the recapitalisation of KBC on similar conditions to the October 2008 capital increase, in subscribing for the same type of yield enhanced securities for an amount of EUR 3.5 billion. A first tranche of EUR 2 billion has already been subscribed (and the second, back-up tranche of EUR 1.5 billion is likely to be called by KBC).

<sup>45</sup> On 14 May 2009, the Belgian State announced the following three-steps rescue plan for KBC. A first EUR 5.7 billion EUR tranche of (possible) losses will be borne by KBC alone; the Government will take part in a capital increase of up to EUR 2 billion of new voting shares for 90 % of the default. For any subsequent losses up to EUR 14.8 billion, the Government will provide cash for 90 % of the default. See the 14 May 2009 press release from the Government at [premier.fgov.be/fr/nieuws/communiqu%25C3%25A9-de-presse-sur-la-garantie-accord%25C3%25A9e-%25C3%25A0-kbc](http://premier.fgov.be/fr/nieuws/communiqu%25C3%25A9-de-presse-sur-la-garantie-accord%25C3%25A9e-%25C3%25A0-kbc).

<sup>46</sup> Commission Decision of 12 February 2009 in Case No NN 57/2008 *Rescue Aid in favour of Ethias* (not yet published in the OJ).

### 3. ACQUISITION OF RISK POSITIONS / IMPAIRED ASSETS

A generally applicable framework for the acquisition of risk positions or impaired assets has not been adopted. However, certain guarantees referred to above may fall under this heading as they could serve as a basis to establish an asset protection scheme, whereby losses incurred by supervised institutions on a portfolio of impaired assets exceeding a certain threshold are covered by the State. The enabling provision also provides for the possibility to establish a scheme whereby the liabilities entered into by a 'bad bank', a special purpose vehicle created to acquire and manage a portfolio of impaired assets held by supervised institutions, is covered by a State guarantee.

In relation to **Fortis**<sup>47</sup>, in the framework of its sale to BNP Paribas, Belgium agreed to assume a large part of the risk of the investment vehicle that will purchase impaired assets from Fortis Bank and Fortis Holding's exposure will be reduced accordingly. Belgium also gave Fortis Holding a call option on the BNP Paribas shares it would acquire. Furthermore, Belgium agreed that the investment vehicle, in which it assumes the largest part of the risk, would purchase additional impaired assets from Fortis Bank<sup>48</sup>.

## BULGARIA

The Bulgarian efforts to combat the financial crisis do not encompass any measures under a general rescue framework; instead, the measures envisaged by Bulgaria are limited to Ordinance No 21 by Българска народна банка (Bulgarian National Bank (BNB)) on the required minimum reserves maintained by banks with BNB. This measure intends to ensure that banks keep the required minimum reserves and aims at reducing uncertainty in the interbank cash market and at stimulating banking activities in the credit market. It came into effect on 1 October 2008.

Eligible institutions under the scheme are Bulgarian banks and foreign bank branches operating in Bulgaria. Under the scheme, 50 % of an eligible institution's cash holdings, including cash held as ATM stock, will be considered reserve assets.

Where an eligible institution uses over 50 % of the Bulgarian levs equivalent to the required minimum reserves on its accounts with BNB it will be charged interest. BNB decides the rate of interest on the amount exceeding 50 % of the minimum reserve requirements, on a daily basis, as long as that amount is in use by the institution. Furthermore, where an eligible institution has a minimum reserves shortage at the end of the maintenance period, penalty interest is due. If that shortage exceeds one-twelfth of the required minimum reserves at the end of a maintenance period, BNB's banking department will notify the banking supervision department with a view to carrying out an examination, and BNB's Governing Council may decide to restrict current use of the institution's accounts with BNB until minimum required reserves are fully met. Such measure will be taken also if an institution records required minimum reserves shortages for three maintenance periods in succession, irrespective of the shortage amounts.

---

<sup>47</sup> This was approved by the Commission in its Decision of 12 May 2009 in Case No N 255/2009 *Fortis* (not yet published in the OJ), considering that the measures relieving Fortis Bank S.A./N.V. of certain impaired assets were in line with its communication on the treatment of impaired assets. The new entity committed not to expand through acquisitions in the Belgian and Luxembourg banking market.

<sup>48</sup> See the Royal Decree of 14 April 2009 granting State guarantees for certain transactions related to the rescue of Fortis.



## CYPRUS

In order to help preserve confidence in the domestic financial system, the competent authorities in Cyprus have recently taken measures to improve arrangements for the support of troubled financial institutions. In particular, a draft law concerning State guarantees, loans, recapitalisation and the purchase of assets has been drawn up. Adoption of the draft law was still pending in June 2009.

### STATE GUARANTEES, LOANS, RECAPITALISATION, ACQUISITION OF RISK POSITIONS / IMPAIRED ASSETS

State guarantees, recapitalisation, loans, and the acquisition of assets are addressed in a draft law on the management of revenues and expenditure and on the accounting system of the Republic and other related matters<sup>49</sup> (hereinafter ‘the draft law on financial institutions’), which was presented by the Ministry of Finance in January 2009.

#### *Eligible institutions*

The draft law on financial institutions is intended to apply to financial institutions licensed by the competent Cypriot authorities. It is implicit in the text of the draft law on financial institutions that, with the exception of branches of banks and other financial institutions registered outside Cyprus, the draft law on financial institutions applies to all Cypriot financial institutions, including the Cyprus-based subsidiaries of foreign financial institutions.

#### *Eligible instruments*

The purpose of the draft law on financial institutions is to establish a framework enabling the Ministerial Council to take measures intended to address liquidity or insolvency problems affecting Cyprus-based financial institutions and to enhance their capital base or balance sheets. The draft law on financial institutions envisages a power for the Ministerial Council to: (i) grant a loan; (ii) grant a State guarantee; (iii) recapitalise a financial institution; (iv) purchase a financial institution’s assets; and (v) grant a loan or guarantee for an appropriate price to deposit-guarantee or investor protection schemes.

#### *Timing*

The draft law on financial institutions is intended to apply in financial crisis situations, on the understanding that financial difficulties faced by individual institutions may qualify as a financial crisis only where potential systemic disorders are foreseeable. No further conditions on timing are included in the draft law on financial institutions.

#### *Conditions*

The actual terms and conditions on which support measures may be taken by the Ministerial Council are not set out in the draft law on financial institutions and will be determined on a case-by-case basis if and when the need arises.

---

<sup>49</sup> Draft law amending the Laws of 2002 and 2004 on the management of revenues and expenditure and on the accounting system of the Republic and other related matters (νομοσχέδιο με τίτλο «Νόμος που τροποποιεί τους περί της Διαχείρισης των Εσόδων και Δαπανών και του Λογιστικού της Δημοκρατίας, καθώς και για άλλα συναφή θέματα Νόμους του 2002 και 2004»). The information in this paper relies on the draft law submitted by the Cypriot Ministry of Finance to the ECB for consultation (see Opinion CON/2009/12).

## CZECH REPUBLIC

The Government of the Czech Republic recently approved a draft amendment to the Law on banks<sup>50</sup> as a response to turbulent developments on financial markets in connection with the global financial crisis. As a preventive measure, the draft amendment establishes a legal framework enabling a quick, transparent and efficient response to possible difficulties faced by Czech banks and Czech branches of foreign banks in order to maintain financial market stability and credibility of the banking system. To this end, the proposed changes, in particular, facilitate the increase of a distressed bank's capital or the transfer of its business or liabilities to a sound institution. Česká národní banka, the integrated financial market supervisor, is provided with a special regulatory instrument for the event that the stability of the banking or financial system is threatened. By means of this measure it would be possible, *inter alia*, to provide for temporary exemptions from certain regulatory requirements and prohibit or restrict certain banking activities or operations.

### 1. RECAPITALISATION

The draft amendment to the Law on banks establishes a special regime for the increase of a bank's capital where the purpose of such increase is to comply with regulatory capital requirements. The objective is to ensure the fastest possible supply of real money to a distressed bank while maintaining maximum transparency and fairness when increasing a bank's capital under such circumstances. Both private and public investors will be able to participate in such capital increases.

### 2. ACQUISITION OF RISK POSITIONS / IMPAIRED ASSETS

The draft amendment to the Law on banks provides for the possibility for a distressed bank's business to be acquired and operated by a State-owned special purpose bank, i.e. a 'bridge bank'. This is considered necessary to cover the situation where no bank on the market is willing to take over a distressed bank's business. It is envisaged that such acquisition would only be temporary and that following rescue, the shares of the bank or its business would be sold to a private sector banking investor.

## DENMARK

The Danish measures to combat the financial crisis comprise creditor guarantees, loans, recapitalisation, guarantees of capital issuance, acquisition of impaired assets (loans), creation of a 'bad bank', liquidation and the sale of assets and liabilities<sup>51</sup>.

### 1. STATE GUARANTEES

The Danish guarantee scheme is based on the existing Private Contingency Association for the winding up of distressed banks, savings banks and cooperative banks (*Det Private Beredskab* (DPB)), financed by the banks and administered in cooperation with the Financial

<sup>50</sup> Law No 21/1992 Coll. (*zákon č. 21/1992 Sb.*), as amended. The draft amendment is being discussed in the Czech Parliament.

<sup>51</sup> The guarantee scheme was approved by the Commission in its Decision of 10 October 2008 in Case No NN 51/08 *Liquidity support scheme for banks in Denmark* (OJ C 273, 28.10.2008, p. 2). The recapitalisation scheme and an amendment to the guarantee scheme were approved by the Commission in its Decision of 3 February 2009 in Case No N 31a/09 *Recapitalisation of financial institutions and amendment of the Guarantee Scheme* (OJ C 50, 3.3.2009, p. 3).

Supervisory Authority (*Finanstilsynet* (FSA)). In the context of the financial crisis, this scheme was supplemented with a temporary general State guarantee<sup>52</sup>.

## 1.1 General guarantee scheme

The general guarantee scheme is set out in the Law on financial stability<sup>53</sup>, which sets up a State-owned limited company (hereinafter the ‘Winding-up Company’), which will pay all claims of simple creditors of credit institutions that are covered by the Law on financial stability and whose claims are not otherwise covered (e.g. by a deposit protection scheme). The guarantee is unlimited, although the State budget estimates that it will, in practice, not exceed DKK 170 billion (approximately EUR 22.8 billion). The DPB will provide the financing for the guarantee scheme (through contributions and guarantees for the Winding-up Company) up to a total amount of DKK 35 billion (approximately EUR 4.7 billion) during the two years in which the Law on financial stability operates. Claims by creditors on the Winding-up Company in excess of this amount are covered by the unconditional, irrevocable State guarantee.

### *Eligible institutions*

Eligible under the guarantee scheme are all solvent credit institutions established in Denmark that applied for membership to the DPB with the new supplementary State guarantee element by 13 October 2008, as well as banks established and commencing business after that date with the FSA’s approval. Foreign branches of banks established in Denmark and Danish branches of foreign banks that entered into an agreement with the DPB, where deposits are not covered by a similar scheme in the home country, are also eligible to participate in the scheme.

### *Eligible liabilities*

Eligible under this scheme are all simple and unsecured credit claims (including debt issues other than subordinated debt or covered bonds). For branches of foreign banks in Denmark only claims that are related to the Danish funds for depositors and investors and that relate to their Danish branches are eligible.

### *Issue and maturity*

The general guarantee scheme will end on 30 September 2010. The Minister for Economic and Business Affairs may lay down rules extending the duration of the scheme. Any such individual guarantee is limited to three years.

### *Conditions*

Eligible institutions must adhere to the rules previously agreed between the Government and the DPB and laid down in the by-laws of the latter and in the Law on financial stability concerning dividend payments and new management incentive programmes. Further conditions include limiting management remuneration and restricting expansion activities. For credit institutions commencing business in Denmark after the original deadline of 13

<sup>52</sup> See the FSA’s website at: [www.dfsa.dk/sw99.asp](http://www.dfsa.dk/sw99.asp).

<sup>53</sup> Law No 1003 of 10 October 2008, which entered into force on 11 October 2008 (with retroactive effect from 5 October 2008) (*Lovtidende A 2008, Udgivet den 10. oktober 2008*), as amended by the Law amending the Law on financial stability, No 68 of 3 February 2009, which entered into force on 4 February 2009 (*Lovtidende A 2009, Udgivet den 3. februar 2009*), and as amended by Law No 338 amending the Law on the Danish Guarantee Fund for Depositors and Investors, the Law on financial stability, and the Law on the injection of State capital in credit institutions of 1 May 2009 (*Lovtidende A 2009, Udgivet den 3. maj 2009*).

October 2008 and applying to become members of the State guarantee scheme, the FSA may set additional requirements.

The contribution of the DPB to the Winding-up Company is made up of: (i) an annual guarantee fee of DKK 7.5 billion (approximately EUR 1 billion); and (ii) an annual DKK 10 billion (approximately EUR 1.3 billion) loss guarantee (to be increased by another DKK 10 billion, if needed). The contribution of individual credit institutions is determined by the relative size of the institution's capital base compared to the aggregate capital base of all institutions in the scheme. The guarantee provision is to be paid in monthly tranches, either in cash or own shares.

The Law on financial stability sets out more detailed rules on the amount of risk the individual banks covered by the guarantee scheme are allowed assume. The FSA is responsible for supervising observance of these rules and, in this context, has issued Executive Order No 13 of 13 January 2009 on the risks of credit institutions included in the guarantee scheme<sup>54</sup>.

## 1.2 Provisions on individual guarantee measures

The general guarantee scheme will cease on 30 September 2010. From the entry into force of the amending Law on 3 February 2009 and until 31 December 2010 credit institutions may on an individual basis apply to the Winding-up Company for a State guarantee regarding new or existing unsecured simple debt and for special covered bonds ('junior covered bonds'). The Minister for Economic and Business Affairs may lay down rules extending the deadline for application. Any such individual guarantee is limited to three years.

The detailed provisions on individual guarantee measures are laid down in Executive Order No 231 of 26 March 2009 on applications for an individual State guarantee under the Law on financial stability<sup>55</sup>.

### *Eligible institutions*

Eligible for individual State guarantees are Danish credit institutions and Danish subsidiaries of foreign credit institutions which fulfil, *inter alia*, the individual 8 % solvency ratio requirement (or any higher ratio as required by the FSA). Institutions that do not fulfil the capital requirements must give a commitment to the Winding-up Company that they will assent to be sold to a purchaser selected by the Winding-up Company. Alternatively, the Winding-up Company may subscribe for share capital of a bank taking over assets and liabilities from a distressed bank<sup>56</sup>.

### *Eligible instruments*

See the instruments listed under the general guarantees above. In addition, supplementary securitised capital covered bonds (junior covered bonds) are eligible for this individual guarantee<sup>57</sup>.

---

<sup>54</sup> This measure entered into force on 16 January 2009 (*Lovtidende A, Udgivet 15. januar 2009*). This individual scheme requires accession of the individual loans. The framework is set out in the Law on financial stability but the individual guarantees are subject to individual contracts.

<sup>55</sup> This measure entered into force on 1 April 2009 (*Lovtidende A, Udgivet 27 marts 2009*).

<sup>56</sup> Share capital, hybrid core capital and subordinated loans remain with the distressed bank; the rest is transferred to the new institution.

<sup>57</sup> The Danish covered bonds legislation permits mortgage banks to issue 'junior' covered bonds as a funding instrument to protect regular covered bonds if real estate prices should decrease. Such bonds may be issued to fund assets eligible as security for covered bonds in case of a loan-to-value ratio of over 80 %, but do not legally qualify as covered bonds.

### ***Issue and maturity***

The Law amending the Law on financial stability provides that credit institutions may on an individual basis apply to the Winding-up Company for a State guarantee regarding new or existing unsecured simple debt and for special types of covered bonds between 4 February 2009 and 31 December 2010. Any such individual guarantee is limited to a maximum maturity of three years.

### ***Conditions***

In addition to the guarantee provision payable by all credit institutions to the general scheme (see above) the interest rate to be paid under an individual scheme will be negotiated between the credit institution and the Ministry of Economic and Business Affairs. Eligible institutions must meet solvency requirements, provide a report of their economic situation and a plan for the future including an auditor's evaluation, and submit their latest annual and quarterly reports. Furthermore, no dividends may be paid before 1 October 2010 and thereafter they may be paid only out of annual profits. There may be no reduction of the capital base (repurchase of shares), distribution of preference shares, or establishment of share option programmes for an institution's management.

## **2. RECAPITALISATION**

Recapitalisation by the Ministry of Economic and Business Affairs is a subsidiary measure to the granting of State loans in the form of hybrid core capital according to the Law on the injection of State capital in credit institutions<sup>58</sup>. If the amount of Tier 1 capital of a credit institution exceeds 35 % of its total core capital at the time of the agreement on capital injection, the FSA may require the hybrid core capital to be converted into share capital if the credit institution faces financial difficulties.

Alternatively, at the request of a credit institution, the Minister for Economic and Business Affairs may enter into an agreement with the credit institution for a State loan whereby the State loan is converted to share capital, if the total hybrid core capital of the credit institution exceeds 35 % of its core capital. Any such conversion will only be initiated at the request of the credit institution. Conversion may relate to up to 20 % of the original capital injection, and may be repeated, if the total hybrid core capital of the credit institution should again exceed 35 % of its core capital<sup>59</sup>.

The maximum amount (for loans and recapitalisation) was estimated not to exceed DKK 100 billion (approximately EUR 13.4 billion), if all eligible institutions apply for the capital injection to obtain a minimum of 12 % Tier 1 capital. There is, however, general political agreement that sufficient funds will be supplied via the annual State budget laws to achieve the intended objectives of the Law on financial stability. As an alternative to full direct capital injections, the scheme also contains the possibility for State provision of an underwriting guarantee for eligible institutions to raise funds on the capital market.

### ***Eligible institutions***

Institutions eligible under this scheme are solvent credit institutions established in Denmark.

---

<sup>58</sup> Law No 67 on the injection of State capital in credit institutions of 3 February 2009 (*Lovtidende A, Udgivet den 3. februar 2009*). Another form of recapitalisation exists in the case of reconstruction/winding-up of solvent credit institutions that do not fulfil the solvency ratio required by the FSA. The Winding-up Company may recapitalise such institutions in the context of a takeover by another credit institution or inject capital in the credit institution effecting the takeover.

<sup>59</sup> Executive Order No 228 of 26 March 2009 (*Lovtidende A, Udgivet den 27. marts 2009*).



### ***Eligible instruments***

The recapitalisation scheme concerns hybrid core capital.

### ***Timing***

The measures came into effect on 4 February 2009 (the qualifying provisions on limitations on payment of dividends, executive payment and share option programmes, etc. governing capital injections have retroactive effect from 21 January 2009). The deadline for applications by credit institutions for the injection of Tier 1 hybrid core capital is 30 June 2009. However, the conversion right operates independently of the legislation's timing provisions and may extend beyond its end date.

### ***Conditions***

Depending on the individual credit institution's rating, capital adequacy and liquidity risk, the fixed interest rate on the loan may vary between 9 % and 11.25 %, with the average interest rate expected to be approximately 10 %.

There may be requirements with regard to lending policies and related semi-annual reporting. In addition, certain restrictions related to dividend policy, executive pay and capital reduction/repurchase programmes may also be included.

## **3. STATE LOANS**

The provision of loans to credit institutions is based on the Law on State-funded capital injections into credit institutions. Loans are granted to credit institutions by the Ministry of Economic and Business Affairs. In the event that all credit institutions make full use of the possibility established by the law to obtain hybrid core capital, it is estimated that the State will have injected approximately DKK 100 billion (EUR 13.4 billion) (i.e. 5.5 % of GDP) by way of hybrid core capital, of which three quarters will be supplied to banks and one quarter to mortgage credit institutions.

### ***Eligible institutions***

All credit institutions established in Denmark that fulfil the solvency requirement of 8 % (or any individual higher requirement set by the FSA) are eligible under this scheme. To qualify for hybrid core capital, a credit institution must have a core capital ratio of 12 % after the capital injection. If an institution has a core capital ratio of less than 9 % before the capital injection, the maximum hybrid core capital injection available will correspond to the difference between 12 % and its current core capital. Where an institution has a core capital ratio of less than 6 %, an individual agreement on hybrid core capital injection may be negotiated that results in the highest possible core capital ratio.

### ***Eligible instruments***

The only eligible instrument for this measure is the provision of hybrid core capital.

### ***Timing***

The details are set out above in the section on recapitalisation.

### ***Conditions***

Conditions for State loans include the prohibition on institutions to reduce their capital by payments to shareholders, to acquire their own shares except as part of trade holding or in reimbursement of any shares owned by the State in the course of conversion of hybrid capital

into share capital and to establish any new payment incentive programmes for management above certain limits. In addition, there is an absolute prohibition on the payment of any dividends before 30 September 2010, with the proviso that such payments are permitted thereafter only if financed out of current profits. Loans are subject to the payment of interest (on rates, see the section on recapitalisation). Foreign subsidiaries operating in Denmark must, to the greatest extent possible, use capital injections for consolidation and lending in Denmark.

#### 4. ACQUISITION OF RISK POSITIONS / IMPAIRED ASSETS

##### 4.1. Assets and liabilities

The acquisition of impaired assets is based on the Law on financial stability and the Law on its amendment (see above) and is managed through the Winding-up Company.

##### *Eligible institutions*

This measure concerns credit institutions participating in the State guarantee scheme that do not comply with the solvency requirements set by the FSA and are unable to increase their capital base within the deadline set by the FSA.

##### *Eligible instruments*

Eligible institutions must transfer assets and liabilities (but not subordinated or share capital) to another bank chosen by the Winding-up Company, at a price determined by the institution's external auditor. Alternatively, the Winding-up Company may inject capital into the failing bank or provide a loan or guarantee to another bank to take over the business, or the assets and liabilities of the failing bank, in whole or in part. For those assets and liabilities for which no buyer can be found, the Winding-up Company will establish a 'bad bank' solution, administering the impaired assets on behalf of the shareholders and holders of subordinated capital, until all claims can be finally wound up.

##### *Timing*

When the State guarantee scheme expires, the private arrangement in place before the current financial crisis with the objective of providing financial assistance in the winding-up of failing credit institutions as an alternative to insolvency will reassume its previous role, as is already provided for in amendments to the by-laws of the DPB.

##### *Conditions*

The conditions are the same as those set out above in the section on the general guarantee scheme.

##### 4.2 Individual measures

On 21 September 2008, **Ebh Bank** received funding from Danmarks Nationalbank and a number of Danish banks, enabling it to continue operating. The board of directors agreed to divest subsidiaries with a view to a merger or a divestment of the bank. The bank signed a conditional transfer agreement with the Winding-up Company under which a subsidiary established by the Winding-up Company (*Bankaktieselskabet af 21. november 2008 A/S*) acquired all of the group's assets and liabilities (with the exception of the share capital and other subordinated capital) for the purposes of winding up.

On 22 February 2009, **Fionia Bank** entered a provisional agreement with the Winding-up Company to transfer its banking activities to a new company owned by the bank but controlled by the Winding-up Company, and with the benefit of a DKK 1 billion (approximately EUR 134 million) injection of loan capital provided by the latter. The provisional agreement is dependent on the approval of the FSA, the Competition Board, and the European Commission. The subordinated loans and equity will remain in the old, renamed 'bad bank'. The Commission announced its approval for the framework agreement on 20 May 2009.

In April 2009, **Gudme Raaschou Bank** entered into an agreement with the Winding-Up Company for the transfer of the bank to the Winding-up Company for the price of DKK 0<sup>60</sup>. In a press release of 30 April 2009 the Winding-up Company announced that negotiations with interested bidders would start soon.

In July 2008, **Roskilde Bank** accepted an offer by the DPB, backed by guarantees from Danmarks Nationalbank, to sell all assets and liabilities except subordinated loans and hybrid capital to a newly established company for DKK 37 billion (approximately EUR 5 billion)<sup>61</sup>.

## ESTONIA

The Estonian scheme to secure the stability of the financial system provides for State guarantees, stabilisation reserves, government lending and the acquisition of shareholdings and assets. In addition, provision has been made for special fast-track parliamentary procedures for the acquisition of shareholdings or other financial assets, grant of State guarantees, lending, borrowing or acquisition of other obligations as well as the use of stabilisation reserve funds. This scheme will remain in force until 1 July 2010.

### 1. STATE GUARANTEES

The basis for State guarantees is the Law on the State budget<sup>62</sup>. The amount committed to this scheme is not specified and must be approved on a case-by-case basis by Parliament. The provision on State guarantees entered into force on 1 January 2004.

#### *Eligible institutions*

Institutions that are eligible under this scheme are local governments, legal persons under public law, companies in which the State or local government holds a majority or all of the shares, and any foundation founded by the State, provided that the institution is sufficiently creditworthy and the acquisition of the liabilities is directly related to the performance of public functions or the requirement for a State guarantee is established by law. On 6 April

---

<sup>60</sup> The Winding-up Company will set up two new companies to take over the sound branches of the bank's business, eventually to be sold off to interested buyers for continued trading. The old bank will then function as a 'bad bank' containing those parts for which no buyers can be found and, ultimately, will probably have to be liquidated.

<sup>61</sup> The new company subsequently sold off to three existing banks parts of the assets and loan portfolios with the option, following further assessment, of subsequent rejection and return to the 'old bank', i.e. the 'bad bank'. On the basis of its original guarantee, Danmarks Nationalbank administered the 'bad bank' before transferring it to the Winding-up Company. The rescue aid was approved by the Commission in its Decision of 31 July 2008 in Case No NN 36/08 *Roskilde Bank* (OJ C 238, 17.9.2008, p. 5), and the liquidation aid by Commission Decision of 5 November 2008 in Case No NN 39/08 *Aid for liquidation of Roskilde Bank* (OJ C 12, 17.01.2009, p. 3).

<sup>62</sup> *Riigieelarve seadus*, Riigi Teataja I, 1999, 55, 584.

2009, an extension to the scheme entered into force. As a result, a State guarantee may now be given to any person if it is considered necessary in order to manage or prevent financial crises.

#### ***Eligible liabilities***

All liabilities are eligible under this scheme.

#### ***Issue and maturity***

Information on maturities has not been specified.

#### ***Conditions***

The Law on the State budget does not address conditions in the context of State guarantees. Such conditions will be specified by the Parliament on a case-by-case basis.

## **2. RECAPITALISATION**

Recapitalisation is based on the Law on State participation in private law bodies<sup>63</sup>, under which the State may acquire shareholdings in eligible institutions based on a Government decision. This measure came into effect on 6 April 2009.

#### ***Eligible institutions***

Institutions eligible under this scheme are private law bodies, that is, publicly or closely held companies, foundations and non-profit organisations.

#### ***Eligible instruments***

Under this scheme, the Government may acquire newly issued or existing shares of publicly or closely held companies.

#### ***Conditions***

The acquisition price is determined according to the usual value<sup>64</sup> based on an expert opinion.

## **3. STATE LOANS**

The provision of loans is based on the Law on the State budget, which has been amended as a result of the crisis. Loans may be issued by the Government if the amount committed to the scheme is provided for in the State budget. If the amount required surpasses the amount allocated in the budget, Parliament may decide on a case-by-case basis to devote additional funds to the measure in order to manage or prevent a financial crisis. This measure came into effect on 6 April 2009.

---

<sup>63</sup> *Riigi eraõiguslikes juriidilistes isikutes osalemise seadus*, Riigi Teataja I, 2004, 24, 166.

<sup>64</sup> According to § 65 of the Law on the general principles of the Civil Code, the usual value of an object is its average local selling price (market price).

### ***Eligible institutions***

Municipalities, public law bodies and registered private law bodies are eligible provided that their main activity is the performance of a public task. The loan must be collateralised or secured by a bank guarantee<sup>65</sup>.

### ***Conditions***

The interest rate charged on loans may not be lower than that on similar loans taken by the State. The Ministry of Finance may request information on interest rates from credit institutions. The interest rate may be increased to take account of marginal credit risk.

## **4. ACQUISITION OF RISK POSITIONS / IMPAIRED ASSETS**

State authorities may provide loans, use a capital lease and acquire other similar obligations, provide collateral, make donations, and acquire shareholdings, issued debt obligations and other financial assets if this is provided for in the State budget<sup>66</sup>. Additionally, as a special financial crisis measure, the authorities may acquire shareholdings and other financial assets. The amount committed to the scheme is determined in the State budget. Additional funds may be committed by Parliament on a case-by-case basis. This measure came into effect on 6 April 2009.

## **FINLAND**

The Finnish scheme to counter the effects of the financial crisis at present consists only of a system of State guarantees. Recapitalisation measures are not in force yet. Framework legislation enabling other measures, such as loans to banks, the acquisition of impaired assets and nationalisation exists, but no such measures have been announced<sup>67</sup>.

### **1. STATE GUARANTEES<sup>68</sup>**

#### **1.1 State guarantee scheme**

The guarantees are based on a parliamentary decision of 12 December 2008<sup>69</sup> and Government Decree No 67 on fees applicable to temporary State guarantees to deposit banks and mortgage banks of 12 February 2009 (hereinafter the 'Government Decree'). The guarantee is governed by the Law on State lending and State guarantees of 1988<sup>70</sup>. The

<sup>65</sup> § 40 of the Law on the State budget, § 3 of Government Regulation No 220 of 21 August 2003, *Riigi Teataja* I 2003, 58, 394.

<sup>66</sup> § 29(3) of the Law on the State budget.

<sup>67</sup> See also the Ministry of Finance's website at: [www.vm.fi/vm/en/11\\_financial\\_market/index.jsp](http://www.vm.fi/vm/en/11_financial_market/index.jsp).

<sup>68</sup> The Guarantee scheme for banks' funding in Finland was approved by Commission Decision of 13 November 2008 in Case No N 567/08 *Finnish Guarantee Scheme for banks' funding* (OJ C 309, 4.12.2008, p. 7) and by Commission Decision of 5 February 2009 in Case No N 44/09 *Modifications to the Finnish Guarantee Scheme for banks' funding* (OJ C 112, 16.5.2009, p. 3). The prolongation of the scheme until 31 December 2009 was approved by Commission Decision of 30 April 2009 in Case No N 239/09 *Prolongation of the Finnish guarantee scheme* (not yet published in the OJ).

<sup>69</sup> Parliamentary Decision No EV 110/2008 vp of 12 December 2008. This concerned the approval of the maximum guaranteed amount; it leaves more detailed provisions of the scheme to be decided by the Government pursuant to the Law on State lending and State guarantees, 449/1988.

<sup>70</sup> *Valtioneuvoston asetus talletuspankeille ja kiinnitysluottopankeille myönnettävistä väliaikaisista valtiontakauksista perittävistä maksuista*, 12.2.2009/67; *laki valtion lainanannosta sekä valtiontakauksesta ja valtiontakauusta*, 20.5.1988/449.



overall limit of this scheme is EUR 50 billion. Limits applicable to participating institutions differ for short-term debt. Here, the total nominal value of such debt issued on 17 October 2008 applies; additionally there is a monthly limit corresponding to the total nominal value of debt maturing during the month in question. For medium-term debt, the limit is the total nominal value of bonds maturing between 17 October 2008 and 31 December 2009. This measure came into effect on 13 February 2009. The scheme was initially in force until 30 April 2009, but was extended to 31 December 2009<sup>71</sup>.

### *Eligible institutions*

Solvent Finnish deposit banks and mortgage banks, including Finnish subsidiaries of foreign financial institutions are eligible under this scheme.

### *Eligible liabilities*

This scheme concerns guarantees for the issuance of banks' new short and medium-term debt instruments (deposit certificates, unsecured bonds and other non-subordinated debt instruments, and mortgage-backed bonds).

### *Issue and maturity*

Guaranteed instruments may be issued until 31 December 2009 under the present scheme. The maturity of the debt instruments varies from 90 days to five years<sup>72</sup>.

### *Conditions*

Guarantees are granted against an annual fee which is based on the ECB Recommendation on Guarantees<sup>73</sup>. Other conditions are not explicitly mentioned in the Government Decree. As notified to the Commission, there are certain conditions in the scheme that apply to participating banks with the aim of minimising negative spillover effects. These include restrictions on significant expansion of activities, marketing of the guarantee and remuneration of management. In individual cases, however, the Treasury may grant guarantees to institutions that do not meet the remuneration conditions.

## **1.2 Individual guarantee measures**

**Kaupthing Bank h.f.** Finnish branch<sup>74</sup> benefited from a guarantee against legal risks faced by participants under a private sector agreement. The participants, three commercial banks and a special purpose vehicle, took over credit claims and other assets of Kaupthing Bank h.f. to settle its deposit claims in Finland. The State guarantee covers the legal risks in this arrangement, i.e. the economic loss suffered from any recovery claim or any other equivalent insolvency claim made against the participating banks, special purpose vehicle or depositors. This measure was issued on 24 October 2008 and is not limited in time. It only applies to legal risks which may arise in connection with deposits of EUR 115 million in total.

---

<sup>71</sup> In the parliamentary decision, the scheme was initially approved until 30 April 2009. The Government was delegated the task to re-evaluate the need for new guarantees and decide on a possible extension of the scheme until 31 December 2009.

<sup>72</sup> Until 30 April 2009, the maturity of debt instruments varied between 90 days to three years, and in the case of mortgage-backed bonds up to five years.

<sup>73</sup> For more details see Commission Decision of 13 November 2008 in Case No N 567/08, above footnote 68.

<sup>74</sup> The measure was approved by Commission Decision of 21 January 2009 in Case No NN 2/09 *State measure involving arrangements with Kaupthing Bank h.f., Finnish branch* (OJ C 52, 5.3.2009, p. 2).

## 2. RECAPITALISATION

Recapitalisation is based on the draft law on State capital investment in deposit banks<sup>75</sup>. According to the proposal, the decision to subscribe for a capital loan will be made by the Government, which may authorise the Ministry of Finance or the State Treasury to subscribe for such loan. The overall amount committed to the scheme will be EUR 4 billion or such higher amount separately approved by the Parliament in the State budget. Limits for participating institutions will be a maximum of 2 % of consolidated risk-weighted items (own funds).

### *Eligible institutions*

Eligible under this scheme will be sound and solvent Finnish deposit banks, their holding companies and the central organisation of the consortium of cooperative banks, which includes subsidiaries of foreign credit institutions.

### *Eligible instruments*

Under this scheme, the eligible instrument is a capital loan belonging to a bank's original own funds.

### *Timing*

The measures under this scheme will expire on 31 December 2009.

### *Conditions*

The recapitalisation is subject to an annual interest payment; the reference rate will be equal to the interest payable for five year Government bonds plus 6 %.

## 3. OTHER DRAFT MEASURES

State loans, the acquisition of impaired assets and nationalisation will be based on the amended Law on the Government guarantee fund<sup>76</sup>, which establishes a legal framework for financial support of distressed banks, for instance by means of guarantees or subscription of shares. The guarantee fund may also own asset management companies for the purpose of purchase, management and sale of a distressed bank's assets or liabilities; however, there are currently no plans to make use of the provisions of this Law.

---

<sup>75</sup> The Government proposal for a law on State capital investment in deposit banks (*HE 4/2009 vp, Hallituksen esitys Eduskunnalle laiksi valtion pääomasijoituksista talletuspankkeihin*) was presented to the Parliament on 20 February 2009. The draft law is still in the committee stage, which is likely to be concluded in June. The scheme is likely to be notified to the Commission before its adoption in a plenary session of Parliament.

<sup>76</sup> The Government proposal for amending the Law on the Government guarantee fund and the Law on credit institutions (*HE 5/2009 vp, Hallituksen esitys eduskunnalle laeiksi valtion vakuusrahastosta annetun lain ja luottolaitostoiminnasta annetun lain muuttamisesta*) was presented to the Parliament on 20 February 2009. The bills were approved by the Parliament in the second reading on 9 June 2009. The Parliament's response has not yet been sent to the President of the Republic for ratification.

## FRANCE

The rescue measures in France are essentially founded on Article 6 of the Law on Finance of 16 October 2008 (hereinafter the ‘Law on Finance’)<sup>77</sup>. The French action plan takes the form, *inter alia*, of a refinancing scheme based on State guarantees granted in relation to debt securities issued by a refinancing company established for this purpose. Loans are also provided under certain conditions by the refinancing company. Recapitalisation measures are taken on the basis of State guarantees granted to financing raised by a recapitalisation company. In addition, specific legislative provisions authorise the guarantees given in rescuing Dexia.

### 1. STATE GUARANTEES

#### 1.1 Refinancing scheme

The refinancing scheme set out in the Law on Finance came into effect on 18 October 2008<sup>78</sup>. Under the scheme, the Ministry of the Economy is authorised to grant State guarantees to debt securities issued by a refinancing company (later known as the ‘SFEF’) established for the purpose of granting loans to credit institutions<sup>79</sup>. Various State guarantees were granted by Ministerial orders on programmes of debt securities issued by the SFEF<sup>80</sup>.

The Minister for the Economy was authorised also to give a State guarantee in exceptional circumstances, in particular, in urgent cases, in relation to securities issued by credit institutions, but this possibility has not been used so far. The Law on Finance establishes a maximum amount of EUR 360 billion for all State guarantees covered by Article 6<sup>81</sup>. However, the French authorities currently expect that the guarantees granted under the refinancing scheme will not exceed EUR 265 billion<sup>82</sup>.

#### *Eligible institutions*

For institutions to be eligible under the refinancing scheme, they must be credit institutions that meet legal and regulatory requirements on own funds and have signed an agreement with

<sup>77</sup> Law No 2008-1061 amending budgetary provisions for the financing of the economy (*Loi de finances rectificative pour le financement de l'économie*), published in the *Journal Officiel de la République française* of 17 October 2008, as amended by Article 123 of Law No 2008-1443 of 30 December 2008 amending budgetary provisions for 2008 (published in the *Journal Officiel de la République française* of 31 December 2008). Unless otherwise stated, the Law of 16 October 2008 (as amended) forms the basis for all measures in this chapter.

<sup>78</sup> The refinancing scheme for credit institutions in France was initially approved by the Commission on 30 October 2008 in Case No N 548/08 *France – Financial support measures to the banking industry in France* (not yet published in the OJ); its extension was authorised on 12 May 2009 in Case No N 251/09 *France – Financial support measures to the banking industry in France* (not yet published in the OJ).

<sup>79</sup> The statutes of the refinancing company were approved by its general meeting on 17 October 2008 and authorised by the Ministry of the Economy on 20 October 2008. With effect from 6 November 2008, the refinancing company became the *Société de financement de l'économie française* (SFEF), the statutes of which were adopted by its general meeting on 6 November 2008 and authorised by the Ministry of the Economy on 20 November 2008.

<sup>80</sup> Order of 30 October 2008 published in the *Journal Officiel de la République française* of 31 October 2008 (EUR 25 billion); Order of 23 October 2008 published in the *Journal Officiel de la République française* of 25 October 2008 (EUR 5 billion); Order of 14 January 2009 published in the *Journal Officiel de la République française* of 17 January 2009 (State guarantee in relation to debt securities denominated in USD); Order of 6 February 2009 published in the *Journal Officiel de la République française* of 10 February 2009 (State guarantee in relation to debt securities to a value of EUR 30 billion and USD 20 billion (approximately EUR 14 billion)).

<sup>81</sup> This includes the State guarantees granted for recapitalisation purposes or in the context of the rescue of Dexia.

<sup>82</sup> *Bilan d'activité du plan de financement de l'économie française*, Ministry of the Economy, 27 January 2009.

the State setting out certain conditions in relation to corporate governance and the extension of credit to individuals, firms and regional entities.

### *Eligible liabilities*

Debt securities issued by the refinancing company are eligible under this scheme.

### *Issue and maturity*

The State guarantees may be granted to debt securities issued before 31 December 2009 and having a maximum maturity of five years.

### *Conditions*

The State guarantee is granted against consideration including a premium over the market price. Beneficiary credit institutions must not only satisfy the conditions established in the agreement with the State but also provide collateral security to the refinancing company.

## **1.2 Rescue of Dexia - first State guarantee**

In the framework of an intergovernmental agreement concluded on 9 October 2008 between Belgium, France and Luxembourg, the three States agreed to provide a joint guarantee for a value of up to EUR 150 billion to the **Dexia** financial group, of which France covers 36.5 % (Belgium 60.5 % and Luxembourg 3 %). The Law on Finance authorises the Ministry of the Economy to grant such State guarantee<sup>83</sup>.

### *Eligible institutions*

The institutions eligible are the companies of the **Dexia** group (the parent company Dexia S.A., incorporated under Belgian law, Dexia Banque Internationale Luxembourg, Dexia Banque Belgique S.A. and Dexia Crédit Local de France).

### *Eligible liabilities*

This guarantee covers financing raised by companies of the Dexia group from credit institutions and institutional counterparties, as well as bonds and debt securities issued for the same counterparties.

### *Issue and maturity*

The guarantee scheme is limited to financing, bonds or securities that have been raised or subscribed between 9 October 2008 and 31 October 2009 and mature before 31 October 2011. The scheme ends on 31 October 2011.

### *Conditions*

The guarantee is granted against consideration specified in the agreement between Dexia and France, Belgium and Luxembourg concluded on 9 December 2008. It depends on a guarantee sought at the same time from Belgium and Luxembourg.

---

<sup>83</sup> This scheme was approved by the Commission in its Decision of 19 November 2008 in Case No NN 50/08 (now transferred to Case No C 9/09) *Dexia – FR* (not yet published in the OJ). In accordance with the decision of 19 November 2008, the Member States have notified the Commission of a restructuring plan for the bank. The Commission has started an in-depth investigation under State aid rules to establish whether the restructuring plan for the Dexia group will restore the group's long-term viability (see the Commission's press release IP/09/399).

### ***Measures granted under this scheme***

A guarantee of EUR 54.75 billion was granted by way of an agreement between Dexia and France, Belgium and Luxembourg on 9 December 2008. According to the Ministry of Finance on 27 January 2009, EUR 21.9 billion of the French tranche was used.

This agreement was supplemented by an operational memorandum providing for daily monitoring of the guaranteed amounts, as well as a system of eligibility certificates in relation to guaranteed bond issues<sup>84</sup>.

The total amount of Dexia's liabilities guaranteed by France, Belgium and Luxembourg totalled in excess of EUR 90.9 billion as at 29 May 2009.

### **1.3 Rescue of Dexia - second State guarantee<sup>85</sup>**

By means of an amendment to the Law on Finance, which came into effect on 1 January 2009, the Ministry of the Economy was authorised to grant a second State guarantee to Dexia related to potential losses from the assets of its US subsidiary FSA. The ceiling for the French tranche of the guarantee is USD 6.39 billion (approximately EUR 4.5 billion), with the portfolio of assets covered by the guarantee having a total value of USD 16.5 billion (approximately EUR 11.7 billion).

#### ***Eligible institutions***

The eligible institution is Dexia.

#### ***Eligible liabilities***

This guarantee may be granted for liabilities taken by Dexia in relation to the assets on the balance sheet of FSA on 30 September 2008 insofar as FSA receives income from such assets.

#### ***Issue and maturity***

This guarantee ends if Dexia loses control of FSA or when conditions as to the amount of assets covered are met.

#### ***Conditions***

The guarantee is granted against consideration. Article 6 of the Law on Finance as modified provides for an agreement to be concluded between the Minister for the Economy and Dexia in order to specify the guarantee conditions. This guarantee is dependant on a guarantee being obtained from Belgium at the same time.

### ***Measures granted under this scheme***

The guarantee to Dexia for liabilities in relation to the assets registered on the balance sheet of FSA for a maximum amount of USD 6.39 billion (approximately EUR 4.5 billion) was announced on 14 November 2008 and subsequently approved by the Commission.

---

<sup>84</sup> The aggregate guaranteed amount and data on certified bond issues as well as other relevant information is available on the Nationale Bank van België/Banque Nationale de Belgique's website at: [www.nbb.be/DOC/DO/warandia/index.htm](http://www.nbb.be/DOC/DO/warandia/index.htm).

<sup>85</sup> This measure was approved by the Commission Decision of 13 March 2009 in Case No NN 50/08 (transferred to Case No C 9/09) *Dexia – FR* (not yet published in the OJ).



## 2. RECAPITALISATION<sup>86</sup>

### 2.1 The recapitalisation scheme

The recapitalisation scheme is administered by a separate company (*Société de prise de participations de l'Etat* (SPPE)) whose sole shareholder is the State<sup>87</sup>; the underlying State guarantee is granted by the Minister for the Economy. A first tranche of EUR 10.5 billion Tier 1 subordinated debt capital was injected in six major French banks in December 2008. The amounts injected were aimed at increasing each bank's Tier 1 ratio by 50 basis points. In January 2009, it was decided to provide a second tranche of roughly the same size<sup>88</sup>. This time, eligible banks will be able, until 31 August 2009, to issue either new Tier 1 subordinated debt capital or core Tier 1 preference shares. The total amount of the loans issued under this scheme is EUR 21.5 billion.

#### *Eligible institutions*

Recapitalisation measures can be granted to financial institutions (*organismes financiers*), which include credit institutions and other types of regulated entities, such as portfolio management companies.

#### *Eligible instruments*

Recapitalisation is effected through the issue by banks of preference shares and subordinated debt securities (SDSs) which constitute regulatory own funds. Banks may also convert SDSs that have already been issued into preference shares. The SPPE subscribes for these securities. The issue is subject to a call option at a five-year term.

#### *Timing*

In relation to each type of guaranteed financing, a decision of the Minister for the Economy specifies the duration and amount of the guarantee. The scheme will be phased out from 31 August 2009.

#### *Conditions*

Decree 2009-348 of 30 March 2009<sup>89</sup> contains rules prohibiting the allocation of stock options and free shares and governing the payment of remuneration to directors of beneficiary entities. An average rate of interest of 8% is applied to capital injections. Following negotiations with the Commission, the interest charged on preference shares was set at a higher rate than that charged on SDSs. It is anticipated that the amount of remuneration that the State will receive via the SPPE at the end of 2009 in relation to the SDSs is EUR 850 million. The terms governing the remuneration and reimbursement of the preference shares

<sup>86</sup> The original French recapitalisation scheme was approved in Commission Decision of 8 December 2008 in Case No N 613/08 *French scheme to inject capital into certain banks* (OJ C 106 of 8.5.2009, p. 15). Its first amendment was approved on 28 January 2009 in Case No N 29/09 *Modification of French scheme to inject capital into certain credit institutions* (not yet published in the OJ). A second amendment was approved on 24 March 2009 in Case No N 164/09 *Modification of French scheme to inject capital into certain credit institutions* (not yet published in the OJ). On 8 May 2009, the Commission authorised a further EUR 2.45 billion capital injection for the Caisse Nationale des Caisses d'Épargne and the Banque Fédérale des Banques Populaires, see Commission Decision of 24 April 2009 in Case No N 249/09 *Capital injection for Banque Populaire/Caisse d'Épargne* (not yet published in the OJ).

<sup>87</sup> The SPPE's purpose is to subscribe securities that have been issued by financial entities. To a maximum of EUR 40 billion, the financing raised by the SPPE for this purpose benefits from the State guarantee.

<sup>88</sup> The amount of the second tranche has been increased from EUR 10.5 billion to EUR 11 billion to take account of the merger of the central bodies of the Caisse Nationale des Caisses d'Épargne and the Banque Fédérale des Banques Populaires within the limit of 50 basis points of the Tier 1 ratio of the new entity.

<sup>89</sup> Published in the *Journal Officiel de la République française* of 31 March 2009.

were amended in March 2009. By progressively increasing the amount that has to be reimbursed each year, the incentive was strengthened for the beneficiary banks to repurchase the preference shares at the earliest opportunity.

Beneficiary institutions must undertake to increase the amount of credit they extend by 3 to 4 % annually. In addition, the scheme requires beneficiaries to finance the real economy.

## 2.2 Individual recapitalisation measures

**Dexia's** capital was increased by EUR 3 billion (of which EUR 1 billion, representing 5.7 % of the capital of Dexia, was subscribed for by the Government via the SPPE and EUR 2 billion by the public sector body, *Caisse des dépôts et consignations*)<sup>90</sup>. This was part of a total capital increase of EUR 6.4 billion, with Belgium also subscribing EUR 3 billion, and Luxembourg EUR 376 million.

Further recapitalisation measures, involving subordinated debt securities subscribed for by the SPPE in the context of the first tranche of the scheme, concerned **Banque Fédérale des Banques Populaires** (EUR 0.95 billion), **BNP Paribas** (EUR 2.55 billion), **Caisse Nationale des Caisses d'épargne** (EUR 1.1 billion), **Crédit Agricole** (EUR 3 billion), **Crédit Mutuel** (EUR 1.2 billion) and **Société Générale** (EUR 1.7 billion).

It is intended to apportion the second tranche of the scheme amounting to EUR 11 billion among the beneficiary banks by 31 August 2009 according to the method used for the first recapitalisation measures.

In addition, the Commission recently authorised a further EUR 2.45 billion capital injection for the institution to be created by the merger between **Caisse Nationale des Caisses d'épargne** and **Banque Fédérale des Banques Populaires** with the aim of placing the new central body, which will be responsible for guaranteeing the liquidity and solvency of the entire group, on sound financial footing. Instead of EUR 2.55 billion, the two institutions will therefore receive EUR 5 billion under the second tranche of the scheme.

## 3. LOANS GRANTED BY SFEF

Loans are granted by the SFEF to credit institutions with liquidity problems. In order to fund such loans, by April 2009, the SFEF issued debt securities for an amount of about EUR 50 billion and the Government received between EUR 400 and 500 million as consideration for the State guarantee. The rate applied by the SFEF to the loans was close to 4 % (issuance price increased by the cost of the State guarantee). The beneficiary credit institutions were the following: **Banque Fédérale des Banques Populaires**, **Banque PSA Finance**, **BNP Paribas**, **Caisse centrale du Crédit Immobilier de France – 3CIF**, **Caisse Nationale des Caisses d'Épargne**, **Crédit Agricole**, **Crédit Mutuel**, **GE Capital SAS**, **Groupe RCI Banque**, **Laser Cofinoga**, **S2P – Société des Paiements Pass**, **Société Générale**, and **VFS France**.

Further details on the conditions are set out above in section 1.1.

<sup>90</sup> The French contribution was announced on 30 September 2008 in return for the following consideration: a change in the institution's direction, Government representation in the institution's administrative board and establishment of a restructuring programme.

## GERMANY

The German scheme is essentially based on the Law on the implementation of a package of measures to stabilise the financial market<sup>91</sup>, which came into effect on 18 October 2008 and the Order implementing the Law on the financial market stabilisation fund<sup>92</sup>, which entered into force a day later. The measures include guarantees, recapitalisation, the acquisition of risk positions and nationalisation<sup>93</sup>.

### 1. STATE GUARANTEES

#### 1.1 The State guarantee scheme

The guarantees are issued by the Financial Market Stabilisation Authority in the framework of the German Special Fund for Financial Market Stabilisation (SoFFin)<sup>94</sup>. The amount of the scheme is limited to EUR 400 billion.

##### *Eligible institutions*

Eligible institutions under this scheme are solvent financial sector entities, having their registered office in Germany. These comprise: (i) institutions established under the Law on banking<sup>95</sup>; (ii) insurance corporations and pension funds established under the Law on insurance supervision<sup>96</sup>; (iii) asset management companies pursuant to the Law on investment<sup>97</sup>; and (iv) operators of stock exchanges and derivatives exchanges. Their respective parent companies are also eligible, in so far as these are financial holding companies, mixed financial holding companies or supervised financial conglomerate companies. In order to be considered 'solvent', institutions must have a Tier 1 ratio of at least 7 %. Special purpose vehicles (SPV) are also eligible.

##### *Eligible liabilities*

Eligible for guarantees are debt securities issued by financial sector entities as well as obligations from deposits of financial sector companies (newly issued senior debt or refinancing instruments).

---

<sup>91</sup> *Gesetz zur Umsetzung eines Maßnahmenpakets zur Stabilisierung des Finanzmarktes*, (2008) *Bundesgesetzblatt I*, p. 1982. Article 1 of the law is the Law on the Financial Market Stabilisation Fund (*Finanzmarktstabilisierungsfondsgesetz*).

<sup>92</sup> *Verordnung zur Durchführung des Finanzmarktstabilisierungsfondsgesetzes*, (2008), eBAnz. AT123 V1.

<sup>93</sup> The German rescue package was approved by the Commission in its Decision of 27 October 2008 in Case No N 512/08 *Support measures for financial institutions in Germany* (OJ C 293, 15.11.2008, p. 2). Germany then notified amendments to the scheme, in particular regarding remuneration in the framework of recapitalisation measures. This was approved in Commission Decision of 12 December 2008 in Case No N 625/08 *Amendment to German banks rescue scheme* (not yet published in the OJ).

<sup>94</sup> In the media, this acronym is used both for the Authority and the Fund, although strictly speaking it refers only to the Fund (*Sonderfonds Finanzmarktstabilisierung*). The Authority's website is [www.soffin.de](http://www.soffin.de). In the framework of the draft law on the further development of financial market stabilisation (*Gesetz zur Fortentwicklung der Finanzmarktstabilisierung*) the intent is to turn the Authority into the Federal Authority for Financial Market Stabilisation (*Bundesanstalt für die Finanzmarktstabilisierung*). This amendment is expected to enter into force in summer 2009.

<sup>95</sup> *Kreditwesengesetz* in the version published on 9 September 1998 (BGBl. I, p. 2776), as last amended by Article 2 of the Law of 20 March 2009 (BGBl. I, p. 607).

<sup>96</sup> *Versicherungsaufsichtsgesetz* in the version published on 17 December 1992 (BGBl. 1993 I, p. 2), as last amended by Article 5 of the Law of 20 March 2009 (BGBl. I, p. 607).

<sup>97</sup> *Investmentgesetz* of 15 December 2003 (BGBl. I, p. 2676), as last amended by Article 4 of the Law of 12 March 2009 (BGBl. I, p. 470).

### *Issue and maturity*

The scheme will be phased out from 31 December 2009<sup>98</sup>. The maturity of the debt instruments is for a maximum of 36 months. This has been extended to a maximum of 60 months by the Law on the further stabilisation of financial markets<sup>99</sup>, which entered into force on 9 April 2009.

### *Conditions*

Guarantees are granted for an appropriate fee<sup>100</sup>. Participating financial sector entities have to submit their business model for approval by the Government. In budgetary terms, the Government is making provision for defaults of 5 % of the amount of the guarantee. The Government is allowed to limit the remuneration and compensation paid to management of participating entities. Further, the entities must avoid distortions of competition and produce sound and sustainable business policies; moreover, the Authority may require the recipient entity to limit or abandon risky businesses.

## **1.2 Individual guarantee measures**

**Aareal Bank** was granted a guarantee in the amount of EUR 4 billion<sup>101</sup>.

**BayernLB** was granted a guarantee on 3 December 2008 in the amount of EUR 15 billion<sup>102</sup>, along with other measures<sup>103</sup>.

**Commerzbank** was granted a guarantee in the amount of EUR 15 billion<sup>104</sup>.

**HSH Nordbank** was granted a guarantee in the amount of EUR 30 billion according to a decision taken on 21 November 2008, along with other measures<sup>105</sup>.

**Hypo Real Estate** was granted a guarantee in the amount of EUR 52 billion in October 2008, maturing in April 2009, along with other measures<sup>106</sup>.

<sup>98</sup> Under the draft law, see above footnote 94, the scheme is prolonged until 31 December 2010.

<sup>99</sup> *Gesetz zur weiteren Stabilisierung des Finanzmarktes*, (2009) BGBl. I, p. 725.

<sup>100</sup> Each eligible institution will be charged a fee based on the market rate taking account of the maximum amount of the guarantee provided and the risk of default, and interest at a rate to be determined on an individual basis. Established practice is an annual fee of 0.5 %. For drawings under the guarantee, SoFFin has established varying rates. In line with State aid rules, SoFFin has to apply a market average premium. The premium to be paid by financial institutions is in line with or exceeds the amount established in the ECB Recommendation on Guarantees.

<sup>101</sup> See the press release of Aareal Bank available on its website at: [www.aareal-bank.com/en/press/press-release/aareal-bank-aareal-holding-and-soffin-conclude-definite-agreements/](http://www.aareal-bank.com/en/press/press-release/aareal-bank-aareal-holding-and-soffin-conclude-definite-agreements/).

<sup>102</sup> Commission Decision of 18 December 2008 in Case No N 615/08 *BayernLB* (OJ C 80, 3.4.2009, p. 4). Germany committed itself to submitting a preliminary restructuring plan for BayernLB within four months.

<sup>103</sup> These measures, which entered into force on 19 December 2008, consist of: (i) a core capital increase of EUR 10 billion in several instalments through one of the bank's owners, the Federal State of Bavaria, reducing the shareholding of the savings banks significantly; and (ii) a risk shield for the amount of EUR 4.8 billion provided by the State of Bavaria for part of the bank that would otherwise weaken the capital position of the bank. These measures will be phased out from 18 June 2009 and are subject to a series of behavioural commitments such as granting credit to the real economy.

<sup>104</sup> See the press release of Commerzbank available on its website at: [www.commerzbank.de/en/hauptnavigation/aktionaere/service/archive/ir-nachrichten\\_1/2008\\_5/ir\\_nachrichten\\_detail\\_08\\_2203.html](http://www.commerzbank.de/en/hauptnavigation/aktionaere/service/archive/ir-nachrichten_1/2008_5/ir_nachrichten_detail_08_2203.html). Conditions include the payment of market rates. No dividends are to be paid by the bank in 2008 and 2009; further, the institution is obliged to provide special loans to medium-sized entities in the amount of EUR 2.5 billion.

<sup>105</sup> By a decision of 3 April 2009, HSH Nordbank was granted a guarantee by the Federal States of Schleswig-Holstein and Hamburg for an amount of EUR 10 billion (for details see the press release of HSH Nordbank available on its website at: [www.hsh-nordbank.de/en/presse/pressemitteilungen/2009/press\\_release\\_detail\\_282752.jsp](http://www.hsh-nordbank.de/en/presse/pressemitteilungen/2009/press_release_detail_282752.jsp)).

This was approved by the Commission in its Decision of 29 May 2009 in Case No N 264/09 *Recapitalisation and asset relief for HSH Nordbank* (not yet published in the OJ).

<sup>106</sup> Commission Decision of 7 May 2009 in Case No C 15/09 (ex N 196/09) *Restructuring Aid for Hypo Real Estate* (not yet published in the OJ). The 'further measures' concerned a further guarantee provided on 2

**IKB**<sup>107</sup> was granted a guarantee in the amount of EUR 5 billion on 31 December 2008, which will mature on 31 December 2012.

**Sicherungseinrichtungsgesellschaft deutscher Banken (SdB)**<sup>108</sup> was granted a guarantee in the amount of EUR 6.7 billion with the intention of bolstering the deposit protection fund and to pre-finance future proceeds from the insolvency assets of insolvent Lehman Brothers entities.

At the same time, public authorities granted further guarantees which do not fall under this scheme:

**SachsenLB**<sup>109</sup> was granted a guarantee to a maximum amount of EUR 2.75 billion by the Federal State of Saxony and **NordLB**<sup>110</sup> was granted a guarantee for the amount of EUR 20 billion issued by the Federal States of Lower Saxony and Saxony-Anhalt.

## 2. RECAPITALISATION

### 2.1 Recapitalisation measures

Recapitalisation measures are based on the same legal acts as the State guarantees. The recapitalisation is provided by the Financial Market Stabilisation Authority, using the SoFFin. The amount committed to the scheme is EUR 80 billion (this is the maximum amount available in total for recapitalisation and acquisitions of risk positions), with, in principle, a maximum amount of EUR 10 billion for each individual institution.

#### *Eligible institutions*

Eligible are solvent financial sector entities (as set out above in the section on guarantees).

#### *Eligible instruments*

Various instruments that are commensurate with the legal form of the institution are eligible for this scheme (e.g. non-voting preference shares, shares and hybrid capital such as participation certificates).

---

October 2008 by the Government, with some banks, via an SPV, at an amount of EUR 35 billion. As collateral, Hypo Real Estate has provided a package of securities and loans with a nominal value of EUR 42 billion and the shares of its subsidiary banks. This measure was approved by Commission Decision of 2 October 2008 in Case No NN 44/08 *Rescue aid to Hypo Real Estate* (OJ C 293, 15.11.2008, p. 1).

<sup>107</sup> Commission Decision of 22 December 2008 in Case No N 639/08 *Guarantee for IKB* (OJ C 63, 18.3.2009, p. 14). Additionally, the Commission in its Decision of 21 October 2008 in Case No C 10/08 (ex NN 7/08) *Restructuring aid to IKB* (not yet published in the OJ) approved IKB's restructuring in an amount of EUR 9 billion.

<sup>108</sup> Commission Decision of 21 January 2009 in Case No N 17/09 *State aid to the German deposit-guarantee scheme private banks* (not yet published in the OJ). SdB is a newly created banking entity, which supports the Deposit Protection Fund of the German private commercial banks in processing compensation payments. The guarantee, which came into effect on 1 February 2009, is intended to provide collateral for a bond issued by SdB and subscribed by the member banks of the Association of German Banks (BdB). The scheme will end on 28 February 2014.

<sup>109</sup> SachsenLB's restructuring aid was approved by the Commission in its Decision of 4 June 2008 in Case No C 9/2008 (ex NN8/08) *Restructuring aid to Sachsen LB* (OJ L 104, 24.4.2009, p. 34).

<sup>110</sup> Commission Decision of 22 December 2008 in Case No N 655/08 *NordLB* (OJ C 63, 18.3.2009, p. 16). The guarantee programme put into effect on 1 January 2009 is structured around an SPV that supplies financing to NordLB via securities with a maximum maturity of three to five years, against market-oriented remuneration and backed by a diversified guarantee pool of assets that is constantly reviewed. This scheme ends on 31 December 2010. For details see the NordLB press release available on its website at [www.nordlb.de/Single-View.3699.0.html?&cHash=7615fb1eda&tx\\_ttnews\[backPid\]=3698&tx\\_ttnews\[tt\\_news\]=614](http://www.nordlb.de/Single-View.3699.0.html?&cHash=7615fb1eda&tx_ttnews[backPid]=3698&tx_ttnews[tt_news]=614).



## ***Timing***

Applications for recapitalisation measures must be lodged by 31 December 2009<sup>111</sup>.

## ***Conditions***

Recapitalised institutions have to pay interest at a rate that averages from 7 to 9 %, except where the SoFFin undertakes the recapitalisation measure in conjunction with a significant contribution by private parties on equal terms. There is a temporary prohibition on paying dividends, unless sufficient incentives to repay the State deposit exist. Further, the institution's business policy and its sustainability must be examined and risky business activities may have to be reduced or abandoned. Annual remuneration for individual management members is limited to EUR 500 000, bonuses may not be paid while the stabilisation measures remain in force and dividends may be distributed only to the Government. Recapitalised companies will further be obliged to provide loans to SMEs.

## **2.2 Individual recapitalisation measures**

**Aareal Bank** has benefited from a dormant equity holding in the amount of EUR 0.53 billion<sup>112</sup>.

**Commerzbank** has benefited from a capital increase in the amount of EUR 10 billion and a dormant equity holding in the amount of EUR 8.2 billion<sup>113</sup>.

In addition, one measure was provided for outside this scheme, where **HSH Nordbank** benefited from a capital increase in the amount of EUR 3 billion<sup>114</sup>.

## **3. ACQUISITION OF RISK POSITIONS / IMPAIRED ASSETS**

### **3.1 Acquisition of risk positions**

The acquisition of risk positions is administered by the Financial Market Stabilisation Authority, using the SoFFin. The amount committed to this scheme including recapitalisation measures is EUR 80 billion, with a maximum amount of EUR 5 billion available for each individual institution.

### ***Eligible institutions***

Solvent financial sector entities are eligible under this scheme (as set out above in the section on guarantees).

---

<sup>111</sup> Under the draft law, see above footnote 94, the time frame for applications is prolonged to 31 December 2010.

<sup>112</sup> The dormant equity holding is subject to an interest rate of 9 %. See the press release of Aareal Bank, above footnote 101.

<sup>113</sup> These measures came into effect on 31 December 2008 and 7 May 2009. The recapitalisation of Commerzbank was approved by the Commission in its Decision of 7 May 2009 in Case No N 244/09 *Capital injection into Commerzbank* (not yet published in the OJ). The dormant equity holding is subject to an interest rate of 9 %. Further conditions related to the divestment of activities and the sale of subsidiaries are available in the Commission Decision *Amendment to German banks rescue scheme*, above footnote 93.

<sup>114</sup> This was issued by the Federal States of Schleswig Holstein and Hamburg on 3 April 2009, for details see the press release of HSH Nordbank, above footnote 105. The measure was approved by the Commission in its Decision of 29 May 2009, above footnote 105.

### *Eligible instruments*

This scheme involves the purchase or acquisition by other means of risk positions acquired before 13 October 2008, in particular assets, securities, derivatives, rights and obligations arising from credit commitments or warranties, and holdings, including associated collateral.

### *Timing*

The scheme will end on 31 December 2009<sup>115</sup>.

### *Conditions*

The consideration for the acquisition of risk positions is the value of the risk position as last noted in the balance sheet or the reduced value of the risk position against the transfer of government debt securities. Other conditions include a requirement that the interest yield should be appropriate to the risk and at a minimum no less than the refinancing costs. In addition, the beneficiary company is required to have adequate own funds resources and restrictions are imposed on compensation payable to management. Further conditions are set out above in the section on recapitalisation.

## **3.2 Law on ‘bad banks’**

Currently, a draft law amending the Law on the financial market stabilisation fund is undergoing Parliamentary scrutiny<sup>116</sup>. It is expected to enter in force early July 2009. This law comprises two distinct ‘bad bank’ schemes.

### **3.2.1 SPV scheme**

This scheme is intended to offer banks the opportunity to cleanse their balance sheets by relocating impaired assets. Under this scheme, they may transfer structured securities to special purpose vehicles (SPVs, in this context referred to as ‘bad banks’) and obtain bonds in return. The draft law envisages that the SoFFin will provide guarantees for these bonds.

### *Eligible institutions*

Eligible for the measures under the draft law will be credit institutions and financial holding companies, which on 31 December 2008 had their registered office in Germany, and their subsidiaries and whose SPV also has its registered office in Germany.

### *Eligible instruments*

Under the draft law, eligible for the measure will be bonds issued by the SPV to refinance the acquisition of the structured securities and which a bank accepts in return for the transferred assets. A bank may not transfer to the SPV structured securities that it acquired after 31 December 2008. The structured securities must be transferred at 90 % of their book value or, if higher, at a price reflecting their actual value.

### *Timing*

Requests to participate in the scheme must be made within six months of the law’s publication.

---

<sup>115</sup> Under the draft law, see above footnote 94, the scheme is prolonged until 31 December 2010.

<sup>116</sup> Above footnote 94.

### *Conditions*

This measure will be subject to a market-oriented fee to be paid to the SoFFin. In addition, participant institutions must pay an annual fee to the SPV as compensation. They are required to have adequate own funds and a sustainable business model. Moreover, they must disclose all risks regarding the transferred structured securities. Further conditions are established by the SoFFin on an individual basis.

### **3.2.2 Winding-up agency scheme (AidA)**

Under this draft scheme, for each participating institution a separate public agency with partial legal capacity will be established so that bad assets and non-strategic business areas may be transferred to the agency.

#### *Eligible institutions*

Eligible for the draft measures will be credit institutions and financial holding companies that established their headquarters in Germany prior to 1 January 2009. This also applies to their domestic and foreign subsidiaries and special purpose entities that have taken over their risk exposure.

#### *Eligible instruments*

Eligible will be risk positions established prior to 31 December 2008 and strategically non essential businesses of the eligible institutions.

## **4. NATIONALISATION**

### **4.1 Nationalisation measure**

The option of nationalisation (also by way of expropriation) was introduced by the Law on the further stabilisation of financial markets and came into effect on 9 April 2009.

#### *Eligible institutions*

Institutions that will be considered under the scheme are those facing failure, where no other solution is available and nationalisation is considered necessary to ensure the stability of the financial system.

#### *Timing*

The Federal Ministry of Finance must initiate expropriation procedures at the latest by 30 June 2009 and must adopt a regulation on specific expropriations by 31 October 2009.

#### *Conditions*

Expropriation requires the adoption of a Federal regulation specific to the institution concerned. It is subject to the payment of compensation, the nature and extent of which are to be determined in accordance with current market value, calculated on the basis of its mean stock exchange price during the two weeks before the day on which the expropriation order is issued. The expropriated entity has to be reprivatised as soon as it has been stabilised.

## 4.2 Individual measure

The Government currently is in the process of nationalising **Hypo Real Estate**<sup>117</sup>.

## GREECE

The Greek scheme consists of guarantees, recapitalisation and loans<sup>118</sup>. These measures are based on Law No 3723/2008 (hereinafter the ‘Law on the enhancement of liquidity’)<sup>119</sup>, which entered into force on 23 October 2008. A Supervisory Council will coordinate the implementation of the Law on the enhancement of liquidity and ensure that the liquidity created is used to the benefit of depositors, borrowers and the Greek economy in general<sup>120</sup>.

### 1. STATE GUARANTEES

The amount committed to the scheme is EUR 15 billion<sup>121</sup>. However, funds for guarantees and loans may be redistributed between the two categories of aid, subject to a maximum total amount of EUR 23 billion.

#### *Eligible institutions*

Eligible under this scheme are credit institutions authorised to operate by the Bank of Greece (BoG), on condition that these institutions fulfil the capital adequacy ratio set by the BoG.

#### *Eligible liabilities*

The guarantees cover securities issued or loans received by the eligible institutions in relation to short and medium-term debt. This guarantee does not cover interbank deposits.

<sup>117</sup> The Financial Market Stabilisation Authority has purchased 47.31 % of Hypo Real Estate shares. This is to ensure that at the General Meeting, which will take place on 2 June 2009, the Financial Market Stabilisation Authority will have the simple majority of votes and thus will be able to put through a capital increase. After the capital increase by EUR 3 billion, the Financial Market Stabilisation Authority will subscribe to all new shares, which will give it 90 % of the voting rights. This will enable it to take over all shares by means of a squeeze-out. The planned acquisition by the Government has been granted merger clearance by the Commission on 15 May 2009 in Case No M.5508 (not yet published in the OJ).

<sup>118</sup> The Greek scheme for the enhancement of liquidity in the economy was approved by the Commission in its Decision of 19 November 2008 in Case No N 560/08 *Greek financial support measures* (not yet published in the OJ).

<sup>119</sup> Law 3723/2008 on the enhancement of liquidity in the economy in response to the impact of the international financial crisis (*Νόμος 3723/2008 «Ενίσχυση της ρευστότητας της οικονομίας για την αντιμετώπιση των επιπτώσεων της διεθνούς χρηματοπιστωτικής κρίσης και άλλες διατάξεις», ΦΕΚ Α 250/9.12.2008*). See also Decision 54201/B 2884/26.11.2008 of the Minister for Economy and Finance, implementing the Law on the enhancement of liquidity (*Υπουργική απόφαση αριθ. 54201/B 2884/26.11.2008 «Ενίσχυση της ρευστότητας της οικονομίας για την αντιμετώπιση των επιπτώσεων της διεθνούς χρηματοπιστωτικής κρίσης», ΦΕΚ Β 2471/4.12.2008*), as amended by Decision 21861/1259B/2009 (*Υπουργική απόφαση αριθ. 21861/1259B/2009 «Τροποποίηση της υπ' αριθμ. 54201/B' 2884/26.11.2008 απόφασης του Υπουργού Οικονομίας και Οικονομικών “Ενίσχυση ρευστότητας της Οικονομίας για την αντιμετώπιση των επιπτώσεων της Διεθνούς Χρηματοπιστωτικής Κρίσης”» ΦΕΚ Β 825/4.5.2009*) and Articles 28 and 29 of Law 3756/2009 on the dematerialised securities system, provisions on the capital market, tax issues and other provisions (*Νόμος 3756/2009 «Σύστημα Αυλών Τίτλων, διατάξεις για την Κεφαλαιαγορά, φορολογικά θέματα και λοιπές διατάξεις», ΦΕΚ Α 53/31.3.1009*).

<sup>120</sup> For additional information see the Ministry of Economy and Finance’s website at: [www.mnec.gr/en/](http://www.mnec.gr/en/).

<sup>121</sup> Criteria for distribution include liquidity and capital adequacy position of the credit institution, the likelihood of its capital adequacy being affected, its size and systemic importance, its contribution to the financing of SMEs, etc.

### ***Issue and maturity***

The guarantees are provided to credit institutions for securities issued or loans received from 19 November 2008 until 31 December 2009, with maturities from three months to three years.

### ***Conditions***

The guarantees are provided for an appropriate fee. Collateral may also be required. The level of the fee and the type of collateral, as well as the detailed terms of application of the Law on the enhancement of liquidity, are established by a decision of the Minister for the Economy and Finance, following a recommendation from the Governor of the BoG (having regard to supervisory criteria) as to the amount to be provided to each institution within the overall framework of the scheme. The fee to be paid is largely in line with the ECB Recommendation on Guarantees.

During the guarantee period, a government representative is included in the institution's Board of Directors. The institution is also subject to various operational restraints, as apply in the case of recapitalisation (see below).

## **2. RECAPITALISATION**

### **2.1 Recapitalisation measures**

The Government will make available Tier 1 capital by acquiring preference shares in order to build and maintain an adequate buffer of capital for each credit institution covered by this scheme. Recapitalisation is based on the same legal acts as are guarantees, including Law 3756/2009. The maximum amount committed to the scheme is EUR 5 billion.

### ***Eligible institutions***

Eligible institutions under this scheme are corporate banks (*sociétés anonymes*) licensed by the BoG to operate in Greece, irrespective of whether their securities are listed on organised markets.

### ***Eligible instruments***

Recapitalisation applies to the issuance of preference shares, the value of which will be covered by Greek State bonds. The volume of preference shares purchased by the Government will be based on criteria such as the institution reaching a certain capital adequacy ratio, its market share and its contribution to the financing of SMEs.

### ***Timing***

Eligible institutions are entitled to increase their capital by issuing preference shares. The general meeting of that institution's shareholders must have adopted a resolution to that effect by 19 May 2009. The Government will subscribe for the shares by 31 December 2009 and these must be repurchased by the eligible institution after five years, at the latest.

### ***Conditions***

The preference shares grant the right to a fixed rate of return of 10 % on the contributed capital. They are non-cumulative, are considered as non-core Tier 1 capital and have priority over ordinary shares. These shares entitle the Government to be represented temporarily on the institution's Board of Directors. This representative has the power to veto any decision related to dividend distribution and to policy on benefits accorded to the President, Managing Director and other members of the Board of Directors, General Directors and Deputy General



Directors, if such a decision could jeopardise the interests of depositors or substantially affect the solvency and the proper functioning of the institution.

In addition, several operating restrictions are imposed on the eligible institution, for example, a restriction on the remuneration of the board members, a requirement to dispense with managerial bonuses, a restriction on the maximum dividend payout to 35 % of net profits, and a prohibition on extending the institution's activities and on pursuing aggressive market strategies. The consideration for the preference shares is determined according to the nominal value of ordinary shares of the latest issuance of the credit institution. That value is covered by Greek Government bonds issued at the Euribor interest rate.

The eligible institution must repurchase the preference shares for an amount equivalent to that originally invested in the institution. If, after a certain period, an institution is unable to repurchase the preference shares due to the fact that capital adequacy requirements are not fulfilled, the shares will be converted into ordinary shares or other similar instruments.

## 2.2 Individual recapitalisation measures

The following institutions have adopted a resolution to increase their capital through this scheme: **Agricultural Bank of Greece S.A.** with an increase of EUR 675 million<sup>122</sup>; **Alpha Bank S.A.** with an increase of a maximum amount of EUR 950 million<sup>123</sup>; **Aspis Bank S.A.** with an increase of a maximum amount of EUR 90 million<sup>124</sup>; **Attica Bank S.A.** with an increase of EUR 100 million<sup>125</sup>; **EFG Eurobank Ergasias S.A.** with an increase of EUR 950 million<sup>126</sup>; **General Bank of Greece S.A.** with an increase of EUR 180 million<sup>127</sup>; **Millennium Bank S.A.** with an increase of EUR 65 million<sup>128</sup>; **National Bank of Greece S.A.** with an increase of EUR 350 million<sup>129</sup>; **Piraeus Bank S.A.** with an increase of EUR 370 million<sup>130</sup>; and **Proton Bank S.A.** with an increase of EUR 79 million<sup>131</sup>.

## 3. STATE LOANS

The scheme for State loans is based on the same legal acts as guarantees and is available to eligible credit institutions for enhancing their liquidity. The maximum amount committed to this scheme is EUR 8 billion. However, that amount may be varied in certain circumstances, e.g. depending on the absorption capacity and the general needs, provided that the maximum total amount of EUR 23 billion for guarantees and loans is not exceeded.

<sup>122</sup> See the Resolutions of the Extraordinary General Meeting of Shareholders of 12 January 2009, available on the website [www.atebank.gr/English/Announcements/2009+Announcements/12012009.htm](http://www.atebank.gr/English/Announcements/2009+Announcements/12012009.htm).

<sup>123</sup> See the Resolutions and Results of the Extraordinary General Meeting of Shareholders of Alpha Bank on 12/1/2009, available on the website [www.alpha.gr/page/default.asp?la=2&id=64](http://www.alpha.gr/page/default.asp?la=2&id=64).

<sup>124</sup> See the press release on the Extraordinary General Meeting of the shareholders of 23 January 2009, available on the website [www.aspisbank.gr/category/english/475/index.html](http://www.aspisbank.gr/category/english/475/index.html).

<sup>125</sup> See the Resolutions of the Extraordinary General Meeting of Shareholders of 8 January 2009, available on the website [www.atticabank.gr/index.asp?a\\_id=347&news\\_id=373](http://www.atticabank.gr/index.asp?a_id=347&news_id=373).

<sup>126</sup> See the Resolutions of the Bank's Extraordinary General Shareholders' Meeting of 12 January 2009, available on the website [www.eurobank.gr/online/home/search.aspx?mid=334&lang=en](http://www.eurobank.gr/online/home/search.aspx?mid=334&lang=en).

<sup>127</sup> See the Resolutions of the Extraordinary General Meeting of Shareholders of 29 January 2009, available on the website [www.geniki.gr/index.asp?catid=1002&artid=879&menu=1](http://www.geniki.gr/index.asp?catid=1002&artid=879&menu=1).

<sup>128</sup> See the Board of Directors Report for the period 1 January 2008 to 31 January 2008, available on the website [www.millenniumbank.gr/MillenniumVB/MillenniumEN/LeftMenu1\\_EN/FinancialHighlights\\_EN/FinancialStatementsBank\\_EN/](http://www.millenniumbank.gr/MillenniumVB/MillenniumEN/LeftMenu1_EN/FinancialHighlights_EN/FinancialStatementsBank_EN/).

<sup>129</sup> See the Announcement of Resolutions of the Bank's Extraordinary General Meeting of 22 January 2009, available on the website: [www.nbg.gr](http://www.nbg.gr).

<sup>130</sup> See the Resolutions of Extraordinary General Meeting of 23 January 2009, available on the website [www.piraeusbank.gr/ecportal.asp?id=288949&lang=2&nt=78&from=links&fromsearch=234010&tid=234010](http://www.piraeusbank.gr/ecportal.asp?id=288949&lang=2&nt=78&from=links&fromsearch=234010&tid=234010).

<sup>131</sup> See the decision of the Extraordinary General Meeting of 28 January 2009, available on the website [www.proton.gr/index.php?sid=1e1a586fe42c6a64e32d9260af7e8a82&thirdLevelTag=ia\\_gm](http://www.proton.gr/index.php?sid=1e1a586fe42c6a64e32d9260af7e8a82&thirdLevelTag=ia_gm).

### ***Eligible institutions***

Credit institutions authorised to operate by the BoG and satisfying the capital adequacy ratio set by that body are eligible under this scheme.

### ***Eligible instruments***

The securities (bonds) concerned have zero coupons and are allocated to credit institutions by the Public Debt Management Office. Securities are lent directly and exclusively to the eligible institutions at their nominal value while legal ownership of such securities is transferred to the eligible institutions for the entire lending period. The distribution of securities to credit institutions will be effected according to similar criteria as govern the guarantee scheme.

### ***Timing***

The Public Debt Management Office may issue Government securities until 31 December 2009, with maturities of up to three years.

### ***Conditions***

Institutions must pay a fee and provide sufficient collateral in accordance with the conditions established by the BoG. The fee and collateral required correspond to what an eligible institution must supply for the grant of a State guarantee. The institutions concerned are obliged to use the funds to extend residential loans and loans to SMEs under competitive terms. Beneficiary institutions face operational restrictions. In addition, credit institutions taking advantage of this loan scheme must use the securities allocated as collateral in refinancing transactions or marginal lending facilities of the ECB, and/or as collateral in interbank transactions.

## **HUNGARY**

The Hungarian measures include guarantees, recapitalisation measures and loans and are aimed at strengthening confidence in the markets and, above all, financing the real economy in a period of crisis<sup>132</sup>.

### **1. STATE GUARANTEES**

Guarantees are based on Law CIV of 2008<sup>133</sup> on the strengthening of the financial intermediary system, which came into effect on 23 December 2008, and Government Decree 89/2009 (IV.14.) on procedural regulations for the provision of State guarantees in the interests of financial system stability, which entered into force on 15 April 2009<sup>134</sup>. The maximum total amount committed to State guarantees is HUF 1 500 billion (approximately EUR 5.3 billion).

---

<sup>132</sup> For further information see the Ministry of Finance's website at: [www2.pm.gov.hu/web/home.nsf/frames/english](http://www2.pm.gov.hu/web/home.nsf/frames/english).

<sup>133</sup> *A pénzügyi közvetítőrendszer stabilitásának erősítéséről szóló 2008. évi CIV-es törvény* (2008/187. (XII. 22.) Magyar Közlöny). The measures were approved by the Commission in its Decision of 12 February 2009 in Case N 664/08 *Support measure for the banking industry in Hungary* (not yet published in the OJ).

<sup>134</sup> *A pénzügyi rendszer stabilitása érdekében vállalható állami garancia eljárási szabályairól szóló 89/2009. évi Korm. rendelet* (2009/51. (IV. 14.) Magyar Közlöny).

### ***Eligible institutions***

Guarantees may be sought by sound credit institutions (any banks and specialised credit institutions specified under the Law on credit institutions<sup>135</sup>) with a registered office in Hungary.

### ***Eligible liabilities***

Eligible under this scheme are the debts of a credit institution vis-à-vis its creditors denominated in EUR, CHF or HUF and payable in the same denomination that arose between 23 December 2008 and 31 December 2009 and that are based on a loan agreement or debt security.

### ***Issue and maturity***

The scheme is available until 31 December 2009; it covers debt instruments at a maturity between three months and five years.

### ***Conditions***

The conditions include rules on the remuneration and duration of the measure, the nominal and issuance value of the shares, controlling rights of the State and restricting management remuneration. Other conditions vary and are specified in the individual guarantee agreements. Under the scheme, the Government either has the right to subscribe capital in the credit institution concerned or the credit institution must issue shares carrying specific veto rights.

## **2. RECAPITALISATION**

Recapitalisation is based on Law CIV of 2008 on the strengthening of the financial intermediary system, which came into effect on 23 December 2008<sup>136</sup>. The maximum amount committed to the scheme until 31 December 2009 is HUF 300 billion (approximately EUR 1 billion) in accordance with Law XVII of 2009<sup>137</sup>.

### ***Eligible institutions***

The same institutions that are eligible under the guarantee scheme are eligible under the recapitalisation scheme.

### ***Eligible instruments***

Recapitalisation may be granted by convertible dividend preference shares and preference shares carrying specific veto rights.

Where: (i) the extraordinary liquidity facility of an institution exceeds the credit margin for more than 20 business days, (ii) its solvency capital decreases to 50 % of the minimum, or (iii) payment is made to the creditors of the credit institution under the guarantee assumed under Law CIV of 2008, the Government may exercise special control rights over the institution in accordance with a government decree. The institution concerned may appeal against the government decree.

---

<sup>135</sup> *A hitelintézetekről és pénzügyi vállalkozásokról szóló 1996. évi CXXII. törvény (1996/109. (XII. 12.) Magyar Közlöny).*

<sup>136</sup> See above, footnote 133.

<sup>137</sup> *A Magyar Köztársaság 2008. évi költségvetéséről szóló 2007. évi CLXIX. törvény módosításáról 2009. évi XVII. törvény (Magyar Közlöny 2009/44 (IV. 3.)).*

### **Timing**

The scheme is available until 31 December 2009.

### **Conditions**

The same conditions applying to guarantees apply to recapitalisation.

## **3. STATE LOANS**

### **3.1 Loan measures**

State loans based on Law XXXVIII of 1992 on general government financing are introduced by Law IV of 2009 on the State warranty concerning mortgages. These regulations came into effect on 11 March 2009<sup>138</sup>, under which the State may provide eligible institutions (see the definition set out above in the section on guarantees) with loans. The conditions vary and are detailed in each loan agreement.

### **3.2 Individual loans**

According to a loan agreement between the State and **FHB Jelzálogbank Nyrt.** of 25 March 2009, the bank was granted a total amount of EUR 400 million<sup>139</sup> in two tranches (1 April 2009 and 30 April 2009) until 11 November 2012, with a market interest rate.

According to a loan agreement between the State and **Magyar Fejlesztési Bank Zrt.** of 14 April 2009, the bank was granted an amount of approximately HUF 170 billion<sup>140</sup> (approximately EUR 600 million), with a market-based interest rate.

According to a loan agreement between the State and **OTP Bank Nyrt.** of 25 March 2009, the bank was granted a total of EUR 500.8 million, GBP 135.9 million (approximately EUR 155.6 million), JPY 20.1 billion (approximately EUR 149.1 million) and USD 818 million (approximately EUR 578.3 million)<sup>141</sup> in two tranches (1 April 2009 and 30 June 2009) until 11 November 2012, with a market-based interest rate.

## **IRELAND**

The Irish rescue package provides for guarantees and recapitalisation. A nationalisation measure with regard to Anglo Irish Bank has been provided for as well. A State loan scheme exists but as of yet no loans have been granted and a measure concerning the acquisition of risk positions is currently in draft form.

---

<sup>138</sup> *Az államháztartásról szóló 1992. évi XXXVIII. törvény módosításáról rendelkező, a lakáscélú kölcsönökre vonatkozó állami készfizető kezességéről szóló 2009. évi IV. törvény (2009/28. (III.10.) Magyar Közlöny).*

<sup>139</sup> See the Ministry of Finance's website, above footnote 132.

<sup>140</sup> *Ibid.*

<sup>141</sup> *Ibid.*

## 1. STATE GUARANTEES

### 1.1 The State guarantee scheme

Guarantees are issued by the Minister for Finance, based on the Credit Institutions (Financial Support) Act 2008<sup>142</sup> (hereinafter the ‘Act’), the Credit Institutions (Financial Support) Scheme 2008<sup>143</sup> (hereinafter the ‘Scheme’), and three Orders (see below). The Act came into effect on 2 October 2008 and the Scheme came into effect on 20 October 2008<sup>144</sup>.

#### *Eligible institutions*

Eligible institutions under the Act and Scheme are credit institutions that are systemically important, or subsidiaries of credit institutions specified by the Minister for Finance, and that joined the guarantee scheme under the Act by executing a ‘guarantee acceptance deed’ and being specified in an order. The Minister for Finance has so far issued three Orders specifying certain credit institutions under the Scheme<sup>145</sup>.

#### *Eligible liabilities*

Eligible liabilities are all retail and corporate deposits (to the extent they are not covered by existing deposit protection schemes in Ireland or any other jurisdiction), interbank deposits, senior unsecured debt, asset covered securities, and dated subordinated debt (lower Tier 2). These instruments exclude intra-group borrowings and debts to the ECB arising from Eurosystem monetary operations.

#### *Issue and maturity*

Currently, the liabilities covered by the Scheme are those existing from 30 September 2008 or any time thereafter up to and including 29 September 2010. Under the Act, financial support will not continue beyond that date. While initially maturities were from three months to three years, the Minister for Finance in his Financial Statement of 7 April 2009 announced that the Government intends to put a State guarantee in place for the future issuance of debt securities with a maximum maturity of five years.

<sup>142</sup> Number 18 of 2008, available on the Ministry of Finance’s website at: [www.finance.gov.ie/documents/publications/legi/creditinstsupp08.pdf](http://www.finance.gov.ie/documents/publications/legi/creditinstsupp08.pdf).

<sup>143</sup> S.I. No. 411 of 2008, available on the Ministry of Finance’s website at: [www.finance.gov.ie/documents/publications/statutoryinstruments/2008/si4112008.pdf](http://www.finance.gov.ie/documents/publications/statutoryinstruments/2008/si4112008.pdf).

<sup>144</sup> The guarantee scheme was approved by the Commission in its Decision of 13 October 2008 in Case No NN 48/08 *Guarantee scheme for banks in Ireland* (OJ C 312, 6.12.2008, p. 2).

<sup>145</sup> These orders are: (i) the Credit Institutions (Financial Support) (Specification of Institutions) Order 2008 (S.I. No 416 of 2008, available on the Ministry of Finance’s website at: [www.finance.gov.ie/documents/publications/statutoryinstruments/2008/si4162008.pdf](http://www.finance.gov.ie/documents/publications/statutoryinstruments/2008/si4162008.pdf)): Allied Irish Banks plc and its subsidiaries AIB Mortgage Bank, AIB Bank (CI) Limited, AIB Group (UK) plc and Allied Irish Banks North America Inc.; Anglo Irish Bank Corporation plc and its subsidiary Anglo Irish Bank Corporation (International) plc; the Governor and Company of the Bank of Ireland and its subsidiaries Bank of Ireland Mortgage Bank, ICS Building Society and Bank of Ireland (I.O.M.) Limited; EBS Building Society; Irish Life & Permanent plc and its subsidiary Irish Permanent (IOM) Limited; Irish Nationwide Building Society and its subsidiary Irish Nationwide (I.O.M.) Limited; (ii) the Credit Institutions (Financial Support) (Specification of Institutions) Order 2008 (S.I. No. 425 of 2008, available on the Ministry of Finance’s website at [www.finance.gov.ie/documents/publications/statutoryinstruments/2008/si4252008.pdf](http://www.finance.gov.ie/documents/publications/statutoryinstruments/2008/si4252008.pdf)): Postbank Ireland Limited; and (iii) the Credit Institutions (Financial Support) (Specification of Institutions) Order 2008 (S.I. No 515 of 2008, available on the Ministry of Finance’s website at: [www.finance.gov.ie/documents/publications/statutoryinstruments/2008/si5152008.pdf](http://www.finance.gov.ie/documents/publications/statutoryinstruments/2008/si5152008.pdf)): EBS Mortgage Finance.

## *Conditions*

The guarantee is subject to a fee, to be determined according to, *inter alia*, a risk assessment, the steps taken by the covered institution to reduce that risk, cost efficiency of the scheme, avoidance of distortion of competition and an adequate return for taxpayers. The amount of the fee in respect of each quarter is to be calculated by reference to the composition of the covered institution's average month-end covered liabilities during the preceding quarter, and the guarantee charging model.

As further conditions, covered institutions will be required to appropriately manage their balance sheets, put in place improved structures to ensure long-term funding stability, and improve their liquidity, solvency and capital ratios where required. The Minister for Finance may require changes to board representation and management remuneration. Bonuses have to be linked to reductions in guarantee charges, a reduction in excessive risk taking and the encouragement of long-term sustainability of the eligible institution in question.

### **1.2 Individual guarantee measures**

Guarantees of unknown amounts were granted to **Allied Irish Banks plc** and its subsidiaries **AIB Mortgage Bank**, **AIB Bank (CI) Limited**, **AIB Group (UK) plc** and **Allied Irish Banks North America Inc.**, **Anglo Irish Bank Corporation plc** and its subsidiary **Anglo Irish Bank Corporation (International) plc**, the Governor and Company of the **Bank of Ireland** and its subsidiaries **Bank of Ireland Mortgage Bank**, **ICS Building Society** and **Bank of Ireland (I.O.M.) Limited**, **EBS Building Society**, **EBS Mortgage Finance**, **Irish Life & Permanent plc** and its subsidiary **Irish Permanent (IOM) Limited**, **Irish Nationwide Building Society** and its subsidiary **Irish Nationwide (I.O.M.) Limited**, and **Postbank Ireland Limited**.

## **2. RECAPITALISATION**

### **2.1 The recapitalisation scheme**

The recapitalisation scheme is based on the Credit Institutions (Financial Support) Act 2008 which came into effect on 2 October 2008. The Investment of the National Pensions Reserve Fund Miscellaneous Provisions Act 2009<sup>146</sup>, which came into effect on 5 March 2009, authorises funding for the recapitalisation programme from the National Pensions Reserve Fund. The Minister for Finance is responsible for the recapitalisation measures. The maximum amount for the scheme is EUR 4 billion (to be provided from the Pension Fund's current resources), and EUR 3 billion (to be provided by means of a frontloading of the Exchequer contributions for 2009 and 2010). The Government will provide EUR 3.5 billion in core Tier 1 capital for the two credit institutions covered, although not named, by the legislation<sup>147</sup>.

### *Eligible institutions*

Credit institutions whose shares are admitted to trading on a regulated market are eligible under this measure.

---

<sup>146</sup> Number 7 of 2009, available on the Houses of the Oireachtas' website at: [www.oireachtas.ie/documents/bills28/acts/2009/a0709.pdf](http://www.oireachtas.ie/documents/bills28/acts/2009/a0709.pdf).

<sup>147</sup> See the Explanatory Memorandum to the Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Bill 2009.



### *Eligible instruments*

Under the recapitalisation scheme, perpetual EUR 3.5 billion core Tier 1 non-cumulative preference shares plus warrants (hereinafter the ‘new preference shares’) are eligible<sup>148</sup>. On the purchase of new preference shares, the State will receive an option (hereinafter the ‘warrants’) to purchase 25 % of the existing ordinary shares in each credit institution between five and ten years after the acquisition of the new preference shares.

### *Conditions*

Conditions for new preference shares are as follows:

An annual dividend of 8 % is to be paid. Dividends payable in cash are at the discretion of the bank. If a cash dividend is not paid, ordinary shares are issued at a time no later than the date on which the credit institution subsequently pays a cash dividend on other core Tier 1 capital. The voting rights associated with such shares may be exercised from the date the dividend became payable. The shares can be repurchased at par in the first five years and at 125 % of par thereafter. While any new preference shares are outstanding, the Minister for Finance has the right to directly appoint 25 % of the directors of the credit institution’s Board and to exercise 25 % of the ordinary voting rights in respect of change of control and board appointments. The Minister for Finance’s prior consent is required for capital issuance or redemptions or other changes in the capital structure of the institution. The new preference shares are transferable without voting rights. An arrangement fee of EUR 30 million is payable to the State by the institution on closing<sup>149</sup>.

Concerning warrants, the following conditions apply:

If the credit institution redeems up to EUR 1.5 billion in new preference shares from privately-sourced core Tier 1 capital prior to 31 December 2009, the warrants will be reduced pro rata to an amount of not less than 15 % (hereinafter the ‘core tranche’) of the existing ordinary shares of the institution<sup>150</sup>. Market standard anti-dilution protection applies. The State will vote no more than 50 % of the votes associated with the ordinary shares that it receives through exercise of the warrants. If the State transfers the ordinary shares to a non-State third party, full voting rights will be restored to these shares.

## **2.2 Individual recapitalisation measures**

Recapitalisation has been provided for **Allied Irish Banks** in the amount of EUR 2 billion<sup>151</sup>, **Anglo Irish Bank** in the amount of EUR 1.5 billion<sup>152</sup> and **Bank of Ireland** in the amount of EUR 3.5 billion<sup>153</sup>.

---

<sup>148</sup> See Government announcement of 11 February 2009, Appendix 2 Summary Preference Share term sheet for each of Allied Irish Banks and Bank of Ireland.

<sup>149</sup> Ibid.

<sup>150</sup> The strike price of the core tranche is EUR 0.975 for Allied Irish Banks and EUR 0.52 for Bank of Ireland. The strike price of the balance of the warrants granted to the State is EUR 0.375 for Allied Irish Banks and EUR 0.20 for the Bank of Ireland.

<sup>151</sup> Government Announcement on Recapitalisation, 21 December 2008, available on the Ministry of Finance’s website at [www.finance.gov.ie/Viewprnt.asp?DocID=5609&StartDate=1+January+2008](http://www.finance.gov.ie/Viewprnt.asp?DocID=5609&StartDate=1+January+2008).

<sup>152</sup> This measure was approved by Commission Decision of 14 January 2009 in Case No N 9/09 *Proposed Capital Injection by the Irish State of EUR 1.5 billion into Anglo Irish Bank* (not yet published in the OJ).

<sup>153</sup> The recapitalisation of the Bank of Ireland was approved by Commission Decision of 26 March 2009 in Case No N 149/09 *Bank of Ireland (IRL capital injection)* (not yet published in the OJ).

### 3. STATE LOANS

Under the Credit Institutions (Financial Support) Act 2008, the Minister for Finance may grant loans to credit institutions during the two years beginning on 30 September 2008. Until now, however, no loans have been granted under this Act.

### 4. ACQUISITION OF RISK POSITIONS / IMPAIRED ASSETS

Under the Credit Institutions (Financial Support) Act 2008, the Minister for Finance may exchange assets with a credit institution during the two years beginning on 30 September 2008. Until now, however, no such exchange has taken place under this Act. On 7 April 2009, the Government announced that a National Asset Management Agency will be established under the administration of the National Treasury Management Agency.

#### *Eligible instruments*

This measure will cover the transfer of assets from banks to the new National Asset Management Agency. The Agency will acquire the assets through the issue of Government bonds to the banks. The debt will be repaid from funds raised through the realisation of those assets. The State will not assume the whole risk in the acquisition of these assets. Rather, the assets will be valued on a sustainable basis for the taxpayer. If the crystallisation of losses at any institution requires additional capital, the State will participate in the relevant institution by way of ordinary shares.

### 5. NATIONALISATION

Nationalisation of **Anglo Irish Bank Corporation** is provided for in the Anglo Irish Bank Corporation Act 2009<sup>154</sup>, which came into effect on 21 January 2009<sup>155</sup>. This measure covers the transfer of all shares in Anglo Irish Bank Corporation Limited free of encumbrances to the Minister for Finance.

In cases where an expert appointed by the Minister for Finance reports that compensation for transferred shares and extinguished rights is payable (on the basis of the fair and reasonable value of those entitlements)<sup>156</sup>, an Anglo Irish Bank Corporation Compensation Scheme will be set up providing procedures for the making of a claim for compensation, the payment of those amounts to those persons, and the payment of interest.

## ITALY

The Italian rescue package is based on the Law on urgent measures to guarantee the stability of the banking system and the continued availability of credit to enterprises and consumers in the current crisis on international financial markets (hereinafter the 'Law on urgent stability

---

<sup>154</sup> Number 1 of 2009, available on the Houses of the Oireachtas' website at: [www.oireachtas.ie/documents/bills28/acts/2009/a0109.pdf](http://www.oireachtas.ie/documents/bills28/acts/2009/a0109.pdf).

<sup>155</sup> This measure was approved in Commission Decision of 16 February 2009 in Case No N 61/09 *The taking of Anglo Irish Bank Corporation plc into public ownership* (not yet published in the OJ).

<sup>156</sup> The value is to be determined by apportioning the fair and reasonable aggregate value of the transferred shares between classes of shares, and dividing the value determined for a class of shares by the number of shares of that class actually issued on 15 January 2009. The value of an extinguished right that is an option or right to acquire a share of a particular class is to be taken to be nil if the true value of a share of that class in Anglo Irish Bank on 15 January 2009 was less than the value at which the option or right was exercisable.

measures'), the provisions of which came into effect on 9 and 13 October 2008<sup>157</sup>, and on Article 12 of Law No 2 of 28 January 2009 in relation to recapitalisation<sup>158</sup>.

## 1. STATE GUARANTEES

State guarantees have their legal basis in the Law on urgent stability measures. The issuer of this measure is the Ministry of Economy and Finance (MEF). For each individual bank, the overall maximum amount of transactions guaranteed may not exceed the eligible institution's regulatory capital, including Tier 3 capital. Liabilities that can be included in the calculation of the regulatory capital cannot benefit from the State guarantee.

### *Eligible institutions*

Eligible institutions under this scheme are solvent banks that have their registered office in Italy. The Banca d'Italia will assess the capital adequacy of a bank and its ability to discharge any obligations it assumes<sup>159</sup>.

### *Eligible liabilities*

Eligible liabilities under this scheme are euro-denominated unsubordinated liabilities (where the reimbursement of the principal amount is made in a single payment at maturity). Covered bonds and unstructured securities or complex instruments or securities with an embedded derivative component are excluded from the scheme. The liabilities must be issued after 13 October 2008. In addition, operations by eligible institutions in order to obtain the temporary availability of securities eligible for refinancing operations with the Eurosystem and deposits held at an Italian banks for a period of 36 months from 9 October 2008 (in addition to the interventions of the deposit-guarantee schemes) are included in this scheme.

### *Issue and maturity*

The scheme may be accessed until 31 December 2009. The maximum maturity under this scheme is five years. Securities with a three-year or longer maturity, issued by a bank, may benefit from the guarantee scheme only in an amount not exceeding 25 % of the total amount of liabilities covered by the State guarantee issued by the same bank.

---

<sup>157</sup> Law No 190 of 4 December 2008, *Conversione in legge, con modificazioni, del decreto-legge 9 ottobre 2008, n. 155, recante misure urgenti per garantire la stabilità del sistema creditizio e la continuità nell'erogazione del credito alle imprese e ai consumatori, nell'attuale situazione di crisi dei mercati finanziari internazionali*, published in *Gazzetta Ufficiale* No 286 of 6 December 2008, which converted Decree-Laws No 155 of 9 October 2008 and No 157 of 13 October 2008. Commission Decision of 13 November 2008 in Case No N 520a/08 *Support plan for the banks (d.l. 157/08)* (OJ C 29, 5.2.2009, p. 2) approved the measures previously contained in Decree-Law No 157 as implemented by the implementing decree (issued by the Ministry of Economy and Finance on 27 November 2008) and without prejudice to the Commission assessment of measures previously included under Decree-Law No 155.

<sup>158</sup> Law No 2 of 28 January 2009 on urgent measures to support families, jobs, employment and businesses and to redefine a new national strategic framework against the crisis (*Conversione in legge, con modificazioni, del decreto-legge 29 novembre 2008, n. 185, recante misure urgenti per il sostegno a famiglie, lavoro, occupazione e impresa e per ridisegnare in funzione anti-crisi il quadro strategico nazionale*), published in *Gazzetta Ufficiale* No 22 of 28 January 2009, which converted Decree-Law No 185 of 29 November 2008.

<sup>159</sup> This implies that the core and total capital ratios at the date of the last available supervisory report may not be lower than the required ratios and no loss may have been recorded in more than one of the last three financial statements.

### *Conditions*

In the context of each guarantee, an appropriate fee must be paid<sup>160</sup>. The terms of the guarantee follow the ECB Recommendation on Guarantees, with a premium for maturities longer than two years. The aggregate growth in balance sheet volume of the activities of the credit institutions benefiting from the measures may not exceed the higher of: (i) the annual rate of growth of Italian nominal GDP in the preceding year; (ii) the average historical growth of the balance sheets in the Italian banking sector during the period 1987-2007; or (iii) the average growth rate of the balance sheet volume in the banking sector in the EU in the preceding six months.

## **2. RECAPITALISATION**

### **2.1 Recapitalisation through the subscription of shares**

This recapitalisation measure, which entered into force on 9 October 2008, is provided for under the Law on urgent stability measures and concerns the possibility to subscribe for shares<sup>161</sup>.

#### *Eligible institutions*

Italian banks whose capital increases were not completed by 9 October 2008 are eligible to participate in this scheme.

#### *Eligible instruments*

The government may invest by subscribing for preference shares (more detailed information will be set out in future implementing legislation). The Banca d'Italia is responsible for assessing whether the Government should subscribe for such shares<sup>162</sup>.

#### *Timing*

The scheme is available until 31 December 2009.

### *Conditions*

This measure must take account of market conditions. During any period in which the MEF holds shares, any substantial change to the restructuring plan of the eligible institution is subject to the MEF's prior approval, following consultation with the Banca d'Italia.

### **2.2 Recapitalisation through the subscription of special bonds**

This recapitalisation measure, under which the Government may subscribe for 'special bonds', is aimed at supporting the flow of finance to the real economy in the current context of financial crisis by strengthening the capital of the Italian banking system. This measure entered into force on 29 November 2008. The maximum amount of recapitalisation for an individual eligible institution (or of the eligible institution's group) is fixed at 2 % of their

<sup>160</sup> The fee in respect of liabilities with a one year or shorter maturity is equal to 50 basis points. For liabilities with longer maturities, the fee is calculated in a more complex way, based on the CDS spreads applicable to the beneficiary bank.

<sup>161</sup> The Commission examination of this recapitalisation scheme is currently pending.

<sup>162</sup> That assessment takes account of: (i) whether or not the bank has a capital inadequacy and a programme of stabilisation and strengthening of the bank covering at least 36 months; (ii) the adequacy of the bank's stabilisation and strengthening plan presented in connection with the approval of the capital increase; (iii) the dividend policy approved by the shareholder meetings of the applicant bank over the period of the guarantee.

total risk weighted assets. In addition, the Government stated that the amount of the State intervention should, in principle, not allow the bank's Tier 1 to exceed 8 %. The State may participate in the subscription for such instruments on equal terms with other private investors subscribing at least 30 % of the total amount<sup>163</sup>.

### ***Eligible institutions***

All fundamentally sound banks incorporated under Italian law, subsidiaries of foreign banks, and holding companies of Italian banking groups whose shares are listed on regulated markets are eligible under this scheme.

### ***Eligible instruments***

The State will subscribe for special bonds in the form of undated convertible subordinated debt and have the same subordination as ordinary shares<sup>164</sup>. The instruments have the same features, in terms of permanence, flexibility of payments and loss absorption of ordinary shares and are therefore to be included in the calculation of core Tier 1 capital of the issuing bank. As of the third year after the recapitalisation takes place, the issuer has the right to convert the financial instruments subscribed by the MEF into shares, under the condition that the share price (average of the last 10 days before the conversion date) is above or equal to 110 % of the nominal value.

### ***Timing***

The scheme ends on 31 December 2009.

### ***Conditions***

Conditions include an appropriate fee<sup>165</sup>. In addition, a code of behaviour between the beneficiary and the MEF must be signed containing a number of conditions<sup>166</sup>. The beneficiary banks must also conduct their activity in a manner that does not abuse the assistance received nor may the assistance result in the beneficiary obtaining an advantageous position.

---

<sup>163</sup> In relation to the 30 % requirement, at least 20 % must be subscribed by investors who are not existing shareholders with a share in the beneficiary's capital of more than 2 %. This scheme was approved by the Commission in its Decision of 23 December 2008 in Case No N 648/08 *Urgent measures to support the financing of the real economy in Italy* (OJ C 88, 17.4.2009, p. 3). An amendment to this scheme was approved in Commission Decision of 20 February 2009 in Case No N 97/09 *Financing the economy* (OJ C 88, 17.4.2009, p. 4).

<sup>164</sup> These instruments are included in the calculation of core Tier 1 capital. As of the third year following recapitalisation, the issuer may convert the financial instruments into shares if the share price (average of 10 days prior to the conversion date) exceeds or is equal to 110 % of the nominal value.

<sup>165</sup> There are three options for the calculation of the fee:

Option A: Interest is calculated on the basis set out in points 16 and 17 of Commission Decision No N 648/08. Redemption prices and early redemption options are determined on the basis set out in points 20 and 21 of that decision.

Option B: Interest is calculated on the basis set out in points 24 and 25 of Commission Decision No N 97/09. Redemption prices and the early redemption option are determined on the basis set out in points 26 and 27 of that decision.

Option C: This requires a return that is 200 basis points higher than those of 30 years BTP (long-term Italian treasury bonds) and the purchase by private investors of at least 30 % of the instruments issued by the beneficiary bank in this framework.

<sup>166</sup> Such arrangements concern: (i) maintenance of financing, in particular in favour of SMEs; (ii) conditions to support and maintain entrepreneurial initiatives; (iii) interventions to favour families facing difficulties in repaying mortgages; (iv) dividend policy that favours the recapitalisation of the bank; and (v) presentation of a report on the actions undertaken to sustain the real economy. In addition, the beneficiary has to sign a 'code of conduct' containing restrictions on the remuneration of the management and market operators, as well as limitations on exit bonuses.

### 3. ACQUISITION OF RISK POSITIONS / IMPAIRED ASSETS

Acquisition of risk positions, effected by carrying out temporary swaps between State securities and financial instruments/liabilities of counterparty Italian banks, is based on the Law on urgent stability measures<sup>167</sup>. For each individual bank, the maximum amount of transactions involved may exceed their regulatory capital, including Tier 3 capital.

#### *Eligible institutions*

Solvent banks incorporated in Italy, including Italian subsidiaries of foreign banks are eligible to participate in this scheme.

#### *Eligible instruments*

Eligible in this context are temporary swap arrangements between Treasury bills and financial instruments held by Italian banks or liabilities of Italian banks issued after 13 October 2008.

#### *Timing*

The swaps will last a maximum of six months. The instruments involved have a maximum maturity of five years. The scheme will be phased out from 31 December 2009.

#### *Conditions*

The fee is fixed at 1 %. Government securities issued in these transactions may be used exclusively for refinancing operations with the Eurosystem, for financing operations carried out with other bank counterparties, or for pledging as collateral in mutual schemes. In the event of non-compliance with such provision, the MEF will apply a penalty of 20 % of the value of the transaction. The aggregate growth in balance sheet volume of the activities of the credit institutions benefiting from the measures may not exceed the greater of: (i) the annual rate of growth of Italian nominal GDP in the preceding year; (ii) the average historical growth of the balance sheets in the Italian banking sector during the period 1987-2007; or (iii) the average growth rate of the balance sheet volume in the banking sector in the EU in the preceding six months.

## LATVIA

Latvia has put in place legislation providing for State guarantees and nationalisation in order to reduce general economic risks, avoid social and economic crisis, or at least minimise the impact thereof, and to ensure the availability of financing in the event of extraordinary circumstances.

### 1. STATE GUARANTEE

The Latvian guarantee scheme is based on the Regulation establishing procedures for issue and supervision of guarantees for loans received by banks<sup>168</sup> which came into effect on 14 February 2009.

---

<sup>167</sup> This scheme was approved by the Commission in Decision No N 520a/08 (see above footnote 157).

<sup>168</sup> *Kārtība, kādā sniedz un uzrauga galvojumus par banku aizņēmumiem*, published in *Latvijas Vēstnesis*, 25 (4011) on 13 February 2009. This guarantee scheme was approved by the Commission in its Decision of 22 December 2008 in Case No N 638/08 *Guarantee scheme for banks in Latvia* (OJ C 46, 25.2.2009, p. 3). Additional information is available on the Ministry of Finance's website at: [www.fm.gov.lv/?eng/](http://www.fm.gov.lv/?eng/).



### ***Eligible institutions***

All solvent Latvian banks, including Latvian subsidiaries of foreign banks are eligible under this scheme.

### ***Eligible liabilities***

A guarantee may be issued in respect of existing loans received by banks and in respect of loans taken out to refinance such loans; this concerns all liabilities with the exception of interbank deposits, subordinated liabilities and collateralised liabilities such as covered bonds.

### ***Issue and maturity***

To be eligible, the liabilities must be issued before 31 December 2009. The measure concerns existing loans with a maturity of no more than three years and loans taken out to refinance such loans with a maturity of no less than six months and not exceeding three years.

### ***Conditions***

The fee charged for the provision of guarantees is based on the ECB Recommendation on Guarantees. Banks applying for the guarantee must limit marketing, and accept restrictions on staff remuneration and bonus payments. These institutions must submit, *inter alia*, an irrevocable declaration of the shareholders to be willing to pledge at least 51 % of the shares of the bank and an irrevocable declaration of the shareholders undertaking not to pay dividends during the duration of the guarantee without the agreement of the Minister for Finance.

## **2. NATIONALISATION**

### **2.1 Law on bank takeovers**

The Latvian scheme for the nationalisation of financial institutions is based on the Law on bank takeovers<sup>169</sup>, which came into effect on 31 December 2008 and the Regulation on fair compensation granted to a bank or its shareholders<sup>170</sup>, which came into effect on 13 February 2009.

### ***Eligible institutions***

Nationalisation of solvent banks registered in Latvia and their branches is possible in exceptional cases, where the stability of the banking system and the smooth operation of payment systems is seriously threatened or could be threatened in the absence of a takeover and therefore the bank is (potentially) unable to satisfy the requirements of banking regulation.

### ***Eligible instruments***

Nationalisation is effected through the alienation of shares issued by the bank, its assets, rights and liabilities. The purchaser is the State in the person of a public institution or a publicly-owned company.

<sup>169</sup> *Banku pārņemšanas likums*, published in *Latvijas Vēstnesis*, 202 (3986) on 30 December 2008.

<sup>170</sup> *Bankas akcionāriem vai bankai piešķiramās taisnīgās atlīdzības apmēra noteikšanas, piedāvāšanas un samaksas kārtība*, published in *Latvijas Vēstnesis*, 24 (4010) on 12 February 2009.

### **Conditions**

A takeover is permissible on the basis of an agreement (voluntary takeover) or for fair compensation on the basis of a special law (compulsory takeover). The amount of the fair compensation is calculated by taking into account the sum that the bank to be taken over would realise on selling the assets during a liquidation procedure.

### **2.2 Individual measures**

**Parex banka** was nationalised on 5 December 2008<sup>171</sup>, when the State-owned Mortgage and Land Bank of Latvia became its majority shareholder. On 24 February 2009, the Government decided to transfer the State-owned tranche of 85.14 % of Parex banka's shares to the Privatisation Agency in order to prepare the bank for a capital increase and subsequent sale.

## **LITHUANIA**

Lithuanian rescue measures have not yet been adopted; however, the Ministry of Finance has prepared a draft law on financial sustainability, which is currently under consideration by the Parliament<sup>172</sup>. Detailed implementing rules will be adopted by the Government.

### **1. STATE GUARANTEES<sup>173</sup>**

The amount to be committed to the provision of State guarantees is LTL 3 billion (approximately EUR 865 million), as provided for in the Law on the approval of financial indicators of the State and municipalities budgets of 2009<sup>174</sup>.

#### ***Eligible institutions***

Solvent banks and branches of foreign banks established in Lithuania are eligible under the guarantee scheme.

#### ***Eligible liabilities***

Eligible liabilities are loans received or other financial liabilities assumed by eligible institutions, excluding interbank deposits. The total amount of an eligible institution's liabilities that the State may guarantee cannot exceed the eligible institution's own capital. As regards a branch of a foreign bank, the total amount of liabilities guaranteed may not exceed the amount of minimum reserves calculated for the branch, multiplied by three.

#### ***Issue and maturity***

Maturity will range from three months to three years.

---

<sup>171</sup> A rescue package by the Government in favour of JSC Parex Banka was approved by the Commission in its Decision of 24 November 2008 in Case No NN 68/08, *Public support measures to JSC Parex Banka* (not yet published in the OJ) concerning a state guarantee covering certain existing and new loans (of a maximum three year maturity), a State one-year deposit to support the bank's immediate liquidity needs and of subordinated loans (of a maximum five year maturity) to strengthen its capital base, subject to significant fees and a series of behavioural commitments, such as a limit on balance sheet growth, marketing restrictions and a limitation on the acquisition of businesses during the aid period.

<sup>172</sup> The Commission Decision on the draft law on financial sustainability is pending.

<sup>173</sup> *Lietuvos Respublikos finansinio tvarumo įstatymo projektas*.

<sup>174</sup> *Lietuvos Respublikos 2009 metų valstybės biudžeto ir savivaldybių biudžetų finansinių rodiklių patvirtinimo įstatymo pakeitimo ir papildymo įstatymas (Valstybės žinios, 19.05.2009, No 58-2247)*.

### ***Conditions***

Specific conditions will be established by the Government, after consulting Lietuvos bankas. These will include a guarantee fee and conditions related to assets to be pledged as security should the Government be called upon under the guarantee. Pricing will be based on market conditions and risk factors<sup>175</sup>.

Additional conditions may include: (i) restructuring requirements and a plan of further stabilisation; (ii) restrictions on dividend payments, managerial remuneration and other payments; (iii) provision of credit to the real economy; (iv) substitution on management bodies; and (v) a prohibition on using the rescue measure for marketing or expansion purposes.

## **2. RECAPITALISATION**

Recapitalisation is also provided for under the draft law on financial sustainability. A specific amount dedicated to this measure has not yet been set.

### ***Eligible institutions***

Institutions that are eligible under this measure are banks and branches of foreign banks established in Lithuania.

### ***Eligible instruments***

Eligible instruments for recapitalisation include the acquisition of newly issued shares by an eligible institution and the acquisition of all or part of the shares of an eligible institution from its shareholders.

### ***Timing***

The duration of this measure will be decided by the Government. Shares acquired by the State are to be reprivatized without undue delay as soon as the financial position of the eligible institution is no longer causing a threat to the stability and credibility of the banking system.

### ***Conditions***

General conditions may be attached to the measures (see above under guarantees). Specific conditions to be applied to recapitalisation will be decided by the Government. Pricing will be based on market conditions and risk factors.

## **3. STATE LOANS**

Loans are also covered by the draft law on financial sustainability. The issuer of the loan will be the Government or an institution authorised by the Government, which will be defined in the implementing rules.

### ***Eligible institutions***

Banks and branches of foreign banks established in Lithuania are eligible to receive State loans.

---

<sup>175</sup> It is intended that the fees will be calculated in line with the ECB Recommendation on Guarantees.

### *Eligible instruments*

State loans take the form of subordinated loans from the State to eligible institutions.

### *Conditions*

For general conditions that could be attached to the measures see above under guarantees.

## **4. ACQUISITION OF RISK POSITIONS / IMPAIRED ASSETS**

The acquisition of risk positions will be governed by the draft law on financial sustainability. The issuer of the measures will be an institution or other legal person authorised by the Government, which will be defined in the implementing rules.

### *Eligible institutions*

Banks and branches of foreign banks established in Lithuania are eligible under this scheme.

### *Conditions*

Risk positions may be acquired subject to the following conditions: the eligible institution's assets may be redeemed only if, according to Lietuvos bankas, the use of this measure would enable the restoration of the fulfilment of risk-limiting standards, or otherwise strengthen the stability and credibility of the eligible institution. Its assets will be redeemed under the conditions laid down and at the price set out in an agreement. The price estimation for the eligible institution's assets will be carried out independently and the appraisal costs will be covered by the eligible institution.

## **5. NATIONALISATION**

Nationalisation will be provided for by the draft law on financial sustainability.

### *Eligible institutions*

Banks and branches of foreign banks established in Lithuania may be subject to nationalisation measures.

### *Eligible instruments*

The Government has the right to take over an institution's shares for public needs only if it is necessary for the State to secure the stability of the banking system and if other possible measures are inappropriate or the measures already applied are insufficient.

### *Conditions*

Nationalisation will be subject to fair remuneration under the condition that the value of the institution's shares will be approved by the Government following proposals from independent and qualified experts.

## LUXEMBOURG

The Luxembourg measures to help stabilise the financial markets are based on the Law of 24 October 2008 improving the legal framework governing Luxembourg as a financial centre<sup>176</sup>. Article VII of this Law authorises the Minister for Finance to issue Government bonds to a maximum value of EUR 3 billion in order to strengthen financial institutions, in particular, by the acquisition of securities (shares or other instruments) issued by such institutions, the granting of loans to such institutions as well as the depositing of funds with them.

### 1. STATE GUARANTEE FOR DEXIA

On 9 October 2008, Belgium, France and Luxembourg agreed to provide a joint guarantee to a total amount of EUR 150 billion, 3 % of which is covered by Luxembourg in the amount of EUR 2.4 billion (60.5 % is covered by Belgium and 36.5 % by France) to the Dexia financial group in order to ensure its continued access to financing. The total amount of Dexia's liabilities guaranteed by Luxembourg, France and Belgium totalled in excess of EUR 90.9 billion as at 29 May 2009.

On 9 December 2008, following approval by the European Commission<sup>177</sup>, the Belgian, French and Luxembourg Governments agreed to establish a guarantee mechanism covering Dexia's liabilities, bonds and securities that mature by 31 October 2011, issued in the period from 9 October 2008 to 31 October 2009.

An operational memorandum of 18 December 2008 supplemented the guarantee agreement by providing for daily monitoring of the guaranteed amounts, as well as a system of eligibility certificates in relation to guaranteed bond issues<sup>178</sup>.

The legal basis for Luxembourg's participation in the joint guarantee is the Grand-Ducal Regulation of 10 October 2008, which entered into force on the same day, and is confirmed in Article 44(1) of the Law of 19 December 2008 relating to the expenses and income of Luxembourg for 2009, which entered into force on 1 January 2009.

### 2. RECAPITALISATION

Recapitalisation measures are based on the Law of 24 October 2008, whose provisions on recapitalisation were inserted to establish a legislative basis for the rescue of Fortis Bank and Dexia.

On 30 September 2008, **Dexia S.A.** received a capital injection for a total of EUR 6.4 billion from the Governments of Luxembourg, Belgium and France. Luxembourg's contribution was a EUR 376 million investment in Dexia Banque Internationale Luxembourg in the form of convertible bonds.

Luxembourg, together with Belgium and the Netherlands adopted measures between 29 September and 5 October 2008 in order to prevent the collapse of **Fortis Bank**, Fortis Bank Nederland Holding and Fortis Bank Luxembourg. The Luxembourg Government invested EUR 2.5 billion in Fortis Banque Luxembourg in the form of a mandatory convertible loan, and following the conversion of this loan on 15 December 2008, acquired a 49 % shareholding in the bank.

---

<sup>176</sup> *Loi du 24 octobre 2008 portant amélioration du cadre législatif de la place financière de Luxembourg*, Journal Officiel du Grand-Duché de Luxembourg No 161 of 29 October 2008.

<sup>177</sup> See Commission Decision of 13 March 2009 in Case No NN 45/08 (now transferred to Case No C 9/09) *Dexia Luxembourg* (not yet published in the OJ).

<sup>178</sup> Further information is available on the Nationale Bank van België/Banque Nationale de Belgique's website, above footnote 36.

## MALTA

Malta has not adopted any legislation concerning rescue measures for the financial sector.

## THE NETHERLANDS

On 13 October 2008, the Government of the Netherlands announced a series of measures designed to ensure the stability of the financial system and to protect ordinary savers, depositors, businesses and borrowers. These measures, which include guarantees and recapitalisation measures, aim at: (i) providing sufficient liquidity in the short and medium term; (ii) making new capital available to financial institutions to strengthen their resources; and (iii) allowing financial institutions to restructure their finances, while maintaining their support to the real economy.

### 1. STATE GUARANTEES

#### 1.1 Credit guarantee scheme (CGS)

The CGS came into effect on 23 October 2008 and was most recently amended on 18 February 2009<sup>179</sup>. Access to the CGS is available until 31 December 2009 and the overall amount committed by the Government to the CGS is EUR 200 billion.

#### *Eligible institutions*

Institutions eligible under the CGS are banks<sup>180</sup> established and operating in the Netherlands, and financial subsidiaries of foreign banks with substantial operations in the Netherlands. Banks wishing to use the guarantee must be sufficiently capitalised at the level determined by the supervisor.

#### *Eligible liabilities*

The debt instruments that may be issued by eligible institutions include senior unsecured debt instruments with standard market terms that are not complex and fall within one of the following categories: (i) certificates of deposit or commercial paper that carry a no interest (zero) coupon, or have a fixed rate of interest; and (ii) medium-term notes that can be redeemed in one single payment and carry a no interest (zero) coupon, a fixed interest rate, or a floating interest rate calculated as the aggregate of a market reference rate and a fixed spread. The instruments must be denominated in one of GBP, EUR or USD.

In addition, the debt instruments may not contain cross-default or cross-acceleration provisions or any right of prepayment by the issuer. They must also fit within the liquidity requirements of the eligible institution as determined by De Nederlandsche Bank and the issue proceeds must be applied towards refinancing of any debt instruments or other borrowings of the eligible institution with a scheduled maturity date falling on or after 23 October 2008.

---

<sup>179</sup> Rules of the 2008 Credit Guarantee Scheme of the State of the Netherlands as originally published on 21 October 2008. See Commission Decision of 30 October 2008 in Case No N 524/08 *Guarantee scheme for banks in the Netherlands* (OJ C 328, 23.12.08, p. 9).

<sup>180</sup> For bank to qualify for the purposes of the CGS it must be a bank as defined in section 1.1 of the Law on financial market supervision (*Wet op het financieel toezicht*), have its corporate domicile in the Netherlands, be authorised to perform certain activities and be registered in accordance with those supervisory provisions.



### *Issue and maturity*

The debt instrument must have an issue date falling on or after 23 October 2008 and before the final application date. Under the CGS only debt instruments with a duration of three months to a maximum of five years are eligible and are guaranteed until maturity.

### *Conditions*

The proceeds from the issue of debt instruments must be applied towards refinancing of any debt instruments or other borrowings of the relevant eligible institution with a scheduled maturity date falling on or after 23 October 2008. In addition, participating institutions must comply with certain conditions regarding corporate governance, remuneration, advertising and marketing, and balance sheet growth.

The fee payable on guaranteed liabilities is largely in line with the ECB Recommendation on Guarantees.

## **1.2 Individual guarantee measures<sup>181</sup>**

**Fortis Bank Netherlands (Holding) N.V.** was granted a number of loan guarantees commencing on 6 April 2009. The total amount guaranteed under the scheme is EUR 7.85 billion with a maturity ranging from two to five years.

**ING Bank N.V.** was granted a number of loan guarantees commencing on 30 January 2009. The total amount guaranteed under the scheme is USD 9 billion (approximately EUR 6.4 billion) and EUR 5 billion. The maturity ranges from one and a half years to five years with either a fixed or floating interest rate. In addition, on 26 January 2009, the Government granted ING Bank N.V. a back-up facility for its securitised mortgage portfolio under the CGS.

**LeasePlan Corp. N.V.** was granted a loan guarantee on 9 December 2008 in the amount of EUR 1.6 billion for two years, with a fixed interest rate and on 23 January 2009 it was granted a second loan guarantee in the amount of EUR 1.5 billion for three years, with a fixed interest rate. LeasePlan Corp. N.V. also was granted a loan guarantee on 28 April 2009 for USD 2.5 billion (approximately EUR 1.8 billion) for three years, with a fixed interest rate.

**NIBC Bank N.V.** was granted a number of loan guarantees commencing on 27 November 2008 totalling almost EUR 4.8 billion. The maturity ranges from one year to five years with either a fixed or floating interest rate.

**SNS Bank N.V.** was granted a number of loan guarantees commencing on 19 January 2009 for EUR 4.28 billion, USD 900 million (approximately EUR 636 million) and GBP 500 million (approximately EUR 572 million). The maturity ranges from two years to five years with either a fixed or floating interest rate.

---

<sup>181</sup> More detailed information is available on the Treasury's website at:  
[www.dutchstate.nl/uploads/assigned%20guarantees%2020090526\\_4.pdf](http://www.dutchstate.nl/uploads/assigned%20guarantees%2020090526_4.pdf).

## 2. RECAPITALISATION

### 2.1 The recapitalisation scheme

The recapitalisation scheme is based on a declaration made by the Minister for Finance on 10 October 2008. This measure is in place until 10 October 2009 and the amount committed by the Government is EUR 20 billion.

#### *Eligible institutions*

Every financial institution that is registered in the Netherlands and is fundamentally sound and viable is eligible under the recapitalisation scheme.

#### *Eligible instruments*

The Government may participate in a number of ways, whether by the acquisition of preference shares or otherwise, having regard to, *inter alia*, the legal form of the institution and its group structure.

#### *Conditions*

The recapitalisation measures are subject to conditions in order to limit market distortions, financial risks for the government, and to prevent abuse. The conditions relate, *inter alia*, to guarantees on returns, the financing of operational costs by the financial enterprises concerned, executive pay, and representation in the executive bodies. The Government's contributions are provided on market terms.

### 2.2 Individual recapitalisation measures

Concerning **Aegon N.V.**<sup>182</sup>, the Government provided a loan of EUR 3 billion to Vereniging Aegon (Aegon N.V.'s largest shareholder). Vereniging Aegon acquired 750 million newly issued non-voting convertible capital securities from Aegon N.V. for this amount and the Government has a first right of pledge on the securities. Vereniging Aegon requires the Government's permission for any action related to the securities. Conditions include a restructuring plan, the right to nominate two Supervisory Board members with a right of veto for fundamental decisions, the requirement that all Executive Board members relinquish their 2008 bonuses, and the maintenance of certain solvency ratios.

With regard to **ING Groep N.V.**<sup>183</sup>, on 12 November 2008, the Government acquired securities in the amount of EUR 10 billion. The issued securities qualify as core Tier 1 capital and produce an annual coupon equal to the higher of: (i) EUR 0.85 per security, non cumulative, payable annually in arrears; (ii) 110 % of the dividend paid on the ordinary shares in 2009; (iii) 120 % of the dividend paid on the ordinary shares in 2010; and (iv) 125 % of the dividend paid on the ordinary shares from 2011 onwards. The coupon will be paid only if a dividend is paid on the ordinary shares. In the event that ING decides to repurchase the securities, the Government will be paid 150 % of the issue price. The conditions attached to the measure are similar to those for Aegon N.V. (see above).

---

<sup>182</sup> For more detailed information on this measure see Commission Decision of 27 November 2008 in Case No N 569/08 *Aid to Aegon N.V.* (OJ C 9, 14.1.09, p. 3).

<sup>183</sup> For more detailed information on this measure see Commission Decision of 12 November 2008 in Case No N 528/08 *Aid to ING Groep N.V.* (OJ C 328, 12.11.2008, p.10).

The Government has granted an ‘illiquid assets’ back-up facility to ING Groep N.V. (ING) on the bank’s securitised mortgage portfolio. The facility partially covers the risks of ING Groep N.V.’s Alt-A portfolio, after its value has been adjusted from USD 39 billion (approximately EUR 27.5 billion) down to USD 35.1 billion (EUR 26.7 billion). The bank remains owner of this portfolio. The State and ING Groep N.V. share in the profits and losses (the State (80 %) ING Groep N.V. (20%)). ING Groep N.V. pays a guarantee fee to the State and a compensatory guarantee fee in compensation for the taken risk. The State pays ING Groep N.V. a management and funding fee. Several conditions are attached to the facility, including: (i) ING Groep N.V. must extend EUR 25 billion in additional credit to individuals and private companies; and (ii) bonuses may not be paid for 2009 and thereafter until a new compensation policy has been agreed.

Concerning **SNS REAAL N.V.**<sup>184</sup>, on 12 November 2008, the Government acquired securities in the amount of EUR 750 million. The securities to be issued qualify as core Tier 1 capital. Conditions relating to the annual coupon are in accordance with the provisions concerning ING Groep N.V. (see above). However, a different rule applies when the securities are repurchased in the first year after issuance. In that case, the Government will be paid 100 % of the issue price plus accrued interest and a repurchase fee. Certain conditions are attached to this measure, similar to those applying to Aegon N.V. In addition, SNS REAAL will obtain EUR 500 million through the issuance of core capital instruments to the private independent foundation Stichting Beheer SNS REAAL.

### 3. NATIONALISATION

Concerning **Fortis Bank Nederland Holding**, at the end of September 2008, the Governments of the Netherlands, Belgium and Luxembourg jointly invested EUR 11.2 billion to support the Fortis group. The Dutch Government invested EUR 4 billion in Fortis Bank Nederland Holding in exchange for a 49 % stake. The Belgian Government invested EUR 4.7 billion in Fortis Bank N.V./S.A. in exchange for a 49 % stake. The Luxembourg Government invested EUR 2.5 billion in Fortis Banque Luxembourg S.A. by way of a mandatory convertible loan. Following conversion, Luxembourg will have a 49 % stake in Fortis Bank Luxembourg, in addition to other rights.

On 3 October 2008, following consultation with De Nederlandsche Bank, the Government acquired all the shares in Fortis Bank Nederland (Holding) N.V., Fortis Insurance Netherlands N.V. and Fortis Corporate Insurance N.V.

## POLAND

On 13 March 2009, the first package of measures aimed at reinforcing stability in the Polish financial markets came into effect, including the Law on the provision of State Treasury support to financial institutions (hereinafter the ‘Law on support’)<sup>185</sup>. In addition, the Ministry of Finance has announced the preparation of a draft law on the recapitalisation of financial institutions and insurance companies, setting out measures that apply to financial institutions facing bankruptcy. The draft law is currently at the parliamentary stage.

<sup>184</sup> For more detailed information on this measure see Commission Decision of 10 December 2008 in Case No N 611/08 *Aid to SNS REAAL N.V.* (not yet published in the OJ).

<sup>185</sup> *Ustawa z dnia 12 lutego 2009 r. o udzielaniu przez Skarb Państwa wsparcia instytucjom finansowym* (Dz. U. 2009 No 39, item 308).

## 1. STATE GUARANTEES

Measures included within the State guarantee scheme are: (i) a guarantee for the repayment by financial institutions of refinancing credit (extended to a bank by Narodowy Bank Polski (NBP)); (ii) a guarantee for the repayment of credit facilities or loans provided within a line of credit (extended by a bank to another bank); (iii) loans of Treasury securities to eligible financial institutions; and (iv) preferential sales of Treasury securities to eligible financial institutions (involving, *inter alia*, deferred payment, payment in instalments or a sale directed to a specific institution). Eligible institutions may access the guarantee scheme until 31 December 2009.

### *Eligible institutions*

The guarantee scheme specifies six categories of financial institutions established in Poland that are eligible to benefit from the support measures. These are registered credit institutions, registered insurance undertakings, brokerage houses, investment funds, pension funds and Polish credit unions.

### *Eligible liabilities*

The liabilities that may be covered under the guarantee scheme include those resulting from: (i) the refinancing credit facility granted to commercial banks by NBP; (ii) interbank loans and lines of credit, including in the form of unsecured interbank loans; and (iii) debt securities issuance. Interbank deposits are not explicitly excluded.

### *Issue and maturity*

A State guarantee for debt securities may be extended only for instruments with maturities of three months to a maximum of five years.

### *Conditions*

A number of conditions may be attached to the guarantee including restricting dividend payments, salaries and executive benefits. The Minister for Finance is also obliged by the Law on support to require the beneficiary institution to provide collateral covering the obligation to repay the full amount of the support, including interest. Terms on fees are not addressed in the Law on support.

## 2. RECAPITALISATION

In February 2009, the Government presented a draft law on the recapitalisation of certain financial institutions<sup>186</sup>, which will authorise the Government to intervene for the purposes of addressing potential liquidity or solvency difficulties that may arise in the financial market either by providing a guarantee to market-initiated recapitalisation operations (hereinafter the ‘recapitalisation guarantee’) or by taking over the share capital of distressed financial institutions (see Section 3 below). The scheme is expected to be in operation until 31 December 2010.

### *Eligible institutions*

Eligible institutions are insurance companies (excluding mutual insurance associations) established in Poland and credit institutions registered in Poland.

---

<sup>186</sup> *Projekt ustawy o rekaptalizacji niektórych instytucji finansowych* (Parliamentary Paper No 1691 of 12 February 2009).

### *Eligible instruments*

Under the recapitalisation guarantee, the Government may acquire shares, bonds or other debt instruments issued by a recapitalised institution, where such instruments are not acquired by market entities.

### *Conditions*

The Government may require that a beneficiary institution complies with certain conditions, which include the authority for the Minister for Finance to appoint members to the recapitalised financial institution's bodies and to influence the financial policy of such institution, as well as limitations on executive remuneration. Where a State recapitalisation guarantee is invoked, i.e. if the Government acquires financial instruments issued by the recapitalised financial institution, the Financial Supervision Commission (FSC) may, acting on a request of the Minister for Finance, appoint a guardian to oversee the restructuring plan. Furthermore, in the event of a breach of the conditions of a recapitalisation guarantee, the Government may demand the redemption of its holdings of financial instruments issued by the recapitalised financial institution, apply to the FSC to place the institution under compulsory administration, and commence takeover proceedings.

In terms of pricing, the Government is remunerated by way of commission charged to the recapitalised financial institution.

## **3. NATIONALISATION**

Under the draft law on the recapitalisation of certain financial institutions, if the Government considers that an institution's solvency is threatened and takeover is justified on the grounds of financial system stability, the Government may decide to acquire the shares of an institution. It must dispose of the acquired shares once financial stability is restored, and in any event no later than three years following acquisition, with a possibility to extend that period for two further one-year periods.

## **PORTUGAL**

In the final quarter of 2008, the Portuguese Government put in place a number of measures aimed at ensuring the normal functioning of the economy as a whole in the light of the financial crisis. The measures include a guarantee scheme aimed at supporting access to liquidity by solvent credit institutions in Portugal as well as a recapitalisation scheme and nationalisation provisions.

### **1. STATE GUARANTEES**

#### **1.1 Guarantee scheme**

On 20 October 2008, the Parliament adopted a new law<sup>187</sup> that allows the Government to provide guarantees to eligible institutions. The guarantees are granted by the Government

---

<sup>187</sup> Law No 60-A/2008 of 20 October 2008 on the provision of State guarantees in exceptional circumstances in the context of the financial system, which is implemented by Ministerial Order No 1219-A/2008 of 23 October 2008 (published in the *Diário da República* (DR), Series I, No 203 of 20 October 2008, p. 7476-(2) and Supplement to the DR Series I, No 206 of 23 October 2008, p. 7516-(2), respectively. An English translation is available on the Ministry of Finance and Public Administration's website at [www.min-financas.pt/inf\\_economica/Portuguese\\_Guarantee\\_Scheme\\_23Oct2008.pdf](http://www.min-financas.pt/inf_economica/Portuguese_Guarantee_Scheme_23Oct2008.pdf). This measure was approved by the Commission in its Decision of 29 October 2008 in Case No NN 60/08 *Portugal, Guarantee scheme for*

upon the recommendation of the Banco de Portugal and the Portuguese Debt Institute. The overall amount committed by the Government to this scheme is EUR 20 billion. Individual guarantees are to be authorised separately by the Minister for Finance, but no limits are set for individual cases. The guarantee scheme may be accessed until 31 December 2009.

### *Eligible institutions*

All solvent credit institutions that have their headquarters in Portugal (including subsidiaries of foreign banks with a registered office in Portugal) are eligible under the scheme.

### *Eligible liabilities*

The Government may guarantee financing agreements and new or refinanced debt up to an aggregate amount of EUR 20 billion. Interbank deposits in the money market, subordinated debt, operations that already benefit from other types of guarantees, as well as financing operations in jurisdictions not complying with internationally accepted transparency standards are specifically excluded from the scheme.

### *Issue and maturity*

The guarantees are available to eligible institutions for borrowings and unsubordinated debt denominated in EUR, with a maturity from three months to three years, or exceptionally, when justified by the Banco de Portugal, five years.

### *Conditions*

A guarantee will be granted only against payment of a fee fixed under normal commercial conditions and taking into account any credit risk. Such fees are calculated in line with the ECB Recommendation on Guarantees<sup>188</sup>.

If the Government is required to pay a claim under the scheme, to the extent deemed necessary to protect the public interest, the Government may: (i) convert its rights as a creditor into preference shares, under which they will receive a dividend of not less than 10 % of the nominal value, taken from the profits, and to the priority reimbursement of their nominal value in the event of liquidation; (ii) decide on executive remuneration, corporate governance and dividend policy; and (iii) appoint one or more temporary administrators to replace existing management in whole or in part.

## **1.2 Individual guarantee measures**

**Banco Espírito Santo** was granted a guarantee on 25 November 2008 to a maximum of EUR 1.5 billion, for three years with a fee of 0.958 % per year.

**Banco Finantia** was granted a guarantee on 17 April 2009 to a maximum of EUR 100 million for three years with a fee of 0.958 % per year.

**Banco Internacional do Funchal** was granted a guarantee on 16 April 2009 to a maximum of EUR 50 million, for three years with a fee of 0.958 % per year. In addition, on 24 April 2009, Banco Internacional do Funchal was granted a second guarantee to a maximum of EUR 500 million for three years with a fee of 0.958 % per year.

**Banco Invest** was granted a guarantee on 16 April 2009 to a maximum of EUR 25 million for three years with a fee of 0.958 % per year.

---

*credit institutions in Portugal* (OJ C 9, 14.1.2009, p. 2). Additional information is available on the Ministry of Finance and Public Administration's website at [www.min-financas.pt/english/default.asp](http://www.min-financas.pt/english/default.asp).

<sup>188</sup> See also the Annex to the Ministerial Order of 23 October 2008.



**Banco Privado Português**<sup>189</sup> was granted a guarantee on 5 December 2008 (against collateral) underwriting a EUR 450 million loan it obtained from six Portuguese banks.

**Caixa Geral de Depósitos** was granted a guarantee on 24 November 2008 to a maximum of EUR 2 billion, for three years with a fee of 0.865 % per year<sup>190</sup>.

## 2. RECAPITALISATION

The Portuguese Parliament approved, with effect from 25 November 2008, the Law establishing measures to improve the financial soundness of Portuguese credit institutions<sup>191</sup>. The scheme makes available new capital (up to EUR 4 billion) to eligible credit institutions, to strengthen their capital base against potential losses, in line with the recommendations of the Banco de Portugal to establish a Tier 1 ratio of not less than 8 %.

The Law provides for two separate regimes: (i) increasing the level of own funds of credit institutions that already are solvent and stable, aimed at bringing them into line with their European counterparts; and (ii) direct State intervention in recovery and remedial processes. Under the scheme, the Portuguese authorities may also take part in recapitalisations provided that private investors contribute at least 30 % of the capital, and that the State capital is on equal terms with the private capital<sup>192</sup>.

The recapitalisation scheme is available until 31 December 2009.

### *Eligible institutions*

Eligible institutions are all credit institutions having their headquarters in Portugal (including subsidiaries of foreign banks with a registered office in Portugal) whether financially sound or not, in exchange for instruments eligible as Tier 1 capital (ordinary or preference shares). An individual beneficiary institution may receive a maximum of 2 % of its risk-weighted assets. The latter ceiling does not apply to credit institutions that are not fundamentally sound, but they must submit a restructuring plan.

### *Eligible instruments*

The Government may invest by: (i) increasing an eligible solvent institution's own funds through the acquisition of own shares; an increase of the share capital through the issuance of non-voting preference shares, shares with special rights and ordinary shares taken or underwritten by the State or, upon proposal of the Banco de Portugal, through the issuance of bonds; and (ii) Government intervention in an insolvent institution's restructuring plan.

<sup>189</sup> See Commission Decision of 13 March 2009 in Case No NN 71/08 *Portugal, individual application under the guarantee scheme* (not yet published in the OJ). The guarantee is valid for six months. The fund may be used only for liabilities on the balance sheet on 24 November 2008. Banco Privado Português is required also to provide a restructuring plan within six months from the date the guarantee was granted.

<sup>190</sup> A statutory biannual report on the operation of the scheme so far is available (in Portuguese) on the Ministry of Finance's website at [www.min-financas.pt/inf\\_economica/RelatorioGarantiasPessoaisEstado.pdf](http://www.min-financas.pt/inf_economica/RelatorioGarantiasPessoaisEstado.pdf).

<sup>191</sup> Law No 63-A/2008 of 24 November 2008 establishing measures for the recapitalisation of credit institutions, in the context of the initiatives to strengthen the financial stability and to stimulate the provision of liquidity in the financial markets (implemented by Decree-Law No 64/2009 of 20 March 2009 and Ministerial Order No 493-A/2009 of 8 May 2009), published in the DR Series I, No 228 of 24 November 2008, p. 8456-(2), DR Series I, No 56 of 20 March 2009, p. 1773 and DR Series I, No 89 of 8 May 2009, p. 2762-(2), respectively.

<sup>192</sup> See Commission Decision of 20 May 2009 in Case No N 556/2008 *Portuguese recapitalisation scheme* (not yet published in the OJ).

### 3. NATIONALISATION

#### 3.1 Nationalisation measure

On 11 November 2008, Law No 62-A/2008<sup>193</sup> was adopted, establishing a legal framework for State acquisitions by way of nationalisation (hereinafter the ‘Law on nationalisation’). This new framework provides for total or partial nationalisation of the capital shares of private companies when, under exceptional circumstance and for good reason, nationalisation is considered necessary to safeguard the public interest. Compensation for shareholders is envisaged in accordance with certain criteria and having regard to the company’s financial situation at the time of nationalisation.

#### 3.2 Individual measures

The Law on nationalisation was used to nationalise all the shares in **Banco Português de Negócios S.A.** (BPN) whereby BPN became a public limited company wholly owned by the State. BPN continues to be governed under the same regulatory framework as before except where the Law on nationalisation and the legislation on public sector corporations provides otherwise. The State-owned bank, Caixa Geral de Depositos, is responsible for BNP’s management.

## ROMANIA

Romania did not adopt any rescue measures concerning the financial sector.

## SLOVAKIA

Slovakia has not yet adopted any rescue measures. However, the Ministry of Finance has prepared a draft law on measures to mitigate the effects of the global financial crisis on the banking sector and on amendments to certain laws<sup>194</sup> (hereinafter the ‘draft law on crisis measures’), which is currently under consideration of the Government. Under those proposals, it will be for the Ministry of Finance, in agreement with Národná banka Slovenska (NBS), to adopt detailed implementing rules.

### 1. STATE GUARANTEES

Under the draft law on crisis measures, the Government may grant stabilisation aid aimed at: (i) providing support to the economy through the extension of loans by banks to meet the existing credit needs of natural and legal persons that have a permanent residence, registered office, or place of business in a Member State; and (ii) at stabilising the financial situation of individual banks.

The State guarantee scheme is expected to be operational from 1 July 2009 (the envisaged date of entry into force of the draft law on crisis measures).

<sup>193</sup> Published in the DR Series I, No 219 of 11 November 2008, p. 7898-(2).

<sup>194</sup> *Návrhu zákona o zmiernení vplyvov globálnej finančnej krízy na slovenský bankový sektor a o zmene a doplnení niektorých zákonov.*

### ***Eligible institutions***

Banks having their registered office in Slovakia and performing their activities on the basis of a banking licence, including subsidiaries of foreign banks, will be eligible under this scheme. Branches of foreign banks will not be eligible.

### ***Eligible liabilities***

Eligible liabilities are bonds issued by an eligible institution, with a maturity of three months to three years (hereinafter the 'bond issue') and loans extended to eligible institutions with a maximum maturity of one year, which potentially includes interbank deposits (hereinafter the 'short-term loans').

### ***Issue and maturity***

Under the scheme, the Government may grant guarantees for bond issues until 2013 and for short-term loans until 2011.

### ***Conditions***

To qualify for a State guarantee, an eligible institution will be required to conclude a stabilisation aid agreement with the Ministry of Finance by 31 December 2010 at the latest. Once the guarantee is granted, the eligible institution will be required to conclude a separate agreement on refundable financial aid with the Ministry of Finance.

A fee will be charged in connection with granting a guarantee. That fee will be based on: (i) the risk premium, having regard to whether the special guarantee covers a short-term loan or bonds, the risk profile of the bank (taking into account the bank's own funds in relation to the own funds requirements), the risk sensitivity of the bank and bank's rating; and (ii) the cost margin based on operating costs. Detailed implementing measures related to pricing and other conditions will be adopted at a later stage by the Ministry of Finance, following consultation with NBS. The fee structure is expected to be in line with the ECB's Recommendation on Guarantees.

In addition, recipient institutions will be subject to a number of conditions that include: (i) restrictions on dividend payments for at least 12 months after the guarantee is granted; (ii) reductions in executive wages and/or other remuneration; (iii) restrictions on bonus payments; (iv) the possibility for the Ministry of Finance to appoint a representative to the institution's management or supervisory body during the guarantee period; and (v) reporting obligations.

## **2. RECAPITALISATION**

Recapitalisation is also based on the draft law on crisis measures<sup>195</sup>. The recapitalisation scheme will apply from 1 July 2009 (the envisaged date of entry into force of the draft law on crisis measures). The amount to be committed to recapitalisation has not yet been specified.

### ***Eligible institutions***

Banks having their registered office in Slovakia and performing their activities on the basis of a banking licence including subsidiaries of foreign banks, but excluding branches of foreign banks are eligible to participate in this scheme.

### ***Eligible instruments***

The Government may make a capital contribution to the registered capital of eligible institutions from the States financial assets. In relation to a beneficiary institution, the amount

---

<sup>195</sup> See above footnote 194.

contributed by the Government by way of recapitalisation may not exceed 50 % of the bank's own funds requirements.

### ***Conditions/Pricing***

The beneficiary institution will be required to pay interest for the recapitalisation measure. The rate of interest will be determined in the light of: (i) the current market interest income on government bonds whose remaining maturity approximates the most recent period for which the aid is granted; (ii) the risk premium taking into account, *inter alia*, the type of shares issued by the bank, the risk profile (amount of the bank's own funds in relation to the own funds requirements), risk sensitivity of the bank and its rating; and (iii) the cost margin. For details of the other conditions that will apply, see above the section on guarantees.

## **SLOVENIA**

Measures were adopted in 2008 to ensure the stability of the Slovenian financial system<sup>196</sup>, authorising the Government to provide State guarantees and loans to eligible institutions, to purchase claims from those institutions and to undertake recapitalisation. Specific criteria and conditions are set out in the relevant Government decrees.

### **1. STATE GUARANTEES**

#### **1.1 State guarantee measures**

The Government decree laying down conditions for issuing State guarantees<sup>197</sup> came into effect on 6 December 2008<sup>198</sup>. The guarantee covers new short and medium-term debt. The overall amount committed by the Government to the guarantee scheme is EUR 12 billion.

#### ***Eligible institutions***

For an institution to be eligible under this scheme, it must be a solvent credit institution that: (i) fulfils the minimum capital requirements; (ii) holds a valid banking licence; (iii) has its corporate seat in Slovenia; and (iv) as a result of the global financial crisis, is not otherwise able to obtain funds on the financial and interbank market necessary for its operations. In this context, eligible institutions include subsidiaries of foreign banks and exclude foreign bank branches.

#### ***Eligible liabilities***

Guarantees may be issued for all liabilities arising from borrowing in the financial or interbank markets, including any liabilities towards credit institutions and other financial companies, with the exception of structured financial instruments (i.e. swaps, options and other derivatives), subordinated liabilities and liabilities towards parent entities and their associated entities.

---

<sup>196</sup> Law amending the law on public finance, adopted on 11 November 2008 (*Zakon o spremembi in dopolnitvah Zakona o javnih financah*, published in *Uradni list Republike Slovenije* No 109/2008). Additional information is available on the Government's website at:

[www.vlada.si/en/projects/measures\\_taken\\_in\\_response\\_to\\_global\\_financial\\_and\\_economic\\_turmoil/](http://www.vlada.si/en/projects/measures_taken_in_response_to_global_financial_and_economic_turmoil/).

<sup>197</sup> Decree on criteria and conditions for issuing guarantees under Article 86.a of the Law on public finance (*Uredba o merilih in pogojih za izdajanje poroštev po 86.a členu Zakona o javnih financah*, published in *Uradni list RS* No 115/2008).

<sup>198</sup> By Decision of 12 December 2008 in Case No N 531/08 *Slovenia – Public support measures to the financial sector* (OJ C 9, 14.01.2009, p. 7), the Commission approved the Slovenian support scheme.

### *Issue and maturity*

The debt instruments' maturity may range from three months to five years.

### *Conditions*

An annual fee will be charged taking account of the duration of the guarantee and credit rating of the eligible institution.

Funds obtained by the eligible institution under the scheme must be used to enhance economic activities and ensure appropriate credit support to the economy and households, and not for lending or refinancing of loans intended for the purchase of companies by their management or associated entities.

If the Government is called upon under the guarantee to discharge the liability, it is entitled to convert the claim into a capital share in the beneficiary institution.

Other terms and conditions related to the guarantee will be specified by way of a Government decision on a case-by-case basis. These may include restrictions on remuneration and other benefits received by the credit institution's management, including share options, and restrictions on dividend payments.

### *Timing*

This scheme will operate until 31 December 2010.

## **1.2 Individual guarantees**

**Nova Ljubljanska banka d.d., Ljubljana (NLB)** was granted a guarantee on 5 March 2009 to a maximum of EUR 2.5 billion for obligations arising from NLB's bonds to be issued in the international financial market. A fee of 0.95 % per year is payable on the total nominal value of issued bonds. The guarantee is subject to other conditions stipulated in the Government decision and is not limited in time.

## **2. RECAPITALISATION**

The draft decree laying down conditions for State capital investments and the related debt-to-equity swaps<sup>199</sup> has not yet been adopted. The scheme's general features are governed by the Law on public finance.

### *Eligible institutions*

Eligible institutions will be credit institutions, insurance, reinsurance and pension companies with their corporate seat in Slovenia which, as a result of the global financial crisis, are unlikely to be capable of fulfilling minimum capital requirements under the relevant legislation without the injection of State capital.

### *Eligible instruments*

Capital injections may take the form of ordinary or preference shares or any other form or instrument that has the characteristics of basic capital. Such preference shares must give the

---

<sup>199</sup> Draft decree laying down criteria and conditions for the implementation of State capital investments and for the conversion of State claims into capital shares under Article 81(1) and (6) of the Law on public finance. (*Predlog Uredbe o merilih in pogojih za izvedbo kapitalskih naložb države in za konverzijo terjatev države v kapitalski delež po prvem in šestem odstavku 81.a člena Zakona o javnih financah*). The information in this paper relies on the draft decree submitted by the Slovenian Ministry of Finance to the ECB for consultation on 30 December 2008 (see Opinion CON/2009/3).

State voting rights, rights to a dividend and certain rights in the event of a reduction in the share capital of the eligible institution in order to cover losses and in the event of bankruptcy or liquidation.

### ***Timing***

This scheme is expected to operate until 31 December 2010.

### ***Conditions***

The Government will charge a fee for recapitalisation. In addition, the draft envisages that certain restrictions will apply in relation to: (i) remuneration; (ii) management benefits including share options; (iii) restrictions on dividend payments and other shareholder rights; (iv) business strategy (e.g. major investment decisions, interest rate policy); and (v) conditions for the realisation of the capital investment.

## **3. STATE LOANS**

The Government decree laying down conditions for the grant of State loans<sup>200</sup> came into effect on 20 December 2008<sup>201</sup>.

### ***Eligible institutions***

Eligible institutions are solvent credit institutions and solvent insurance, reinsurance and pension companies that: (i) fulfil the minimum capital requirements; (ii) hold a valid operating licence; and (iii) have their corporate seat in Slovenia. In addition, credit institutions must demonstrate that they are unable to acquire funds on the financial and interbank market, notwithstanding the State guarantee. Insurance, reinsurance and pension companies must demonstrate also that as a result of the global financial crisis, they need the loan to ensure the smooth performance of their current business.

### ***Terms of the loan***

Loans will be granted for a period of one to a maximum of five years. The maturity of the loan granted to a beneficiary institution may not exceed the maturity of the assets that the Government acquires, at the time the loan is granted, in issuing debt securities on the financial market or in borrowing.

### ***Timing***

This scheme will operate until 31 December 2010.

### ***Conditions***

Interest is payable on the loan at an annual rate based on: (i) the cost of borrowing arising from the issuance of debt securities in the framework of the Government guarantee or from borrowing itself; and (ii) a credit risk premium dependent on the long-term credit assessment of the recipient institution. The Ministry of Finance also charges a fee of 25 basis points for processing the loan application.

The eligible institution must use the funds to enhance economic activities and ensure appropriate credit support to the economy and households. The funds may not be used for

---

<sup>200</sup> Decree laying down criteria and conditions for granting loans under Article 81.a of the Law on public finance (*Uredba o merilih in pogojih za odobritev posojil po 81.a členu Zakona o javnih financah*, published in *Uradni list RS* No 119/2008).

<sup>201</sup> By Decision of 20 March 2009 in Case No N 637/08 *Liquidity scheme to the financial sector* (not yet published in the OJ), the Commission approved the Slovenian liquidity scheme.



lending or refinancing loans intended for the purchase of companies by their management or associated entities.

Funds obtained by the recipient insurance, reinsurance and pension companies must be used to ensure the smooth performance of their current business.

Restrictions on remuneration and other benefits of the eligible institution's management, including share options, as well as restrictions on dividend payments and other shareholders' rights may be imposed.

The Government may convert any claim it has towards an eligible institution into a capital share in the eligible institution.

#### **4. ACQUISITION OF RISK POSITIONS / IMPAIRED ASSETS**

The Law on public finance provides for an asset protection scheme (APS). However, this law provides only a general outline of the APS. A Government decree laying down criteria and conditions governing the implementation of the APS, as required by the legislation, has not yet been adopted.

##### ***Eligible institutions***

According to the Law on public finance, eligible institutions under the APS will be credit institutions with their corporate seat in Slovenia.

##### ***Timing***

The APS is expected to operate until 31 December 2010.

##### ***Conditions***

The implementing decree will define the terms of the applicable fee and in accordance with the Law on public finance that fee will respect EU requirements and guidelines.

As with the other measures, and in accordance with the provisions of the Law on finance, the Government may, in its decree in relation to the purchase of claims, impose restrictions on the remuneration and other benefits of the company's management (including share options), on dividend payments and other shareholders' rights as well as other restrictions on operations.

## **SPAIN**

On 10 October 2008, the Spanish Government announced measures aimed at stabilising the financial markets through the provision of guarantees and liquidity to eligible financial institutions.

### **1. STATE GUARANTEES**

#### **1.1 State guarantee for new financing operations by credit institutions**

The State guarantee for new financing operations by credit institutions came into effect on 14 October 2008<sup>202</sup>. The overall amount committed by the Government was EUR 100 billion in 2008. Information on the amount committed for 2009 is not yet available.

<sup>202</sup> See Royal Decree-Law 7/2008 of 13 October 2008 on urgent financial and economic measures in relation to the concerted European action plan of the euro area countries (implemented by Ministerial Order

### *Eligible institutions*

Credit institutions with a registered address in Spain, including subsidiaries of foreign institutions that carry out significant activities in Spain, may apply for a guarantee under this scheme. In addition, to be eligible the institution must be solvent, have a minimum market share and have issued similar securities to the ones to be guaranteed within the last five years within the euro area.

### *Eligible liabilities*

The new debt instruments that may be issued by eligible institutions are commercial papers, bonds and obligations admitted to trading on Spanish secondary official markets. Interbank deposits may not be guaranteed.

### *Issue and maturity*

The guarantee scheme applies to financing operations conducted from 14 October 2008. The guarantee scheme is temporary and the guarantees are available until 31 December 2009. The issues guaranteed against the 2008 budget must have been issued prior to 15 December 2009. The scheme covers financial instruments with a maturity of between three months and three years, with the possibility of extension in exceptional circumstances to instruments with a maximum maturity of five years.

### *Conditions*

To benefit from the guarantee, participating banks are required to pay a market-oriented fee, in line with the ECB Recommendation on Guarantees.

## **1.2 Individual guarantee measures**

On 29 March 2009, the Spanish Government and the Banco de España proceeded with the first major bank rescue in the current financial crisis, taking control of **Caja Castilla-La Mancha** (CCM). The Banco de España pledged a loan to CCM backed by a Government guarantee to a maximum amount of EUR 9 billion<sup>203</sup>. The Banco de España removed the savings bank's directors and replaced them with central bank nominees<sup>204</sup>. The Spanish Government reported that CCM remained solvent but had liquidity problems.

## **2. RECAPITALISATION**

In accordance with the stability measures<sup>205</sup>, the Government recapitalisation scheme (GRS), authorises the Minister for Economic Affairs and Finance to acquire instruments issued by resident credit institutions in order to strengthen their capital base. The details of this scheme will be set out in a Ministerial order.

### *Eligible institutions*

Eligible institutions are resident credit institutions.

---

EHA/3364/2008 of 21 November 2008, amended by Ministerial Order EHA/3748/2008 of 23 December 2008). Article 1 of Royal Decree-Law 7/2008 authorises State guarantees of new financing operations by credit institutions. See also Commission Decision of 23 December 2008 in Case No NN 54b/08 *Spain, Spanish guarantee scheme for credit institutions* (OJ C 122, 30.5.2009, p.2).

<sup>203</sup> Pursuant to a guarantee authorised by Royal Decree-Law 4/2009 of 29 March 2009, confirmed by Parliament on 23 April 2009.

<sup>204</sup> Under the provisions of Law 26/1988 on discipline and intervention in credit institutions.

<sup>205</sup> Article 2 of Royal Decree-Law 7/2008 of 13 October 2008.

### ***Eligible instruments***

The Government may acquire preference shares, ordinary shares and participation certificates.

### ***Timing***

The legislation provides for the scheme to operate from 14 October 2008 until 31 December 2009, but it has not yet been activated.

### ***Conditions***

Consultation with Banco de España is a prerequisite for entering into an acquisition agreement.

## **3. ACQUISITION OF RISK POSITIONS / IMPAIRED ASSETS**

The Financial Assets Acquisition Fund (*Fondo para la Adquisición de Activos Financieros* (FAAF)) will acquire by way of auction high-quality assets backed by credit granted to individuals, corporations and non-financial institutions. This scheme came into effect on 15 October 2008<sup>206</sup>. The FAAF is administered and managed by the Ministry of Economic Affairs and Finance. It has an endowment of EUR 30 billion, which may be increased to EUR 50 billion. The FAAF is neither a bailout plan nor an impaired asset rescue programme; instead, it is aimed at alleviating the temporary liquidity shortage on the capital markets by providing medium-term credit (more than one year) to eligible institutions<sup>207</sup>.

### ***Eligible institutions***

Credit institutions domiciled in Spain and Spanish branches of foreign credit institutions may take part in the FAAF auctions. In particular, the FAAF is open to banks, savings banks, credit cooperatives and financial credit establishments. Institutions wishing to participate must declare their interest in advance through the procedure specified in the specific auction announcement.

### ***Eligible Assets***

The FAAF will invest in high-quality investment instruments issued by eligible institutions, backed by loans granted to individuals, companies and non-financial entities in Spain. It may purchase only 'AAA' rated covered bonds, significantly limiting the credit risk, while providing liquidity for participating banks. In addition, there is a temporary repurchase measure under which the FAAF may purchase highly-rated covered bonds or asset backed securities from an eligible institution (with a minimum 'AA' rating). The eligible institutions must commit to repurchasing those assets at a fixed price at a later date.

In addition, the assets must be traded on regulated markets. Therefore, the assets that the FAAF acquires are subject to the strict regulation of the Spanish Securities and Exchange Commission (*Comisión Nacional del Mercado de Valores*) in relation to the issuance of assets traded on regulated markets.

<sup>206</sup> See Royal Decree-Law 6/2008 of 10 October 2008, which sets up a Fund for the acquisition of financial assets. See also Commission Decision of 4 November 2008 in Case No NN 54a/08 *Spain, Fund for the acquisition of financial assets in Spain* (not yet published in the OJ).

<sup>207</sup> Detailed information on the four auctions that have taken place to date is available on the FAAF's website at [www.fondoaf.es/EN/Subastas.htm](http://www.fondoaf.es/EN/Subastas.htm).

### **Timing**

The assets involved in the auctions must have been issued after 1 August 2007 for repurchase transactions and after 15 October 2008 for outright purchases. The FAAF may not hold auctions after 31 December 2009.

### **Conditions**

For the ‘competitive’ tranche of an auction, submitted bids must specify the interest rate and amount. Bids are ranked according to interest rate (in decreasing order) and awarded on the basis of the maximum volume of funds to be acquired by the FAAF. In the event that requests exceed the volume of funds auctioned by FAAF, bids will be awarded on a pro rata basis. The FAAF may also set aside up to 25 % of the funds supplied for a ‘non-competitive’ tranche of an auction, which may be awarded to institutions on the basis of their contribution to new credit extended to the private sector.

Specific conditions are not required of eligible institutions in terms of the management of the funds obtained from asset sales; however, the Government recommends that beneficiaries make funds available to households and small businesses.

## **SWEDEN**

The Government’s stabilisation plan aimed at securing financial stability in Sweden and restoring confidence in the markets came into effect on 30 October 2008<sup>208</sup>. The Government announced an extension of the measures on 29 January 2009<sup>209</sup>. The relevant legislation<sup>210</sup> authorises the Government to adopt a wide variety of stability measures, including, *inter alia*, the issuance of State guarantees, recapitalisation, compulsory share redemptions, and granting loans.

### **1. STATE GUARANTEE**

#### **1.1 The Government stabilisation guarantee scheme (SGS)<sup>211</sup>**

The SGS provides for support to be granted in the form of State guarantees for new short and medium-term debt issuance, to be administered by the *Riksgäldskontoret* (the National Debt Office (NDO))<sup>212</sup>. The SGS is limited to an amount of SEK 1 500 billion (approximately EUR 140 billion) of which an amount of SEK 500 billion (approximately EUR 46.8 billion) may be committed to bonds with a maturity between three and five years. Support may be extended only for the purpose of reducing risks related to severe disruption of the financial market.

### **Eligible institutions**

Eligible institutions are solvent banks and mortgage institutions incorporated and operating in Sweden (including Swedish subsidiaries of foreign institutions). Only institutions with at least

<sup>208</sup> See Commission Decision of 29 October 2008 in Case No N 533/08 *Support measures for the banking industry in Sweden* (OJ C 308, 3.12.2008, p. 6).

<sup>209</sup> See Commission Decision of 29 January 2009 in Case No N 26/09 *Amendments to the support measures for the banking industry in Sweden* (OJ C 37, 14.2.2009, p. 4).

<sup>210</sup> The Law on State support for credit institutions (*Lag om statligt stöd till kreditinstitut* (SFS 2008:814)).

<sup>211</sup> The Ordinance on State guarantees for banks (*Förordning om statliga garantier till banker m.fl.* (SFS 2008:819)).

<sup>212</sup> See the NDO’s website at [www.riksdagen.se](http://www.riksdagen.se).

6 % Tier 1 capital and at least 9 % combined Tier 1 and Tier 2 capital will be considered sufficiently capitalised to be eligible.

### *Eligible liabilities*

Instruments covered by the SGS are bonds, certificates of deposits and other non-subordinated debt instruments. The sum of the institution's debt instruments is covered by the SGS. The scheme also includes covered bonds and debt securities without special collateral. It excludes complex and structured financial products or instruments that qualify as either Tier 1 or Tier 2 capital. The scheme is not subject to any currency restrictions.

### *Issue and Maturity*

Instruments guaranteed under the SGS may be issued until 31 October 2009. The maximum guarantee limit calculated in relation to each institution will be based on the debt securities maturing between 1 September 2008 and 31 December 2009. The term of uncollateralised instruments and bonds issued under the SGS may range from 90 days to a maximum of five years.

### *Conditions*

The fee structure is based on the ECB Recommendation on Guarantees. Essentially, the fee payable for the guarantee is calculated annually, based on market benchmarks and will in most cases comprise two elements: a measure of institution-specific risk and a fixed add-on, generally, of 50 basis points<sup>213</sup>.

In addition, some constraints will be imposed on the beneficiaries. These include a limit on aggregate growth in balance sheet volume related to the guarantee to be monitored by the Swedish Financial Supervisory Authority, marketing restrictions, a prohibition on any significant expansion on the basis of the guarantee and restrictions on staff remuneration.

## **1.2 Individual guarantee measures<sup>214</sup>**

**Carnegie Investment Bank AB** is a participant in the guarantee scheme.

**Sveriges Bostadsfinansieringsaktiebolag, SBAB** has participated in the guarantee scheme since 17 February 2009.

**Swedbank AB** has participated in the guarantee scheme since 22 October 2008.

**Swedbank Hypotek AB** has participated in the guarantee scheme since 30 October 2008.

**Volvofinans Bank AB** has participated in the scheme since 19 March 2008.

## **2. RECAPITALISATION**

### **The recapitalisation scheme**

The Government's recapitalisation scheme was launched on 11 February 2009 and allows the Government to provide beneficiaries with share capital or hybrid capital to be counted as Tier 1 capital<sup>215</sup>. As with the SGS, the NDO is responsible for administering this scheme. The maximum amount of capital the Government intends to make available under the Scheme is SEK 50 billion (approximately EUR 4.68 billion).

<sup>213</sup> For more detailed information on the calculation on the fee see the NDO's website at [www.riksdagen.se/templates/RGK\\_Templates/TwoColumnPage\\_17106.aspx](http://www.riksdagen.se/templates/RGK_Templates/TwoColumnPage_17106.aspx).

<sup>214</sup> See the NDO's website, above footnote 212.

<sup>215</sup> The recapitalisation scheme is set out in the *Förordning om kapitaltillskott till solventa banker m.fl.* (SFS 2009:46) (Ordinance on capital injections to solvent banks). See also Commission Decision of 10 February 2009 in Case No N 69/09 *Recapitalisation scheme for fundamentally sound banks* (OJ C 52, 5.3.2009, p. 3).

### *Eligible institutions*

The financial institutions eligible for recapitalisation under this scheme are the same as under the SGS, i.e. banks and mortgage institutions incorporated and operating in Sweden (including Swedish subsidiaries of foreign institutions), provided they meet minimum capital adequacy requirements. For groups including two or more eligible institutions, only one entity will be eligible to receive capital under the scheme. The Government will only provide capital to financial institutions that are fundamentally sound within the meaning of the Commission's recapitalisation communication of 15 January 2009<sup>216</sup>.

### *Eligible instruments*

The Government may invest by subscribing for preference shares. In the case of systemically important institutions, the Government has the right to become a shareholder through a forced redemption of shares effected at market rates.

### *Timing*

The scheme is operational from 17 February 2009 to 17 August 2009. This period may be extended by the Government to 31 December 2009, subject to notification and approval by the Commission under State aid rules.

### *Conditions*

Under the scheme, the Government will provide capital to eligible financial institutions on equal terms with private investors, on condition that 30 % or more of the investment is made by the private investors. The capital granted by the Government under this scheme to an individual financial institution will amount to at most 2 % of the institution's risk-weighted assets. In calculating that weighting, consideration will be given to the credit risks, market risks and operational risks facing the institution concerned. The Government's remuneration will be on equal terms with the participating private investors.

The conditions for capital injections will be based on agreements between the institution and the Government acting through the NDO. In the individual recapitalisation agreements with participating institutions, the following conditions will be included: (i) restrictions on marketing relating to the provision of State capital; and (ii) restrictions with respect to wage increases, bonus payments, and increases in board remuneration and executives' severance packages for 2009 and 2010. The scheme also comprises a number of conditions intended to ensure that the capital provided is used for lending to the real economy.

## **3. STATE LOANS**

Under the Government's stabilisation scheme, the NDO, not the Sveriges Riksbank, was given responsibility for providing liquidity assistance to banks in difficulty. Under this scheme, a support loan was granted to **Carnegie Investment Bank AB**<sup>217</sup> in the amount of SEK 2.4 billion (approximately EUR 225 million), which corresponds to the amount previously provided to Carnegie Bank by Sveriges Riksbank as emergency liquidity assistance, plus interest. The agreement between NDO and Carnegie Bank was entered into on 10 November 2008. Since the Financial Supervisory Authority declared that the banking and securities licence of Carnegie Bank would have to be withdrawn, the NDO took over the collateral of Carnegie Bank, as a consequence of which the Government, acting through the

---

<sup>216</sup> Above footnote 5.

<sup>217</sup> See Commission Decision of 15 December 2008 in Case No NN 64/08 *Public support measures to Carnegie* (OJ C 29, 5.2.2009, p. 1).



NDO, became sole shareholder of Carnegie Bank. On 11 February 2009 an agreement was entered into to sell the bank to Altor Fund III and Bure Equity AB.

## THE UNITED KINGDOM

On 8 October 2008, HM Treasury (the UK's economics and finance ministry) announced a comprehensive package of measures to help to ensure the stability of the financial system and to protect ordinary savers, borrowers and businesses<sup>218</sup>. These measures are intended to provide sufficient liquidity in the short term, make available new capital to UK banks and building societies to enable them to restructure their finances, while maintaining their support for the real economy, and ensure that the banking system has the funds necessary to maintain lending in the medium term. On 19 January 2009, the UK Government announced a second rescue package for UK banks extending some of the existing measures as well as introducing new measures.

### 1. STATE GUARANTEES

#### 1.1 Credit guarantee scheme (CGS)

The CGS came into effect on 13 October 2008 and has since been extended and modified<sup>219</sup>. HM Treasury is the guarantor under the CGS, which is administered by the Debt Management Office (DMO). The overall amount committed by the Government to the CGS is GBP 250 billion (approximately EUR 286 billion)<sup>220</sup>.

##### *Eligible institutions*

Institutions eligible under the CGS are UK deposit-takers, including UK subsidiaries of foreign banks, which have a substantial business in the UK and maintain a level of Tier 1 capital deemed appropriate by the UK Government. The DMO maintains a list of institutions that have been issued eligibility certificates by HM Treasury<sup>221</sup>. The issuance of an eligibility certificate signifies that the specified instruments are unconditionally and irrevocably guaranteed by HM Treasury to ensure their payment.

##### *Eligible liabilities*

The debt instruments that may be issued by eligible UK institutions include senior unsecured debt instruments with standard market terms that are not complex and fall within one of the following categories: (i) certificates of deposit; (ii) commercial paper; and (iii) bonds or notes. The instruments must be denominated in GBP, EUR, USD, JPY, AUD, CAD or CHF.

---

<sup>218</sup> See the Rules of the 2008 Credit Guarantee Scheme available on the Debt Management Office's (DMO) website at [www.dmo.gov.uk/documentview.aspx?docname=cgs/press/cgsrules.pdf&page=](http://www.dmo.gov.uk/documentview.aspx?docname=cgs/press/cgsrules.pdf&page=). The initial package of measures was approved by the Commission in its Decision of 13 October 2008 in Case No N 507/08 *United Kingdom, Guarantee and other forms of equity intervention* (OJ C 290, 13.11.2008, p. 4).

<sup>219</sup> The original measures were approved by the Commission on 13 October 2008 (above footnote 218) and modifications were approved on 22 December 2008 (Case No N 650/08 *Modifications to the Financial Support Measures to the Banking Industry in the UK* (OJ C 54, 10.3.2009, p.3)). On 15 April 2009, the Commission approved the extension of the CGS until 13 October 2009 (see Commission Decision of 15 April 2009 in Case No N 193/09 *United Kingdom, Extension of the credit guarantee scheme* (not yet published in the OJ)).

<sup>220</sup> A number of institutions have taken advantage of the CGS. A complete list is available on the DMO's website at [www.dmo.gov.uk/index.aspx?page=CGS/CGS\\_about](http://www.dmo.gov.uk/index.aspx?page=CGS/CGS_about).

<sup>221</sup> Available on the DMO's website at [www.dmo.gov.uk](http://www.dmo.gov.uk).

They may not contain cross-default or cross-acceleration provisions or any right of prepayment by the issuer.

### *Issue and maturity*

The debt instrument must be issued within 30 days of the date of the eligibility certificate. The term of instruments guaranteed under the Scheme may be no longer than three years. The drawdown window of the CGS is until 31 December 2009 and the final maturity date is 9 April 2014. During the drawdown window, eligible banks and building societies may issue new guaranteed debt. After the closure of the drawdown window, those banks and building societies may continue rolling over any outstanding guaranteed debt (all of it until 13 April 2012 and a maximum of one-third of the total until 9 April 2014).

### *Conditions*

The fee payable to HM Treasury on guaranteed liabilities will be based on a per annum rate of 50 basis points plus 100 % of the institutions' median five-year CDS spread during the period from July 2007 to July 2008 as determined by HM Treasury. This fee will apply to all guaranteed issues under the CGS since its launch on 13 October 2008. HM Treasury may charge an incremental fee for guarantees of non-sterling denominated issuance.

## **1.2 Individual guarantee measures**

Over 55 institutions have received eligibility certificates under the CGS including **Abbey National plc, Bank of Scotland plc, Barclays Bank plc, HSBC Bank plc, Lloyds TSB Bank plc, Nationwide Building Society, The Royal Bank of Scotland plc, and Standard Chartered Bank**. The institutions that have received eligibility certificates either have issued guaranteed liabilities or intend to issue debt instruments for which an application for eligibility certificates has been or will be made<sup>222</sup>.

## **1.3 The asset-backed securities guarantee scheme (hereinafter the 'ABS scheme')**

The ABS scheme, which is an extension of the CGS, was announced on 19 January 2009<sup>223</sup>. The aims are to: (i) improve banks' and building societies' access to wholesale funding markets; (ii) help support their lending in the economy; (iii) promote robust and sustainable markets over the long term; and (iv) protect the taxpayer. HM Treasury is also the guarantor under this scheme and it is administered by the DMO. The two types of guarantees available under this scheme are a credit guarantee and a liquidity guarantee. The Government has committed GBP 50 billion (approximately EUR 57 billion) to the scheme.

### *Eligible institutions*

The institutions eligible to participate in the CGS are also eligible to participate in the ABS scheme (see above).

### *Eligible liabilities*

The assets eligible for the 2009 scheme: (i) must be single currency denominated in GBP, EUR, USD, JPY, AUD, CAD, CHF and such other currency as may be approved by HM Treasury; and (ii) must be rateable as 'AAA' at the time of issue by at least two international

<sup>222</sup> For more detailed information see the DMO's website, *ibid*.

<sup>223</sup> See Commission Decision of 21 April 2009 in Case No N 232/09 *Assets backed Security Scheme* (not yet published in the OJ).

credit rating agencies. The mortgage loans which are sold into the mortgage pool backing the eligible instruments must be of a high quality, based on criteria specified by HM Treasury.

### ***Issue and maturity***

The Government will issue guarantees during a six-month period from the commencement of the ABS scheme, subject to any extension at the discretion of HM Treasury. The guarantee in respect of an eligible instrument will have a maximum term of either up to three years or up to five years. A maximum of one third of the guarantees (based on the total amount of guaranteed eligible instruments) may have up to a five year term.

### ***Conditions***

The fee payable to HM Treasury will be based on a per annum rate of 25 basis points plus 100 % of the institution's median five-year CDS spread during the period from 2 July 2007 to 1 July 2008, as determined by HM Treasury. HM Treasury may charge an incremental fee for any guarantee applied to non-sterling denominated eligible instruments.

## **2. RECAPITALISATION**

### **2.1 The Government recapitalisation scheme (GRS)**

The GRS was launched on 8 October 2008 and enables the Government to make capital investments to a maximum aggregate amount of GBP 50 billion (approximately EUR 57 billion) in eligible institutions, in order to help increase their Tier 1 capital and strengthen their finances. These investments may take the form of preference shares or permanent interest bearing shares (PIBS). The Government investments are managed by a new company, UK Financial Investments Ltd (UKFI), with HM Treasury as its sole shareholder. UKFI is charged with managing the Government's investments commercially and with a view to achieving an exit.

### ***Eligible institutions***

Eligible institutions are those eligible under the CGS that wish to use Government subscription as a means of raising their Tier 1 capital in order to qualify for the CGS. There is no automatic right of access to the GRS; HM Treasury has set out specific minimum requirements related to: (i) a plan to meet an appropriate level of capitalisation; (ii) a sustainable business model and delivery plan; (iii) the funding profile, sources and mix; and (iv) the credibility of senior management.

### ***Eligible instruments***

The Government may invest by subscribing for preference shares, PIBS, or (at the request of an eligible institution) by providing assistance to an ordinary equity fund-raising. Financial Services Authority (FSA) rules state that at least 50 % of a bank's Tier 1 capital should comprise ordinary shares and retained earnings (that is, excluding preference shares). As a result, some eligible institutions will need to raise funds through issuing a combination of preference shares and ordinary shares.

### ***Timing***

The Government has stated that it does not aim to be a permanent investor in UK financial institutions. UKFI plans to develop a strategy for disposing of the Government's shareholdings in an orderly manner in the future.

## *Conditions*

Terms and conditions will apply in relation to dividend policy, remuneration, lending policy and wider public policy issues. In relation to ordinary equity shares, the price will be at a discount to either the market price prevailing at the time of the transaction or, if applicable, the placing price agreed on 13 October 2008, whichever is lower. In relation to preference shares or other Tier 1 instruments, the appropriate coupon will be based on prevailing market conditions. An appropriate fee is charged for any underwriting commitments.

## **2.2 Individual measures under the GRS**

Under the GRS, the Government has made available an aggregate of GBP 25 billion (approximately EUR 28 billion) to **Abbey National plc, Barclays Bank plc, HBOS, HSBC Bank plc, Lloyds TSB Bank plc, Nationwide Building Society, the Royal Bank of Scotland plc (RBS)** and **Standard Chartered Bank**. The Government also stated that it was ready to provide a further GBP 25 billion (approximately EUR 28 billion) to other eligible institutions that may apply under the GRS.

HM Treasury initially invested a total of GBP 37 billion (approximately EUR 42 billion) in the preference shares of **RBS** (GBP 20 billion (approximately EUR 22.9 billion), a 58 % holding) and of the **Lloyds Banking Group** (GBP 17 billion (approximately EUR 19 billion), a 43.3 % holding) formed by the Government-sponsored merger of HBOS and Lloyds TSB Bank plc of 16 January 2009. The aim was to raise the Tier 1 capital ratios for both banks above 9 % (compared with the minimum Basel II requirement of 8 %). Also, on 19 January 2009, GBP 5 billion (approximately EUR 5.7 billion) of HM Treasury's preference shares held in RBS were converted into ordinary shares in order to boost RBS's core Tier 1 capital and to enable RBS to increase its lending to the real economy.

## **3. ACQUISITION OF RISK POSITIONS/IMPAIRED ASSETS**

### **3.1 Asset protection scheme (APS)**

The APS was announced on 19 January 2009, under which HM Treasury will provide each participating institution with protection against credit losses incurred on one or more portfolios of defined assets to the extent that credit losses exceed a 'first loss' amount to be borne by the institution. The APS aims to target those assets which are most affected by current market illiquidity. Banks receive protection for a proportion of their balance sheets so that the healthier core of their commercial business can continue to lend. 'First loss' remains with banks and government protection covers 90 % of the remaining loss.

#### *Eligible institutions*

Eligible institutions are UK incorporated authorised deposit-takers, including UK subsidiaries of foreign institutions, with more than GBP 25 billion (approximately EUR 28 billion) of eligible assets. Affiliated entities of those deposit-takers will also be considered for participation under the APS. Applicants must meet similar criteria to those listed under the GRS (see above).

#### *Eligible assets*

The following categories of assets are eligible for inclusion in the APS: (i) corporate and leveraged loans; (ii) commercial and residential property loans; (iii) structured credit assets, including residential mortgage-backed securities, commercial mortgage-backed securities, collateralised loan obligations and collateralised debt obligations; and (iv) participations in

respect of the above. These assets must have been held by the covered entities as at 31 December 2008 and thereafter.

### ***Timing***

The APS is expected to last for a minimum of five years. Eligible institutions were entitled to request to participate until 31 March 2009.

### ***Conditions***

A fee is payable. Assets must have been held by eligible institutions on 31 December 2008. Banks must enter into legally binding agreements to increase the amount of their lending to homeowners and businesses in a commercial manner. They must also develop a sustainable long-term remuneration policy in accordance with FSA guidelines and satisfy certain other largely transparency-related conditions. The Government has committed up to GBP 200 billion (approximately EUR 229 billion) of Treasury bills. Approximately GBP 185 billion (approximately EUR 212 billion) has already been used.

## **3.2 Special Liquidity Scheme (SLS)**

On 21 April 2008, the Bank of England (BoE) introduced the SLS, aimed at improving the liquidity position of the banking system by allowing banks to swap their high quality mortgage-backed and other securities for more tradable UK Treasury bills for a maximum of three years. The risk remains with the banks and shareholders under the SLS, since assets are pledged by banks as security against Treasury bills. When a swap transaction ends, the assets are returned to the banks in exchange for the Treasury bills. Under the SLS, the Government, acting through the DMO, issued new Treasury bills to lend to the BoE. The scheme is ring-fenced from and independent of the BoE's money market operations.

### ***Eligible institutions***

All banks and building societies that were eligible for the standing deposit and lending facilities within the BoE's Sterling Monetary Framework were eligible to take part in the SLS.

### ***Eligible assets***

Eligible assets for the SLS were assets accepted by the BoE for its special three-month lending operations. In particular, the main category of assets included residential mortgage backed securities and those backed by credit card debt. These assets had to be high quality ('AAA' rated). If the assets were down-rated, the eligible institutions had to replace them with 'AAA' rated assets. The facility did not accept raw mortgages, assets based on derivative products, or securities backed by US mortgages. The assets could be denominated in currencies other than GBP.

### ***Timing***

The SLS was available until 30 January 2009. Eligible institutions could enter new asset swaps during a six-month window. These assets, unless they matured within one year, were swapped for one year and eligible institutions have the opportunity to renew such transaction for a total of up to three years. Thereby, all assets will be returned to the banks and the SLS will close by October 2011. The SLS is a one-off measure to deal with illiquid assets held by eligible institutions.



## Conditions

Participating institutions are required to pay a fee to borrow the Treasury bills. The fee charged is the spread between the three-month London interbank interest rate (Libor) and the three-month interest rate for borrowing against the security of government bonds, subject to a floor of 20 basis points. The BoE decides on the margin between the asset value and Treasury bill value that the banks will have to provide as security.

### 3.3 Individual measures

**RBS** intends to participate in the scheme in respect of GBP 325 billion (approximately EUR 372 billion) of assets<sup>224</sup>. **Lloyds Banking Group** also intends to participate in the scheme in respect of GBP 260 billion (approximately EUR 298 billion) of assets<sup>225</sup>.

## 4. NATIONALISATION

The Banking Act 2009, which came into effect on 21 February 2009, introduced, *inter alia*, a special resolution regime (SRR) giving powers to HM Treasury, the BoE and the FSA to deal with distressed banks and building societies. SRR powers allow the authorities: (i) to transfer all or part of a bank to a private sector buyer or to a bridge bank pending a future sale; (ii) to place a bank into temporary public ownership; (iii) apply to put a bank into the bank insolvency procedure; or (iv) to apply for use of the bank administration procedure. The Banking Act 2009 replaced the Banking (Special Provisions) Act 2008 under which orders were passed to nationalise Northern Rock in February 2008 and the mortgage and personal loan book of Bradford & Bingley in September 2008 (see below).

On 21 February 2008, in the absence of a private sector buyer for **Northern Rock**, pursuant to an order made under the Banking (Special Provisions) Act 2008<sup>226</sup>, Northern Rock was brought under temporary public ownership, with HM Treasury becoming its sole shareholder. A new independent board was appointed and Northern Rock was delisted from the London Stock Exchange. HM Treasury provided Northern Rock with GBP 27 billion (approximately EUR 30.9 billion) of emergency loans and GBP 30 billion (approximately EUR 34.3 billion) of deposit-guarantees and guarantees of other liabilities<sup>227</sup>.

---

<sup>224</sup> RBS will pay a participation fee of GBP 6.5 billion (approximately EUR 7.4 billion) to HM Treasury in capital. The agreement would see RBS bear a first loss of up to GBP 19.5 billion (approximately EUR 22.3 billion), and make 2009 lending commitments totalling GBP 25 billion (approximately EUR 28 billion) (GBP 9 billion (approximately EUR 10.3 billion) of mortgage lending and GBP 16 billion (approximately EUR 18.3 billion) of business lending). As part of the Government's commitment to financial stability, HM Treasury will also make a capital injection of GBP 13 billion (approximately EUR 14.9 billion) into RBS and commit to subscribe for an additional GBP 6 billion (approximately EUR 6.9 billion) at RBS' option.

<sup>225</sup> The protection will cover a range of assets, including mortgages, unsecured personal loans, corporate and commercial loans and treasury assets. Lloyds will pay a participation fee of GBP 15.6 billion (approximately EUR 17.9 billion) to HM Treasury in non-voting but dividend paying B-shares. Lloyds will bear a first loss of up to GBP 25 billion (approximately EUR 28 billion), increase 2009 lending commitments by GBP 14 billion (approximately EUR 16 billion) and make no annual free share awards.

<sup>226</sup> On 2 April 2008, the Commission launched an in-depth State aid investigation into the UK authorities' package of measures to support the restructuring of Northern Rock. The Commission received the notification of these measures on 17 March 2008. The plan submitted by the UK authorities provides for a reduction in Northern Rock's lending operations and in the size of its balance sheet. Over the period of the plan, Northern Rock would repay the loans made by the BoE and the UK Government guarantees on its funding operations in the deposit and wholesale funding markets would gradually be phased out. Northern Rock would need to find funding from other sources, notably by rebuilding the level of its retail deposits.

<sup>227</sup> On 5 December 2007, the Commission authorised the UK authorities' package of measures to support Northern Rock. The Commission received full details of these measures on 26 November 2007 (see Commission Decision of 5 December 2007 in Case No NN 70/07 *Northern Rock* (OJ C 43, 16.2.2008, p.1)).



Events in September 2008 had a serious impact on **Bradford & Bingley's (B&B)** liquidity position. B&B was downgraded by the major ratings agencies, which made it difficult for it to refinance itself. On 27 September 2008, the FSA determined that it was failing to satisfy the threshold conditions for authorisation under the Financial Services and Markets Act and that its permission to accept deposits would be withdrawn, effectively closing B&B down. In response to those events, B&B was nationalised. In a series of measures designed to protect retail depositors and ensure financial stability, its retail deposit book, along with a matching cash amount provided by the deposit-guarantee scheme (the Financial Services Compensation Scheme) and HM Treasury, and also including the bank's branches, was sold to Abbey National (owned by Grupo Santander) after a competitive bidding process<sup>228</sup>.

---

<sup>228</sup> On 1 October 2008, the Commission authorised the measures in relation to B&B (Decision of 1 October 2008 in Case No NN 41/08 *Rescue aid to Bradford & Bingley* (OJ C 290, 13.11.08, p.2). The Commission's assessment of the measures found that the State funding to enable the sale of the deposit book provided State aid to B&B and to its retail deposit business that was sold. The Commission also concluded that the working capital facility and the guarantee arrangements provided by HM Treasury to B&B constitute State aid. On 27 March 2009, HM Treasury sought Commission approval for the continuation of the guarantee arrangements in relation to certain wholesale borrowings, deposits and derivatives transactions of B&B.

## National Rescue Measures in Response to the Current Financial Crisis Deposit Guarantee Schemes\*

Member State	Amount covered	What is covered by the scheme	Eligible depositors
<b>Austria</b>	For natural persons: unlimited (until 31 December 2009); EUR 100 000 (from 1 January 2010)	<ul style="list-style-type: none"> <li>All savings deposits including building savings deposits</li> <li>Credit balances which result from funds left in an account or from temporary positions in the course of banking transactions</li> <li>Any debt evidenced by a certificate issued by a credit institution, with the exception of mortgage bonds, municipal bonds and funded bank bonds</li> </ul>	<ul style="list-style-type: none"> <li>Natural persons</li> <li>For 'small companies' (essentially partnerships and small corporations) 90 % of deposits and a maximum of EUR 50 000</li> <li>For other creditors 90 % of deposits and a maximum of EUR 20 000</li> <li>In addition, 'large companies' are excluded from the scheme</li> </ul>
<b>Belgium</b>	EUR 100 000	<ul style="list-style-type: none"> <li>Deposits, i.e. cash and financial instruments, although in relation to financial instruments the limit of EUR 20 000 remains</li> <li>Certain life insurance products with a guaranteed minimum return known as 'Branche 21' as defined in Annex 1 to the Royal Decree of 22 February 1991</li> </ul>	<ul style="list-style-type: none"> <li>Natural persons (including self-employed), non-profit associations, partnerships without legal personality and small and medium-sized enterprises, i.e. enterprises with fewer than 100 employees (calculated as an annual average) and which do not exceed more than one of the following thresholds: EUR 3.65 million balance sheet total; EUR 7.3 million turnover; 50 employees (calculated as an annual average)</li> <li>The following are excluded: public authorities and institutions, financial institutions, institutional investors, large companies and persons having a link with the defaulting institution (directors, commissioners, related companies, etc.) or whose behaviour contributed to the default</li> </ul>
<b>Bulgaria</b>	BGN 100 000 (approximately EUR 51 000)	<ul style="list-style-type: none"> <li>Deposits and interest accrued prior to a decision of the Bulgarian National Bank to revoke the banking licence of the deposit-taker with whom the deposits are held. The deposit-guarantee scheme covers all deposits held by a person (including by supplementary mandatory pension funds) in a single bank to maximum total amount of BGN 100 000</li> </ul>	<ul style="list-style-type: none"> <li>The deposit-guarantee scheme does not apply to a person obtaining a deposit claim as a result of a deposit made following a decision of the BNB revoking the institution's banking licence</li> <li>All depositors, except deposits held by persons subject to preferential interest rates; bank's shareholders entitled to more than 5 % of the votes in that bank's general meeting of shareholders; members of the bank's management or supervisory organs; procurators and members of its internal audit bodies; auditing companies selected to certify the bank's financial statement; spouses or relatives (direct line/second degree); any bank whose deposits are in its name and on its account; financial institutions; insurers; pension and social security funds, except for supplementary mandatory pension funds; any investment intermediary whose deposits are in its name and on its account; closed-end investment companies, collective investment schemes and financial</li> </ul>

\* See Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ L 135, 31.5.1994, p. 5) as amended by Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay (OJ L 68, 13.3.2009, p. 3).

## National Rescue Measures in Response to the Current Financial Crisis Deposit Guarantee Schemes\*

Member State	Amount covered	What is covered by the scheme	Eligible depositors
<b>Cyprus</b>	EUR 20 000 (draft law proposes raising the limit to EUR 100 000)	<ul style="list-style-type: none"> <li>Under the draft law, deposits denominated in all currencies are included</li> </ul>	<p>vehicle corporations; the government or government institutions; municipalities; the Bank Deposit-Guarantee Fund, The Securities Investors Compensation Fund and the Insurers Guarantee Fund; no guarantee may be provided on deposits arising out of or related to transactions or actions constituting money laundering</p> <ul style="list-style-type: none"> <li>The scheme covers all deposits (including current and notice accounts) made by natural or legal persons, provided that such deposits are denominated in EUR or in the currency of any EU Member State</li> </ul>
<b>Czech Republic</b>	EUR 50 000	<ul style="list-style-type: none"> <li>All claims arising from deposits, including interest accrued, recorded as credit balances on accounts or deposit books or evidenced by a certificate of deposit, deposit slip or other comparable document</li> </ul>	<ul style="list-style-type: none"> <li>Natural and legal persons. The deposit claims of banks, foreign banks, financial institutions, health insurance companies and state funds are excluded</li> </ul>
<b>Denmark</b>	Both unlimited and limited coverage - currently DKK 300 000 (approximately EUR 40 000); EUR 50 000 from 30 June 2009; EUR 100 000 from 1 October 2010	<ul style="list-style-type: none"> <li>Limited coverage: registered deposits with eligible institutions</li> <li>Unlimited coverage: index-linked, children's and educational savings accounts; lump-sum, personal and instalment pension accounts; home savings contracts; business establishment accounts; lawyers' client accounts; probate accounts relating to estates administered by a court; accounts in accordance with the Law on the right of debtors to discharge obligations by way of deposits; accounts administered by trustees and guardians; deposits of the purchase price for real property and proceeds from mortgage loans. Coverage is net of a depositor's liabilities to the credit institution</li> </ul>	<ul style="list-style-type: none"> <li>Depositors and investors of Danish banks and mortgage banks, branches in Denmark of credit institutions with a head office outside the EU unless they have a cooperation agreement with the EU; and branches in Denmark of EU credit institutions or which have their head office in a country with which the EU has a cooperation agreement which have suffered losses in cases of bank receivership or compulsory winding-up</li> <li>Excluded are: members of the board of directors and the board of management, companies which are part of the same group, and depositors which own more than 10 % or more of the equity</li> </ul>
<b>Estonia</b>	EUR 50 000 (in relation to deposits)	<ul style="list-style-type: none"> <li>Deposits together with the accrued interest</li> <li>Investments (EUR 20 000 per investment)</li> <li>Pension savings (EUR 10 000 and 90 % of the amount)</li> </ul>	<ul style="list-style-type: none"> <li>Every individual account of each depositor in a particular credit institution</li> <li>Per investor per one investment undertaking (investments in investment</li> </ul>

\* See Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ L 135, 31.5.1994, p. 5) as amended by Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay (OJ L 68, 13.3.2009, p. 3).

National Rescue Measures in Response to the Current Financial Crisis  
Deposit Guarantee Schemes\*

Member State	Amount covered	What is covered by the scheme	Eligible depositors
<b>Finland</b>	EUR 50 000	<p>exceeding EUR 10 000)</p> <ul style="list-style-type: none"> <li>Annuities (full coverage in the amount equivalent to the State pension and 90 % of any additional amount)</li> <li>Deposits and interest</li> <li>No limit applies to deposits which comprise assets received from the sale of a residence and intended for the acquisition of a new residence, where the funds were deposited no more than six months before the insolvency</li> </ul>	<p>undertakings registered in Estonia or branches of foreign investment undertakings in Estonia are eligible)</p> <ul style="list-style-type: none"> <li>Natural and legal persons, including public sector entities</li> <li>Each depositor in relation to their aggregate deposits with a particular credit institution</li> </ul>
<b>France</b>	EUR 70 000	<ul style="list-style-type: none"> <li>Deposits and other repayable funds received by credit institutions that belong to the Deposits Guarantee Funds, as defined in Regulation No 99-05 of the Financial and Banking Regulation Committee</li> <li>The deposit-guarantee scheme is supplemented by a securities-guarantee scheme that covers the same amount for deposits in financial instruments and cash held with an institution which is not a credit institution (and therefore not covered by the deposit-guarantee scheme) linked to investment services</li> </ul>	<ul style="list-style-type: none"> <li>Each depositor is covered in relation to their aggregate deposits with a particular credit institution</li> <li>Each investor is covered in relation to their aggregate holdings in financial instruments and in cash held with an individual institution. The amount of EUR 70 000 applies separately for financial instruments and for cash in the context of the securities-guarantee scheme</li> </ul>
<b>Germany</b>	Political guarantee: unlimited; statutory scheme: EUR 20 000; EUR 50 000 as of 30 June 2009 and to EUR 100 000 as of 31 December 2010	<ul style="list-style-type: none"> <li>All saving deposits held by natural persons with a credit institution that is part of the German deposit-guarantee scheme are covered</li> <li>This supplements the statutory deposit-guarantee scheme (90 % of the deposit, to a maximum of EUR 20 000) and various voluntary schemes run by the Federal Association of German Banks and others</li> </ul>	<ul style="list-style-type: none"> <li>Natural persons</li> <li>All creditors of institutions except institutions dealing in their own name and on their own behalf; executive organs of such institutions; their relatives and spouses (up to second degree), unless the deposit concerns their private dealings; insurance companies; investment companies; members of the institution's group; public authorities; and creditors whose claims against the institution are connected to business, on account of which persons have been convicted of money laundering</li> </ul>

\* See Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ L 135, 31.5.1994, p. 5) as amended by Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay (OJ L 68, 13.3.2009, p. 3).

## National Rescue Measures in Response to the Current Financial Crisis Deposit Guarantee Schemes\*

Member State	Amount covered	What is covered by the scheme	Eligible depositors
<b>Greece</b>	EUR 100 000 for deposits until 31 December 2011, subject to extension by the Minister for Finance	<ul style="list-style-type: none"> <li>Any credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution must repay under the applicable legal and contractual conditions and any debt evidenced by a certificate issued by a credit institution. Repurchase agreements are excluded. Interest accrued is also included to the date on which the deposit became unavailable</li> </ul>	<ul style="list-style-type: none"> <li>Depositors of participating credit institutions. Claims excluded are deposits held by other credit institutions; instruments constituting own funds; deposits in connection with money laundering or other illegal activity; deposits by investment firms, financial institutions and insurance companies; deposits by UCITS including management companies; deposits by legal or natural persons affiliated with the credit institution; deposits by central government, supranational institutions and administrative authorities; deposits by shareholders of the credit institution whose participation represents at least 5 % of the share capital or voting rights; bonds issued by the credit institution and liabilities arising from own acceptances or promissory notes and negotiable certificates of deposit</li> </ul>
<b>Hungary</b>	Statutory scheme: the HUF equivalent of EUR 50 000; political declaration: unlimited deposits	<ul style="list-style-type: none"> <li>Law XLI of 2009: a maximum amount of EUR 50 000 paid in HUF.</li> <li>Government declaration: unlimited state guarantee concerning deposits above HUF 13 million</li> </ul>	<ul style="list-style-type: none"> <li>Registered accounts only, all deposits without any state guarantee at credit institutions which are members of the Guarantee Fund. Foreign branch offices of credit institutions that have their registered offices in Hungary are also covered, except where the laws of the country in which the branch office is established do not provide equivalent coverage under a deposit-guarantee scheme</li> <li>The Guarantee Fund does not cover the deposit accounts of: budgetary organs; business associations in exclusive state ownership; local government; insurance companies, voluntary mutual insurance funds and private pension funds; investment funds; the Pension and Health Insurance Fund and their management bodies; the health and pension insurance administration agencies; appropriated state funds; financial institutions; Magyar Nemzeti Bank; investment companies; members of the stock exchange and commodities brokers; deposit insurance; institution and investor protection funds; pension guarantee funds; credit institution executives; appointed auditors; persons who own at least a 5 % interest in the credit institution, and the close relatives of any of the above; economic organisations in which the persons described hold a qualifying participation; venture capital companies and funds; and the foreign equivalents of such deposits</li> </ul>

\* See Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ L 135, 31.5.1994, p. 5) as amended by Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay (OJ L 68, 13.3.2009, p. 3).



## National Rescue Measures in Response to the Current Financial Crisis Deposit Guarantee Schemes\*

Member State	Amount covered	What is covered by the scheme	Eligible depositors
<b>Ireland</b>	<p>Category 1: no limit from 30 September 2008 to 29 September 2010</p> <p>Category 2: currently: EUR 20 000; future: EUR 100 000 per depositor per institution. The cover will apply to 100 % of each individual's deposit.</p>	<ul style="list-style-type: none"> <li>• 'Covered liabilities': all retail and corporate deposits (to the extent not covered by existing deposit protection schemes in Ireland or any other jurisdiction); interbank deposits; senior unsecured debt; covered bonds; and dated subordinated debt (Lower Tier 2)</li> <li>• The Minister for Finance is taking powers under the Financial Services (deposit-guarantee scheme) Bill 2009 to amend the standard deposit rate for credit institutions (currently 0.2 % of the eligible deposit base) by regulations, and to vary it (by direction) in regard to an individual institution or class of institutions. The Bill also extends the guarantee scheme to apply to credit union savers</li> </ul>	<ul style="list-style-type: none"> <li>• Depositors of:</li> <li>• Category 1: 'covered credit institutions': a credit institution or a subsidiary of a credit institution specified by order of the Minister for Finance and that has joined the credit institutions (financial support) scheme</li> <li>• Category 2 (i): credit institutions (excluding credit unions)</li> <li>• Category 2 (ii): credit institutions (including credit unions)</li> </ul>
<b>Italy</b>	<p>EUR 103 291.38 per depositor (deposit guarantee scheme). The Ministry of Economy and Finance is authorised to issue an unlimited guarantee until 9 October 2011 (State guarantee).</p>	<ul style="list-style-type: none"> <li>• Saving deposits held with a credit institution that is part of the Italian deposit-guarantee scheme are covered</li> <li>• The State guarantee supplements the guarantee provided by the deposit-guarantee scheme. The State guarantee will apply only following adoption by the Minister of an ad hoc decision specifying the relevant conditions</li> </ul>	<ul style="list-style-type: none"> <li>• Depositors of Italian member banks, depositors of members' foreign branches in EU Member States, and depositors of branches in Italy of EU and non-EU scheme members.</li> <li>• No cover for bearer deposits and other reimbursable funds; bonds and credits from acceptances, promissory notes and security transactions; the bank's equity capital, reserves and other capital elements; deposits from transactions relating to a conviction for certain crimes; the deposits of government departments and other public bodies; deposits made by banks in their own name and for their own account, as well as the credits of banks; deposits of financial companies, insurance companies, collective investment undertakings and other companies belonging to the same group; deposits of members of the corporate organs and the top management of the bank; deposits of shareholders holding at least 5 % of the member's equity capital; deposits in respect of which the depositor has obtained terms which have played a part in damaging the financial position of the bank</li> </ul>

\* See Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ L 135, 31.5.1994, p. 5) as amended by Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay (OJ L 68, 13.3.2009, p. 3).



## National Rescue Measures in Response to the Current Financial Crisis Deposit Guarantee Schemes\*

Member State	Amount covered	What is covered by the scheme	Eligible depositors
<b>Latvia</b>	EUR 50 000	<ul style="list-style-type: none"> <li>Guaranteed deposits – monies in any currency held in an account of a client of a deposit taker which the deposit taker is legally or contractually obliged to repay</li> </ul>	<ul style="list-style-type: none"> <li>Natural and legal persons</li> <li>No cover for central banks, deposit takers, financial institutions, institutions financed from the public budget, persons related to deposit takers, deposits laundering proceeds derived from criminal activities and deposits that make up the equity capital of a deposit taker</li> </ul>
<b>Lithuania</b>	EUR 100 000 (deposits; from 1 November 2008 until 31 October 2009) EUR 22 000 (liabilities to investors)	<ul style="list-style-type: none"> <li>Deposits held by private or legal persons (except for deposits of credit institutions or similar companies in the credit institution)</li> <li>Liabilities to investors (100 % of the liabilities to EUR 3 000 and 90 % of the liabilities from EUR 3 000 to a maximum of EUR 22 000)</li> </ul>	<ul style="list-style-type: none"> <li>Each depositor is covered in relation to their aggregate deposits with a particular credit institution</li> <li>Per investor per institution (an investor is defined as a natural or legal person which has entrusted funds or securities to banks, credit unions or undertakings licensed to provide investment services which pay insurance premiums to the deposit insurance fund or the fund of insurance of liabilities to investors)</li> </ul>
<b>Luxembourg</b>	EUR 100 000 for cash; EUR 20 000 for financial instruments	<ul style="list-style-type: none"> <li>Cash deposits, regardless of the currency in which the account is denominated; for the purposes of the EUR 100 000 limit, coverage is net of a depositor's liabilities to the credit institution</li> </ul>	<ul style="list-style-type: none"> <li>Natural and legal persons. However, legal persons are covered only if they are incorporated under the laws of a Member State and do not exceed two of the following criteria: <ul style="list-style-type: none"> <li>total of the balance sheet exceeds EUR 3.125 million</li> <li>annual revenue exceeds EUR 6.25 million</li> <li>more than 125 employees</li> </ul> </li> </ul>
<b>Malta</b>	EUR 100 000	<ul style="list-style-type: none"> <li>The Depositor Compensation Scheme is a rescue fund for depositors of failed banks which are licensed by the Malta Financial Services Authority.</li> <li>The Scheme covers 90 % of a bank's net liability to a depositor in respect of deposits which qualify for compensation subject to a maximum of EUR 100 000</li> </ul>	<ul style="list-style-type: none"> <li>Most types of deposit are covered.</li> <li>No cover for deposits by companies not permitted to draw up abridged balance sheets; amounts deposited by another bank for its own account; deposits which form part of the capital of the bank; deposits arising out of transactions in connection with a conviction under anti money-laundering legislation; deposits by financial institutions and legal and natural persons affiliated to them; insurance undertakings; central or regional governments or authorities; collective investment undertakings; pension and retirement funds; holders of at least 5 % of the institution's capital; statutory auditors of the institution and depositors of similar status in other companies in the same group; deposits by other companies in the same group which provide consolidated accounts; deposits which do not disclose the depositor's identity; deposits for</li> </ul>

\* See Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ L 135, 31.5.1994, p. 5) as amended by Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay (OJ L 68, 13.3.2009, p. 3).

## National Rescue Measures in Response to the Current Financial Crisis Deposit Guarantee Schemes\*

Member State	Amount covered	What is covered by the scheme	Eligible depositors
<b>The Netherlands</b>	EUR 100 000 per depositor per institution	<ul style="list-style-type: none"> <li>• Money held in current accounts, savings accounts or special savings accounts such as fixed-term deposits are covered. Whether or not subordinated deposits are covered will be assessed on a case-by-case basis</li> </ul>	<p>which the depositor obtained financial concessions which have helped to aggravate its financial situation; debt securities issued by the same institution and liabilities arising out of own acceptances and promissory notes; deposits held by third parties</p> <ul style="list-style-type: none"> <li>• Natural persons and small companies (specifically: companies eligible to publish a summary balance sheet)</li> </ul>
<b>Poland</b>	EUR 50 000 (including interest) per depositor per institution, subject to temporary adjustments by the government	<ul style="list-style-type: none"> <li>• Funds deposited by a depositor with a bank, in an account held in the depositor's name, and a depositor's claims resulting from other banking operations, whether in PLN or foreign currencies</li> </ul>	<ul style="list-style-type: none"> <li>• All depositors (defined in the Law on the Bank Guarantee Fund as 'natural persons, legal persons and unincorporated entities with legal capacity, being a party to a bank account agreement held in the account holder's name or having a claim resulting from banking activities towards a bank covered by the mandatory guarantee system')</li> </ul>
<b>Portugal</b>	EUR 100 000 until 31 December 2011; thereafter EUR 25 000 (per depositor per institution, irrespective of whether the depositor is resident in Portugal)	<ul style="list-style-type: none"> <li>• Any type of deposits with credit institutions authorised to receive deposits and which are members of the deposit-guarantee fund (with a few exceptions)</li> <li>• Every credit institution with its head office in Portugal and authorised to take deposits. Deposits taken by branches in other EU Member States of credit institutions with their head office in Portugal. Deposits taken by branches in Portugal of credit institutions with their head office in other EU Member States are covered by their home country guarantee scheme if deemed equivalent and without prejudice to any bilateral agreements</li> <li>• The guarantee also covers funds represented by certificates of deposit issued by the credit institution, but not those represented by other debt securities.</li> </ul>	<ul style="list-style-type: none"> <li>• Natural and legal persons</li> <li>• No cover for deposits by financial institutions, insurance companies, pension fund management companies or general government bodies; deposits arising out of transactions in connection with a conviction for money laundering; deposits by investment funds, pension funds or other collective investment undertakings; deposits by members of the management or auditing boards of the credit institution, its qualifying shareholders, official accountants at the service of the institution, external auditors or depositors of similar status in other companies in the same group; deposits by close relatives or third parties acting on behalf of the depositors; deposits by other companies in the same group or holding a controlling interest in the institution; and deposits for which the depositor has obtained rates or other financial concessions which have helped to aggravate its financial situation</li> </ul>

\* See Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ L 135, 31.5.1994, p. 5) as amended by Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay (OJ L 68, 13.3.2009, p. 3).

## National Rescue Measures in Response to the Current Financial Crisis Deposit Guarantee Schemes\*

Member State	Amount covered	What is covered by the scheme	Eligible depositors
<b>Romania</b>	RON 50 000 for natural persons and RON 20 000 for legal persons (to be changed to RON 50 000 in the near future)	<p>Interest is included in the credit balances, calculated to the date of unavailability of the deposits</p> <ul style="list-style-type: none"> <li>Deposits with an authorised credit institution; according to Government Ordinance No 39/1996 on the setting up and functioning of the deposit-guarantee fund for the banking system, 'deposits' means any credit balance, including accrued interest, in a bank account of any type, including a joint account</li> </ul>	<ul style="list-style-type: none"> <li>Individuals, legal persons and entities without legal personality</li> <li>No cover for the depositors listed in the Annex to Government Ordinance No 39/1996, for example, persons which are in a special relationship to the credit institution, other credit institutions or financial institutions, collective investment undertakings, pension funds, central and local public authorities, publicly-owned companies</li> </ul>
<b>Slovakia</b>	Unlimited	<ul style="list-style-type: none"> <li>Covered: all liabilities of a bank or a branch office of a foreign bank towards a natural person or a legal entity to repay funds deposited, including interest and other benefits related to the custody of the funds, including joint deposits and deposits in the form of funds kept in notarial custody</li> <li>Not covered: deposits which do not meet formal legal requirements before they became inaccessible (e.g. in the case of an insolvent bank or during bankruptcy proceedings) or are not held in the name of the depositor; bearer deposits or the balance of a cancelled bearer deposit account; investment trust certificates, securities listed on the stock exchange, financial instruments, other securities or derivative instruments and clients assets protected by the Investment Guarantee Fund; deposits in the form of a bond, bill of exchange or a cheque; deposits contributing to the equity capital of the bank</li> </ul>	<ul style="list-style-type: none"> <li>Natural persons</li> <li>Foundations, non-investment funds, non-profit organisations providing community services, civil associations and associations of residential and non-residential property owners</li> <li>Other legal entities with the exception of: banks; securities dealers; execution and mediation institutions; issuers of electronic means of payments; operators and participants in payment systems; central depositories of book-entry securities and other participants in payment and settlement systems; stock and commodities exchanges; trustee companies; pension asset management companies; insurance, reinsurance and supplementary retirement insurance companies; postal companies; legal entities running lotteries; or the Export-Import Bank of the Slovak Republic; legal entities involved in business identical or partially identical to that of the legal entities above; commercial companies or cooperatives that are obliged to have their financial statements approved by an auditor, or fail to provide written notice to that effect; the State, a State fund, regional authorities or bodies financed partially or fully by them including public authorities; and legal entities that control the bank or are controlled by the bank</li> </ul>
<b>Slovenia</b>	Unlimited until 31 December	<ul style="list-style-type: none"> <li>The net deposit (total deposits minus liabilities) of the depositor on the date when insolvency proceedings are</li> </ul>	<ul style="list-style-type: none"> <li>Any natural or legal person</li> <li>No cover for the deposits of banks and financial undertakings; States,</li> </ul>

\* See Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ L 135, 31.5.1994, p. 5) as amended by Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay (OJ L 68, 13.3.2009, p. 3).

## National Rescue Measures in Response to the Current Financial Crisis Deposit Guarantee Schemes\*

Member State	Amount covered	What is covered by the scheme	Eligible depositors
	2009 (EUR 22 000 is guaranteed by the banks; above that amount a State guarantee applies)	<p>initiated against the bank</p> <ul style="list-style-type: none"> <li>Not covered are bearer deposits, deposits arising from transactions for which the holder of the deposit has been convicted for money laundering and deposits which are included in the calculation of the bank's own funds</li> <li>All deposit balances (including transitory funds and nominative deposit certificates)</li> </ul>	<p>central banks and local communities; members of the management board and of the supervisory board and their immediate family; the bank's shareholders which hold at least a 5 % share of the bank's capital or voting rights; subsidiaries of the bank; members of the management board and of the supervisory board or any other management or supervisory body of the abovementioned legal persons and their immediate family; large or medium-sized enterprises</p> <ul style="list-style-type: none"> <li>Natural and legal persons</li> <li>No cover for the deposits of other credit institutions on their own account and in their own name; brokering companies, insurance companies, investment companies, collective investment undertakings, pension fund managers, ABS managing companies, venture capital companies and venture capital management companies; deposits by any financial institutions subject to prudential supervision; deposits by companies owned by the group to which the credit institution belongs; deposits by general government</li> </ul>
<b>Spain</b>	EUR 100 000 per depositor per institution	<ul style="list-style-type: none"> <li>Deposits in all types of accounts with banks, securities companies and some other institutions (the amount of cover applies per depositor and institution). The deposit insurance covers all types of accounts, irrespective of whether the funds are available for immediate withdrawal</li> </ul>	<ul style="list-style-type: none"> <li>Natural or legal persons</li> </ul>
<b>Sweden</b>	SEK 500 000 (approximately EUR 46 800)	<ul style="list-style-type: none"> <li>The Financial Services Compensation Scheme protects deposits; life and general insurance firms; investment business (on or after 28 August 1988); home finance (e.g. mortgage) advice and arranging (on or after 31 October 2004); and general insurance policies advice and arranging (on or after 14 January 2005)</li> </ul>	<ul style="list-style-type: none"> <li>Natural persons</li> <li>Some small businesses</li> <li>All policyholders of compulsory insurance policies</li> </ul>
<b>United Kingdom</b>	For deposits GBP 50 000 per person and per bank (approximately EUR 57 000)		

\* See Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ L 135, 31.5.1994, p. 5) as amended by Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay (OJ L 68, 13.3.2009, p. 3).

## National Rescue Measures in Response to the Current Financial Crisis

## ECB opinions\* and non-consultation letters\*\*

Member State	ECB action	Subject
<b>Austria</b>	Opinion CON/2008/55	<ul style="list-style-type: none"> <li>• Recovery of the interbank market</li> <li>• State guarantees</li> <li>• Recapitalisation</li> <li>• Deposit-guarantee scheme</li> </ul>
<b>Belgium</b>	Opinion CON/2008/46	<ul style="list-style-type: none"> <li>• Power to adopt emergency measures destined to preserve the stability of the financial system</li> <li>• Introduction of a State guarantee covering the provision of emergency liquidity assistance by the Nationale Bank van België/Banque Nationale de Belgique</li> </ul>
	Opinion CON/2008/50	<ul style="list-style-type: none"> <li>• Introduction of a State guarantee for liabilities entered into by certain financial institutions</li> </ul>
	Opinion CON/2008/61	<ul style="list-style-type: none"> <li>• Deposit-guarantee scheme (increase of the amount covered and extension of coverage to certain types of life insurance)</li> </ul>
	Opinion CON/2008/74	<ul style="list-style-type: none"> <li>• Introduction of a State guarantee aimed at avoiding liquidity outflows</li> </ul>
	Opinion CON/2008/91	<ul style="list-style-type: none"> <li>• Introduction of a limitation on severance payments to executive directors of certain companies</li> </ul>
	Opinion CON/2009/25	<ul style="list-style-type: none"> <li>• Amendment to the State guarantee aimed at avoiding liquidity outflows</li> </ul>
	Opinion CON/2009/29	<ul style="list-style-type: none"> <li>• Amendment concerning emergency measures destined to preserve the stability of the financial system</li> <li>• Amendment concerning State guarantees (extension of the type of commitments that can be covered)</li> </ul>
<b>Bulgaria</b>		
<b>Cyprus</b>	Opinion CON/2009/12	<ul style="list-style-type: none"> <li>• Draft law amending the Laws of 2002 and 2004 on the management of revenues and expenditure and on the accounting system of the Republic and other related matters</li> </ul>
	Opinion CON/2009/20	<ul style="list-style-type: none"> <li>• Certain draft regulations related to the Deposit Protection Scheme</li> </ul>
<b>Czech Republic</b>	Opinion CON/2009/34	<ul style="list-style-type: none"> <li>• Rules facilitating an increase of a bank's capital and providing for the possibility of transferring a distressed bank's business to a State-owned bridge bank</li> </ul>

\* The list of ECB opinions on Member State financial crisis measures is up-to-date as of 1 June 2009.

\*\* As of 2008, the ECB has decided to publish in its Annual Report information regarding clear and important cases of non-compliance with the obligation to consult the ECB on draft national and Community legislation (see the 2008 Annual Report, pp. 133-134). The 2008 non-compliance cases stemming from financial crisis legislation are included in this table.



## National Rescue Measures in Response to the Current Financial Crisis

## ECB opinions\* and non-consultation letters\*\*

Member State	ECB action	Subject
Denmark	Opinion CON/2008/54	<ul style="list-style-type: none"> <li>• Law on the establishment of a temporary State guarantee scheme for deposits in banks in Denmark and the establishment of a Winding-up Company for banks unable to comply with financial supervisory requirements</li> </ul>
	Opinion CON/2009/6	<ul style="list-style-type: none"> <li>• Law on the capital injection of hybrid core capital in Danish credit institutions and mortgage credit institutions</li> <li>• Law extending and amending the law on the State guarantee scheme beyond 2010 by individually agreed guarantees</li> </ul>
Estonia	Opinion CON/2009/18	<ul style="list-style-type: none"> <li>• Stabilisation reserve funds, grant of loans, grant of the State guarantee, acquisition of shareholdings and other financial assets, fast track proceedings</li> </ul>
Finland	Opinion CON/2008/68	<ul style="list-style-type: none"> <li>• Framework legislation for bank support (State guarantee fund)</li> </ul>
	Opinion CON/2008/75	<ul style="list-style-type: none"> <li>• Recapitalisation (grant of capital loans to deposit banks)</li> </ul>
France	Opinion CON/2008/56	<ul style="list-style-type: none"> <li>• State guarantees</li> <li>• Prohibition of monetary financing</li> <li>• Loans</li> <li>• Recapitalisation</li> </ul>
Germany	Opinion CON/2008/57	<ul style="list-style-type: none"> <li>• Guarantees</li> <li>• Recapitalisation</li> <li>• Assumption of risk positions</li> </ul>
	Opinion CON/2009/24	<ul style="list-style-type: none"> <li>• Nationalisation/expropriation</li> </ul>
Greece	Opinion CON/2008/51	<ul style="list-style-type: none"> <li>• Depositor and investor protection scheme: extension of scope, enhancement of Bank of Greece's role, temporary increase in deposit-guarantee ceiling</li> </ul>
	Opinion CON/2008/79	<ul style="list-style-type: none"> <li>• Recapitalisation (State participation in the capital of credit institutions through the acquisition of preference shares)</li> <li>• Provision of State guarantees</li> <li>• Issuance of government securities</li> </ul>

\* The list of ECB opinions on Member State financial crisis measures is up-to-date as of 1 June 2009.

\*\* As of 2008, the ECB has decided to publish in its Annual Report information regarding clear and important cases of non-compliance with the obligation to consult the ECB on draft national and Community legislation (see the 2008 Annual Report, pp. 133-134). The 2008 non-compliance cases stemming from financial crisis legislation are included in this table.



## National Rescue Measures in Response to the Current Financial Crisis

## ECB opinions\* and non-consultation letters\*\*

Member State	ECB action	Subject
	Non-consultation letter	<ul style="list-style-type: none"> <li>Restrictions on dividend distributions for banks participating in the liquidity support scheme</li> <li>State participation in a credit institution through the acquisition of preference shares – provisions establishing certain legal and accounting consequences</li> </ul>
	Opinion CON/2009/39	<ul style="list-style-type: none"> <li>Amendment to the recapitalisation scheme</li> </ul>
<b>Hungary</b>	Opinion CON/2008/81	<ul style="list-style-type: none"> <li>IMF loan, state guarantee vis-à-vis creditors of credit institutions, state capital increase in credit institutions</li> </ul>
	Opinion CON/2009/28	<ul style="list-style-type: none"> <li>State guarantee</li> </ul>
<b>Ireland</b>	Opinion CON/2008/44	<ul style="list-style-type: none"> <li>Guarantees to credit institutions</li> </ul>
	Opinion CON/2008/48	<ul style="list-style-type: none"> <li>Minister to stand as guarantor of the ‘covered liabilities’ of a ‘covered institution’ for the period of two years from 30 September 2008 to 29 September 2010.</li> </ul>
	Opinion CON/2008/69	<ul style="list-style-type: none"> <li>Deposit-guarantee scheme</li> </ul>
	Opinion CON/2009/15	<ul style="list-style-type: none"> <li>Deduction of up to 10 % from the remuneration of public servants accruing from 1 March 2009, introduced in the context of the priority being given to the stabilisation of public finances in Ireland</li> </ul>
	Opinion CON/2009/16	<ul style="list-style-type: none"> <li>Recapitalisation of credit institutions from the National Pensions Reserve Fund</li> </ul>
<b>Italy</b>	Opinion CON/2008/58	<ul style="list-style-type: none"> <li>State guarantees</li> <li>Swap arrangements (assumption of risk positions)</li> <li>Emergency liquidity assistance</li> <li>Recapitalisation</li> </ul>
	Opinion CON/2008/65	<ul style="list-style-type: none"> <li>Guarantees for banking liabilities (assumption of risk positions)</li> </ul>
<b>Latvia</b>	Opinion CON/2008/89	<ul style="list-style-type: none"> <li>Lowering of the minimum issuer and issue rating requirements for eligible securities in Latvijas Banka’s credit operations</li> </ul>
	Opinion CON/2009/2	<ul style="list-style-type: none"> <li>Procedures for issue and supervision of guarantees for loans received by banks</li> </ul>

\* The list of ECB opinions on Member State financial crisis measures is up-to-date as of 1 June 2009.

\*\* As of 2008, the ECB has decided to publish in its Annual Report information regarding clear and important cases of non-compliance with the obligation to consult the ECB on draft national and Community legislation (see the 2008 Annual Report, pp. 133-134). The 2008 non-compliance cases stemming from financial crisis legislation are included in this table.

## National Rescue Measures in Response to the Current Financial Crisis

## ECB opinions\* and non-consultation letters\*\*

Member State	ECB action	Subject
	Opinion CON/2009/10	<ul style="list-style-type: none"> <li>• Amendments to the deposit-guarantee scheme</li> <li>• Extension of the powers of the Latvian Financial and Capital Market Commission to allow it to deal more effectively with distressed banks</li> </ul>
	Opinion CON/2009/11	<ul style="list-style-type: none"> <li>• Compensation in the event of bank takeovers</li> </ul>
	Opinion CON/2009/31	<ul style="list-style-type: none"> <li>• Coverage, eligible depositors, financing and payout procedure of the deposit-guarantee fund</li> </ul>
<b>Lithuania</b>	Opinion CON/2008/66	<ul style="list-style-type: none"> <li>• Minimum reserves: lower reserve ratio; temporary amendment to the composition of minimum reserves</li> </ul>
	Opinion CON/2009/26	<ul style="list-style-type: none"> <li>• Distribution of the profits of Lietuvos bankas for the financial year 2008</li> </ul>
	Opinion CON/2009/32	<ul style="list-style-type: none"> <li>• General framework for rescue measures (State guarantees, redemption of bank assets, recapitalisation, nationalisation)</li> </ul>
<b>Luxembourg</b>		
<b>The Netherlands</b>	Non-consultation letter	<ul style="list-style-type: none"> <li>• Law amending the Law on financial supervision concerning the possibility of establishing temporary rules to foster orderly and transparent financial market processes and the stability of the financial industry</li> </ul>
<b>Poland</b>	Opinion CON/2008/80	<ul style="list-style-type: none"> <li>• State support to financial institutions – various rescue measures including guarantees and loans and preferential sales of Treasury securities</li> </ul>
	Opinion CON/2009/19	<ul style="list-style-type: none"> <li>• Recapitalisation of financial institutions (State guarantees to market-initiated recapitalisation operations and compulsory State takeovers)</li> </ul>
	Opinion CON/2009/22	<ul style="list-style-type: none"> <li>• Amendment of the general framework concerning the operations of BGK (a State-owned bank) enhancing its role in supporting the government's social and economic programmes, including assisting the government's economic programmes relating to the financial crisis</li> </ul>
<b>Portugal</b>	Non-consultation letter	<ul style="list-style-type: none"> <li>• Three legal acts. One assigned to the Banco de Portugal tasks such as assessing credit institution requests for an increase of own funds. The other two provided for the State to stand as guarantor to the financing of credit institutions registered in Portugal, and set out specific related tasks for the Banco de Portugal</li> </ul>
<b>Romania</b>	Opinion CON/2009/48	<ul style="list-style-type: none"> <li>• Law introducing measures requiring financial support from shareholders and limits on profit distribution</li> </ul>

\* The list of ECB opinions on Member State financial crisis measures is up-to-date as of 1 June 2009.

\*\* As of 2008, the ECB has decided to publish in its Annual Report information regarding clear and important cases of non-compliance with the obligation to consult the ECB on draft national and Community legislation (see the 2008 Annual Report, pp. 133-134). The 2008 non-compliance cases stemming from financial crisis legislation are included in this table.

## National Rescue Measures in Response to the Current Financial Crisis

## ECB opinions\* and non-consultation letters\*\*

Member State	ECB action	Subject
	Opinion CON/2009/51	<ul style="list-style-type: none"> <li>• Amendments to the deposit-guarantee scheme</li> <li>• Extension of the powers of Banca Națională a României; the central bank is designated as the competent authority to declare that deposits are unavailable</li> </ul>
<b>Slovakia</b>	Opinion CON/2009/49	<ul style="list-style-type: none"> <li>• State guarantees</li> <li>• Recapitalisation</li> </ul>
<b>Slovenia</b>	Opinion CON/2008/76	<ul style="list-style-type: none"> <li>• General framework for rescue measures</li> </ul>
	Opinion CON/2008/88	<ul style="list-style-type: none"> <li>• State guarantees</li> </ul>
	Opinion CON/2008/92	<ul style="list-style-type: none"> <li>• State loans</li> </ul>
	Opinion CON/2009/3	<ul style="list-style-type: none"> <li>• Recapitalisation</li> </ul>
<b>Spain</b>	Opinion CON/2008/52	<ul style="list-style-type: none"> <li>• Creation of a State fund for the acquisition of financial assets</li> <li>• State guarantees for new financing operations by credit institutions</li> <li>• State recapitalisation of credit institutions</li> </ul>
	Opinion CON/2008/60	<ul style="list-style-type: none"> <li>• Implementation of the State fund for the acquisition of financial assets</li> </ul>
	Opinion CON/2008/67	<ul style="list-style-type: none"> <li>• Implementation of the State guarantees for new financing operations by credit institutions</li> </ul>
<b>Sweden</b>	Opinion CON/2008/59	<ul style="list-style-type: none"> <li>• Stabilising measures for the Swedish financial system</li> </ul>
	Opinion CON/2008/62	<ul style="list-style-type: none"> <li>• Implementation of the Law on State aid to credit institutions</li> </ul>
	Opinion CON/2009/30	<ul style="list-style-type: none"> <li>• Prolongation of government guarantees to banks</li> </ul>

\* The list of ECB opinions on Member State financial crisis measures is up-to-date as of 1 June 2009.

\*\* As of 2008, the ECB has decided to publish in its Annual Report information regarding clear and important cases of non-compliance with the obligation to consult the ECB on draft national and Community legislation (see the 2008 Annual Report, pp. 133-134). The 2008 non-compliance cases stemming from financial crisis legislation are included in this table.

National Rescue Measures in Response to the Current Financial Crisis

Summary chart

Member State	State guarantee	Recapitalisation	State loans	Acquisition of impaired assets	Nationalisation	Individual rescue decisions
Austria	X	X	X		X	X
Belgium	X					X
Bulgaria						
Cyprus						
Czech Republic		X (draft)		X (draft)		
Denmark	X	X	X	X		X
Estonia	X	X	X	X		
Finland	X	X (draft)				X
France	X	X	X			X
Germany	X	X		X	X	X
Greece	X	X	X			
Hungary	X	X	X			X
Ireland	X	X		X	X	X
Italy	X	X		X		

## National Rescue Measures in Response to the Current Financial Crisis

Summary chart

Member State	State guarantee	Recapitalisation	State loans	Acquisition of impaired assets	Nationalisation	Individual rescue decisions
Latvia	X				X	X
Lithuania	X (draft)	X (draft)	X (draft)	X (draft)	X (draft)	
Luxembourg						X
Malta						
The Netherlands	X	X			X	X
Poland	X	X (draft)			X (draft)	
Portugal	X	X	X (draft)		X	X
Romania	X					
Slovakia	X (draft)	X (draft)				
Slovenia	X		X			
Spain	X	X		X		X
Sweden	X	X		X		X
United Kingdom	X	X		X	X	X

Status: 1 June 2009

## European Central Bank Legal Working Paper Series

- 1 “The developing EU legal framework for clearing and settlement of financial instruments” by K. M. Löber, February 2006.
- 2 “The application of multilingualism in the European Union context” by P. Athanassiou, February 2006.
- 3 “National central banks and Community public sector procurement legislation: a critical overview” by J. García-Andrade and P. Athanassiou, September 2006.
- 4 “Privileges and immunities of the European Central Bank” by G. Gruber and M. Benisch, June 2007.
- 5 “Legal and institutional aspects of the currency changeover following the restoration of the independence of the Baltic States” by K. Drēviņa, K. Laurinavičius and A. Tupits, July 2007.
- 6 “The legal implications of the prudential supervisory assessment of bank mergers and acquisitions under EU law” by S. Kerjean, June 2008.
- 7 “Electronic money institutions – current trends, regulatory issues and future prospects” by P. Athanassiou and N. Mas-Guix, July 2008.
- 8 “National rescue measures in response to the current financial crisis” by A. Petrovic and R. Tutsch, July 2009.



ISSN 1830-2688



9 771830 268007