



## **Freedom of Investment Process**

### **INVENTORY OF INVESTMENT MEASURES TAKEN BETWEEN 1 SEPTEMBER 2009 AND 14 FEBRUARY 2010**

*26 March 2010*

The "Freedom of Investment" (FOI) process hosted by the OECD Investment Committee has stepped up monitoring of investment policy developments and will be issuing reports on investment measures throughout 2010.

This report was prepared for Freedom of Investment Roundtable 12 held in March 2010. It follows on from an earlier report submitted for consideration at the Freedom of Investment Roundtable 11 on 7 October 2009 that covered investment measures taken between 15 November 2008 and 31 August 2009.

Information presented in this report has also been used for a joint report by WTO, OECD and UNCTAD, released on 8 March 2010, in response to the G20 Leaders' request of 2 April 2009 for quarterly public reporting on their adherence to their trade and investment policy commitments. More information about the FOI process is available at [www.oecd.org/daf/investment/foi](http://www.oecd.org/daf/investment/foi).

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## INVENTORY OF INVESTMENT MEASURES TAKEN BETWEEN 1 SEPTEMBER 2009 AND 14 FEBRUARY 2010

1. By adhering to the OECD investment instruments, governments have committed themselves to open, non-discriminatory policies toward foreign direct investment and other capital movements. G20 Leaders made similar *ad hoc* commitments to standstill at their summits in Washington on 15 November 2008, in London on 2 April 2009, and in Pittsburgh on 25 September 2009. At the London summit, G20 leaders reaffirmed their “commitment made in Washington: to refrain from raising new barriers to investment or to trade in goods and services,” and pledged to “minimise any negative impact on trade and investment of [their] domestic policy actions including fiscal policy and action in support of the financial sector.” They also committed to “not retreat into financial protectionism, particularly measures that constrain worldwide capital flows, especially to developing countries” and asked for quarterly reporting on their “adherence to these undertakings.”

2. Under its mandate to track investment policy developments, the Secretariat of the OECD Investment Committee prepared a status report for consideration by Ministers at the June 2009 Council Meeting at Ministerial Level (MCM)<sup>1</sup> and a further, updated and enhanced report to the Freedom of Investment Roundtable 11, held on 7 October 2009.<sup>2</sup> OECD also developed, jointly with WTO and UNCTAD, two public reports to G20 Leaders.<sup>3</sup> Participants of the Freedom of Investment Roundtable 11 requested that the Secretariat continue its monitoring of investment policy developments, using the introduced methodology. (More detailed information on the methodology is available in the section “Methodology – Coverage, definitions and sources” on p. 71 in this document.)

3. The present document responds to this mandate. It covers the period from 1 September 2009 to 14 February 2010, thus seamlessly continuing the monitoring where the reporting period of DAF/INV/WD(2009)13/REV1 ends. It comprises all economies that participate in the Freedom of Investment process and provides descriptions of recent investment or investment-related actions. These actions are of three types: ‘investment measures’; ‘investment measures relating to national security’ and ‘emergency and related measures with potential impacts on international investment’.

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<sup>1</sup> “Status Report: Inventory of Investment Measures taken between 15 November 2008 and 15 June 2009”, [www.oecd.org/daf/investment/foi](http://www.oecd.org/daf/investment/foi).

<sup>2</sup> “Inventory of Investment Measures taken between 15 November 2008 and 31 August 2009”, [www.oecd.org/daf/investment/foi](http://www.oecd.org/daf/investment/foi).

<sup>3</sup> The first “Report on G20 Trade and Investment Measures” was released prior to the G20 Summit in Pittsburgh on 24-25 September 2009. The second “Report on G20 Trade and Investment Measures” was released on 8 March 2010, [www.oecd.org/daf/investment/foi](http://www.oecd.org/daf/investment/foi).

## Summary of Findings

4. During the 1 September 2009 – 14 February 2010 reporting period, 40 of the 49 economies covered by this report took some sort of investment policy action (investment-specific measures, investment measures relating to national security, emergency and related measures with potential impacts on international investment). Emergency measures with potential impacts on international investment accounted by far for most of the measures (Table 1).

**Table 1: Investment Measures taken between 1 September 2009 and 14 February 2010**

	Investment policy measures	Investment measures related to national security	Emergency and related measures with potential impacts on international investment			
			Financial sector		Measures regarding non-financial sectors	
			New or maintained measures	Exit from financial sector measures	New or maintained measures	Exit from measures in non-financial sectors
Argentina						
Australia	•		•			
Austria			•		•	
Belgium			•		•	
Brazil	•					
Canada	•	•	•	•	•	•
Chile						
P.R. China	•					
Czech Republic					•	
Denmark			•	•		
Egypt						
Estonia					•	
Finland			•		•	
France			•	•	•	
Germany			•		•	
Greece			•		•	
Hungary			•	•	•	
Iceland	•		•	•		
India	•		•	•		
Indonesia	•					
Ireland			•		•	
Israel						
Italy			•	•	•	
Japan			•		•	
Korea					•	
Latvia			•		•	
Lithuania					•	
Luxembourg			•		•	
Mexico						
Morocco						
Netherlands			•		•	

	Investment policy measures	Investment measures related to national security	Emergency and related measures with potential impacts on international investment			
			Financial sector		Measures regarding non-financial sectors	
			New or maintained measures	Exit from financial sector measures	New or maintained measures	Exit from measures in non-financial sectors
New Zealand			•			
Norway			•	•	•	
Peru						
Poland			•		•	
Portugal			•		•	
Romania					•	
Russian Federation					•	
Saudi Arabia						
Slovak Republic			•		•	
Slovenia			•		•	
South Africa	•				•	
Spain			•	•	•	
Sweden			•		•	
Switzerland						
Turkey						
United Kingdom			•	•	•	
United States			•	•	•	•
European Union	•					

**(1) Investment measures**

5. Eight governments plus the European Union took investment-specific measures during the reporting period. Most of these aimed to enhance openness and transparency for investors. Measures include the following:

- Australia increased the threshold on foreign ownership stakes in the flag carrier Qantas. The 25 per cent limit on individual foreign investors in Qantas and a 35 per cent cap for total foreign airline holdings were removed, but the overall cap of 49 per cent on foreign ownership was maintained. Australia also will allow 100 per cent foreign ownership of domestic airlines. Further, reforms to Australia's foreign investment screening framework came into effect.
- Brazil raised the limit of foreign participation in the capital of *Banco do Brasil*, a state-owned bank, from 12.5 per cent to 20 per cent.
- The Canada-EU Air Transport Agreement was signed. In future stages of the implementation of the agreement, EU investors will be able to acquire up to 49 per cent of Canadian airline companies, up from 25 per cent, and vice-versa.
- China introduced regulations for the administration of representative offices of foreign enterprises; issued a decree that will allow foreign investors to use the partnership structure for investments in China; specified the conditions under which mainland law firms and law firms from Hong Kong, China or Macao, China may apply for association; clarified which regulations apply to enterprises

from Hong Kong, China and Macao, China that invest in the mainland and that are engaged in the distribution of books, newspapers and periodicals. China also increased the quotas for qualified foreign institutional investors' investments to USD 1 billion, up from USD 800 million and shortened frozen periods.

- India sought to make its foreign investment regulations more accessible to investors by consolidating into one document all FDI regulations. The country also liberalized the establishment of foreign branch and liaison offices. Also, India withdrew some of the temporary relaxations of the Federal Reserve Bank's External Commercial Borrowings policy but established a one-time relaxation of the policy in light of an auction of 3G mobile communication frequency spectrum.
- Indonesia passed a law that abolishes the monopoly of state electricity company PT Perusahaan Listrik Negara on the supply and distribution of electricity to end-customers. The law allows private investors, including foreign investors, to generate, transmit, distribute and sell electricity.
- The European Union acquired, under the "Lisbon Treaty", the exclusive competence of foreign direct investment under the Union's common commercial policy.

6. These findings confirm those reported to the Freedom of Investment Roundtable 11 – that almost all investment-specific measures (those not covered by security or emergency exceptions) continue to point towards greater openness and clarity for foreign direct investors.

7. Three countries took new capital control measures during the reporting period. Measures taken by Brazil's measures were toward more restrictiveness, while Iceland's and South Africa's pointed were toward less restrictiveness.

- Brazil imposed a 2 per cent levy on short-term portfolio investments by non-residents in local fixed income instruments and stocks in order to prevent strong capital inflows that could lead to asset price bubbles and to ease upward pressure on the Real. Brazil also imposed a 1.5 per cent levy on the creation of depositary receipts by companies or investors converting local shares. The levy seeks to alleviate distortions caused by the above-mentioned 2 per cent levy on short-term portfolio investments.
- Iceland abolished some of the capital controls that it had introduced on 28 November 2008 and March 2009. The relaxation permits inflows of foreign currency for new investments and potential outflows of foreign currency that may derive from such investments in the future.
- South Africa relaxed the approvals required for investing in Southern African Development Community (SADC) countries and increased the rand thresholds applicable to outward foreign direct investments by South African companies.

## **(2) *Investment measures related to national security***

8. One country, Canada, took an investment measure related to national security: Canada's *National Security Review of Investments Regulations* came into force. The regulations establish time periods and information-sharing regulations in relation to the process for national security reviews under the Investment Canada Act (ICA).

## **(3) *Emergency and related measures with potential impacts on international investment***

9. Emergency measures taken in response to the crisis accounted for the vast majority of measures taken during the reporting period. Of the 49 economies covered by the present report, 35 took emergency

measures that could influence worldwide capital movements, or continued to implement emergency measures that they had introduced earlier. While most emergency measures involved ongoing implementation by governments of existing legislation, 11 countries introduced new schemes, most of which target the non-financial sector. Measures included taking equity stakes of various sorts in individual companies, issuing loans or guarantees or engaging in other business transactions with them (e.g. as counterparties in rescue operations). During the reporting period, 13 governments (Austria, Belgium, France, Germany, Iceland, Ireland, Latvia, Netherlands, the Slovak Republic, Sweden, the United Kingdom and the United States) were involved in financial negotiations with a total of 49 specifically-named companies (most of them larger companies in finance and automobiles) and also reported making 57 new investments in unnamed companies. The number of companies that had received aid under the schemes or were expected to benefit from emergency measures established for the non-financial sector exceeds 10,000. Public expenditure commitments related to the measures for the non-financial sector covered in this report exceed USD 1 trillion.

10. Eleven countries (Canada, Denmark, France, Hungary, Iceland, India, Italy, Norway, Spain, the United Kingdom, and the United States) took measures to exit from crisis response programmes in the financial sector, and two countries (Canada and the United States) discontinued some crisis response programmes regarding non-financial sectors. These took several forms: paying down of loans by companies participating in the programmes or sales of government-owned stakes in such companies (France, Iceland, United States); and discontinuation of some programmes (Canada, Denmark, Hungary, India, Norway, Spain, United Kingdom, United States). Some exits occurred as a result of sunset clauses written into the original crisis response legislation (e.g. Canada). The United States published a strategy for exit from crisis measures. The creation of “bad banks” or of public private partnerships to remove distressed assets from bank balance sheets also prepared the way for exit (Germany, Korea, United Kingdom and the United States).

11. Overall, the emergency measures that many governments have taken have politicised structural adjustment processes, including those that operate through international investment. In some cases, emergency measures have also created problems of transparency and accountability and concerns have been voiced as to their potential discriminatory implementation and effect. Governments have tried to counteract these problems through public reporting, formal auditing of emergency response accounts,<sup>4</sup> publishing guidance for government and private participants in these programmes and public consultations. These measures are useful, but there is a limit to how much they can improve transparency and accountability. The many financial relationships that now exist between some governments and the companies that they have rescued are inherently difficult to monitor. Moreover, they may create strains between governments’ roles as financial investors in companies and their roles as neutral policy makers and law enforcers.

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<sup>4</sup> For example, in the US the Government Accountability Office (GAO) audited the FY 2009 financial statement for the TARP stating that "the financial statements are presented fairly, in all material respects, in conformity with U.S. generally accepted accounting principles" and found no material weaknesses in internal controls.



**Reports on individual economies: Recent investment policy measures**

***Argentina***

*Investment policy measures*

None during reporting period.

*Investment measures relating to national security*

None during reporting period.

*Emergency and related measures with potential impacts on international investment*

*Financial sector*

None during reporting period.

*Measures regarding non-financial sectors*

None during reporting period.

## *Australia*

### *Investment policy measures*

On 22 September 2009, reforms to Australia's foreign investment screening framework came into effect for business proposals.<sup>5</sup> The four lowest monetary thresholds for private business investment were replaced with a single indexed monetary threshold of AUD 219 million (the previous lowest threshold was AUD 100 million). The new threshold is indexed on 1 January each year to keep pace with inflation. The reforms also removed the need for private foreign investors to notify the Treasurer when they establish a new business in Australia. Other notification requirements and the indexed monetary threshold for investors from the United States in non-sensitive sectors (AUD 953 million in 2009) are unchanged. The monetary thresholds for 2010 are AUD 231 million and AUD 1004 million.

On 23 November 2009, the House of Representatives passed the Foreign Acquisitions and Takeovers Amendment Bill that was introduced in Parliament on 20 August 2009.<sup>6</sup> The Senate passed the Bill on 2 February 2010 and it received Royal Assent on 12 February 2010. The Amending Act clarifies that the *Foreign Acquisitions and Takeovers Act 1975* applies equally to all foreign investments irrespective of the way they are structured. The amendments apply retrospectively from 12 February 2009, the date of the Treasurer's announcement and transitional arrangements apply for transactions that occurred between the date of announcement and royal assent.

On 16 December 2009, the Australian Transport Minister announced that while the Government would maintain the cap of 49% on foreign ownership of Australian international airlines (*Air Navigation Act 1920*), it would remove the secondary restrictions of 25 per cent for foreign individual shareholdings and 35% for total foreign airlines shareholdings in Qantas (*Qantas Sale Act 1992*).<sup>7</sup> The Government also announced that it will continue to allow 100% foreign ownership of domestic airlines.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

On 1 September 2009, Australia activated its car dealership financing special purpose vehicle (SPV) that was legally established as a financing trust on 2 January 2009.<sup>8</sup> The establishment of the SPV followed the announcement in October 2008 by GE Money Motor Solutions and GMAC that they intended to depart

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<sup>5</sup> "Reforming Australia's foreign investment framework", Treasurer media release No. 089 of 2009, 4 August 2009; and Policy and Supporting Documents, Foreign Investment Review Board (FIRB) website.

<sup>6</sup> "Amendments to Foreign Acquisitions and Takeovers Act", Treasurer media release No. 017 of 2009, 12 February 2009; the *Foreign Acquisitions and Takeovers Amendment Bill 2010*; and Policy and Supporting Documents, Foreign Investment Review Board (FIRB) website.

<sup>7</sup> "National Aviation Policy – White Paper", Commonwealth of Australia, December 2009; "National Aviation Policy Statement Released", Minister for Infrastructure, Transport, Regional Development and Local Government media release AA539/2009, 16 December 2009; and "Launch of the Aviation White Paper - National Press Club", Minister for Infrastructure, Transport, Regional Development and Local Government speech AS25/2009, 16 December 2009.

<sup>8</sup> "Activation of Car Dealership Financing Special Purpose Vehicle ('Ozcar')", Treasurer media release No. 94, 28 August 2009; "Car Dealer Financing: Establishment of a Special Purpose Vehicle", Treasurer media release No. 136, 5 December 2008; and "Treasurer Releases Update on Car Dealer Financing and the Special Purpose Vehicle", Treasurer media release No. 145, 19 December 2008.

the Australian wholesale floorplan finance market. On 13 May 2009, the Government announced that Ford Credit would be able to participate in the SPV to allow it to support its dealership network.<sup>9</sup> With funding from the four major Australian banks, namely ANZ, Commonwealth Bank of Australia, National Australia Bank, and Westpac, the SPV provides liquidity support to participating car dealer financiers. The Government supports the SPV by guaranteeing the non-AAA rated securities issued by the trust so that banks can provide the necessary funding. The Government guarantee is supported by the *Car Dealership Financing Guarantee Appropriation Act 2009*, which received Royal Assent on 6 July 2009.

*Measures regarding non-financial sectors*

None during reporting period.

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<sup>9</sup> “*Car Dealer Financing Special Purpose Vehicle: Supporting Legislation and Ford Credit*”, Treasurer media release No. 71, 13 May 2009; and *Car Dealership Financing Guarantee Appropriation Act 2009*.

## *Austria*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Austria prolonged its bank support scheme a second time until 30 June 2010, date when the scheme will be discontinued, and continued its implementation.<sup>10</sup> The scheme was initially passed into law<sup>11</sup> in October 2008. It authorises the Minister of Finance to provide banks and domestic insurance companies with credit and credit guarantees, and to acquire parts of such institutions. Domestic insurance companies include foreign controlled institutions established in Austria. The law also authorises the Minister of Finance, in accord with the Chancellor, to expropriate the owners of such institutions if this is necessary to prevent serious damage to the Austrian economy. Up to EUR 80 billion are available for these measures, down from the initial cap at EUR 90 billion. According to Austria's report to the European Commission on the implementation of the measure, several Austrian banks have benefitted from the scheme.

Austria provided BAWAG P.S.K., one of the largest banking groups in Austria, a EUR 550 million capital injection and a EUR 400 million guarantee.<sup>12</sup> The measure seeks to improve the capital base of the bank and to shield it against the risk of potential losses from a structured credit book. Austria committed to submit a modified restructuring plan for the bank within three months from the date of the decision.

#### *Measures regarding non-financial sectors*

Austria continued to implement two framework schemes to support enterprises:

- A scheme that allows the Federal Government or lower levels of Government to provide small amounts of aid—“*Kleinbeihilfen*”—of up to EUR 500 000 per undertaking in 2009 and 2010 combined. The aid can be granted in the form of direct grants, interest rate subsidies, subsidised public loans, and public guarantees.<sup>13</sup> An amendment in mid-2009 added the possibility to grant credit guarantees to large enterprises to the scheme and increased the gross budget by EUR 10 billion, up from EUR 150 million.<sup>14</sup> Austria estimates that more than 1,000 companies will benefit from the scheme. The scheme is scheduled to expire on 31 December 2010.

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<sup>10</sup> European Commission decisions N663/2009, N352/2009 and N557/2008.

<sup>11</sup> Financial Stability Act (*Finanzmarktstabilitätsgesetz*, FinStaG), Federal Law Gazette I No. 136 of 26 October 2008.

<sup>12</sup> European Commission decision N640/2009.

<sup>13</sup> European Commission decision N47a/2009.

<sup>14</sup> European Commission decision N317/2009. At national level, the measure is based on the *Unternehmensliquiditätsstärkungsgesetz* (law to enhance the liquidity of enterprises) that entered into force on 25 August 2009.

- A risk capital scheme that consists of a temporary enhancement of the existing risk capital investment scheme “*Eigenkapitalgarantien*”.<sup>15</sup> The modification lowers the minimum proportion of private risk capital and increases the threshold of investment eligible for the programme to EUR 2.5 million per year per SME. The programme is expected to amount to a total of EUR 25 million until the end of 2010 when the temporary enhancement will expire.<sup>16</sup>

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<sup>15</sup> The risk capital scheme was established in 2007 and was initially approved by the Commission on 18 October 2007.

<sup>16</sup> European Commission decision N47d/2009.

## **Belgium**

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

On 18 November 2009, the restructuring plan that Belgium had developed for the Belgium-based financial institution KBC received approval by the European Commission.<sup>17</sup> To offset the distortion of competitive conditions that the earlier State aid had triggered—Belgium had granted KBC two recapitalisations, an asset relief measure and a restructuring package<sup>18</sup>—the restructuring plan requires among others that KBC: sell its entire European Private Banking business; divest *Centea* and *Fidea*, a bank and insurer, respectively in KBC's home market, Belgium; and divest or run-down a significant number of businesses in Central and Eastern Europe, while retaining an important presence in the region. KBC is also required to stop the activities of "*KBC Financial Products*".

Belgium, jointly with France and Luxembourg, extended a state guarantee to Dexia that the three countries provide since November 2008.<sup>19</sup> The guarantee covers Dexia bonds up to the amount of EUR 100 billion. The extension of the guarantee became necessary as the restructuring plan submitted by Belgium, France and Luxembourg had not been approved by the European Commission when the guarantee expired as scheduled on 31 October 2009.

#### *Measures regarding non-financial sectors*

Belgium continued to implement, in the region Flanders, a framework scheme for aid in the form of subsidised guarantees for investment and working capital loans concluded by 31 December 2010.<sup>20</sup>

On 25 January, Belgium introduced a new temporary aid scheme to support access to finance for the agriculture sector.<sup>21</sup>

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<sup>17</sup> European Commission decision C18/2009.

<sup>18</sup> See for more details on this requirement the entry on p. 89 in the present document as well as the decision by the European Commission of June 2009 to initiate a formal investigation procedure into this case under reference C18/2009.

<sup>19</sup> European Commission decisions N583/2009, NN49/2008 and C9/2009.

<sup>20</sup> European Commission decision N117/2009.

<sup>21</sup> European Commission decision N34/2010.

## ***Brazil***

### *Investment policy measures*

On 19 October 2009, Brazil imposed a 2 percent levy on short-term portfolio investments by non-residents in local fixed income instruments and stocks.<sup>22</sup> The levy seeks, according to the Ministry of Finance, to prevent strong capital inflows that could lead to asset price bubbles and to ease upward pressure on the Real.

A 1.5 percent levy was imposed on the creation of depositary receipts by companies or investors converting local shares from 19 November 2009 on.<sup>23</sup> According to the Ministry of Finance, the levy seeks to alleviate distortions caused by the abovementioned 2 percent levy on short-term portfolio investments.

A presidential decree of 16 September 2009 raised the limit of foreign participation in the capital of *Banco do Brasil*, a state-owned bank, from 12.5% to 20%.<sup>24</sup>

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

None during reporting period.

#### *Measures regarding non-financial sectors*

None during reporting period.

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<sup>22</sup> Decreto no. 6.983 of 19 October 2009 amended by Decreto no. 6.984 of 20 October 2009.

<sup>23</sup> Finance minister Guido Mantega said the tax will be charged when foreign investors convert American Depositary Receipts (ADRs) for Brazilian companies into receipts for shares issued locally.

<sup>24</sup> Presidential Decree of 16 September 2009.

## *Canada*

### *Investment policy measures*

On 18 December 2009, the Canada–EU Air Transport Agreement was signed.<sup>25</sup> The agreement, which is being applied on an administrative basis prior to ratification, currently allows any Canadian and "Community" airline to fly scheduled passenger and all-cargo air services between any point in the EU to any point in Canada, without any restrictions on the number of flights (first stage of implementation). In future stages of the implementation of the agreement, EU investors will be able to acquire up to 49% of Canadian airline companies, up from 25%, once Canada adopts regulations in this regard, cargo air operators will be authorized to provide services to third countries from the other party to third countries without connection to their point of origin (so called "7th freedom" rights); investors will be allowed to set up and control new airlines in each others' markets should both parties deem these decisions appropriate in the future and subject to policy and legislative amendments. Also, passenger airlines will then be able to fly onward to third countries without restrictions.

### *Investment measures relating to national security*

The *National Security Review of Investments Regulations*, which apply to national security reviews under the Investment Canada Act (ICA), came into force on 17 September 2009.<sup>26</sup> The new Regulations prescribe the various time periods within which action must be taken to trigger a national security review, to conduct the review, and, after the review, to order measures in respect of the reviewed investment to protect national security. The Regulations also provide a list of investigative bodies with which confidential information can be shared and which may use that information for the purposes of their own investigations. The new Regulations stem from the amendments to the ICA which were passed in March 2009 that established a review procedure for inward investments potentially injurious to national security.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Canada continued implementation of the January 2009 Economic Action Plan,<sup>27</sup> which was initially announced on 27 January 2009.<sup>28</sup> The Plan allocated up to CAD 200 billion to support credit availability through the Extraordinary Financing Framework. In total, the Government has provided CAD 135 billion in extraordinary support to improve access to financing, all of it on a commercial basis. As market conditions have improved, demand for certain measures under the Extraordinary Financing Framework has decreased. For instance, lenders have shown moderate interest to participate in the Insured Mortgage Purchase Program, and the extraordinary liquidity provided by the Bank of Canada stood at about CAD 27 billion in mid-November 2009, down from its peak of over CAD 40 billion in December 2008.

The two temporary facilities that the Canadian Government had created—the *Canadian Lenders Assurance Facility* and the *Canadian Life Insurers Assurance Facility*—expired as planned on

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<sup>25</sup> "Canada will sign its most comprehensive air agreement ever", Transport Canada press release, 17 December 2009. "Canada Concludes Historic Air Transport Negotiations with European Union", Transport Canada press release and background, 9 December 2008. "EU and Canada sign Air Transport Agreement", EU press release IP/09/1963, 17 December 2009. The text of the agreement is available on the EU transport policy website.

<sup>26</sup> "Investment Canada Act—National Security Review of Investments Regulations", P.C. 2009-1596, 17 September 2009, Canada Gazette Vol. 143, No. 20 of 30 September 2009.

<sup>27</sup> "Fourth report to Canadians on Canada's Economic Action Plan", 2 December 2009. Chapter 2, section 6.

<sup>28</sup> "Canada's Economic Action Plan—Budget 2009", Department of Finance, 27 January 2009.



31 December 2009 without having ever been used by its intended beneficiaries.<sup>29</sup> The Government had created the facilities in May 2009 to provide Canadian deposit-taking institutions and life insurers with insurance on wholesale term borrowing.<sup>30</sup>

*Measures regarding non-financial sectors*

The Canadian Government discontinued the Canadian Warranty Commitment Program for GM and Chrysler on 16 September 2009.<sup>31</sup> The programme was established on 7 April 2009 to provide government guarantees for warranties issued by General Motors of Canada Limited (GMCL) and Chrysler Canada to help ensure that the automakers remain competitive while undergoing restructuring.<sup>32</sup> The programme paralleled a similar programme established in the US.

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<sup>29</sup> “*Canadian Lenders Assurance Facility and Canadian Life Insurers Assurance Facility*”, Government of Canada website.

<sup>30</sup> “*Minister of Finance Announces Launch of Canadian Life Insurers Assurance Facility*”, Department of Finance news release no. 2009-049, 22 May 2009.

<sup>31</sup> “*Canadian Warranty Commitment Program Comes to a Close*”, Industry Canada news release, 16 September 2009.

<sup>32</sup> “*Canadian Warranty Commitment Program*”, information by Industry Canada. A parallel programme existed in the US.

***Chile***

*Investment policy measures*

None during reporting period.

*Investment measures relating to national security*

None during reporting period.

*Emergency and related measures with potential impacts on international investment*

*Financial sector*

None during reporting period.

*Measures regarding non-financial sectors*

None during reporting period.

## *People's Republic of China*

### *Investment policy measures*

On 4 January 2010, the State Administration for Industry & Commerce and the Ministry of Public Security jointly issued the “*Notice on Further Administration of Registration of Foreign Companies' Resident Representative Offices*” that introduces new regulations for the administration of representative offices of foreign enterprises.<sup>33</sup> Detailed measures include the strengthened screening of registration materials, the registration form of one-year duration, and a requirement of no more than four representatives under normal circumstances.

On 25 November 2009, the Decree of the State Council of the People's Republic of China No. 567 on Measures for the Administration on the Establishment of Partnership Business by Foreign Enterprises or Individuals in China<sup>34</sup> was promulgated. Upon its entry into effect on 1 March 2010, the decree will allow foreign investors to use the partnership structure for investments in P.R. China.

On 1 October 2009, the “*Decision on Revising the Measures for the Administration of Associations Formed by Hong Kong SAR-based Law Firms or Macao SAR-based Law Firms and Mainland Law Firms*” by the Ministry of Justice came into effect. This decision specifies the conditions under which mainland law firms and law firms from Hong Kong, China or Macao, China may apply for association.

Decree No. 45 [2009] of GAPP and MOFCOM, which came into effect on 1 October 2009, clarifies which regulations apply to enterprises from Hong Kong, China and Macao, China investing in the mainland that are engaged in the distribution of books, newspapers and periodicals. Requirements for minimum registered capital are the same as applied to enterprises in the mainland.<sup>35</sup>

On 29 September 2009, the State Administration of Foreign Exchange (SAFE) promulgated the *Regulations on Foreign Exchange Administration of Domestic Securities Investments by Qualified Foreign Institutional Investors (QFII)*. The Regulations, which replace earlier provisional procedures, increase the quotas for QFII investments to USD 1 billion, up from USD 800 million; shorten frozen periods; and clarify the administrative matters related to the investments.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

None during reporting period.

#### *Measures regarding non-financial sectors*

None during reporting period.

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<sup>33</sup> MOFCOM Laws and regulations site (in Chinese).

<sup>34</sup> Decree of the State Council of the People's Republic of China No. 567 on Measures for the Administration on the Establishment of Partnership Business by Foreign Enterprises or Individuals in China.

<sup>35</sup> “*Decree on the Supplementary Provisions to the Measures for Administration of Foreign Invested Enterprises Engaged in Distribution of Books, Newspapers and Periodicals (II)*”, General Administration of Press and Publication and the Ministry of Commerce.

## ***Czech Republic***

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

None during reporting period.

#### *Measures regarding non-financial sectors*

The Czech Republic continued to implement two temporary framework schemes for state support to companies. One scheme allows government, regional and local authorities to grant aid in the form of reduced interest rates on loans.<sup>36</sup> The second temporary scheme allows granting aid of up to EUR 500,000 per company over the period 2009-10. The aid can be granted in the form of direct grants, reimbursable grants, interest rate subsidies, subsidised public loans and public guarantees.<sup>37</sup>

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<sup>36</sup> European Commission decision N237/2009.

<sup>37</sup> European Commission decision N236/2009.

## *Denmark*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Denmark continued to implement its guarantee scheme and prolonged the window for issuing debt instruments under the scheme until 30 June 2010.<sup>38</sup> Under the scheme, which initially came into force on 11 October 2008, credit institutions may apply for guarantees for newly issued short- and medium-term loans. The overall budget of the scheme is capped at DKK 600 billion. At the end of 2009, five institutions had effectively used the scheme by issuing guaranteed bonds for a total amount of approximately DKK 54 billion.

Denmark discontinued its recapitalisation framework scheme on 31 December 2009.<sup>39</sup> The scheme, which initially came into force on 4 February 2009 and was prolonged in July and December 2009, established a mechanism for government capital injections or credit guarantees to increase solvency of domestic banks, mortgage credit institutions and Danish Ship Finance A/S. The scheme was administered by the Ministry of Economic and Business Affairs. The overall volume of capital injections under this scheme was initially estimated at approximately DKK 100 billion. Around 50 financial institutions have benefitted from the scheme.

#### *Measures regarding non-financial sectors*

None during reporting period.

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<sup>38</sup> European Commission decisions N20/2010, N415/2009 and N31a/2009.

<sup>39</sup> European Commission decisions N628/2009, N415/2009, NN46/2009 and N31a/2009.

***Egypt***

*Investment policy measures*

None during reporting period.

*Investment measures relating to national security*

None during reporting period.

*Emergency and related measures with potential impacts on international investment*

*Financial sector*

None during reporting period.

*Measures regarding non-financial sectors*

None during reporting period.

## ***Estonia***

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

None during reporting period.

#### *Measures regarding non-financial sectors*

Estonia continued to implement its temporary framework scheme that allows authorities to grant aid of up to EUR 500,000 per company in the form of grants, loans or guarantees in the period 2009-2010.<sup>40</sup> Large firms and SMEs can benefit from the scheme. The government estimated that more than 1,000 firms will benefit from the scheme and that its budget will not exceed EEK 3.198 billion.

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<sup>40</sup> European Commission decision N387/2009.

## ***Finland***

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Finland continued to implement its guarantee scheme for banks and prolonged it for a second time, with slight alterations, until 30 June 2010.<sup>41</sup> The scheme initially entered into effect in November 2008. Under the scheme, Finland can temporarily provide a State guarantee for new medium-term debts (maturity between 1 and 5 years) of Finnish deposit banks and mortgage banks, including the Finnish subsidiaries of foreign financial institutions. The overall budget of the scheme is now reduced to EUR 17 billion. Between May and December 2009, no guarantees were provided under the scheme.

On 11 September 2009, Finland introduced a new scheme to inject capital into deposit banks.<sup>42</sup> All Finnish deposit banks including subsidiaries of foreign banks are eligible to benefit from the measure. Under the scheme, the State can support deposit banks' capital by subscribing to a subordinated, non-transferable loan of up to 25 percent of the regulatory required amount of own funds. Debt instruments may be issued no later than 1 May 2010, and the total capital available for the scheme is EUR 4 billion.

#### *Measures regarding non-financial sectors*

Finland continued to implement two temporary framework schemes to support companies' access to liquidity and credit. The first measure, a framework scheme for small amounts of aid—up to a total volume of EUR 500 000 per company in 2009 and 2010 combined—<sup>43</sup> allows the Finnish authorities at national, regional or local levels to grant SMEs as well as large firms direct grants, loans and interest rate subsidies, guarantees, or risk capital and capital injections. The initially estimated overall volume of the scheme was EUR 200–300 million. The second temporary aid scheme allows the Finnish authorities to provide subsidised guarantees for investment and working capital loans concluded by 31 December 2010.

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<sup>41</sup> European Commission decisions N674/2009, N239/2009, N44/2009 and N567/2008. Domestically, the measure is based on the Act on State Lending and State Guarantees (449/1988).

<sup>42</sup> European Commission decision N329/2009.

<sup>43</sup> European Commission decision N224/2009.



## **France**

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

France continued to operate its scheme to inject capital into banks that were considered fundamentally sound, but needed to reinforce their capital base;<sup>44</sup> however, only one bank still benefitted from the scheme on 14 February 2010, down from six in late 2009. The scheme allows eligible banks to sell securities to the *Société de prise de participation de l'État* (SPPE), a wholly state-owned investment company. The scheme includes obligations for the beneficiary banks with regard to financing the real economy the observance of which are monitored locally and nationally. A mediation system is also planned to ensure compliance with the obligations. The beneficiary banks must also undertake to adopt measures concerning the remuneration of senior management and market operators (including traders) and to observe ethical rules consistent with the general interest. The programme is budgeted up to EUR 21 billion. Five of the six French banks that had benefitted from capital injections under the scheme had reimbursed the SPPE on 14 February 2010 (Crédit Mutuel reimbursed the SPPE on 1 October 2009, Crédit Agricole on 27 October 2009, BNP Paribas on 3 November 2009, Société Générale on 4 November 2009). The only bank in which the SPPE still held equity on 14 February 2010 is BPCE, the bank that emerged from the *Caisse d'Épargne* and *Banque Populaire*, formerly two separate banks.<sup>45</sup> The SPPE holds EUR 3 billion in non-voting preference shares of the BPCE.

France discontinued its scheme for refinancing credit institutions on 30 November 2009, when the scheme expired as planned.<sup>46</sup> The scheme, which became law in October 2008<sup>47</sup> and was extended in May 2009, established the wholly state-owned *Société de Financement de l'Économie Française* (SFEF, previously known as *Société de refinancement des activités des établissements de crédits* (SRAEC). The scheme authorises SFEF to provide medium and long-term financing to banks that apply for such financing. It benefits from a state guarantee and can extend lending up to EUR 265 billion. Credit institutions that benefit from the scheme have to pay a premium over and above the normal market price and have to make commitments regarding their conduct. Any bank authorised in France, including the subsidiaries of foreign groups, had access to the scheme.

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<sup>44</sup> The scheme was initially announced on 20 October 2008 and entered into force upon approval by the European Commission on 8 December 2008, European Commission decision N613/2008. The scheme was repeatedly amended as documented in European Commission decisions N29/2009, N164/2009 and N249/2009.

<sup>45</sup> The Decision by the European Commission not to raise objections against this capital injection will be available under reference N249/2009. The press release regarding this decision has been issued under reference IP/09/722 on 8 May 2009.

<sup>46</sup> European Commission decisions N548/2008 and N251/2009.

<sup>47</sup> Loi n° 2008-1061 du 16 Octobre 2008 de finances rectificative pour le financement de l'économie. The measure is documented in the decision of the European Commission not to raise objections dated 30 October 2008 under reference N548/2008.

France, jointly with Belgium and Luxembourg, extended a state guarantee to Dexia that the three countries provide since November 2008.<sup>48</sup>

#### *Measures regarding non-financial sectors*

As part of the support that three French automakers, Renault, Renault Trucks and PSA/Peugeot-Citroën, had received in early 2009, the companies committed not to shut any plants in France for 5 years, corresponding to the duration of a loan of a combined EUR 6.5 billion to the three companies.<sup>49</sup> Then, France provided a commitment to the Commission that the loan agreements “*will not contain any condition concerning either the location of their activities or the requirement to prioritise France-based suppliers*”. This commitment was tested when it emerged in January 2010 that Renault considered producing one of its car models in a plant in Turkey rather than in France. Senior members of Government, including the Industry Minister, a vice-Minister and the French President, publicly opposed the plan with reference to the firm’s commitment, aid previously received by the firm and the State’s 15 percent stake in the firm. The CEO of the firm was called in for questioning over the plan.

France’s Strategic Investment Fund (*Fonds Stratégique d’Investissement*, FSI), equipped with EUR 20 billion when established on 19 December 2008,<sup>50</sup> continued to acquire stakes in companies including OpenPortal,<sup>51</sup> Technip,<sup>52</sup> Mecamidi,<sup>53</sup> Forenap,<sup>54</sup> Carbone Lorraine,<sup>55</sup> Dailymotion,<sup>56</sup> Cegedim,<sup>57</sup> NicOx,<sup>58</sup> Bontoux,<sup>59</sup> Mecachrome,<sup>60</sup> Avanquest,<sup>61</sup> and GLI International.<sup>62</sup> All these companies were under French control at the time of the investment. Almost all these investments were made in the context of capital increases of the concerned firms, but in one case, the FSI has also co-founded a new company in

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<sup>48</sup> More details on the measure are available in the section on Belgium in this report on p. 14.

<sup>49</sup> “*Questions/Réponses—Le Pacte Automobile*”, government note, 6 March 2009.

<sup>50</sup> www.fonds-fsi.fr; “*Le FSI va être doté par ses deux actionnaires d’un portefeuille de participations de 14Md€*”, FSI press release 6 July 2009, and FSI website.

<sup>51</sup> “*OpenPortal réalise une opération capitalistique de près de 3 millions d’euros auprès du FSI, Ouest Ventures, Pays de la Loire Développement et de la société Triviumsoft*”, FSI release, 9 September 2009.

<sup>52</sup> “*Le FSI porte sa participation à 5% du capital de Technip*”, FSI release, 9 September 2009.

<sup>53</sup> “*MECAMIDI réalise une levée de fonds de près de 5 millions d’euros auprès de ses actionnaires : le FSI et Midi Capital*”, FSI press release, 15 September 2009.

<sup>54</sup> “*Le FSI, CIC Finance et TechFuund/Airfi annoncent un investissement de 11M€ dans FORENAP*”, FSI press release, 1 October 2009.

<sup>55</sup> “*Le FSI participe à l’augmentation de capital de Carbone Lorraine*”, FSI press release, 6 October 2009.

<sup>56</sup> “*Le FSI entre au capital de Dailymotion en participant, aux côtés des actionnaires historiques, à une levée de fonds de 17M€*”, FSI press release, 22 October 2009.

<sup>57</sup> “*Cegedim annonce un projet d’augmentation de capital de 180M€ soutenu par la famille Labrune et le FSI en vue de poursuivre sa dynamique de croissance*”, FSI press release, 28 October 2009.

<sup>58</sup> “*Le Fonds Stratégique d’Investissement a acquis 5,1% du capital de NicOx*”, FSI press release, 18 November 2009.

<sup>59</sup> “*Le FSI et AgroInvest investissent 7, 5 M€ dans Bontoux SA*”, FSI press release, 14 December 2009.

<sup>60</sup> “*Mecachrome completes its financial restructuring in France and Canada*”, Mecachrome Communiqué de Presse, 18 December 2009. “*Mecachrome sort de la protection de la loi de sauvegarde*”, joint press release, 18 December 2009.

<sup>61</sup> “*Entrée du Fonds Stratégique d’Investissement au Capital d’Avanquest Software*”, FSI press release, 11 November 2009.

<sup>62</sup> “*Le FSI investit 5 M€ dans GLI International*”, FSI press release, 18 January 2010.

cooperation with other investors.<sup>63</sup> Some of the companies the FSI invested in or considered investing in were in financial difficulties at the time of the investment.<sup>64</sup> In December 2009, for instance, the FSI acquired 30 percent in the holding company of Mecachrome International, then under bankruptcy protection.<sup>65</sup> Other investments supported capital increases to allow the companies the establishment in foreign markets.<sup>66</sup>

France consolidated and expanded its state-owned or state co-owned funds mandated to invest in companies. These measures are taken—according to government statements—to assist companies to cope with the crisis and the financial difficulties that it triggered.<sup>67</sup>

- On 1 October 2009, France established the *Fonds de consolidation et de développement des entreprises* (FCDE). With a capital of EUR 200 million, contributed by the FSI (47.5 percent) and a consortium of private banks, the FCDE provides capital to companies that are in financial difficulties, did not succeed in obtaining sufficient investment from private investors, but represent potential for development.<sup>68</sup> The fonds will only take minority stakes that are limited to EUR 15 million. Once it has received approval by the financial market authority, the fund will be managed by a body composed of its shareholders. In the meantime, the *CDC Entreprises*, a subsidiary of the public Caisse des Dépôts, operates the fund.
- In early October 2009, the FSI further enhanced existing programmes that seek to strengthen the capital base of SMEs.<sup>69</sup> A new programme, OC+, was established to complement the measures for SMEs. Under OC+, the FSI may acquire until a gross limit of EUR 300 million, convertible bonds of up to EUR 4 million per company.
- On 26 October 2009, the FSI also established *InnoBio*, a sector specific public-private investment fund, jointly with the main pharmaceutical laboratories operating in France.<sup>70</sup> FSI holds 37 percent of the EUR 140 million fund, which is managed by the public *CDC Entreprises*.

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<sup>63</sup> “*Le FSI annonce sa participation aux côtés de Renault, Nissan et du Commissariat à l’Energie Atomique (CEA) à la création en France d’une société commune de recherche et développement, de production, de commercialisation et de recyclage de batteries destinées aux véhicules électriques*”, FSI press release, 5 November 2009.

<sup>64</sup> Notably Bontoux and Mecachrome, according to the FSI press releases (see footnotes 59 and 60). A potential investment of the FSI in CMA CGM, a French controlled shipping line and the world’s third largest carrier that came under financial pressure and undergoes major debt restructuring, was mentioned in press reports (“*Shipping line confers over bail-out*”, Financial Times, 25 September 2009; “*French Government May Help CMA CGM*”, the Journal of Commerce, 2 December 2009).

<sup>65</sup> “*Mecachrome completes its financial restructuring in France and Canada*”, Mecachrome press release, 18 December 2009. “*Mecachrome sort de la protection de la loi de sauvegarde*”, joint press release, 18 December 2009.

<sup>66</sup> This reason is explicitly given in the press releases regarding the investments in OpenPortal, Mecamidi, Dailymotion and Cegedim, according to the FSI press releases (see footnotes 51, 53, 56 and 57).

<sup>67</sup> For the measures directed at SMEs, see “*Le FSI lance le programme FSI-PME, destiné à renforcer les fonds propres des PME ayant des projets de croissance*”, FSI press release, 5 October 2009. For the mandate of the FMEA, see

<sup>68</sup> “*Lancement du Fonds de consolidation et de développement des entreprises*”, press release, Médiateur du crédit, 1 October 2009.

<sup>69</sup> “*Le FSI lance le programme FSI-PME, destiné à renforcer les fonds propres des PME ayant des projets de croissance*”, FSI press release, 5 October 2009.

<sup>70</sup> “*Mise en place d’un partenariat entre le FSI et 6 des 10 premiers laboratoires mondiaux pour créer un fonds d’investissement de 140M€ dans les biotechnologies*”, FSI press release, 26 October 2009.

- Another sector specific fund, the *Fonds de Modernisation des Equipementiers Automobiles* (FMEA), a public-private fund of EUR 600 million that is owned to equal parts by the FSI and by French automakers PSA Peugeot-Citroen and Renault SA, continued to carry out investments into French car-component makers. Described as an “illustration of measures to retain the automotive industry in France”<sup>71</sup> and designed as part of the support plan for the automotive industry drawn up in December 2008,<sup>72</sup> the FMEA, invested EUR 3 million in Delfingen Industry in December 2009 and EUR 7 million in Defta in January 2010.
- On 19 October 2009, the FSI took over the investment commitments hitherto held by the public *Caisse des Dépôts*, within the framework of *FSI-France Investissement*, a programme aimed at providing SMEs with capital.<sup>73</sup> It manages investment commitments of EUR 3.4 billion between 2006 and 2012, of which EUR 2.4 billion are public funds invested in private enterprises, the remaining being brought by private investors. By the end of 2009, almost half of these commitments had been fulfilled.

France continued to implement its four temporary framework schemes that it had established to support the real economy manage the consequences of the crisis until 31 December 2010. These include: a scheme for small amounts of aid of up to EUR 500 000 per undertaking in 2009-2010 combined.<sup>74</sup> A second scheme that provides aid in form of subsidised interest rates for loans contracted no later than 31 December 2010;<sup>75</sup> the subsidy may only remain in place on interest payments before 31 December 2012. A third scheme concerning subsidized guarantees to companies for investment and working capital loans concluded by 31 December 2010.<sup>76</sup> A fourth framework scheme allows to grant loans with a reduced interest rate at most during two years to businesses investing in the production of “green” products, i.e. products which already comply with future EU environmental product standards which did not yet enter into force.<sup>77</sup> The scheme is open for companies of any size and any sector, including the automotive sector and may be implemented by state, regional and local authorities. The French government estimates that about 500 enterprises may benefit from this fourth scheme.

On 2 December 2009, France introduced a new temporary aid scheme to support access to finance for the agriculture sector.<sup>78</sup> The framework scheme allows federal, regional and local authorities to provide until 31 December 2010 direct grants, interest rate subsidies, and subsidised loans and guarantees. The overall budget of the scheme is limited to EUR 700 million, and the French authorities expect up to 1,000 companies to directly benefit from the scheme. The scheme complements the aforementioned measures.

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<sup>71</sup> “Création du Fonds de modernisation des équipementiers automobile”, Caisse des Dépôts press release, 21 January 2009.

<sup>72</sup> “Hervé Guyot nommé directeur du fonds de modernisation des équipementiers automobiles”, FSI press release, 20 January 2009.

<sup>73</sup> “Réunion des fonds France Investissement le 19 octobre 2009: création du FSI - France Investissement et évolution du dispositif d’accompagnement”, notice de France Investissement du 27 October 2009.

<sup>74</sup> European Commission decisions N7/2009, N188/2009, and N278/2009.

<sup>75</sup> European Commission decision N15/2009.

<sup>76</sup> European Commission decision N23/2009.

<sup>77</sup> European Commission decision N11/2009.

<sup>78</sup> European Commission decision N609/2009.

## Germany

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

The Financial Market Stabilisation Fund (SoFFin) continued to operate and was prolonged until 30 June 2010.<sup>79</sup> Since its establishment in October 2008, the fund is the vehicle to provide the state assistance to the financial sector to weather the financial crisis. The fund provides guarantees and capital to affected financial institutions, including to German subsidiaries of foreign financial institutions (§ 2 FMStFG). By 31 December 2009, SoFFin had received requests from 25 institutions—plus 2 expressions of interest—with a gross volume of EUR 230.8 billion. On that date, SoFFin had granted stabilisation measures of a total EUR 188.7 billion, of which EUR 160.7 billion were guarantees; EUR 28 billion were provided as capital.<sup>80</sup>

During the reporting period, SoFFin was notably involved in a series of measures that aimed at stabilising banks that had been in State ownership or had come under State ownership as a consequence of the crisis:

- SoFFin established a first liquidation institution ("bad bank") for WestLB, a state controlled bank, on 11 December 2009,<sup>81</sup> based on a law introduced in July 2009.<sup>82</sup> WestLB transfers a portfolio of "toxic" and non-strategic assets with a nominal value of EUR 85.1 billion to the liquidation institution. The shareholders of WestLB remain liable for future losses of the transferred assets.<sup>83</sup> SoFFin also granted the bank a EUR 3 billion capital injection that can be turned into shares at a later stage, whereby a 49 percent stake in the bank may not be exceeded. Moreover, between 1 October and 30 November 2009, SoFFin had provided an additional risk shield by guaranteeing EUR 6.3 billion to prevent a drop of its overall capital ratio that would have triggered a bank resolution.<sup>84</sup> Germany submitted a restructuring plan for the bank that requires among others that WestLB: reduce its balance sheet by 50% until March 2011, and change the bank's ownership structure through a public tender procedure before the end of

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<sup>79</sup> The Fund is established by a law of 17 October 2008 (Finanzmarktstabilisierungsfondsgesetz—FMStFG), which also regulates its operations. The FMStFG was passed as article 1 of the Finanzmarktstabilisierungsgesetz and entered into force on 17 October 2008. European Commission decisions N512/2008, N625/2008, N330/2009 and N665/2009.

<sup>80</sup> "Stabilisierungsmaßnahmen des SoFFin", SoFFin press release, 9 December 2009.

<sup>81</sup> „Bundesanstalt für Finanzmarktstabilisierung errichtet Abwicklungsanstalt der WestLB“, SoFFin press release, 14 December 2009. The European Commission temporarily approved the establishment of the SPV on 22 December 2009 under reference N555/2009 and initiated a formal investigation procedure of the case under reference C40/2009 on the same day.

<sup>82</sup> "Law on the development of financial market stabilisation/Gesetz zur Fortentwicklung der Finanzmarktstabilisierung", in force since 23 July 2009.

<sup>83</sup> "SoFFin unterstützt WestLB", SoFFin press release, 26 November 2009.

<sup>84</sup> European Commission decision N531/2009.

2011).<sup>85</sup> These elements are designed to offset the distortion of competitive conditions that the stabilisation and support measures in favour of the bank had triggered.<sup>86</sup>

- SoFFin increased its ownership of the Hypo Real Estate Holding AG (HRE) to 100% through a squeeze out of remaining shareholders on 13 October 2009.<sup>87</sup> On 4 November 2009, the SoFFin increased the capital of HRE by EUR 3 billion to a total amount of EUR 6.3 billion.<sup>88</sup> On 21 December 2009, SoFFin provided the now fully state-owned bank a guarantee of EUR 43 billion which replaces an earlier guarantee of the same amount provided by the Federal Government and a consortium of financial institutions. Overall, HRE benefits of public guarantees of EUR 95 billion.<sup>89</sup> On 21 January 2010, HRE filed an application to SoFFin to establish a “bad bank” to which it would eventually transfer assets valued at up to EUR 210 billion, subject to approval by the European Commission.<sup>90</sup>

In addition to measures executed under the SoFFin scheme, Germany prolonged a guarantee for the state-controlled Nord/LB until 15 February 2010.<sup>91</sup> The maximum volume of the guarantee for 2009 and 2010 combined is limited to EUR 20 billion.

On 15 December 2009, the restructuring plan for LBBW, a state-owned bank, became effective.<sup>92</sup> The restructuring plan, that the German government had developed requires among others that LBBW: reduce its balance sheet; focus its activities in financing German SMEs and reduces capital market activities and proprietary trading; and implement corporate governance changes that include the change of its current legal status to that of a joint stock corporation.

#### *Measures regarding non-financial sectors*

Germany continued to implement six support schemes that it had established to support the real economy, and added a new, seventh, support scheme.

Germany maintained its credit and guarantee programme “*Wirtschaftsfonds Deutschland*” that disposes of a gross volume of up to EUR 115 billion and is scheduled to run until 31 December 2010.<sup>93</sup> It consists of a credit component (up to a total of EUR 25 billion), a credit guarantee component (up to EUR 75 billion), as well as a loan subsidy programme (budgeted at up to EUR 15 billion and administered by the State-owned development bank KfW).<sup>94</sup> Under the programme, decisions on major support

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<sup>85</sup> The details of the restructuring plan are set out in the annex of the European Commission decision C43/2008.

<sup>86</sup> The European Commission accepted the restructuring plan on 12 May 2009 in case C43/2008.

<sup>87</sup> “*HRE – Übertragung der Aktien der Minderheitsaktionäre nach erfolgtem Squeeze-Out*”, SoFFin information, 14 October 2009.

<sup>88</sup> “*HRE – SoFFin beschließt Kapitalerhöhung um 3 Mrd. Euro*”, SoFFin press release, 4 November 2009. European Commission decision N557/2009.

<sup>89</sup> “*SoFFin löst Liquiditätsfazilität ab – Restrukturierung der HRE schreitet voran*“, SoFFin press release, 21 December 2009. European Commission decision N694/2009.

<sup>90</sup> “*HRE submits application for a transfer of assets*”, HRE press release, 21 January 2010.

<sup>91</sup> European Commission decisions N412/2009 and N655/2008.

<sup>92</sup> European Commission press release IP/09/1927, dated 15 December 2009.

<sup>93</sup> “*Kredit- und Bürgschaftsprogramm der Bundesregierung/Wirtschaftsfonds Deutschland*”. Detailed documentation (in German) is provided on the website of the Federal Ministry for Economy and Technology.

<sup>94</sup> “*KfW Sonderprogramm 2009*”, initially introduced on 5 November 2008. European Commission decision N661/2008. Modifications of the programme were planned to enter into force in February 2010 “*Verbesserungen im KfW Sonderprogramm für mittelständische Unternehmen*”, press release, Federal Ministry for Economic Affairs and Technology, 10 December 2009.

measures (i.e. applications for credit in excess of EUR 150 million and credit guarantees in excess of EUR 300 million or cases of fundamental significance—increased risks, unusual loan and/or collateral structure, special regional, sectoral, employment significance—are taken by an inter-ministerial Steering Group<sup>95</sup> which takes into account *inter alia* the long term viability of the firm and whether or not it has access to commercial credit. By the end of December 2009, EUR 9.9 billion, or almost 10% of the available volume, had been committed. While the overwhelming majority (about 95%) of beneficiaries are SMEs, the measure also supports large companies. In early October 2009, for instance, Germany subscribed a 90% guarantee for loans worth EUR 1.2 billion to Hapag-Lloyd, the world’s fifth largest container shipping line by volume. The City of Hamburg and the „*Deutschlandfonds*“ cover the guarantee to equal parts.<sup>96</sup>

- Germany continued to implement its framework scheme for small amounts of aid that broadens channels for distributing existing funds earmarked for state aid.<sup>97</sup> It authorises the government to provide businesses with aid in various forms up to a total value of EUR 500 000 each. The measures can be applied until 31 December 2010.
- Germany also continued to implement four schemes that allow authorities at federal, regional and local level to grant aid in various forms. The schemes include a scheme regarding subsidized guarantees for investment and working capital loans concluded by 31 December 2010.<sup>98</sup> A second scheme permits authorities at federal, regional and local level, including public development banks, to provide loans at reduced interest rates.<sup>99</sup> A third scheme concerns the granting of risk capital.<sup>100</sup> All three schemes initially came into force in February 2009 and are scheduled to expire on 31 December 2010. A fourth framework scheme, concerning reduced interests on loans to businesses investing in the production of “green” products entered into effect in August 2009.<sup>101</sup>
- On 23 November 2009, a new temporary aid scheme to support access to finance for the agriculture sector was established.<sup>102</sup> The framework scheme allows federal, regional and local authorities to provide until 31 December 2010 direct grants, interest rate subsidies, and subsidised loans and guarantees. The scheme complements the aforementioned measures.

<sup>95</sup> “*Lenkungsausschuss Unternehmensfinanzierung*”, assisted by a steering council “*Lenkungsrat Unternehmensfinanzierung*” with an advisory role.

<sup>96</sup> “*Besonders der Mittelstand profitiert von Mitteln aus dem Wirtschaftsfonds Deutschland*“, release of the Federal Ministry for Economic Affairs and Technology, 22 September 2009.

<sup>97</sup> “*Regelung zur vorübergehenden Gewährung geringfügiger Beihilfen im Geltungsbereich der Bundesrepublik Deutschland während der Finanz- und Wirtschaftskrise (“Bundesregelung Kleinbeihilfen”)*”. European Commission decisions N668/2008, N299/2009 and N411/2009.

<sup>98</sup> “*Regelung zur vorübergehenden Gewährung von Bürgschaften im Geltungsbereich der Bundesrepublik Deutschland während der Finanz- und Wirtschaftskrise (“Befristete Regelung Bürgschaften”)*“. European Commission decision N27/2009.

<sup>99</sup> “*Regelung zur vorübergehenden Gewährung niedrigverzinslicher Darlehen an Unternehmen im Geltungsbereich der Bundesrepublik Deutschland während der Finanz- und Wirtschaftskrise (“Bundesrahmenregelung Niedrigverzinsliche Darlehen”)*”. European Commission decision N38/2009.

<sup>100</sup> “*Bundesrahmenregelung Risikokapital*“, documented in European Commission decision N39/2009.

<sup>101</sup> “*Bundesrahmenregelung zur Herstellung grüner Produkte*”. European Commission decision N426/2009.

<sup>102</sup> “*Bundesregelung landwirtschaftliche Kleinbeihilfen*“, European Commission decision N597/2009.

## *Greece*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Greece prolonged its bank support scheme twice until 30 June 2010 and continued its implementation.<sup>103</sup> The scheme was initially established in November 2008 and consists of three components: a recapitalisation scheme; a guarantee scheme; and a 'bond loan' scheme. A total amount of EUR 28 billion is available for the scheme (EUR 5 billion for recapitalisation; EUR 15 billion for guarantees; and EUR 8 billion for the bond loan scheme). Any credit institution authorised to operate in Greece—including subsidiaries of foreign banks—may benefit from the scheme. Institutions benefiting from recapitalization measures or State guarantees must agree to various conditions, including government appointed director of the board, and behavioural conditions.

#### *Measures regarding non-financial sectors*

Greece continued to implement its two temporary aid schemes with a common budgetary ceiling of EUR 2 billion. The scheme for loan guarantees allows the provision of aid in the form of guarantees for working capital loans and investment loans concluded by 31 December 2010.<sup>104</sup> The other scheme authorises subsidising interest rates on loans taken by 31 December 2010.<sup>105</sup>

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<sup>103</sup> European Commission decisions N690/2009, N504/2009 and N560/2008.

<sup>104</sup> European Commission decision N308/2009.

<sup>105</sup> European Commission decision N309/2009.



## ***Hungary***

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Hungary discontinued the implementation of the guarantee component of its bank support scheme on 31 December 2009.<sup>106</sup> In turn, it prolonged the recapitalisation measure until 30 June 2010.<sup>107</sup> The support schemes were initially established in February 2009. They included a recapitalisation measure (government purchases of preferred shares of credit institutions, budgeted at EUR 1.04 billion) and guarantee for certain categories of new debt (budgeted at EUR 5.22 billion). Both schemes were open to all systemically-important credit institutions and contain behavioural safeguards.

Hungary continued to implement its lending programme in domestic or foreign currency directly to systemically-important banks. The liquidity scheme entered into effect in March 2009. Liquidity support under the scheme takes the form of non-subordinated, non-structured loans, with a maximum maturity and an entry window open until 30 June 2010.<sup>108</sup>

#### *Measures regarding non-financial sectors*

Hungary continued to implement three temporary frameworks schemes to support enterprises in the real economy:

- A scheme for granting limited amounts of aid in the form of direct grants, reimbursable grants, soft loans, interest rate subsidies, tax advantages, reduction of social security contributions, provision of risk capital, equity intervention (increase of capital by public companies where the maximum amount of capital increase in a given company cannot exceed EUR 500 000), debt write-off and public guarantees. The scheme initially entered into effect in February 2009.<sup>109</sup>
- A scheme for granting aid in the form of loans with subsidised interest rates.<sup>110</sup> The scheme is open to all sectors of the economy, and to large enterprises and SMEs alike. At the inception of the scheme, Hungarian authorities estimated that over 1,000 enterprises will benefit from aid under this scheme.
- A scheme that allows the provision of subsidised guarantees for investment and working capital loans.<sup>111</sup> The aid is granted in a decentralised way by all relevant economic policy actors at central, regional and local levels. The Hungarian authorities estimate that the guaranteed amount of loans will not exceed HUF 2.315 billion.

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<sup>106</sup> European Commission decisions N355/2009 and N664/2008.

<sup>107</sup> European Commission decision N662/2009.

<sup>108</sup> European Commission decision NN68/2009 and European Commission press release IP/10/19.

<sup>109</sup> European Commission decision N77/2009.

<sup>110</sup> European Commission decision N78/2009.

<sup>111</sup> European Commission decisions N203/2009, N114/2009 and N341/2009.

## *Iceland*

### *Investment policy measures*

The Central Bank of Iceland's new *Rules on Foreign Exchange*<sup>112</sup> entered into force on 31 October 2009. The Rules abolish some of the capital controls that Iceland had introduced on 28 November 2008 and March 2009.<sup>113</sup> The relaxation permits inflows of foreign currency for new investments and potential outflows of foreign currency that may derive from such investments in the future. Investors are thus authorised, without restrictions, to convert into foreign currency the sales proceeds from assets in which they invest after 1 November 2009. The revision of the Rules on Foreign Exchange also sought to enhance consistency and close loopholes that made it possible to circumvent the capital controls.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

On 18 December 2009, the Ministry of Finance announced that the restructuring of Iceland's three commercial banks was concluded.<sup>114</sup> Three operational new banks, Arion banki, Landsbanki and Íslandsbanki, have emerged from the restructuring process. Overall, the state contributed ISK 184 billion to the banks' reconstruction, ISK 135 billion to the restructuring operation, and subordinated loans to Arion banki (ISK 24 billion) and to Íslandsbanki (ISK 25 billion). The state maintains holdings in all three banks; it owns 81% of Landsbanki, 13% of Arion banki and 5% of Íslandsbanki. The state has four directors on Landsbanki's board and one each on the boards of the other two banks.

#### *Measures regarding non-financial sectors*

None during reporting period.

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<sup>112</sup> "Rules on Foreign Exchange", No. 880, 30 October 2009.

<sup>113</sup> "First stage of capital account liberalisation", Central Bank of Iceland press release No. 33/2009, 31 October 2009. The document "Capital account liberalisation strategy" of 5 August 2009 contains a summary of the capital controls that were introduced and the strategy for liberalisation.

<sup>114</sup> "Bank Reconstruction Concluded", Ministry of Finance press release No. 82/2009, 17 December 2009.

## *India*

### *Investment policy measures*

India made efforts to clarify its foreign investment regime. On 4 September 2009, the Indian Ministry of Commerce and Industry issued a press note<sup>115</sup> that clarifies the rules concerning foreign investment into micro and small enterprises, and conditions for foreign invested enterprises that manufacture products reserved for small scale industrial undertakings and micro and small enterprises. A broader approach to clarify India's foreign investment regime was made with the issuing on 24 December 2009 of a draft press note that will consolidate, once entered into force, into one document all prior regulations on FDI.<sup>116</sup> Substantive changes are not intended. It is planned that the consolidating press note be replaced periodically twice yearly to take into account updates of India's FDI policy.

On 30 December 2009, the Reserve Bank of India (RBI) issued guidelines on the implementation of India's foreign exchange control regime.<sup>117</sup> The Guidelines liberalise the establishment of foreign branch and liaison offices in India, and delegated respective powers concerning the administration of their establishment. On the same day, the RBI also provided eligibility criteria and procedural guidelines for the establishment of such offices.<sup>118</sup>

The Reserve Bank of India withdrew some of the temporary relaxations of the Bank's External Commercial Borrowings policy.<sup>119</sup> The measures took effect on 1 January 2010. An additional one-time relaxation from the Bank's External Commercial Borrowings policy was made on 25 January 2010 in light of an auction of 3G frequency spectrum. The relaxation seeks to enable successful bidders for the spectrum to pay for the spectrum allocation.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

India continued to provide liquidity to non-deposit taking systemically important Non-Banking Financial Corporations under its Stressed Asset Stabilisation Fund, a Special Purpose Vehicle (SPV) of Industrial Development Bank of India (IDBI).<sup>120</sup> The SPV ceased to make fresh purchases on 31 December 2009 and is scheduled to recover all dues by 31 March 2010.<sup>121</sup>

#### *Measures regarding non-financial sectors*

None during reporting period.

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<sup>115</sup> Press note 6 (4 September 2009), Ministry of Commerce and Industry, Department of Industrial Policy and Promotion.

<sup>116</sup> Draft Press Note (2010): FDI Regulatory Framework. Ministry of Commerce and Industry, Department of Industrial Policy and Promotion.

<sup>117</sup> Reserve Bank of India, RBI/2009-2010/279 A. P. (DIR Series) Circular No.24, dated 30 December 2009.

<sup>118</sup> Reserve Bank of India, RBI/2009-2010/278 A. P. (DIR Series) Circular No.23, dated 30 December 2009.

<sup>119</sup> Reserve Bank of India, RBI/2009-10/ 252 A.P. (DIR Series) Circular No.19, December 9, 2009.

<sup>120</sup> "Framework for addressing the Liquidity Constraints of NBFCS", RBI Press release dated 18 February 2009, reproduced in RBI Monthly Bulletin, April 2009, p.668.

<sup>121</sup> "Second Quarter Review of Monetary Policy 2009-10", Reserve Bank of India, 27 October 2009.

## *Indonesia*

### *Investment policy measures*

On 8 September 2009, the Indonesian Parliament passed Law No. 30/2009 Concerning Electricity, which allows private investors, including foreign investors, to generate, transmit, distribute and sell electricity. Hitherto, state electricity company PT Perusahaan Listrik Negara (PLN) had a monopoly on supply and distribution of electricity to end customers. State-owned enterprises retain, according to article 11 of the law, the right of first priority to develop electric power projects. On 14 February 2010, cut-off date for this report, the law was still awaiting implementing regulations; these regulations must be stipulated within 1 year after entry into force of the Law Concerning Electricity.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

None during reporting period.

#### *Measures regarding non-financial sectors*

None during reporting period.

## *Ireland*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Ireland prolonged until 31 May 2010 and continued to implement a guarantee scheme.<sup>122</sup> Initially established on 30 September 2008, the scheme guarantees until 28 September 2010 all deposits, covered bonds, senior debt and dated subordinated debt. The institutions eligible to benefit from the scheme are those systemically important credit institutions which the Minister specifies by Order as requiring financial support; they may include foreign subsidiaries as well as to branches of systemic significance. The measure applies to the six Irish banks specified by the Government's announcement of 30 September 2008 – Allied Irish Bank, Bank of Ireland, Anglo Irish Bank, Irish Life and Permanent, Irish Nationwide Building Society and the Educational Building Society as well as their subsidiaries abroad – and is open to five banking subsidiaries in Ireland with a significant and broad based footprint in the domestic economy.

Ireland established the National Asset Management Agency (NAMA), an impaired asset relief scheme for financial institutions in Ireland.<sup>123</sup> NAMA buys from participating financial institutions assets related to loans issued for the purchase, exploitation or development of land and associated loans. The scheme was open to all systemically-important credit institutions established in Ireland, including subsidiaries of foreign banks. Five institutions will participate: Anglo Irish Bank, Allied Irish Bank, Bank of Ireland, Irish Nationwide Building Society and Educational Building Society. They were admitted after a 60-day application window that expired on 19 February 2010. The Irish authorities anticipate that NAMA will purchase loans with a nominal value of approximately EUR 80 billion for an estimated purchase price of EUR 54 billion.

#### *Measures regarding non-financial sectors*

On 15 December 2009, Ireland increased the estimated budget of its framework scheme under which it continues to grant limited amounts of aid (up to EUR 500,000 per firm in 2009 and 2010) to businesses facing difficulties to access credit.<sup>124</sup> Under the scheme, which is administered by Enterprise Ireland, aid can be provided as direct grants, reimbursable grants, interest rate subsidies, and subsidised public loans. Initially, it was estimated that the overall aid volume provided under this scheme would not to exceed EUR 100 million and that it would reach no more than 1,000 firms; in late 2009 however, the estimates were increased to an overall budget of EUR 350 million and 2,000 beneficiaries.

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<sup>122</sup> European Commission decisions N349/2009 and NN48/2008.

<sup>123</sup> European Commission decision N725/2009, European Commission press release, IP/10/198, 26 February 2010.

<sup>124</sup> European Commission decisions N186/2009, N473/2009.

***Israel***

*Investment policy measures*

None during reporting period.

*Investment measures relating to national security*

None during reporting period.

*Emergency and related measures with potential impacts on international investment*

*Financial sector*

None during reporting period.

*Measures regarding non-financial sectors*

None during reporting period.

## *Italy*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Italy discontinued implementation of its guarantee scheme for the financial sector after its scheduled expiry on 16 December 2009. The scheme, initially introduced in late 2008 and prolonged for six months in June 2009,<sup>125</sup> consisted of three components: a state guarantee on banks' liabilities; swaps between state securities and liabilities of Italian banks; and a state guarantee in favour of non-banking institutions willing to lend high quality bonds to Italian banks for refinancing operations with the Eurosystem. Solvent Italian banks, including subsidiaries of foreign banks incorporated in Italy, were eligible for the measures.

Italy also discontinued implementation of its recapitalisation scheme for banks on 31 December 2009, the programme's scheduled end date;<sup>126</sup> the scheme had been extended and slightly modified once more in October 2009. The scheme had authorised the injection of capital into banks incorporated under Italian law, including subsidiaries of foreign banks. A later modification encouraged an early redemption. The Ministry of Economy and Finance administered the scheme and the Bank of Italy was involved in the evaluation of applicant institutions. The scheme had been used once in the first six months, and four applications were being processed in October 2009.

#### *Measures regarding non-financial sectors*

On 26 October 2009, Italy established a scheme that allows subsidies on interest rates for investment loans for producers of car components related to an early adaptation to or overachievement of EU environmental standards.<sup>127</sup> The aid targets the automotive industry, affected by crisis-related difficulties to access capital and declining sales, and supports specifically development and production of components that will be competitive in the future. The scheme, budgeted of up to EUR 300 million, is open to companies of all sizes, and over 1,000 undertakings are expected to benefit directly from the scheme. Interest rate subsidies under this scheme may not be granted after 31 December 2010. The scheme will be administered by the Ministry for Economic Development, but other levels of the public administration may be involved in the scheme's administration at a later stage. Italy committed to report to the European Commission on the implementation of the scheme.

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<sup>125</sup> European Commission decisions N520a/2008 and N328/2009. Decree-law No 155 on "Urgent measures to guarantee the stability of the credit system and the continued availability of credit to enterprises and consumers in the current crisis on international financial markets" and Decree-Law No 157 on "Further urgent measures to guarantee the stability of the credit system".

<sup>126</sup> The scheme is based on article 12 of Decree-Law No 185 of 28 November 2008 and the relating draft implementing decree. European Commission decisions N648/2008, N97/2009 and N466/2009.

<sup>127</sup> European Commission decision N542/2009. The measure is established on the basis of the "Decreto del Presidente del Consiglio dei Ministri del 3 giugno 2009" and "Dettagli operativi".

## *Japan*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Japan continued to implement its capital injection programme. Under the programme, which is based on the Act on Special Measures for Strengthening Financial Functions,<sup>128</sup> the Japanese government injects capital into deposit-taking institution to help them properly and fully exercise their financial intermediary functions to SMEs. The programme is scheduled to expire on 31 March 2012. The overall budget for capital injections is capped at JPY 12 trillion.<sup>129</sup>

Japan also continued to operate the share purchase programme of the Banks Shareholding Purchase Corporation (BSPC).<sup>130</sup> Japan had reactivated this programme in March 2009. The programme originally expired on 31 September 2006 but it was extended to March 2012. The BSPC is an authorised corporation which can purchase shares issued and/or owned by member banks, upon request from the member banks. Currently all members are Japanese banks, but local branches of foreign banks are eligible to become members as well. The amended Act on Special Measures for Strengthening Financial Functions which was enacted in March 2009 provides a government guarantee up to JPY 20 trillion for the BSPC's operations.

#### *Measures regarding non-financial sectors*

The government-owned Japan Finance Corporation (JFC) continued to cover parts of losses that designated financial institutions suffered as a result of providing financing to business operators that implemented an authorized business restructuring plan.<sup>131</sup> The measure came into force under an amendment to the Act on Special Measures for Industrial Revitalisation and a related cabinet ordinance on 30 April 2009.<sup>132</sup> The measure was scheduled to expire at the end of March 2010, but on 8 December 2009, the government extended the period of the measure from the end of March 2010 to the end of September 2010.<sup>133</sup>

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<sup>128</sup> [www.fsa.go.jp/common/diet/170/index.html](http://www.fsa.go.jp/common/diet/170/index.html); [www.fsa.go.jp/news/20/20081216-3.html](http://www.fsa.go.jp/news/20/20081216-3.html)

<sup>129</sup> It was JPY 2 trillion before the amendment. This increase by JPY 10 trillion was announced in the third package.

<sup>130</sup> [www.bspc.jp/pdf/saikai.pdf](http://www.bspc.jp/pdf/saikai.pdf)

<sup>131</sup> The eligibility criteria are described in a Ministry of Economy, Trade and Industry press release (in Japanese).

<sup>132</sup> “*Cabinet Ordinance to Partially Amend the Enforcement Order for the Act on Special Measures for Industrial Revitalization*”, Ministry of Economy, Trade and Industry press release, 24 April 2009. The Act on Special Measures for Industrial Revitalisation was originally enacted in 1999 with a fixed term of four years, it was extended twice in 2003 and 2007.

<sup>133</sup> “*Emergency Economic Countermeasures for Future Growth and Security*”, Cabinet Decision, 8 December 2009.



The government extended the period of crisis response operations in which the Development Bank of Japan and Shoko Chukin Bank provide two-step loans and purchase CPs from the end of March 2010 to the end of March 2011.<sup>134</sup>

Japan also continued to implement measures to enhance credit supply to firms.<sup>135</sup> It increases the funds available for emergency credits for SMEs from JPY 30 trillion to JPY 60 trillion and increases the volume of safety-net loans by government-affiliated financial institutions from JPY 17 trillion to JPY 21 trillion.

The state-backed Japan Bank for International Cooperation (JBIC) continued to implement temporary measures that provide Japanese companies operating abroad with loans and guarantees. JBIC provides domestic financial institutions with two-step five-year loans with a total volume of up to USD 3 billion.<sup>136</sup> Financial institutions are required to on-lend these funds to overseas Japanese SMEs, mid-tier firms and second-tier large corporations to further support firms governed by Japanese law by financing their overseas subsidiaries' business activities. The measures are planned to expire at the end of March 2010.

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<sup>134</sup> “*Emergency Economic Countermeasures for Future Growth and Security*”, Cabinet Decision, 8 December 2009.

<sup>135</sup> “*Emergency Economic Countermeasures for Future Growth and Security*”, Cabinet Decision, 8 December 2009.

<sup>136</sup> “*Public Invitation to Domestic Financial Institutions to Apply for Two-Step Loans Based on ‘Countermeasures to Address the Economic Crisis’*”, JBIC news release NR/2009-10, 26 May 2009.

## ***Korea***

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

None during reporting period.

#### *Measures regarding non-financial sectors*

Korea continued to operate its *Corporate Restructuring Fund*. The fund, which is administered by Korea Asset Management Corporation (KAMCO), is to purchase until 2014 non-performing loans from financial institutions as well as assets of the companies that undergo restructuring. The fund will purchase above mentioned loans and assets within the amount of KRW 10 trillion in 2010. The Fund disposes of up to KRW 40 trillion (USD 27 billion) through government-guaranteed bonds.

In November 2009, Korea Asset Management Corp. (KAMCO) expanded the ship purchase scheme and continued to purchase vessels from shipping companies. The shipping fund has been established through contributions from private investors and financial institutions as well as from the Restructuring Fund managed by KAMCO. The fund was initially established on 13 May 2009 as part of its efforts to facilitate restructuring of the shipping industry and began purchasing ships in July 2009.<sup>137</sup>

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<sup>137</sup> “*Restructuring Initiatives for Shipping Industry*”, Financial Services Commission Press release, 23 April 2009. A bill that will enable the Restructuring Fund to finance the programme was reviewed in Parliament in end of April 2009.

## *Latvia*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Latvia prolonged and continued to implement a guarantee scheme for banks in Latvia. The scheme was initially established on 22 December 2008 and has since been prolonged twice until 30 June 2010.<sup>138</sup> Under the scheme, banks incorporated in Latvia, including the Latvian subsidiaries of foreign banks, which are considered of importance for the financial stability of Latvia can apply for a State guarantee, which can cover new debt issuance and, exceptionally, existing loans. The total amount that can be guaranteed under the scheme is capped at 20% of GDP. Until 1 December 2009, no guarantee had been given under the scheme.

Latvia provided the Mortgage and Land Bank of Latvia (LHVB), a state-owned development and commercial bank, with two capital injections of a combined amount of LVL 72.29.<sup>139</sup> The recapitalisation aims at strengthening the LHVB's capital base of the development activities; the bank's residual commercial activities will be phased out by 31 December 2013.

#### *Measures regarding non-financial sectors*

Latvia continued to implement two schemes that it had established to assist companies – a national guarantee scheme<sup>140</sup> and a guarantee scheme to companies<sup>141</sup> – and slightly extended the scope of the latter scheme. Both schemes were initially established with a combined budget of LVL 600 million as part of a package of measures to support the economy.

In addition to the schemes, Latvia provided a EUR 89 million state guarantee to *JSC Liepājas Metalurģis*, a steel manufacturer of strategic importance for the Latvian economy, to enable it to continue the modernisation of its installations.<sup>142</sup>

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<sup>138</sup> European Commission decisions N638/2008, N326/2009 and N664/2009.

<sup>139</sup> European Commission decision NN60/2009.

<sup>140</sup> European Commission decision N139/2009.

<sup>141</sup> European Commission decisions N124/2009 and N506/2009.

<sup>142</sup> European Commission decision N670/2009.

## *Lithuania*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

None during reporting period.

#### *Measures regarding non-financial sectors*

Lithuania continued to implement its framework scheme and amended and extended the scope of the programme's beneficiaries.<sup>143</sup> The scheme was initially established in June 2009 and enables its authorities to provide guarantees to credit institutions for loans taken by SMEs and large enterprises until its expiry on 31 December 2010. The State owned limited liability company INVEGA implements the programme, and losses that arise from INVEGA's guarantees are covered by the national budget. An amendment of the scheme that entered into effect on 13 November 2009 broadens the scope of potential beneficiaries to include measures for diversification into non-agricultural activities and measure to support business creation.<sup>144</sup> The amendment also increases the initial budget of LTL 150 million by approximately LTL 196 million.

On 1 February 2010, Lithuania established a new temporary aid scheme to support access to finance for the agriculture sector.<sup>145</sup> It is limited until 31 December 2010.

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<sup>143</sup> European Commission decision N272/2009.

<sup>144</sup> European Commission decision N523/2009.

<sup>145</sup> European Commission decision N686/2009.

## **Luxembourg**

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Luxembourg, jointly with Belgium and France, extended a state guarantee to Dexia that the three countries provide since November 2008.<sup>146</sup>

#### *Measures regarding non-financial sectors*

Luxembourg continued to implement two aid schemes to support the real economy: Under the Temporary Aid Scheme for Economic Recovery (*Régime temporaire d'aides au redressement économique*)<sup>147</sup>, Luxembourg provides up to EUR 500,000 per undertaking to businesses likely to have a structural impact on the national or regional economy. The measure is scheduled to expire on 31 December 2010.

Under a second aid scheme, the Temporary Guarantee Scheme for Economic Recovery (*Régime temporaire de garanties en vue du redressement économique*)<sup>148</sup>, the government extends subsidised credit guarantees to enterprises that are registered and operating in Luxembourg, with the exception of financial sector enterprises. A total amount of EUR 500 million is available for this scheme that is likewise scheduled to expire on 31 December 2010 and that is expected to benefit no more than 50 enterprises.

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<sup>146</sup> More details on the measure are available in the section on Belgium in this report on p. 14.

<sup>147</sup> European Commission decision N99/2009.

<sup>148</sup> European Commission decision N128/2009.

***Mexico***

*Investment policy measures*

None during reporting period.

*Investment measures relating to national security*

None during reporting period.

*Emergency and related measures with potential impacts on international investment*

*Financial sector*

None during reporting period.

*Measures regarding non-financial sectors*

None during reporting period.

***Morocco***

*Investment policy measures*

None during reporting period.

*Investment measures relating to national security*

None during reporting period.

*Emergency and related measures with potential impacts on international investment*

*Financial sector*

None during reporting period.

*Measures regarding non-financial sectors*

None during reporting period.

## *Netherlands*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

The Netherlands prolonged until 30 June 2010 and continued to implement its guarantee scheme for the financial sector.<sup>149</sup> The scheme was initially established in October 2008 and make guarantees accessible to based in the Netherlands or having substantial operations in the country, including subsidiaries of foreign banks. The Dutch central bank assesses the applications of the individual banks. Participating banks must comply with certain conditions regarding corporate governance. The total volume of the guarantee scheme is EUR 200 billion.

On 18 November 2009, the restructuring plan that the Netherlands had developed for the Dutch-based financial institution ING received approval by the European Commission.<sup>150</sup> To offset the distortion of competitive conditions that the earlier state aid had triggered—the Dutch State had provided ING a EUR 10 billion capital injection, EUR 12 billion of liquidity guarantees as well as an illiquid asset back-up facility covering 80% of a portfolio of USD 39 billion—the restructuring plan requires among others that ING: reduce the risk profile and complexity of its operations; sell its insurance activities; and carve out *Westland Utrecht Hypotheekbank*, one of its business units.

As part of the process of restructuring ABN AMRO and Fortis Bank Nederland, the Netherlands provided an additional recapitalisation package of EUR 6.9 billion.<sup>151</sup>

#### *Measures regarding non-financial sectors*

The Dutch government continued to implement its framework scheme for limited amounts of aid.<sup>152</sup> The scheme, which initially entered into effect on 1 April 2009, allows the provision of grants, interest rate subsidies, loans and public guarantees to SMEs or large companies. The aid can be granted in a decentralised way by authorities at national, regional and local level until 31 December 2010. The Netherlands estimate that between 50 and 100 companies would benefit from the scheme.

On 2 December 2009, the Netherlands introduced a new temporary aid scheme to support access to finance for undertakings in primary production of agricultural products.<sup>153</sup> Under the scheme, the Minister of Agriculture, Nature and Food Quality can provide working capital guarantees. The budget for this measure is capped at EUR 2.81 million.

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<sup>149</sup> European Commission decisions N669/2009, N524/2008 and N379/2009.

<sup>150</sup> European Commission decisions C10/2009 and N627/2009.

<sup>151</sup> European Commission decisions NN2/2010, N19/2010 and C11/2009, and European Commission press release IP/10/138.

<sup>152</sup> European Commission decision N156/2009.

<sup>153</sup> European Commission decision N611/2009.



## *New Zealand*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

New Zealand continued to operate its Wholesale Funding Guarantee Scheme that was initially established on 1 November 2008.<sup>154</sup> The scheme is available to financial institutions that have substantial New Zealand borrowing and lending and have an investment grade credit rating. Branches of foreign banks are eligible for the scheme, but only in respect of their New Zealand dollar issuance. The facility operates on an opt-in basis, by institution and by instrument. Guarantees are provided for a fee that depends on the riskiness of the issuer and the term of the security being guaranteed.

#### *Measures regarding non-financial sectors*

None during reporting period.

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<sup>154</sup> “Memorandum for Cabinet: Crown Wholesale Guarantee Facility: Implementing and Monitoring the Scheme”, Minister of Finance, 4 November 2008.

## *Norway*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Norway's State Finance Fund ended accepting applications for recapitalisation measures on 30 September 2009. The State Finance Fund became operational on 15 May 2009 to strengthen the capital ratios of Norwegian banks.<sup>155</sup> Norwegian banks, including those owned by foreign banks, were allowed to apply for a state capital injection from the *Statens finansfond*, the body that administers the recapitalisation scheme on behalf of the Norwegian State. *Statens finansfond* is equipped with a capital of NOK 50 billion. The specific terms and conditions attached to the recapitalisation measures were determined in individual agreements between the Fund and the individual banks.

#### *Measures regarding non-financial sectors*

Norway continued to implement its temporary aid scheme under which compatible aid of up to EUR 500,000 per firm may be granted until 31 December 2010 to businesses facing funding problems.<sup>156</sup> The aid can be provided as direct grants, reimbursable grants, interest rate subsidies and subsidised public loans and public guarantees. The scheme is administered by Innovation Norway.

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<sup>155</sup> “Regulations relating to the Norwegian State Finance Fund” were laid down on 8 May 2009. EFTA Surveillance Authority decision no. 205/09/COL. “Norway presents new measures for industry and households”, Government press release 17/2009, published 8 February 2009.

<sup>156</sup> The scheme initially entered into effect on 20 May 2009. EFTA Surveillance Authority decision 235/09/COL.

***Peru***

*Investment policy measures*

None during reporting period.

*Investment measures relating to national security*

None during reporting period.

*Emergency and related measures with potential impacts on international investment*

*Financial sector*

None during reporting period.

*Measures regarding non-financial sectors*

None during reporting period.

## *Poland*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Poland introduced two new schemes for the financial sector with a combined budget of up to PLN 40 billion in 2009:

- On 25 September 2009, Poland introduced a temporary liquidity support scheme for banks and prolonged the scheme shortly afterwards until 30 June 2010.<sup>157</sup> The support scheme seeks to address the short- and medium-term financing needs of financial institutions established in Poland through State Treasury Guarantees and State Treasury bonds-related support measures.
- On 21 December 2009, a recapitalisation scheme for banks and insurance companies in Poland came into effect.<sup>158</sup> The scheme is open to all banks or insurance companies established in Poland, including foreign-owned institutions. Institutions that wish to take advantage of the scheme need to express this in a remedial plan that must be approved by the Polish supervisory authority, *Komisja Nadzoru Finansowego*. Subject to the approval of its remedial plan, financial institution can obtain a State Treasury's underwriting guarantee for planned capital increases. The State guarantee is only triggered if existing shareholders or third parties do not take up the whole or parts of the issue.

#### *Measures regarding non-financial sectors*

Poland continued to implement its scheme for granting limited amounts of aid that had come into effect on 17 August 2009.<sup>159</sup> Under the scheme, enterprises may obtain aid of up to EUR 500,000 in 2009 and 2010 combined. The aid may be granted either as direct grants or as debt relief in cases where the enterprise is indebted towards the bodies that implement the Polish social security system. The scheme is implemented by the Fund of Guaranteed Transfers for the Employees, one of the institutions associated with the implementation of Poland's social security system. The Polish authorities estimate an overall aid volume of up to PLN 1,020 million.

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<sup>157</sup> European Commission decisions N658/2009 and N208/2009.

<sup>158</sup> European Commission decision N302/2009.

<sup>159</sup> European Commission decision N408/2009.

## ***Portugal***

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Portugal prolonged until 30 June 2010 and continued to implement its guarantee and recapitalisation schemes.<sup>160</sup> The guarantee scheme for credit institutions had initially been introduced on 29 October 2008. Credit institutions that are incorporated in Portugal, including subsidiaries of foreign banks, are eligible to participate in the guarantee scheme. The Portuguese government estimates that between 50 and 100 credit institutions are eligible.

The recapitalisation scheme has been introduced on 20 May 2009<sup>161</sup> and allows any credit institution with a registered office in Portugal to apply for recapitalisation independently of its financial soundness. However, access to the scheme is restricted to institutions that have submitted an application to the Portuguese Central Bank and that set out a plan for strengthening the respective institution's own capital.

The overall combined budget allocated to the two schemes is EUR 20 billion, whereas commitments for the recapitalisation scheme may not exceed EUR 3 billion, down from EUR 4 billion earlier. For the year 2010, the overall budget of the guarantee scheme is set at EUR 9.1462 billion.

#### *Measures regarding non-financial sectors*

Portugal continued to implement its aid scheme that allows the allocation of limited amounts to companies of any size in 2009 and 2010.<sup>162</sup> The scheme came into effect on 19 January 2009 and permits authorities at central, regional and local levels to grant direct grants, reimbursable grants, interest rate subsidies, subsidized public loans and public guarantees. The aid per undertaking may not exceed EUR 500,000 in 2009 and 2010 combined. The total aid amount available under this scheme is estimated at EUR 750 million.

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<sup>160</sup> European Commission decisions N51/2010 and NN60/2008. Domestically, the scheme is based on *Law n° 60-A/2008* of 20 October 2008 and its implementing provision *Portaria n° 1219-A/2008* of 23 October 2008.

<sup>161</sup> European Commission decision N556/2008.

<sup>162</sup> European Commission decision N13/2009.

## **Romania**

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

None during reporting period.

#### *Measures regarding non-financial sectors*

Romania continued to implement a temporary framework scheme, under which companies of any size can obtain aid in the form of subsidised guarantees for investment and working capital loans.<sup>163</sup> The scheme initially entered into effect on 5 May 2009 and is scheduled to expire on 31 December 2010. The guarantees are provided by the state-owned Export-Import Bank of Romania on loans provided by commercial banks to undertakings on behalf of the Romanian State. Guarantees may cover up to 90% of the loans. The Romanian authorities estimate that the guaranteed amount of loans will not exceed RON 450 million and the aid amount will not exceed RON 20.34 million in the period 2009-2010.

Romania also continued to implement a rescue aid scheme for companies in state ownership, i.e. companies that are part of the portfolios of the Authority for State Assets Recovery (AVAS) or the Ministry of Economy. The scheme entered into effect on 4 May 2009.<sup>164</sup> Up to an estimated 50 SMEs, which are located in Romanian regions eligible for regional aid under EU rules, may obtain loans for a period of up to six months.

On 3 December 2009, Romania introduced a framework scheme for limited amounts of aid.<sup>165</sup> The scheme allows authorities at national, regional, and local level to provide to SMEs and large companies, including cooperatives aid, in particular, in the form of direct grants, interest rate subsidies, subsidised public loans, public guarantees, rescheduled public debt or waiving of interest rates. The value of the aid may not exceed EUR 500,000 per undertaking until the expiry of the scheme on 31 December 2010. The Romanian authorities estimate that over 1000 firms will benefit from the scheme. Its overall budget is estimated at RON 950 million.

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<sup>163</sup> European Commission decision N286/2009.

<sup>164</sup> European Commission decision N129/2009.

<sup>165</sup> European Commission decision N547/2009.

## ***Russian Federation***

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

None in the reporting period.

#### *Measures regarding non-financial sectors*

On 30 December 2009 the Russian Government issued its Anti-Crisis guidelines for 2010.<sup>166</sup> The guidelines stipulate that the anti-crisis measures adopted in the Russian Government's Anti-Crisis Programme for 2009 will continue to be implemented throughout 2010 and new measures will be approved as necessary. The Anti-Crisis guidelines allocate RUB 195 billion to the implementation of the measures.

Russia continues to implement a number of measures to support domestic automotive companies.<sup>167</sup> Some of these measures were announced as part of the 2009 Anti-Crisis Programme and are extended through 2010. They include interest rate subsidies, including loans taken by car manufacturers for modernisation (RUB 2.5 billion).

Certain anti-crisis measures adopted in the Russian Government's Anti-Crisis Programme for 2009 are continued to be implemented throughout 2010 according to Anti-Crisis guidelines for 2010.<sup>168</sup> For the real economy, these measures include notably support to “backbone” organisations, i.e. companies that have important impacts on the Russian economy and that are eligible for state support measures.<sup>169</sup> An Interdepartmental Working Group allocates support in the form of capital injections, direct state support and state guarantees of loans to the 295 enterprises designated by the Government Commission on Sustained Economic Development as backbone organisations.<sup>170</sup>

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<sup>166</sup> “*The Anti-Crisis Guidelines of the Government of the Russian Federation for 2010*”, Protocol No. 42 of Russian Government meeting dated 30 December 2009. “*Russian Government's Anti-Crisis Programme for 2009*”, 9 June 2009.

<sup>167</sup> “*Anti-Crisis Programme of the Government of the Russian Federation for 2009*”, Section 3 and Appendix item no. 2.2.2.8.

<sup>168</sup> “*The Anti-Crisis Guidelines of the Government of the Russian Federation for 2010*”, Protocol No. 42 of Russian Government meeting, dated December 30, 2009.

<sup>169</sup> “*Anti-Crisis Programme of the Government of the Russian Federation for 2009*”, Section 3.

<sup>170</sup> “*Anti-Crisis Programme of the Government of the Russian Federation for 2009*”, Section 4.1.

***Saudi Arabia***

*Investment policy measures*

None during reporting period.

*Investment measures relating to national security*

None during reporting period.

*Emergency and related measures with potential impacts on international investment*

*Financial sector*

None during reporting period.

*Measures regarding non-financial sectors*

None during reporting period.



## ***Slovak Republic***

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

On 8 December 2009, Slovakia introduced a recapitalisation and guarantee scheme for financial institutions.<sup>171</sup> Systemically relevant banks incorporated in Slovakia, including subsidiaries of foreign financial institutions can receive aid under the scheme, regardless of whether they are deemed to be fundamentally sound or distressed. Capital injections and guarantees can be granted repeatedly and concurrently, and financial institutions that benefit from aid are subject to behavioural constraints. Under the scheme's recapitalisation component, the Finance Ministry may make a capital contribution to the registered capital of the bank. Details are set out in individual agreements concluded between the Ministry of Finance and the respective beneficiary banks. The recapitalisation scheme has a total budget of EUR 664 million, half of which can be used in 2009 and 2010, respectively). Under the guarantee component of the scheme, financial institutions may obtain a guarantee for newly issued bonds and loans against a fee.

#### *Measures regarding non-financial sectors*

On 5 November 2009, the Slovak Parliament passed the Act on Certain Measures Regarding Strategic Companies.<sup>172</sup> The law accords the State a pre-emptive right of to acquire assets of certain "strategic" companies when these slip into serious economic difficulties. "Strategic" companies are those that have considerable importance in the sphere of energy, waterworks, sewerage or water treatment facilities or that have more than 500 employees, that are important for health protection, state security and the overall performance of economy and that are declared strategic by the government. According to the sponsors of the legislation, its purpose is to preserve jobs in companies threatened by the crisis. The mechanism applies until 31 December 2010. The state would remain owner and operate these companies until a new owner has been identified by public tender to continue its operation.

In early December 2009, the Slovak government declared *Novácke chemické závody*, a bankrupt chemicals firm that employs 1,700 workers, a strategic company and expressed its intention to take over the firm under the new Act.

Slovakia extended and continued to implement its scheme for the granting of small amounts of aid.<sup>173</sup> The scheme, which initially entered into effect on 29 April 2009, allows authorities at national, regional, and local level to grant SMEs and large firms limited amounts of aid (up to EUR 500,000 per undertaking for 2009 and 2010 combined). The aid can be provided in various forms, including as direct grants, non-reimbursable grants and remission of penalties for non payment of taxes etc. The amendment that came into effect on 2 February 2010 expands the forms of aid that can be granted; they henceforth include remission of debts that firms may have at public creditors (e.g., tax authorities, health insurance, social

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<sup>171</sup> European Commission decision N392/2009.

<sup>172</sup> The law was signed on 26 November 2009.

<sup>173</sup> European Commission decisions N711/2009 and N222/2009.

insurance authorities, municipalities, etc.). The Slovak authorities estimate that aid worth not more than EUR 400 million will be granted under the scheme until its expiry on 31 December 2010.

On 21 December 2009, Slovakia introduced a new temporary aid scheme to support access to finance for undertakings in primary agricultural production.<sup>174</sup>

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<sup>174</sup> European Commission decision N707/2009.

## *Slovenia*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Slovenia prolonged and continued to implement its two support schemes for the financial sector.

- Slovenia prolonged its bank guarantee scheme until 30 June 2010 and continued its implementation.<sup>175</sup> Under the scheme, which was initially introduced on 12 December 2008, allows Slovenian authorities to guarantee up to EUR 12 billion of debt issued by financial institutions that are incorporated in Slovenia, including Slovenian subsidiaries of foreign financial institutions. By the end of 2009, Slovenian authorities had granted guarantees to two banks for the issuance of bonds for a total volume of EUR 2 billion.
- Slovenia also prolonged its liquidity scheme for the financial sector until 19 April 2010 and continued its implementation.<sup>176</sup> Under the scheme, which initially entered into effect on 20 March 2009, the Slovenian state provides short and medium term non-subordinated debt for one to three years.

The overall budget of the two schemes is capped at EUR 12 billion. Institutions that participate in the scheme are subject to behavioural commitments, including limitations on expansion and conditions for staff remuneration or bonus payments.

#### *Measures regarding non-financial sectors*

Slovenia also continued to implement three schemes to support the real economy. These schemes include:

- a national risk capital scheme to respond to the unavailability of risk capital investments into start-ups and small and medium-sized enterprises.<sup>177</sup> The measure will run initially until end 2013 and dispose of a total budget of EUR 35.05 million;
- a scheme for subsidised state guarantees for investment and working capital loans concluded by 31 December 2010;<sup>178</sup> and
- a temporary aid scheme for granting limited amounts of compatible aid.<sup>179</sup>

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<sup>175</sup> European Commission decisions N651/2009, N331/2009 and N531/2008

<sup>176</sup> European Commission decisions N510/2009 and N637/2008.

<sup>177</sup> European Commission decision N201/2008.

<sup>178</sup> European Commission decision NN34/2009.

<sup>179</sup> European Commission decision N228/2009.

## *South Africa*

### *Investment policy measures*

On 27 October 2009, the Minister of Finance announced a series of measures to liberalise inward and outward capital flows.<sup>180</sup> The new policy: increased the rand thresholds applicable to outward direct investments by South African companies;<sup>181</sup> removes some restrictions on rand conversion of export proceeds and advance payments for imports; and increases in foreign capital allowances for resident individuals. Further relaxations of the approvals required for investing in Southern African Development Community (SADC) countries were announced.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

None during reporting period.

#### *Measures regarding non-financial sectors*

South Africa continued to provide assistance to companies in distress through the Industrial Development Corporation (IDC), a state-owned development finance institution. Over two years, ZAR 6.1 billion are available to address the challenges of access to credit and working capital for firms in distress due directly to the crisis; companies that do not offer the prospect of long-term viability are not eligible. At the end of September 2009, IDC had received 33 applications to the total value of ZAR 2.3 billion; about ZAR 1.5 billion concerned a few large applications in the automotive industry.<sup>182</sup>

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<sup>180</sup> “Medium Term Budget Policy Statement 2009” and “Exchange Control Circular No. 13/2009: Statement on Exchange Control”, dated 27 October 2009.

<sup>181</sup> “Guidelines to Authorised Dealers in respect of genuine new foreign direct investments of up to R 500 million per company per calendar year”, Exchange control department, South African Reserve Bank, 27 October 2009.

<sup>182</sup> IDC Presentation to Parliamentary Committee on Economic Development dated 13 October 2009.

## *Spain*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Spain prolonged until 30 June 2010 its bank guarantee scheme and continued its implementation.<sup>183</sup> The scheme initially entered into effect on 23 December 2008. It allows the provision of public guarantees for certain debt instruments of credit institutions, consolidated groups of credit institutions and pools of credit institutions, including subsidiaries of foreign credit institutions. The Scheme provides for State guarantees covering new issuance of debt instruments up to an amount of EUR 164 billion. As of 16 November 2009, thirty-nine financial institutions had issued debt instruments under the scheme for a total of EUR 45 billion.

On 28 January 2010, Spain introduced a temporary scheme for the recapitalisation of the Spanish banking sector.<sup>184</sup> The scheme, which is valid until 30 June 2010 authorises the *Fondo de Reestructuración Ordenada Bancaria*, a distinct legal entity, to acquire convertible preference shares from credit institutions to assist in their consolidation. The *Fondo* disposes of EUR 9 billion that are contributed by the State Budget and by the Deposit Guarantee Funds of commercial banks, savings banks and credit cooperatives. The *Fondo* may also resort to outside funding to finance its activities. Spain indicated that both fundamentally and non-fundamentally sound credit institutions are eligible under the Scheme. Institutions that apply for guarantees need to draw up a plan towards increased efficiency and solvability that needs to be approved by the Bank of Spain; institutions are also subject to special behavioural safeguards.

Spain discontinued the operation of the *Fund for the Acquisition of Financial Assets* (FAAF) on 31 December 2009; the mechanism had been prolonged once until this date.<sup>185</sup> The FAAF disposed of an allocation of EUR 43.25 billion to purchase assets from financial institution permanently established in Spain in reverse auctions.<sup>186</sup> FAAF is administered, managed and led by the Spanish Ministry of Economy and Finance.

#### *Measures regarding non-financial sectors*

Spain continued to implement its temporary aid scheme for granting limited amounts of compatible aid (i.e. up to EUR 500,000 per undertaking for 2009 and 2010 combined) to companies of all sizes.<sup>187</sup> The Spanish authorities estimate that the overall volume of aid under this scheme would be EUR 1.4 billion.

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<sup>183</sup> European Commission decisions N588/2009, NN54b/2008 and N336/2009.

<sup>184</sup> European Commission decision N28/2010.

<sup>185</sup> European Commission decisions N337/2009 and NN54a/2008.

<sup>186</sup> The results and beneficiaries of the auctions are documented on the FAAF website.

<sup>187</sup> European Commission decision N307/2009.

## *Sweden*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Sweden prolonged its bank guarantee scheme until 30 April 2010 and continued its implementation.<sup>188</sup> The guarantee scheme, initially established on 30 October 2008, authorises the National Debt Office to issue guarantees up to a maximum of SEK 1500 billion until 30 April 2010. Under the scheme, eligible institutions – banks and mortgage institutions incorporated and operating in Sweden, including Swedish subsidiaries of foreign institutions – may enter into an agreement with the state which in turn guarantees the institutions' new issuance of senior debt in exchange for a fee.

Sweden also prolonged its bank recapitalisation scheme until 17 February 2010 and continued its implementation.<sup>189</sup> Under the scheme, which initially became effective on 10 February 2009, Sweden can provide capital to eligible banks on equal terms with private investors, on the condition that at least 30% of the investment is made by private investors. SEK 50 billion of public funds are available for the scheme. By mid-2009, the Swedish Government has participated in the rights issue of only one bank, *Nordea Bank AB*. The government investment of approximately EUR 515 million was limited to maintaining the Sweden's pre-existing pro rata ownership share in *Nordea* (19.9%).

#### *Measures regarding non-financial sectors*

On 8 February 2010, Sweden guaranteed a EUR 400 million loan from the EIB to *Saab Automobile AB*.<sup>190</sup> The loan was taken to co-finance Saab's business plan in the light of its sale by General Motors, its previous owner, to Dutch carmaker *Spyker Cars N.V.*

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<sup>188</sup> European Commission decisions N544/2009, N154/2009, N26/2009 and N533/2008.

<sup>189</sup> European Commission decisions N436/2009 and N69/2009.

<sup>190</sup> European Commission decision N541/2009 and European Commission press release IP/10/139.

***Switzerland***

*Investment policy measures*

None during reporting period.

*Investment measures relating to national security*

None during reporting period.

*Emergency and related measures with potential impacts on international investment*

*Financial sector*

None during reporting period.

*Measures regarding non-financial sectors*

None during reporting period.

***Turkey***

*Investment policy measures*

None during reporting period.

*Investment measures relating to national security*

None during reporting period.

*Emergency and related measures with potential impacts on international investment*

*Financial sector*

None during reporting period.

*Measures regarding non-financial sectors*

None during reporting period.



## ***United Kingdom***

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

The UK prolonged and continued to operate the Government Credit Guarantee Scheme (CGS) as well as the recapitalisation scheme; the schemes initially came into force in October 2008, were modified in December 2008 and were prolonged in April and December 2009 until 28 February 2010.<sup>191</sup> UK-incorporated financial institutions, including subsidiaries of foreign institutions with substantial business in the UK, are eligible for the scheme. The limit on guarantees is set to GBP 250 billion, and GBP 50 billion were initially set aside for recapitalisation.

The UK phased out the Asset Backed Securities guarantee scheme on 31 December 2009. At the time of its inception in April 2009, the scheme was conceived to restart securitisation in the UK and offered a government guarantee for residential mortgage-backed securities. UK incorporated banks, including UK subsidiaries of foreign institutions, that have a substantial business in the UK and building societies were eligible for this scheme.<sup>192</sup> The scheme was prolonged in October 2009 until the end of 2009. No bonds were issued under this scheme.

The British government continued to prepare unwinding financial positions it had taken in banks as the financial crisis unfolded. Restructuring of these banks—Northern Rock, Lloyds HSOB, Royal Bank of Scotland, and Bradford&Bingley—, which had come under state ownership following significant state support seeks to transform the banks into smaller, viable banks that will be privatised after separation and liquidation of impaired assets.

- Northern Rock, which had received government support measures including recapitalisation measures of up to GBP 3 billion, liquidity measures of up to GBP 27 billion and guarantees covering several billion GBP, was split into two separate companies on 1 January 2010, both still held in Government ownership.<sup>193</sup> The operational part, Northern Rock plc, will eventually be sold to a third party, while Northern Rock (Asset Management) plc, a “bad” bank holding illiquid assets, will run down past loans and eventually be liquidated.
- Restructuring of Lloyds HBOS also progressed: On 18 November 2009, the restructuring plan for the bank that the UK Government had presented received approval from the European Commission.<sup>194</sup> The restructuring plan requires among others that Lloyds HBOS: exit riskier and more volatile lending activities and sell branches and sections of its operations.

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<sup>191</sup> European Commission decisions N677/2009, N507/2008, N650/2008, N193/2009 and N537/2009.

<sup>192</sup> European Commission decision N550/2009 and N232/2009.

<sup>193</sup> European Commission approval of the restructuring plan submitted by the British Government on 28 October 2009, European Commission press release IP/09/1600.

<sup>194</sup> European Commission decision N428/2009.

- Restructuring of Royal Bank of Scotland (RBS) moved forward with the approvals by the European Commission of an impaired asset relief measure and the restructuring plan of Royal Bank of Scotland on 14 December 2009.<sup>195</sup> Under the plan, RBS is obliged to divest parts of its business such as its insurance, transaction management and commodity trading operations, and 300 branches.
- Restructuring of Bradford&Bingley advanced as well: On 25 January 2010, the European Commission approved liquidation aid for the bank that had been split, partly sold and liquidated in September 2008.<sup>196</sup>
- On 25 January 2010, the European Commission also approved the restructuring of the Dunfermline Building Society.<sup>197</sup> The restructuring will split-up of Dunfermline; the part maintaining the “good” assets and liabilities was sold in an auction to a competitor with a financial contribution by the UK of over GBP 1.5 billion. The part containing the impaired assets was put into administration.

#### *Measures regarding non-financial sectors*

The British Government continued to implement its four temporary framework schemes that it had established to support the real economy manage the consequences of the crisis until 31 December 2010. These include schemes for granting subsidised public loans,<sup>198</sup> for granting loan guarantees<sup>199</sup> and a scheme providing for interest rate subsidies for investment loans for the production of “green” products (i.e. products that already comply with future EU environmental standards).<sup>200</sup> The overall budget for the three schemes combined is GBP 8 billion. The fourth framework scheme, which allows the provision of direct grants, reimbursable grants, interest rate subsidies, and subsidised public loans in 2009 and 2010 combined, has a separate budget envelope of up to GBP 1 billion.<sup>201</sup> The schemes are administered at country, regional, and local levels. UK authorities estimate that the number of beneficiaries of the schemes will exceed 1,000 firms.

The British Government also continued to implement the temporary Working Capital Guarantee Scheme. Under this scheme, the UK offers banks up to a total of GBP 10 billion of guarantees in respect of portfolios of working capital loans to sound, credit-worthy companies.<sup>202</sup> Extensions of guaranteed loans are only allowed until 31 March 2010 and the government guarantees under the scheme expire on 31 March 2011 at the latest.

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<sup>195</sup> European Commission decisions N422/2009 and N621/2009, EC press release IP/09/1915.

<sup>196</sup> European Commission decisions N194/2009 and NN41/08.

<sup>197</sup> European Commission decision NN19/2009 and European Commission press release IP/10/48.

<sup>198</sup> European Commission decisions N257/2009 and N460/2009.

<sup>199</sup> European Commission decision N71/2009.

<sup>200</sup> European Commission decision N72/2009.

<sup>201</sup> European Commission decision N43/2009.

<sup>202</sup> European Commission decision N111/2009.

## *United States*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*<sup>203</sup>

#### *Financial sector*

The Troubled Assets Relief Program or TARP was established pursuant to the Emergency Economic Stabilization Act of 2008 (EESA). On 9 December 2009, the Treasury Secretary certified the extension of TARP authority until 3 October 2010 and defined a strategy for exit from the programme, including re-focusing banking support on smaller and community banks. It is expected that the total commitments under the program will not exceed USD 550 billion of the USD 700 billion authorized.

Key developments that took place under Treasury's programmes during the reporting period include:<sup>204</sup>

- In September 2009, seven banks repaid USD 404 million of Treasury investments under the Capital Purchase Program (CPP; a programme designed to strengthen the capital bases of banks that are supervised and regulated on a consolidated basis by a US supervisor and regulator). The Treasury made new investments in 14 banks totalling USD 140.81 million. Negotiations were terminated with Bank of America concerning the asset guarantee arrangement announced in January 2009. In connection with that termination and in recognition of the benefits provided by entering into the term sheet for such arrangement, Bank of America paid the U.S. government USD 425 million.
- In October 2009, three banks repaid USD 88.4 million of Treasury investments under the CPP. Treasury made new investments in 6 banks totalling USD 58.27 million in October 2009.
- In November 2009, nine banks repaid USD 228.62 million of Treasury investments under the Capital Purchase Program. Treasury announced it would conduct public offerings to sell its warrant positions in Capital One Financial Corporation, JP Morgan Chase & Co., and TCF Financial Corporation. Treasury closed the Capital Assistance Program. Of the 19 banks that participated in the Program, 18 demonstrated no need for additional capital or fulfilled their needs in the private market. GMAC is the only financial institution that was not able to raise sufficient capital.
- In December 2009, twelve banks repaid USD 51 billion of Treasury's investments under the CPP. In addition, Bank of America redeemed USD 20 billion of preferred stock, and Citigroup repurchased USD 20 billion of trust preferred securities, ending the Targeted Investment Program (TIP, which makes investments in institutions that are critical to the functioning of the financial system). The Treasury, the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve

<sup>203</sup> [www.financialstability.gov](http://www.financialstability.gov); see, in particular, "*Quarterly Report to Congress pursuant to section 104(g) of the Emergency Economic Stabilization Act of 2008 For the quarter ending 31 March 2009*".

<sup>204</sup> From the monthly reports to the US Congress pursuant to Section 105(a) of the Emergency Economic Stabilization Act of 2008 for September 2009-January 2010, available at [www.financialstability.gov](http://www.financialstability.gov).

Bank of New York and Citigroup agreed to terminate the loss-sharing agreement with Citigroup that covered a pool of originally USD 301 billion in assets. No losses were incurred under the program, and Treasury and the FDIC retain USD 5.2 billion of trust preferred securities of Citigroup, as well as warrants. Treasury commenced public auctions of warrants issued by CPP participants and raised a total of approximately USD 1.1 billion. The warrants sold were issued by Capital One Financial Corporation, JP Morgan Chase&Co. and TCF Financial Corporation. Treasury made final CPP investments in 37 small banks totalling USD 180.14 million. Treasury completed an additional capital investment of USD 3.8 billion in GMAC and converted a portion of Treasury's existing investment to common stock and mandatorily convertible preferred stock.

On 24 December 2009, the U.S. Treasury announced<sup>205</sup> its decision to terminate, at the end of 2009, several initiatives taken under the 2008 Housing and Economic Recovery Act, which empowered the Treasury to take steps to stabilize and support housing finance markets. In addition, the Treasury made changes to the Preferred Stock Purchase Agreements (PSPAs) for Fannie Mae and Freddie Mac. These agreements aim to ensure that each firm maintains a positive net worth. Treasury has amended them to allow the cap on Treasury's funding commitment under the agreements to increase as necessary to accommodate any cumulative reduction in net worth over the next three years. At the conclusion of the three year period, the remaining commitment will be fully available to be drawn per the terms of the agreements. Neither firm is near the limit originally established under the PSPAs, set at USD 200 billion per institution. Total funding provided under these agreements through the third quarter of 2009 has been USD 51 billion to Freddie Mac and USD 60 billion to Fannie Mae. According to the Treasury announcement, the changes seek to remove any uncertainty about the Treasury's commitment to support the two firms.

#### *Measures regarding non-financial sectors*

On 18 December 2009, GM began repaying loans that the company had received from the U.S., Canadian and Ontario governments.<sup>206</sup> In a first instalment, the company paid USD 1 billion to the U.S. Treasury and USD 192 million to Export Development Canada (EDC) and announced its intention to reimburse the full amount by June 2010. The repayments were made on the outstanding USD 6.7 billion owed to the US Treasury and USD 1.4 billion owed to EDC. The US Government holds a majority stake in GM after it had converted, on 10 July 2009, loans it had earlier provided to GM to 60.8 percent of equity in the New GM, loans in the amount of USD 7.1 billion, and USD 2.1 billion in preferred stock.

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<sup>205</sup> "Treasury issues update on status of support for housing programs", Treasury news release, 2009-12-25-15-34-2543, 24 December 2009.

<sup>206</sup> "GM to begin repaying federal loans in December ahead of schedule", GM press report, 16 November 2009. "GM makes first payment on government loans", GM press report, 18 December 2009.

## *European Union*

### *Investment policy measures*

With the entry into force of the Lisbon treaty on 1 December 2009, the European Union acquired the exclusive competence of foreign direct investment under the Union's common commercial policy.<sup>207</sup>

On 17 December 2009, the EU and Canada signed the Canada–EU Air Transport Agreement.<sup>208</sup>

### *Emergency and related measures with potential impacts on international investment*

The European Union (EU) limits and controls Member States' aid to industries or individual companies under the EU competition policy framework of the Common Market as set out in articles 107-109 TFEU (previously articles 87-89 of the TEC). This regime seeks to avoid distortions of competition that could result from State aid intervening in the economy. The specific situation of the financial crisis and its impact on the real economy has led the European Commission (EC) to temporarily adapt the EU State aid policies in order to enhance Member States' flexibility for their response to the crisis. These modifications concerned first the financial sector – from autumn 2008 onwards – and, subsequently, from December 2008 on, the real economy.

#### *Financial sector*

The European Commission continued to review guarantee and recapitalisation schemes that EU-member states notified or re-notified to the Commission. As set out in its earlier Communications,<sup>209</sup> the Commission's approval of such schemes is limited to 6 months, requiring EU-member states to re-notify the schemes periodically if they wished to extend them. This requirement enables the Commission to ensure consistency and effectiveness; impose adjustment to the schemes, in particular in light of issues raised by Member states or other parties; and eventually withdraw approval of state aid once conditions that warranted them have abated.<sup>210</sup> The regular reviews of the schemes that are publicly available and include an assessment of the operation and application of the schemes.<sup>211</sup>

In the reporting period, the European Commission also initiated a series of formal investigation procedures that imply a thorough review of the compatibility of the overall support that individual financial institutions had received with the restrictions imposed on state aid.<sup>212</sup> The reviews constitute an element of the framework in place to control and limit discrimination of competitors and distortion of market conditions.

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<sup>207</sup> Article 207 Treaty on the Functioning of the European Union (TFEU).

<sup>208</sup> For detailed information refer to the entry in the report on Canada above.

<sup>209</sup> *Communication from the Commission - The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis*, OJ C270, 25 October 2008, p. 8; *Communication from the Commission—the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition*, OJ C 10, 15 January 2009, p. 2; *Communication from the Commission on the treatment of impaired assets in the Community banking sector*, OJ C72, 26 March 2009, p. 1.

<sup>210</sup> Additional information on the prolongation and revision process is available in the *DG Competition's review of guarantee and recapitalisation schemes in the financial sector in the current crisis*, p. 2.

<sup>211</sup> The Commission's decisions are available on the European Commission's State aid website and referenced in the present document.

<sup>212</sup> The cases are mentioned in the respective country reports in the present document.

The European Commission also began approving restructuring plans of financial institutions that had received emergency state aid earlier during the crisis. The Commission had made the approval of some emergency measures (recapitalisation and impaired asset measures) conditional upon the presentation of restructuring plans within 6 months.<sup>213</sup> These plans must require that the concerned financial institutions pay a significant proportion of the restructuring costs, restore their long-term commercial viability, and tackle the distortions of competition that result from the state aid. To compensate the distortions of competition, the financial institutions are required to divest part of their businesses. During the reporting period, restructuring plans were approved among others for Lloyds HBOS, Royal Bank of Scotland, ING, KBC, and Bradford&Bingley.

In December 2009, the Council of the European Union agreed on common principles adopted *Conclusions on Exit Strategies for the Financial Sector*.<sup>214</sup> The document formulates agreed principles for the design of exit strategies and unwinding financial support schemes by EU-member states that are planned to start in 2011 at the latest.

#### *Measures regarding non-financial sectors*

The European Commission also continued to assess the compliance of member governments' support to the real economy with the state aid and internal market rules. Benchmark for assessment continue to be the standards that the European Commission set out in its *Temporary Community Framework for State aid measures to support access to finance in the current financial and economic crisis*. The framework was initially adopted on 17 December 2008 and slightly amended on 25 February 2009, 28 October 2009 and on 8 December 2009,<sup>215</sup> and is applicable from the day of its adoption until 31 December 2010. This Framework temporarily relaxes State aid restrictions based on article 107(3)(b) TFEU (formerly article 87 EU-treaty).

Among other goals, the control of measures under the framework seeks to ensure that state interventions in restructuring deals were not dependent on commitments concerning the location of production within the EU. In this regard, the EC requested, in the case of the planned sale of automaker Opel by GM, a written assurance by the German authorities that state aid offered by the German government would be available to any investor provided the investor contributed at least 10 per cent of financing. The EC made this request in light of concerns that aid promised by the German Government to New Opel was subject to the pre-condition that a specific bidder, Magna/Sberbank, was selected to acquire a majority of the shares in New Opel.<sup>216</sup>

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<sup>213</sup> *Communication from the Commission on the treatment of impaired assets in the Community banking sector*, OJ C72, 26 March 2009, p. 1; paragraph 55 of this communication

<sup>214</sup> Conclusions of the Council of the European Union (document EUCO6/09 dated 11 December 2009), paragraphs 9-11, referring to the Conclusions of the Council of the European Union (ECOFIN) (document 17066/09 dated 3 December 2009). *Commission communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules*, OJ C 195, 19 August 2009.

<sup>215</sup> *Communication from the Commission—Temporary framework for State aid measures to support access to finance in the current financial and economic crisis* (2009/C16/01), adopted on 17 December 2008, OJ of 22 January 2009. A consolidated version, taking into account amendments adopted on 25 February 2009 (*Communication from the Commission—Amendment of the Temporary framework for State aid measures to support access to finance in the current financial and economic crisis, and applicable from 25 February 2009 onwards*) was published in OJ C83 of 7 April 2009. The amendment of October 2009 concerned aid to the agricultural sector and the amendment of December 2009 was a technical modification to take into account the situation of Member States with low labour costs

<sup>216</sup> “*State aid: Commissioner Kroes expresses concerns that New Opel aid is conditional on choice of Magna/Sberbank*”, MEMO/09/460 of 16 October 2009. On 4 November 2009, GM decided to keep Opel in its portfolio.

## Methodology—Coverage, definitions and sources

At Freedom of Investment Roundtable 11, participants considered an inventory of investment measures taken between 15 November 2008 and 31 August 2009 [DAF/INV/WD(2009)13/REV1].<sup>217</sup> As requested by participants, the Secretariat continued to track investment measures, using the same methodology as the previous report.

*Reporting period.* The reporting period of the present document is from 1 September 2009 to 14 February 2010. The report thus continues the inventory where the earlier report to Freedom of Investment Roundtable 11 ended. An investment measure is counted as falling within the reporting period if new policies were prepared, announced, adopted, entered into force or applied during the period. That certain policies had already been under development before the financial and economic crisis unfolded does not prevent it from being included in this inventory.

*Country coverage.* The inventory of investment measures contains policy information pertaining to 49 economies, including all economies that participate in the Freedom of Investment process of the OECD Investment Committee. Information on Morocco has been added to the report for the first time.

*Definition of investment.* For the purpose of this report, international investment is understood to include all international capital movements, including foreign direct investment.

*Definition of investment measure.* For the purpose of this report, investment measures by recipient countries consist of those measures that impose or remove differential treatment of foreign or non-resident investors compared to domestic investors. Investment measures by home countries are those that impose or remove restrictions on investments to other countries (e.g. attaching restrictions on outward investments as a condition for receiving public support).

*National security.* International investment law, including the OECD investment instruments, recognises that governments may need to take investment measures to safeguard essential security interests and public order. The investment policy community at the OECD monitors these measures to help governments adopt policies that are effective in safeguarding security and to ensure that they are not disguised protectionism.

*Emergency measures with potential impacts on international capital movements.* International investment law also recognises that countries may need flexibility in designing and implementing policies that respond to crises. For example, the OECD investment instruments provide for derogations to liberalisation commitments “if its economic and financial situation justifies such a course of action” but imposes time limits on such derogations and asks members to “avoid unnecessary damage” to others.<sup>218</sup> The emergency measures, which in practice focus mainly on financial services and automobiles, include: *ad hoc* rescue and restructuring operations for individual firms and various schemes that give rise to capital injections and credit guarantees. Several emergency schemes that provide cross-sectoral aid to companies were adopted and these are included in the inventory.

A large number of crisis related measures was taken during the reporting period. However, the report defines measures in a manner that takes into account the need to keep the size of the report manageable. The report classifies an “*emergency or related measure with potential impacts on international investment*” as: any measure that a government has identified as having been enacted to deal with the crisis; and that

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<sup>217</sup> The report is available on the OECD webpage dedicated to the Freedom of Investment process [www.oecd.org/daf/investment/foi](http://www.oecd.org/daf/investment/foi).

<sup>218</sup> See article 7 paragraphs a., d. and e. of the OECD Codes of Liberalisation.

may have a direct or indirect impact on foreign investment and that may differentiate between domestic and foreign or non-resident investors,<sup>219</sup> or that may raise barriers to outward investment. This includes programs that permit rescues or restructuring of individual firms, or lending, guarantees or other aid schemes for individual companies and may have an impact on international capital flows (e.g. schemes that influence the pattern of entry and exit in globalised sectors such as automobiles and financial services).

*Measures not included.* Several types of measures are not included in this inventory:

- *Fiscal stimulus.* Fiscal stimulus measures were not accounted for unless these contained provisions that may differentiate between domestic and foreign or non-resident investors.
- *Local production requirements* were not included unless they apply *de jure* only to foreign firms.
- *Visas and residence permits.* The report does not cover measures that affect visa and residence permits as business visa and residency policy is not deemed likely to be a major issue in subsequent political and economic discussions.
- *Companies in financial difficulties for other reasons than the crisis.* A number of countries provided support to companies in financial difficulties—in the form of capital injections or guarantees—in particular to state-owned airlines. Where there was evidence that these companies had been in substantive financial difficulties for other reasons than the crisis, these measures are not included as "emergency measures".
- *Central Bank measures.* Many central banks adopted practices to enhance the functioning of credit markets and the stability of the financial system. These measures influence international capital movements in complex ways. In order to focus on measures that are of most relevance for investment policies, measures taken by Central Banks are not included unless they involved negotiations with specific companies or provided for different treatment of non-resident or foreign-controlled enterprises.

*Sources of information and verification.* The sources of the information presented in this report are:

- official notifications made by governments to various OECD processes (e.g. the Freedom of Investment Roundtable or as required under the OECD investment instruments);
- information contained in other international organisations' reports or otherwise made available to the OECD Secretariat;
- other publicly available sources: specialised web sites, press clippings etc.

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<sup>219</sup> The existence of differentiation does not itself imply discrimination against foreign or non-resident investors or investment.