Liquidity assistance and the provision of state aid to financial institutions

Ojo, Marianne

Center for European Law and Politics, University of Bremen, Oxford Brookes University

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ABSTRACT

In response to the recent Financial Crisis - after it had been widely accepted that "a serious disturbance in the economy of Member States" had occurred, and that several measures were required to remedy this disturbance, various Commission communications were adopted and these include: *The Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis* (hereinafter "the Banking Communication"), its *Communication on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition* (hereinafter "the Recapitalisation Communication"), and its *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* (hereinafter "the Restructuring Communication")." The Banking Communication will constitute the focus of this study.

Are rescue aids (as distinguished from other forms of State aids) justified even where the possibility exists that rescue attempts are unlikely to succeed? Should rescue aids still be granted at a point when other measures such as winding down measures and the provision of other forms of liquidity assistance could be introduced?At what point should the Government decide upon the nationalisation of ailing institutions?

Furthermore, should State aids be provided to all classes of financial institutions which are considered to qualify for such aid – as stated within the Banking Communication?

These questions *interalia* constitute questions which are not only raised in this paper, but which this paper aims to address through a consideration of different State aid rescue and restructuring measures, as well as reference to two rescue aid cases, namely those of Bradford & Bingley (State aid NN 41/2008 – United Kingdom Rescue Aid to Bradford & Bingley) and Hypo Real Estate (State aid NN 44/2008 – Germany Rescue Aid for Hypo Real Estate).

In addition, the impact of the recent crisis on the choice of legislation and legal basis for compatibility assessments, will be highlighted. Whereas State aid to individual undertakings in difficulties is usually assessed under Article 87 (3)(c) of the EC Treaty and the Community Guidelines on State aid for rescuing and restructuring firms in difficulty, the systemic relevance of a financial institution and the impact of such an institution's failure on the economy, has been reflected by the preference for Article 87(3)(b) EC Treaty and Article 107(3)(b) TFEU.

Key Words: Rescue Aids, Liquidity, Banking Communication, Systemically Relevant Financial Institutions, Guarantees, Recapitalisation, Financial Crisis.

Liquidity Assistance and the Provision of State Aid to Financial Institutions

Marianne Ojo[1]

A. Introduction

In response to the recognition that "the pervasive uncertainty about the credit risk of individual financial institutions" has severely restricted the market for inter bank lending – consequently impeding access to liquidity (for financial institutions), as well as the need to address a situation whereby the existence of individual financial institutions are threatened, the ECOFIN Council adopted measures whose purposes are directed at enhancing the soundness and stability of the banking systems and consequently restoring confidence and the proper functioning of the financial sector.[2]

Article 87(3)(c) of the Treaty and the Community Guidelines on State Aid For Rescuing and Restructuring Firms in Difficulty[3], serve as the principal sources under which State aid to individual undertakings in difficulties is usually assessed.

An initial assessment occurs to establish whether the measures are to be regarded as State aid pursuant to Article 87(1) EC

What Constitutes a State Aid?

Legal bases
According to Article 87(1) EC, "State aid is any aid granted by a Member State or (ii) through State resources in any form whatsoever and which iii) distorts or threatens to distort competition by favouring certain undertakings as far as it affects trade between Member States."

Article 107(1) TFEU (Treaty on the Functioning of the European Union): According to this provision, State aid is any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, insofar as it affects trade between Member States.

The ensuing section of this paper will consider whether a distinction should be drawn between "the treatment of illiquid but otherwise fundamentally sound financial institutions" where viability problems are exogenously induced and the treatment of financial institutions whose endogenous problems are attributed to inefficiency or excessive risk- taking. Section three will then introduce the different forms of State aids as set out under the *"Communication from the Commission on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis"*[4] – hereinafter referred to as the Banking Communication. Such State aids include guarantees, rescue aids,

[1]Researcher, Center for European Law and Politics (ZERP) University of Bremen and Teaching Associate at Oxford Brookes University.

[2] European Commission, "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" (2008/C 270/02), section 1 paragraphs 1- 3.

[3] OJC 244, 1.10.2004 at page 2; the Community Guidelines which "articulate the Commission's understanding of Article 87 (3) (c) of the Treaty", are referred to as R and R guidelines; see ibid section 2 paragraph 6.

[4](2008/C 270/02)

controlled winding up and other forms of liquidity assistance. The distortion of competition constitutes a major concern where State aids are provided - hence safeguards which are in place to ensure that competition is not distorted will be considered under section four. This will be facilitated through a reference to the general principles which constitute the basis of State aid rules of the EC Treaty and the Treaty on the Functioning of the European Union (hereinafter referred to as TFEU). Section five will then provide the forum for discussion on new and existing recapitalisation schemes as provided under the present Communication from the Commission on "the recapitalisation of financial institutions in the current financial crisis."Emergency guarantees[5] constitute the first identified systemic measure in response to the recent financial crisis whilst the recapitalisation[6] of financial institutions constitute the second type of systemic measure. Other measures which may serve as supplements to rescue aids and which include the controlled winding up[7] of financial institutions and the provision of other forms of liquidity assistance,[8] will be considered under sections six and seven respectively. Having drawn on all these considerations, the final and concluding section will attempt to address the questions raised in this paper – as highlighted under the abstract.

B. Should Financial Institutions Whose Problems Are Attributed To "Inefficiencies, Poor Asset-Liability Management or Risky Strategies" Benefit From State Aid?

In its Communication[9], the Commission draws a distinction between "the treatment of illiquid but otherwise fundamentally sound financial institutions" where viability problems are exogenously induced and also related to extreme conditions which prevail in the financial market, and the treatment of financial institutions whose endogenous problems are related to inefficiency or excessive risk- taking.

Even though adverse possible consequences of state rescues in both cases are acknowledged, namely, the potential of such aids favouring the beneficiaries – to the detriment of their competitors, as well as the possibility that liquidity problems for financial institutions in other member states may be aggravated,[10] the provision of assistance to those financial institutions

[5] Guarantees Covering the Liabilities of Financial Institutions granted either under a national scheme or on an *ad hoc basis*, with the requirements of Article 107 (3) (b) TFEU; see section 3 paragraph 17;ibid

[6]See section 4 paragraph 34;ibid. The recapitalisation of financial institutions is also considered comprehensively in the 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 (2009/C 10/03)

[7]"Such a controlled liquidation, possibly carried out in conjunction with a contribution of public funds, may be applied in individual cases, either as a second step, after rescue aid to an individual financial institution when it becomes clear that the latter cannot be restructured successfully, or in one single action. Controlled winding-up may also constitute an element of a general guarantee scheme, e.g. where a Member State undertakes to initiate liquidation of the financial institutions for which the guarantee needs to be activated."
See section 5; paragraph 43 of "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" (2008/C 270/02).

[8] "Complementary forms of liquidity support - with the provision of public funds (including funds from the central bank)", may be implemented by Member States as accompaniments to guarantees or recapitalisation schemes, in addressing very serious liquidity problems encountered by financial institutions. See paragraph 51;ibid.

[9] See European Commission, "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" (2008/C 270/02) – hereinafter referred to as the Banking Communication, section 2 paragraph 14

[10] Furthermore, the Commission adds that distortions of competition resulting from schemes supporting the viability of institutions where viability problems are exogenously induced (and also related to extreme conditions which prevail in the financial market) will normally be more limited and require less substantial restructuring than the latter class of institutions; see ibid.

whose problems have been induced as a result of inefficiencies, poor asset liability management or risky strategies, could be disputed initially.

Provision of assistance to those institutions whose problems have been induced as a result of inefficiencies, poor asset liability management or risky strategies could however, be justified on the basis that such financial institutions are considered to be of significance in terms of the systemic risks which could be triggered within the financial system where such institutions are allowed to fail. That is, such institutions are considered to be "too big or too interconnected to fail." Furthermore, signals should be sent to management of firms considered to be "too big to fail" that their importance (in terms of the threats posed to systemic stability – where they are permitted to fail) does not provide an excuse for management of such firms to act recklessly – reckless behaviour being attributed to the knowledge that in any case, government bail outs would be provided in the event of a likelihood that financial failure may occur.

Restructuring of such institutions – to the extent that senior management (or indeed the entire management) of those institutions could be replaced would serve as a form of sanction and warning that reckless management of "too big to fail firms" would result in redundancies for the management of such firms.

C. Rescue Aids, Guarantees, Controlled Winding Down[11] of Financial Institutions and Provision of Other Forms of Liquidity Assistance.

Emergency guarantees[12] constitute the first identified systemic measure in response to the recent financial crisis whilst the recapitalisation[13] of financial institutions constitute the second type of systemic measure. Other measures which may serve as supplements to rescue aids include the controlled winding up[14] of financial institutions and the provision of other forms of liquidity assistance.[15]

Government guarantees, along with the monetary actions of central banks which are aimed at lowering interest rates as well as providing banks with exceptional amounts of liquidity, have served as means of addressing general liquidity needs of banks.[16]

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[11] In this paper, Controlled Winding Up and Controlled Winding Down will be used interchangeably.

[12] Guarantees Covering the Liabilities of Financial Institutions granted either under a national scheme or on an *ad hoc basis*, with the requirements of Article 107 (3) (b) TFEU; see section 3 paragraph 17;ibid

[13] See section 4 paragraph 34;ibid. The recapitalisation of financial institutions is also considered comprehensively in the 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 (2009/C 10/03)

[14] "Such a controlled liquidation, possibly carried out in conjunction with a contribution of public funds, may be applied in individual cases, either as a second step, after rescue aid to an individual financial institution when it becomes clear that the latter cannot be restructured successfully, or in one single action. Controlled winding-up may also constitute an element of a general guarantee scheme, e.g. where a Member State undertakes to initiate liquidation of the financial institutions for which the guarantee needs to be activated."
See section 5; paragraph 43 of "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" (2008/C 270/02).

[15] "Complementary forms of liquidity support - with the provision of public funds (including funds from the central bank)", may be implemented by Member States as accompaniments to guarantees or recapitalisation schemes, in addressing very serious liquidity problems encountered by financial institutions. See paragraph 51;ibid.

[16] See DG Competition Staff Working Document, „The Application of State Aid Rules to Government Guarantee Schemes Covering Bank Debt to be issued after 30 June 2010" April 2010 at page 2

In the rescue case involving Hypo Real Estate (hereinafter referred to as HRE),[17] the Commission justified its decision to consider the guarantees as State aid since:[18]

i) It considered it evident that the guarantees were from State resources
ii) They had been offered to one bank only; and that
iii) Because HRE is active in the banking sector (which is characterised by competition across member states), these measures distort competition and affect inter State trade.

D. Safeguards in Place To Ensure that Competition is not Distorted.

The Requirement that aid granted "does not exceed what is strictly necessary to achieve its legitimate purpose and that distortions of competition are avoided or minimized as far as possible"

In line with the general principles which constitute the basis of State aid rules of the Treaty, which require that the aid granted "does not exceed what is strictly necessary to achieve its legitimate purpose and that distortions of competition are avoided or minimized as far as possible, and taking due account of the current circumstances, all general support measures are require to be":[19]

- well targeted in order to be able to achieve effectively the objective of remedying a serious disturbance in the economy;

- proportionate to the challenge faced, not going beyond what is required to attain this effect; and

- designed in such a way as to minimize negative spill over effects on competitors, other sectors and other member states."

Compatibility of aid with the Internal market: The requirement of a Condition aimed at remedying "a serious disturbance in the economy of a member state."(Article 107(3)(b) TFEU).

The Requirement that aid serves " to remedy a serious disturbance in the economy of a Member State".

Article 107 (3) (b) TFEU allows the Commission to find aid compatible with the internal market if it serves " to remedy a serious disturbance in the economy of a Member State".[20] The Commission justified its assessment of State aid measures in the banking sectors at the time, in view of the current fragile state of the financial markets and with regards to the fact that the collapse and failure of a systemically relevant bank can directly affect the financial

[17] See European Commission, „"State aid NN 44/2008 – Germany Rescue Aid for Hypo Real Estate" at page 2 of 9 <http://ec.europa.eu/competition/state_aid/register/ii/doc/NN-44-2008-WLWL-en-02.10.2008.pdf>
[18] ibid; paragraph 19 at page 3
[19] See section 3 paragraph 15 of the Banking Communication
[20] European Commission, "European Commission State aid n° N 694/2009 – Germany Emergency guarantees for Hypo Real Estate" at page 4 section 4.2.1 paragraph 21

markets and indirectly the entire economy of a Member State.[21] Furthermore, the supervisory authority, BaFin, indicated that "a collapse of HRE group would have considerable negative effects on the national and international financial markets, with the potential to cause major disruptions and to eliminate the trust that has recently resurged."[22] The Commission, on these bases, assessed the State aid measures for HRE under Article 107(3)(b) TFEU.

Are Guarantees Appropriate, Necessary and Proportional?

In arriving at the conclusion that the guarantees were appropriate, necessary and proportional at the time, and in considering their compatibility with the Internal Market on the basis of Article 107(3)(b)TFEU on a temporary basis, the Commission based its decision on the following considerations:[23]

i) That from the information provided by Germany, it was evident that HRE was still experiencing serious difficulties in covering its refinancing needs without continued State support, and therefore State guarantees on its funding operations are an appropriate means and necessary to ensure that it can maintain its operations.

ii) In cases where financial stability is at stake and urgent remedial action is needed to keep the ailing bank afloat - as in the present case -, it can be accepted that it is necessary to temporarily grant emergency aid prior to the final assessment of the revised restructuring plan.

iii) The guarantee amounting to EUR 8 billion is proportionate as it is limited in amount and time.

iv) The guarantee amounting to EUR 10 billion is proportionate as it is limited in time and amount.

Necessary procedures which had been promulgated by the German government in January 2009, and which were aimed at facilitating the adoption of legislation which would enable it acquire a majority stake holding in Hypo,[24] resulted in the squeeze-out of minority shareholders - this being approved by a court in Munich in October 2009 (which paved way for the German government's rescue fund SoFFin to get 100 percent of the real estate lender).[25]

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[21] ibid

[22] ibid at paragraph 22

[23] see ibid at paragraphs 24-27

[24] See Reuters, "Hypo Real Estate's path to Nationalisation" <http://www.reuters.com/article/idUSTRE5381WB20090409 >

[25] See Reuters, "Hypo Real Estate is Nationalised with Squeeze Out" <http://www.reuters.com/article/idUSLD67573320091013>. "The Financial Market Stabilisation Authority purchased 47.31 % of Hypo Real Estate shares. This was to ensure that at the General Meeting, which would take place on 2 June 2009, the Financial Market Stabilisation Authority would have the simple majority of votes and thus be able to put through a capital increase. After the capital increase of EUR 3 billion, the Financial Market Stabilisation Authority was to subscribe to all new shares, which would give it 90 % of the voting rights. This would enable it to take over all shares by means of a squeeze-out. The planned acquisition by the Government was granted merger clearance by the Commission on 15 May 2009.";see Petrovic and R Tutsch, „National Rescue Measures in Response to the Current Financial Crisis" ECB Legal Working Paper Series No 8/ July 2009 at page 41

E. RECAPITALISATION

Recapitalisation schemes in three[26] member states and recapitalisation measures which accord with principles set out in the Banking Communication, have been approved by the Commission.[27]

Section 1 (4) of the Communication on the "Recapitalisation of Financial Institutions in the Current Financial Crisis"sets out a number of objectives which the recapitalisation of banks could serve - within the context of the recent Financial Crisis:[28]

- First, recapitalisations contribute to the restoration of financial stability and help restore the confidence needed for the recovery of inter-bank lending. Moreover, additional capital provides a cushion in recessionary times to absorb losses and limits the risk of banks becoming insolvent."[29]

- Second, recapitalisations can have as objective to ensure lending to the real economy. Fundamentally sound banks may prefer to restrict lending in order to avoid risk and maintain higher capital ratios. State capital injection may prevent credit supply restrictions and limit the pass-on of the financial markets' difficulties to other businesses.[30]

- Third, State recapitalisation may also be an appropriate response to the problems of financial institutions facing insolvency as a result of their particular business model or investment strategy. [31]

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[26]See Commission Decision of 13 October 2008 in Case N 507/08 Financial Support Measures to the banking Industry in the UK (OJ C 290, 13.11.2008, p. 4), Commission Decision of 27 October 2008 in Case N 512/08 Support measures for financial institutions in Germany (OJ C 293, 15.11.2008, p. 2) and Commission Decision of 19 November 2008 in Case N 560/08 Support measures for the credit institutions in Greece, Commission Decision of 12 November 2008 in Case N 528/08 the Netherlands, Aid to ING Groep N.V., Commission Decision of 25 November 2008 in Case NN 68/08 on Latvian State support to JSC Parex Banka.

[27]"Recapitalisation, notably in the form of ordinary and preferred shares, has been authorized, subject in particular to the introduction of market-oriented remuneration rates, appropriate behavioural safeguards and regular review. However, as the nature, scope and conditions of recapitalisation schemes currently being envisaged vary considerably, both Member States and potential beneficiary institutions have called for more detailed guidance as to whether specific forms of recapitalisation would be acceptable under State aid rules. In particular, some Member States envisage the recapitalisation of banks, not primarily to rescue them but rather to ensure lending to the real economy. The ECOFIN Council of 2 December 2008 recognised the need for further guidance for precautionary recapitalisations to sustain credit, and called for its urgent adoption by the Commission. The present Communication provides guidance for new recapitalisation schemes and opens the possibility for adjustment of existing recapitalisation schemes." See 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 (2009/C 10/03);section 1 para (3)

[28]See 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 (2009/C 10/03)

[29]Furthermore, section 1 paragraph 4 states that "under current conditions, triggered in particular by the collapse of Lehman Brothers, fundamentally sound banks may require capital injections to respond to a widespread perception that higher capital ratios are necessary in view of the past underestimation of risk and the increased cost of funding."

[30]Ibid; Section 1 (5)

[31]"A capital injection from public sources providing emergency support to an individual bank may also help to avoid short term systemic effects of its possible insolvency. In the longer term, recapitalisation could support efforts to prepare the return of the bank in question to long term viability or its orderly winding-up." see ibid;

Whilst recognising the benefits of recapitalisation, its potential to instigate distortions in respect of competition, is also acknowledged.[32]

F. CONTROLLED WINDING-UP OF FINANCIAL INSTITUTIONS

Pursuant to Section 5, paragraph 43 of the Banking Communication, controlled liquidation (which is possible in collaboration with the contribution of public funds), may be undertaken:

- Either as a second step – after rescue aid to an individual financial institution has been granted (when it becomes clear that the latter cannot be restructured successfully) or;

- In one single action

"Controlled winding-up may also constitute an element of a general guarantee scheme."[33] The need to minimise moral hazard (through the exclusion of shareholders and particular classes of creditors from the receipt of benefit of any aid within the context of the controlled winding up procedure) and the avoidance of undue distortions of competition are amongst several considerations which are of vital importance.[34]

Liquidation Aid to Bradford and Bingley Plc

With the financial turmoil in September 2008 and its impact on the liquidity position of Bradford and Bingley, the UK authorities decided to pursue a wind-down procedure whereby the retail deposit book was to be sold while an orderly wind-down of the remainder of the business was to be undertaken for the purposes of maximising recoveries – as well as minimising the burden on taxpayers.[35]

A package of rescue measures which comprised of the following elements was accepted by the Commission : [36]

a) the working capital facility;

b) the guarantee arrangements to certain wholesale borrowings, derivative transactions and wholesale deposits existing as on 28 September 2008; and

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Section 1 (6)

[32] See paragraphs 8-10

[33] „ For instance, where a member state undertakes to initiate liquidation of the financial institutions for which the guarantee needs to be activated. The assessment for such a scheme and of individual liquidation measures taken under such a scheme are to be applied along the same lines, mutates mutandis, as set out for guarantee schemes." See Section Five paragraph 43-44 of the Banking Communication.

[34] Furthermore, i) "the liquidation phase should be limited to the period strictly necessary for orderly winding up; ii) The beneficiary financial institution should merely continue with ongoing activities and not pursue any new activities – as long as it continues to operate ; and iii) The banking licence should be withdrawn as quickly as possible." See ibid paragraphs 46 and 47.

[35] See European Commission, "State aid N 194/2009 –United Kingdom: Liquidation Aid to Bradford and Bingley Plc at paragraph 4 page 2.

[36] See Rescue Decision and ibid.

c) the public support resulting from the Transfer Order containing two aid elements: firstly, an aid to B&B through the payment of £612 million for the sale of the transfer package, and secondly, an aid to the transferred economic entity, which corresponds to the ability for this entity to remain in the market.

An orderly winding down process, it was submitted, would not only "maximise the value of the remaining assets and minimize the amount of necessary state aid", but would also facilitate the repayment of the working capital facility as well as the statutory debt. Furthermore, the reasons for the choice of a controlled winding down process necessitated a consideration of the legislation in force when the decision to wind down Bradford and Bingley (now Rumpco) was taken and such reasons include:[37]

- An absence of a "strictly defined time-frame" for large and complex liquidations such as that of Bradford and Bingley (B & B).

- The fact that B & B would not have obtained the working capital facility which was required in order to pay Rumpco creditors – had B & B chosen the route of uncontrolled insolvency. An uncontrolled insolvency procedure would also have resulted in liquidation shortfall with respect to debt owed to such creditors.

- A uncontrolled insolvency procedure would have endangered the prospects of the recovery of full value of statutory debt.

- Rumpco's uncontrolled insolvency would have undermined financial stability – as well as market confidence.

G. PROVISION OF OTHER FORMS OF LIQUIDITY ASSISTANCE

According to section 6 of the Banking Communication[38] which deals with the provision of other forms of liquidity assistance, member states are permitted to implement "complementary forms of liquidity support – along with the provisions of public funds (which includes funds from the central bank)" in situations where "acute" liquidity problems are in need of redress. Furthermore, general measures which are implemented and are "open" to all market players on a comparable and equal basis (for example lending provided on an equal footing) and which do not constitute selective measures (which are in favour of individual banks), are often considered by the Commission as falling outside the boundaries of State rules and as such do not require notification to the Commission.[39]

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[37] See ibid at paragraphs 13 and 14

[38] See paragraph 51of the Banking Communication

[39] „The Commission considers for instance that activities of central banks related to monetary policy, such as open market operations and standing facilities, are not caught by the State aid rules. Dedicated support to a specific financial institution may also be found not to constitute aid in specific circumstances. The Commission considers that the provision of central banks' funds to the financial institution in such a case may be found not to constitute aid when a number of conditions are met, such as:

— the financial institution is solvent at the moment of the liquidity provision and the latter is not part of a larger aid package,

— the facility is fully secured by collateral to which haircuts are applied, in function of its quality and market value,

— the central bank charges a penal interest rate to the beneficiary,

H. CONCLUSION

In response to the question on whether State aids should be provided to all classes of financial institutions permitted under the Banking Communication – particularly those institutions whose problems have been induced as a result of inefficiencies, poor asset liability management or risky strategies, the grant of State aid to such institutions could be justified on the basis that such financial institutions are considered to be of significance in terms of the systemic risks which could be triggered within the financial system where such institutions are allowed to fail. Furthermore, the Government should be prepared at any point in time, to nationalise such systemically relevant financial institutions.

Are Rescue Aids(as distinguished from other forms of State Aids) Justified Even Where the Possibility Exists that the Rescue Attempts Are Unlikely To Succeed?

After having evaluated both cases relating to Hypo Real Estate and Rumpco, it was illustrated that both, respectively, were eventually nationalised and wound up. Nationalisation serves as an indicator that a government recognises the systemic importance of such institutions. The reasons put forward by both authorities in justifying the systemic relevance of HRE and Bradford & Bingley (later known as Rumpco) include:

Consequences of Hypo Real Estate's Insolvency

Three consequences emanating in the event of HRE's insolvency, as identified are as follows:[40]

- Firstly, it would lead to very serious disturbances in the money markets in Germany and in the European Union.

- Secondly, there is a danger of serious distortions of payment transactions, for example in the case of transactions involving foreign exchange, securities or derivatives.

- Thirdly, it would damage the covered bond market, which plays an important role in refinancing the banks, particularly at this time of crisis. "[41]

In accordance with point 25 (b) of the Rescue and Restructuring Guidelines, the aims of the measures provided to Rumpco are as follows: [42]

— the measure is taken at the central bank's own initiative, and in particular is not backed by any counterguarantee of the State."ibid

[40] See See European Commission, „"State aid NN 44/2008 – Germany Rescue Aid for Hypo Real Estate" <http://ec.europa.eu/competition/state_aid/register/ii/doc/NN-44-2008-WLWL-en-02.10.2008.pdf>paragraph 18 at page 5 of 9

[41] "At around €900 billion, the German covered bond market is the second largest in the world. HRE represents around one fifth of this market. Covered bonds are a popular form of investment abroad, including in the USA, and confidence in them is high. Germany considers that the consequences of an uncontrolled collapse would be inestimable for the many creditors of HRE, with many banks being involved. Germany also states that pension schemes, professional associations, *Bundesländer* and municipalities had, in some cases, invested hundreds of millions in the Munich-based institute."ibid

[42]See European Commission, "State aid NN 41/2008 – United Kingdom Rescue Aid to Bradford & Bingley" at paragraph 47 and page 9 of 11;

"The Commission did not consider it necessary to assess whether Article 87(3)(b) EC, which allows aid to remedy a serious disturbance in the economy of a Member State would apply at that stage in time - given that

- The prevention of serious social difficultie. Furthermore, such measures have no unduly adverse spill-over effects on other Member States.

- The protection of the jobs of some of the workers of B&B - who in the case of an ordinary liquidation may have lost their jobs. The protection of depositors - hence preventing a situation whereby the savings of UK citizens could be endangered.

- Maintaining confidence in the UK financial system – this being considered to be the most important of all the aims.

As long as it has been established that the purpose of the State aid is directed at "remedying a serious disturbance in the economy of a Member State", pursuant to Article 87(3)(b) of the EC Treaty, considerations of other reasons put forward by state authorities for obtaining such state aids, as well as whether such reasons reflect the belief that these institutions can genuinely be rescued appear to be of less relevance.

Reasons should clearly reflect the desire to facilitate measures aimed at preventing further deterioration of the stability of the economy. With respect to the economy, the impact of the recent crisis on the choice of legislation has also been demonstrated. Whereas State aid to individual undertakings in difficulties is usually assessed under Article 87 (3)(c) of the EC Treaty and the Community Guidelines on State aid for rescuing and restructuring firms in difficulty, the systemic relevance of a financial institution and the impact of such an institution's failure on the economy, was reflected by the preference for Article 87(3)(b) EC Treaty and Article 107(3)(b) TFEU.[43] - which were available as legal bases for aid measures undertaken to address the systemic crisis.

Should Rescue Aids Still be Granted at a Point When Other Measures Such as Winding Down Measures and the Provision of Other Forms of Liquidity Assistance could be Introduced?

As mentioned previously, whether the reasons advanced by authorities for State aid application reflect the belief and possibility that these institutions can actually be rescued, appear to be of less relevance – as long as other stated criteria[44] have been established. Where an institution is of such systemic relevance as to merit government intervention, and consequently the grant of State aid, then such an institution should be provided with opportunities aimed at facilitating its rescue. Where and when it becomes certain and clear that such institutions can no longer be rescued or restructured successfully, then supplementary assistance in the form of controlled winding down measures and other forms of liquidity assistance could then be introduced.

Furthermore, speedy processes whereby such systemically relevant institutions are wound up – for instance, directly instigating uncontrolled winding up procedures without due consideration or recourse to rescue possibilities and/or controlled winding up procedures, would not only trigger an immediate loss of jobs, but also serious disturbances and repercussions which could further jeopardize the stability of the economy.

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the Commission considers that the measure is compatible on the basis of Article 87(3)(c) EC." See ibid at paragraph 52

[43] Under which the Commission may allow State aid 'to remedy a serious disturbance in the economy of a Member State.'

[44] Such criteria including *interalia* the establishment that the purpose of the State aid is directed at "remedying a serious disturbance in the economy of a Member State", pursuant to Article 87(3)(b) of the EC Treaty.

However, it has to be highlighted that once government intervention has taken place, State aid beneficiaries should not be encouraged to become too dependent on the Government but rather, should be stimulated to get back on their feet through “weaning” processes which would also reduce possibilities for distortions in competition.

REFERENCES

Article 87(1) EC Treaty and the Community Guidelines on State Aid For Rescuing and Restructuring Firms in Difficulty

Article 107(1) TFEU (Treaty on the Functioning of the European Union).

Article 107(3)(b) TFEU : The Requirement of a Condition Aimed at Remedying "a serious disturbance in the economy of a member state."

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European Commission, "State aid NN 41/2008 – United Kingdom Rescue Aid to Bradford & Bingley"

European Commission, „"State aid NN 44/2008 – Germany Rescue Aid for Hypo Real Estate" <http://ec.europa.eu/competition/state_aid/register/ii/doc/NN-44-2008-WLWL-en-02.10.2008.pdf>

European Commission, "State aid N 194/2009 –United Kingdom: Liquidation Aid to Bradford and Bingley Plc

European Commission, "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" (2008/C 270/02)

European Commission, 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 (2009/C 10/03)

Petrovic and R Tutsch, „National Rescue Measures in Response to the Current Financial Crisis" ECB Legal Working Paper Series No 8/ July 2009

Reuters, "Hypo Real Estate's path to Nationalisation" <http://www.reuters.com/article/idUSTRE5381WB20090409 >

Reuters, "Hypo Real Estate is Nationalised with Squeeze Out" <http://www.reuters.com/article/idUSLD67573320091013>

SOURCE : State aid: Overview of National Measures Adopted as a Response to the Financial/Economic Crisis
http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/13&format=HTML&aged=0&language=EN&guiLanguage=en

State aid cases - situation as of 26 January 2010

Decisions adopted by the Commission in 2008/2009/2010

	Member State	Type of measure / Beneficiary	Type of Decision	Date of adoption
1	Austria	N 557/2008 - Aid scheme for the Austrian financial sector (guarantees, recapitalisation & other)	Decision not to raise objections IP/08/1933	09 December 2008
		N 352/2009 - Prolongation	MEX/09/0630	30 June 2009
		N 663/2009 - Second prolongation	MEX/09/1217	17 December 2009
2	Austria	N 214/2008 - Recapitalisation of Hypo Tirol	Decision not to raise objections IP/09/928	17 June 2009
	Austria	N 640/2009 - BAWAG - capital injection and asset guarantee	Decision not to raise objections IP/09/1989	22 December 2009
	Austria	C 16/2009 + N698/2009 - Emergency aid to Hypo Group Alpe Adria	Decision not to raise objections IP/09/1998	23 December 2009
3	Belgium/France/ Luxembourg	NN 45-49-50/2008 - Guarantee on liabilities of Dexia	Decision not to raise objections IP/08/1745	19 November 2008
		Prolongation	IP/09/1662	30 October 2009
4	Belgium/France/ Luxembourg	C 9/2009 - Guarantee in favour of Dexia on certain assets in FSA	Decision not to raise objections IP/09/399	13 March 2009
5	Belgium/Luxembourg /Netherlands	N 574/2008 - Measures in favour of Fortis	Decision not to raise objections IP/08/1746	19 November 2008
6	Belgium/Luxembourg /Netherlands	NN 42-46-53A/2008 - Restructuring aid to Fortis Bank and Fortis Bank Luxembourg	Decision not to raise objections IP/08/1884	03 December 2008
7	Belgium/Luxembourg	N 255/2009 and N 274/2009 - Additional aid measures in favour of Fortis Bank and Fortis Bank Luxembourg	Decision not to raise objections IP/09/743	12 May 2009
8	Belgium	N 602/2008 - Recapitalisation measure in favour of KBC	Decision not to raise objections IP/08/2033	18 December 2008
9	Belgium	NN 57/2008 - Capital Injection for Ethias Group	Decision not to raise objections IP/09/254	12 February 2009
10	Belgium	C 18/2009 - Recapitalisation and asset relief for KBC Group	Decision not to raise objections IP/09/1063	30 June 2009

11	Belgium	C 18/2009 - Asset relief and restructuring package for KBC	Final conditional decision after formal investigation procedure IP/09/1730	18 November 2009
12	Cyprus	N 511/2009 - Cypriot scheme to support credit institutions (guarantee)	Decision not to raise objections IP/09/1569	22 October 2009
13	Denmark	NN 36/2008 - Rescue aid to Roskilde Bank	Decision not to raise objections (IP/08/1222)	31 July 2008
14	Denmark	NN 39/2008 - Liquidation aid Roskilde bank	Decision not to raise objections IP/08/1633	5 November 2008
15	Denmark	NN 51/2008 - Guarantee scheme for banks in Denmark	Decision not to raise objections IP/08/1483	10 October 2008
16	Denmark	N 31a/2009 - Recapitalisation scheme and amendment of the guarantee scheme NN 46/2009 - Prolongation N 628/2009 – Second prolongation	Decision not to raise objectives IP/09/206 MEX/09/0817 MEX/09/1217	3 February 2009 17 August 2009 17 December 2009
17	Denmark	NN 23/2009 - Rescue aid for Fionia Bank	Decision not to raise objections IP/09/819	20 May 2009
18	Finland	N 567/2008 - Finnish guarantee scheme N 239/2009 - Prolongation and modification N 674/2009 – Second prolongation and modification	Decision not to raise objections IP/08/1705 Decision not to raise objections IP/09/681 MEX/09/1217	14 November 2008 30 April 2009 17 December 2009
19	Finland	NN 2/2009 - Guarantee for Kaupthing Bank Finland	Decision not to raise objections IP/09/82	21 January 2009
20	Finland	N 329/2009 - Capital injection scheme	Decision not to raise objections IP/09/1303	11 September 2009
21	France	N 548/2008 - Financial support measures to the banking industry in France (Refinancing) N 251/2009 - Extension of the scheme	Decision not to raise objections IP/08/1609 Decision not to raise objections IP/09/750	30 October 2008 12 May 2009
22	France	N 613/2008 - Financial support measures to the banking industry in France (Recapitalisation) N 29/2009 - Amendment to the Decision N 164/2009 - Amendment to the Decision	Decision not to raise objections IP/08/1900 IP/09/158 IP/09/461	08 December 2008 28 January 2009 23 March 2009

23	France	N 249/2009 - Capital injection for Caisse d'Epargne and Banque Populaire	Decision not to raise objections IP/09/722	8 May 2009
24	Germany	C 9/2008 - Restructuring aid to Sachsen LB	Conditional decision (after formal investigation procedure IP/08/849	4 June 2008
25	Germany	C 10/2008 - Restructuring aid to IKB	Conditional decision (after formal investigation procedure) IP/08/1557	21 October 2008
26	Germany	NN 44/2008 - Rescue aid to Hypo Real Estate Holding	Decision not to raise objections IP/08/1453	2 October 2008
27	Germany	N 512/2008 - Aid scheme for financial institutions in Germany (guarantees, recapitalisations & other) N 330/2009 – Prolongation N 665/2009 – Second prolongation	Decision not to raise objections IP/08/1589 MEX/09/0622 MEX/09/1217	27 October 2008 22 June 2009 17 December 2009
28	Germany	N 615/2008 - Guarantee and recapitalisation for Bayern LB	Decision not to raise objections IP/08/2034	18 December 2008
29	Germany	N 655/2008 - Guarantee for NordLB N 412/2009 - Prolongation	Decision not to raise objections IP/08/2056 MEX/09/0910	22 December 2008 10 September 2009
30	Germany	N 639/2008 - Guarantee for IKB	Decision not to raise objections IP/08/2055	22 December 2008
31	Germany	N 17/2009 - Guarantee for SdB – Sicherungseinrichtungsgesellschaft deutscher Banken mbH	Decision not to raise objections IP/09/114	22 January 2009
32	Germany	N 244/2009 - Commerzbank capital injection	Decision not to raise objections IP/09/711	7 May 2009
33	Germany	C 43/2008 - Aid for the restructuring of WestLB	Conditional decision (after formal investigation procedure) IP/09/741	12 May 2009
34	Germany	N 531/2009 - Temporary additional aid to WestLB	Decision not to raise objections IP/09/1434	7 October 2009
35	Germany	N 264/2009 - Recapitalisation of HSH Nordbank	Decision not to raise objections IP/09/854	29 May 2009
36	Germany	C 17/2009 - Recapitalisation and asset relief for LBBW (Landesbank Baden Württemberg)	Decision not to raise objections IP/09/1058	30 June 2009

37	Germany	N 694/2009 – State guarantees for Hypo Real Estate	Decision not to raise objections IP/09/1985	21 December 2009
38	Germany	N 314/2009 - German asset relief scheme	Decision not to raise objections IP/09/1216	31 July 2009
39	Germany	N 400/2009 - Additional aid (guarantees) for IKB	Decision not to raise objections IP/09/1235	17 August 2009
40	Germany	N 456/2009 - Export credit scheme	Decision not to raise objections IP/09/1319	15 September 2009
41	Germany	C 17/2009 - Approval of restructuring plan and impaired assets relief measure for LBBW (Landesbank Baden Württemberg)	Decision not to raise objections IP/09/1927	15 December 2009
	Germany	N 555/2009 – Rescue aid for WestLB; in-depth investigation into bad bank	Decision not to raise objections IP/09/1996	22 December 2009
42	Greece	N 560/2008 - Aid scheme to the banking industry in Greece (guarantees, recapitalisation & other) Prolongation and modification N 690/2009 - Prolongation	Decision not to raise objections IP/08/1742 MEX/09/0918 MEX/10/0125	19 November 2008 18 September 2009 25 January 2010
43	Hungary	N 664/2008 - Financial support measures to Hungarian financial industry in form of recapitalisation and guarantee scheme N 355/2009 - Prolongation and modification N 662/2009 – Second prolongation	Decision not to raise objections IP/09/253 Decision not to raise objections MEX/09/0903 MEX/09/1217	12 February 2009 3 September 2009 17 December 2009
44	Hungary	N 358/2009 - Hungarian Mortgage Support Scheme N 603/2009 – Prolongation	Decision not to raise objections IP/09/1123 MEX/09/1124	13 July 2009 24 November 2009
45	Ireland	NN 48/2008 - Guarantee scheme for banks in Ireland	Decision not to raise objections IP/08/1497	13 October 2008
46	Ireland	N 9/2009 - Recapitalisation of Anglo Irish Bank	Decision not to raise objections IP/09/50	14 January 2009
47	Ireland	N 356/2009 - Recapitalisation of Anglo Irish Bank	Decision not to raise objections IP/09/1045	26 June 2009
48	Ireland	N 61/2009 - Change of ownership of Anglo Irish Bank	Decision not to raise objections IP/09/271	17 February 2009
49	Ireland	N 149/2009 - Recapitalisation of Bank of Ireland	Decision not to raise objections IP/09/483	26 March 2009
50	Ireland	N 241/2009 - Recapitalisation of Allied Irish Bank	Decision not to raise objections IP/09/744	12 May 2009

51	Ireland	N 349/2009 - Revised Irish guarantee scheme for financial institutions	Decision not to raise objections IP/09/1787	20 November 2009
52	Italy	N 520a/2008 - Guarantee scheme for Italian banks N 328/2009 - Prolongation	Decision not to raise objections IP/08/1706 IP/09/929	14 November 2008 16 June 2009
53	Italy	N 648/2008 - Recapitalisation scheme N 466/2009 - Prolongation	Decision not to raise objections IP/08/2059 MEX/09/1006	23 December 2008 6 October 2009
54	Latvia	NN 68/2008 - Public support measures to Parex Banka N 189/2009 - Amendment to the Decision	Decision not to raise objections IP/08/1766 IP/09/732	24 November 2008 11 May 2009
55	Latvia	N 638/2008 - Guarantee scheme for banks N 326/2009 – Prolongation N 664/2009 – Second prolongation	Decision not to raise objections IP/08/2054 MEX/09/0630 MEX/09/1217	22 December 2008 30 June 2009 17 December 2009
56	Latvia	NN 60/2009 - Capital injection for Mortgage Bank of Latvia	Decision not to raise objections IP/09/1742	19 November
57	Luxembourg	N 344/2009&N 380/2009 - Restructuring aid for Kaupthing Bank Luxembourg	Decision not to raise objections IP/09/1107	9 July 2009
58	Netherlands	N 524/2008 - Guarantee scheme for Dutch financial institutions N 379/2009 – Prolongation N 669/2009 – Second prolongation	Decision not to raise objections IP/08/1610 MEX/09/0707 MEX/09/1217	30 October 2008 7 July 2009 17 December 2009
59	Netherlands	N 528/2008 - Measure in favour of ING	Decision not to raise objections IP/08/1699	13 November 2008
60	Netherlands	N 569/2008 - Measure in favour of Aegon	Decision not to raise objections IP/08/1822	27 November 2008
61	Netherlands	N 611/2008 - SNS Reaal/New capital injection by Dutch authorities	Decision not to raise objections IP/08/1951	10 December 2008
62	Netherlands	C 10/2009 - ING Illiquid asset facility	Decision not to raise objections IP/09/514	31 March 2009
63	Netherlands	C 10/2009 - ING restructuring plan and illiquid asset back-up facility	Final conditional decision after formal investigation procedure IP/09/1729	18 November 2009
64	Poland	N 208/2009 - Polish support scheme for financial institutions (guarantee and liquidity support)	Decision not to raise objections IP/09/1360	25 September 2009

65	Poland	N 302/2009 – Polish bank recapitalisation scheme	Decision not to raise objections IP/09/1979	21 December 2009
66	Portugal	NN 60/2008 - Guarantee scheme for credit institutions in Portugal	Decision not to raise objections IP/08/1601	29 October 2008
67	Portugal	NN 71/2008 - State guarantee for Banco Privado Português	Decision not to raise objections IP/09/400	13 March 2009
68	Portugal	N 556/2008 - Bank recapitalisation scheme	Decision not to raise objections IP/09/818	20 May 2009
69	Slovakia	N 392/2009 - Slovak bank support scheme	Decision not to raise objections IP/09/1889	8 December 2009
70	Slovenia	N 531/2008 - Guarantee scheme for credit institutions in Slovenia N 331/2009 - Prolongation	Decision not to raise objections IP/08/1964 MEX/09/0622	12 December 2008 22 June 2009
71	Slovenia	N 637/2008 - Liquidity scheme for financial sector N 510/2009 – Prolongation N 651/2009 – Second prolongation	Decision not to raise objections IP/09/452 MEX/09/1019 MEX/09/1217	20 March 2009 19 October 2009 17 December 2009
72	Spain	NN54a/2008 - Fund for the Acquisition of Financial Assets in Spain N337/2009 - Prolongation	Decision not to raise objections IP/08/1630 MEX/09/0807	4 November 2008 7 August 2009
73	Spain	NN 54b/2008 - Spanish guarantee scheme for credit institutions Prolongation N 588/2009 - Second prolongation	Decision not to raise objections IP/08/2049 MEX/09/0625 MEX/09/1201	22 December 2008 25 June 2009 1 December 2009
74	Sweden	N 533/2008 - Support measures for the banking industry in Sweden N 26/2009 - Amendment to the decision N 154/2009 - Amendment and prolongation N 544/2009 - Prolongation	Decision not to raise objections IP/08/1600 IP/09/186 IP/09/652 MEX/09/1026	29 October 2008 28 January 2009 28 April 2009 26 October 2009
75	Sweden	NN 64/2008 - Emergency rescue measures regarding Carnegie Investment Bank	Decision not to raise objections IP/08/1977	15 December 2008
76	Sweden	N 69/2009 - Recapitalisation scheme N 436/2009 - Prolongation	Decision not to raise objections IP/09/241 MEX/09/0805	11 February 2009 5 August 2009

77	United Kingdom	NN 41/2008 - Rescue aid to Bradford and Bingley	Decision not to raise objections IP/08/1437	1st October 2008
78	United Kingdom	N 507/2008 - Aid scheme to the banking industry in the UK (guarantees, recapitalisation & other) N 193/2009 - Prolongation N 537/2009 – Prolongation N 677/2009 - Prolongation	Decision not to raise objections IP/08/1496 IP/09/586 MEX/09/1013 MEX/09/1217	13 October 2008 15 April 2009 13 October 2009 17 December 2009
79	United Kingdom	N 111/2009 - Working capital guarantee scheme	Decision not to raise objections IP/09/471	24 March 2009
80	United Kingdom	PN 65/2009 - UK Asset-Backed Securities guarantee scheme Prolongation	Decision not to raise objections IP/09/613 MEX/09/1027	21 April 2009 27 October 2009
81	United Kingdom	C 14/2008 - Restructuring package for Northern Rock	Final conditional decision after formal investigation procedure IP/09/1600	28 October 2009
82	United Kingdom	N 428/2009 - Restructuring plan of Lloyds Banking Group	Decision not to raise objections IP/09/1728	18 November 2009
83	United Kingdom	N 422/2009 and N 621/2009 - Royal Bank of Scotland, impaired asset relief measure and restructuring plan	Decision not to raise objections IP/09/1915	14 December 2009
84	United Kingdom	N 194/2009 – Liquidation aid to Bradford & Bingley	Decision not to raise objections IP/10/47	25 January 2010
85	United Kingdom	NN 19/2009 – Restructuring of Dunfermline Building Society	Decision not to raise objections IP/10/48	25 January 2010

Remark: As a general rule, aid schemes are reviewable six months after approval. Some individual decisions are subject to a review and possible restructuring plan.

Cases currently under formal investigation procedure (in-depth investigation under the EC Treaty's rules on state aid)

	Country	Type of measure / Beneficiary	Date of decision regarding the opening of formal investigation	
1	Belgium/France/ Luxembourg	C 9/2009 - Restructuring of Dexia	13 March 2009 (IP/09/399)	*Case under assessment*
2	Germany	C 15/2009 - Aid package for Hypo Real Estate Prolongation	7 May 2009 IP/09/712 13 November 2009 IP/09/1708	*Case under assessment*
3	Germany, Austria	C 16/2009 - Aid package for Bayern LB and its Austrian subsidiary Hypo Group Alpe Adria Extension	12 May 2009 IP/09/742 23 December 2009 IP/09/1998	*Case under assessment*
4	Germany	C 29/2009 - Aid package for HSH Nordbank AG	22 October 2009 IP/09/1577	*Case under assessment*
5	Germany	C 32/2009 - Support measures for German savings bank Sparkasse KölnBonn	5 November 2009 IP/09/1670	*Case under assessment*
6	Germany	C43/2009 – WestLB: in-depth investigation into bad bank	22 December 2009 IP/09/1996	*Case under assessment*
7	Latvia	C 26/2009 - Aid package for JSC Parex Banka	29 July 2009 IP/09/1203	*Case under assessment*
8	Netherlands	C 11/B/2008 - State measures in favour of Fortis Bank Nederland (FBN) and the activities of ABN Amro	8 April 2009 IP/09/565	*Case under assessment*
9	Portugal	C 33/2009 - State guarantee for Banco Privado Português	10 November 2009 IP/09/1691	*Case under assessment*

Real economy cases falling under the Temporary Framework - situation as of 26 January 2010

Decisions adopted by the Commission in 2008/2009/2010

	Member State	Type of measure / Beneficiary	Type of decision	Date of adoption
1	Austria	N 47/a/2009- Temporary scheme (aid up to € 500 000)	Decision not to raise objections IP/09/454	20 March 2009
		N 317/2009 - Amendment	IP/09/972	18 June 2009
2	Austria	N 47/d/2009- Temporary scheme (risk capital)	Decision not to raise objections IP/09/484	25 March 2009
3	Austria	N 434/2009 – Temporary scheme (export-credit insurance)	Decision not to raise objections IP/09/1955	17 December 2009
4	Belgium	N 117/2009- Temporary scheme (subsidised guarantees)	Decision not to raise objections IP/09/447	20 March 2009
5	Belgium	N 532/2009 – Temporary scheme (export-credit-insurance)	Decision not to raise objections IP/09/1680	6 November 2009
6	Czech Republic	N 237/2009 - Temporary scheme (subsidised interest rates)	Decision not to raise objections IP/09/699	6 May 2009
7	Czech Republic	N 236/2009 - Temporary scheme (aid up to € 500 000)	Decision not to raise objections IP/09/719	7 May 2009
8	Denmark	N 198/2009 - Temporary scheme (export-credit insurance)	Decision not to raise objections IP/09/706	6 May 2009
		N 554/2009 (amendment)	IP/09/1630	29 October 2009
9	Estonia	N 387/2009 - Temporary scheme (aid up to € 500 000)	Decision not to raise objections IP/09/1121	13 July 2009
10	Finland	N 224/2009 - Temporary scheme (aid up to € 500 000)	Decision not to raise objections IP/09/869	3 June 2009
11	Finland	N 82b/2009 - Temporary scheme (guarantees)	Decision not to raise objections IP/09/919	9 June 2009
12	Finland	N 258/2009 – Temporary scheme (export-credit insurance)	Decision not to raise objections IP/09/979	22 June 2009
13	France	N 7/2009 – Temporary scheme (aid up to € 500 000)	Decision not to raise objections IP/09/72	19 January 2009
14	France	N 15/2009 - Temporary scheme (reduced interest rates)	Decision not to raise objections IP/09/216	4 February 2009
15	France	N 11/2009 - Temporary scheme (reduced interest rates – to producers of green products)	Decision not to raise objections IP/09/205	3 February 2009

16	France	N 23/2009 - Temporary scheme (subsidised guarantees)	Decision not to raise objections IP/09/332	27 February 2009
17	France	N 119/2009 - modification of French risk capital scheme	Decision not to raise objections IP/09/406	16 March 2009
18	France	N 609/2009 - Temporary scheme (aid up to € 15 000 for the agricultural sector)	Decision not to raise objections IP/09/1866	2 December 2009
19	France	N 36/2009 - Temporary scheme (risk capital)	Decision not to raise objections IP/09/1094	30 June 2009
20	France	N 449/2009 – Temporary scheme (export-credit insurance)	Decision not to raise objections IP/09/1422	5 October 2009
21	Germany	N 661/2008 – KfW run special program 2009 (interest subsidies)	Decision not to raise objections (IP/08/2063)	30 December 2008
22	Germany	N 668/2008 – Temporary scheme (limited amount of compatible aid) N 299/2009 - Amendment N 411/2009 - Amendment	Decision not to raise objections IP/08/2063 IP/09/877 IP/09/1163	30 December 2008 4 June 2009 17 July 2009
23	Germany	N 39/2009 – Temporary adaptation of risk-capital schemes	Decision not to raise objections IP/09/214	3 February 2009
24	Germany	N 27/2009 - Temporary scheme (guarantees)	Decision not to raise objections IP/09/331	27 February 2009
25	Germany	N 38/2009 - Temporary scheme (reduced interest rates)	Decision not to raise objections IP/09/296	19 February 2009
26	Germany	N 426/2009 – Temporary Scheme (green products)	Decision not to raise objections IP/09/1223	4 August 2009
27	Germany	N 384/2009 – Temporary Scheme (export credit insurance)	Decision not to raise objections IP/09/1222	5 August 2009
28	Germany	N 597/2009 – Temporary scheme (aid up to € 15 000 for the agricultural sector)	Decision not to raise objections IP/09/1805	23 November 2009
29	Greece	N 308/2009 - Temporary scheme (guarantees)	Decision not to raise objections IP/09/867	3 June 2009
30	Greece	N 309/2009 - Temporary scheme (subsidised interest rates)	Decision not to raise objections IP/09/868	3 June 2009
31	Greece	N 304/2009 - Temporary scheme (aid up to € 500 000)	Decision not to raise objections IP/09/1143	15 July 2009
32	Hungary	N 114/2009- Temporary scheme (guarantees)	Decision not to raise objections IP/09/387	10 March 2009
33	Hungary	N 77/2009 - Temporary scheme (aid up to € 500 000)	Decision not to raise objections IP/09/325	24 February 2009

34	Hungary	N 78/2009 – Temporary scheme (subsidised interest rates)	Decision not to raise objections IP/09/325	24 February 2009
35	Hungary	N 203/2009 - Temporary scheme (guarantees)	Decision not to raise objections IP/09/647	24 April 2009
36	Hungary	N 679/2009 - Temporary scheme (aid up to € 15 000 for the agricultural sector)	Decision not to raise objections No IP issued	5 January 2010
37	Ireland	N 186/2009 – Temporary scheme (aid up to € 500 000)	Decision not to raise objections IP/09/585	15 April 2009
38	Italy	N 279/2009 - Temporary scheme (risk capital)	Decision not to raise objections IP/09/825	20 May 2009
39	Italy	N 266/2009 - Temporary scheme (guarantees)	Decision not to raise objections IP/09/852	28 May 2009
40	Italy	N 248/2009 – Temporary scheme (aid up to € 500 000)	Decision not to raise objections IP/09/852	28 May 2009
41	Italy	N 268/2009 – Temporary scheme (subsidised interest rates)	Decision not to raise objections IP/09/857	29 May 2009
42	Italy	N 542/2009 – Temporary scheme (aid for green cars)	Decision not to raise objections IP/09/1581	26 October 2009
43	Latvia	N 124/2009 – Temporary scheme (aid up to € 500 000)	Decision not to raise objections IP/09/442	19 March 2009
44	Latvia	N 139/2009 - Temporary scheme (guarantees)	Decision not to raise objections IP/09/626	22 April 2009
45	Latvia	N 670/2009 - Temporary scheme (guarantee to JSC Liepājas Metalurgs)	Decision not to raise objections IP/09/1923	15 December 2009
46	Lithuania	N 272/2009 – Temporary scheme (aid up to € 500 000) N 523/2009 - Amendment	Decision not to raise objections IP/09/890 IP/09/1719	8 June 2006 13 November 2009
47	Lithuania	N 659/2009 – Temporary scheme (export-credit insurance)	Decision not to raise objections IP/09/1980	21 December 2009
48	Luxembourg	N 99/2009 – Temporary scheme (aid up to € 500 000)	Decision not to raise objections IP/09/334	26 February 2009
49	Luxembourg	N 128/2009 – Temporary scheme (guarantees)	Decision not to raise objections IP/09/392	11 March 2009
50	Luxembourg	N 50/2009 – Temporary scheme (export-credit insurance)	Decision not to raise objections IP/09/603	20 April 2009
51	Malta	N 118/2009 - Temporary scheme (aid up to € 500 000)	Decision not to raise objections IP/09/820	18 May 2009
52	Netherlands	N 156/2009 – Temporary scheme (aid up to € 500 000)	Decision not to raise objections IP/09/527	1 April 2009

53	Netherlands	N 409/2009 – Temporary scheme (export-credit insurance)	Decision not to raise objections IP/09/1405	2 October 2009
54	Netherlands	N 611/2009 - Temporary scheme (aid up to € 15 000 for the agricultural sector)	Decision not to raise objections IP/09/1993	22 December 2009
55	Poland	N 408/2009 - Temporary scheme (aid up to € 500 000)	Decision not to raise objections IP/09/1483	17 August 2009
56	Portugal	N 13/2009 – Temporary scheme (aid up to € 500 000)	Decision not to raise objections IP/09/71	19 January 2009
57	Romania	N 286/2009 – Temporary scheme (guarantees)	Decision not to raise objections IP/09/882	5 June 2009
58	Romania	N 547/2009 – Temporary scheme (aid up to € 500 000)	Decision not to raise objections IP/09/1876	3 December 2009
59	Romania	N 478/2009 – State guarantee in favour of Ford Romania	Decision not to raise objections IP/09/1711	13 November 2009
60	Slovak Republic	N 222/2009 – Temporary scheme (aid up to € 500 000)	Decision not to raise objections IP/09/680	30 April 2009
61	Slovenia	NN 34/2009 - Temporary scheme (guarantees)	Decision not to raise objections IP/09/917	12 June 2009
62	Slovenia	N 228/2009 - Temporary scheme (aid up to € 500 000)	Decision not to raise objections IP/09/918	12 June 2009
63	Spain	N 140/2009 – Temporary scheme (aid for green cars)	Decision not to raise objections IP/09/499	29 March 2009
64	Spain	N 307/2009 – Temporary scheme (aid up to € 500 000)	Decision not to raise objections IP/09/889	8 June 2009
65	Sweden	N 80/2009 - State guarantees in favour of Volvo cars	Decision not to raise objections IP/09/879	5 June 2009
66	Sweden	N 605/2009 – Temporary scheme (export-credit insurance)	Decision not to raise objections IP/09/1819	25 November 2009
67	United Kingdom	N 43/2009 – Temporary scheme (aid up to € 500 000)	Decision not to raise objections IP/09/215	4 February 2009
68	United Kingdom	N 71/2009 – Temporary scheme (guarantees)	Decision not to raise objections IP/09/333	27 February 2009
69	United Kingdom	N 72/2009 – Temporary scheme (to businesses producing green products)	Decision not to raise objections IP/09/333	27 February 2009
70	United Kingdom	N 257/2009 – Temporary scheme (subsidised interest rates)	Decision not to raise objections IP/09/793	15 May 2009

Cases currently under formal investigation procedure – cases falling under the Temporary framework (in-depth investigation under the EC Treaty's rules on state aid)

	Country	Type of measure / Beneficiary	Date of decision regarding the opening of formal investigation	
1	Romania	C 36/2009 – State guarantee in favour of Oltchim	19 November 2009 IP/09/1748	*Case under assessment*