ISSN 1725-2423

Official Journal of the European Union

C 195

English edition

Information and Notices

Volume 52

19 August 2009

Notice No | Contents | Page

I *Resolutions, recommendations and opinions*

OPINIONS

Council

2009/C 195/01 Council Opinion of 7 July 2009 on the updated stability programme of Slovenia, 2008-2011 1

II *Information*

INFORMATION FROM EUROPEAN UNION INSTITUTIONS AND BODIES

Commission

2009/C 195/02 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty — Cases where the Commission raises no objections [1] 6

2009/C 195/03 Commission communication cancelling and replacing Communication No 178/05 of 31 July 2009 on the body authorised to issue certificates of authenticity under Regulation (EC) No 620/2009 8

EN

(1) Text with EEA relevance

(Continued overleaf)

Notice No Contents (continued) Page

2009/C 195/04 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 [1] 9

IV *Notices*

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

Commission

2009/C 195/05 Euro exchange rates 21

V *Announcements*

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION POLICY

Commission

2009/C 195/06 Prior notification of a concentration (Case COMP/M.5604 — Dong/Kom-Strom) [1] 22

2009/C 195/07 Prior notification of a concentration (Case COMP/M.5421 — Panasonic/Sanyo) [1] 23

[1] Text with EEA relevance

I

(Resolutions, recommendations and opinions)

OPINIONS

COUNCIL

COUNCIL OPINION

of 7 July 2009

on the updated stability programme of Slovenia, 2008-2011

(2009/C 195/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies [1], and in particular Article 5(3) thereof,

Having regard to the recommendation of the Commission,

After consulting the Economic and Financial Committee,

HAS DELIVERED THIS OPINION:

1. On 7 July 2009 the Council examined the updated stability programme of Slovenia, which covers the period 2008 to 2011.

2. Slovenia's solid economic growth in recent years, averaging 5 % in 2004-2008, has been marked by a strong performance of exports and investments. Given its very high degree of openness, the economy has been severely hit by the global crisis. Activity decelerated markedly throughout 2008, with a steep fall in the final quarter. At the same time, the economy evidenced an increase in the unit labour costs. In addition, while supported by a strong increase in employment and wages, private consumption was held back by high inflation and falling consumer confidence. Using the room for fiscal manoeuvre offered by the moderate deficit and debt levels going into the crisis, the authorities have adopted measures to support the economy, aimed at stabilising the financial system, safeguarding jobs and enhancing growth potential, while firms also benefit from tax relief decided before the onset of the crisis. At the same time, given the necessity to improve the long-term sustainability of public finances, consolidation measures have been taken and further savings have been adopted after the programme submission (in the supplementary budget that was adopted by the government on 17 June) to stem the rapid rise in the government deficit, from below 1 % of GDP in 2008 to more than 5 % of GDP in

[1] OJ L 209, 2.8.1997, p. 1. The documents referred to in this text can be found at the following website: http://ec.europa.eu/economy_finance/about/activities/sgp/main_en.htm

2009 (about half of the deterioration reflects the working of automatic stabilisers). The removal of fiscal stimulus and the return to budgetary consolidation are a key challenge going forward, together with the need to improve long-term sustainability through a reform of the pension system. In view of recent wage and productivity developments; another challenge is to improve competitiveness through adequate wage policies and efforts in the area of research and innovation that should help increase the technological intensity of manufacturing.

3. The macroeconomic scenario underlying the programme envisages that, after expanding by 3,5 % in 2008, real GDP will fall by 4 % in 2009 before recovering to positive and increasing growth over the rest of the programme period. Assessed against currently available information [1], notably real GDP data for the first quarter of 2009 that was released after the programme submission, this scenario appears to be based on favourable growth assumptions. Economic growth in 2009 could be lower than projected in the programme and the recovery could be more muted in 2010. Also in the light of this, the rise in unemployment could be somewhat faster than foreseen in the update. The programme's projections for inflation, which is forecast to moderate significantly from its 2008 peak, appear realistic. The update projects a more pronounced narrowing of the external deficit than the Commission services in 2009 (from 5,6 % of GDP in 2008) against the background of a significant downward adjustment in private sector wage growth.

4. According to the spring 2009 fiscal notification, the outturn for the 2008 general government deficit is estimated at 0,9 % of GDP, in line with the target set in the previous update of the stability programme, but against a lower GDP growth than envisaged (outturn at 3,5 % against 4,6 % planned). Budgetary execution was marked by expenditure overruns. These have prevented over-achieving the target for 2008, which would have been possible in view of (i) the 2007 outcome being more than 1 percentage point of GDP better than expected in the previous programme and (ii) stronger revenue growth in 2008 than budgeted. Revenue rose 7,1 % instead of 6,4 % as planned, with positive developments in personal income tax, social contributions and non-tax revenues. Expenditure increased by 10,7 % instead of 7,4 %, with overruns in public investment, social transfers and compensation of employees.

5. According to the updated programme, the general government deficit is targeted to widen significantly in 2009, to 5,1 % of GDP, reflecting the working of the automatic stabilisers and various discretionary measures as well as the strong dynamics of social transfers (especially from indexation arrangements) and compensation of employees (owing to the agreement to address 'wage disparities'). According to the programme, measures to support the economy, laid down in the government's stimulus packages as well as expansionary measures taken before the onset of the crisis (mainly tax relief for companies), would add up to almost 2 % of GDP. At the same time, consolidation measures have been adopted in the form of a rise in excise duties and expenditure savings on the public sector wage bill, intermediate consumption and investment. The latter were announced in the stability programme and later only partly confirmed in the supplementary budget. The programme envisages a widening of the structural deficit, i.e. the cyclically-adjusted deficit net of one-off and other temporary measures, by 1 ¼ percentage points of GDP (calculated according to the commonly agreed methodology), which points to an expansionary fiscal stance.

6. The programme's medium-term strategy is to reduce the general government deficit over the programme period through a frontloaded adjustment, from just over 5 % of GDP in 2009 to 3,4 % of GDP in 2011. The primary deficit would improve slightly faster given a projected rise in the interest burden. The programme confirms the medium-term objective (MTO) for the budgetary position of Slovenia to be a structural deficit of 1 % of GDP but, while envisaging progress towards the MTO from 2010 onwards, it does not foresee the MTO to be reached within the programme period. Reflecting the aim of 'withdrawing the fiscal stimulus in line with economic recovery by 2011', the envisaged consolidation falls predominantly on the expenditure side, driven by a decline in subsidies by 1 percentage point of GDP between 2009 and 2011. The wage subsidy scheme should be phased out in 2010 and the remaining stimulus measures on the expenditure side in 2011. The projected rise in the interest burden by 1 ¼ of a percentage point of GDP over the programme period is broadly offset by a decline in compensation of employees as a share of GDP. The envelope for social transfers is planned to be frozen until the end of 2010 (at the level reached in the first half of 2009).

[1] The assessment notably takes into account the Commission services' spring 2009 forecast, but also other information that has become available since then.

Revenue is envisaged to rise by ½ percentage point of GDP in 2010. The government gross debt ratio, estimated at 22,8 % of GDP in 2008, is projected to increase by 13,5 percentage points over the programme period. The sizeable increase in the primary deficit accounts for more than half of the rise in the debt ratio but the snow-ball effect and a significant stock-flow adjustment in 2009 reflecting recapitalisations and liquidity operations to support the financial sector also contribute.

7. The budgetary outcomes in the programme are subject to downside risks throughout the programme period. First, economic growth could be lower than projected in the programme. Second, as suggested by the supplementary budget adopted after the programme submission, the expenditure savings announced in the stability programme for 2009 on intermediate consumption and investment may not be realised fully. There are also risks of expenditure overruns: for example, the envisaged further restraint in the wage bill still has to be negotiated with the social partners. Also, it might be difficult to ensure the planned reversal of the stimulus measures on the expenditure side, which consist mainly of subsidies. Third, on top of the impact of possibly lower economic growth, revenue shortfalls may materialise from 2010 onwards; especially in indirect taxes. Finally, the sizeable government guarantees provided as part of the measures to support the financial sector constitute a further risk to the budgetary targets (expenditure would increase if and when guarantees are called). The negative risks to the budgetary targets compounded by uncertainty about the stock-flow adjustment imply that the debt ratio could rise faster than projected in the programme.

8. The long-term budgetary impact of ageing in Slovenia is well above the EU average, mainly as a result of a relatively high projected increase in pension expenditure as a share of GDP over the coming decades. The budgetary position in 2008 estimated in the programme, which is worse than the starting position of the previous programme, compounds the budgetary impact of population ageing on the sustainability gap. Reducing the primary deficit over the medium term, as foreseen in the programme, and a further pension reform aimed at curbing the substantial increase in age-related expenditures, in particular by encouraging longer working lives, would contribute to reducing the high risks to the long-term sustainability of public finances.

9. The Slovenian budgetary framework offers scope for improvement, especially in the area of spending control in view of the reliance of the consolidation strategy on expenditure restraint. At the same time, public spending efficiency and effectiveness, including in the area of health care, could be enhanced so as to help ensure that expenditure restraint does not compromise the level of services provided. To achieve this goal, the government intends to introduce performance-based budgeting as of the next budgetary cycle (2010-2011) but the programme does not provide details on how this will be done in practice.

10. Slovenia adopted several measures to safeguard the stability of the financial sector. In autumn 2008 an unlimited government guarantee on bank deposits of individuals was introduced. In addition, the government is entitled to utilise the following types of measures: (i) loans to, and equity investments in, credit institutions, (re-)insurance companies and pension companies; (ii) government guarantees to credit institutions for refinancing operations; and (iii) purchases of claims from credit institutions. These measures are planned to be phased out by the end of 2010. The ceiling on the overall volume of government guarantees has been set at EUR 12 billion (33 % of GDP). A second set of measures, adopted in early 2009, consists of a government guarantee scheme for bank loans to enterprises and the recapitalisation of the Slovene Export and Development Bank and of the Fund for Entrepreneurship (together amounting to 0,6 % of GDP). Finally, the government has temporarily deposited the proceeds of some recent bond issuances with banks.

11. In line with the European Economic Recovery Plan agreed in December 2008 by the European Council, Slovenia adopted two stimulus packages. Together with tax relief benefitting companies decided before the onset of the crisis, the stimulus measures would add up to almost 2 % of GDP and would be partly financed by the already adopted and announced consolidation measures. On the basis of the supplementary budget, the net impact amounts to around ¾ % of GDP. The measures appear to be an adequate response to the economic downturn given that the room for fiscal manoeuvre offered by the moderate deficit and debt levels going into the crisis is constrained by the long-term sustainability challenges.

The stimulus measures can be regarded as timely and targeted as they focus on stemming the deterioration in the labour market and enhancing growth potential and competitiveness by stimulating investment in new technologies and R&D. A third set of measures, re-allocating part of the funds from the previous two packages in light of the low take-up of the wage subsidy scheme, was adopted by the government after the programme submission. It envisages further support to the labour market and a lump-sum transfer to disadvantaged individuals. The expenditure-related stimulus measures (mainly subsidies) are intended to be temporary — valid for one or two years — but the remaining measures, including the tax relief decided earlier, are of a permanent nature. Ongoing infrastructural investment should provide further support to the recovery. The measures adopted by the authorities are related to the medium-term reform agenda and the country-specific recommendations proposed by the Commission on 28 January 2009 under the Lisbon Strategy for Growth and Jobs and endorsed by the Spring European Council on 19 March.

12. After the strong increase in 2009 the deficit is projected to narrow gradually, especially in 2010. Taking into account the risks to the budgetary targets, the deficit will not be brought back below the 3 % of GDP reference value by the end of the programme period (2011). The 2009 deficit is likely to widen substantially, possibly beyond the programme target. The budgetary stance in the programme in 2010 and 2011 would not ensure an adequate structural improvement in view of the long-term sustainability challenge, unless pension reform is pursued and the above-mentioned risks to the budgetary targets are addressed, in particular by reversing the stimulus as the recovery takes hold, implementing further consolidation measures and ensuring tight control over expenditure. Furthermore, the envisaged adjustment in 2011 should be speeded up in view of the projected strengthening of economic growth.

13. As regards the data requirements specified in the code of conduct for stability and convergence programmes, the programme has some gaps in the required and optional data ([1]).

The overall conclusion is that fiscal policy in Slovenia will be expansionary in 2009 in line with the European Economic Recovery Plan (EERP). Slovenia adopted measures to support the economy in line with the room for manoeuvre offered by moderate deficit and debt levels going into the crisis, which together with tax relief benefiting companies decided before the onset of the crisis, appear to be an adequate response to the EERP. They are timely, targeted and partly temporary. In addition to supporting the economy and employment, they aim at enhancing growth potential and competitiveness by stimulating investment in new technologies and R&D. At the same time, as the room for fiscal manoeuvre is constrained by the long-term sustainability challenge, consolidation measures to help finance the stimulus measures have been adopted. The programme announces additional savings for 2009 that appear to have been only partly confirmed in the supplementary budget adopted on 17 June. Thereafter, the programme plans a return to fiscal consolidation, with improvements in the primary structural balance in 2010 and, to a lesser extent, 2011, but the deficit is not foreseen to be brought below the 3 % of GDP reference value by the end of the programme period. The budgetary strategy is subject to downside risks, as economic growth could be lower than projected. In addition, it might be difficult to reverse the stimulus measures and expenditure overruns cannot be excluded. Although the debt ratio is low (albeit increasing rapidly), Slovenia is assessed to be at high risk with regard to the long-term sustainability of public finances due to the significant projected budgetary impact of ageing.

In view of the above assessment, Slovenia is invited to:

(i) implement the stimulus measures in 2009 in line with the EERP and within the framework of the Stability and Growth Pact;

(ii) start reversing the fiscal stimulus as planned in the programme in 2010 and implement a significant consolidation thereafter via concrete measures; in so doing, keep tight control over government expenditure, including through implementing the planned improvements in the budgetary framework;

(iii) in view of the projected increase in age-related expenditure, improve the long-term sustainability of public finances by further reforming the pension system, in particular with a view to encouraging longer working lives.

([1]) In particular, data on net lending/borrowing vis-à-vis the rest of the world are not provided.

Comparison of key macroeconomic and budgetary projections

		2007	2008	2009	2010	2011
Real GDP (% change)	**SP Apr 2009**	**6,8**	**3,5**	**- 4,0**	**1,0**	**2,7**
	COM Spring 2009	6,8	3,5	- 3,4	0,7	n.a.
	SP Nov 2007	*5,8*	*4,6*	*4,1*	*4,5*	*n.a.*
HICP inflation (4) (%)	**SP Apr 2009**	**3,6**	**5,7**	**0,4**	**1,6**	**2,6**
	COM Spring 2009	3,8	5,5	0,7	2,0	n.a.
	SP Nov 2007	*3,4*	*3,5*	*2,8*	*2,6*	*n.a.*
Output gap (1) (% of potential GDP)	**SP Apr 2009**	**4,7**	**4,4**	**- 2,3**	**- 3,5**	**- 3,1**
	COM Spring 2009	4,5	3,2	- 1,3	- 2,7	n.a.
	SP Nov 2007	*0,7*	*0,5*	*0,1*	*0,2*	*n.a.*
Net lending/borrowing vis-à-vis the rest of the world (% of GDP)	**SP Apr 2009**	**n.a.**	**n.a**	**n.a**	**n.a**	**n.a**
	COM Spring 2009	- 3,7	- 5,6	- 4,6	- 4,4	n.a.
	SP Nov 2007	*n.a.*	*n.a*	*n.a*	*n.a*	*n.a*
General government balance (% of GDP)	**SP Apr 2009**	**0,5**	**- 0,9**	**- 5,1**	**- 3,9**	**- 3,4**
	COM Spring 2009	0,5	- 0,9	- 5,5	- 6,5	n.a.
	SP Nov 2007	*- 0,6*	*- 0,9*	*- 0,6*	*0,0*	*n.a.*
Primary balance (% of GDP)	**SP Apr 2009**	**1,8**	**0,2**	**- 3,6**	**- 2,2**	**- 1,6**
	COM Spring 2009	1,8	0,2	- 3,9	- 4,7	n.a.
	SP Nov 2007	*0,7*	*0,2*	*0,6*	*1,1*	*n.a.*
Cyclically-adjusted balance (2) (% of GDP)	**SP Apr 2009**	**- 1,6**	**- 2,9**	**- 4,1**	**- 2,3**	**- 2,0**
	COM Spring 2009	- 1,7	- 2,5	- 4,9	- 5,2	n.a.
	SP Nov 2007	*- 0,9*	*- 1,1*	*- 0,7*	*- 0,1*	*n.a.*
Structural balance (3) (% of GDP)	**SP Apr 2009**	**- 1,6**	**- 2,9**	**- 4,1**	**- 2,3**	**- 2,0**
	COM Spring 2009	- 1,7	- 2,5	- 4,9	- 5,2	n.a.
	SP Nov 2007	*- 0,8*	*- 1,0*	*- 0,7*	*- 0,1*	*n.a.*
Government gross debt (% of GDP)	**SP Apr 2009**	**23,4**	**22,8**	**30,5**	**34,1**	**36,3**
	COM Spring 2009	23,4	22,8	29,3	34,9	n.a.
	SP Nov 2007	*25,6*	*24,7*	*23,8*	*22,5*	*n.a.*

Notes:

(1) Output gaps and cyclically-adjusted balances according to the programme as recalculated by Commission services on the basis of the information in the programme.

(2) Based on estimated potential growth of 3,9 %, 4,9 %, 1,0 % and 2,2 % respectively in the period 2007-2010.

(3) One-off and other temporary measures are zero according to the most recent programme and the Commission services' spring 2009 forecast.

(4) For the programmes the CPI definition is shown.

Source:

Stability programmes (SP); Commission services' spring 2009 forecasts (COM); Commission services' calculations.

II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COMMISSION

Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty

Cases where the Commission raises no objections

(Text with EEA relevance)

(2009/C 195/02)

Date of adoption of the decision	2.7.2008
Reference number of State Aid	N 847/06
Member State	Slovakia
Region	Západné Slovensko
Title (and/or name of the beneficiary)	Samsung Electronics LCD Slovakia s.r.o.
Legal basis	Zákon č. 231/1999 Z.z. o štátnej pomoci v znení neskorších predpisov; Zákon č. 565/2001 Z.z. o investičných stimuloch v platnom znení; Zákon č. 523/2004 Z.z. o rozpočtových pravidlách verejnej správy v znení neskorších predpisov; Zákon č. 595/2003 Z.z. o daniach z príjmov, v znení neskorších predpisov, § 52 ods. 4; Zákon č. 366/1999 Z.z. o daniach z príjmov v znení platnom k 31. decembru 2003, § 35b;. Výnos Ministerstva hospodárstva č. 1/2005 o poskytovaní dotácií v rámci právomoci Ministerstva hospodárstva; Vyhláška Ministerstva hospodárstva Slovenskej republiky č. 235/2002 Z.z., ktorou sa ustanovujú podrobnosti o náležitostiach žiadosti o poskytnutie investičných stimulov; Zákon č. 5/2004 Z.z. o službách zamestnanosti v znení neskorších predpisov, § 54.
Type of measure	Individual aid
Objective	Regional development, Employment
Form of aid	Direct grant, Tax advantage
Budget	Overall budget: SKK 2 314 million
Intensity	21,97 %
Duration (period)	—
Economic sectors	Electrical and optical equipment

Name and address of the granting authority	Ministerstvo hospodárstva Slovenskej republiky Mierová 19 827 15 Bratislava 212 SLOVENSKO/SLOVAKIA Ústredie práce, sociálnych vecí a rodiny Špitálska ul. č. 8 812 67 Bratislava SLOVENSKO/SLOVAKIA
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/community_law/state_aids/index.htm

Date of adoption of the decision	17.6.2009
Reference number of State Aid	N 584/08
Member State	France
Region	—
Title (and/or name of the beneficiary)	Régime d'aides aux énergies renouvelables de l'Agence pour le Développement et la Maîtrise de l'Energie 2009-2013
Legal basis	Délibération du Conseil d'Administration de l'Agence pour le Développement et la Maîtrise de l'Energie n° 08-5-4 du 9 octobre 2008: «Système d'aides aux énergies renouvelables 2009-2013». Loi du 15 juillet 2008 relative au développement économique régional
Type of measure	Aid scheme
Objective	Environmental protection
Form of aid	Direct grant
Budget	Overall budget: EUR 735 million
Intensity	—
Duration (period)	Until 31.12.2013
Economic sectors	All sectors
Name and address of the granting authority	Agence de l'Environnement et de la Maîtrise de l'Energie 20 avenue du Grésillé BP 90406 49004 Angers Cedex 01 FRANCE
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/community_law/state_aids/index.htm

Commission communication cancelling and replacing Communication No 178/05 of 31 July 2009 on the body authorised to issue certificates of authenticity under Regulation (EC) No 620/2009

(2009/C 195/03)

By Council Regulation (EC) No 617/2009 of 13 July 2009, published in the *Official Journal of the European Union* L 182 of 15 July 2009, an import tariff quota for high quality beef has been opened.

Under Article 7 of Commission Regulation (EC) No 620/2009 of 13 July 2009, the release for free circulation of the goods imported under that quota is conditional upon presentation of a certificate of authenticity.

The following authority is authorised to issue certificates of authenticity under the Regulation.

Food Safety and Inspection Service (FSIS) of the United States Department of Agriculture (USDA)
Washington D.C., 20250
UNITED STATES OF AMERICA

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

(Text with EEA relevance)

(2009/C 195/04)

1. INTRODUCTION

1. At its meetings on 20 March 2009 and on 18 and 19 June 2009, the European Council confirmed its commitment to restoring confidence and the proper functioning of the financial market, which is an indispensable precondition for recovery from the current financial and economic crisis. In view of the systemic nature of the crisis and the interconnectivity of the financial sector, a number of actions have been initiated at Community level to restore confidence in the financial system, preserve the internal market and secure lending to the economy [1].

2. Those initiatives need to be complemented by action at the level of individual financial institutions to enable them to withstand the current crisis and return to long-term viability without reliance on State support in order to perform their lending function on a sounder basis. The Commission is already dealing with a number of State aid cases resulting from interventions by Member States to avoid liquidity, solvency or lending problems. The Commission has provided guidance, in three successive communications, on the design and implementation of State aid in favour of banks [2]. Those communications recognised that the severity of the crisis justified the granting of aid, which can be considered compatible pursuant to Article 87(3)(b) of the Treaty establishing the European Community, and provided a framework for the coherent provision of public guarantees, recapitalisation and impaired asset relief measures by Member States. The primary rationale of those rules is to ensure that rescue measures can fully attain the objectives of financial stability and maintenance of credit flows, while also ensuring a level playing-field between banks [3] located in different Member States as well as between banks which receive public support and those which do not, avoiding harmful subsidy races, limiting moral hazard and ensuring the competitiveness and efficiency of European banks in Community and international markets.

3. State aid rules provide a tool to ensure the coherence of measures taken by those Member States which have decided to act. However, the decision whether to use public funds, for example to shelter banks from impaired assets, remains with the Member States. In some instances, financial institutions will be in a position to handle the current crisis without major adjustment or additional aid. In other cases, State aid may be necessary, in the form of guarantees, recapitalization or impaired asset relief.

4. Where a financial institution has received State aid, the Member State should submit a viability plan or a more fundamental restructuring plan, in order to confirm or re-establish individual banks' long-term viability without reliance on State support. Criteria have already been established to delineate the conditions under which a bank may need to be subject to more substantial restructuring, and when measures are needed to cater for distortions of competition resulting from the aid [4]. This Communication does not alter those criteria. It complements them, with a view to enhancing predictability and ensuring a coherent approach, by explaining how the Commission will assess

[1] In its Communication to the European Council of 4 March 2009 on 'Driving the European Recovery' COM(2009) 114 final, the Commission announced a reform programme to address more general weaknesses in the regulatory framework applicable to financial institutions which operate in the Community.

[2] See the 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 ('the Banking Communication') (OJ C 270, 25.10.2008, p. 8), 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 ('the Recapitalisation Communication') (OJ C 10, 15.1.2009, p. 2) and the Communication from the Commission on the Treatment of Impaired assets in the Community Banking Sector ('the Impaired Assets Communication') (OJ C 72, 26.3.2009, p. 1). For an overview of the Commission's decision-making practice, see State aid Scoreboard — Spring 2009 Update, Special edition on State aid interventions in the current financial and economic crisis, COM(2009) 164 final of 8 April 2009.

[3] The application of this Communication is limited to financial institutions as referred to in the Banking Communication. Guidance provided in this Communication refers to banks for ease of reference. However it applies, *mutatis mutandis*, to other financial institutions where appropriate.

[4] The criteria and specific circumstances which trigger the obligation to present a restructuring plan have been explained in the Banking Communication, the Recapitalisation Communication and the Impaired Assets Communication. They refer in particular, but not exclusively, to situations where a distressed bank has been recapitalised by the State, or where a bank benefiting from asset relief has already received State aid in whatever form that contributes to coverage or avoidance of losses (except participation in a guarantee scheme) which altogether exceeds 2 % of the total bank's risk weighted assets. The degree of restructuring will depend on the seriousness of the problems of each bank. By contrast, in line with those Communications (in particular point 40 of the Recapitalisation Communication and Annex V to the Impaired Assets Communication), where a limited amount of aid has been given to banks which are fundamentally sound, Member States are required to submit a report to the Commission on the use of State funds comprising all the information necessary to evaluate the bank's viability, the use of the capital received and the path towards exit from reliance on State support. The viability review should demonstrate the risk profile and prospective capital adequacy of these banks and evaluate their business plans.

the compatibility of restructuring aid ([1]) granted by Member States to financial institutions in the current circumstances of systemic crisis, under Article 87(3)(b) of the Treaty.

5. The Banking Communication, the Recapitalisation Communication and the Impaired Assets Communication recall the basic principles set out in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty ([2]). Those principles require, first and foremost, that restructuring aid should lead to the restoration of viability of the undertaking in the longer term without State aid. They also require restructuring aid to be accompanied, to the extent possible, by adequate burden sharing and by measures to minimise distortions of competition, which would in the longer term fundamentally weaken the structure and the functioning of the relevant market.

6. The integrity of the internal market and the development of banks throughout the Community must be a key consideration in the application of those principles; fragmentation and market partitioning should be avoided. European banks should be in a strong global position on the basis of the single European financial market, once the current crisis has been overcome. The Commission also reaffirms the need to anticipate and manage change in a socially responsible way and underlines the need to comply with national legislation implementing Community Directives on information and consultation of workers that apply under such circumstances ([3]).

7. This Communication explains how the Commission will examine aid for the restructuring of banks in the current crisis, taking into account the need to modulate past practice in the light of the nature and the global scale of the crisis, the systemic role of the banking sector for the whole economy, and the systemic effects which may arise from the need of a number of banks to restructure within the same period:

— The restructuring plan will need to include a thorough *diagnosis* of the bank's problems. In order to devise sustainable strategies for the restoration of viability, banks will therefore be required to stress test their business. This first step in the restoration of viability should be based on common parameters which will build to the extent possible on appropriate methodologies agreed at Community level. Banks will also be required, where applicable, to disclose impaired assets ([4]).

— Given the overriding goal of financial stability and the prevailing difficult economic outlook throughout the Community, special attention will be given to the design of a restructuring plan, and in particular to ensuring a sufficiently flexible and realistic timing of the necessary implementation steps. Where the immediate implementation of structural measures is not possible due to market circumstances, intermediate behavioural safeguards should be considered.

— The Commission will apply the basic principle of appropriate burden sharing between Member States and the beneficiary banks with the overall situation of the financial sector in mind. Where significant burden sharing is not immediately possible due to market circumstances at the time of the rescue, this should be addressed at a later stage of the implementation of the restructuring plan.

— Measures to limit distortion of competition by a rescued bank in the same Member State or in other Member States should be designed in a way that limits any disadvantage to other banks while taking into account the fact that the systemic nature of the current crisis has required very widespread State intervention in the sector.

([1]) That is to say, aid which was temporarily authorised by the Commission as rescue aid under the Community Guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 2) or aid temporarily authorised under Article 87(3)(b) of the Treaty, as well as any new aid that may be notified as needed for restructuring. This Communication will therefore be applied instead of the Guidelines on State aid for rescuing and restructuring firms in difficulty for the assessment of restructuring aid to banks in the current circumstances of systemic crisis.

([2]) In the past, the Commission has adopted a number of decisions relating to restructuring aid (compatible under Article 87(3)(c) of the Treaty) to ailing banks, on the basis of a comprehensive restructuring process which allowed the beneficiaries to regain their long-term viability without the aid unduly harming competitors. Typical restructuring strategies included reorientation of business models, closure or divestments of businesses divisions, subsidiaries or branches, changes in the asset-liabilities management, sale as a going concern or break-up and sale of different parts of business to viable competitors. See for instance Commission Decision 98/490/EC of 20 May 1998 concerning aid granted by France to the Crédit Lyonnais group (OJ L 221, 8.8.1998, p. 28), Commission Decision 2005/345/EC of 18 February 2004 on restructuring aid implemented by Germany for Bankgesellschaft Berlin AG (OJ L 116, 4.5.2005, p. 1), Commission Decision 2009/341/EC of 4 June 2008 on State aid C 9/2008 (ex NN 8/2008, CP 244/07) implemented by Germany for Sachsen LB (OJ L 104, 24.4.2009, p. 34) and the autumn 2006 State Aid Scoreboard, COM(2006) 761 final, p. 28 (http://ec.europa.eu/comm/competition/state_aid/studies_reports/2006_autumn_en.pdf), with a special survey on rescue and restructuring aid.

([3]) See also: Communication on 'Restructuring and Employment' of 31 March 2005 (COM(2005) 120 final of 31 March 2005) and the good practice on restructuring agreed by the European social partners in November 2003.

([4]) In accordance with the Impaired Assets Communication.

— Provision of additional aid during the restructuring period should remain a possibility if justified by reasons of financial stability. Any additional aid should remain limited to the minimum necessary to ensure viability.

8. Section 2 applies to cases where the Member State is under an obligation to notify a restructuring plan [1]. The principles underlying section 2 apply by analogy to cases where the Member State is not under a formal obligation to notify a restructuring plan, but is nonetheless required to demonstrate viability [2] of the beneficiary bank. In the latter case, and save situations where there are doubts, the Commission will normally request less detailed information [3]. In case of doubt, the Commission will, in particular, seek evidence of adequate stress testing, in accordance with point 13, and of validation of the results of the stress testing by the competent national authority. Sections 3, 4 and 5 only apply to cases where the Member State is under an obligation to notify a restructuring plan. Section 6 deals with the temporal scope of this Communication and applies both to Member States required to notify a restructuring plan for the aid beneficiary and to Member States required only to demonstrate the viability of aid beneficiaries.

2. RESTORING LONG-TERM VIABILITY

9. Where, on the basis of previous Commission guidance or decisions, a Member State is under an obligation to submit a restructuring plan [4] that plan should be comprehensive, detailed and based on a coherent concept. It should demonstrate how the bank will restore long-term viability without State aid as soon as possible [5]. The notification of any restructuring plan should include a comparison with alternative options, including a break-up, or absorption by another bank, in order to allow the Commission to assess [6] whether more market oriented, less costly or less distortive solutions are available consistent with maintaining financial stability. In the event that the bank cannot be restored to viability, the restructuring plan should indicate how it can be wound up in an orderly fashion.

10. The restructuring plan should identify the causes of the bank's difficulties and the bank's own weaknesses and outline how the proposed restructuring measures remedy the bank's underlying problems.

11. The restructuring plan should provide information on the business model of the beneficiary, including in particular its organisational structure, funding (demonstrating viability of the short and long term funding structure [7]), corporate governance (demonstrating prevention of conflicts of interest as well as necessary management changes [8]), risk management (including disclosure of impaired assets and prudent provisioning for expected non-performing assets), and asset-liability management, cash-flow generation (which should reach sufficient levels without State support), off-balance sheet commitments (demonstrating their sustainability and consolidation when the bank bears a significant exposure [9]), leveraging, current and prospective capital adequacy in line with applicable supervisory regulation (based on prudent valuation and adequate provisioning), and the remuneration incentive structure [10], (demonstrating how it promotes the beneficiary's long-term profitability).

12. The viability of each business activity and centre of profit should be analysed, with the necessary breakdown. The return to viability of the bank should mainly derive from internal measures. It may be based on external factors such as variations in prices and demand over which the undertaking has no great influence, but only if the market assumptions made are generally acknowledged. Restructuring requires a withdrawal from activities which would remain structurally loss making in the medium term.

13. Long-term viability is achieved when a bank is able to cover all its costs including depreciation and financial charges and provide an appropriate return on equity, taking into account the risk profile of the bank. The restructured bank should be able to compete in the marketplace for capital on its own merits in compliance with relevant regulatory requirements. The expected results of the planned restructuring need to be demonstrated under a base case scenario as well as under 'stress' scenarios. For this, restructuring plans need to take account, inter alia, of the current state and future prospects of the financial markets, reflecting base-case and worst-case assumptions. Stress testing should consider a range of scenarios, including a combination of stress events and a protracted global recession. Assumptions should be compared with appropriate sector-wide benchmarks, adequately amended to take account of the new elements of the current crisis in financial markets. The plan should include measures to

(1) In accordance with the Banking Communication, the Recapitalisation Communication and the Impaired Assets Communication. See point 4 of this Communication.

(2) In accordance with the Banking Communication, the Recapitalisation Communication and the Impaired Assets Communication, where a limited amount of aid is granted to fundamentally sound banks, Member States are required to submit a viability review to the Commission.

(3) In accordance, in particular, with point 40 of the Recapitalisation Communication and Annex V to the Impaired Assets Communication.

(4) As explained in point 8 of this Communication, where section 2 refers to a restructuring plan, the principles underlying section 2 apply by analogy also to viability reviews.

(5) An indicative model for a restructuring plan is reproduced in the Annex.

(6) Where appropriate the Commission will ask for the advice of an external consultant to examine the notified restructuring plans in order to assess viability, burden sharing and minimising competition distortions. It may also request certification of various elements by supervisors.

(7) See for instance, Commission Decision of 2 April 2008 in case NN 1/2008 *Northern Rock* (OJ C 135, 3.6.2008, p. 21), and Decision 2009/341/EC in Case C 9/2008 *Sachsen LB*.

(8) See Decision 2009/341/EC in Case C 9/2008 *Sachsen LB*.

(9) Except in duly justified circumstances. See Commission Decision of 21 October 2008 in case C 10/2008 *IKB*, not yet published.

(10) In accordance with Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector (OJ L 120, 15.5.2009, p. 22).

address possible requirements emerging from stress testing. The stress testing should, to the extent possible, be based on common parameters agreed at Community level (such as a methodology developed by the Committee of European Banking Supervisors) and, where appropriate, adapted to cater for country- and bank-specific circumstances.

14. In the current crisis governments have recapitalised banks on terms chosen primarily for reasons of financial stability rather than for a return which would have been acceptable to a private investor. Long-term viability therefore requires that any State aid received is either redeemed over time, as anticipated at the time the aid is granted, or is remunerated according to normal market conditions, thereby ensuring that any form of additional State aid is terminated. As the Treaty is neutral as to the ownership of property, State aid rules apply irrespective of whether a bank is in private or public ownership.

15. While the restructuring period should be as short as possible so as to restore viability quickly, the Commission will take into account the current crisis conditions and may therefore allow some structural measures to be completed within a longer time horizon than is usually the case, notably to avoid depressing markets through fire sales [1]. However, restructuring should be implemented as soon as possible and should not last more than five years [2] to be effective and allow for a credible return to viability of the restructured bank.

16. Should further aid not initially foreseen in the notified restructuring plan be necessary during the restructuring period for the restoration of viability, this will be subject to individual *ex ante* notification and any such further aid will be taken into account in the Commission's final decision.

Viability through sale of a bank

17. The sale of an ailing bank to another financial institution can contribute to the restoration of long-term viability, if the purchaser is viable and capable of absorbing the transfer of the ailing bank, and may help to restore market confidence. It may also contribute to the consolidation of the financial sector. To this end, the purchaser should demonstrate that the integrated entity will be viable.

In the case of a sale, the requirements of viability, own contribution and limitations of distortions of competition also need to be respected.

18. A transparent, objective, unconditional and non-discriminatory competitive sale process should generally be ensured to offer equal opportunities to all potential bidders [3].

19. Furthermore, without prejudice to the merger control system that may be applicable, and while recognising that the sale of an aided ailing bank to a competitor can both contribute to the restoration of long-term viability and result in increased consolidation of the financial sector, where such a sale would result *prima facie* in a significant impediment of effective competition, it should not be allowed unless the distortions of competition are addressed by appropriate remedies accompanying the aid.

20. The sale of a bank may also involve State aid to the buyer and/or to the sold activity [4]. If the sale is organised via an open and unconditional competitive tender and the assets go to the highest bidder, the sale price is considered to be the market price and aid to the buyer can be excluded [5]. A negative sale price (or financial support to compensate for such a negative price) may exceptionally be accepted as not involving State aid if the seller would have to bear higher costs in the event of liquidation [6]. For the calculation of the cost of liquidation in such circumstances, the Commission will only take account of those liabilities which would have been entered into by a market economy investor [7]. This excludes liabilities stemming from State aid [8].

21. An orderly winding-up or the auctioning off of a failed bank should always be considered where a bank cannot credibly return to long-term viability. Governments should encourage the exit of non-viable players, while allowing for the exit process to take place within an appropriate time frame that preserves financial stability. The Banking Communication provides for a procedure in the

(1) Understood as selling large quantities of assets at current low market prices which could lower the prices further.
(2) The Commission practice has been to accept two to three years as the duration of a restructuring plan.

(3) See also point 20.
(4) See for example Decision 2009/341/EC in Case C 9/2008 *Sachsen LB*.
(5) The absence of the tender as such does not automatically mean that there is State aid to the buyer.
(6) This would normally result in an aid to the sold economic activity.
(7) Joined Cases C-278/92, C-279/92 and C-280/92 *Hytasa* [1994] ECR I-4103, paragraph 22.
(8) See Case C-334/99 *Gröditzer Stahlwerke* [2003] ECR I-1139, paragraph 134 *et seq*. and Commission Decision 2008/719/EC of 30 April 2008 on State aid C 56/2006 (ex NN 77/2006) *Bank Burgenland* (OJ L 239, 6.9.2008, p. 32).

framework of which such orderly winding up should take place [1]. Acquisition of the 'good' assets and liabilities of a bank in difficulty may also be an option for a healthy bank as it could be a cost effective way to expand deposits and build relationships with reliable borrowers. Moreover, the creation of an autonomous 'good bank' from a combination of the 'good' assets and liabilities of an existing bank may also be an acceptable path to viability, provided this new entity is not in a position to unduly distort competition.

3. OWN CONTRIBUTION BY THE BENEFICIARY (BURDEN SHARING)

22. In order to limit distortions of competition and address moral hazard, aid should be limited to the minimum necessary and an appropriate own contribution to restructuring costs should be provided by the aid beneficiary. The bank and its capital holders should contribute to the restructuring as much as possible with their own resources. This is necessary to ensure that rescued banks bear adequate responsibility for the consequences of their past behaviour and to create appropriate incentives for their future behaviour.

Limitation of restructuring costs

23. Restructuring aid should be limited to covering costs which are necessary for the restoration of viability. This means that an undertaking should not be endowed with public resources which could be used to finance market-distorting activities not linked to the restructuring process. For example, acquisitions of shares in other undertakings or new investments cannot be financed through State aid unless this is essential for restoring an undertaking's viability [2].

Limitation of the amount of aid, significant own contribution

24. In order to limit the aid amount to the minimum necessary, banks should first use their own resources to finance restructuring. This may involve, for instance, the sale of assets. State support should be granted on terms which represent an adequate burden-sharing of the costs [3]. This means that the costs associated with the restructuring are not only borne by the State but also by those who invested in the bank, by absorbing losses with available capital and by paying an adequate remuneration for State interventions [4]. Nonetheless, the Commission considers that it is not appropriate to fix thresholds concerning burden-sharing *ex ante* in the context of the current systemic crisis, having regard to the objective of facilitating access to private capital and a return to normal market conditions.

25. Any derogation from an adequate burden-sharing *ex ante* which may have been exceptionally granted in the rescue phase for reasons of financial stability must be compensated by a further contribution at a later stage of the restructuring, for example in the form of claw-back clauses and/or by farther-reaching restructuring including additional measures to limit distortions of competition [5].

26. Banks should be able to remunerate capital, including in the form of dividends and coupons on outstanding subordinated debt, out of profits generated by their activities. However, banks should not use State aid to remunerate own funds (equity and subordinated debt) when those activities do not generate sufficient profits. Therefore, in a restructuring context, the discretionary offset of losses (for example by releasing reserves or reducing equity) by beneficiary banks in order to guarantee the payment of dividends and coupons on outstanding subordinated debt, is in principle not compatible with the objective of burden sharing [6]. This may need to be balanced with ensuring the refinancing capability of the bank and the exit incentives [7]. In the interests of promoting refinancing by the beneficiary bank, the Commission may favourably regard the payment of coupons on newly issued hybrid capital instruments with

(1) See points 43 to 50 of the Banking Communication. In order to enable such orderly exit, liquidation aid may be considered compatible, when for instance needed for a temporary recapitalisation of a bridge bank or structure or satisfying claims of certain creditor classes if justified by reasons of financial stability. For examples of such aid and conditions under which it was found compatible, see Commission Decision of 1 October 2008 in case NN 41/2008 UK, *Rescue aid to Bradford&Bingley* (OJ C 290, 13.11.2008, p. 2) and the Commission Decision of 5 November 2008 in case NN 39/2008 DK, *Aid for liquidation of Roskilde Bank* (OJ C 12, 17.1.2009, p. 3).

(2) See Case T-17/03 Schmitz-Gotha [2006] ECR II-1139.

(3) As already developed in previous Commission Communications, in particular the Impaired Assets Communication, see points 21 *et seq.*

(4) The Commission has provided detailed guidance regarding the pricing of State guarantees, recapitalisations and asset relief measures respectively in the Banking Communication, the Recapitalisation Communication and the Impaired Assets Communication. To the extent that such a price is being paid, the shareholders of the bank see their position diluted in a financial sense.

(5) Impaired Asset Communication, points 24 and 25. See also Section 4 of this Communication.

(6) See Commission Decision of 18 December 2008 in case N 615/2008 *Bayern LB* (OJ C 80, 3.4.2009, p. 4). However, this does not prevent the bank from making coupon payments when it is under a binding legal obligation to do so.

(7) See Impaired Asset Communication, point 31, and the nuanced approach to dividend restrictions in the Recapitalisation Communication, points 33, 34 and 45, reflecting that although temporary dividend or coupon bans may retain capital within the bank and increase the capital cushion and hence improve the solvency of the bank, they may equally impede the bank's access to private finance sources, or at least increase the cost of new future financing.

greater seniority over existing subordinated debt. In any case, banks should not normally be allowed to purchase their own shares during the restructuring phase.

27. Provision of additional aid during the restructuring period should remain a possibility if justified by reasons of financial stability. Any additional aid should remain limited to the minimum necessary to ensure viability.

4. LIMITING DISTORTIONS OF COMPETITION AND ENSURING A COMPETITIVE BANKING SECTOR

Types of distortion

28. Whilst State aid can support financial stability in times of systemic crisis, with wider positive spillovers, it can nevertheless create distortions of competition in various ways. Where banks compete on the merits of their products and services, those which accumulate excessive risk and/or rely on unsustainable business models will ultimately lose market share and, possibly, exit the market while more efficient competitors expand on or enter the markets concerned. State aid prolongs past distortions of competition created by excessive risk-taking and unsustainable business models by artificially supporting the market power of beneficiaries. In this way it may create a moral hazard for the beneficiaries, while weakening the incentives for non-beneficiaries to compete, invest and innovate. Finally, State aid may undermine the single market by shifting an unfair share of the burden of structural adjustment and the attendant social and economic problems to other Member States, whilst at the same time creating entry barriers and undermining incentives for cross-border activities.

29. Financial stability remains the overriding objective of aid to the financial sector in a systemic crisis, but safeguarding systemic stability in the short-term should not result in longer-term damage to the level playing field and competitive markets. In this context, measures to limit distortions of competition due to State aid play an important role, inter alia for the following reasons. First, banks across the Community have been hit by the crisis to a very varying degree and State aid to rescue and restructure distressed banks may harm the position of banks that have remained fundamentally sound, with possible negative effects for financial stability. In a situation of financial, economic and budgetary crisis, differences between Member States in terms of resources available for State intervention become even more pronounced, and harm the level-playing field in the single market. Second, national interventions in the current crisis will, by their very nature, tend to focus on the national markets and hence seriously risk leading to retrenchment behind national borders and to a fragmentation of the single market. Market presence of aid beneficiaries needs to be assessed with a view to ensuring effective competition and preventing market power, entry barriers and disincentives for cross-border activities to the detriment of European businesses and consumers. Third, the current scale of the public intervention necessary for financial stability and the possible limits to normal burden sharing are bound to create even greater moral hazard that needs to be properly corrected to prevent perverse incentives and excessively risky behaviour from reoccurring in the future and to pave the way for a rapid return to normal market conditions without State support.

Applying effective and proportionate measures limiting distortions of competition

30. Measures to limit the distortion of competition should be tailor-made to address the distortions identified on the markets where the beneficiary bank operates following its return to viability post restructuring, while at the same time adhering to a common policy and principles. The Commission takes as a starting point for its assessment of the need for such measures, the size, scale and scope of the activities that the bank in question would have upon implementation of a credible restructuring plan as foreseen in section 2. Depending on the nature of the distortion of competition, it may be addressed through measures in respect of liabilities and/or in respect of assets [1]. The nature and form of such measures will depend on two criteria: first, the amount of the aid and the conditions and circumstances under which it was granted and, second, the characteristics of the market or markets on which the beneficiary bank will operate.

31. As regards the first criterion, measures limiting distortions will vary significantly according to the amount of the aid as well as the degree of burden sharing and the level of pricing. In this context, the amount of State aid will be assessed both in absolute terms (amount of capital received, aid element in guarantees and asset relief measures) and in relation to the bank's risk-weighted assets. The Commission will consider the total amount of aid granted to the beneficiary including any kind of rescue aid. In the same vein, the Commission will take into account the extent of the beneficiary's own contribution and burden sharing over the restructuring period. Generally speaking, where there is greater burden sharing and the own contribution is higher, there are fewer negative consequences resulting from moral hazard. Therefore, the need for further measures is reduced [2].

[1] See point 21.

[2] If the Commission has, pursuant to Banking Communication, the Recapitalisation Communication or the Impaired Assets Communication, exceptionally accepted aid that departed from the principles required by those communications, the resulting additional distortion of competition will require additional structural or behavioural safeguards; see point 58 of the Impaired Assets Communication.

32. As regards the second criterion, the Commission will analyse the likely effects of the aid on the markets where the beneficiary bank operates after the restructuring. First of all, the size and the relative importance of the bank on its market or markets, once it is made viable, will be examined. If the restructured bank has limited remaining market presence, additional constraints, in the form of divestments or behavioural commitments, are less likely to be needed. The measures will be tailored to market characteristics [1] to make sure that effective competition is preserved. In some areas, divestments may generate adverse consequences and may not be necessary in order to achieve the desired outcomes, in which case the limitation of organic growth may be preferred to divestments. In other areas, especially those involving national markets with high entry barriers, divestments may be needed to enable entry or expansion of competitors. Measures limiting distortions of competition should not compromise the prospects of the bank's return to viability.

33. Finally, the Commission will pay attention to the risk that restructuring measures may undermine internal market and will view positively measures that help to ensure that national markets remain open and contestable. While aid is granted to maintain financial stability and lending to the real economy in the granting Member State, where such aid is also conditional upon the beneficiary bank respecting certain lending targets in Member States other than the State which grants the aid, this may be regarded as an important additional positive effect of the aid. This will particularly be the case where the lending targets are substantial relative to a credible counterfactual, where achievement of such targets is subject to adequate monitoring (for example, through cooperation between the home and host State supervisors), where the banking system of the host State is dominated by banks with headquarters abroad and where such lending commitments have been coordinated at Community level (for example, in the framework of liquidity assistance negotiations).

Setting the appropriate price for State aid

34. Adequate remuneration of any State intervention generally is one of the most appropriate limitations of distortions of competition, as it limits the amount of aid. Where the entry price has been set at a level significantly below the market price for reasons of financial stability, it should be ensured that the terms of the financial support are revised in the restructuring plan [2] so as to reduce the distortive effect of the subsidy.

(1) In particular, concentration levels, capacity constraints, the level of profitability, barriers to entry and to expansion will be taken into account.

(2) For example by favouring early redemption of State aid.

Structural measures — divestiture and reduction of business activities

35. On the basis of an assessment in accordance with the criteria of this Section, banks benefiting from State aid may be required to divest subsidiaries or branches, portfolios of customers or business units, or to undertake other such measures [3], including on the domestic retail market of the aid beneficiary. In order for such measures to increase competition and contribute to the internal market, they should favour the entry of competitors and cross-border activity [4]. In line with the requirement of restoration of viability, the Commission will take a positive view of such structural measures if they are undertaken without discrimination between businesses in different Member States, thus contributing to the preservation of an internal market in financial services.

36. A limit on the bank's expansion in certain business or geographical areas may also be required, for instance via market-oriented remedies such as specific capital requirements, where competition in the market would be weakened by direct restrictions on expansion or to limit moral hazard. At the same time, the Commission will pay particular attention to the need to avoid retrenchment within national borders and a fragmentation of the single market.

37. Where finding a buyer for subsidiaries or other activities or assets appears objectively difficult, the Commission will extend the time period for the implementation of those measures, if a binding timetable for scaling down businesses (including segregation of business lines) is provided. However, the time period for implementing those measures should not exceed five years.

38. In assessing the scope of structural remedies required to overcome distortions of competition in a given case, and with due regard to the principle of equal treatment, the Commission will take into account the measures provided for in cases relating to the same markets or market segments at the same time.

(3) See for example Commission Decision of 21 October 2008 in Case C 10/2008 *IKB*, not yet published and Commission Decision of 7 May 2009 in case N 244/2009 *Capital injection into Commerzbank* (OJ C 147, 27.6.2009, p. 4).

(4) It should be noted that balance-sheet reductions due to asset write-offs, which are partly compensated with State aid, do not reduce the bank's actual market presence and cannot therefore be taken into account when assessing the need for structural measures.

Avoiding the use of State aid to fund anti-competitive behaviour

39. State aid must not be used to the detriment of competitors which do not enjoy similar public support [1].

40. Subject to point 41, banks should not use State aid for the acquisition of competing businesses [2]. This condition should apply for at least three years and may continue until the end of the restructuring period, depending on the scope, size and duration of the aid.

41. In exceptional circumstances and upon notification, acquisitions may be authorised by the Commission where they are part of a consolidation process necessary to restore financial stability or to ensure effective competition. The acquisition process should respect the principles of equal opportunity for all potential acquirers and the outcome should ensure conditions of effective competition in the relevant markets.

42. Where the imposition of divestitures and/or the prohibition of acquisitions are not appropriate, the Commission may accept the imposition by the Member State of a claw-back mechanism, for example in the form of a levy on the aid recipients. This would allow recovery of part of the aid from the bank after it has returned to viability.

43. Where banks receiving State support are requested to fulfil certain requirements as to lending to the real economy, the credit provided by the bank must be on commercial terms [3].

44. State aid cannot be used to offer terms (for example as regards rates or collateral) which cannot be matched by competitors which are not in receipt of State aid. However, in cases where limitations on the pricing behaviour of the beneficiary may not be appropriate, for example because they may result in a reduction of effective competition, Member States should propose other, more suitable, remedies to ensure effective competition, such as measures that favour entry. In the same vein, banks must not invoke State support as a competitive advantage when marketing their financial offers [4]. These restrictions should remain in place, depending on the scope, size and duration of the aid, for a period ranging between three years and the entire duration of the restructuring period. They would then also serve as a clear incentive to repay the State as soon as possible.

45. The Commission will also examine the degree of market opening and the capacity of the sector to deal with bank failures. In its overall assessment the Commission may consider possible commitments by the beneficiary or commitments from the Member State concerning the adoption of measures [5] that would promote more sound and competitive markets, for instance by favouring entry and exit. Such initiatives could, in appropriate circumstances, accompany the other structural or behavioural measures that would normally be required of the beneficiary. The Member State's commitment to introduce mechanisms to deal with bank difficulties at an early stage may be regarded positively by the Commission as an element promoting sound and competitive markets.

5. MONITORING AND PROCEDURAL ISSUES

46. In order to verify that the restructuring plan is being implemented properly, the Commission will request regular detailed reports. The first report will normally have to be submitted to the Commission not later than six months after approval of the restructuring plan.

47. Upon notification of the restructuring plan the Commission has to assess whether the plan is likely to restore long term viability and to limit distortions of competition adequately. Where it has serious doubts as to the compliance of the restructuring plan with the relevant requirements, the Commission is required to open a formal investigation procedure, giving third parties the possibility to comment on the measure and thereby ensuring a transparent and coherent approach while respecting the confidentiality rules applicable in State aid proceedings [6].

---

(1) See for example Commission Decision of 19 November 2008 in case NN 49/2008, NN 50/2008 and NN 45/2008 *Guarantees to Dexia* (not yet published), point 73, Commission Decision of 19 November 2008 in case N 574/2008 *Guarantees to Fortis Bank* (OJ C 38, 17.2.2009, p. 2), point 58 and Commission Decision of 3 December 2008 in case NN 42/2008, NN 46/2008 and NN 53/A/2008 *Restructuring aid to Fortis Bank and Fortis Bank Luxembourg* (OJ C 80, 3.4.2009, p. 7), paragraph 94. For instance a bank may, in certain circumstances, be prohibited from proposing the highest interest rates offered on the market to retail depositors.

(2) It is recalled that restructuring costs have to be limited to the minimum necessary for the restoration of viability. See point 23.

(3) Credit provided on non-commercial terms might constitute State aid and might be authorised by the Commission, upon notification, if it is compatible with the common market, for example under the Communication from the Commission — Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis (OJ C 83, 7.4.2009, p. 1).

(4) Commission Decision of 12 November 2008 in Case N 528/2008 *ING* (OJ C 328, 23.12.2008, p. 10), point 35.

(5) See for example Commission Decision 2005/418/EC of 7 July 2004 on the aid measures implemented by France for Alstom (OJ L 150, 10.6.2005, p. 24), point 204.

(6) Commission communication C(2003) 4582 of 1 December 2003 on professional secrecy in State aid decisions (OJ C 297, 9.12.2003, p. 6).

48. Nevertheless the Commission does not have to open formal proceedings where the restructuring plan is complete and the measures suggested are such that the Commission has no further doubts as to compatibility in the sense of Article 4(4) of Council Regulation EC No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [1]. This might, in particular, be the case where a Member State has notified the Commission of an aid accompanied by a restructuring plan which meets all of the conditions set out in this Communication, in order to obtain legal certainty as to the necessary follow-up. In such cases the Commission might adopt a final decision stating that rescue aid as well as restructuring aid is compatible under Article 87(3)(b) of the Treaty.

6. TEMPORARY SCOPE OF THE COMMUNICATION

49. This Communication is justified by the current exceptional financial sector crisis and should therefore only be applied for a limited period. For the assessment of restructuring aid notified to the Commission on or before 31 December 2010, the Commission will apply this Communication. As regards non-notified aid, the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid [2] will apply. The Commission will therefore apply this Communication when assessing the compatibility of non-notified aid granted on or before 31 December 2010.

50. Bearing in mind that this Communication is based on Article 87(3)(b) of the Treaty, the Commission may review its content and duration according to the development of market conditions, the experience gathered in the treatment of cases and the overriding interest in maintenance of financial stability.

---

(1) OJ L 83, 27.3.1999, p. 1.

(2) OJ C 119, 22.5.2002, p. 22.

ANNEX

Model restructuring plan

Indicative table of contents for restructuring plan [1]

1. Information on the financial institution (description of its structure etc.)

   (NB: Information previously submitted may be reproduced but shall be integrated into this document and where necessary updated)

2. Market description and market shares

2.1. Description of the main relevant product markets (distinction at least between: retail, wholesale, capital markets etc.)

2.2. Calculations of market shares (e.g. national and European wide, depending on the geographical scope of the relevant markets)

3. Analysis of the reasons why the institution run into difficulty (internal factors)

4. Description of the State intervention and assessment of State aid

4.1. Information on whether the financial institution or its subsidiaries have already received a rescue or restructuring aid in the past

4.2. Information on form and amount of the State support or financial advantage related to support. Information should contain all State aid received as individual aid or under a scheme during the restructuring period

   (NB: All aid needs to be justified within the restructuring plan as indicated in the following)

4.3. Assessment of State support under the State aid rules and quantification of aid amount

5. Restoration of viability

5.1. Presentation of the different market assumptions

5.1.1. Initial situation in the main product markets

5.1.2. Expected market development in the main product markets

5.2. Presentation of the scenario without the measure

5.2.1. Required adjustment to the initial business plan

5.2.2. Past, current and future capital ratios (tier 1, tier 2)

5.3. Presentation of the proposed future strategy for the financial institution and how this will lead to viability

5.3.1. Starting position and overall framework

5.3.2. Individual frameworks per business line of the financial institution

5.3.3. Adoptions to changes in regulatory environment (enhancement of risk management, increased capital buffers, etc.)

5.3.4. Confirmation regarding full disclosure of impaired assets

5.3.5. If adequate, change in ownership structure

[1] Information required for the viability assessment may comprise bank's internal data and reports as well as reports prepared by/for the Member State's authorities, including the regulatory authorities.

5.4. Description and overview of the different measures planned to restore viability, their costs and their impact on the P&L/balance sheet

5.4.1. Measures at group level

5.4.2. Measures per business lines

5.4.3. Impact of each measure on the P&L/balance sheet

5.5. Description of effect of the different measures to limit distortions of competition (cf. point 7) in view of their costs and their impact on the P&L/balance sheet

5.5.1. Measures at group level

5.5.2. Measures in the fields of business

5.5.3. Impact of each measure on the P&L/balance sheet

5.6. Comparison with alternative options and brief comparative evaluation of the economic and social effects on the regional, national and Community level (elaboration is mainly required where bank may not meet prudential requirements in the absence of aid)

5.6.1. Alternative options: orderly winding up, break up, or absorption by another bank and resulting effects

5.6.2. General Economic Effects

5.7. Timetable for the implementation of the different measures and the final deadline for implementation of the restructuring plan in its entirety (please indicate issues of confidentiality)

5.8. Description of the repayment plan of the State aid

5.8.1. Underlying assumptions to the exit planning

5.8.2. Description of the State's exit incentives

5.8.3. Exit or repayment planning until full repayment/exit

5.9. Profit and loss accounts/balance sheets for the last three and next five years including key financial ratios and sensitivity study based on best/worst case

5.9.1. Base case

5.9.1.1. Profit and Loss Statement/balance sheet group level

5.9.1.2. Key Financial ratios on group level (RAROC as a benchmark for internal criteria for risk adjusted profitability, CIR, ROE, etc.)

5.9.1.3. Profit and Loss Statement/balance sheet per business unit

5.9.1.4. Key Financial ratios per business unit (RAROC as a benchmark for internal criteria for risk adjusted profitability, CIR, ROE, etc.)

5.9.2. Best case scenario

5.9.2.1. Underlying assumptions

5.9.2.2. Profit and Loss Statement/balance sheet group level

5.9.2.3. Key Financial ratios on group level (RAROC as a benchmark for internal criteria for risk adjusted profitability, CIR, ROE, etc.)

5.9.3. Worst case scenario — where a stress test has been performed and/or validated by the national supervisory authorities, the methodologies, the parameters, and the results of such a test will have to be provided [1]

5.9.3.1. Underlying assumptions

5.9.3.2. Profit and Loss Statement/balance sheet group level

5.9.3.3. Key Financial ratios on group level (RAROC as a benchmark for internal criteria for risk adjusted profitability, CIR, ROE, etc.)

6. Burden sharing — contribution to restructuring by the financial institution itself and other shareholders (accounting and economic value of holdings)

6.1. Limitation of restructuring costs to those necessary for restoring viability

6.2. Limitation of the amount of aid (including information on eventual provisions for limiting dividends and interest payments on subordinated debt)

6.3. Provision of significant own contribution (including information on the size of contribution from shareholders or subordinated creditors)

7. Measures to limit distortion of competition

7.1. Justification of scope of measures in view of the size and effect of the State aid

7.2. Structural measures, including proposal on timing and milestones for divestments of assets or subsidiaries/branches or other remedies

7.3. Behavioral commitments, including to refrain from mass marketing invoking State aid as an advantage in competitive terms

8. Monitoring (possible arrangement of a trustee)

---

(1) The stress testing should to the extent possible be based on common parameters agreed at Community level (such as a methodology developed by the Committee of European Banking Supervisors) and where appropriate adapted to cater for country- and bank-specific circumstances. Where appropriate, reverse stress tests or other equivalent exercises could also be considered.

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COMMISSION

Euro exchange rates [1]

18 August 2009

(2009/C 195/05)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,4101	AUD	Australian dollar	1,7116
JPY	Japanese yen	134,12	CAD	Canadian dollar	1,5606
DKK	Danish krone	7,4433	HKD	Hong Kong dollar	10,9302
GBP	Pound sterling	0,85660	NZD	New Zealand dollar	2,0985
SEK	Swedish krona	10,2375	SGD	Singapore dollar	2,0450
CHF	Swiss franc	1,5207	KRW	South Korean won	1 762,49
ISK	Iceland króna		ZAR	South African rand	11,3450
NOK	Norwegian krone	8,6735	CNY	Chinese yuan renminbi	9,6365
BGN	Bulgarian lev	1,9558	HRK	Croatian kuna	7,3093
CZK	Czech koruna	25,568	IDR	Indonesian rupiah	14 133,00
EEK	Estonian kroon	15,6466	MYR	Malaysian ringgit	4,9882
HUF	Hungarian forint	272,66	PHP	Philippine peso	68,047
LTL	Lithuanian litas	3,4528	RUB	Russian rouble	45,1050
LVL	Latvian lats	0,7002	THB	Thai baht	48,021
PLN	Polish zloty	4,1645	BRL	Brazilian real	2,6281
RON	Romanian leu	4,2188	MXN	Mexican peso	18,2467
TRY	Turkish lira	2,1117	INR	Indian rupee	68,8060

[1] *Source*: reference exchange rate published by the ECB.

V

(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION POLICY

COMMISSION

Prior notification of a concentration

(Case COMP/M.5604 — Dong/Kom-Strom)

(Text with EEA relevance)

(2009/C 195/06)

1. On 12 August 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 [1] by which the undertaking Dong Naturgas A/S controlled by Dong Energy A/S ('Dong', Denmark) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Kom-Strom AG ('Kom-Strom', Germany) by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— for Dong: exploration and production of natural gas and oil, power generation, trading and marketing of energy in Denmark and Northern Europe,

— for Kom-Strom: energy supply (wholesale and trading) in Germany.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of Regulation (EC) No 139/2004. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301 or 22967244) or by post, under reference number COMP/M.5604 — Dong/Kom-Strom, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
J-70
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

(1) OJ L 24, 29.1.2004, p. 1.

Prior notification of a concentration

(Case COMP/M.5421 — Panasonic/Sanyo)

(Text with EEA relevance)

(2009/C 195/07)

1. On 11 August 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 [1] by which the undertaking Panasonic Corporation ('Panasonic', Japan) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Sanyo Electric Co., Ltd. ('Sanyo', Japan) by way of public bid.

2. The business activities of the undertakings concerned are:

— for Panasonic: development, manufacture and sale of audiovisual and communication products, home appliances, electronic components and devices (including batteries), industrial and other products,

— for Sanyo: development, manufacture and sale of consumer products, commercial equipment, electronic components (including batteries), industrial logistics/maintenance equipment.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of Regulation (EC) No 139/2004. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301 or 22967244) or by post, under reference number COMP/M.5421 — Panasonic/Sanyo, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
J-70
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

(1) OJ L 24, 29.1.2004, p. 1.

2009 SUBSCRIPTION PRICES (excluding VAT, including normal transport charges)

EU Official Journal, L + C series, paper edition only	22 official EU languages	EUR 1 000 per year (*)
EU Official Journal, L + C series, paper edition only	22 official EU languages	EUR 100 per month (*)
EU Official Journal, L + C series, paper + annual CD-ROM	22 official EU languages	EUR 1 200 per year
EU Official Journal, L series, paper edition only	22 official EU languages	EUR 700 per year
EU Official Journal, L series, paper edition only	22 official EU languages	EUR 70 per month
EU Official Journal, C series, paper edition only	22 official EU languages	EUR 400 per year
EU Official Journal, C series, paper edition only	22 official EU languages	EUR 40 per month
EU Official Journal, L + C series, monthly CD-ROM (cumulative)	22 official EU languages	EUR 500 per year
Supplement to the Official Journal (S series), tendering procedures for public contracts, CD-ROM, two editions per week	multilingual: 23 official EU languages	EUR 360 per year (= EUR 30 per month)
EU Official Journal, C series — recruitment competitions	Language(s) according to competition(s)	EUR 50 per year

(*) Sold in single issues: up to 32 pages: EUR 6
from 33 to 64 pages: EUR 12
over 64 pages: Priced individually.

Subscriptions to the *Official Journal of the European Union*, which is published in the official languages of the European Union, are available for 22 language versions. The Official Journal comprises two series, L (Legislation) and C (Information and Notices).

A separate subscription must be taken out for each language version.

In accordance with Council Regulation (EC) No 920/2005, published in Official Journal L 156 of 18 June 2005, the institutions of the European Union are temporarily not bound by the obligation to draft all acts in Irish and publish them in that language. Irish editions of the Official Journal are therefore sold separately.

Subscriptions to the Supplement to the Official Journal (S Series — tendering procedures for public contracts) cover all 23 official language versions on a single multilingual CD-ROM.

On request, subscribers to the *Official Journal of the European Union* can receive the various Annexes to the Official Journal. Subscribers are informed of the publication of Annexes by notices inserted in the *Official Journal of the European Union*.

Sales and subscriptions

Priced publications issued by the Publications Office are available from our commercial distributors. The list of commercial distributors is available at:

http://publications.europa.eu/others/agents/index_en.htm

EUR-Lex (http://eur-lex.europa.eu) offers direct access to European Union legislation free of charge. The *Official Journal of the European Union* can be consulted on this website, as can the Treaties, legislation, case-law and preparatory acts.

For further information on the European Union, see: http://europa.eu

Publications Office
Publications.europa.eu

OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES
L-2985 LUXEMBOURG

EN