The new State aid temporary framework

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1. Introduction: the financial and economic crisis

The unprecedented crisis in the international financial markets has created major challenges for the EU.

Since the beginning of the crisis, the Council has emphasised the necessity of maintaining the application of competition rules. The Commission must ensure a level playing field for European businesses and prevent Member States engaging in subsidy races which would be unsustainable and detrimental to the EU as a whole.

Although public intervention has to be decided at national level, this needs to be done within a coordinated framework and on the basis of a number of common Community principles (2). Abandoning State aid control would worsen difficulties and would ultimately be prejudicial to the European economy. Competition policy is therefore part of the solution, not part of the problem.

The Commission’s response

The financial crisis first impacted heavily on the EU banking sector. The Commission reacted very quickly and adopted on 13 October 2008 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 (3) as well as a number of decisions authorising rescue aid to financial institutions.

The importance of maintaining State aid rules was confirmed again in the Communication adopted by the Commission on 26 November 2008, A European Economic Recovery Plan (“the Recovery Plan”). This document constitutes a global action plan to drive Europe’s recovery from the current financial crisis. This plan rests on two pillars:

– a boost to purchasing power that increases demand and confidence in the economy; and

– immediate actions that will boost long-term competitiveness, such as investing in a greener economy through technology.

The Recovery Plan already refers to the adoption by the Commission of temporary guidelines to enhance access to finance for business.

Further, on 5 December 2008 the Commission adopted, as a companion document to the Communication on the financial sector, a Communication on the recapitalisation of financial institutions in the current financial crisis (4). This document provides guidance on how Member States can recapitalise banks to ensure adequate levels of lending to the rest of the economy and stabilise financial markets whilst avoiding excessive distortions of competition.

This Communication already takes into account the effects of the crisis on the real economy, stating that financially sound banks may need State capital to ensure an adequate level of loans to companies. It also stresses the need for appropriate safeguards to ensure that public capital is used to sustain lending to the real economy and not to finance aggressive commercial conduct to the detriment of competitors.

The Communications on the financial sector are aimed at reactivating the interbanking system and normal market functioning as soon as possible, while ensuring fair competition between Member States and financial entities. Their objective is, therefore, to remedy the negative effects of the “financial crisis”.

Despite these initiatives, by the end of 2008, the impact of the crisis in the real economy was becoming more obvious, feeding into a serious downturn affecting businesses and jobs.

As a consequence and following the announcement of the Recovery Plan, the Commission adopted on 17 December 2008, in record time, a new Temporary framework containing additional State aid measures aimed at facilitating companies’ access to finance. This Communication thus focuses on the “economic crisis” and its effects on the real economy.

The temporary framework states that the Commission may provide further clarifications on its approach to particular issues. Using this possibility and on the basis of its application over the last few months, on 25 February 2009 the Commission adopted a Communication amending the temporary framework so as to introduce some technical adjust-

(1) The views expressed in this article are entirely personal and do not necessarily reflect the official position of the European Commission.
mements, in particular as regards aid in the form of guarantees.

Following the adoption of these changes, a consolidated version of the temporary framework has been published in the Official Journal (\(^\text{5}\)).

2. The temporary framework: exceptional times call for exceptional measures

The new temporary framework is part of a coordinated response to the crisis. The departure point of the framework was a situation of high risk aversion on the part of banks. The credit squeeze affected (and still affects) not only weak companies without solvency buffers but also healthy companies, which found themselves facing a sudden shortage of credit due to the impossibility of obtaining credit, or to the higher price of credit. Obviously, the situation was even more difficult for small and medium-sized companies (SMEs).

Sufficient and affordable access to finance is clearly a pre-condition for investment, growth and job creation by the private sector. In the short term, this economic context has negative consequences for the viability of European companies. In the long term, it can delay investments in sustainable growth and other objectives of the Lisbon Strategy.

Although Member States already have a wide range of possibilities to grant State aid for different objectives (environmental aid, rescue and restructuring aid, etc.), there was an urgent need for additional measures targeted to the exceptional difficulties in obtaining finance.

Member States needed to take direct and quick action that could contribute to boosting confidence, facilitating investment and improving conditions for future investments. With the new temporary framework, the Commission provided them with the necessary instruments to tackle the market failure brought about by the markets’ higher perception of risk.

By adopting a single framework applicable to all Member States, the Commission encouraged coordinated action to ensure transparency and a level playing field for businesses and Member States.

The new measures contained in the temporary framework needed to have considerable impact on the market, be well targeted to concrete needs but be flexible enough to adapt to the specific configuration of each Member State.

In light of the above, the new framework focused on three objectives: first, to immediately unblock bank lending, thereby preserving continuity in companies’ access to finance; second, to ensure that limited amounts of aid reach the recipients in the most rapid and effective way; and third, to encourage companies to continue investing in a sustainable future, including the development of green products.

This approach is fully in line with the Council requirement that application of the competition rules be maintained. The Commission did not modify the existing State aid rules but provided additional possibilities for granting State aid tailored to exceptional circumstances.

A very important aspect of the new temporary framework is its limitation in time. It will be applicable only until 31 December 2010. This is because the Commission has considered that the current global crisis requires extraordinary policy responses but for a limited period of time. The proposed measures are strictly linked to the crisis and would not be justified under different circumstances.

This is why the legal basis that has been used (as for the banking communications) is Article 87(3)(b) of the Treaty, a very exceptional legal basis that allows the Commission to declare compatible with the common market aid “to remedy a serious disturbance in the economy of a Member State”.

The potential distortion of competition that these measures could create in the common market would be, in any case, justified by the positive effects that the initiative will have in the European economy, which is suffering the worst crisis since the Great Depression.

3. The new State aid measures contained in the temporary framework

The Communication is structured in three parts: a first part recaps the existing State aid possibilities that Member States can already apply. There is a special reference to the General Block Exemption Regulation (\(^\text{6}\)) (GBER), which allows Member States to support SMEs at different stages of their development with 26 different categories of aid. The measures covered by the GBER are exempted from the notification requirement if all the conditions laid down therein are fulfilled.

The second part develops new openings for Member States to grant State aid, in particular a new compatible limited amount of aid, aid in the form of guarantees, aid in the form of subsidised interest rates and aid for the production of green products.

\(\text{\textcopyright Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation).}\)

\(\text{\textcopyright OJ C83, 7.4.2009, p.1.}\)
Finally, the **third part** includes the temporary adaptation of existing State aid instruments: the Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises (1) and the Communication from the Commission to Member States pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export-credit insurance (2).

The temporary framework:

- applies to all sectors, without making any distinction (3). The reason is that a horizontal approach seems more appropriate as a response to a problem that affects the entire EU economy. At the same time, Member States may adapt the new measures to their specific problems and integrate them into their national recovery plans.

For instance, the automotive industry, one of the industries most heavily affected by the current recession, can benefit from all the measures contained in the framework. That said, subsidising green products is perhaps the most appropriate measure for this sector since it combines access to finance with the promotion of long-term objectives, such as the low carbon economy. In this context, it needs to be stressed that any aid granted on the basis of the framework must fully respect the single market rules to avoid distortions of competition and fragmentation (9);

- applies to SMEs and large companies. There is, however, more favourable treatment for SMEs, which can benefit from higher aid intensities in line with usual Commission policy.

### Definition of firms in difficulty

In order to define a firm in difficulty, the Communication refers to criteria already contained in other existing guidelines. Nevertheless, these criteria should be applied retroactively at the date of 1 July 2008. Those firms which were not in difficulty at 1 July 2008, according to these criteria, can benefit from the new aid measures.

This is reflected in the text, which states that “the aid may be granted to firms that were not in difficulty at that date (1 July 2008) but entered in difficulty thereafter as a result of the global financial and economic crisis”. Of course, “healthy” companies can also qualify for the new State aid possibilities.

However, the Community guidelines on State aid for rescuing and restructuring firms in difficulty (11) (hereafter the R&R guidelines) — based on Article 87(3)(c) of the Treaty — are still the appropriate instrument to be applied to those companies which face serious financial difficulties that cannot be solved by temporary access to finance and that require a restructuring plan. If that is not the case, the necessary restructuring of the economy will be delayed, deepening the recession and its long-term effects.

Concerning the criteria used to define firms in difficulty, a distinction has been drawn between large companies and SMEs. For large companies, the normal conditions stated in the R&R guidelines apply (12). For SMEs, the conditions are those set out in the GBER (13), which reiterate the “hard core” requirements of the R&R guidelines’ definition of firms in difficulty.

### 3.1 Compatible limited amount of aid

This measure allows the granting of €500 000 per undertaking to cover investments and/or working capital over a period of two years.

It is crucial to stress that this is not a new **de minimis** allowance of €500 000 or an increase of the **de minimis** threshold. The existing **de minimis** Regulation gives Member States the possibility of granting up to €200 000 (14) to firms during a period of three fiscal years, without any notification obligation, if a number of conditions are fulfilled. In contrast, the new measure constitutes State aid and, accordingly, needs to be notified and approved by the Commission.

As for **de minimis** aid, the fisheries sector and some agricultural activities are not included in the scope of application. Further, export aid or aid favouring domestic products is also excluded.

The objective behind this new aid measure is to provide financing, in most cases to SMEs, swiftly and with a minimum of red tape. This would help to remedy the situation of companies that are especially vulnerable to a sudden shortage of credit. SMEs play a key role in safeguarding employment. Therefore, everything must be done to ensure that viable businesses continue.

The impact on competition of this aid measure will be restricted given the limited amount of aid involved. In any event, the amount will not be enough

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(3) Apart from the specific provisions governing the compatible limited amount of aid.
(11) Article 1(7) of the General Block Exemption Regulation.
(12) €100 000 for the road transport sector.
for large companies in difficulty, which will need additional financing and a restructuring plan.

Other safeguards are contained in this measure: the aid can only be granted in the form of schemes and is subject to strict cumulation rules (if the new aid is combined with de minimis a limit of €500 000 for the period 2008-2010 applies).

3.2 Aid in the form of guarantees

The temporary framework is intended to facilitate access to loans by reducing the annual premium to be paid for guarantees granted until the end of 2010. It provides for a reduction of 25% for SMEs and 15% for large companies to be applied for a maximum of 2 years following the grant of the guarantee.

This measure also contains some requirements to limit its impact on competition. First, the maximum loan related to the guarantee cannot exceed the total annual wage bill of the beneficiary for 2008. Second, the guarantee can only cover up to 90% of the loan, which means that a risk analysis for the remaining 10% has to be carried out by the entity giving the guarantee.

The initial text of the temporary framework allowed Member States to apply a reduction of the annual premium to be paid in accordance with the safe-harbour provisions contained in the Commission Notice on Guarantees (15).

Normally, these safe-harbour provisions constitute the minimum annual premium which can be applied in the case of SMEs, as a simpler evaluation of whether or not a loan guarantee involves aid. The safe-harbour premiums do not distinguish between different levels of collateralisation because their aim is to serve as a simple way for Member States to grant guarantees to SMEs, without having to collect market data and without having to find a comparable market rate.

The temporary framework extends the use of the safe harbours as benchmarks to large companies. For this reason, it was necessary to take into account different levels of collateralisation (in particular for low rating categories) when calculating the permissible guarantee premiums under the framework. The basis for such calculations is the interest rate top-up as set out in the Commission Communication on the revision of the method for setting the reference and discount rates (16), from which 20 basis points are deducted.

The introduction of the collaterals within the safe-harbour premium gives, as a result, a new grid which will be used for the calculation of subsidised guarantees and has been attached to the Communication as an Annex.

Furthermore, the modifications to the temporary framework clarified that in addition to the two-year reduction of the annual premium, Member States may apply the new safe-harbour premiums set out in the Annex for 8 more years without reduction.

3.3 Subsidised loans

Apart from guarantees, another way to promote the granting of loans is to reduce the applicable interest rate.

In order to achieve this objective, Member States are allowed to use a methodology for the calculation of reference rates different to the one contained in the Commission Communication on the revision of the method for setting the reference and discount rates (17) (based on the one-year IBOR).

Under the temporary framework, Member States can apply pre-crisis spreads between overnight rates and commercial rates at the time of granting loans for contracts concluded before 31 December 2010.

For the time being, this new calculation method results in a more favourable interest rate than the application of the Commission Reference Rate Communication, constituting an incentive for companies. The aid element of the measure, the difference between both interest rates, will be considered compatible under Article 87(3)(b) for interest-rate reductions applied until 31 December 2012.

New methodology

The subsidised interest rate should be at least equal to the central bank overnight rate plus a premium equal to the difference between the average one-year interbank rate and the average of the central bank overnight rate over the period from 1 January 2007 to 30 June 2008, plus the credit risk premium corresponding to the risk profile of the recipient, as stipulated by the Commission Communication on the revision of the method for setting the reference and discount rates.

3.4 Aid for the production of green products

The new methodology for the calculation of the interest rate may be used for investment loans for the production of green products. Further, an additional reduction of 25% for large companies and of 50% for SMEs is applied to this rate for a period of two years following the granting of the loan.

Only products that involve early adaptation to or going beyond future Community product standards which increase the level of environmental protection and are not yet in force can benefit from this aid.

It is important to stress that, in the Commission’s view, environmental goals should remain a priority despite the crisis. The significant progress that has been achieved in recent years must not be brought to a halt because of the economic context. For this reason, it is necessary to provide temporary support to companies for investing in environmental projects.

Finally, to avoid a disproportionate impact on competition, companies related to sectors with overcapacity are excluded from the scope of application of the measure.

### 3.5 Temporary adaptation of existing State aid rules

The temporary framework makes concrete changes to existing guidelines to make them more effective in the current circumstances. For instance, nowadays investors are tending to invest in safer assets to the detriment of the illiquid nature of risk capital investments. Therefore, to reactivate these investments, the Commission is allowing until the end of 2010 a risk capital injection in SMEs of up to €2.5 million per year (instead of the current €1.5 million), in cases where at least 30% (instead of the current 50%) of the investment cost comes from private investors.

Further, Member States can benefit from a simplification of the “escape clause” contained in the Communication on short-term export-credit insurance. This clause allows marketable risks, which are usually excluded from this benefit, to be covered with public funds. This temporary modification will speed up — something which is now essential for commercial transactions — the procedures to be followed by Member States in order to use this clause.

### 4. Additional provisions of the temporary framework

Apart from the general reporting obligations, the temporary framework contains additional requirements. On the one hand, Member States must provide by 31 July 2009 a list of the schemes put in place under the framework and, by 31 October 2009, a report indicating the need for the Commission to maintain the application of the framework until the end of its validity.

This important information will be used to assess the effectiveness and market impact of the measures contained in the temporary framework. It should be borne in mind that the Commission, on the basis of important competition policy or economic considerations and after consulting Member States, can review the temporary framework before the established deadline. In view of the speed with which recent developments have unfolded, this possibility cannot be completely ruled out.

On the other hand, Member States must provide detailed data on the environmental benefits of the subsidised loans for green products. As mentioned before, this request is justified by the need to ensure a positive impact on the environmental objectives proportional to the potential distortion created by the subsidised green products.

Member States are also required to demonstrate that only those companies that were not in difficulty on 1 July 2008 have benefited from the framework.

Of course, all the aid measures contained in the temporary framework need to be notified to the Commission, including the compatible limited amount of aid amounting to €500 000. To this end, the Commission has put in place specific arrangements to ensure the swift adoption of decisions as long as complete and clear notifications are submitted.

### 5. Concluding remarks

We can already conclude, just a few months after its adoption, that the temporary framework has been welcomed by the Member States. The great number of notifications received, as well as the number of decisions already adopted, can only confirm the above. At this stage, the following schemes have been put in place on the basis of the framework:

- 8 schemes for aid of up to €500 000 per company proposed by Germany, France, Latvia, Luxembourg, Hungary, Portugal, the United Kingdom and Austria;
- 4 schemes for interest-rate subsidies in Germany, Hungary and France;
- 3 risk-capital schemes in Germany, France and Austria;
- 3 schemes offering reduced-interest loans to businesses investing in the production of green products in France, the United Kingdom and Spain;
- 6 guarantee measures in Belgium, Germany, France, Luxembourg, Hungary and the United Kingdom.

(*) For the limited amount of compatible aid, aid in the form of guarantees, aid in form of interest-rate subsidies and aid for the production of green products.

The significant use of the framework shows that the Commission has provided Member States with a useful tool to face the impact of the crisis on the real economy. It clearly constitutes an additional instrument to secure credit flows to firms.

Almost all Member States have adopted comprehensive fiscal, monetary and structural measures to combat the crisis in the short term. The temporary framework provides also the opportunity of encouraging investments in the future, in particular via subsidised loans for the production of green products.

The informal meeting of Heads of State or Government that took place on 1 March 2009 recognised that unblocking the flow of credit is crucial for the effectiveness of fiscal stimuli undertaken by Member States. Further, it expressed confidence in the Commission’s role as guardian of the Treaty and stressed that protectionism is not the answer to the crisis.

We must not forget that the single market has been the motor of economic and social prosperity and job creation in the EU (20). Europe’s successful economic recovery will depend on our ability to make the most of the benefits it brings (21).

The worldwide recession that we are facing constitutes a difficult test for State aid control policy. But, despite the current context, distortions of competition should be kept to an absolute minimum to avoid making the recovery of the European economy more difficult.

Member States should make the maximum possible use of the existing State aid possibilities for building confidence in the markets and getting the real economy back on track. The lessons to be learned from the crisis should allow Europe to come out of this recession even stronger. To quote Sir Winston Churchill: “Difficulties mastered are opportunities won”.

(20) The single market has raised EU prosperity by 2.15% of EU GDP year on year and added 2.75 million extra jobs between 1992 and 2006. Intra-EU trade relative to GDP rose by 30% between 1995 and 2005.