The period under review continued to be dominated by the effects of the crisis in the banking sector with spill-over into the real economy. For more details, see the spring edition of the scoreboard. (2)

1. Policy developments

In addition to the specific banking communications it has already issued, the Commission adopted on 25 February 2009 a Communication on ‘Impaired assets’. (3) This Communication provides guidance to Member States on how to handle asset relief measures. Impaired assets are categories of assets on which banks are likely to incur losses (e.g. US sub-prime mortgage-backed securities).

The Commission considers that a common European approach is needed to deal with impaired assets, to make sure that foreseeable losses are disclosed and properly handled and to enable banks to use their capital to resume their normal function of lending to the economy instead of feeling the need to retain capital to cushion against potential losses.

The Commission’s Communication outlines various methods to deal with impaired assets, notably through asset purchase (including bad bank scenarios) and asset insurance schemes. It explains the budgetary and regulatory implications of asset relief measures and gives details on how to apply State aid rules to such measures.

The aim of this document is to ensure that foreseeable losses are disclosed and that impaired assets are valued properly with the help of an independent expert using a commonly accepted valuation methodology. The aim of the valuation is to establish the real economic value of illiquid assets, which may be significantly above the fair (market) value. The Communication requires that measures designed to protect banks against illiquidity arising from impaired assets are accompanied by adequate burden sharing and remuneration.

In addition, the Commission adopted on 25 February 2009 a series of amendments to the December 2009 Temporary Framework (4), in particular to clarify the use of safe harbour premiums with regard to guarantees.

2. Cases adopted (5)

2.1. Decision taken under Article 87(2)(a) of the EC Treaty

UK Homeowners Mortgage Support Scheme (N 179/2009)

On 21 April 2009, the Commission approved the UK Homeowners Mortgage Support Scheme to help households affected by the financial downturn. The scheme aims to reduce the level of home repossessions likely to occur as a result of the current economic downturn.

The measure targets households affected by a temporary income shock and who are at risk of falling behind on their mortgage payments. This scheme enables eligible borrowers to reduce their monthly payments to a more manageable level for up to 2 years on their sole residence, giving them breathing space to restructure their mortgage and helping them to keep their family home.

The government will guarantee a maximum of 80% of the total interest deferred to financial institutions that provide or hold these mortgages, for a period of up to two years. The guarantee is designed to enhance lender incentives in such a way as to make the policy of forbearance relatively more attractive compared to repossession policy. It seeks to alter lender behaviour by encouraging them to forebear in cases where they otherwise would not have been prepared to take the risk, particularly in a falling market.

The scheme is open to any regulated or unregulated institution offering or holding mortgages in the UK. This includes incorporated banks, UK subsidiaries of foreign institutions and building societies.

The government will only pay the guarantee in the event that the proceeds of repossession are not

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(1) The views expressed are purely those of the writers. The content of this article does not necessarily reflect the official position of the European Commission.


(4) This is only a small selection of the cases adopted in the period under review.
enough, once the principal of the mortgage has been repaid by the lender. The guarantee runs for four years commencing when the borrower exits the scheme in order to avoid any perverse incentive for lenders to repossess before the guarantee expires.

Although the primary beneficiaries of the scheme are individual borrowers, the scheme also provides aid to lenders. Therefore the scheme was approved under Article 87(2)(a) of the EC Treaty as it provides aid of a social character to individuals affected by a temporary income shock and at risk of losing their home, on a non-discriminatory basis. Although these individuals may not previously have been considered as disadvantaged, given that they had sufficient resources to fund the purchase of their own home, the worsening economic climate means that many of them have become unemployed and now face the prospect of losing their home.

2.2. Decision taken under Article 87(3)(a) of the EC Treaty

Aid to Sunfilm AG for the production of thin-film solar modules in Saxony, Germany (N 453/2008)

On 11 February 2009, the Commission endorsed €56 million of regional investment aid to Sunfilm for the production of thin-film solar modules in Saxony, Germany.

Sunfilm AG is a newly founded company which is setting up a plant to manufacture large solar modules based on thin-film technology. The project is to be carried out in Großröhrsdorf, Sachsen, Germany, an area with a below-average standard of living and high unemployment and so eligible for regional aid under Article 87(3)(a) of the EC Treaty.

The Commission’s assessment of the compatibility of regional aid for large investment projects depends on the market shares of the beneficiary and on the production capacity created by the investment or the performance of the market. Provided that the thresholds set in the Regional Aid Guidelines are not exceeded, the effect of the aid on competition is deemed to be outweighed by its positive contribution to regional development.

The Commission found that Sunfilm’s share of the worldwide solar module market would remain far below the 25% threshold, both before and after the planned investment. As the solar module market has a double-digit growth rate, which is well above the average European Economic Area (EEA) growth rate, the Commission also concluded that the additional production capacity created by the project would raise no concerns.

Therefore, the Commission found the measure to be compatible with the requirements of the Regional Aid Guidelines 2007-2013, and in particular with the rules on large investment projects, as Sunfilm would not gain significant new market shares and the investment takes place in a fast growing market, the photovoltaic sector. The positive impact of the investment on regional development was considered to outweigh the potential distortion of competition.

2.3. Decisions taken under Article 87(3)(b) of the EC Treaty

2.3.1. Banking cases

(a) Aid Schemes

UK Asset-Backed Securities Guarantee Scheme (N 232/2009)

On 17 April 2009, the UK notified its intention to set up another scheme to alleviate the funding constraints that banks are currently facing. By guaranteeing AAA rated residential mortgage-backed securities (‘RMBS’), the UK Government will encourage the return of confidence in this important market for the UK economy. Unlike other Member States, the UK real estate market is heavily reliant on the securitisation market, which has a significant influence on the availability of mortgages. The scheme will enable the issuer to sell RMBS and therefore provide the necessary liquidity to originating banks or building societies on more favourable terms than would have been possible under the conditions prevailing in the financial markets.

The measure is designed to increase the funds available to banks to promote lending to homebuyers and homeowners. Under the scheme, investors will benefit from the guarantee provided to securities issued by special purpose vehicles collateralised with residential mortgages. Guarantees allocated under the scheme will be limited to a total of £50 billion.

The Commission concluded that the scheme complies with the conditions laid down in its Guidance Communication on State aid to the financial sector during the crisis. In particular, the Commission found that the scheme is well targeted to remedy a serious disturbance in the UK economy, proportionate to the challenge faced and designed to minimise negative spill-over effects on competitors, other sectors and other Member States. The scheme is non-discriminatory, limited in time (six months) and scope and with a market-orientated remuneration.

(b) Ad-hoc aid

ING illiquid assets (N 138/2009)

On 31 March 2009, the Commission approved for 6 months the illiquid asset back-up facility provid-
ed by the Dutch State to the financial group ING, while at the same time initiating the formal investigation procedure laid down in Article 88(2) of the EC Treaty to verify the conditions of the Impaired Assets Communication regarding valuation (including the valuation methodology) and burden sharing of the measure.

In January 2009, the Dutch State and ING agreed on a illiquid assets back-up facility for a portfolio of US$39 billion par value worth of securitised US mortgage loans, mostly consisting of Alt-A mortgages. Alt-A loans are the category of US loans between prime and sub-prime, often granted on the basis of a simple declaration of income by the borrower with no other proof required.

Under the transaction, the Dutch State will buy the right to receive cash flow on 80% of this US$39 billion portfolio by paying ING about US$28 billion. That amount will be paid by the Dutch State in accordance with a pre-agreed payment schedule.

Following an initial assessment of the complex measure for ING, the Commission decided for reasons of financial stability, similar to those governing the assessment of rescue aid, not to raise objections for a period of six months. The Commission found that the measure complies with the conditions on eligibility of assets, asset management arrangements, transparency and disclosure and the guarantee fee stipulated in the Impaired Assets Communication. However, some conditions such as valuation and burden sharing required further in-depth analysis, which is why the Commission opened an in-depth investigation.

ING had already benefited from an emergency recapitalisation of €10 billion, which the Commission approved in November 2008 (N 528/2008).


On 19 December 2008, the Irish authorities informed the Commission of their intention to recapitalise Anglo Irish Bank with €1.5 billion. On 8 January 2009, the Irish authorities formally notified this measure.

Due to the current financial crisis, even banks that meet the regulatory solvency ratios may experience distress and be required to reinforce their capital. In addition to difficulties caused by the global financial crisis, recent developments with regard to the Anglo Irish Bank’s corporate governance increased the need to reassure the financial markets of the bank’s stability. Against this background, the Irish authorities decided to inject €1.5 billion into Anglo Irish Bank.

The shares to be issued will qualify as core tier 1 capital and will produce a dividend of 10% payable annually, at the discretion of the bank and in priority to dividends on ordinary shares. Dividends on the shares are payable in cash, or (if the bank is unable to pay in cash) in ordinary shares on the basis of the average daily closing price over the previous 30 trading days. The shares will carry 75% of the voting rights in Anglo Irish Bank. The bank can repurchase the shares at par for a maximum of five years. After that period, shares can be repurchased at 125% of par. No dividends on ordinary shares are allowed when no dividend on the shares to be issued is paid to the State.

The Commission concluded that the measure complies with the conditions laid down in its Banking and Recapitalisation Communications and approved it on 14 January 2009.

However, the Irish Government eventually decided to take Anglo Irish Bank into public ownership on 21 January 2009. For purposes of legal certainty, the Irish authorities notified the change of ownership of Anglo Irish Bank to the European Commission.

The European Commission considered that the purchase of existing shares and the takeover of assets, when these are not accompanied by a capital injection, assumption of liabilities or other State measures, do not favour the financial institution, inasmuch as they amount to a mere change of ownership. Therefore, they do not constitute State aid. That is also in line with the principle of neutrality as regards property ownership (Article 295 of the EC Treaty).

### 2.3.2. Real economy cases


The Commission authorised 10 schemes providing for aid up to €500 000 under the Temporary Framework in Portugal, France, UK, Hungary, Luxembourg, Austria, Latvia, the Netherlands, Ireland and Slovakia. The measures enable aid of up to €500 000 to be granted in 2009 and 2010 to businesses in difficulty as a consequence of the current economy crisis or facing funding problems due to the credit crunch. The schemes meet the conditions set under the Commission’s Temporary Framework. The schemes apply only to companies which were not in difficulty on 1 July 2008 — that is before the start of the credit squeeze. For companies whose difficulties date from before the credit squeeze and which, therefore, must address structural problems,
the Rescue and Restructuring Guidelines (7) provide the best tool for ensuring long-term viability.


The Commission authorised 8 schemes providing for aid in the form of loan guarantees under the Temporary Framework in the UK, France, Germany, Luxembourg, Latvia, Belgium and Hungary. The schemes allow authorities at federal, regional and local level to grant aid in the form of subsidised guarantees for investment and working capital loans concluded by 31 December 2010 (or 2009 for the Latvian scheme). The loan guarantee measures allow companies to receive State guarantees at subsidised rates, to raise investment or working capital.

Worth mentioning is the Belgian scheme, which is not a national but a regional scheme. In view of the importance of Flanders for the overall Belgian economy, the Commission considered that the scheme could be approved under Article 87(3)(b) of the EC Treaty even though it was proposed at regional level. The Commission took into account that Flanders represents a very substantial part of Belgium’s GDP (57.5 %) and population (57.8 %). Compared to Belgium averages, the share of industry in Flanders is rather high. Its industry is strongly focused on exports, and services are closely linked to port activities (mainly in Flanders) and thus on trends in world trade. About 80.7 % of Belgian exports are produced in Flanders. Export activities and international trade have been strongly affected by the crisis in the real economy. The Belgian authorities submitted extensive material to substantiate the above-mentioned facts, in particular to prove the interdependency between the economy of the Flemish region and the entire Belgian economy. They also demonstrated that the scheme was necessary, proportional and appropriate to remedy a serious disturbance in the Belgian economy as a whole. According to the Commission, a measure of this scale can be reasonably expected to produce effects across the entire Belgian economy.

**Loans with subsidised interest rate (N 15/2009, N 38/2009 and N 78/2009)**

In February the Commission authorised three schemes providing for aid to firms in the form of reduced-interest rates under the Temporary Framework in France, Germany and Hungary. The schemes allow government, local authorities and some public bodies to grant aid in the form of reduced-interest rates on loans of any duration concluded by 31 December 2010. The low rates will be available for loans finalised no later than 31 December 2010, but only on interest payments up to 31 December 2012. After that date firms will have to pay market rates. The schemes apply only to companies which were not in difficulty on 1 July 2008.


The Commission authorised schemes offering reduced-interest loans to businesses investing in the production of green products under the Temporary Framework in France, the UK and Spain. In the UK and Spain, the schemes focus mainly on the car and car component industry, whereas the French scheme is not restricted to car sector. The schemes allow state, regional or local authorities to grant reduced-interest loans until 31 December 2010 (until December 2009 under the Spanish scheme) with a maximum term of two years. The schemes will support businesses faced with financing problems due to the credit squeeze, while at the same time making it easier for them to invest in products with an environmental benefit. The investment must relate to products that meet or surpass future Community environmental protection standards. The reduction in the interest rate may not exceed 50 % for small and medium-sized enterprises (SMEs) and 25 % for large businesses, in relation to the reference rate, and must take into account the enterprise’s risk profile when the loan is granted. The schemes apply only to businesses that were not in difficulty on 1 July 2008 or that were not in difficulty on that date but have since fallen into difficulty due to the economic crisis. Lastly, monitoring reports to be produced by the authorities must include additional information on the sectors of activity covered and the environmental benefits of the measure.


The Commission authorised temporary changes to certain existing risk-capital schemes in Germany, France and Austria to the Commission’s Temporary Framework.

The aim of the schemes concerned is to facilitate access to risk capital for small and medium-size enterprises (SMEs) in their early stages of development. The maximum investment instalments were temporarily increased from € 1.5 million to € 2.5 million over each 12-month period. The minimum private participation for risk capital investments was temporarily reduced from 50 % to 30 %. These amendments will apply until the end of 2010.

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(7) Community guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C 244, 1.10.2004, pages 2-17. These guidelines have been extended until 9 October 2012, see OJ C 156, 9.7.2009, p. 3.
Luxembourg’s export-credit insurance scheme (N 50/2009)

The Commission authorised on 20 April 2009 under the Temporary Framework a measure adopted by Luxembourg to limit the adverse impact of the current financial crisis on export firms. Under the notified scheme, the export-credit agency concerned, Ducroire Luxembourg, will provide export-credit insurance to complement insurance policies taken out with private insurance companies. Ducroire can provide credit up to a higher limit where evidence exists that private insurers have excessively reduced or even refused credit. The limits authorised by Ducroire will be based on an analysis of the underlying risk conducted by the private insurer and a further analysis carried out by Ducroire itself. The budget earmarked for this measure amounts to €25 million.

The Luxembourg authorities provided sufficient proof that the necessary cover is unavailable on the private insurance market. The premiums required by Ducroire meet the condition of being aligned to those of the private market, as stipulated by the safeguard clause in the Commission’s Communication on short-term export-credit insurance. The premiums were set at a level that encompasses an additional margin, thereby providing an incentive for exporters to have recourse to private insurers again once normal market conditions are restored. The measure’s impact in terms of squeezing out private insurers is thus limited, which the Commission described as vital in its analysis. The measure will apply until 31 December 2010.

2.4. Decisions taken under Article 87(3)(c) of the EC Treaty

€800 million public funding for Spanish textile sector (C 52/2007)

On 24 March 2009, the Commission authorised €800 million of public funding for a comprehensive support programme aimed at the Spanish textile and clothing sector. The programme comprises measures to promote technical research, reindustrialise areas affected by structural changes, loans to modernise SMEs, preferential loans for innovation, collective participation in fairs and consultancy regarding the export potential, specific training and to maintain aged workers in their jobs.

The Spanish textile programme was in force from June 2006 until 31 December 2008 and was not notified to the Commission. An in-depth investigation was opened on 13 November 2007, as the Commission had doubts regarding the possible accumulation of different measures offered by the programme.

The Spanish authorities provided evidence that the de minimis threshold of a maximum of €200 000 aid over three years per company had been respected on an individual and accumulated basis. The aid intensity of the training measure was well below the thresholds set by analogy by the EU Training Aid Regulation and General Block Exemption Regulation. The measure to maintain the employment of aged workers applied mainly to micro-enterprises and its impact on the market was very limited, in line with Commission Decision of 10 December 2008 authorising aid aimed at furthering the training and employment of aged workers in the Spanish footwear, tanning and leather sector (case N 244/2008).

The Commission therefore found the measures to be in line with State aid rules, either under approved aid schemes, the exemption for small amounts of aid or Article 87(3)(c). It also concluded that the positive effects of the measure would outweigh any potential distortion of competition it might create.

UK measures in favour of Royal Mail (C 7/2007)

On 8 April 2009, the Commission decided that four State aid measures granted in favour of the UK postal incumbent Royal Mail between 2001 and 2007 were in line with EU State aid rules. Since none of the measures had been notified to the Commission, the State aid investigation was opened in 2007 following complaints.

The Commission’s investigation found that three loan measures granted in 2001, 2003 (extended in 2007) and 2007, totalling £1.7 billion (£1.9 billion at today’s values) did not constitute State aid because they were granted on commercial terms. The Commission could not reach the same conclusion concerning a fourth measure, under which the UK Government released £850 million from the reserves of Royal Mail which were under specific State control, extending the period over which it could address its large pensions deficit. However, the historic pensions’ liabilities of Royal Mail arose solely as a result of employing staff on civil service terms, and over a period of time when Royal Mail enjoyed a monopoly over ordinary letter mail. The Commission also noted that the form of the measure left the pension liabilities of Royal Mail intact and only allowed the company to address the deficit over a longer period, rather than lifting those liabilities entirely. The Commission indicated that, in general, a measure requiring a beneficiary to address its accrued liabilities in full is likely to be less distortive than a measure which relieves them entirely. Thus, the Commission concluded that any aid contained in the pension measure was compatible with the Single Market under Article 87(3)(c) of the EC Treaty.
2.5. Decisions taken under Article 88 of the EC Treaty (recovery)

**BT Group plc (C 55/2007)**

On 11 February 2009, the Commission found aid granted to BT to be partially unlawful and ordered recovery. The Commission concluded that a UK Crown guarantee covering the pension liabilities of British Telecom plc on the EU telecommunications markets was partially unlawful under State aid rules. In November 2007, following a complaint, the Commission initiated a formal investigation on the Crown guarantee for BT's pension liabilities, granted by the UK Government in 1984, at the time of BT's privatisation. The aim of the measure was to guarantee the pension rights of BT employees working at the time of privatisation. The guarantee can only be called upon if BT goes bankrupt and if there are not enough assets in its pension fund to finance the covered employees' pension rights. The Commission's investigation found that the guarantee benefits directly and exclusively the employees involved and not BT itself, and does therefore not constitute State aid to BT.

However, subsequent UK legislation imposed obligations on pension funds, from which funds with a Crown guarantee were exempted. In particular, as concerns pre-privatisation employees, BT’s pension fund is exempt from the payment of a levy to the Pension Protection Fund, a safety net created in 2004 to guarantee pensions when sponsor companies go bankrupt and financed by their contributions. A levy is however paid for BT post-privatisation employees who are not covered by the Crown guarantee.

In that respect, the Commission concluded that exemption from the application of the payment confers a financial advantage to BT and constitutes State aid. Such aid cannot be justified under EU rules because it merely dispenses BT from charges that its competitors have to pay. Therefore, the UK must recover the aid by ensuring that a full levy, corresponding to what would have been due since 2005 by BT without the Crown guarantee, is paid to the Pension Protection Fund plus interest. BT has already blocked an amount of GBP 16.6 million in an escrow account corresponding to the levies payable until 2008, which should accrue to the Pension Protection Fund following the Commission decision.