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In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 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, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […].		**PUBLIC VERSION** **This document is made available for information purposes only.**

Subject: State aid NN12/2010 and C11/2010 (ex N667/2009) – Ireland
Second recapitalisation of Anglo Irish Bank and restructuring of Anglo Irish Bank

Sir,

The Commission wishes to inform the Irish authorities that, having examined the information supplied by your authorities on the measure referred to above, it has decided to approve the measure temporarily for six months as compatible rescue measure. At the same time, it will also in parallel initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union with regard to the restructuring plan submitted by the Irish authorities on 30 November 2009, since the Commission has doubts as to the compatibility of this restructuring plan and the associated aid measures with the internal market in the light of the *Commission's Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current financial crisis under the State aid rules*[1] (the Restructuring Communication).

[1] OJ C195, 19.8.2009, p. 9.

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1 PROCEDURE

(1) On 26 June 2009, the European Commission authorized in case N 356/2009 emergency aid to Anglo Irish Bank (hereinafter "Anglo" or "the Bank") in the form of a capital injection of EUR 4 billion on the basis of Article 87(3)(b) EC for a period of six months and upon the submission of an in-depth restructuring plan.[2]

(2) On 30 November 2009, the Irish authorities notified a restructuring plan[3] prepared by the bank (registered under case N 667/2009).

(3) On 24 November and 18 December 2009 the Commission sent information requests regarding the restructuring plan […][*].

(4) On 29 January 2010, the Irish authorities informed the Commission of their intention to inject additional capital into Anglo.

(5) Following a number of preliminary contacts, the Irish authorities formally notified to the Commission a second recapitalisation measure on 17 February 2010. As the measure has already been put into effect, the measure was registered under NN 12/2010.

(6) On 17 March 2010, the Irish authorities submitted that the recapitalisation would amount to up to EUR 8.3 billion, allowing Anglo to respect its capital requirements until […]. This amount may later potentially be adjusted downwards to take into account the transfer of assets to NAMA and the associated reduction in capital requirements.

(7) On 29 March 2010, the Irish authorities submitted that additional impairments on NAMA and non-NAMA loans may need to be taken shortly after 31 March 2010. Consequently the Irish authorities submitted a final recapitalisation measure, based on (i) an initial recapitalisation of EUR 8.3 billion needed to ensure that Anglo will meet its capital requirements at […]; and at earlier dates; and (ii) a potential increase of the recapitalisation of up to EUR 2.14 billion which will be granted under pre-determined conditions (NAMA haircut and effective impairments on non-NAMA loans) and which will enable Anglo to meet its capital requirements until […]. The total recapitalisation amount would not exceed EUR 10.44 billion.

[2] Commission Decision of 26 June 2009 in case N 356/2009, OJ C 235, 30.9.2009.

[3] According to paragraph 40 of the Commission Decision of 26 June 2009, the submission of a restructuring plan is consistent with paragraph 28 of the CIFS Scheme and paragraph 30 of the Commission's approval of the CIFS Scheme (see Commission Decision of 13 October 2008 in Case NN 48/2008 "Guarantee Scheme for Banks in Ireland"). In particular, the Minister will require a restructuring plan to be produced if a participating institution's solvency ratio falls below the minimum regulatory standards applicable to it on a material basis.

[*] Business secret, contains confidential information, where possible figures have been replaced by ranges in [brackets].

2 DESCRIPTION OF THE MEASURE

2.1 The beneficiary

(8) Measured by balance sheet size, Anglo Irish Bank is one of largest banks operating in Ireland. At 30 June 2009[4] it had a balance sheet size of over EUR 90 billion (nearly 50% of Irish GDP). Prior to suspension from listing on 16 January 2009, the bank's shares were quoted on the Dublin and London stock exchanges. Anglo has operations in Ireland, the UK, the United States, Jersey and the Isle of Man.

(9) In terms of its business model, Anglo can be categorised as a "monoline" bank specialising in *commercial* real estate lending. The Bank is not active in *retail* mortgage lending. Its main strategy is to lend on a senior first-secured basis to clients against investments and development property assets in each of its three core markets: Ireland, the UK and the US. Its market share in the lending to Irish firms (both property and non-property lending) was around 20% in March 2009[5]. The market share in UK property lending was estimated at 3.3% (the Bank has nearly no non-property lending in the UK).

(10) According to the Anglo Group Management Accounts, Anglo registered a loss of EUR […] billion in the nine months to 30 June 2009 and had a balance-sheet total of EUR […] billion at that date. Lending (loans to customers and to banks) was EUR […] billion and comprises approximately [75-90]% of the Bank's total assets. The lending balances by sector as at 30 June 2009 show that: commercial property lending amounts to EUR […] billion ([60-75]% of total lending); residential property amounts to EUR […] billion ([10-25]% of total lending); business banking amounts to […] billion ([0-15]% of total lending) and other lending amounts to EUR […] billion ([0-15]% of total lending). As of 30 June 2009, total lending Ireland amounted to EUR […] billion[6], while lending UK and US amounted respectively to EUR […] billion and EUR […] billion.

(11) The Bank's funding is based on customers' (retail and firms) deposits and on wholesale funding. On the retail side, the Bank does not offer current accounts but offers saving products, mainly through direct channels, as the Bank has only 5 branches in Ireland. Its market share in the Irish saving market in September 2009 was 6%. In the UK retail saving market, its market share was around 1%.

(12) It should also be mentioned that the Bank is active in wealth management. It estimates its market share at [30-40]% in Ireland and [0-10]% in the UK.

(13) Funding markets were extremely challenging for the Bank throughout the period from September 2008 to June 2009. The composition of the Bank's funding profile has deteriorated since September 2008 with a significant decline in balances from non-retail customers and market counterparts, resulting in an increased reliance on funding support from central banks. There was a significant reduction in customer deposits (particularly

4 Anglo Group Management Accounts, June 2009 as notified in the context of the restructuring plan.
5 Source: Restructuring plan dated 30 November 2009, page 27
6 In addition, lending by the Irish Wealth Management division amounted to EUR […] billion.

non-retail), falling from EUR […] billion at 30 September 2008 ([…]% of the total funding) to EUR […] billion at 30 June 2009 ([…]% of total funding). Its reliance on ECB funding increased and has been the primary driver of the increase in interbank borrowings from EUR […] billion ([…]% of the total funding) as at September 2008 to EUR […] billion ([…]% of total funding) as at June 2009.

(14) Anglo is one of the financial institutions covered by the Irish Guarantee Scheme for financial institutions ("the CIFS Scheme"), which was adopted under the Credit Institutions (Financial Support) Act 2008 (hereafter the "Act"). That scheme was approved by the Commission as compatible State aid on 13 October 2008.[7] Total State-guaranteed funding (including deposits) at 30 June 2009 was approximately EUR […] billion. Anglo applied to participate in the newly established Eligible Liabilities Guarantee Scheme ("the ELG Scheme")[8] on 28 January 2010. According to the estimates provided by the Irish authorities, the potential issuance (including deposits) by Anglo under the new scheme will be EUR […] billion.

(15) Despite its coverage under the CIFS guarantee scheme, the impact of the global financial crisis on the Bank as well as difficulties that arose with regard to its corporate governance led the Irish Government to announce on 21 December 2008 its intention to provide a capital injection of EUR 1.5 billion to Anglo. The Commission approved the proposed recapitalisation on 14 January 2009.[9] However, this proposed recapitalisation did not take place, as it was overtaken by events.

(16) On 15 January 2009 however, the Irish Government announced its decision to take Anglo into public ownership. The change of ownership occurred on 21 January 2009, pursuant to the Anglo Irish Bank Act 2009. The decision to nationalise the Bank was taken because the Bank's funding position, notwithstanding the recapitalisation announcement of 21 December 2008, had weakened while recent corporate governance developments at the Bank had caused serious reputational damage to it at a time when overall market sentiment towards it was already highly negative. The change of ownership sought, therefore, to stabilise the Bank's credibility position. On 16 February 2009, the Commission concluded that the change of ownership of Anglo as such did not involve State aid to the Bank.[10] Following the nationalisation, the Government did not proceed with the proposed capital injection of EUR 1.5 billion.

2.2 The events triggering the first recapitalisation by the State

(17) The Bank, due to its business model, has been highly exposed to the property market. As the credit crisis intensified and the property market collapsed in 2008 in all the countries

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[7] See Commission decision of 13 October 2008 in Case NN48/2008 'Guarantee Scheme for Banks in Ireland'.

[8] See Commission decision of 20 November 20009 in Case N 349/2009 "Credit Institutions Eligible Liability Guarantee Scheme".

[9] See Commission decision of 14 January 2009 in case N9/2009, 'Recapitalisation of Anglo Irish Bank by the Irish State', OJ C177, 30.8.2009

[10] See Commission decision of 16 February 2009 in case N61/2009, 'Change of Ownership of Anglo Irish Bank', OJ C177, 30.8.2009

where the bank was active (Ireland, UK and US), market sentiment towards the Bank and its exposure to the property market became a significant problem and threatened its access to funding. The composition of the Bank's funding profile had deteriorated since September 2008 with a significant decline in balances from non-retail customers and market counterparts resulting in an increased reliance on funding support from central banks.

(18) Notwithstanding the nationalisation, the liquidity position of the Bank continued to deteriorate. For the period from 16 January 2009 to 20 May 2009, the Bank experienced an outflow of EUR […] billion of funding, mainly from corporate/non-retail funding.

(19) Over 2009, the number of property and related loans being impaired increased, leading to a severe deterioration in the Bank's capital position. The Bank incurred a loss before taxation of EUR […] billion for the nine months to 30 June 2009.

(20) On 28 May 2009, the Irish Financial Regulator, on a temporary basis and in exceptional circumstances, granted derogations from certain regulatory capital requirements and also exercised its discretion not to impose a minimum total capital ratio requirement above the 8% required under the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006[11]. On 30 October 2009, the Irish Financial Regulator granted the Bank a further extension of its temporary derogation reducing the minimum total capital requirement from 9.5% to 8% and also reinstated some of the temporary derogations granted on 28 May 2009 until 30 April 2010[12].

[11] See the Capital Requirements Directive which comprises Directive 2006/48/EC and Directive 2006/49/EC, L 177, 30.06.2006, p. 201.

[12] On 30 October, 2009, the Financial Regulator granted the following temporary capital derogations to Anglo Irish Bank:

1. The minimum total capital requirement for credit institutions is 8% as set down by Regulation 19 of the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 (SI No. 661 of 2006, the "CBD Regulations"). The Financial Regulator has imposed a higher minimum total capital ratio requirement of 9.5% on Anglo Irish Bank. While the Financial Regulator has already granted a derogation on the minimum required total capital ratio from 9.5% to 8% until 31 December 2009, the timeline for this derogation is now extended to be consistent with that of the other derogations i.e. up to a review of this decision at 30 April 2010.

2. Under Regulation 11(6) of the CBD Regulations Anglo Irish Bank is authorised to exceed the limits set out in Regulation 11(1)(a).

3. The Financial Regulator's requirements in relation to Own Funds as set out in paragraph 3.2.1 (i) and (ii) of BSD S 1/04, Notice to Credit Institutions (Alternative Capital Instruments: Eligibility as Tier 1 Capital) shall not apply to Anglo Irish Bank.

4. In accordance with the national discretion provisions afforded to member states under Annex VI of the Capital Requirements Directive 2006/48/EC the Financial Regulator imposed a risk weighting of 150% to speculative commercial real estate with effect from 1 January 2007. This is as set out in paragraph 2.2, Type A Discretions (ref 20) of the Financial Regulator's notice on Implementation of the CRD (28 December 2006) (the "Implementation Notice"). This shall be amended in the case of Anglo Irish Bank to 100% in respect of the value of all exposures as at 31 October 2009 meeting the definition of speculative commercial real estate as defined in the Implementation Notice. Any increase in such exposures after that date or any new exposures arising after that date meeting the definition of speculative commercial real estate shall continue to have a risk weighting of 150%.

5. The Financial Regulator has in place a restriction on the level of general provisions that may be included in Tier 2 of 1.25% of risk weighted assets, as set forth in paragraph 2.2 (iv) of the Financial Regulator's notice BSD S 1/00. This limit of 1.25% shall not apply to Anglo Irish Bank.

(21) The Irish authorities provided a recapitalisation of EUR 4 billion, which was authorised by the Commission on 26 June 2009 under case N 356/2009. In the Commission's approval decision it was clearly stated that the recapitalisation's aim was to avoid that the insolvency of a distressed bank of systemic relevance would lead to a serious disruption of the Irish financial system; however, no reasonable return could be expected for the investment. In view of this situation, Ireland committed to consider all possible options for an in-depth restructuring of Anglo, including liquidation.

(22) The emergency recapitalisation was necessary in order to comply with the – already loosened - regulatory capital requirements, which the Bank has breached in May 2009. A EUR 3 billion recapitalisation was granted in June 2009 and the remaining part, EUR 1 billion, was granted in two tranches, on 6 August 2009 and 25 September 2009. […]. Even with the EUR 3 billion capital injection, the Bank did not meet its core tier 1 capital ratio requirements. It was only after the additional EUR 1 billion capital injection in the third quarter of 2009 that the Bank could report core tier 1 capital ratios above the minimum regulatory levels. A Liability management exercise (buyback of certain Tier 1, Upper Tier 2 and Lower Tier 2 instruments at a severe discount to nominal value)[13] further increased the Bank's core tier 1 ratio to […]% at 31 August 2009. Therefore, without the recapitalisation the Bank would have had insufficient capital to absorb then existing impairments on the loan portfolios and been unable to meet the normal regulatory capital requirements.

(23) After the recapitalisation of the summer of 2009, Anglo's position continued to deteriorate as it suffered further impairments on its loan book, especially on land and property development loans. These impairments further depleted its capital position. By the end of 2009, the losses on the loan book were of such magnitude that Anglo failed to meet its regulatory capital requirements, even when taking into account the derogations. […]. To avoid this and maintain financial stability, the Irish authorities decided to provide a second capital injection.

(24) The December 2009 group management accounts show a dramatic deterioration of the performance of the Bank resulting in a loss before tax of EUR […] billion for the fifteen month period to 31 December 2009, driven by lending impairment of EUR […] billion. Total capital and core tier 1 capital ratios at 31 December 2009 are estimated to be […]% and […]% respectively.

(25) In addition, Anglo will transfer assets to the National Asset Management Agency ("NAMA"). The nominal value of these assets is estimated to be EUR [30-40] billion. Originally, Anglo estimated that the haircut would be 30%, resulting in EUR 11 billion

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6. The Financial Regulator grants a derogation from the requirement, set out in its letter of 25 July 2008 to make a deduction of €169m from Total Own Funds. These derogations were granted until 30th April, 2010 or such shorter period if Anglo Irish Bank’s capital ratios are restored to a level adequate to enable it to comply.

[13] See paragraphs 27 and 28 of the Commission Decision of 26 June 2009, in Case N 356/2009 "Recapitalisation of Anglo-Irish Bank by the Irish State",

total impairment[14]. The Irish authorities have informed the Commission however that, although the haircut that will apply to Anglo loans transferred to NAMA is still unknown, it could be as high as [50-60]% based on preliminary information from NAMA. Assets will be transferred from Anglo to NAMA in 2010. The participation in NAMA will facilitate the accelerated removal of higher risk property-related assets, but will also result in a realisation of losses at the transfer date, i.e. earlier than may otherwise have been the case. Therefore the participation in NAMA also necessitates recapitalising the Bank.

2.3 The additional aid measure notified on 17 February 2010

(26) The decision by the Irish Government to make the State investment was taken in consideration of the deterioration in the institution's financial position which came to light in the context of the preparation of the end of the year 2009 accounts. This deterioration is also regarded by the Irish authorities as creating a significant risk of systemic disturbance to the financial system in Ireland.

(27) Anglo will receive a capital injection through a direct grant in the form of a promissory note which is sufficient to ensure that the Bank is in compliance with its regulatory capital requirements as at […]. In order to restore the balance sheet position of the Bank to minimum regulatory capital levels as at […], Anglo will need additional capital of maximum EUR 8.3 billion. This capital requirement has been calculated on the basis of a NAMA haircut of […]% on the first pool (also referred to as "tranche") of loans transferred to NAMA (April 2010);

(28) In order for the Bank to respect its capital requirements […], up to EUR 2.14 billion may be needed in addition to the EUR 8.3 billion, in particular because the NAMA haircut will likely be higher than […]%. The potentially additional recapitalisation requirement is divided into EUR […] billion relating to non-NAMA loans, and EUR […] billion on loans to be transferred to NAMA.

(29) The EUR […] billion potential impairments on NAMA loans will depend on the haircut applied to loans transferred to NAMA[15]. More precisely, additional capital will be needed in case the haircut is higher than […]% on first tranche. For example, if the NAMA haircut is […]%, the additional capital requirement will be EUR […] billion.[16]

(30) As regards the additional recapitalisation resulting from potential additional impairments on non-NAMA loans, the Irish authorities will pay up to EUR […] billion depending on the effective impairments taken by these loans.

14 A large part of the loans will already be impaired in the accounts of Anglo before their transfer date to NAMA.

15 Loans transferred to NAMA will be transferred in several tranches in April (EUR 10 billion), June (EUR […] billion), September 2010 (EUR […] billion), and end-year 2010. In total Anglo plans to transfer EUR [30-40] billion loans to NAMA. The balance (EUR […] billion) will be transferred by end-year 2010. Only the first tranche is covered by the recapitalisation measure described in the present decision.

16 […]

(31) The Irish authorities have committed to report to the Commission any increase in the principal value of the promissory note above EUR 8.3 billion, as well as the underlying reason (higher NAMA haircut or effective impairments on non-NAMA loans). In addition the Irish authorities have committed to provide confirmation of the Financial Regulator that such additional capital is indispensable to comply with the Bank's capital requirements.

(32) The Irish authorities committed that […] EUR […] billion, and that the maximum increase in the principal of the note above EUR 8.3 billion resulting from a higher than expected NAMA haircut would not exceed EUR 2.14 billion.

(33) Any recapitalisation larger than that amount or not granted according to the conditions described above is not covered by the present decision and would therefore have to be notified in compliance with Article 108 (3) TFEU. The principal amount of the promissory note will be made available to Anglo on the date of issuance, which will be shortly after the adoption of this decision. The capital injection will be taken into account in the accounts over 2009. This is possible because the Minister for Finance in a letter dated 22 December 2009 informed Anglo regarding the commitment of the Irish authorities to inject capital in order to ensure that it will satisfy regulatory requirements.

(34) From an accounting perspective the promissory note will be an asset (receivable) on Anglo's balance sheet. On the liability and equity side, the note shall furthermore qualify as core equity and treated as Tier-1 capital from a regulatory perspective.

(35) Although the full principal amount will qualify as core Tier 1 as at 31 December, 2009, the principal amount will be transferred to Anglo in annual payments of a maximum of 10% over a 10-year period. The principal amount of the instrument will amortise over time. The Irish authorities will pay every year a fixed annual coupon on the average principal amount during the preceding year. The coupon rate will be set on the date of issue of the promissory note[17]. The Irish authorities intend to accumulate the coupon and pay it after the payment of the principal amount. This will have as a consequence that the duration of the payments made to Anglo is increased by four years to fourteen years in total.

(36) The principal amount will be adjusted in 2010 by the Irish authorities after the auditing of Anglo accounts, in order to align the principal amount to the minimum capital requirements of Anglo. In addition, after Anglo has transferred its NAMA eligible assets to NAMA, the initial principal amount will also be adjusted to take into account the reduction in RWAs and thus the change in Anglo's capital ratios following this transfer. These adjustments aim at providing Anglo with sufficient capital to meet its regulatory capital requirements at […].

(37) The promissory note is not remunerated, the Irish authorities will not obtain any further rights in Anglo and repayment of the principal is not foreseen.

[17] The coupon will be a fixed rate which will discount the principal repayment and accumulated coupon payments to par on the day the promissory note is issued. The discount curve used to value the cash flows will be derived from a linear interpolation of Irish Government Bond Yields. The Irish authorities provided an example which demonstrated that the fixed coupon, if it had been set on 24 February 2010, would have been 4.16%.

(38) According to estimates provided by the Irish authorities, the measure will raise Anglo' core Tier-1 ratio from […]% (without derogation), or […]% (with derogation), to 4.0% and Anglo's total capital ratio from […]% (without derogation), or […]% (with derogation), to 9.2%.

(39) In order to provide commercial behaviour safeguards, the promissory note includes (i) a dividend stopper on all capital instruments so as to facilitate the build-up of revenue reserves; (ii) a requirement to engage in cost reduction; (iii) a requirement to recognise impairments in a prudent manner; and (iv) a requirement to comply with the same commercial restraints, restrictions and obligations to which the Bank is subject under the CIFS and ELG schemes for the term of the promissory note (even it the Bank no longer participates in the schemes). The promissory note foresees that the Irish authorities can waive these covenants. The Irish authorities have provided the commitment that they will seek prior approval if they intend to waive any of these behavioural safeguards.

2.4 The restructuring plan notified on 30 November 2009

2.4.1 Main macroeconomic assumptions

(40) The submitted restructuring plan covers a period from 2010 to 2014. The plan provides base and adverse case economic forecasts for the three regions (Ireland, UK and US).

(41) The base case assumptions for Ireland show a relatively severe economic scenario for the forecast period[18]. It hinges among others the following forecasts:

(i) Irish real GDP growth is forecast to be negative in 2009 (-9%) and in 2010 (-2.6%). The Irish recession is forecast to be over in 2011, with economic growth building to an annual rate of 2.6% by 2013;

(ii) Irish house prices and property capital value indices are forecast to fall by between approximately 15% and 19% in 2009; for house prices this is a decline significantly in excess of that experienced in 2008 while for other property this is a lower fall than in 2008. Further property value declines are forecast, at a lower rate, in 2010 and 2011. Values are forecast to be stable or grow from 2012 onwards. The peak to trough falls in the Ireland base case range between 29% and 62%, averaging a decline of 47%.

(42) The adjustments made to the three regional base cases to generate the adverse cases are identical for each region and are as follows: GDP growth is reduced by 2 percentage points in each year from 2009 onwards, to simulate a slower rate of economic recovery from 2010 onwards; consumer price inflation is increased by 2 percentage points for each year after 2009; foreign exchange rates are made less favourable by approximately 10%

[18] According to the plan, the Bank used a number of macro-economic indicators which were selected based on instructions from the European Commission and are sourced from recognised external agencies (e.g EC Economic Forecasts Spring 2009, June 2009 IMF Country report, Economist Intelligence Unit, Irish Central Statistics Office, Bloomberg)

during the forecast period; and property values are forecast to decrease by 33% in 2009 and by 20% in 2010, with no recovery thereafter.

(43) The peak to trough property value declines in the Ireland adverse case range between 50% and 69%, averaging a decline of 60%. According to […], this is in line with UK Financial Services Authority (FSA) guidance to UK banks that a decline of 60% is appropriate for an adverse test.

(44) In comparison to the UK and Ireland, the US is assumed to suffer the least severe recession and to recover most strongly thereafter.

2.4.2 Description of the envisaged – but not selected - scenarios

(45) As committed to the Commission by the Irish authorities in the context of the recapitalisation in June 2009, the restructuring plan submitted for Anglo has assessed different scenarios for the restructuring of Anglo: (i) liquidation; (ii) wind down; (iii)"stabilised bank" scenario and (iv) "far-reaching restructuring" scenario […] by the Irish authorities.

(46) In the following description of the different scenarios, the estimations of the State support needed include the EUR 4 billion recapitalisation already received by the Bank.

Immediate and slightly delayed liquidation of the Bank

(47) In this scenario, the Bank carried out an analysis of the impact of liquidation in two scenarios: an immediate disposal of the Bank's portfolio and a disposal over a 6-12 month timeframe.

(48) The Bank has engaged an investment Bank to provide an indicative market value of the Bank's loan assets on an arm's length sale basis over a 6- to 12-month horizon. The investment bank's indication of the haircut for loan portfolios by lending division is approximately […]% of face value, entailing: US-sales prices of […]% of face value; UK-sales prices of […]% of face value; Irish sales prices of […]% of face value; overall – estimated to be […]% of the face value. As a consequence, in order to allow the Bank to reimburse its creditors and therefore to avoid its default, the State would have to provide it with EUR […] billion of capital. According to the investment bank, the 6- to 12-month timeframe scenario for a disposal of the Bank's assets is extremely aggressive and does not consider that this assumption could be realized without a significant negative impact on values.

(49) The financial consequences of immediate liquidation (within 2 months) of the Bank is difficult to quantify due to the size of the loan book and the inability of the investors to evaluate the risk associated with the underlying assets in such an short timeframe. The Bank has interpreted the price for the scenario of an immediate liquidation to be at least […]% below the price indicated by the investment bank for liquidation in 6 to 12 months. As a result, the State would have to provide even more capital to the Bank in the case of immediate liquidation

(50) In addition to the losses on disposal of assets which would need to be funded by the State, the Bank's role as holder of NAMA bonds would need to be transferred to another

financial institution in order to ensure that the bonds continue to be repo-ed with the ECB and the resulting cash is circulated to the economy. The Irish Government would therefore in both scenarios need to find a bank prepared to hold EUR […] billion of NAMA bonds.

(51) In conclusion, due to its considerable fiscal consequence, as well as the burden it would impose on the Irish banking sector and wider economy, the Irish authorities have dismissed the liquidation scenario as a feasible option.

Wind down scenario

(52) An assessment was also undertaken to consider the consequences of adopting an orderly wind down of the Bank's business, over a five year horizon and over a prolonged period. In the former scenario, the loans still outstanding after five years would be sold. […].

(53) In conclusion, […] consider that the wind down scenarios would be likely to generate significant losses and impose a significant capital requirement and a funding requirement on the Irish State. The capital consequence and the funding consequence of wind down the Bank (respectively EUR […] billion and EUR […] billion in winding down over five years and EUR […] billion and EUR […] billion in winding down over a prolonged period) would be […].

Wind down or liquidation/disposal of the US and UK operations

(54) The Irish authorities have also calculated the price of a winding down, liquidation or sale limited to the US and UK operations. In each scenario, the price is high compared to a scenario where these activities would be continued. According to the Irish authorities, the economic outlook for the UK and the US is more favourable than for Ireland (with the US the most favourable), indicating that it may be beneficial to maintain a presence in these markets. The UK and US operations are forecast to have higher lending margins and better financial results than the Irish operations, indicating that the operations in the UK and US will add to the future viability of the Bank. Ireland indicates however that the Bank will actively consider these divestments in the future if improvements in market conditions mean that either an appropriate price can be achieved or the Bank's capital and/or liquidity position can be improved as a consequence of such action.

The "stabilised bank" scenario

(55) The Irish authorities also investigated the consequences of continuing the bank's business, while undertaking a number of restructuring measures (the "stabilised bank" scenario). According to […], this scenario will allow Anglo to return to profitability over time but with limited ability to repay State aid within five years. In the "stabilised bank" scenario, the State would have to provide EUR […] billion of capital in the base case and up to EUR […] billion in the adverse case. In the […] view, this is less than in the liquidation or wind down scenarios, but more than in the far-reaching restructuring option which is described further on.

2.4.3 Description of the selected scenario: The "far-reaching restructuring" scenario

(56) According to […], the pillars of the proposed far-reaching restructuring - or Old Anglo/New Bank structure - are the following:

(i) The State will, via a newly established bank (the "New Bank"), purchase from the bank performing loans and non-performing commercial mortgage-backed loans having reasonable recovery prospects. This New Bank would therefore purchase the large majority of the loan portfolio of the bank;

(ii) Loans will be purchased at fair value, by reference to current market pricing for such loans (see below);

(iii) Deposit-taking operations and other business operations will be transferred from the bank to New Bank;

(iv) The bank, which will be referred to as "Old Anglo", will retain only EUR […] billion of loans: certain troubled assets, loans related to legacy corporate governance issues and certain non-performing loans. In particular, unsecured business banking and personal loans, where the prospect of a recovery is less certain will remain in Old Anglo.

(v) Old Anglo will relinquish its banking licence and become an 'asset management company', but will remain legally the same company as before; […].

(vi) As part of the purchase consideration, New Bank will agree to a claw-back provision, whereby New Bank will make payments to Old Anglo based on the performance of the purchased loan portfolio over time, and subject to certain conditions being met; […];

(vii) New Bank will be engaged in diversification initiatives such as […].

(57) The split of the entities is assumed to take place at the end of 2010. A preliminary assessment of the legal, accounting, tax, regulatory and ratings implications of the proposed restructuring has been carried out, but according to the Irish authorities extensive further analysis is required if this concept is to be developed further. The same applies to management and corporate governance matters.

(58) The transfer of assets to New Bank will occur at fair value, which would be calculated by reference to current market pricing for similar assets and would lead to a substantial discount to the par value of those assets. That discount is expected to cover the full amount of losses on the portfolio in the base case scenario and provide a reasonable buffer for further losses in an adverse case scenario.

(59) The transfer of assets at 'fair value' could therefore take place at a value significantly below the long-term economic value of those assets. To ensure that the transfer results in a fair outcome for both entities, it is proposed that New Bank would enter into a claw-back arrangement with Old Anglo, whereby New Bank would be required to make an additional payment to Old Anglo by reference to the performance of the transferred loan portfolio over time and subject to certain criteria being satisfied. It is envisaged that the

claw-back arrangement will result in a single payment being made by New Bank to Old Anglo after a specified period of time, based on: (i) […]; (ii) […]; and (iii) […].

(60) The net fair value adjustment (i.e. net of the ultimate claw-back payment by New Bank to Old Anglo) has been estimated as EUR […] billion in the base case. The final number may be smaller or greater than this estimate, […]. […].

Description of New Bank

(61) The transfer of loans at fair value would result in the 'right-sizing' of loans to current market conditions: the discount on the transfer would offset the decline in commercial property values, thereby substantially improving the key metrics (effective loan-to-value; and effective interest cover/debt service cover ratios) of the loan portfolio and also protecting New Bank from further losses from impairments. […].

(62) The New Bank's total loan assets (commercial property backed loans, business banking loans, personal loans, diversification strategies) would account for EUR […] billion in 2010, EUR […] billion in 2011, EUR […] billion in 2012, EUR […] billion in 2013, and […] billion in 2014. New lending by New Bank would increase from EUR […] billion in 2011 to EUR […] billion in 2014. Property investment loans and loans in the framework of the diversification initiative would represent the largest categories of new lending. Business lending would account for a smaller part of new lending. Property development lending would be negligible.

(63) The total core funding profile (including retail deposits, corporate deposits, debt securities issued and excluding inter-bank and ECB) will account for EUR […] billion in 2010, EUR […] billion in 2011, EUR […] billion in 2012, EUR […] billion in 2013 and EUR […] billion in 2014.

(64) New Bank will attract depositors and other funding counterparties. This is expected to result in an improvement in retail deposits over the term of the plan. The basis for the increase is as follows:

(i) Ireland: The bank believes that New Bank's capacity to raise retail deposit funding in Ireland will be enhanced by the Old Anglo/New Bank corporate restructuring […];

(ii) UK: New Bank will seek to restore its position in the UK retail deposit market to pre-crisis levels of approximately EUR […] billion in a responsible manner over time. Market share in the UK would be less than […]%;

(iii) Other European markets: New Bank would also expand its retail funding operations into other European markets in an orderly manner over time. […].

(65) Given New Bank's relatively high reliance on corporate and wholesale funding at the outset, it would be important that New Bank maintains a strong credit profile throughout. Overall, New Bank would aim to have a credit profile commensurate with a […] rating, without relying on State support. This would make it highly competitive and give it wider access to the debt capital markets and funding from institutional investors, eliminate its

reliance on Government-guaranteed funding and allow it to manage its funding costs over time.

(66) Once New Bank is established, it would require an additional share capital injection of around EUR […] billion (this amount would come on top of the recapitalisation measure described in the present decision) to ensure sufficient core and total capital. The amount is based on the assumption that a reduction in the risk weighting of assets will occur due to the improved risk metrics of the loan portfolio resulting from the transfer of assets at fair value. This is subject to regulatory approval and would depend on the final form of the corporate restructuring (the initial capital required would increase by around EUR […] million if the reduction of the risk weighted assets is not achieved). New Bank's profitability would be enhanced by the acquisition of the loan portfolio at fair value (discount to face value), […]. […]. New Bank would also benefit from improved funding costs (compared to a scenario where Anglo would not be split in two), given its attractiveness to the funding markets.

(67) According to the plan, New Bank would be immediately capital generative and would broadly generate approximately EUR […] billion of distributable profits over the term of the plan. By the end of 2014, New Bank would generate pre tax profits of around EUR […] billion per annum. According to […], it could then conservatively be valued on a price-to-earnings multiple of […]. The Government's capital injection of EUR […] billion into New Bank would be worth around EUR […] billion (without taking account of dividends paid in the intervening period) by that time, which would allow the State to (partially) recoup its successive investments in Anglo, New Bank and Old Anglo. […].

Description of Old Anglo

(68) Old Anglo would become an asset management company, which will run-down the remaining assets. Old Anglo would not engage in any new lending or deposit taking activities […].

(69) Since Old Anglo will sell the portfolio of loans to New Bank at fair value (i.e. significantly below their book value) while liabilities would be settled for their face value, this would result in a funding shortfall of around EUR […] billion in Old Anglo. To address this funding shortfall, the transfer consideration would include a Government-guaranteed bond issued by Old Anglo in favour of New Bank. The Government-guaranteed bond would be repaid over time through a combination of: loan repayments; and capital injections by the State; and payments under the claw-back arrangement. As regards the latter arrangement, the projected losses in the transferred portfolio in the base case scenario are significantly lower than the discount on the transfer of assets to New Bank at fair value resulting in an expected claw-back of c. EUR […] billion over time.

(70) Therefore, depending upon the precise structure of, and terms applicable to the arrangements governing, the transfer of assets to New Bank, Old Anglo may require assurances from the Irish Government to ensure that its creditors are not unfairly discriminated against.

(71) Finally, Old Anglo currently has approximately EUR 2 billion of subordinated debt outstanding. […].

Burden sharing

(72) According to […], the restructuring plan foresees various measures to ensure a sufficient burden sharing.

(73) As regards the limitation of the restructuring costs to those necessary for restoring viability, they underline the payment and indemnification to be provided to the Irish Minister for Finance under the CIFS Scheme and the sale of around EUR [27-32] billion (nominal value) in eligible assets to NAMA[19].

(74) As regards the limitation of the amount of aid, […] recall that the aid was limited to the minimum necessary to comply with regulatory requirements.

(75) As regards the provision of a significant own contribution, […] underline the very significant senior management changes at board and operational levels, the restriction of executive remuneration in accordance with Government recommendations, and the implementation of a cost review resulting in the reduction of the number of employees and an annual saving of approximately EUR […] million. As regards shareholders, they recall that the Bank's share price had dropped from a peak of EUR 17.31 in May 2007 to EUR 0.20 just prior to suspension of these shares on 15 January 2009. Moreover, the European Commission, as a condition of its approval of the first recapitalisation in June 2009, required that no further coupon payments be made on any of the Bank's Tier 1 securities except for the payment due on one security in July 2009. As a consequence, holders of these securities are already experiencing a degree of burden sharing. In addition, the completion of a Liability Management Exercise in August 2009 crystallized large losses for the bond holders and provided additional core tier one capital to the Bank.

Measures to limit distortion of competition

(76) […] consider that the plan foresees a number of measures aiming at limiting the distortion of competition. Given the current conditions of the Irish financial sector, with the Bank's two largest local competitors having been recapitalised and also required to submit a restructuring plan and several of its competitors in the Irish market also having received State aid from their respective Member State governments, it would […] be difficult to imagine how the State aid granted to the Bank could lead to a serious distortion of competition in Ireland since all major banks faced and continue to face similar challenges. Given the significant level of burden sharing, the negative consequences resulting from moral hazard are very limited. Therefore, the need for further measures is reduced.

(77) […] believe that an important structural measure to limit distortion of competition is the significant balance sheet reduction of approximately [35-40]% as a result of loans transferred to the NAMA.

(78) A second important structural measure is to operate the UK and the US businesses […].

[19] […] submitted in the notification of the restructuring plan of 30 November 2009 that the nominal value of the assets transferred to NAMA would be EUR [25-30] billion. On 24 March 2010, the Irish authorities submitted that the nominal value of the assets transferred to NAMA would be EUR [35-40] billion.

(79) A third structural measure that the Bank has taken in conjunction with setting up an Old Anglo/New Bank structure, is the limitation of growth of the New Bank, after the transfer of the assets. In this respect, […].

(80) As regards behavioural measures, the plan recalls that the Irish Government has imposed behavioural commitments on the Bank for the purpose of, amongst others, limiting distortion of competition in the context of the national recapitalisation programme by the Irish Government on 21 December 2008 and as part of the Subscription Agreement dated 29 June 2009. First, the Bank is not permitted for a period of 12 months starting 29 June 2009 to make any loans or similar arrangements, save that it may at its discretion make a loan or similar arrangement to a party that is an existing customer who seeks a loan or similar arrangement for the purpose of refinancing a loan previously agreed by the Bank. Recommencement of lending to existing customers for new projects and new customers requires approval of the Department of Finance. Second, in the Subscription Agreement, the Bank agreed that it shall not use the fact that it received the initial subscription amount (EUR 3 billion) or the additional subscription amount (EUR 1 billion) for any advertisement or promotional purposes at any time without the prior written consent of the Department of Finance.

(81) […] also listed several measures, while acknowledging that some had negligible or no effect at all on the activities of the Bank and without providing quantification of the effect or cost of the others.

(82) Finally, […] recall that on 27 January 2009, based on the Financial Services and Market Act 2000 (FSMA), the UK Financial Services Authority imposed First Supervisory Notice on the Bank as a result of its anticipated deteriorating liquidity position. The UK FSA required the Bank to revise its interest rate pricing strategy in order to ensure that none of its retail products appeared in the top ten institutions listed in any best buy tables in the UK until further notice

3 POSITION OF THE IRISH AUTHORITIES

Second recapitalisation measure

(83) The Irish authorities accept that the notified measure contain State aid elements.

(84) The Irish authorities acknowledge that Anglo is a distressed bank and consider that […]. In these circumstances, the State investment is required as a matter of absolute urgency to preserve the financial stability of the bank and to safeguard the Irish financial system as a whole due to the Bank's systemic relevance. This is confirmed by the letter of 20 January 2010 of the Central Bank and the Financial Services Authority of Ireland. They are therefore of the view that the recapitalisation is necessary in order to remedy a serious disturbance in the Irish economy

Restructuring plan

(85) As far as the restructuring plan is concerned, […] believe that the "far-reaching restructuring" scenario […]. It is based on the Old Anglo/New Bank model. The Bank considers that this scenario both minimises the initial capital requirement for the Irish

State (circa EUR […] billion) and forecasts a small positive return to the Irish State within a five-year time horizon.

Consideration of a "Traditional" good bank/bad bank split

(86) […].

(87) […][20].

(88) According to […], the interests of the Bank's stakeholders and EU requirements could best be served by a clean break from Old Anglo, by the establishment of a new State-owned bank (New Bank), which will purchase loans from the Bank, and […].

(89) A far-reaching restructuring through the establishment of New Bank is deemed necessary to: (i) achieve a repositioning and rebranding of New Bank and a clean break from legacy issues, which will allow New Bank to fund itself more effectively; (ii) ensure the viability of the bank's core business and allow New Bank to contribute to competition in the Irish market; (iii) provide the shareholder with longer-term strategic options, by creating enterprise value that could be realised by the State over time (e.g. through the sale of the viable New Bank); (iv) avoid a systemic funding crisis that could be triggered by the liquidation or winding up of the Bank; (v) avoid the immediate sale of assets in a depressed market, which could have dangerous systemic implications for other Irish financial institutions, and would not maximise the recovery potential of the State's investment in the bank.

(90) The Irish authorities have provided the following additional commitments:

(i) The Bank will be subject to a number of behavioural conditions under the proposed measure, under the State investment and under the CIFS and ELG Schemes. The behavioural conditions under the measure are the prohibition on promotion on the basis of the measure and commercial conduct restrictions (dividend stopper and other commercial constraints) so as to facilitate a build-up of revenue reserves by the Bank. There have been various management changes at the Bank since the nationalisation as a consequence of the State investment. Moreover as conditions for the State investment in Anglo, the Bank will not use the fact that it has received the capital injection for advertisement purposes and will comply with the commercial conduct undertaken in the context of the restructuring plan in relation to the reduction in the size of the balance sheet and restriction on new lending pending the restructuring of the Bank. Therefore for a period of at least 12 months, the Bank will not provide new lending except to exiting customers for current projects. Anglo Irish continues to be subject to the behavioural, transparency and reporting conditions of the CIFS and ELG Schemes.

(ii) Ireland will submit a revised restructuring plan to the Commission, before 31 May 2010;

[20] In contrast, prime residential mortgage portfolios tend to benefit greatly from seasoning as loans are repaid in instalments over a long period of time. As such, residential mortgage portfolios tend to have a broad range of loan-to-value ratios with a significant proportion that would meet normal underwriting criteria for such loans even when underlying property values have fallen significantly.

(iii) Ireland will seek prior approval of the waiver of the behavioural commitments mentioned in recital (39) in case the waiving of these requirements is necessary (for instance in case of sales of the Bank in order to protect the legitimate interest of new investors).Ireland will report to the Commission the potential increase by up to EUR 2.14 billion in the principal value of the promissory note (above EUR 8.3 billion), as well as the underlying reason (higher NAMA haircut or effective impairments on non-NAMA loans). In addition the Irish authorities have committed to provide confirmation of the Financial Regulator that such additional capital is indispensable to comply with the Bank's capital requirements.

4 ASSESSMENT

4.1 Existence of State Aid

(91) According to Article 107(1) TFEU, State aid is any aid granted by a Member State or through State resources in any form whatsoever which distorts, or threatens to distort, competition by favouring certain undertakings, in so far as it affects trade between Member States.

(92) Given that Anglo Irish Bank collects deposits in Ireland and UK and lends in Ireland, UK and US, any advantage from State resources to Anglo would have the potential to affect inter-State trade and to distort competition. Since the Irish Government injects maximum EUR 8.3 billion to the Bank, it is also clear that the measure is imputable to the Irish State and that State resources are involved.

(93) It must also be examined whether the measure leads to a selective advantage to Anglo Irish for it to constitute a State aid. The State capital injection gives an economic advantage to the Bank. The advantage is selective since it only benefits the Bank.

(94) The measures furthermore confer an advantage to Anglo as it allows Anglo to absorb its impairments; […].

(95) In particular, the proposed recapitalisation would not have been provided by a market economy investor. The Commission recalls that a market economy investor expects a reasonable return on his investment. However, if a firm is in difficulty or acts in an industry experiencing particular difficulties it is normally not justified to assume a reasonable return. For the proposed recapitalisation this is confirmed by the fact that the State is only investing because no market economy operator was willing to invest on similar terms[21]. As stated by the Irish authorities, the willingness to avoid a further deterioration in Anglo's financial position, which would represent a threat to the stability of the financial system as a whole, has determined the State intervention, rather than the possible return for the State as an investor.

[21] See Commission decision in case N 507/2008 – UK "Financial Support Measures to the Banking Industry in the UK", point n. 39.

(96) The Commission therefore comes to the conclusion that the measure constitutes State aid within the meaning of Article 107(1) TFEU. The Commission furthermore observes that the aid was effectively granted on 22 December 2009, on the basis of the letter of the Minister for Finance to the Chairman of the Bank confirming its commitment to ensure that the Bank has sufficient capital to continue to meet its regulatory capital requirements. According to the Irish authorities, this letter will allow the accountants of the Bank to back-date the recapitalisation to the date of the letter and therefore to close the 2009 accounts with enough capital. The Commission concludes that the aid has been implemented in breach of Article 108(3) TFEU.

4.3. Compatibility of the aid

(97) As regards compatibility of the measure with the internal market, it must first be assessed whether the aid remedies a serious disturbance in the economy of Ireland. Subsequently, it needs to be assessed whether the measure at stake is compatible with the internal market

(98) Article 107(3)(b) TFEU provides for the possibility that aid falling within the scope of Article 107(1) TFEU can be regarded as compatible with the internal market if it intends to "remedy a serious disturbance in the economy of a Member State".

(99) The Commission notes that Anglo is one of the largest banks in Ireland with operations in the United Kingdom, United States, Jersey and the Isle of Man. In the context of the various uncertainties surrounding the current recovery from the global financial and economic crisis, the discontinuity of this bank would create a serious disturbance for the Irish economy and therefore State aid from the Irish government can be assessed under Article 107(3)(b) TFEU, as already concluded in the decision of 26 June 2009 concerning the first recapitalisation.

(100) Since the Bank has already received a first rescue measure in June 2009 and submitted a restructuring plan in November 2009, the Bank is already in the restructuring stage.

(101) The Commission has explained in the Restructuring Communication how it will assess restructuring aid to banks in the current crisis: (i) the Member State should commit to implement a restructuring plan restoring the long-term viability of a bank without reliance on State support; (ii) the bank and its capital providers should contribute to the financing of the restructuring costs as much as possible with their own resources thereby limiting the total amount of State aid necessary; and (iii) the plan should contain sufficient measures to limit distortions of competition, which is most relevant in business segments where the bank's relative position remains strong[22].

(102) In the next section, the Commission assesses the compatibility with the Restructuring Communication of the notified restructuring plan and the associated aid measures (i.e. the aid already granted in June 2009 and the additional recapitalisation in the form of the promissory note)

[22] Cfr. Paragraph (32) of the Restructuring Communication.

4.3.1 Compatibility of the aid measures under the Restructuring Communication

(i) Restoration of long term viability

(103) In line with the Commission Decision of 26 June 2009 under case N 356/2009 regarding the first recapitalisation of Anglo, the Irish authorities have submitted a restructuring plan on 30 November 2009 (case N 667/2009).

(104) On 18 December 2009, a request for information was sent by the Commission to the Irish authorities, […].

(105) The Restructuring Communication[23] explains that the Member State should provide a comprehensive and detailed restructuring plan, include a comparison with alternative options. In case a financial institution cannot be restored to viability, the restructuring plan must indicate how it can be wound up in an orderly fashion. The plan must furthermore also identify the causes of the difficulties faced by a financial institution. Ultimately, the plan must provide evidences that the Bank can operate without continued State support.

(106) The Commission observes that […] have provided a plan. However, after a first assessment of the restructuring plan, the following doubts on whether the restoration of viability of New Bank and the orderly wind-down of Old Anglo remain:

Income statement

(107) The Commission notes that […] have not provided a detailed business plan for New Bank or Old Anglo, whether under the base case or the adverse case. It is therefore not possible for the Commission to assess to which extent the business plans of both entities are credible and rely on prudent assumptions. Accordingly, the Commission would need to receive a stress test of the New Bank.

(108) […] in particular submit that in 2014 New Bank will generate profits of approximately EUR […] billion, whereas Old Anglo will generate losses of EUR […] million only.[24] This means that that the total profits of Old Anglo/New bank together would amount to EUR […] million. That profit would be equivalent to the profit generated by Anglo in […], ([…]), i.e. at the top of the commercial real estate cycle. Considering the level of impairments in Anglo, the projected reduced size of New Bank and taking into account that it intends to develop activities in areas in which it has no previous experience, the Commission doubts that such an objective is achievable under prudent assumptions and with reasonable risks. In particular, the previous business model, which allowed such a high profit in […], was characterised by a far too high level of risk.

(109) In order to complete its assessment, the Commission requires further information to assess the restructuring plan, in particular a description of the methodology used to build the business plan including assumptions on market shares of New Bank in each market it

23 Restructuring Communication, paragraphs 9 and 10.
24 Restructuring plan. Tables 5.9.2.2.2 and 5.9.2.3.2. Claw-back payment from New Bank to Old Anglo is factored out.

targets, and growth of these markets. In addition the levels of impairments and operational and funding costs should be explained and benchmarked versus comparable banks.

Impairments (NAMA and non-NAMA)

(110) As regards the impact of the participation of Anglo in NAMA and the estimations of impairments provided by the Bank, the Commission observes that the valuation of the assets concerned has not yet been approved. Moreover, the Commission has yet to receive information regarding the impairments related to loans that will not be transferred to NAMA. The Commission therefore has doubts whether the assumptions in the restructuring plan are sufficiently conservative on the impairments.

Macroeconomic assumptions and regulatory environment

(111) The Commission notes that the analysis of some key macro-indicators (e.g. GDP growth, house prices) is incomplete and sensitivity analyses with regard to the relevant macroeconomic parameters and with regard to changes in the regulatory environment should be provided to allow for a proper assessment of the business plan. The Commission thus has doubts on the reasonableness of the assumptions used and on the consequences for the business plan that was based on this data.

(112) The Commission also observes that the plan depends on the rating of the Irish State bonds being maintained at a current level. Moreover, the potential impact of a broader restructuring of the Irish banking sector or individual Irish banks has not been considered in the plan, thus casting doubts on the scope covered by the adverse scenario. The Commission invites the Irish authorities to take such considerations into account when modelling the adverse scenario.

Legal and accounting construction of New Bank/Old Anglo

(113) In the Old Anglo/New Bank scenario, according to the plan, the figures describing the split of activities between the two entities are only illustrative and are subject to further legal, accounting, regulatory and tax analysis. It is therefore uncertain that the construction foreseen is sustainable. The absence of this information calls into question the feasibility, achievability and (financial) consequences of the plan for Old Anglo, New Bank and the Irish authorities. For this reasons, the Commission has doubts on the scenario as described in the plan.

(114) The Commission therefore requests the Irish authorities to provide more legal and accounting analyses (internal and external) in order to provide reasonable clarity on the legal and accounting construction between New Bank and Old Anglo.

Risk profile of assets transferred from Old Anglo to New Bank

(115) The Commission observes that a significant improvement in the risk profile of the loan portfolio, following the transfer of loans to New Bank at fair value, will lead to a reduction in the overall risk weighting of assets for regulatory capital purposes. This will require an external credit rating on the loan portfolio (of […]) and the approval of the Irish

Financial Regulator. The failure to achieve a lower risk weighting for regulatory capital purposes would increase the amount of core capital required in New Bank.

(116) The Commission finds that the reduction of the risk weighting has not been substantiated to a reasonable degree by the Irish authorities and thus doubts whether this reduction is realistic enough to be taken account in its assessment of the restructuring plan. Further evidence regarding the rating of New Bank and evidence that the regulator will accept a reduction of the risk profile of loans transferred is thus needed.

Diversification activities

(117) According to the plan, New Bank will engage in new and challenging sectors (for instance […]). Over the period 2010-2014 the diversification initiatives will account for [35-45]% of the new loans granted by the bank[25]. They therefore contribute substantially to the business plan, and the successful entry of New Bank on these markets weights heavily on the viability of the bank. Anglo is not currently active on these markets and therefore lacks the required expertise or competitive advantages. Little explanation is provided with regard to the specific expertise needed to enter these markets and how New Bank will acquire it. Similarly, few explanations are provided with regard to characteristics of these markets, such as a description of competitors and competitive intensity.

(118) Consequently, the Commission has doubts regarding the New Bank's capacity to penetrate different market segments without undercutting price and without accumulating excessive risks. Further information will thus be needed to provide evidences that the new businesses targeted by New Bank will positively contribute to its viability.

Exposure to the property market

(119) New Bank would remain very much exposed to the property market. Over the restructuring period, […]% of the new loans granted by New Bank will be in the property investment area (not including mortgages), and, in 2014, […]% of the loans of New Bank will be commercial property backed loans.

(120) This exposure to the property market has been one of the main reasons why Anglo has required State aid support. It is unclear whether the level of exposure of New Bank to the property market is acceptable in terms of risks, and how this will be reflected in its funding costs and resilience to stress scenarios. At the moment, the Commission doubts whether further large exposure to a sector which is experiencing severe difficulties and which is volatile by nature will contribute to the viability of New Bank. The plan also does not indicate whether New Bank will stop with risky lending practices such as interest-only loans and high loan-to-value loans (with possibility for the borrower to increase its borrowing when the value of the mortgaged property increased). Further information is therefore necessary to assess whether the business model of New Bank is sustainable.

[25] New loans 2010-2014: New initiatives ([…]); total ([…]).

Funding

(121) The funding strategy of New Bank does not seem sufficiently developed. In particular it is unclear which spread the New Bank should pay for wholesale funding, and what will be the different sources of customer deposits. In addition the Commission has doubts regarding the funding structure and the sustainability of the business model due to the maturity mismatch of New Bank's assets (long-term) and liabilities (short-term). Moreover, given New Bank's relatively high reliance on corporate and wholesale funding at the outset, which gives rise to the need to maintain a strong credit profile, it is uncertain that New Bank would achieve the credit profile without relying on Government support.

(122) To address funding concerns, the restructuring plan foresees that deposits will increase. According to the plan, New Bank will attract depositors and other funding counterparties, with an improvement in the total core funding (including retails and corporate deposits, debt securities issued and excluding inter-bank and ECB) over the term of the plan (EUR […] billion in 2010 increasing to EUR […] billion in 2014). In particular, retails deposits will increase from […] billion in 2010 to […] in 2014. The Commission doubts whether these forecasts are realistic taking into account the fact that most banks active in Ireland and the UK focus on the gathering of retail deposits to address funding concerns. The Commission furthermore doubts whether New Bank's plan to enter the German market to gather deposits is reasonable as it will require substantial investments, while it is unclear for what amount these deposits would contribute to New Bank's funding mix. The Commission therefore invites the Irish authorities to provide evidence with regard to New Bank's access to wholesale funding and increase in deposits.

Liquidity

(123) In the plan that was submitted, little evidence is provided in the restructuring plan with regard to the capacity of New Bank to meet its liquidity requirements. Further evidence will thus be needed, in particular through informing the Commission on the results of the provisional liquidity stress tests. In addition it is not clear whether New Bank will meet future liquidity requirements, currently under discussion in the Basel Committee on Banking supervision (short-term liquidity coverage ratio, long-term net stable funding ratio) and whether these developments have been taken into account in the plan. The Commission therefore doubts that New Bank will meet current and future liquidity requirements.

Conclusion

(124) The Commission, in view of the various concerns expressed above, has doubts whether the measures taken and foreseen ensure the long-term viability of New Bank and […].

(ii) Own contribution/burden-sharing

(125) The Restructuring Communication indicates that an appropriate contribution by the beneficiary is necessary in order to limit the aid to minimum and to address distortions of competition and moral hazard. To that end, firstly, the restructuring costs should be limited while, secondly, the aid amount should be limited and a significant own contribution is necessary.

Limitation of restructuring costs

(126) As regards the limitation of the restructuring costs, the Restructuring Communication indicates in point 23 that the restructuring aid should be limited to cover the costs which are necessary for the restoration of viability.

(127) After a first assessment of the restructuring plan, the Commission doubts that the restructuring costs are limited to the minimum. The Commission observes that New Bank intends to expand in new activity. It is doubtful that this expansion, which requires funding and capital, is an adequate way and is necessary to restore viability.

Limitation of aid - burden sharing

(128) The Commission notes that the terms and the conditions of the State investment, together with the terms and conditions under the CIFS and ELG Schemes constitute safeguards in order to secure the proportionality of the aid and to limit possible distortions of competition. The Commission notes positively that as, a result of the nationalisation of Anglo by the Irish authorities in January 2009, all its former shareholders have been wiped-out, bearing thereby the consequences of the huge losses of the Bank. Moreover, the Commission, as a condition of its approval of the first recapitalisation in June 2009, required that no further coupon payments be made on any of the Bank's Tier 1 securities. Therefore, holders of these securities experienced a degree of burden sharing. The Commission notes positively the first Liability Management Exercise, which has allowed the Bank to buy back hybrid debt instrument at high discounts, creating thereby core Tier 1 capital at the expense of the hybrid debt holders, who suffered a large loss.

(129) […].

(130) […].

(131) In the case of the restructuring of Anglo, the Commission notes that it has not been explored whether the bank could contribute to minimize the State aid necessary for the restructuring via sales of particular assets (on which capital gains can be realised) or via other means. The Commission therefore doubts that the own contribution of the Bank to its restructuration has been optimised so as to provide the Bank with the minimum aid necessary to enable to restore its long-term viability and to be able to compete on its own merits in the medium-term.

(132) Further analysis on potential divestments of assets will thus need to be conducted. In particular, the contribution of UK and US activities to the viability of the Bank should be further explored, and a sales scenario should be further considered

Conclusion

(133) The Commission, in view of the large amount of aid Anglo had received and will receive according to the plan, doubts whether the measures taken and foreseen are sufficient to ensure adequate burden-sharing.

(iii) Measures limiting the distortion of competition

(134) As regards the measures limiting the distortion of competition, the Restructuring Communication indicates that the following elements should be taken into account when determining appropriate measures: the amount of aid, the degree of burden-sharing and the effects the position the financial institution will have on the market after the restructuring. On the basis of that analysis, suitable compensatory measures should be put into place.

(135) As regards the market, Anglo is the third largest bank in Ireland by balance sheet size. Anglo is a focused business bank with a private banking arm. Anglo can be categorised as a "monoline" bank specialising in commercial and real estate lending. As indicated, the market share in lending to Irish firms was around 20% in March 2009. The Irish authorities are invited to provide information pre- and post- restructuring on the market share on the commercial real estate lending market. On the Irish wealth management market, the market share was [30-40]%. The Irish authorities are invited to provide more information on the expected market share after restructuring. On the UK markets, the share of Anglo is much smaller, as indicated before.

(136) As regards the amount of aid, besides the second recapitalisation measure at hand, Anglo was granted a first recapitalisation in June 2009 of EUR 4 billion (around 5% of the Bank's risk weighted assets). Anglo is one of the financial institutions covered by the CIFS Scheme. The total currently State-guaranteed funding, (including deposits), as of 30 June 2009, under the CIFS Scheme is around EUR […] billion. Anglo will also participate in the ELG Scheme[26]. According to the estimates provided by the Irish authorities, the potential issuance (including deposits) under the new scheme will be EUR […] billion. In addition, it is anticipated that Anglo will participate in NAMA and the transfer of assets is estimated to be EUR [35-40] billion. The restructuring plan furthermore foresees additional State measures through the EUR […] billion recapitalisation of New Bank, a Government-guaranteed bond issued by Old Anglo in favour of New Bank of EUR […] billion and a guarantee that Anglo will meet its obligations at all time. The Irish authorities are invited to indicate whether they consider that these measures constitute State aid. Based on a preliminary analysis, the Commission considers it would be the case (see Table 01 below). The total amount of aid is therefore likely to be very substantial.

[26] See Commission decision of 20 November 20009 in Case N 349/2009 "Credit Institutions Eligible Liability Guarantee Scheme"..

Table 1: Preliminary overview of aid measures Anglo

State Aid	Nature of the aid	Date	EUR
CIFS	Guarantee	[29 Sept 2008-28 Sept 2010]	[…] (debt guaranteed)
ELG	Guarantee	[Feb 2010 – 29 Sept 2010] – covers debt up to 5-year maturity issued during the period	[…] (debt guaranteed)
NAMA	Asset relief	[2010-2011]	[35-40] (assets transferred) [27]
First Capital injection	Recapitalisation	29 June 2009	4 bn
Second Capital injection	Recapitalisation	31 December 2009	8.3 bn (+2.14 bn)
Capital injection in New Bank	Recapitalisation	2010	[…]
Guarantee on bonds issued by Anglo in favour of New Bank	Guarantee	2010	[…] (bonds guaranteed)
Guarantee that Old Anglo will meet its obligation at all time	Ad-hoc measure. Guarantee to recapitalise	undefined	undefined

(137) The Bank submits that it has taken, or considers that it has taken, a number of structural measures to limit distortion of competition: (i) reduction of its balance sheet by approximately [35-45]% due to its participation in NAMA; (ii) operation of the US and UK businesses […]; and (iii) potential limitation of growth of New Bank.

(138) In addition, the Bank underlines that it is subject to a number of behavioural commitments connected to previous aid measures: (i) no new lending for a 12-month period starting 29 June 2009; (ii) no reference to State aids for promotional purposes; and (iii) additional behavioural commitments to facilitate recovery of the Irish economy (application of a new code of practice for business lending, facilitation of lending to SMEs or mortgage first-time buyers, assist householders who are in arrears, provision of basic bank accounts to some socio-economic groups, investment in a fund to support environmentally friendly investments, exit from the UK best-buy tables).

(139) The Commission observes that absent the State aid, the Bank would have likely been forced to cease its operations, which would have allowed competitors to expand their business. It should be recalled that not all Anglo's competitors in Ireland have received State aid. In addition, among the banks which received aid, Anglo has received in absolute amount the largest State recapitalisation. Compared to RWA, the Bank will receive a larger recapitalisation than most of the other aided banks. All this reflects the fact that the bank was engaged much more than the other banks in risky lending. The aid to Anglo therefore leads to serious distortion of competition even in an environment where many banks have been in receipt of State aid. In addition, it is recalled that Anglo is also active

[27] According to the second footnote to paragraph 20 (a) of the Impaired Asset Communication, "The aid amount corresponds to the difference between the transfer value of the assets (...) and the market price". Since these figures are not known yet, the aid amount can not be calculated yet.

in the UK, where it also competes with many banks that have not received aid. Taking this into account, the measures offered by Anglo should therefore be in proportion to the effect of the State aid.

(140) In that context, the Commission notes that the certain measures mentioned in the plan and recital 137 either have no effect on the Bank as they do not relate to segments of the markets where the Bank is active (i.e. provision of basic bank accounts and first time mortgage buyers) or because the Bank is limited by other measures (i.e. lending to SME). Furthermore, some measures entail an increase of market share, especially the lending commitments and not a reduction of the market presence. In addition, the Commission considers that some measures were necessary in order to enable it to approve the previous aid measures, including the CIFS and ELG schemes, and thus not sufficient to find the additional aid compatible.

(141) The Commission furthermore observes that Anglo has not considered any divestment or structural measure in Ireland that could facilitate entry or expansion of a competitor.

(142) Therefore the Commission doubts that sufficient measures are taken to offset the distortive effects of the aid, considering the high amount of aid Anglo received both in absolute terms (including the aid element in guarantees) and in proportion to RWAs. The Commission thus invites the Irish authorities to consider further measures, more in proportion to the impact of State aid on Anglo and on competition on the banking sector in Ireland and in the UK.

(143) The Commission observes that the loans will be transferred to New Bank at fair value (market value). Contrary to the NAMA process, the loans will not be transferred at their long-term economic value. The long-term economic value is significantly superior to the market value. The New Bank will then integrate in its balance sheet loans at a low cost, allowing it to make large profits over time.

(144) New Bank could use these profits to grow by lending new loans in the market and collect more deposits, and therefore distort competition. The Old Anglo/New Bank type of restructuring seems to create a very competitive bank while the State aid is used to absorb all the impairments of the existing loan book.

(145) Further information on this transfer of loans at a low price is thus required, including a guarantee that the profits on transferred loans will be used to repay State aid (via claw-back mechanism payment to Old Anglo or other means) and will not be used to grow and enter new market at the expense of competitors.

Conclusion on the compatibility under the Restructuring Communication

(146) The Commission doubts at this stage that the aid measures and the restructuring plan fulfil all the conditions laid down in the Restructuring Communication. In particular, the Commission has doubts on whether the New Bank/Old Anglo solution as currently envisaged by Ireland presents sufficient and credible guarantees in terms of viability of New Bank. In addition the magnitude of the aid received by Anglo raises concerns with regard to the level of the measures needed to address distortion of competition. A

fundamental revision of the restructuring plan seems thus necessary. The plan should notably include a thorough assessment of the cost of winding-down the Bank over a 10-year period, and alternatively over a longer period in excess of 20 years, as well as an assessment of a good bank/bad bank scenario. The Irish authorities should also demonstrate that these scenarios are less costly than a liquidation of Anglo. The Irish authorities have committed to present such an updated plan.

4.3.2 Compatibility of the alleged aid measure as emergency aid

(147) The Commission considers that the second recapitalisation measure of EUR 8.3 billion can be temporarily authorised as emergency aid for reasons of financial stability. In line with the Commission 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" ("the Banking Communication")[28], in order for an aid or aid scheme to be compatible under Article 107(3)(b) TFEU it must comply with general criteria for compatibility under Article 107(3) TFEU, which imply compliance with the following conditions[29]:

a. *Appropriateness*: The aid has to be well targeted in order to be able to effectively achieve the objective of remedying a serious disturbance in the economy. This would not be the case if the measure is not appropriate to remedy the disturbance.

b. *Necessity*: The aid measure must, in its amount and form, be necessary to achieve the objective. That implies that it must be of the minimum amount necessary to reach the objective, and take the form most appropriate to remedy the disturbance. In other words, if a lesser amount of aid or a measure in a less distortive form (e.g. a temporary and limited guarantee instead of a capital injection) were sufficient to remedy a serious disturbance in the entire economy, the measures in question would not be necessary. This is confirmed by settled case law of the Court of Justice.[30]

c. Proportionality: The positive effects of the measures must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to reach the measures' objectives. Article 107(1) TFEU prohibits all selective public measures that are capable of distorting trade between Member States. Any derogation under Article 107(3)(b) TFEU which authorises State aid must ensure that such aid must be limited to that necessary to achieve its stated objective.

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28 Commission 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", adopted on 13.10.2008, OJ C 270 of 25.10.2008, pages 8–14.

29 Cf. Commission decision of 10 October 2008 in case NN 51/2008 *Guarantee scheme for banks in Denmark,* OJ C 273 of 28.10.2008, at point 41.

30 Cf. Case 730/79 *Philip Morris* [1980] ECR 2671. This line of authority has recently been reaffirmed by the Court of Justice in Case C-390/06 *Nuova Agricast* [2008] ECR I-2577, where the Court held that, "As is clear from Case 730/79 […], aid which improves the financial situation of the recipient undertaking without being necessary for the attainment of the objectives specified in Article 87(3) EC cannot be considered compatible with the common market […]."

(148) The three principles of the Communication on the financial crisis have been further elaborated in the Commission Communication on "The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition" ("the Recapitalisation Communication")[31]. The Commission will therefore also assess the additional recapitalisation measure in the light of this Communication.

(i) Appropriateness

(149) The Anglo Group management accounts for fifteen months to 31 December 2009 showed a dramatic deterioration in the capital position of the Bank with a loss before tax of EUR […] billion driven by lending impairment of EUR […] billion. Moreover the total capital and core tier 1 capital ratios at 31 December 2009 are estimated to be […] and […] respectively (with the derogation granted by the Financial Regulator). According to the Irish authorities the proposed measure is necessary to maintain the minimum capital requirements (4% Tier 1 Capital ratio and 8% Total capital ratio). In view of the above, the Commission considers that the Bank is distressed and in serious difficulties with a failure to meet the equity and solvency ratio requirements necessitating the State intervention. The Commission considers that a capital injection is an appropriate measure to improve the Core Tier 1 and the total capital of the Bank.

(150) […]. Anglo Irish has approximately EUR […] billion in customers' deposits and approximately a further EUR […] billion in debt securities and subordinated debt. In total, approximately EUR […] billion is guaranteed under the CIFS Scheme. […].

(151) The Irish authorities have furthermore stated that without a capital injection of EUR 8.3 billion (which could decrease upon the transfer of the eligible bank's assets to NAMA) there would be a failure of the Bank at the date of […] or earlier, with consequent severe adverse impacts on other banks and the wider financial system in Ireland. This position has been confirmed by the Central Bank and the Financial Services Authority of Ireland. In addition the Irish authorities have submitted that an increase of the capital injection of up to EUR 2.14 billion may be needed due to higher impairments on NAMA and non-NAMA loans, in order for the Bank to respect its capital requirements until […]. Such additional capital injection will be duly justified on the basis of the materialisation of pre-determined conditions (higher than expected NAMA haircut for loans transferred to NAMA, and effective impairments for loans not transferred to NAMA). In case of use of this contingent recapitalisation, the Irish authorities have committed to provide a report from the Financial Regulator confirming that the aid paid to the bank is indeed necessary to allow it to comply with its regulatory requirements.

(152) The Commission shares the view of the Irish authorities that the proposed recapitalisation is necessary in order to preserve the stability of the banking sector in Ireland. The Commission notes that the size of the activity of the Bank in the Irish commercial property areas is significant. That sector has registered a dramatic deterioration. […]. Moreover, the Commission takes note of the fact that the proposed capital injection is an

[31] OJ C10, 15.1.2009, p.2.

emergency measure which will be followed by a fundamental revision of the restructuring plan for the Bank.

(153) Therefore, given the extreme fragility of the Irish banking sector in the current crisis, the Commission considers that a public sector capital intervention in Anglo Irish Bank is a necessary and appropriate means to strengthen the Bank's capital base with the aim of restoring market confidence in the Irish financial sector, thus avoiding the risk of a serious disturbance of the entire Irish economy.

(ii) Limitation of the aid to the minimum necessary

(154) Capital interventions must be done on terms that minimise the amount of aid. This relates to the amount of the measure as well as to the conditions at which it is provided.

(155) As regards the **amount** of the recapitalisation, the Commission takes into account the submission from the Irish authorities to provide a maximum amount of aid of EUR 10.44 billion (split into an initial EUR 8.3 billion and a contingent increase of up to EUR 2.14 billion) of Core Tier 1 capital, and the exchanges with the Financial Regulator confirming the necessity of the proposed measure.

(156) The Irish authorities estimate that the RWAs of Anglo at 30 December 2009, are worth EUR […] billion with the derogation, and EUR […] billion absent the derogation. The recapitalisation amounts to approximately [>7]% of the Bank's RWAs in case EUR 8.3 billion of aid is granted, and up to [>10]% if EUR 10.44 billion of aid is granted. Considering the first recapitalisation (5% RWA), the cumulated two recapitalisations will amount to between [>12]% and [>15]% of the Bank's RWAs (largely above the 2% ceiling indicated for fundamentally sound banks in the Communication on bank recapitalisation).[32] According to estimates provided by the Irish authorities, the initial EUR 8.3 billion recapitalisation will raise Anglo' core Tier-1 ratio from […]% (without derogation), or […]% (with derogation), to 4% and Anglo's total capital ratio from […]% (without derogation), or […]% (with derogation), to 9.2% on […]. This is adequate to ensure that the Bank continues to operate in compliance with the minimum capital adequacy ratio. The increase of the capital injection would also ensure this.

(157) As regards the **remuneration**, the Irish authorities do not envisage an expected remuneration for the promissory note, which in their view, is in line with the aim of the proposed recapitalisation i.e. […].

(158) The fact that the Irish authorities consider that the capital injected in the Bank is not likely to be remunerated at all is indicative of the high level of distress of Anglo Irish[33]. As a consequence, the necessary restructuring and the compensatory measures will have to be proportionate to the level of distress of the Bank. In this context, the Commission notes

[32] See Annex to the Recapitalisation Commission Communication.

[33] It can also be argued that after the full nationalisation of Anglo the remuneration of the State aid can also take the form of a profit on the sale of the Bank. Nevertheless, the financial projections of the Bank foresee a benefit for the State which is minimal, and which is positive only under uncertain assumptions. It is then unlikely that the proceeds of a sale of the Bank would bring a reasonable remuneration for the State.

that paragraph 15 of the Recapitalisation Communication allows an exception to the general requirement of remuneration for recapitalisations only in the short-term, and only on the assumption and condition that the costs of public intervention and the competitive impact of the State intervention be reflected in the compensatory measures within the restructuring phase. The assessment is without prejudice to the position the Commission may take with regard to this measure in the context of the analysis of the restructuring plan. The Commission anticipates that the costs of public intervention in favour of the Bank will be reflected in the restructuring plan which will need to take account of the competitive impact of the support given by making commensurate provision for compensatory measures. [34] The same approach was taken in point 64 of Commission's decision of 26 June 2009.

(159) The Commission's approach in this case is also in line with point 44 of the Recapitalisation Communication which states that 'notwithstanding the need to ensure financial stability, the use of State capital for banks which are not fundamentally sound can only be accepted on the condition of either a bank's winding up or a thorough and far-reaching restructuring, including a change in management and corporate governance where appropriate'.

(160) The Commission also notes that the instrument that will be used to make the State investment is a promissory note which will be treated as core Tier 1 capital. Since the State already owns 100% of the Bank's share capital and existing shareholders were wiped out, it is not necessary to assess whether the State should receive additional ordinary shares and at which price these new shares should be subscribed.

(iii) Proportionality

(161) Anglo continues to be subject to the behavioural conditions, transparency and reporting conditions that have been imposed under the CIFS and ELG Schemes, and which aim at limiting distortion of competition. Under the terms of the promissory note, Anglo will continue to be subject to these conditions even after the end of the CIFS and ELG. The Commission considers that these measures constitute a sufficient safeguard to ensure that distortion of competition will be limited to the minimum until the restructuring plan is approved.

(162) The Irish authorities have also committed to submit a revised restructuring plan before 31 May 2010, which will include a full chapter on measures that will need to be implemented by the Bank to remedy distortion of competition brought by the granting of State aid. The proportionality of the aid will then be addressed fully in the assessment of the restructuring or liquidation plan to be submitted.

[34] See e.g. Commission decision of 11 May 2009 in case N 189/2009 – Latvia "Modification to the public support measures to JSC Parex Banka", point 34; Commission decision of 29 May 2009 in case N264/2009, Germany, Rescue Aid (recapitalisation and risk shield) to HSH Nordbank AG, points 45-47.

Conclusion

(163) Therefore, the Commission can conclude that the measure as emergency aid, conforms to the conditions laid down in the Banking Communication and the Recapitalisation Communication. It can therefore be authorized for six months.

5 CONCLUSION

(164) The Commission, in view of the serious threat to financial stability, has decided to approve the recapitalisation measure of up to EUR 10.44 billion (split into EUR 8.3 billion granted immediately to allow Anglo to respect its capital requirements at […] and earlier, and a contingent amount of EUR 2.14 billion to face potential capital requirements […]) for six months as emergency aid. This period is extended until the approval of the restructuring plan of Anglo by the Commission, provided Ireland provides a revised restructuring plan before 31 May 2010.

(165) At the same time, the Commission had doubts as to whether the restructuring plan submitted to it on 30 November 2009 complies with the conditions of the Restructuring Communication. The Commission at present is therefore not in the position to approve the restructuring plan and to approve definitively the associated aid.

(166) The Commission notes that the rescue measure is the second such measure that Anglo has benefitted from since the beginning of the crisis. Given the large scale and repeated nature of the State interventions in favour of Anglo and given the absence of remuneration, the Commission invites the Irish authorities to submit before 31 May 2010 a revised in-depth restructuring plan for Anglo that takes into account these considerations and the doubts raised in the present decision.

DECISION

- The Commission concludes that the EUR 8.3 billion capital injection, potentially increased to up to EUR 10.44 billion in line with the commitments provided by the Irish authorities, in the form of a promissory note constitutes State aid pursuant to Article 107(1) TFEU.

- As Ireland has put the aid into effect in breach of Article 108(3) TFEU, this aid measure constitutes non-notified State aid.

- The Commission nevertheless finds that the recapitalisation measure in favour of Anglo is temporarily compatible with the internal market as emergency aid for reasons of financial stability. It is accordingly approved for six months from 22 December 2009. This period is extended until the approval of the restructuring plan of Anglo by the Commission, provided Ireland provides a revised restructuring plan before 31 May 2010.
- At the same time in line with the foregoing considerations, the Commission has decided to initiate the procedure laid down in Article 108(2) TFEU with regard to the restructuring plan submitted by the Irish authorities on 30 November 2009 and the associated aid measures, to

verify whether the conditions of the Restructuring Communication regarding viability, burden-sharing and measures limiting the distortion of competition are met.

- The Commission requires the Irish authorities to provide, in addition to all documents already received, information and data needed for the assessment of the compatibility of the aid. In particular, the Commission invites Ireland to comment on the points on which it raised doubts. The Irish authorities are requested to forward a copy of this letter to the potential recipient of the aid immediately.

- The Commission informs the Irish authorities that it will inform interested parties by publishing this letter and a meaningful summary of it in the Official Journal of the European Union. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publishing a notice in the EEA Supplement to the Official Journal of the European Union, and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.

If this letter contains confidential information which should not be published, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to publication of the full text of this letter. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
Rue Joseph II 70
B-1049 Brussels
Fax No: (+32)-2-296.12.42

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President of the Commission