EUROPEAN COMMISSION

Brussels, 10.8.2010
C(2010)5560 final

Subject: State aid NN 35/2010 (ex N 279/2010) – Ireland
Temporary approval of the third recapitalisation in favour of Anglo Irish Bank

Sir,

1 PROCEDURE

(1) On 26 June 2009, the European Commission temporarily 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.[1]

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

(3) On 17 February 2010, the Irish authorities formally notified their intention to inject additional capital of a maximum of EUR 10.44 billon into Anglo. This second

[1] Commission Decision in Case N 356/2009, *Recapitalisation of Anglo Irish* Bank, OJ C 235, 30.9.2009, p. 3.

[2] According to paragraph 40 of the Commission Decision of 26 June 2009, in Case N 356/2009 "Recapitalisation of Anglo-Irish Bank by the Irish State", 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.

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recapitalisation was approved by the Commission on 31 March 2010.[3] By the same decision, the Commission initiated a formal investigation procedure on the restructuring plan and the associated recapitalisations by the State.

(4) On 31 May 2010 the Irish authorities submitted an amended restructuring plan for Anglo Irish Bank.

(5) On 9 June 2010 the Irish authorities informed the Commission services of their intention to provide a third capital injection to Anglo […][*]. The Irish authorities formally notified […] measures on 28 June 2010. […] the recapitalisation […] were initially registered under N 279/2010. On 14 July 2010, NN 35/2010 was created for the recapitalisation as it was determined by the Commission services that it had been effectively granted on 30 June 2010.

(6) On 4 August 2010 the Irish authorities […] maintained the notification of the third recapitalisation.

(7) The Commission requested information regarding the recapitalisation on 2 and 23 July and 3 August 2010. The Irish authorities replied on 12, 16 and 30 July 2010 and 4 August 2010.

2 DESCRIPTION OF THE MEASURE

2.1 The beneficiary

(8) Measured by balance sheet size, Anglo is one of largest banks operating in Ireland. At the end of December 2009 it had a balance sheet size of EUR 85.2 billion (around 50% of Irish GDP).

(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 [20-30]% in March 2009[4]. The market share in UK property lending was estimated at [0-5]% (the Bank has nearly no non-property lending in the UK).

(10) Anglo registered a loss of EUR 12.7 billion over the 2009 financial year which was mainly driven by EUR 15.1 billion of impairment charges on its commercial loan

[3] Commission Decision in Case C11/2010 (ex NN 12/2010), *Second recapitalisation of Anglo Irish Bank and restructuring of Anglo Irish Bank*, not yet published in the Official Journal but available on the website of DG Competition.

[*] Confidential, contains business secrets where possible figures have been replaced by ranges in [brackets]

[4] Source: Restructuring plan dated 30 November 2009, page 27

book. As at […] total lending ([…] to customers […]) amounted to EUR [70-80] billion and comprises approximately [80-90]% of the Bank’s total assets. The lending balances by sector as at […] show that: commercial property lending amounts to EUR [50-60] billion (approximately [70-80]% of total lending); business banking amounts to [5-10] billion ([10-20]% of total lending) and other lending (including residential development lending) amounts to EUR [10-20] billion ([20-30]% of total lending). As of […], total lending in Ireland amounted to EUR 43.3 billion, while lending in UK and US amounted respectively to EUR 21.4 billion and EUR 9.4 billion.

(11) The Bank's funding is based on customers' (retail and firms) deposits and on wholesale funding. The Bank had deposits totalling EUR 27 billion at the end of 2009, down from around EUR 51 billion at the end of 2008. Its market share in the Irish retail saving market in December 2009 was [5-10]%. In the UK retail saving market, its market share was [0-5]%.

(12) It should also be mentioned that Anglo was active in wealth management. It estimates its market share was at [30-40]% in Ireland and [0-5]% in the UK.

2.2. The aid measures already received by Anglo

(13) 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.[5] Total State-guaranteed funding (including deposits) at 31 March 2010 was approximately EUR [30-40] billion. Anglo applied to participate in the newly established Eligible Liabilities Guarantee Scheme ("the ELG Scheme")[6]. According to the estimates provided by the Irish authorities, the issuance (including deposits) by Anglo under the ELG scheme as at 31 March 2010 was EUR [30-40] billion.

(14) Anglo was nationalised on 15 January 2009. The decision to nationalise the Bank was taken because the Bank's funding position had weakened while 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 financial 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.[7]

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[5] See Commission Decision in Case NN48/2008, *Guarantee Scheme for Banks in Ireland*, OJ C 312, 06.12.2008, p. 2.

[6] See Commission Decision in Case N349/2009, *Credit Institutions Eligible Liability Guarantee Scheme*, OJ C 72, 20.03.2010, p. 6, subsequently prolonged until 30.06.2010 on 31.05.2010 through the Commission's Decision in Case N198/2010, *Prolongation of the Eligible Liabilities Guarantee Scheme*, not yet published, and again extended until 31.12.2010 through Commission Decision in Case N254/2010, *Second Prolongation of the Eligible Liabilities Guarantee Scheme*, not yet published.

[7] See Commission Decision in Case N61/2009, *Change of Ownership of Anglo Irish Bank*, OJ C 177, 30.07.2009, p. 2.

(15) In order to cope with the increasing losses associated with Anglo's commercial property loan book and the increasingly deteriorating funding position, […], the Irish authorities provided a first recapitalisation of EUR 4 billion, which was authorised by the Commission on 26 June 2009.[8]

(16) 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. […][9][…] the Irish authorities decided to provide a second capital injection of EUR 8.3 billion which could be increased up to EUR 10.44 billion if the haircut on the loans being transferred to the National Asset Management Agency (hereinafter "NAMA") were higher and the impairments on the loans not transferred to NAMA were to continue. The recapitalisation aimed to ensure that Anglo would meet its capital requirement […]. It was approved by the Commission on 31 March 2010.[10] In the same decision the Commission furthermore opened the formal investigation procedure on the restructuring plan submitted by the Irish authorities on 30 November 2009. On 31 May 2010 the Irish authorities announced that they increased the second recapitalisation by EUR 2 billion to EUR 10.3 billion, an amount which is within the range approved by the Commission on 31 March 2010.

(17) In addition it is anticipated that Anglo will transfer further assets to the NAMA during the second half of 2010 and in 2011. The total nominal value of all the transferred assets is estimated to be EUR 36.5 billion. Anglo has already transferred EUR 9.3 billion of its commercial property development loans to NAMA at a haircut of 55%. The participation in NAMA will facilitate the accelerated removal of higher risk property-related assets, but will 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 earlier than may otherwise have been the case.

2.3 The events triggering the measures by the State

(18) As indicated in paragraph (16), the second recapitalisation that was approved by the Commission on […] only covered Anglo's impairments resulting from the transfer of the first tranche of NAMA loans and the impairments on the non-NAMA loan book until […].

(19) […] and could create a significant risk of systemic disturbance to the financial system in Ireland.

[8] See footnote 1.

[9] […]

[10] Commission Decision in Case C11/2010 (ex NN 12/2010), *Second recapitalisation of Anglo Irish Bank and restructuring of Anglo Irish Bank*, not yet published.

2.4 The additional aid measure

(20) Anglo will receive a capital injection through a direct grant in the form of an adjustment of the promissory note provided to Anglo as part of the second recapitalisation. The EUR 8.581 billion injected is sufficient to ensure that the Bank is in compliance with regulatory capital requirements […]. This is based on the assumption that the NAMA bonds which are received by Anglo as consideration for the transfer of loans to NAMA are valued at par in Anglo's accounts. If it is necessary to apply a discount to the NAMA bonds of […]% due to the fact that the interest paid on the NAMA bonds is lower than the interest rate paid in the market for similar instruments, the recapitalisation will be increased to EUR 10.054 billion.

(21) If additional capital is necessary to ensure that Anglo will respect its capital ratio requirements, the Irish authorities have committed to notify any increase above EUR 10.054 billion to the Commission.

(22) Anglo's Core Tier 1 capital will increase on the date of the adjustment of the note, which will be shortly after the adoption of this decision. The capital injection will be taken into account by the Financial Regulator retroactively […]. This is possible because the Minister for Finance in a letter dated 30 June 2010 informed Anglo of the commitment of the Irish authorities to inject capital in order to ensure that it will satisfy regulatory requirements.

(23) From an accounting perspective the promissory note will be an asset (receivable) on Anglo's balance sheet. On the liability side, the receipt of the note (and its increase) shall create capital, which will be treated as Core Tier-1 capital from a regulatory perspective.

(24) Although the full principal amount of the promissory note creates Core Tier 1 capital on the date it is granted, this principal amount, which will be EUR 18.881 billion in total in case EUR 8.581 billion of capital is injected (EUR 20.354 billion in case EUR 10.054 billion is injected), will be paid out to Anglo in annual payments of a maximum of 10% of the principal over a ten-year period. The principal amount of the instrument shall therefore amortise over time. The Irish authorities will pay every year a fixed annual coupon on the average principal amount during the preceding year (in other words, on the still unpaid part of the promissory note). The coupon rate will be set on the date of issue of the promissory note.[11] 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.

(25) The principal amount will be adjusted periodically 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

[11] 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. As the increase of the promissory note through the third recapitalisation takes place at a later date, the coupon on this part of the promissory note will be calculated taking into account this date.

following this transfer. These adjustments aim at providing Anglo with sufficient capital to meet its regulatory capital requirements […].

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

(27) According to estimates provided by the Irish authorities, the measure will raise Anglo's estimated Core Tier-1 ratio from […]. Anglo's estimated total capital ratio will increase from […].

(28) In order to provide commercial behavioural safeguards, the promissory note includes (i) a dividend stopper on all capital instruments so as to facilitate the build-up of revenue reserves; (ii) requirement to engage in cost reduction; (iii) requirement to recognise impairments in a prudent manner; and (iv) 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 if 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 of the Commission in case they intend to waive any of these behavioural safeguards.

(29) Anglo will furthermore be subject to the same conditions that apply for the ELG scheme, as set out in paragraphs 24-29 in the first Commission Decision on the ELG scheme in case N349/2009.[12] These include:

(a) balance sheet growth constraints;
(b) compliance with directions given by the Governor of the Central Bank of Ireland and the Financial Regulator on consultation with the Minister concerning: (i) the management of its balance sheet; (ii) structures to improve long-term stability of funding; (iii) executive management and corporate governance; (iv) liquidity, solvency and capital ratios; (v) minimizing any risk of recourse to the Guarantee;
(c) controls over acquisition of shares in other financial institutions, establishing subsidiaries and/or entering into new business;
(d) compliance with targets on assets and liabilities set by the Financial Regulator on consultation with the Minister for Finance;
(e) compliance with liquidity, solvency and capital ratios set by the Financial Regulator in consultation with the Minister for Finance;
(f) limitations on dividends;
(g) controls on executive remuneration;
(h) reporting and compliance obligations;
(i) controls on board representation and executive management;
(j) an obligation to draw up a restructuring plan in certain circumstances.

3 POSITION OF THE IRISH AUTHORITIES

(30) The Irish authorities accept that the third recapitalisation contains State aid elements.

[12] See footnote 6

(31) The Irish authorities acknowledge that Anglo is a distressed bank and consider that […]. The further recapitalisation of Anglo will ensure that it will meet its capital requirements for […]. The Irish authorities consider that there is no prospect that Anglo would be successful in raising the required additional capital from private investors at this time.

(32) In these circumstances, the State investment is required as a matter of absolute necessity 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 25 June 2010 from the Central Bank and Financial Services Authority of Ireland (hereinafter "CBFSAI"). Furthermore the letter of 24 June 2010 from the Financial Regulator confirms that the further upward revision in the balance of the Promissory Note is necessary to allow the Bank to comply with its regulatory requirements.

(33) Overall the Irish authorities consider that the recapitalisation fulfils the requirements of the Banking Communication[13] and the Recapitalisation Communication[14] and are thus compatible with Article 107(3)(b) TFEU.

(34) The Irish authorities have also provided the following commitments:

(i) To notify to Commission for approval any increase in the principal amount of the promissory note which occurs on the Final Reset Date;

(ii) To inform the Commission of their intend to increase the amount of the recapitalisation beyond EUR 8.581 billion and to provide a justification for this increase;

(iii) To seek prior approval of the Commission before waiving any of the behavioural constraints mentioned in paragraph 28;

(iv) To take into account the additional aid granted to Anglo through the third recapitalisation in the restructuring of Anglo;

4 ASSESSMENT

4.1 Existence of State Aid

(35) 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.

(36) Since the Irish Government has provided a commitment to Anglo that it will inject a maximum of EUR 10.054 billion into the Bank, it is clear that the measure is imputable to the Irish State and that State resources are involved.

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[13] 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, 25.10.2008, p. 8.

[14] Commission Communication on "The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortion of competition, OJ C 10, 15.01.2009, p. 2.

(37) It must also be examined whether the measure lead to a selective advantage to Anglo for it to constitute a State aid. The Commission notes in this context that the capital injection is provided only to Anglo. The measure is thus selective since it only benefits the Bank.

(38) The recapitalisation furthermore confer an advantage to Anglo. The recapitalisation allows Anglo to absorb its impairments […].

(39) The Commission furthermore notes that the measures 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.[15] 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. Moreover, it is clear in this case that the amount injected will never be recovered.

(40) Finally, Anglo is collecting deposits in Ireland and the UK (and was lending in Ireland and the UK and could resume lending in these markets), where it competes with other financial institutions, including subsidiaries of foreign financial institutions. The advantage stemming from the State resources provided to Anglo would therefore have the potential to affect intra-Union trade and to distort competition.

(41) 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 recapitalisation was effectively granted on 30 June 2010, on the basis of the indication by the Minister for Finance of his intention to recapitalise Anglo. The commitment of the Minister for Finance to provide Anglo with additional capital has been taken into account by the CBFSAI and the Financial Regulator for determining Anglo's capital adequacy for June 2010. The recapitalisation has therefore been implemented in breach of Article 108(3) TFEU.

4.3. Compatibility of the aid

(42) In the next section, the Commission assesses the compatibility with the Banking Communication and the Restructuring Communication of the aid measure.

(43) As regards the compatibility with the internal market of the aid provided to the Bank through the measure, the Commission first needs to determine whether the aid can be assessed under Article 107(3)(b) TFEU, i.e. whether the aid remedies a serious

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

disturbance in the economy of the Ireland. Subsequently, the Commission, using this legal basis, has to assess whether the measures at issue are compatible with the internal market.

4.3.1 Legal basis for the compatibility assessment

(44) 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 where it "remedies a serious disturbance in the economy of a Member State".

(45) Given the present circumstances in the financial markets, the Commission considers that the measures may be examined under Article 107(3)(b) TFEU.

(46) The Commission observes that market conditions have been difficult all over the world since the last quarter of 2008. The Commission notes that Ireland in particular has been severely hit by the financial and economic crisis. The economic downturn combined with the fall in property prices and the excessive exposure of the Irish banks to land and property development loans have led to significant impairments for Irish banks. Irish banks have furthermore been faced with difficulties in obtaining funding and capital from the markets due to the uncertainty associated with the property market in Ireland.

(47) The Irish authorities have shown that Anglo will face a considerable deterioration of its capital position as huge impairment provisions are registered on its loan book over 2010. Indeed, according to the Irish authorities' estimates, without the proposed capital injections the Core Tier 1 ratio would be […].

(48) […] with consequent severe adverse impacts on other banks and the wider financial system in Ireland[16], […].

(49) For these reasons the Commission accepts that in the current circumstances the additional recapitalisation in favour of Anglo is necessary to avoid a serious disturbance in the economy of Ireland.

4.3.2 Compatibility assessment

(50) In line with point 15 of the Banking Communication, 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[17]:

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 were 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.

[16] Anglo's position as an important financial institution has been previously confirmed by the CBFSAI.

[17] See paragraph 41 of Commission decision in Case NN 51/2008, *Guarantee scheme for banks in Denmark,* OJ C 273, 28.10.2008, p.2.

c. *Proportionality:* The positive effects of the measure must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to reach the measure's objectives.

(51) The Recapitalisation Communication further elaborates on the three principles of the Banking Communication and states that recapitalisations can contribute to the restoration of financial stability. In particular the Recapitalisation Communication states that recapitalisations may be an appropriate response to the problems of financial institutions […].[18]

4.3.2.1 Compatibility with the Banking and Recapitalisation Communications

a. Appropriateness of the Measures

(52) The recapitalisation aims at ensuring that Anglo is in compliance with its regulatory capital requirements[19] […]. It targets in particular Anglo's Core Tier 1 ratio and Total Capital ratio. The Commission considers that a capital injection is the most efficient and straightforward measure as it directly improves the Core Tier 1 and the total capital of the Bank. The Irish authorities submit that the Financial Regulator has confirmed that both measures can be categorised as Core Tier1.

(53) The Irish authorities have stated that without a total capital injection of up to EUR 10.054 billion (which could decrease upon the transfer of the Bank's eligible assets to NAMA) […]. This position has been confirmed by the CBFSAI and the Financial Regulator.

Conclusion

(54) The Commission considers that the measure is appropriate because it effectively meet its objective to ensure that Anglo is in compliance with its regulatory capital requirements. The measure therefore effectively achieves the objective […]. The measure furthermore ensures that financial stability in Ireland is maintained. The Commission observes that the CBFSAI and the Financial Regulator have confirmed that the measures are necessary in order to safeguard financial stability in Ireland. For these reasons, the Commission finds that the measure is appropriate.

b. Necessity – limitation of the aid to the minimum

(55) According to the Banking Communication, the aid measure must, in its amount and form, be necessary to achieve the objective. That implies that the capital injection must be of the minimum amount necessary to reach the objective. In this context, the Commission observes that the amount of the capital injection will ensure that Anglo will again fulfil its ordinary regulatory capital requirements.

(56) As regards the remuneration Anglo has to pay, the State will receive no fixed remuneration on the promissory note. The Commission in this context notes that paragraphs 15 and 44 of the Recapitalisation Communication explain that in duly justified cases lower remuneration can be accepted in the short-term for distressed

[18] Recapitalisation Communication, paragraph (6).

[19] The Irish authorities submit that regulatory capital levels set under the PCAR, under the base case, are a target level of 8% Core Tier 1 Capital, of which 7% must be equity.

banks on the condition that this lack of remuneration will be reflected in the restructuring plan. In this context, the Commission notes that the restructuring of Anglo will need to take into account the further recapitalisation provided to it and that fact that it is not remunerated. The Irish authorities have provided the necessary commitment in that regard.

(57) In the June 2009 and March 2010 decisions on the first and second recapitalisation of Anglo, the Commission has come to the conclusion that Anglo is not fundamentally sound, and that it is in a particularly distressed financial situation according to the criteria laid down in the Annex to the Recapitalisation Communication. The Commission finds that this conclusion is still valid and indeed is strengthened by the Bank's need for the additional large recapitalisation assessed in the present decision.

(58) Having established that Anglo is a financial institution in distress […], the Commission therefore considers it acceptable that Anglo is recapitalised despite the likelihood that Ireland will not recover its investment, much less receive sufficient remuneration. This is in line also with the Commission's previous decisional practice.[20]

Conclusion

(59) The Commission concludes that the recapitalisation is necessary in order to ensure Anglo's capital adequacy. As regards the remuneration of the recapitalisation in order to keep the aid to the minimum, the Commission considers it justified that Anglo does not pay a remuneration given its level of distress.

c. Proportionality – measures limiting negative spill-over effects

(60) The Commission observes that Anglo in the context of the CIFS and ELG schemes is subject to several behavioural constraints set out in paragraphs (28) and (29), which aim to limit the 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.

(61) As regards the behavioural constraints in paragraph (28) (the dividend stopper, obligations regarding cost reduction and recognition of impairments and the constraints of the CIFS and ELG schemes) the Commission observes that although these can be waived pursuant to the terms of the promissory note, the Irish authorities have provided the commitment to seek prior Commission approval if they intend to waive these constraints.

(62) The Commission also observes that Anglo stopped new lending in the spring of 2009. It therefore no longer competes on the commercial real estate market. The aid

[20] The same approach was taken in point 64 of Commission's Decision, in Case N 356/2009, *Recapitalisation of Anglo Irish bank*, OJ C 235, 30.9.2009, p. 3 and more recently in the Commission's Decision in Case NN 11/2010, *Rescue measures in favour of INBS*, not yet published. Commission Decision in Case C11/2010 (ex - NN 12/2010), *Second recapitalisation of Anglo Irish Bank and restructuring of Anglo Irish Bank*, not yet published, and the Commission Decision in Case N160/2010, *Capital support measures in favour of EBS*, not yet published.

provided to the Bank is therefore not used to write new lending but only to cover the losses on the legacy portfolio. This reduces the risk of the distortions of competition during the rescue period.

(63) Taking into consideration the difficulties Anglo is facing combined with the need to maintain financial stability in Ireland, the Commission considers these measures at this time to be sufficient to be able to temporarily approve the recapitalisation as emergency aid.

Conclusion

(64) The Commission thus concludes that: (i) the recapitalisation measure is appropriate […] and necessary as it is limited to the minimum; (ii) Anglo is a distressed bank; (iii) the fact that the investment in Anglo will not provide any remuneration or positive return is justified under the circumstances of the case; and (v) there are sufficient measures limiting the negative spill-over effects for other competitors to enable the Commission to temporarily approve the measure as emergency aid.

(65) The Commission can therefore temporarily approve the recapitalisation of Anglo up to EUR 10.054 billion until the adoption of the final decision on the restructuring of the Bank.

5 CONCLUSION

(66) The Commission, in view of the serious threat to financial stability, has decided to approve the recapitalisation as emergency aid until it has reached a final decision on Anglo's restructuring plan and the associated aid measures.

(67) The Commission observes that Anglo has benefitted from several aid measures and again will receive a large amount of aid through the third recapitalisation. The Commission furthermore notes that in its decision regarding the second recapitalisation[21] it already observed that because of the significant amount of aid granted to Anglo and the lack of remuneration paid by it, an in-depth restructuring is required.[22] The receipt by Anglo of further aid confirms the Commission's assessment. It therefore informs the Irish authorities that the additional aid granted to Anglo will be taken into account when determining the depth of the required restructuring. In that context the Commission notes positively the commitment provided by the Irish authorities.

[21] See footnote 3.

[22] In this context it should be noted that the injection of equity to absorb losses stemming from transferring impaired assets at their real economic value - which occurs under NAMA - appears to be economically equivalent to an impaired assets measure that does neither foresee the bearing of a first loss nor any remuneration. In fact, it seems to be a measure preventing a transfer value of the assets exceeding the real economic value, as the recapitalisation compensates the losses resulting from the transfer. Thus, under point 41 of the Impaired Assets Communication, it can "only be accepted if it is accompanied by far-reaching restructuring and the introduction of conditions allowing the recovery of this additional aid at a later stage."

DECISION

- The Commission concludes that the capital injection up to EUR 10.054 billion in the form of an adjustment of the promissory note constitutes State aid pursuant to Article 107(1) TFEU.
- The Commission observes that the aid has been put into effect in breach of Article 108(3) TFEU.
- The Commission nevertheless finds that the aid measure in favour of Anglo is temporarily compatible with the internal market as emergency aid for reasons of financial stability. The measure is accordingly approved until the Commission reaches a final decision on Anglo's restructuring plan and the associated aid measures.

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
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