



EUROPEAN COMMISSION

Brussels, 10.2.2009
C(2009) 1011 final

Subject: State Aid N 69/2009 – Sweden
Recapitalisation scheme for fundamentally sound banks

Sir,

PROCEDURE

- (1) By letter dated 8 February 2009, registered with the Commission on 9 February 2009, Sweden notified the below measures as state aid. Sweden submitted complementary information on 10 February 2009.

DESCRIPTION OF THE AID SCHEME

Objective of the measure

- (2) Sweden has notified a scheme allowing the state to inject capital into financial institutions (“the Scheme”). Sweden has explained the background and the objective of the notified measure as follows:
- (3) In October 2008, the Swedish Government introduced a number of measures to calm financial markets and guarantee that the access of Swedish banks to funding would not be disturbed by the market turmoil. These measures included i.a. a state guarantee scheme for the debt issued by financial institutions¹ (“the Guarantee scheme”) and provisions for rescue aid to banks in difficulty ²(Law 2008:814).

¹ The Guarantee scheme was approved by the Commission on 29 October 2008, see case N 533/2008 as amended by the Commission’s decision of 29 January 2009 in case N 26/2009)

² The powers laid down in the latter were used in the rescue of Carnegie Bank (see case NN 64/2008).

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- (4) Since then, the financial and economic situation in Sweden and the world has continued to deteriorate. In particular, it has become clear that the credit supply in the international financial markets that previously was available to large multinational corporations is no longer available. These conditions make it very likely that the shock to global credit markets and its transmission into national financial systems will have the undesirable effect of reducing credit to both smaller and larger Swedish businesses, as well as to households, and consequently stifling economic activity.
- (5) Sweden has explained that the notified measures aim at complementing the Government's toolbox in situations where banks have no solvency problems but the Government nevertheless considers it necessary to take steps to prevent a serious disturbance of the financial system and real economy. Thus, the notified recapitalisation scheme aims at preventing a socially undesirable credit squeeze by contributing capital to robust, solvent banks in order for them to be able to expand their supply of credit and replace the sudden lapse in credit from other sources.
- (6) For these reasons, the Swedish Government has decided to make capital available to Swedish credit institutions on terms described below.

The beneficiaries

- (7) The financial institutions eligible for recapitalisation under the Scheme are the same as for the Guarantee scheme, i.e. banks and mortgage institutions incorporated and operating in Sweden (including Swedish subsidiaries of foreign institutions), provided they meet minimum capital adequacy under Swedish law (including any Pillar II additions by the supervisors). For groups of two or more eligible institutions, only one entity will be eligible for capital under the measures.
- (8) Under the Scheme, the state will only provide capital to financial institutions that are fundamentally sound within the meaning of the Commission's recapitalisation communication of 5 December 2008³ ("the Recapitalisation Communication").

The Scheme

- (9) Under the Scheme, the state will be able to provide capital to eligible financial institutions on equal terms with other, private investors. The condition is that 30 % or more of the investment is made by the private investors. Public authorities and public undertakings within the meaning of the Transparency Directive⁴ will not be included in the calculation of this percentage.
- (10) The capital injection will be made by the state participating in, or underwriting, the issuance of either share capital or hybrid capital that can be included in the benefiting institution's Tier 1 capital.
- (11) The capital granted by the state under the Scheme to an individual financial institution will amount to at most 2% of the institution's risk weighted assets. When calculating

³ Communication from the Commission of 5.12.2008 « 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, 15.1.2009).

⁴ Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ L 318, 17.11.2006, p. 17).

the institution's risk weighted assets, consideration will be given to the credit risks, market risks and operational risks to which the institution is exposed.

- (12) The remuneration to the state will be on equal terms with the participating private investors.
- (13) The Scheme will be laid down in a Government Ordinance and the National Debt Office⁵ ("the NDO") will be entrusted with its administration. The NDO will negotiate the terms of individual recapitalisation deals but the decision to proceed with a recapitalisation will in each case ultimately rest with the Government.
- (14) Before a recapitalisation is proposed to the Government, the NDO will make a specific evaluation that the transaction is made on market terms. Specifically, the NDO's evaluation will include the following points:
 - an evaluation with the assistance of an independent financial advisor of the terms of the transaction to make sure that they are consistent with market requirements and that the remuneration is in line with current market rates.
 - a review to conclude that terms of the deal are not such as to significantly alter the incentives of the other investors; and
 - a review to conclude that the bank is fundamentally sound.
- (15) All individual recapitalisation agreements with participating banks will be submitted by the NDO to the Government for approval. If it is deemed, based on the above evaluation, that the transaction, despite the participation of private investors, is not on market terms (e.g. the remuneration is not at current market levels), or otherwise not consistent with the purpose of the Scheme, the Government will not participate in the transaction. In particular, the Government will refrain from taking part in a recapitalisation in case a controlling or large owner would price a recapitalisation at a very favourable rate in order to obtain state financing.
- (16) In the individual recapitalisation agreements with participating banks, the following constraints will be included:
 - restrictions on marketing of the provision of state capital, except when required by law or other regulation, for example rules relating to offering documents; and
 - restrictions with respect to wage increases, bonus payments, increases in board remuneration and executives' severance packages for 2009 and 2010.
- (17) The Scheme also comprises a number of conditions intended to ensure that the capital provided is used for lending to the real economy. In the NDO's review process and when deciding to invest, the possibilities for increased lending will be an important factor for the Government. An institution that requires capital for other reasons, and

⁵ The National Debt Office ("Riksgäldskontoret") is the Swedish state's financial administration. It is responsible for cash and debt management on behalf of the government.

that is not fundamentally sound, will not be supported under the Scheme. In line with this, the agreement between the state and the individual credit institution shall indicate that the capital injection is made with the purpose of ensuring the supply of credit to the economy. The Swedish Financial Supervisory Authority will be given the assignment of monitoring the lending to Swedish households and companies of participating banks and, after having consulted with the Debt Office, to report back to the Government on a monthly basis. These reports will be made public.

- (18) In addition, Sweden has made the following express commitments:
- (a) Sweden has committed to notify any recapitalisation of financial institutions made outside the Scheme to the Commission for approval under the state aid rules of the Treaty. In addition Sweden has expressly confirmed that any recapitalisations of financial institutions that are not fundamentally sound will follow the relevant guidelines in the Recapitalisation Communication.
 - (b) Sweden has committed to give the Commission information prior to entering into an agreement concerning recapitalisation under the Scheme. Sweden will provide the Commission with information (including the NDO's evaluation of the terms of the transaction, made by the help of an independent advisor) explaining how the conditions of the scheme are met and in particular that the financial institution is fundamentally sound and that the participation is on equal terms with private investors.
 - (c) Six months after their introduction, the Swedish Government will submit a report to the Commission on the implementation of the measures taken. The report will provide information on the banks that have been recapitalised, the amounts received by those banks and the terms on which recapitalisation has taken place, the use of the capital received, including in relation to the sustained lending to the real economy and external growth, the compliance with the commitments made by Sweden in relation to conditions and safeguards, and the path towards exit from reliance on state capital.
 - (d) Sweden has committed to ensure that if an institution that was initially considered financially sound falls into difficulties after recapitalisation, it will be required to draw up a restructuring plan that will be submitted to the Commission within six months.
- (19) The maximum amount of capital the Swedish Government intends to make available under the Scheme is SEK 50 billion (approximately EUR 4.8 billion).
- (20) The scheme will enter into force on 17 February 2009 and apply until 17 August 2009, i.e. six months. This period can be extended by the Government up to 31 December 2009, subject however to notification to and approval by the European Commission under the state aid rules of the EC Treaty.

SWEDEN'S POSITION

- (21) Sweden acknowledges that the Scheme contains state aid elements. However, Sweden considers that the Scheme can be justified in view of article 87(3)(b) of the EC Treaty as it would help to remedy a serious disturbance in Sweden's economy.

- (22) Sweden seeks urgent approval of the Scheme as it considers that it will strengthen the market confidence in the Swedish government's efforts to stimulate the real economy and avoid disturbances in the lending. In addition, an approval would create legal certainty for the banks and they would be able act rapidly to raise capital from the market.

ASSESSMENT

Existence of state aid

- (23) Article 87(1) of the EC Treaty provides that 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 or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.
- (24) The Commission agrees with the Swedish authorities that the Scheme constitutes state aid within the meaning of Article 87(1) of the EC Treaty in favour of the eligible financial institutions.
- (25) Indeed, the Scheme will enable the beneficiaries to secure capital on more favourable terms than would otherwise be possible in the light of the prevailing conditions in the financial markets. Since it confers an economic advantage on the beneficiaries and strengthens their position vis-à-vis competitors in Sweden and other Member States, the Scheme distorts competition and affects trade between Member States. The advantage is provided through state resources and is selective since it benefits only beneficiaries under the Scheme.
- (26) The fact that the state will provide capital only on equal terms with private investors could be seen as an indication that the state is acting like a market economy investor and that consequently the Scheme does not provide the benefiting banks with an economic advantage. However, the Commission considers that on present market conditions, the investment decisions of the private investors are very likely to be influenced to a decisive degree by the very fact that the state is investing alongside them (and it should be remembered that under the Scheme, the state's share of the capital provided can be as much as 70%). The concomitant provision of capital from private investors does therefore not allow the conclusion that the state is acting as a market economy investor.
- (27) The Commission consequently finds that the Scheme constitutes state aid within the meaning of Article 87(1) of the EC Treaty.

Compatibility of the Scheme

- (28) Sweden plans to grant state aid in the form of guarantees and fresh capital under a scheme in favour of financial institutions. In view of the current situation in the financial market, the Commission considers that this measure can be examined directly under the provisions of the EC Treaty, and in particular Article 87(3)(b) thereof.

- (29) Under Article 87(3)(b) of the EC Treaty, the Commission may declare aid compatible with the common market if it helps “to remedy a serious disturbance in the economy of a Member State”. The Commission would point out that the Court of First Instance has expressly stated that Article 87(3)(b) is to be applied restrictively, with the result that the aid may not benefit just one enterprise or one sector but must help to remedy a disturbance in the whole of the economy of the Member State concerned⁶.
- (30) The Commission takes the view that the Scheme concerns the whole of the banking sector in Sweden. The Commission confirms its earlier finding in case N 533/2008 that the Scheme will serve to remedy the present crisis situation. This will tackle in particular the scarcity of capital and the ensuing contraction of credit to undertakings and households in the “real economy”. It concludes, therefore, that the Scheme will help to remedy a serious disturbance in the Swedish economy.

Conditions for the application of Article 87(3)(b) of the EC Treaty

- (31) According to 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 crisis⁷, it must be stressed in the context of the application of Article 87(3)(b) EC that an aid measure or scheme may be declared compatible with the common market only if it satisfies the general criteria for compatibility under Article 87(3) EC viewed in the light of the general objectives of the Treaty and in particular Articles 3(1)(g) and 4(2) EC, which imply compliance with the following conditions⁸:
- a. *Appropriateness*: The aid measure must be precisely targeted at its objective, i.e. in this case to remedy a serious disturbance in the entire 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. This 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 Justice⁹.

⁶ See Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen and Volkswagen AG v Commission* [1999] ECR II-3663, paragraph 167. Confirmed in the Commission Decisions in Cases C 47/1996 *Crédit Lyonnais* (OJ L 221, 8.8.1998, p. 28, paragraph 10.1), C 28/2002 *Bankgesellschaft Berlin* (OJ L 116, 4.5.2005, p. 1, paragraphs 153 *et seq.*) and C 50/2006 *BAWAG*, not yet published, paragraph 166. See Commission Decision of 5 December 2007 in Case NN 70/2007 *Northern Rock* (OJ C 43, 16.2.2008, p. 1), Commission Decision of 30 April 2008 in Case NN 25/2008 *Rescue aid for WestLB* (OJ C 189, 26.7.2008, p. 3), and Commission Decision of 4 June 2008 in Case C 9/2008 *Sachsen LB*, not yet published.

⁷ See http://ec.europa.eu/comm/competition/state_aid/legislation/banking_crisis_paper.pdf

⁸ See Commission decision of 10 October 2008 in Case NN 51/2008 *Guarantee scheme for banks in Denmark*, not yet published, paragraph 41; Commission decision of 13 October 2008 in Case N 507/2008 *Guarantee scheme for banks in the United Kingdom*, not yet published, paragraph 45; Commission decision of 13 October 2008 in Case N 481/2008 *Guarantee scheme for banks in Ireland*, not yet published, paragraph 58.

⁹ See judgment in Case 730/79 *Philip Morris* [1980] ECR 2671. This line of authority was recently reaffirmed by the Court of Justice in its judgment of 15 April 2008 in Case C-390/06 *Nuova Agricast v Ministero delle Attività Produttive*, 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”.

- 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. This follows from Article 3(1)(g) EC and Article 4(1) and (2) EC, which provide that the Community shall ensure the proper functioning of an internal market with free competition. Therefore, Article 87(1) EC prohibits all selective public measures that are capable of distorting trade between Member States. Any derogation under Article 87(3)(b) EC which authorizes state aid must ensure that such aid is limited to that which is necessary to achieve its stated objective, limiting to a minimum consequential distortions of competition.

Assessment of the Scheme

- (32) The Commission has already observed in several cases that credit institutions may need an extra capital cushion in the present market circumstances in order to ensure a sufficient flow of credit to the entire economy, thereby preventing a further deepening of the crisis. In addition, uncertainties regarding the economic prospects have weakened trust in the long term solidity of the financial institutions. The objective of the Scheme is to ensure that financial institutions are sufficiently well capitalised as to better withstands potential losses and thus give room for maintained or increased lending to the rest of the economy. This is in principle an appropriate means to strengthen financial institutions¹⁰ and thus to prevent credit supply restrictions and limit the passing-on of the financial markets difficulties to other businesses. This is all the more so as the Scheme is exclusively aimed at institutions that are fundamentally sound, and thus, rather than absorbing new capital simply to ensure their solvency, will be in a position to translate a more comfortable capital levels into increased lending activities.
- (33) Indeed, the Scheme is expressly linked to the benefiting institutions ensuring continued supply of credit to the real economy. This will be expressly spelled out in the individual agreement between the state and the financial institution and regularly monitored by the Financial Supervisory Authority which will make public reports.
- (34) The Commission consequently finds, in line with its consistent practice¹¹, that the Scheme is appropriate to remedy the serious disturbance of its economy identified by the Swedish authorities.
- (35) As regards necessity, the Commission must examine whether the aid is limited to the minimum necessary in scope and time.
- (36) In this respect, the Commission notes positively that Sweden has limited the size of the scheme both as regards the overall amount (capped at SEK 50 billion) and in respect of individual beneficiaries (maximum 2 % of the institutions risk-weighted assets). The Scheme will also be limited in time to six months from its entry into force.
- (37) As regards proportionality, the Commission regards an appropriate remuneration of the capital provided to be the best safeguard to ensure the proportionality of a capital

¹⁰ See point 5 of the Recapitalisation Communication.

¹¹ See the Recapitalisation Communication.

injection¹². Under the Scheme, the Swedish state will only take part in recapitalisations if there is a participation of at least 30 % of private investors and on equal terms with the latter. As set out in point 21 of the Recapitalisation Communication, the Commission will accept the remuneration set out in such a deal as appropriate. This is so despite the fact that the State's participation is state aid and therefore may incite private investors to accept a price which they might not have otherwise accepted. Indeed, point 21 of the Recapitalisation Communication reflects the fact that a substantial participation of private investors is likely to lead to a remuneration which, although not necessarily identical to the price that would have been paid in a perfectly competitive situation, is nevertheless sufficiently close to the market price as to minimize competition concerns.

- (38) There should also in principle be no doubt that a bank which is capitalised with a considerable private contribution is fundamentally sound. It can be assumed that the investors will have carefully screened the risk profile of the bank. This should match with the indicators (a - capital adequacy), (c – CDS spreads) and (d - rating) indicated in the Annex to the Recapitalisation Communication for determining a bank's fundamental soundness. It is obvious that a private investor will have made his investment decision only on the basis of a positive assessment in this respect. Only the criterion of size as indicated in indicators (b) of the Annex of the Recapitalisation Communication is not evident in a partially private solution. However, compliance with this criterion is in the present case covered by the ceiling of the Swedish authorities who have fixed it exactly so as to stay below the indicated 2 % of the benefiting institution's risk weighted assets. Therefore, the Commission has no particular reason to doubt that a bank which is provided capital under the Scheme will be fundamentally sound.
- (39) However, a key condition to this assessment is that the terms of the recapitalisation, as required by point 21 of the Recapitalisation Communication, are not such as to significantly alter the incentives of private investors. This would for example be the case where the terms of the transaction are not consistent with market requirements and the remuneration is not in line with current market rates, despite the participation of private investors: Amongst other things, the Commission will pay attention to whether the private contribution stems mainly from the current shareholders or other investors with a vested interest in the bank and/or whether the remuneration is below the remuneration indicated as appropriate in point 26 to 30 of the Recapitalisation Communication. The Commission considers that the structure of the scheme and the commitments made by the Swedish authorities give sufficient *prima facie* assurances on these points.
- (40) The Commission takes particular account of Sweden's commitment to inform the Commission prior to entering into a contract concerning recapitalization under the Scheme and to provide the Commission with information explaining how the conditions of the scheme are met and in particular that the participation is on equal terms with private investors. This will allow the Commission to satisfy itself that the conditions laid down in the present decision are met in all individual cases, and to take appropriate steps, should this not be the case.

¹² See point 11 of the Recapitalization Communication.

- (41) The Commission notes that the Scheme does not contain any specific incentives for state capital to be redeemed when market conditions allow. Such incentives are normally considered as a positive contribution to the elimination of undue distortion of competition and to ensuring that the aid is proportionate. However, as recognized in point 21 of the Recapitalisation Communication, there appears to be no need for “*ex ante* competition safeguards or exit incentives” where the state injects capital on equal terms with a significant participation of private investors. Indeed, in such situations, the market-oriented remuneration reduces the risk of undue distortion of competition that would otherwise warrant the requirement for safeguards and exit incentives (and some forms of safeguards may even be outright unsuitable)¹³.
- (42) In view of the market-oriented remuneration, the Commission finds no *prima facie* need for exit incentives in the Scheme. The Commission does however note that Sweden has committed to provide information on the path to exit from reliance on state capital in the review it has to make six months after the implementation of the Scheme. This will allow the Commission to analyze the Scheme’s impact on competition and, if needed, to reconsider the need for exit incentives if the Scheme were to be extended beyond its initial scope of six months.
- (43) In addition the Commission notes that the restrictions on references to the Scheme in the advertising of the beneficiaries will contribute to eliminating any concerns of undue distortion of competition.¹⁴
- (44) The Commission also notes that Sweden has, as indicated above in point 17, taken effective and enforceable steps in the sense of point 39 of the Recapitalisation Communication to ensure that the capital received is used to sustain lending to the real economy.
- (45) The Commission finally notes that Sweden has committed to notify a restructuring plan within six months if a bank that receives capital under the Scheme later falls into difficulties (point 42 of the Recapitalisation Communication).
- (46) The Commission consequently finds that the Scheme is proportionate.
- (47) The Commission finally notes that the Scheme provides for regular review in conformity with point 40 of the Recapitalisation Communication.

CONCLUSION

The Commission finds that the Scheme constitutes state aid within the meaning of Article 87(1) of the EC Treaty.

Since the Scheme satisfies the abovementioned conditions for aid under Article 87(3)(b) of the EC Treaty, it is compatible with the common market. The Commission has accordingly decided not to raise any objections. The Commission recalls that the measure is limited to 6 months and may be prolonged only upon notification and approval by the Commission.

¹³ See points 31-34 of the Recapitalisation Communication.

¹⁴ See point 36 of the Recapitalisation Communication.

The Swedish authorities have indicated that the notification does not contain any confidential information. The Commission will therefore disclose this letter to third parties by publishing it on its Internet site http://ec.europa.eu/competition/state_aid/register.

Yours faithfully,

For the Commission

Neelie Kroes
Member of the Commission