EUROPEAN COMMISSION

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C(2009) 990 final

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

WORKING LANGUAGE

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Subject: **State aid NN 57/2008 - Belgium**

Emergency aid for Ethias

Sir,

I have the honour to inform you that the European Commission has decided not to raise any objections to the above-mentioned state aid.

1. PROCEDURE

(1) On 20 October 2008 the Belgian authorities publicly announced measures to recapitalise the Ethias group.

(2) By email dated 23 October 2008 the Commission asked Belgium to inform it of the measures in favour of the Ethias group.

(3) On 31 October 2008 Belgium emailed information to the Commission on the group’s reorganisation and recapitalisation. The information included the term sheet detailing how to subscribe to the Ethias group’s recapitalisation scheme.

(4) By email dated 20 November 2008 the Commission sent Belgium additional questions on the rescue measures, to which Belgium replied on 13 January 2009. The Belgian authorities sent further information on 27 January and 2, 3 and 4 February 2009.

His Excellency Mr Karel DE GUCHT
Minister for Foreign Affairs
Rue des Petits Carmes, 15
B - 1000 Brussels

2. DESCRIPTION OF THE RECAPITALISATION MEASURES

2.1. Beneficiary

(5) The Ethias group is active in the insurance market and, to a lesser extent, in the market for banking services for private individuals, businesses and public entities. The group is composed of three mutual insurance associations (‘mutuals’), namely Ethias Accidents du Travail, Ethias Droit Commun and Ethias Vie, together with a number of subsidiaries.

(6) The Ethias group has 1.1 million individual customers and in 2007 accounted for almost 13% of the Belgian insurance market[1], essentially in the area of life assurance and supplementary pensions (Ethias Vie), but also in that of third party liability insurance (Ethias Droit Commun) and the coverage of industrial accidents (Ethias Accidents du Travail). It has practically no presence outside Belgium apart from a reinsurance business established in Luxembourg.

(7) In a Belgian mutual insurance association, there are no shareholders or share capital: membership of the mutual consists either wholly or partly of policyholders, for the duration of their contract. The mutual’s own funds are composed of members’ subscriptions (non–existent in this case) and any reserves built up over time.

2.2. The factors that led to Ethias’s difficulties

(8) The Belgian authorities have submitted the following observations.

(9) The global financial crisis, which gained pace at the beginning of the autumn, considerably reduced the value of the assets (essentially transferable securities) backing the commitments entered into vis-à-vis policyholders, eroded customer confidence and made access to liquidity gradually more difficult. The crisis hit the Ethias group hard, reducing its capital and its solvency margin to below the regulatory limits.

2.2.1. Dexia

(10) The Ethias group was particularly affected by the fall in the value of its shareholding in Dexia, which for historical reasons was relatively large (6.5% of the capital before the recapitalisation carried out in September 2008, accounting for up to half of its portfolio of quoted shares); the stock exchange price of the shares dropped from an average of €21.68 in 2007 to less than €3.2 at the end of December 2008. As at 31 December 2008, the loss on the Dexia shares compared with their book value in Ethias’s accounts came to more than €[>500]* million[2].

(11) The Ethias group also suffered more generally from the consequences of the stock market collapse (the Bel 20 index fell from over 4 000 at the beginning of 2008 to less than 2 000 at year’s end).

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* Confidential information; where possible, figures have been replaced by ranges in square brackets [ ].

[1] The Belgian authorities refer to the 2007 Assuralia report www.assuralia.be/fr/sector/key_figures/Assurinfo08.pdf.

[2] As at 31 December 2008 Ethias owned 4.96% of Dexia’s capital stock, or 87 388 770 shares. This translated to an average market value of € 1 894 588 534 in 2007, and €[…] at the end of December 2008, a variation of €[between -2 000 000 and -1 000 000].

2.2.2. *Lehman Brothers*

(12) The Ethias group also incurred losses stemming from the bankruptcy and liquidation of the entities of the Lehman Brothers group (exposure estimated at €[>200] million). This exposure to the Lehman Brothers group raised concerns among Ethias group customers who had subscribed to financial products linked to the Lehman Brothers group (Lift Multisecurity), of which Ethias, like a number of banks, had decided to undertake to guarantee the capital amounting to approximately €97 million.

2.2.3. *Withdrawals from the First account*

(13) The immediate problem of liquidity arose essentially because of the marketing by the Ethias group of an insurance product comparable in economic terms to a savings product (‘First’), holders of which could withdraw at any time without any exit penalty (apart from the withholding tax (*précompte mobilier*) due in case of repurchase within a period of eight years following subscription). From the beginning of October, owing to customers’ mounting concern in the face of the developments outlined above, the pace of withdrawals increased, reaching as much as €[10-40] million a day by mid-October, with a peak of some €[> 50] million in a single day (20 October). In total, nearly €[400-800] million was withdrawn from the First account during the month of October.

(14) On 14 November 2008 a royal decree was adopted under Article 117 *bis*, subparagraph 1, point 1 of the Law of 2 August 2002 on supervision of the financial sector and financial services. The decree provides for extension of the deposit protection scheme to the category of insurance contract (‘class 21’) to which the First product belonged.

2.2.4. *Capital needs*

(15) On the basis of the situation in the financial markets on 30 September 2008, the coverage of the solvency margin had in fact fallen to [<50%]. Without state intervention, if one adds together all the unrealised losses on shares and the permanent losses on bonds as at 31 December 2008, the solvency margin coverage ratio would even have been as low as [<0%].

(16) An injection of € 1 500 million into the Ethias group would result in its solvency margin coverage ratio as at 31 December 2008 reaching [>100%] (taking into account all unrealised losses on shares and the permanent losses on bonds) or [150-240]% (disregarding the non-permanent losses on shares), the latter ratio being currently considered as being the minimum acceptable, notably by the rating agencies.

(17) […]

(18) This refinancing amount would also enable Ethias to obtain the loans needed to ensure the group’s liquidity.

2.3. Recapitalisation

(19) The recapitalisation of the Ethias group is to take the form of a € 1 500 million capital subscription by the Belgian State, the Flemish Region and the Walloon Region (‘the Public Investors’) to the tune of €500 million each. In exchange for the subscription each Public Investor will obtain preference shares in the company Ethias Finance SA, which will be newly created with a view to the recapitalisation (see Section 2.4). Each of the three investors will hold 25% + 1 share in Ethias Finance SA.

(20) The preference shares which the Belgian authorities will hold will entitle them to an annual preferential dividend of 10% on their investment. These dividends may be cumulated up to a maximum of three tax years. The parties to the shareholder agreement of 24 December 2008 have undertaken to ensure that the subsidiaries of Ethias Finance will distribute their profits once the amounts needed to achieve 150% of the solvency margin and 100% coverage of technical reserves by representative assets have been set aside.

(21) The shareholder agreement stipulates also that the shareholders of Ethias Finance SA undertake to keep their shares for 24 months from the date of signature of the agreement (‘standstill’). However, the Belgian authorities have given a commitment, confirmed by the parties to the agreement, that this clause cannot preclude any restructuring option (see paragraph 44).

2.4. Prior reorganisation and change of legal structure

(22) The legal structure of the Ethias group, composed as it is essentially of mutual insurance associations, renders impossible a conventional capital increase such as would be possible for a limited liability company. A mutual insurance association has neither share capital nor shareholders. It is only by taking out an insurance policy that one becomes a member. Prior to the recapitalisation, the Ethias group therefore plans to change its legal structure as approved in the shareholder agreement of 24 December 2008.

(23) To that end, Société Anonyme Nateus, an Ethias group subsidiary active exclusively in brokerage, was partially split up on 26 December 2008, with its life brokerage business and its non-life brokerage business being transferred to two new companies, Nateus Vie SA and Nateus SA. The original company Nateus was renamed Ethias SA.

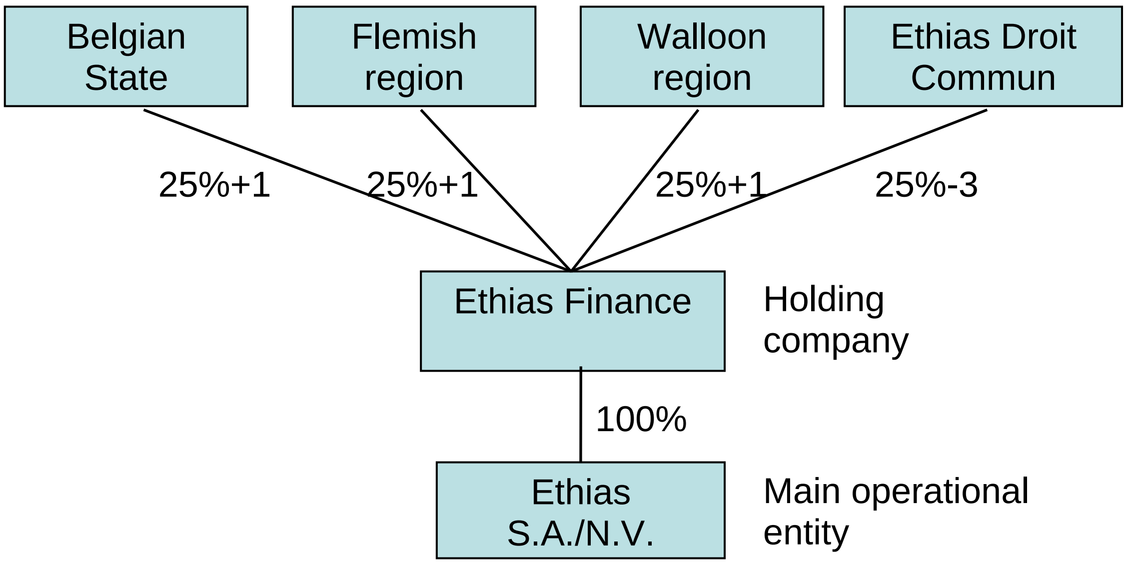
(24) The mutual Ethias Accidents du Travail will merge with the mutual Ethias Droit Commun, the former being absorbed by the latter. The mutuals Ethias Vie and Ethias Droit Commun will transfer all of their assets (apart from those relating to the ‘*accident du travail services publics*’ (public service industrial accident) business), by contribution of total assets and of branches of activity respectively, to Ethias SA (ex-Nateus), whereupon the mutual Ethias Vie will be liquidated.

(25) The ‘Public Sector’ industrial accident insurance business will remain within the mutual Ethias Droit Commun. The maintenance of the residual business in the mutual Ethias Droit Commun will enable it to remain in existence (this survival being legally bound up with the exercise of an insurance business).

(26) The mutuals Ethias Vie and Ethias Droit Commun will transfer their shares in Ethias SA to Ethias Finance SA, to the amount of €500 million (including the €25 million transferred at the time of the formation of Ethias Finance SA).

(27) For its part, Ethias Finance SA will carry out a capital increase of € 1 500 million, to be subscribed to by the Public Investors in exchange for preference shares which will represent 75% + 3 shares of the totality of the shares issued by Ethias Finance SA.

(28) At the end of the stages described above, the Ethias group will have the following structure and share ownership (excluding operational subsidiaries):



(29) As soon as its € 1 500 million capital increase has been finalised, Ethias Finance SA will transfer the totality of the capital injection to Ethias SA.

(30) This reorganisation will have the effect of changing the business model of Ethias, which will lose its mutual status and become a conventional limited liability company.

2.5. Measures taken and planned at the commercial and financial level

(31) According to the Belgian authorities, the following measures have been taken:

(a) Ethias group membership of the special protection fund intended to guarantee class 21 insurance products up to € 100 000, in return for payment of the requisite contributions;

(b) replacement of the previous CEO by Mr Bertrand Thiry and the appointment of a new board member in the person of Mr Hans Verstraete; the other board members, currently three in number, will be replaced by four new members;

(c) cessation of the marketing of the 'classic' First product on 31 December 2008; a new savings product for private individuals was launched on 5 January 2009; this new product, the 'Top First', has been designed so as to present a smaller risk to Ethias:

– the management fees are higher (flat-rate amount of €12.39 in the old First, capitalisation of 0.12% a year deducted from the contractual capitalisation in the new First);

– unlike the old product, which contained no exit fee, the Top First is subject to dissuasive surrender fees (surrender fee for the first three years of the contract: 1.5% of the amount withdrawn; once this three-year period has passed, there is no surrender fee, and there is a performance bonus: 0 or 2 or 5% of the amount withdrawn (variable percentage depending on trends in the bond market));

(d) the post of finance director is being filled by another person on a temporary basis pending the appointment of a new finance director (when Ethias's new board is in place).

(32) For the rest, measures of a more commercial and financial nature needed in order to reposition the Ethias group correctly in the market for insurance products will be submitted to the new board that is to be installed after the capital increase. The board is currently working on the definition of new strategic guidelines for the Ethias group, to be followed by the definition and roll-out of the optimal organisation for carrying out the new strategy with the help of the consultants Mc Kinsey. In addition, an in-depth analysis of the functions of risk and investment management is now being conducted and should lead to improvements in organisation.

3. POSITION OF THE BELGIAN AUTHORITIES

(33) According to the Belgian authorities, the business carried on by Ethias is important to the country's economy. First, Ethias is one of the country's leading insurance groups, both in the market for public entities and in that for private individuals. Ethias counts among its members more than 540 towns and municipalities, the ten provinces, the regional and language community authorities, hundreds of public social assistance centres and thousands of intermunicipal and other associations (cultural centres, youth clubs, school committees, etc.). Ethias's continued existence is therefore important to the functioning of the Belgian State. Most public institutions are insured by Ethias, and would find themselves in a state of legal and financial uncertainty should Ethias cease trading.

(34) Secondly, Ethias offers several investment products accounting for a non-negligible share of ordinary Belgians' savings. Any uncertainty about the survival of these funds, including the First account, might damage Belgians' already fragile confidence in the country's financial institutions.

(35) Thirdly, Ethias is one of the Belgian financial world's major investors. For example, its shareholdings in other financial institutions (in particular Dexia, in which Ethias held 6.5% of the shares prior to Dexia's capital increase) bring with them a risk of a leverage effect on the entire Belgian financial system.

(36) Insolvency would have had significant negative consequences for the public at large and would have weakened the Belgian financial system as a whole. It would also have meant the loss of over 1 400 direct jobs and a considerable number of indirect jobs, particularly in Liège and Hasselt, where the Ethias group is a leading employer, but also to some extent in Brussels and elsewhere in Belgium.

(37) The amount of the capital injection, i.e. € 1 500 million, is, according to the Belgian authorities, limited to the absolute minimum necessary to restore the group's solvency margin to a level acceptable to the Belgian supervisory authorities.

(38) The Belgian authorities consider that the distortion of competition is limited. The impact of the public authorities' intervention in the Belgian insurance services market should be small, owing to (i) the market's relatively open structure, (ii) the limited

nature of the intervention (transfer of capital at the requisite level, without any investment capacity or additional working funds) and (iii) the measures that will be suggested in order to put an end to certain commercial distortions (in particular […], a less aggressive advertising policy, etc.), which should foster better competition from other operators in the Belgian market.

(39) The Belgian authorities point out that the Ethias group is not the only Belgian insurance enterprise to have experienced difficulties due to the financial crisis. The Belgian insurance market is characterised by the presence of several banking and insurance groups, namely Fortis, Dexia, ING and KBC. Several of these groups have received state aid, enabling them to resolve certain problems in their banking business as well as helping to increase the solvency of their insurance business.

(40) In particular, Ethias points out that the recapitalisation of the KBC group enabled the latter to increase the solvency ratio of KBC Assurance by € 1 250 million, bringing it to 280%[3], i.e. well above the solvency margins targeted by Ethias.

(41) The position of the Ethias group in the banking market and outside Belgium is negligible.

(42) In the light of these considerations, the Belgian authorities take the view that the measure constitutes state aid compatible with the rules of the common market under Article 87(3)(b) of the Treaty.

(43) According to the Belgian authorities, the Ethias group is a firm in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty[4].

(44) In their letter of 4 February 2009 the Belgian authorities undertook:

(a) to provide a restructuring plan for the Ethias group before 20 April 2009; and

(b) to ensure that the standstill clause in the shareholder agreement of 24 December 2008 (see paragraph 21) cannot be relied on by the parties to the agreement to oppose a restructuring option, including the sale by the Public Investors of all or part of their shares should scrutiny of the restructuring plan lead the Commission to conclude that that is necessary.

4. ASSESSMENT OF THE COMMISSION

4.1. Existence of state aid within the meaning of Article 87(1) of the Treaty

(45) The Commission must examine the interventions in accordance with the criteria in Article 87(1) of the Treaty.

(46) It notes that the Belgian authorities acknowledge that the notified recapitalisation measures contain elements of state aid. It shares that finding. The recapitalisation operation fulfils all the criteria of this concept: it is selective in that it concerns only the Ethias group; it is liable to affect trade between Member States, since it strengthens the

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3 See Commission press release IP/08/2033 and KBC’s press release of 27 October 2008.

4 OJ C 244, 1.10.2004, p. 2.

Ethias group *inter alia* vis-à-vis foreign enterprises active in Belgium and distorts or threatens to distort competition; and lastly, the measure is being carried out using state resources via the commitment of the Belgian authorities, whether directly or through investment structures controlled by the State.

(47) Owing to current market tensions, it is difficult, not to say impossible, to raise capital, especially in the case of a firm in difficulty. The state intervention therefore constitutes an appreciable financial advantage for the Ethias group.

(48) The Commission accordingly considers that the recapitalisation constitutes state aid to the Ethias group.

(49) As regards the extension of the deposit protection scheme to 'class 21' insurance products, the Commission notes that, despite being open to any insurance company, the extension has been subscribed to only by Ethias. The measure therefore seems *de facto* to be selective in favour of Ethias. If there are insufficient assets in the Special Fund created by the extension, the Caisse des Dépôts et Consignations will advance the funds needed to reimburse failing firms' customers. The Caisse des Dépôts et Consignations will recover such advances either by levying half of the annual contributions of members of the Special Fund or via special annual contributions. The extension therefore involves state resources. The Commission considers that the measure confers an advantage on Ethias given the difficulty for Ethias to obtain such protection for its policy holders otherwise than through the State. It notes that the protection of insurance products is not covered by Community instruments, in particular Directives 94/19/EC[5] and 97/9/EC[6].

(50) The Commission would stress that, in the present case, all companies belonging to the Ethias group as at 20 October 2008, the date from which the measure took effect[7], are deemed to be beneficiaries of the state intervention. This conclusion is based among other things on the fact that, given Ethias's mutual status, the capital injection would not be possible without a reorganisation of this nature. The Commission notes also that the commitment to provide a restructuring plan explicitly covers all the enterprises forming part of the Ethias group as on 20 October 2008 (that is to say, in the new structure, Ethias Droit Commun, Ethias Finance and Ethias SA, plus all the operational subsidiaries).

4.2. Analysis of compatibility under Article 87(3)(b)

(51) The Belgian authorities refer to Article 87(3)(b) of the Treaty, which states that 'aid … to remedy a serious disturbance in the economy of a Member State' may be considered compatible with the common market.

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5 Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes, OJ L 135, 31.5.1994, p. 5.

6 European Parliament and Council Directive 97/9/EC of 3 March 1997 on investor-compensation schemes, OJ L 84, 26.3.1997, p. 22.

7 This is in keeping with the Commission's practice in the France Télécom case, C13a/2003, OJ L 257, 20.9.2006, p. 11.

(52) In accordance with the Communication from the Commission 'The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis'[8], it should be pointed out that, in order for it to be compatible on the basis of Article 87(3)(b) of the Treaty, an individual aid award or an aid scheme must fulfil the general criteria for compatibility under Article 87(3)(c) of the Treaty, read in the light of the general objectives of the Treaty and in particular of Articles 3(1)(g) and 4(2) thereof, which means complying with the following conditions.

(53) The aid must be an appropriate means of achieving the objective sought, namely that of remedying a serious disturbance in the economy of a Member State as a whole.

(54) The aid must be necessary, that is to say, its amount must be limited to the minimum necessary to achieve the objective pursued, and it must take the form most appropriate to remedy the serious disturbance identified in the economy. Any aid in excess of this minimum is not necessary to remedy the serious disturbance and cannot therefore be authorised on the basis of Article 87(3)(b) of the Treaty. In other words, if another aid measure of a lesser amount or less liable to distort competition (e.g. a temporary, limited guarantee rather than a capital injection) would have been sufficient to remedy the disturbance in the economy, the measure is not necessary. This is confirmed by settled case law[9].

(55) The aid must be proportionate, meaning that the distortion of competition to which it gives rise or threatens to give rise must be weighed against its positive effects. Such distortion of competition must be limited therefore to the minimum necessary to attain the effect pursued. As indicated in Articles 3(1)(g) and 4(1) and (2) of the Treaty, the activities of the Community include a system ensuring that competition in the internal market is free and undistorted. Article 87(1) of the Treaty accordingly prohibits, as a general principle, any selective measure liable to affect trade between Member States. Any aid authorised in derogation from this general principle on the basis of Article 87(3)(b) of the Treaty must therefore be limited to the minimum necessary to achieve its objective.

(56) The three preceding points are general principles of the Community rules on state aid which apply to all aid measures approved under Article 87(3). The Commission would point out that, in the present case, the remedy to the serious disturbance takes the form of aid to an enterprise which, in the absence of such measures, might have suffered from a solvency margin shortfall.

(57) On the principles governing the different types of recapitalisation, the Commission would also refer to its Communication 'The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards

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8 This is in keeping with the Commission's practice in the *France Télécom* case, C13a/2003, OJ L 257, 20.9.2006, p. 11.

9 Case 730/79 *Philip Morris* [1980] ECR 2671. This case law was recently confirmed by the Court of Justice in Case C-390/06 *Nuova Agricast* v *Ministero delle Attività Produttive* [2008] ECR I-2577: 'As is clear from Case 730/79 *Philip Morris Holland* v *Commission* [1980] ECR 2671, paragraph 17, 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'.

against undue distortions of competition' (hereinafter 'Communication on recapitalisation')[10].

(58) The relevance of the legal basis cited must first of all be analysed before verifying whether the three conditions for compatibility are met.

4.2.1. Applicability of Article 87(3)(b) of the EC Treaty

(59) The Commission does not dispute the Belgian authorities' findings as to the critical situation experienced by the Ethias group when faced with having to increase its capital owing to the losses incurred during the second half of 2008. In order to ensure that the Ethias group respected the capital adequacy ratio, such an operation was necessary to restore confidence not only in the group but also in the financial system.

(60) The Commission shares the Belgian authorities' analysis (paragraphs 33 to 43 above) according to which, until such time as confidence in the financial system is restored, the potential impact of such a crisis might not be confined only to the Ethias group, nor even to the financial system. Firstly, because of its key role in the Belgian economic system and, in particular, its close links with local entities, and secondly, in view of the importance of the Ethias group in its market and the scale of the current financial crisis, there exists at present a systemic risk capable of affecting the Belgian economy as a whole. The Commission therefore considers that the notified measures may be considered as being intended to remedy a serious disturbance in the Belgian economy.

4.2.2. Conditions for compatibility within the meaning of Article 87(3)(b) of the EC Treaty

4.2.2.1. Appropriateness of the means employed to the objectives pursued

(61) Pursuant to the Law of 9 July 1975 on the supervision of insurance enterprises, the management committee of the Banking, Finance and Insurance Commission (Commission bancaire, financière et des assurances – 'CBFA') asked the Ethias group to send it within three weeks a schedule of concrete measures detailing the final structure of the various entities of the Ethias group and the composition of the decision-making bodies. On 12 November 2008 the CBFA's management committee approved Ethias's financing plan, subject to the commitment by the Public Investors to carry out the refinancing before 31 December 2008.

(62) If the Ethias group had not acceded to its demands, the CBFA could have imposed various measures on it as provided for in the Law of 9 July 1975. In the worst of cases, the CBFA could have revoked Ethias's licence, thereby preventing it from writing new insurance contracts. Existing insurance contracts could not then have been renewed and, where appropriate, would have been terminated.

(63) Since the state intervention satisfied the national supervisory authority, the form of the intervention is in keeping with the pursued objective of strengthening the Ethias group and leaving it sufficient time to prepare a restructuring plan. As for the solvency ratio reached by insurance enterprises which have been aided by Member States, the Belgian

[10] OJ C 10, 15.1.2009, p. 2.

authorities stress the low level reached in the present case (see paragraphs 39 and 40). The Commission would point out, however, that, unlike the others, the Ethias group is a firm in difficulty. Hence the capital contribution must be limited to the strict minimum. At all events, when it assesses the restructuring plan the Commission will reconsider whether the group is capable of facing up to the situation in the market and of restoring its long-term viability.

(64) In paragraph 44 of the Communication on recapitalisation, concerning recapitalisations with a view to rescuing financial institutions which are not fundamentally sound, the Commission stated that ‘notwithstanding the need to ensure financial stability, the use of State capital for these banks[11] 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.’ The Commission accordingly welcomes the measures undertaken by the Ethias group concerning the partial replacement of the members of the governing bodies, the introduction of a rigorous risk-management policy and a review of the First product. These measures are certainly necessary to the beneficiary’s return to viability. However, only a review of the restructuring plan the Belgian authorities have undertaken to provide will enable the Commission to adopt a final position on the matter.

(65) As regards the extension of the scheme to ‘class 21’ insurance contracts, the Commission agrees that this measure has helped to reduce the withdrawal of First product funds, thereby contributing to the stability of the Ethias group.

(66) In the light of the above considerations, the Commission considers that the measures are properly targeted towards strengthening the Ethias group and restoring confidence.

4.2.2.2. Necessity of the measure

(67) The Commission takes note of the declaration made on 12 October 2008 by the countries of the euro area recalling the commitment of the Member States ‘to avoid the failure of relevant financial institutions, through appropriate means including recapitalisation. In doing so, we will be watchful regarding the interest of taxpayers and ensure that existing shareholders and management bear the due consequences of the intervention. Emergency recapitalisation of a given institution shall be followed by an appropriate restructuring plan.’

(68) In point 2.3. of the Communication on recapitalisation the Commission acknowledged that it may be necessary to make the recapitalisation of financial institutions in difficulty subject to stricter requirements than in the case of fundamentally sound financial institutions. However, such an injection of public capital can only be accepted on the condition of either a winding-up or a thorough and far-reaching restructuring, which will be assessed in accordance with the principles set out in the guidelines on State aid for rescuing and restructuring firms in difficulty and will have to include compensatory measures.

(69) In this context, the Commission considers that the establishment of a recapitalisation mechanism in favour of the Ethias group is necessary. The strengthening of its capital base will stabilise not only the beneficiary but also the financial system as a whole. The

[11] In the Communication, the term ‘bank’ is used generically to mean any form of financial institution.

Commission shares the view that such an intervention is necessary in order to boost confidence in the proper functioning of the financial system.

(70) As far as the scale of the measure is concerned, the Commission would point out that, following the state intervention, the beneficiary's coverage ratio is close to the regulatory minimum required to ensure the continuity of its activities.

(71) As for the extension of the scheme to 'class 21' insurance contracts, the Commission accepts that this measure was necessary in order to lessen the fragility of the Ethias group during the crisis at the end of 2008.

(72) On the basis of these findings, the Commission considers that these measures are necessary to remedy a serious disturbance in the Belgian economy.

4.2.2.3. Proportionality of the measure

(73) In order to assess the proportionality of the measure, the Commission must examine whether the distortion of competition brought about by such state intervention is kept to a minimum having regard to the risks of a serious disturbance in the economy.

(74) First of all, as regards the remuneration of the preference shares used for the state intervention, the Commission would point out that the preference shares will give entitlement to an annual preferential dividend of 10% on the investments made by the Belgian authorities, these dividends being cumulable up to a maximum of three tax years. In comparison with the level of remuneration that would result from the formula advocated for ordinary shares by the European Central Bank in its communication of 20 November 2008 on the remuneration of recapitalisations[12], the Commission notes that the Belgian authorities' remuneration is higher by 53 bps.

(75) However, the Ethias group is considered to be a firm in difficulty at the time of the state intervention and this fact implies higher remuneration rates than for fundamentally sound institutions, needing as they do to reflect its risk profile. Notwithstanding this, according to paragraph 15 of the Communication on recapitalisation, the Commission considers that it is acceptable, in duly justified cases, for firms in difficulty to pay in the short term a lower remuneration on condition that it is not lower than that of fundamentally sound institutions. In such a case, in the longer term this additional advantage must be taken into account by the Commission when it comes to laying down compensatory measures during the restructuring phase in order to factor in its effect on competition.

(76) As far as the Ethias group is concerned, the Commission doubts whether the additional 53 bps (see paragraph 74) is sufficient to comply with the principles set out in the Communication on recapitalisation owing to the beneficiary's financial position at the time of the intervention. However, it will carry out an in-depth study when it scrutinises the restructuring plan the Belgian authorities have undertaken to provide. In this Decision, the Commission would simply observe that the level of remuneration is higher than the minimum level required of fundamentally sound institutions in accordance with the Communication on recapitalisation.

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[12] The average for 5-year German treasury bonds between 1 October 2008 and 20 October 2008 is 3.35%.

(77) Lastly, the Commission notes that the measures undertaken at the commercial level ([…], less aggressive advertising policy, better risk management) ought to rationalise the beneficiary's conduct. In this respect the Commission notes favourably the cessation of the marketing of the 'First' product as of 31 December 2008 and its replacement by the 'Top First' product, the administration costs of which are higher and which includes exit fees. The higher price of this product and hence its lower competitiveness, which was presented by the Belgian authorities as being one of the main causes of the Ethias group's difficulties, is capable of limiting the distortion of competition. These conditions are likely to reduce the impact of the measures on competition. However, the Commission will be re-examining this point in the context of the restructuring plan which the Belgian authorities have undertaken to provide by 20 April 2009.

(78) As regards the extension of the scheme to 'class 21' insurance contracts, the Commission notes that the cost to Ethias of providing this protection is not negligible and has in fact dissuaded other insurers from taking part.

(79) For all these reasons, the Commission is of the opinion that the measures are proportionate to the risks of a serious disturbance to the economy.

4.3. Conclusion as to compatibility

(80) The Commission considers that, as an emergency rescue measure, the aid satisfies the conditions laid down previously and that it is compatible with the common market on the basis of Article 87(3)(b) of the Treaty. It accordingly authorises the aid for a period of six months from 20 October 2008.

(81) Beyond this initial period, during which the aid is authorised as an emergency rescue measure, the Commission will have to reassess it, this time as a structural measure. As the Commission indicated at the end of paragraph 44 of the Communication on recapitalisation, the plan will be assessed according to the principles of the guidelines on State aid for rescuing and restructuring firms in difficulty, and will have to include compensatory measures.

(82) As regards the extension of the scheme to 'class 21' insurance contracts, the Commission intends to take a final position on this measure either as part of its assessment of the restructuring plan or as part of a more wide-ranging assessment of investor protection measures in Belgium.

5. CONCLUSION

(83) The Commission has decided to raise no objections to the state aid implemented by Belgium in favour of the Ethias group. This Decision will apply until 20 April 2009. If a plan for the restructuring or liquidation of the beneficiary is submitted in accordance with the commitments provided by Belgium, this period will be automatically prolonged until such time as the Commission adopts its decision on the plan.

(84) If this letter contains confidential information which should not be disclosed to third parties, 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 the disclosure to third parties and to the publication of the

full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/community_law/state_aids/index.htm.

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Registry
SPA 3 - 6/5
B-1049 Brussels
stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Neelie KROES
Member of the Commission