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EUROPEAN COMMISSION - PRESS RELEASE

State aid: Commission extends crisis rules for banks

Brussels, 1 December – The European Commission has updated and prolonged a set of temporary state aid control rules to assess public support to financial institutions during the crisis. The main provisions consist in explaining how to ensure that the State is adequately remunerated if – as is increasingly likely in the future - Member States decide to recapitalise their banks using instruments, such as ordinary shares, for which the remuneration is not fixed in advance. A revised methodology was also agreed concerning the remuneration of guarantees for banks' funding needs – the bulk of the support to date – to ensure the fees that banks pay reflect their intrinsic risk, rather than the risk related to the Member State concerned or the market as a whole. The rules will apply as long as required by market conditions.

In 2008-2009, the European Commission adopted special state aid rules to allow Member States to support the banking system during the financial crisis for the sake of financial stability without undue distortions of competition in the European Union's single market. The crisis rules have proven their value in ensuring that banks restructure when changes to their business models are required to ensure their long-term viability, e.g. if they are heavily reliant on risky activities. By also ensuring that shareholders and hybrid capital holders bear a fair share of the burden, the Commission ultimately reduced the amount of taxpayers' money used to support the banks.

"*The exacerbation of tensions in sovereign debt markets has put banks in the Union under renewed pressure, justifying the extension of the crisis rules, in particular to help put in place the package agreed by the European Council in October to restore confidence and to continue the necessary restructuring of the sector",* said Commission Vice-President in charge of competition policy Joaquín Almunia. He added*: "We will continue to insist on the restructuring and cleaning up of balance sheets where it is necessary, to help break the vicious circle between the sovereign debt crisis and a weak financial sector. In its application of the rules, the Commission will take full account of elements that indicate that banks can be viable in the long term without the need for significant restructuring."*

The Communication adopted by the Commission on the application, from the 1st of January 2012, of state aid rules to support measures in favour of banks in the context of the crisis, keeps in place the four Communications that set the conditions for the compatibility with the Treaty rules on state aid of support in the form of funding guarantees, recapitalisation and asset relief, as well as the requirements for a restructuring or viability plan (the Restructuring Communication).

The Commission will continue to grant swift temporary approval whenever required to preserve financial stability provided the terms of the intervention comply with the guidance provided.

IP/11/1488

Additional information

Increased tensions in sovereign debt markets since the summer have put the EU banking sector under renewed pressure, making it necessary to prolong the extraordinary crisis rules, including to facilitate the implementation of the "banking package" agreed by the EU Heads of State or Government in October. The package aims to restore confidence in the sector by way of guarantees on medium-term funding and the creation of a temporary buffer amounting to a capital ratio of 9% of the highest quality capital after accounting for market valuation of sovereign debt exposures.

In view of regulatory changes and the changing market environment, the Commission anticipates that State capital injections may in the future more commonly take the form of shares bearing a variable remuneration. As such shares are remunerated in the form of dividends and capital gains that are by definition uncertain, guidance is given on the use of market-based valuations to give a reasonable assurance of an adequate remuneration for the State. Shares should be subscribed by the State at an appropriate discount to the latest share price, depending, among other things, on the size of the capital injection compared to the bank's existing capital and whether or not the shares carry voting rights. As to hybrid capital instruments, to cater for circumstances in which banks may be unable to pay the agreed remuneration in the short term, such instruments should include an "alternative coupon satisfaction mechanism", allowing coupons that cannot be paid in cash to be paid in shares, instead.

The Commission has also reviewed guidance on the fees that banks must pay for guarantees to ensure the aid is limited to the minimum necessary and to reflect the risk for public finances. The revised methodology establishes the minimum fees that should apply where the guarantees are granted on a national basis. The new rules apply for guarantees covering debt with a maturity between one and five years (seven in case of covered bonds). The rules for shorter maturities remain the same.

Restructuring plans

The Commission will continue to require Member States to submit a restructuring plan (or an update of a previously approved plan) for all banks which receive public support in the form of recapitalisation or impaired asset measures, be it from national or EU sources, regardless of the size or the reason for support. The Commission will determine the need for restructuring through a proportionate assessment of the long-term viability of banks, taking full account of all relevant elements: whether the capital shortage is essentially linked to a confidence crisis on sovereign debt, the public capital injection is limited to the amount necessary to offset losses stemming from marking sovereign bonds of the EEA Member States to market in banks which are otherwise viable, and the analysis shows that the bank in question did not take excessive risk in acquiring sovereign debt.

Banks which have not received public support in the form of recapitalisation or impaired asset measures, but benefit from State guaranteed funding, do not have to present restructuring plans. Only "heavy users" of state guarantees on their liabilities will continue to be obliged to submit viability reviews to the Commission.

Background

The crisis regime was first adopted in 2008-2009 in the wake of the financial crisis that followed the collapse of Lehman Brothers. It comprises the Banking Communication, the Recapitalisation Communication, the Impaired Assets Communication and the Restructuring Communication. These special rules were introduced under Article 107(3)(b) of the Treaty on the functioning of the EU that allows the Commission to approve state support to remedy a serious disturbance in the economy of a Member State.

The rules were updated twice before, in July 2010, when the guarantee fees were increased to better reflect the risk profile of the beneficiaries and to avoid excessive dependence on an instrument that represents a high contingent risk for public finances. In December 2010, the regime was extended for one year with the main change being to require all banks receiving support through either recapitalisation or asset relief measures to submit a restructuring plan regardless of the size of the support (see IP/10/1636).

For a list of the ongoing individual state aid investigations as well as decisions taken since the beginning of the crisis, see MEMO/11/858.

The full text of the Communications is available at:

http://ec.europa.eu/competition/state_aid/legislation/temporary.html

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