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State aid N 349/2009 – Ireland Credit Institutions Eligible Liabilities Guarantee Scheme

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EUROPEAN COMMISSION

Brussels, 20.11.2009
C(2009)9165 final

Subject: State aid N 349/2009 - Ireland
Credit Institutions Eligible Liabilities Guarantee Scheme

Sir,

I. PROCEDURE

(1) Following several preliminary exchanges, on 12 June 2009, Ireland submitted a notification on a revised guarantee scheme, the Credit Institutions Eligible Liabilities Guarantee (the "ELS Scheme"). The proposed scheme amends the existing guarantee scheme (the "CIFS Scheme") which was approved on 13 October 2008[1]. Following contacts with the Irish authorities, the Commission asked for further information on 3 August 2009, to which Ireland replied on 28 September, 20 October and 10 November 2009.

II. DESCRIPTION

1. The existing guarantee scheme: the CIFS Scheme

Rationale and context

(2) In response to the exceptional turbulence in the world financial markets, Ireland brought forward a guarantee scheme (the "CIFS Scheme") designed to restore the

[1] Commission Decision of 13.10.2008 Guarantee scheme for banks in Ireland, in case NN 48/2008, OJ C 312/2008 of 06.12.2008

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stability of the financial system and to remedy a serious disturbance in the Irish economy.

(3) The aim of the CIFS Scheme was to guarantee, for a period not exceeding two years, all deposits and certain liabilities of six systemically important Irish credit institutions[2] and certain banking subsidiaries of systemic importance in Ireland with a significant and broad presence in the domestic economy[3].

Scope of covered liabilities

(4) Liabilities covered under the CIFS Scheme are liabilities of the covered institutions existing from 30 September 2008 until 29 September 2010, in respect of the following as set out in paragraph 10 of the CIFS Scheme:

- All retail and corporate deposits (to the extent not covered by existing deposit protection schemes in the State or any other jurisdiction);
- Interbank deposits;
- Senior unsecured debt;
- Asset covered securities; and,
- Dated subordinated debt (Lower Tier 2),

excluding any intra-group borrowing and any debt due to the European Central Bank arising from Eurosystem monetary operations.

Operation of the CIFS Scheme up to 30 June 2009

(5) According to the Irish authorities, the CIFS Scheme has made an important contribution for assisting the covered institutions in meeting their funding needs in stressed market conditions.

(6) The total currently State-guaranteed funding, as of 30 June 2009, under the CIFS scheme is showed in Table 1 of the Annex to this decision. The total amount of EUR […][*], which includes deposits, is divided into: Retail deposits (net of DGS[4]) ([…]%); Corporate deposits (net of DGS) ([…]%); Interbank deposits ([…]%); Commercial Papers ([…]%); Certificates of Deposits ([…]%); senior unsecured bonds/note ([…]%); Asset Covered Securities ([…]%); Dated subordinated debt ([…]%).

(7) The breakdown per institution (including deposits) is the following: Allied Irish Bank ([…]%); Anglo Irish Bank ([…]%); Bank of Ireland ([…]%); EBS Building Society ([…]%); Irish Life & Permanent ([…]%); Irish Nationwide Building Society ([…]%); Post Bank Ireland Limited ([…]%).

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2 Allied Irish Bank, Bank of Ireland, Anglo Irish Bank, Irish Life and Permanent, Irish Nationwide Building Society and the Educational Building Society.

3 In particular, the Minister stated that Ulster Bank, First Active, Halifax Bank of Scotland (Ireland), KBC Bank and Postbank Ireland Limited would be eligible for the scheme.

* Confidential information.

4 Deposit Guarantee Scheme.

(8) The guaranteed issuance (excluding deposits) by maturity, as of 30 June 2009, is showed in Table 2 of the Annex to this decision. The total amount of EUR […] is divided into: less than 1 week ([…]%); from 1 week to 1 month ([…]%); from 1 month to 3 months ([…]%); from 3 months to 12 months ([…]%); more than 12 months ([…]%).

(9) The breakdown per institution (excluding deposits) is the following: Allied Irish Bank ([…]%); Anglo Irish Bank ([…]%); Bank of Ireland ([…]%); EBS Building Society ([…]%); Irish Life and Permanent ([…]%); Irish Nationwide Building Society ([…]%); Postbank Ireland Limited ([…]%).

2. Amendment to the existing CIFS Scheme: the ELG Scheme

Objectives and beneficiaries

(10) The introduction of the ELG Scheme seeks to provide the participating institutions with access to medium-term State-guaranteed funding (with maturities of up to five years) and thereby lengthen the debt maturity profile of their liabilities, avoid the banks cutting off loans and credits, and maintain financial stability in the best interests of the public and the economy of Ireland.

(11) The ELG Scheme envisages a three month phase-in period during which liabilities with maturities of up to one month will be guaranteed at a fee of 0.25% on annual basis, as opposed to the 0.50% pricing recommended by the ECB for maturities up to one year.

(12) The ELG Scheme is open to institutions eligible to participate in the CIFS Scheme, i.e. systemically important and solvent credit institutions incorporated in Ireland (including Irish subsidiaries of credit institutions authorized in another Member State) having a broad-based retail "Main Street" business in Ireland.

Material scope

(13) The ELG Scheme covers newly issued liabilities incurred or rolled-over by a participating institution as from the time it becomes a participating institution under that Scheme and in respect to the following :

- Deposits, to the extent not covered by existing deposit protection schemes in the State (other than CIF Scheme) or any other jurisdiction;
- Senior unsecured certificates of deposit;
- Senior unsecured commercial paper;
- Senior unsecured bonds and notes; and,
- other form of senior unsecured debt which may be specified by the Irish Minister for Finance ("the Minister"), consistent with EC State aid rules and subject to prior consultation with the Commission.

(14) The guarantee may be applied to stand-alone eligible liabilities or to eligible liabilities issued under programmes, in each case approved by the Minister. In the case of programmes, participating institutions may apply for the eligible liability guarantee to apply to all eligible liabilities issued under a particular programme. Under the scheme, participating institutions may issue debt securities or take deposits on an unguaranteed basis.

(15) The Minister may, in circumstances where the objective of the Scheme requires it and for a given period of time or for the remainder of this Scheme: (i) decide not to issue any further eligible liability guarantee certificates to a particular participating institution in respect of guaranteed liabilities other than deposits; or (ii) require a participating institution to cease issuing eligible liabilities pursuant to a particular guaranteed programme.

(16) On the basis of information provided by the covered institutions, Ireland estimates that the total issuance, including deposits (EUR […] billion) and debt (EUR […] billion), is EUR […]billion. The total newly issued debt liabilities under the ELG Scheme (excluding deposits) will amount to approximately EUR […]billion, of which approximately EUR […] billion would have a maturity in excess of three years. This amount accounts for 18,32% of total expected new issuance volume excluding deposits, and 5,87% of the total issuance including deposits. Guarantees cannot exceed these estimated amounts[5] .

Temporal scope

(17) The maximum maturity of the covered liabilities is five years. The total volume of covered liabilities under the ELG Scheme with a maturity longer than 3 years (i.e. EUR […] billion) is less than one-third of the total expected new issuance volume excluding deposits (i.e. EUR […]billlion).

(18) Debt instruments guaranteed under this scheme may be issued during an entry window of six months starting from 1 December 2009 (the "commencement date"). The Irish authorities undertake to notify to the Commission any prolongation of the scheme after the six month period.

Remuneration

(19) The participating institutions will pay an annual fee that will follow the Recommendations of the Governing Council of the European Central Bank on government guarantees for bank debt of 20 October 2008 (hereafter "ECB recommendations").

(20) The fee payable to the State in relation to a guaranteed liability with a maturity greater than one year will be based on a per annum rate of 0.50% of the principal guaranteed amount plus either:

[5] Total issuance, including deposits (EUR […]billion); Total Debt (EUR […] billion) of which term notes 3-5 years (EUR […] billion).

- 100% of the relevant participating institution's median five-year credit default swap (CDS) spread during the period from 1 January 2007 to 31 August 2008; or,
- 100% of the median five-year CDS spread during the period from 1 January 2007 to 31 August 2008 for euro area credit institutions in the same credit rating category as the relevant participating institution (or the lowest rating category if such participating institution has no rating),

whichever is the lower, as determined by the Minister.

(21) The fee payable to the State in relation to a guaranteed liability with a maturity of up to one year will be based on a per annum rate of 0.50% of the principal guaranteed amount.

(22) An additional fee may be charged in relation to any guaranteed liabilities issued in non-euro denominated currencies.

(23) Notwithstanding paragraphs 19 to 22 above, the fee applicable to any eligible guaranteed liabilities of a participating institution with a maturity of one month or less newly issued within a period of three months from the commencement date (the "transitional period") shall be based on an overall flat fee of 25 basis point per annum.

3. Obligations of Ireland and the institutions participating in the ELG Scheme

(24) The Minister, after consultation with the Governor of the Central Bank and the Financial Regulator will issue directions to the participating institutions to comply with some or all of provisions on conduct, transparency and reporting requirements applicable to those participating institutions as covered institutions pursuant to paragraphs 24 to 52 of the CIFS Scheme. Under the CIFS Scheme, covered institutions are subject to several behavioural safeguards and transparency and reporting conditions, including the following:

(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.

(25) The Irish authorities undertake to present at least every six months reports on the operation of the scheme. These reports will also include a list of all beneficiary companies indicating for each of them data to understand the full scope of the support measures.

(26) The Minister, after consultation with the Governor and the Financial Regulator may at any time direct a participating institution to draw up a restructuring plan to ensure compliance with the objective of the ELG Scheme. 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. A restructuring plan will also be submitted to the Minister by a participating institution within no later than six months of: (i) the Minister notifying the participating institution that he or she has been called upon to make a payment under the ELG Scheme with respect to that participating institution; or (ii) the commencement of insolvency or similar proceedings or the appointment of an examiner in respect of the participating institution. Any restructuring plan drawn up by a participating institution will be required to comply with EC State aid and competition law and it will be notified by the Minister to the Commission immediately.

(27) If in the opinion of the Minister a participating institution is in material breach of its obligations under the ELG Scheme, the Minister may: (i) increase the fee payable above the participating institution; or (ii) impose additional conditions on the participating institution; or (iii) take such other action as the Minister deems appropriate in the context of the breach.

(28) The Irish authorities undertake to notify the Commission of any further measures granted by the State beyond the State guarantee covered by this decision.

(29) Ireland also undertakes to monitor how the banks participating in the ELG Scheme comply with the behavioural constraints mentioned above and to take all the necessary actions if the participating institutions fail to comply with them and to inform the Commission thereof.

4. Link between the existing and the new scheme

(30) Institutions included in the CIFS Scheme will continue to be covered by the CIFS Scheme until its expiry date, i.e. 29 September 2010, subject to the compliance with the conditions mentioned in the CIFS Scheme and the positive conclusion of the six-monthly review on the necessity to maintain the CIFS Scheme. If covered institutions participating in the CIFS Scheme do not apply to join the ELG Scheme within sixty days of the commencement date, the Minister, following consultation with the Financial Regulator, will increase the fees for the new short-term debt (deposits and securities) guaranteed under the CIFS Scheme to the same level as the ELG Scheme.

(31) Institutions included in the CIFS Scheme must apply to join the ELG scheme within sixty days from the commencement date if they wish to participate in it.. An eligible

institution which is not covered by the CIFS Scheme may apply to join the ELG Scheme at any time prior to or during the issuance period .

(32) Those institutions which become participating institutions under the ELG Scheme must cover all the instruments (including deposits and excluding dated subordinated debt and asset covered securities) that they issue from the commencement date via the ELG Scheme[even if those instruments' maturity is before 29 September 2010. The liabilities incurred or contracted by those institutions before 29 September 2010 and already covered under the CIFS Scheme remain fully guaranteed until 29 September 2010 (or until their maturity if earlier) under the terms of the CIFS Scheme.

(33) Dated subordinated debt (Lower Tier 2) and asset covered securities (including other forms of covered bonds) issued by a covered institution or in place (under the CIFS Scheme) before the commencement date and which are covered liabilities (under the CIFS Scheme) will continue to be guaranteed under the CIFS Scheme. Dated subordinated debt (Lower Tier 2) or asset covered securities (including other forms of covered bonds) issued by a covered institution (under the CIFS Scheme) on or after the commencement date will not be guaranteed under the ELG Scheme nor under the CIFS Scheme.

III. THE POSITION OF IRELAND

(34) The Irish authorities acknowledge that the notified measure contains State aid elements.

(35) The Irish authorities consider the aid scheme to be compatible with the common market as it helps to "remedy a serious disturbance in the economy of a Member State" within the meaning of Article 87(3)(b) of the EC Treaty.

(36) Notwithstanding the recent improvement in the liquidity in the market, the covered institutions continue to remain subject to liquidity pressure. […], a substantial portion of Irish banks' funding is still for maturities of less than one month. In their view, the terms of the new scheme create incentives for Irish banks to move away from guaranteed funding at very short maturity (e.g. the possibility of issuing unguaranteed debt). Moreover, allowing a transitional period with a lower price for short-term (less than one month) debt for a period of three months should facilitate the process of banks becoming less reliant on short-term debt in a relatively smooth manner while at the same time not causing undue disruption.

(37) Therefore, the Irish authorities consider it necessary to provide participating institutions with access to more stable and longer-term funding sources from the capital markets to ensure they can discharge their central role in facilitating economic activity and lending to the real economy in the State. A letter from the Governor of the Central Bank and Financial Services Authority of Ireland was submitted to the Commission on 15 June 2009 and further develops the reasons for approving and implementing the ELG Scheme.

(38) The Irish authorities committed that the credit institutions which participate in the ELG Scheme will have all their newly issued liabilities (including deposits) guaranteed under the ELG Scheme in line with the Banking Communication[6] and with the ECB recommendations, save for a transitional fee of 25 basis point during three months for liabilities with maturities of up to one monthand the scope of the guarantees, which covers liabilites shorter than 3 months.

(39) The Irish authorities submitted the opinion of the European Central Bank of 9 November 2009 on the ELG Scheme[7] ("the ECB Opinion"). The ECB notes that the guarantee provided in the ELG Scheme is to cover all deposits and short-term debt. In this regard, the ECB notes the points made by Ireland on why it considers it necessary that short-term funding with a maturity of up to three months can continue to benefit from a State guarantee. In summary, Ireland[advanced the following points: (i) notwithstanding the improvement in liquidity conditions overall over recent months, credit institutions in Ireland remain subject to liquidity pressures; (ii) because the existing scheme covers interbank deposits and obligations of less than three months duration, a transitional phase is necessary so that the guarantees in respect of such funding can be phased-out in an orderly fashion; and (iii) it will be possible for participating institutions to issue unguaranteed deposits, a strategy which is encouraged by way of the fee arrangements provided for under the ELG Scheme.

(40) The ECB acknowledges the significant challenges currently faced by the banking sector in Ireland and notes the points made by the Irish authorities referred to above. However, according to the ECB, granting governments guarantees for bank debt with a maturity of less than three months should be avoided to the extent possible. In particular, the extension of a guarantee to cover interbank deposits should be avoided as this could entail a substantial distortion in the various national segments of the euro area money market by potentially increasing short-term debt issuance activity across Member States and impairing the implementation of the single monetary policy, which is a unique competence of the Eurosystem under Article 105(2) of the Treaty. The ECB, therefore, reiterates that is is essential that the ELG Scheme will not impair the implementation of the single monetary policy throughout the euro area.

(41) Ireland committed that any additional aid that may be received under the ELG Scheme transitional period would be taken into account in the context of the restructuring and viability plans of the participating institutions that have been recapitalized or that will participate in NAMA[8] or which will be recapitalized or which will be subject to

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6 Commission Communication – The application of State aid rules to measures taken in relation to financial institutions in the context of the current global crisis, OJ C 270, 25.10.2008, p. 8.

7 The ECB's competence to deliver an opinion is based on Article 105(4) of the EC Treaty and the third and sixth indents of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on th consultation of the European Central Bank by national authorities regarding draft legislative provisions, as the draft scheme relates to the stability of Ireland's financial system and the Central Bank and Financial Services Authority of Ireland.

8 NAMA (National Asset Management Agency) is an independent commercial entity under the aegis to the Treasury management Agency. The Government decision to set up NAMA aims at addressing in a comprehensive way the problem of impaired or potential impaired assets in the Irish banking system. Assets will be transferred from banks to NAMA to strengthen their balance sheets and ensure that uncertainty over bad debts is reduced. This will facilitate a sustained flow of credit on a commercial basis to individuals, households and businesses in the real economy. Because it is clear that the principal uncertainties in relation to the asset quality in the Irish banking system lie in the banks' land and development loans and the largest aggregate associated exposures in the banks, it is these categories of loans that

restructuring in line with point 26 of this decision. In this respect, Ireland committed to report, for each participating institutions, the date in which they start issuing debt at the reduced fee, and to provide all the information necessary about its useat the end of the transitional period. This information will also be included in the report on the use of the guarantee, to be submitted after six months from the commencement of the Scheme.

(42) The Irish authorities committed to seek the Commission's approval, should it be necessary for the new guarantee scheme to continue beyond 1 June 2010. If the guarantee measures terminate before the intended end of the scheme, the Commission will be informed thereof. Moreover, pursuant to point 41 of the Banking Communication, Ireland committed to submit a report on the use of the guarantee scheme after six months including, in particular, detailed information regarding the ELG Scheme transitional period.

IV. ASSESSMENT

1. State aid character of the ELG Scheme

(43) As set out in Article 87(1) EC, 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.

(44) The Commission agrees with the position of Ireland that the notified measures constitute aid to the institutions concerned pursuant to Article 87(1) EC Treaty.

(45) The notified measure will enable the beneficiaries to secure the necessary capital and liquidity on more favourable terms than would otherwise be possible in the light of the prevailing conditions in the financial markets. Since this confers an economic advantage on beneficiaries and strengthens their position vis-à-vis their competitors in Ireland and in other Member States, these measures distort competition and affect trade between Member States. The advantage is selective since it benefits only beneficiaries under the ELG Scheme and is provided through State resources.

(46) The Commission is convinced that in the current circumstances, despite the observed improvement in the financial markets, the guarantees of newly issued debt would not have been provided by a market economy investor on a comparable scale and on similar terms in favour of the participating banks.

2. Compatibility

Application of Article 87(3)(b) EC

(47) Ireland intends to provide operating aid under a guarantee scheme by assisting banks which have problems accessing liquidity. In line with the Banking Communication and

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will be transferred to the Agency. These assets pose the main systemic risk to the banking sector in Ireland and the most significant obstacle to the recovery and restoration of lending by the Irish banking system

given the still fragile environment in financial markets, the Commission considers that it may be acceptable to examine the notified measure under Article 87(3)(b) EC.

(48) Article 87(3)(b) EC enables the Commission to declare aid compatible with the common market if it has the effect "to remedy a serious disturbance in the economy of a Member State". The Commission recalls that the Court of First Instance has stressed that Article 87(3)(b) EC needs to be applied restrictively and must tackle a disturbance in the entire economy of a Member State[9].

(49) The Commission considers that the present scheme concerns the entire Irish market. It does not dispute the analysis of the Irish authorities that the financial crisis has made access to liquidity (including medium-term liquidity) more difficult for Irish financial institutions and has also eroded confidence in Irish financial institutions' creditworthiness. If these problems are not addressed, it may result not only in difficulties for the banking sector but, owing to that sector's pivotal role in providing financing to the rest of the economy, may also have a systemic effect on the Irish economy as a whole. Hence it finds in line with its previous decisions[10] that the scheme is apt to remedy a serious disturbance in the Irish economy.

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

(50) In line with the Banking Communication, in order for an aid or aid scheme to be compatible under Article 87(3)(b) EC, it must comply with 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 conditions:

- *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.

- *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. This is confirmed by settled case law of the Court of Justice[11].

- *Proportionality*: The positive effects of the measures must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to reach the measures' objectives. This follows from Article 3(1)

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9 Cf. in principle Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen and Volkswagen AG Commission* [1999] ECR II-3663, para. 167. Applied in Commission Decision in case C 47/1996, *Crédit Lyonnais*, OJ L 221, 8.8.1998, p. 28, point 10.1, Commission Decision in Case C28/2002 *Bankgesellschaft Berlin*, OJ L 116, 4.5.2005, p. 1, points 153 *et seq* and Commission Decision in Case C50/2006 *BAWAG* , points 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 to WestLB*, OJ C 189, 26.7.2008, p. 3, Commission Decision of 4 June 2008 in Case C9/2008 *SachsenLB*.

10 State Aid NN 48/2008, OJ C 312, 6.12.2008

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

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 authorises State aid must ensure that such aid must be limited to that necessary to achieve its stated objective.

Application of the criteria to the measures

(51) As regards appropriateness, the Commission acknowledges that the guarantee scheme seeks to provide security to investors in newly issued debt of participating banks, in order to provide sufficient liquidity to those banks. For the CIFS Scheme, this was a reaction to the international market failure where even solvent banks were having difficulties getting access to liquidity. The introduction of the CIFS Scheme contributed to avoid a financial markets meltdown and to restore market confidence.

(52) The Commission notes that confidence in the liquidity, solvency and earning potential of Irish banks, while improving, continues to be fragile, as was also noted in the ECB Opinion. In fact, some key parameters related to Irish financial institutions (i.e.credit risk and counterparty risk) remain more volatile and sentitive than the average of the EU market. The ELG Scheme should further contribute to restore financial stability and restore the provision of credit and lending to the real economy. The Commission recognizes the exceptional severity of the slowdown of the economy and the financial system in Ireland. As liquidity in financial markets declined, the Irish banking system was heavily exposed due to its reliance on this source of funding. Moreover, banks' heavy exposure to property-related lending has added to the severity of the downturn. At the same time, the Commission considers, in line with the ECB Opinion, that Ireland should terminate guarantees for bank debt with a maturity of less than three months as soon as the market conditions allow.

(53) Moreover, the scheme is targeted at the appropriate beneficiaries as the eligibility of participating firms is limited to systemically important banks which comply with the minimum capital adequacy requirements and are incorporated in Ireland, including Irish subsidiaries of foreign banks.

(54) As regards necessity, the guarantee scheme, which is required to restore confidence and to stimulate the interbank lending market, is limited to the minimum necessary in scope and time.

(55) As regards scope, the Commission does note that the new guarantee scheme is needed in order to facilitate access of the participating financial institutions to longer-term debt.

(56) As regards temporal scope, the ELG Scheme covers instruments with a term of up to five years unlike the CIFS Scheme which covered liabilities only until 29 September 2010.

(57) This increase in temporal scope does not affect appropriateness of the ELG Scheme as a tool to remedy the serious disturbance in the Irish economy. However, by potentially

increasing maturity of guaranteed debt and hence the time such instruments will remain in the market, the notified measure may increase the distortion of competition likely to be generated.

(58) Ireland estimates that the total covered liabilities under the ELG Scheme will amount to approximately EUR […] billion. Ireland also states that EUR […]billion will in practice act as a limit amount for guaranteed funding under that scheme. The total volume of covered liabilities under the ELG Scheme with a maturity longer than 3 years is limited to EUR […] billion, which is less than one-third of the total expected new issuance volume excluding deposits.

(59) In view of the above and in line with earlier decisions[12], the Commission considers that this limitation provides a sufficient safeguard that any distortion of competition that the extension may generate will be the minimum necessary to achieve the objective of the ELG Scheme. The Commission can therefore agree to the extension of the guarantees to intruments with a term of up to five years.

(60) The Commission notes that institutions that already participate in the CIFS Scheme will continue to be covered until 29 September 2010. The Commission notes positively the commitment of the Irish authorities that all banks currently covered under the CIFS Scheme which chose to participate in the ELG Scheme will cover their newly issued debt via the ELG Scheme even if the maturity of that debt is before 29 September 2010. This is consistent with the established Commission practice[13]. The Commission notes positively the additional safeguards limiting distortive effects of the co-existence of two scheme with different fee mechanisms. The Commission notes positively the commitment to increase the fees under the CIFS Scheme so that they will be at the same level as those under the ELG Scheme as well as the sixty-day window to enter the ELG Scheme, which will be an incentive for banks to enter the ELG Scheme.

(61) The Commission also positively notes that, apart a lower fee for guaranteed liabilities with maturities of up to one month (i.e. 25 basis point), the new scheme will comply with the rules established by the Banking Communication. The Commission notes that this lower fee will apply only during a three-month transitional period and that under the transitional period the fee to be applied is higher than the fee currently currently paid by the banks participating in the CIFS Scheme.

(62) The Commission considers that the proposed transitional period can be justified by reasons of financial stability and by the particular situation of the banking sector, which has been severely hit by the crisis in international financial markets and faces large losses on heavy property-related lending. Credit conditions have also tightened This period will provide a phase-in phase where the lower fee will prevent a destabilising impact on funding conditions and improve the stability of the institutions concerned. Moreover, given that instruments with maturities up to three months constitute a substantial amount of all guaranteed debt under the CIFS Scheme, a transitional period is necessary to keep the ELG Scheme meaningful.

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[12] See Commission Decision of 12 December 2008 in case N 531/2008 *Guarantee scheme for credit institutions in Slovenia* and of 12 February 2009 in state aid N 664/2008 *Support measures for the baking industry in Hungary*.

[13] Commission Decision of 03.02.2009 Recapitalisation of credit institutions and amendments of the guarantee scheme – Denmark, under case N 31/a/2009, OJ C 50, 3.3.2009, point 78

(63) The Commission notes positively the commitment of Ireland that the additional aid amounts granted during the transitional period, i.e. the difference between 50 basis point and 25 basis point, will be reported to the Commission and will taken into account in the restructuring plan of the banks.

(64) The Commission will assess aid amounts both in absolute terms (amount of capital received, aid element in guarantee and asset relief measures) and in relation to the bank's risk weighted assets[14]. The Restructuring Communication indicates in point 30 that the measures to limit the distortion of competition created by the aid should be tailor-made to address the distortions identified on the markets where the beneficiary bank operates following its return to viability after restructuring. The Commission in its assessment should take as a starting point the size, scale and scope of the activities of the bank. Furthermore, the nature and the form of the measures will depend on the amount of aid and the conditions and circumstances under which it was granted and on the characteristics of the markets on which the bank will operate. Moreover, the additional aid amount granted in the transitional period and stemming from a lower fee, being a more distortive element, will be added to the total volume of guarantees granted under both schemes. The totality of the aid will then be reflected in the restructuring plan for the restoration of the bank's viability and will be considered for the purpose of assessing the scope of measures to limit distortions of competition.

(65) As regards proportionality, the distortion of competition is limited by various safeguards e.g the aid amount is reduced through a market-orientated premium and various behavioural constraints have been envisaged. This can be considered proportionate and consistent with the recent practice of the Commission.

(66) The Commission notes that, outside of the transitional period, the remuneration for the provision of the State guarantee is in line with the ECB recommendation which reduces the likelihood of undue displacement of capital flows. The transitional period is necessary for the financial stability of the Irish system and is limited in time. Therefore, the Commission is of the view that the scheme contains sufficient safeguards to minimise the risk of distortion of competition through undue displacement of capital flows between Member States.

(67) The Commission notes positively an additional safeguard in the present scheme in so far as it has a limited issuance period of six months and it envisages the report to the Commission on the ELG Scheme at least every six months.

(68) Furthermore, the Commission acknowledges that Ireland has committed to notify a restructuring or liquidation plan, within 6 months, for any bank that no longer qualifies as fundamentally sound, as stated in point 26.[15]

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[14] This is in line with the principles of the Banking Communication, points 25-26; Commission Communication – The return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules – OJ C 195, 19.8.2009, p. 9 (the Restructuring Communication) point 31; Commission Communication on the Treatment of Impaired Assets in the Community Banking Sector – OJ C 72, 19.8.2009, p.9 point 52. It is also consistent with the established Commission practice, e.g. Commission Decision of 13.8.2009 Homeowners Mortgage support Scheme, under case N 179/2009, OJ C 209, 4.9.2009, point 46.

[15] Such plans are the cornerstone of the Restructuring , point 4

(69) The ELG Scheme is approved for six months, from 1 December 2009 until 1 June 2010. Ireland has committed to notify a prolongation if it deems it necessary.

(70) On the basis of the above, the proposed measures can be considered compatible with the common market.

V. DECISION

The Commission finds that the notified measure is compatible with the common market, in the period from 1 December 2009 to 1 June 2010, and has accordingly decided not to raise objections.

If this letter contains confidential information which should not be published, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to publication of the full text of this letter 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/state_aids_texts_en.htm

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

European Commission:

Directorate-General for Competition
State aid Greffe
Rue de la Loi/Wetstraat, 200
B-1049 Brussels
Fax No: (+32)-2-296.12.42

Yours faithfully,

For the Commission

Neelie KROES
Member of the Commission

Annex 1

Table 1
Total currently outstanding state-guaranteed funding, as of 30 June 2009, under the CIFS Scheme
In EUR million equivalent

[…]

Table 2
Guaranteed issuance (excluding deposits) by maturity as of 30 June 2009
In EUR million equivalent

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