# COMMISSION DECISION

## of 26 February 2010

## on State aid C 9/09 (ex NN 49/08, NN 50/08 and NN 45/08) implemented by the Kingdom of Belgium, the French Republic and the Grand Duchy of Luxembourg for Dexia SA

*(notified under document C(2010) 1180)*

**(Only the French text is authentic)**

**(Text with EEA relevance)**

(2010/606/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above [1],

Whereas:

### I. PROCEDURE

#### 1.1. *EMERGENCY MEASURES FOR DEXIA*

(1) On 30 September 2008, the authorities of Belgium, France and Luxembourg ('the Member States concerned') publicly announced the implementation of the capital increase described in section 3.1 of this decision ('the capital increase'). On 9 October 2008, the Member States concerned announced the implementation of the guarantee described in section 3.2 ('the guarantee').

(2) By communications of 1 and 2 October 2008, recorded the same day at the Commission, the authorities of the Member States concerned informed the Commission of the measures they had taken in the context of the capital increase. Reasoned letters, justifying the urgency of the measures taken by the Member States concerned in the context of the capital increase, were then addressed to the Commission:

— letter from the Banque nationale de Belgique ('BNB'), received on 1 October 2008,

— letter from the Banque de France, received on 2 October 2008,

— letter from the Commission luxembourgeoise de surveillance des services financiers ('CSSF'), received on 10 October 2008.

(3) By communications of 9, 13 and 17 October 2008, the Member States concerned informed the Commission of the implementation of the guarantee.

(4) By communications of 2, 13 and 14 October 2008, the Member States concerned undertook to present to the Commission, within a period of six months from 3 October 2008, a restructuring plan for Dexia, taking into account the measures taken on 3 and 9 October 2008.

(5) By letters of 8 and 13 October, in a concern for transparency, the BNB informed the Commission of a liquidity assistance operation ('the LA operation'), put in place by the BNB, in cooperation with the Banque de France, on account of Dexia's temporary liquidity problems. It has kept the Commission informed of the amounts drawn on that operation.

(6) On 14 November 2008, the Belgian and French States publicly announced the establishment of a guarantee relating to the financial products of Dexia's subsidiary, Financial Security Assurance (FSA) ('the FSA measure').

#### 1.2. *FIRST COMMISSION DECISION: NOT TO RAISE OBJECTIONS TO THE EMERGENCY MEASURES*

(7) By decision of 19 November 2008 [2], the Commission decided not to raise any objections to the LA operation and the guarantee by the Member States concerned in respect of certain of Dexia's liabilities. The Commission considered these measures to be rescue aid to an undertaking in difficulties and therefore compatible with the internal market on the basis of Article 107(3)(b) TFEU [3], and authorised these measures for a period of six months from 3 October 2008, specifying that after that time the Commission would have to re-evaluate the aid as a structural measure.

[1] OJ C 181, 4.8.2009, p. 42.

[2] See footnote 1.

[3] OJ C 115, 9.5.2008, p. 91.

(8) The decision of 19 November 2008 also expressly provided that the other aid measures would be examined separately as part of a later decision.

### 1.3. *COMPLAINT BY A THIRD PARTY AGAINST ALLEGED STATE AID RECEIVED BY DEXIA*

(9) By letter received on 6 November 2008, a complaint was lodged with the Commission against allegedly illegal State aid received by Dexia. This complaint was lodged by a competitor of Dexia Banque Belgique ('DBB') and refers in particular to the EUR 3 billion capital increase subscribed to by the authorities and Dexia's Belgian shareholders and the guarantee issued by the Belgian State in respect of interbank and similar loans in favour of Dexia.

(10) A non-confidential version of the complaint form and its enclosures was forwarded by the Commission to the Belgian authorities by letter dated 13 November 2008. The Belgian authorities sent their observations on the complaint to the Commission by letter dated 19 November 2008.

### 1.4. *EXTENSION OF THE MEASURES AND DEXIA'S RESTRUCTURING PLAN*

(11) In accordance with their commitments, a Dexia restructuring plan ('the initial restructuring plan') was notified to the Commission by the authorities of the Member States concerned on 16, 17 and 18 February 2009 respectively. Additional information on the initial restructuring plan was submitted on 27 February and 3, 5, 6, 7, 8 and 9 March 2009.

(12) Furthermore, under this initial restructuring plan, the authorities of the Member States concerned asked the Commission to authorise the extension of the guarantee mechanism until the deadline provided for in the guarantee agreement, that is to say 31 October 2009, and the continuation of the preferential remuneration rate of 25 basis points for the guarantee covering bonds with a maturity of less than one month. In addition, the Commission was also asked to confirm that, if the guarantee were to be extended beyond October 2009 (to October 2010), that extension would be compatible with the common market.

(13) As a precautionary measure, the Belgian Government also requested the extension until 31 October 2009 of the possibility of Dexia using LA operations provided by the BNB.

(14) Finally, the Belgian and French Governments notified the Commission of the implementation of the FSA measure, publicly announced on 14 November 2008.

### 1.5. *SECOND COMMISSION DECISION: INITIATION OF THE FORMAL PROCEDURE*

(15) By letter of 13 March 2009, the Commission notified the Belgian, French and Luxembourg authorities of its decision to initiate the procedure laid down in Article 108(2) TFEU concerning all the aid granted to Dexia ([4]). However, the letter specifies that, in order to allow the rapid sale of FSA, the Commission did not raise any objection to certain aspects of the FSA measure which were considered to be compatible with the internal market, on the basis of Article 107(3)(b) TFEU. Finally, the letter specifies that the guarantee by the Member States concerned in favour of Dexia, valid until 30 October 2009, could be considered to be compatible with the internal market, on the basis of Article 107(3)(b) TFEU, pending the Commission's final decision closing the formal procedure.

(16) The Commission's decision to initiate the procedure was published in the *Official Journal of the European Union*. The Commission invited interested parties to submit their comments on the measures in question ([5]).

(17) The Commission received no comments on this subject from interested parties.

(18) With regard to the questions relating to the FSA measure (valuation of the assets covered by the measure and remuneration of the measure), the Commission relied on the technical analysis of external experts under contract with the Commission (Oliver Wyman).

### 1.6. *THIRD COMMISSION DECISION: EXTENSION OF THE GUARANTEE*

(19) Since the guarantee agreement concluded between Dexia and the Member States concerned was due to expire on 31 October 2009, the Member States concerned notified the Commission on 27 October 2009 of the renewal of the guarantee agreement until 28 February 2010, subject to certain adjustments. Information on the changes made to the guarantee agreement was communicated to the Commission on 10 September, 8 October and 27 October 2009.

([4]) See footnote 1.
([5]) See footnote 1.

(20) By decision of 30 October 2009 ([6]), the Commission authorised the extension of the guarantee until 28 February 2010 or until the date of the Commission decision on the compatibility of the aid measures and Dexia's restructuring plan, if this decision is taken before 28 February 2010. The Commission specifies in its decision that the measures proposed in the initial restructuring plan did not allow a decision to be taken on the compatibility of the aid at this stage.

### 1.7. *ADDITIONAL MEASURES TO DEXIA'S RESTRUCTURING PLAN*

(21) By communication of 9 February 2010, the Member States concerned sent the Commission information on the additional measures planned to supplement the initial restructuring plan notified in February 2009. The set of restructuring measures notified in this way between February 2009 and February 2010 constitute Dexia's restructuring plan ('the restructuring plan').

(22) By communication of 10 February 2010, the Belgian authorities informed the Commission that, in the interests of this decision being adopted as soon as possible, they agree to this decision being adopted in the French language.

## II. **DESCRIPTION OF THE BENEFICIARY**

(23) Dexia is a financial group active in the banking and insurance sectors. The parent company, Dexia SA, is incorporated as a limited company under Belgian law and listed on the Euronext Paris and Euronext Brussels stock exchanges. On 31 December 2008, its market capitalisation was EUR 5,64 billion. Dexia was formed in 1996 by the merger of France's Crédit Local and Belgium's Crédit communal. It specialises in loans to local authorities but also has 5,5 million private customers, mainly in Belgium and in Turkey, via its local subsidiary DenizBank.

(24) Following the capital increase, which took place on 3 October 2008, the stakes of the principle shareholders of Dexia SA are as follows:

| Subscribed by | % held before the operation | Amount of subscription (million EUR) | % held at 31 December 2008 |
|---|---|---|---|
| Belgian Federal Government | — | 1 000 | 5,73 |
| Flemish Region | — | 500 | 2,87 |
| Walloon Region | — | 350 | 2,01 |
| Brussels Capital Region | — | 150 | 0,86 |
| Holding Communal SA | 17 | 500 | 14,34 |
| Arcofin SCRL | 18,08 | 350 | 13,92 |
| Ethias | 6,37 | 150 | 5,04 |
| French Government | — | 1 000 | 5,73 |
| CDC | 11,89 | 1 710 | 17,61 |
| CNP Assurances | 2 | 288 | 2,97 |
| Employees | 3,92 | | 2,57 |
| Free float | 40,74 | — | 26,86 |

([6]) OJ C 305, 16.12.2009, p. 3.

(25) Dexia is organised around a parent holding company (Dexia SA) and three operational entities located in France (Dexia Crédit Local, 'DCL'), Belgium ('DBB') and Luxembourg (Dexia Banque Internationale à Luxembourg, 'Dexia BIL'). Whereas the total balance sheet of the group was EUR 651 billion at 31 December 2008, that of the three operational entities was:

— EUR 414 billion for DCL,

— EUR 263 billion for DBB,

— EUR 67 billion for Dexia BIL.

(26) Since it was formed, Dexia's activities have been divided among four main business lines:

— financial services to the public and semi-public sector ('Public and Wholesale Banking' or 'PWB'): this business line covers loans to local authorities, project finance, the credit enhancement activities carried out by DCL's subsidiary FSA, sold to Assured Guaranty in July 2009, and holding and active management of a portfolio of bonds and asset-backed securities ('ABS'); a significant proportion of these activities are directed by DCL and its international subsidiaries, with the exception of PWB activities in Belgium, which come under DBB,

— financial services to private individuals ('Retail and Commercial Banking' or 'RCB'): this business line covers deposit-taking and lending to private individuals and businesses in Belgium, Turkey, Slovakia and Luxembourg, as well as private banking in Luxembourg and Belgium; these activities are directed by DBB and Dexia BIL, and, as far as the activities in Turkey are concerned, DenizBank, a direct subsidiary of Dexia SA,

— treasury and financial markets ('Treasury, Funding and Markets' or 'TFM') which covers all the treasury, asset-liability management ('ALM') and proprietary trading activities of Dexia,

— the other activities which cover the asset management activities (grouped under Dexia asset management, 'Dexia AM'), investor services (offered by the joint subsidiary of Dexia and the Royal Bank of Canada, RBC Dexia Investor Services, 'RBC Dexia IS') and the insurance activities of the group, carried out in Belgium, France (Dexia Epargne Pension, 'DEP'), Turkey and Ireland.

(27) From the time it was formed until the crisis in autumn 2008, the salient characteristics of Dexia's business activity, differentiating it from other European commercial banks, were as follows:

— a core clientele, the local authorities, characterised by low credit margins and outstanding loans with relatively long maturities,

— a majority of short-term funding obtained on the interbank and money markets as against long-term assets (loans to local authorities, project finance, bond portfolio),

— considerable dependence for funding on less stable sources, such as the interbank market, or funding from institutional investors,

— the search for margins outside the group's traditional activities (the financing of local authorities, businesses and private individuals), by means in particular of:

(i) credit enhancement through the monoline insurance subsidiary FSA;

(ii) proprietary trading;

(iii) proprietary investments in a portfolio mainly comprising bonds which, at 31 December 2008, was estimated at EUR 233 billion (that is to say 36 % of Dexia's total balance sheet at that date);

(iv) sales of derivatives and structured products.

(28) On account of these specific characteristics, the refinancing profile of the group also displays particularities, since a significant proportion of the group (principally DCL) has structural financing needs which it meets in particular through funding from other parts of the group (essentially DBB and Dexia BIL) and from the money, bond and mortgage bond markets.

(29) Therefore when, in September 2008, following the bankruptcy of Lehman Brothers, the interbank market and the mortgage bond market dried up, Dexia found itself with a dynamic short-term funding requirement amounting to EUR [200-300] (*) billion ([31-46] % of the group's total balance sheet, at 31 December 2008). The bank's situation deteriorated in September and October 2008 on account of its significant exposures to bank and sovereign counterparties in difficulties (American, Irish and Icelandic banks), impairment of assets held directly by Dexia or enhanced by its subsidiary FSA, and the falling prices of shares held by the group. The total losses and asset impairments recorded by the group amounted to EUR 6,5 billion at 30 September 2009 (of which EUR 5,9 billion at 31 December 2008).

(30) For further details of the events at the origin of Dexia's difficulties, the Commission refers to its decisions of 19 November 2008, 13 March 2009 and 30 October 2009.

(31) In response to these difficulties, the group's new management, appointed on 7 October 2008, implemented a transformation plan designed to refocus the group's activities on its core business (comprising the PWB and RCB activities) and to reduce its risk profile and short-term funding needs. This transformation plan consisted of the following main measures:

— sale of FSA's credit enhancement activities to Assured Guaranty, with the FSA investment portfolio ('Financial Products') remaining under Dexia's ownership ([7]),

— reduction in the scale of the international PWB activities (i.e. DCL's PWB activities outside France, Italy and Spain),

— placing a substantial proportion of the bond portfolio in run-off (EUR 158 billion at 31 December 2008),

— cessation of all TFM proprietary trading activities and merger of ALM and treasury activities in a new business line 'Group Center',

— cost reduction programme.

(32) Following the implementation of the transformation plan, at the start of 2009, Dexia's situation improved, enabling it to record a positive net result of EUR 808 million in the first three quarters of 2009.

(*) Confidential information […].

([7]) For further information on the activities and sale of FSA, the Commission refers to its decision of 13 March 2009.

## III. **DESCRIPTION OF THE AID MEASURES**

### 3.1. *THE CAPITAL INCREASE*

(33) The Commission refers to its decision of 19 November 2008. The EUR 6 billion capital increase by the Belgian and French shareholders, consisting in the issue of ordinary Dexia SA shares, became definitive on 3 October 2008. The underwriting of this reserved capital increase is broken down as follows:

(a) Belgium:

— the Belgian State invested EUR 1 billion in Dexia SA,

— the Flemish Region invested EUR 500 million in Dexia SA,

— the Walloon Region invested EUR 350 million in Dexia SA,

— the Brussels Capital Region invested EUR 150 million in Dexia SA,

— Holding Communal SA invested EUR 500 million in Dexia SA,

— Arcofin SCRL invested EUR 350 million in Dexia SA,

— Ethias invested EUR 150 million in Dexia SA,

(b) France:

— the French State invested EUR 1 billion in Dexia SA. This holding will be managed by the Agence des participations de l'État,

— the Caisse des Dépôts et Consignations (CDC) group invested EUR 1,71 billion in Dexia SA,

— CNP Assurances invested EUR 288 million in Dexia SA.

(34) The Luxembourg State undertook in September 2008 to invest EUR 376 million in Dexia BIL, in the form of convertible bonds with a maturity of three years, interest of 10 % a year and conversion to ordinary shares on terms to be agreed. In the restructuring plan notified in February 2010, Dexia indicated that it was definitively waiving the benefit of the Dexia BIL convertible bond, with immediate effect from the date of this decision.

3.2. *THE BOND GUARANTEE*

(35) The guarantee of Dexia's bond liabilities, granted on 9 October 2008 by the Member States concerned, was already the subject of the decision of 19 November 2008. Under the guarantee agreement, the three Member States concerned jointly undertook to guarantee, from 9 October 2008 to 31 October 2009, the new interbank and institutional financing and new bond financing, with a maximum maturity of three years, raised by Dexia SA, Dexia BIL, DCL and DBB. The guarantee initially covered bond liabilities amounting to a maximum of EUR 150 billion in the proportion of 60,5 % for Belgium, 36,5 % for France and 3 % for Luxembourg.

(36) In its above-mentioned decision of 19 November 2008, the Commission authorised the guarantee, as an emergency rescue measure, for a period of six months from the time it was set up. Under this decision, since a plan for restructuring the beneficiary has been submitted in accordance with the undertakings given by the three Member States concerned, this period is automatically extended until the Commission takes its decision on this restructuring plan.

(37) However, since the guarantee agreement between Dexia and the Member States concerned was due to expire on 31 October 2009, the latter notified the Commission on 27 October 2009 of the renewal of the guarantee agreement until 28 February 2010, subject to certain modifications.

(38) The conditions of the guarantee were changed as follows compared with the initial guarantee concluded between the Member States concerned and Dexia on 9 October 2008:

(a) the maximum amount of Dexia's bonds guaranteed by the Member States concerned was reduced from EUR 150 billion to EUR 100 billion. In an amendment to the agreement, Dexia undertook to take every possible step to ensure that the global undertaking by the Member States concerned would not exceed EUR 80 billion after 1 November 2009;

(b) the final maturity for the bonds covered by the guarantee was postponed from 31 October 2011 to 31 October 2014 ([8]);

(c) from 16 October 2009, the guarantee no longer covers the group of contracts with a maturity of less than one month or sight deposits, which are treated in the same way as contracts with a maturity of less than one month in the guarantee mechanism.

(39) None of the other conditions in the initial guarantee concluded on 9 October 2008 were changed. The conditions concerning remuneration, in particular, remain as follows:

(a) the remuneration of the guarantee consists of a commission that Dexia will have to pay every month on the *pro rata temporis* amount outstanding, equal to 50 basis points on an annual basis for all bonds with a maturity of up to twelve months or indefinite maturity;

(b) for all guaranteed bonds that have a maturity exceeding one year, the remuneration of the guarantee will be equal to 50 basis points on an annual basis, plus the lower of the following two values, applied to each guaranteed bond: either the median value of the Dexia five-year senior CDS spreads over a period starting on 1 January 2007 and ending on 31 August 2008 (provided that these spreads are representative), or the median value of the five-year CDS spreads during the same period for all credit institutions with a long-term credit rating equivalent to that of Dexia.

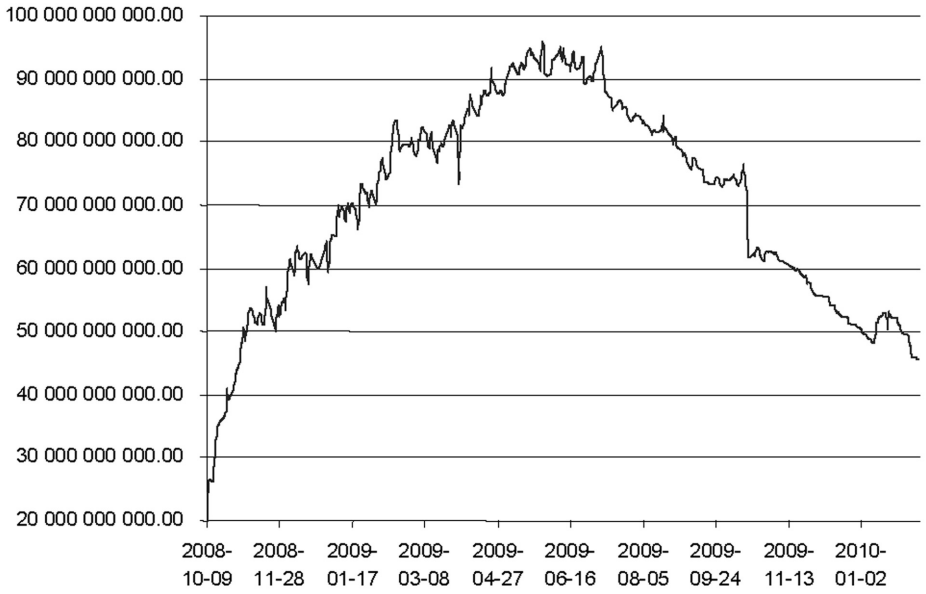
(40) In each case, the commission is calculated on the average amount of the outstanding guaranteed bonds with the maturity in question and covered by the guarantee during the previous month.

(41) The maximum amount of Dexia's bond liabilities covered by the guarantee comes to EUR 95,9 billion at 27 May 2009 ([9]). Fig. 1 illustrates the trend in the volume of Dexia bonds covered by the guarantee between 9 October 2008 and 11 February 2010.

([8]) The postponement of the final maturity applies only to bonds issued after the adoption of the Commission decision of 30 October 2009.
([9]) See: http://www.nbb.be/DOC/DQ/warandia/index.htm

*Fig. 1*

**Trend in the volume of Dexia bonds covered by the guarantee**




(*Source:* BNB, 11 February 2010)

(42) In its decision of 30 October 2009, the Commission raised no objections to the extension of the guarantee by the Member States concerned in favour of Dexia until 28 February 2010, in so far as the guarantee constitutes an emergency rescue measure compatible with the internal market, on the basis of Article 107(3)(b) TFEU.

3.3. *THE LA OPERATION*

(43) The LA operation provided by the BNB in cooperation with the Banque de France has already been the subject of the Commission decision of 19 November 2008. […]

(44) Pursuant to the Law of 15 October 2008 ([10]) on measures to promote financial stability and introducing in particular a State guarantee on credits granted and other operations conducted in the context of financial stability, the credits granted by the BNB to Dexia are covered by the guarantee from the Belgian State automatically and with retroactive effect. This guarantee does not cover the portion of the LA operation granted on behalf of the Banque de France.

(45) According to the information communicated by the BNB to the Commission, the LA operation was approved by the Governing Council of the European Central Bank ('ECB') up to a maximum amount of EUR […] billion. This facility was used by Dexia essentially between October and November 2008.

(46) In its decision of 19 November 2008 mentioned above, the Commission authorised the LA operation as an emergency rescue measure for a period of six months from its establishment. However, in its notification to the Commission of the Dexia restructuring plan, on 17 February 2009, the Belgian Government also requested, as a precautionary measure, the extension until 31 October 2009 of the possibility of Dexia using LA operations provided by the BNB, if the Commission were to consider that this measure contained State aid elements.

([10]) *Moniteur belge* of 17 October 2008, edition 2, pp. 55634 *et seq.*

### 3.4. *THE FSA MEASURE*

(47) The FSA measure was the subject of the Commission decision of 13 March 2009. Under this measure, the Belgian and French Governments provide a guarantee to allow Dexia to honour a put agreement whereby FSA Asset Management ('FSAM'), a former subsidiary of FSA not sold to Assured Guaranty, will have the option of selling certain assets included in the FSAM portfolio to Dexia SA and/or DCL upon the occurrence of certain trigger events (see recitals 50 to 59).

#### 3.4.1. CONTEXT

(48) To recap, the Financial Products ('FP') activity was excluded from the FSA activities sold to Assured Guaranty. The FP activity essentially consists in (i) the collection of deposits from third parties whom FSA undertakes to remunerate for those deposits at a specific level under guaranteed investment contracts (or 'GICs') and (ii) the reinvestment of these deposits in securities with a higher yield than the cost of the guaranteed investments, thereby generating in principle a positive net profit margin. Technically, the GICs are concluded by subsidiaries of FSA ('GIC Companies'), which, in turn, lend the proceeds of those deposits to another company in the group, FSAM, which puts together and manages the asset portfolio intended to meet the liabilities and repayment obligations towards the counterparties of the GICs. FSAM and the GIC Companies, which come under the FP activity, were thus excluded from the group of activities sold to Assured Guaranty and remained under Dexia's ownership.

(49) FSAM's portfolio of assets essentially comprises securities linked to the US real estate sector, whose market value and/or ratings have declined sharply due to the subprime crisis and the financial crisis. To the extent that FSA guarantees assets and liabilities of the FP activity, the exclusion of this activity from the scope of the sale necessarily means that Dexia must guarantee the FP activities, so that guarantees given by FSA are not called upon. Given Dexia's difficult financial situation and the maximum theoretical amount of the guarantee under the GICs, it was vital from the point of view of the purchaser of FSA, Assured Guaranty, that Dexia should be itself guaranteed by the Belgian and French States.

#### 3.4.2. MAIN TERMS

(50) The put is a contract under which FSAM is entitled to sell to Dexia SA and/or DCL certain assets included in the FSAM portfolio as of 30 September 2008 (totalling USD 16,98 billion in residual nominal value) upon the occurrence of certain trigger events, as listed below:

— in the event of asset default, i.e. a failure to pay the principal or the interest due on the assets of the portfolio at the final maturity: in this case, the put relates to the assets concerned, which are sold to Dexia at their residual nominal value plus accrued interest,

— in the event of Dexia's insolvency, in which case the put relates to all the assets of FSAM's portfolio to which the put option relates or to a number of assets with a residual nominal value equal to the total value of the liabilities pursuant to the GICs, if this amount is lower. The assets concerned are sold at their residual nominal value plus accrued interest,

— in the event of liquidity default, i.e. a failure by Dexia to meet its obligations under liquidity agreements concluded or to be concluded in favour of FSAM: in this case, the put relates to a number of assets with a residual nominal value equal to the amount of the liquidity default, which are sold to Dexia at their residual nominal value plus accrued interest,

— in the event of collateral default, i.e. failure by Dexia to provide FSAM with collateral in an amount equal to the difference between the value of the liabilities pursuant to the GICs and the market value of the assets of FSAM, after applying a haircut to these assets: in this case, the put relates to a number of assets with a residual nominal value equal to the amount of the collateral default, which are sold to Dexia at their residual nominal value plus accrued interest.

(51) Under the States' guarantee contract, the Belgian State (62,4 %) and the French State (37,6 %) each undertake to guarantee severally, but not jointly, Dexia's obligations under the put agreement referred to above, but after deduction of excluded assets ('excluded assets') to a value of approximately USD 4,5 billion so that the par value of the assets included in the portfolio to which the guaranteed put relates ('covered assets') is equal to USD 12,48 billion. The States' guarantee is autonomous, first demand, irrevocable and unconditional. It is capped at a total of USD 16,98 billion (consisting of a maximum of USD 12,48 billion of repayment of residual nominal value and USD 4,5 billion of interest), which will gradually be reduced with the amortisation of the portfolio.

(52) Should one of the trigger events occur, FSAM, acting via its agent, will first of all ask Dexia to honour its commitments under the put agreement, and subsequently make that request to the States upon expiry of certain time limits in the event of default by Dexia or its bankruptcy.

(53) The States will be reimbursed by Dexia for being called upon under the guarantee (i) in cash where the total payments remain less than or equal to a first tranche of USD 4,5 billion and (ii) in shares and, where applicable, in profit shares, beyond that amount. However, although the excluded assets referred to above are not covered by the States' guarantee, calls made in relation to the excluded assets will be offset against the amount of the first tranche of USD 4,5 billion, for which the States shall be entitled to direct recourse in cash against Dexia.

(54) The guarantee gives rise to remuneration payable annually by Dexia to the Belgian and French States of 113 basis points in relation to coverage of the risk of default on the guaranteed put, plus 32 basis points in relation to coverage of the risk of Dexia failing to honour its liquidity commitments towards FSAM.

(55) FSA (without FP) was sold on 1 July 2009 and the FSA measure took effect at the same time. The latest study of the valuation of the FSAM portfolio was communicated to the Commission on 18 March 2009 and was carried out by Société Générale ('the consultant'), the independent expert appointed by the Belgian State, on the basis of the data as at 31 January 2009.

(56) Table 1 below shows the key data of the FSAM portfolio:

*Table 1*

**Key data of the FSAM portfolio (total)**

| Asset categories | Nominal value | | Market value | | Expected losses (baseline) | | Expected losses (stress) | |
|---|---|---|---|---|---|---|---|---|
| | In million USD | As % of total | In million USD | As % of total | In million USD | As % of total | In million USD | As % of total |
| RMBS standard (without 'wrap') | 10 582 | 63,8 | [4 000-5 000] | […] | [1 500-2 500] | […] | […] | […] |
| Subprime | 7 317 | 44,1 | [3 000-4 000] | […] | [1 000-1 500] | […] | […] | […] |
| Alt-A | 2 424 | 14,6 | [500-1 000] | […] | [0-1 000] | […] | […] | […] |
| Option ARMs | 694 | 4,2 | [0-500] | […] | [0-500] | […] | […] | […] |
| Prime | 147 | 0,9 | [0-100] | […] | [0-10] | […] | […] | […] |
| CES/HELOCs/ Wrapped RMBS (*) | 817 | 4,9 | [0-500] | […] | [0-500] | […] | […] | […] |
| NIMs | 277 | 1,7 | [0-200] | […] | [0-30] | […] | […] | […] |
| ABS CDO | 36 | 0,2 | [0-20] | […] | [0-40] | […] | […] | […] |
| CLOs | 413 | 2,5 | [0-400] | […] | [0-100] | […] | […] | […] |
| US Agency RMBS | 1 338 | 8,1 | [1 000-1 500] | […] | [0-100] | […] | […] | […] |
| Other | 3 119 | 18,8 | [1 000-2 000] | […] | [0-400] | […] | […] | […] |
| Total | 16 582 | 100,0 | [7 000-9 000] | […] | [2 000-3 000] | […] | [3 500-4 500] | […] |

(*) CES = Closed-end second mortgages / HELOC = Home equity line of credit

(57) The portfolio mainly comprises 'US RMBS standard', accounting for nearly 64 %, and more specifically 'subprime' securities (44 % of the portfolio) and 'Alt-A' (15 % of the portfolio). To a lesser extent, the portfolio is also exposed to 'US Agency RMBS' (8 % of the portfolio) and to securities enhanced by monoline insurers. The nominal value of the portfolio was USD 16,6 billion at 31 January 2009 and its average market value at the same date was [42,2-54,3] % of

the nominal value, i.e. USD [7-9] billion. The expected losses, in a baseline scenario, amounted to USD [2-3] billion, whereas in a stress scenario they were estimated at USD [3,5-4,5] billion. The real economic value ('REV') at 31 January 2009 was USD [13,6-14,6] billion under the baseline scenario and USD [12-13] billion under a stress scenario.

(58) Table 2 below shows the key data of the FSAM portfolio, after deduction of the excluded assets:

*Table 2*

**Key data of the FSAM portfolio (after deduction of the excluded assets)**

| Asset categories | Nominal value | | Market value | | Expected losses (baseline) | | Expected losses (stress) | |
|---|---|---|---|---|---|---|---|---|
| | In million USD | As % of total | In million USD | As % of total | In million USD | As % of total | In million USD | As % of total |
| RMBS standard (without 'wrap') | 9 755 | 79,9 | [3 500-4 000] | […] | [1 500-2 500] | […] | […] | […] |
| Subprime | 6 544 | 53,6 | [2 500-3 000] | […] | [1 000-1 500] | […] | […] | […] |
| Alt-A | 2 371 | 19,4 | [500-1 000] | […] | [0-1 000] | […] | […] | […] |
| Option ARMs | 693 | 5,7 | [0-500] | […] | [0-500] | […] | […] | […] |
| Prime | 147 | 1,2 | [0-100] | […] | [0-10] | […] | […] | […] |
| CES/HELOCs/ Wrapped RMBS (*) | 817 | 6,7 | [0-500] | […] | [0-500] | […] | […] | […] |
| NIMs | 276 | 2,3 | [0-200] | […] | [0-30] | […] | […] | […] |
| ABS CDO | 36 | 0,3 | [0-20] | […] | [0-40] | […] | […] | […] |
| CLOs | 413 | 3,4 | [0-400] | […] | [0-100] | […] | […] | […] |
| Other | 909 | 7,4 | [200-600] | […] | [0-400] | […] | […] | […] |
| Total | 12 205 | 100,0 | [4 500-5 500] | […] | [2 000-3 000] | […] | [3 500-4 500] | […] |

(*) CES = Closed-end second mortgages / HELOC = Home equity line of credit

(59) Net of excluded assets, the nominal value of the portfolio was USD 12,2 billion at 31 January 2009 and its average market value at the same date was [36,9-45,1] % of the nominal value, i.e. USD [4,5-5,5] billion. The expected losses, under a baseline scenario, amounted to USD [2-3] billion, whereas under a stress scenario they were estimated at USD [3,5-4,5] billion. The REV at 31 January 2009 was USD [9,2-10,2] billion under a baseline scenario and USD [7,7-8,7] billion under a stress scenario.

## IV. **THE RESTRUCTURING PLAN**

(60) The restructuring plan aims to refocus Dexia's activities on its principal business lines and markets (that is to say, PWB and RCB activities in France, Belgium and Luxembourg); to reduce its risk profile and leverage; and to restore balance in its liquidity profile. This includes, in particular, abandoning, reducing and selling certain activities and the introduction of two separate internal reporting lines, one relating to traditional banking activities ('core division'), comprising the bulk of the PWB and RCB activities, representing 72 % of Dexia's total balance sheet at end-2009, and the other relating to the activities in run-off called the 'Legacy Portfolio Management Division' ('LPMD'), mainly comprising the bond portfolio and, more marginally, international PWB activities, representing 28 % of Dexia's total balance sheet at end-2009. The improvement in the liquidity profile is achieved by reducing market and short-term funding and increasing the average maturity of the funding and through recourse to more stable funding (retail and commercial deposits and mortgage bonds).

(61) The restructuring plan consists of a series of measures already put in place by Dexia and behavioural and structural measures which Dexia will have to implement during the restructuring period, under the supervision of the Member States concerned which have undertaken to ensure that they are observed.

(62) Together, these measures allow a 35 % reduction in Dexia's total balance sheet at 31 December 2014, compared to 31 December 2008, taking account of new turnover.

4.1. *RESTORATION OF THE LONG-TERM VIABILITY UNDER NORMAL AND STRESS CONDITIONS*

(63) The Member States concerned have communicated detailed information to the Commission on the business model of the bank. This information provides details notably on the following:

— group business plan for the period from 2009 to 2011 and projections of certain balance sheet and profit and loss account data to 2014 and 2017,

— volumes and margins of outstanding amounts and new turnover by business line (PWB, RCB and other) and by geographical area, from 2009 to 2011,

— volumes and average costs of funding the group by source of funding (repos, guaranteed and unguaranteed bonds, mortgage bonds, deposits and other).

(64) On the basis of this information, Dexia forecasts positive results throughout the restructuring period, from 2009 to 2014, and a Core Tier 1 ratio of between 11 % and 15 %. Table 3 below shows Dexia's projected results and Core Tier 1 ratio for each year from 2009 to 2014.

*Table 3*

**Dexia's projected results and Core Tier 1 ratio during the restructuring period**

*(Million EUR and %)*

| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
|---|---|---|---|---|---|---|
| Core division | | | | | | |
| Net results before tax | […] | […] | […] | […] | […] | […] |
| LPD | | | | | | |
| Net results before tax | […] | […] | […] | […] | […] | […] |
| Total Dexia group | | | | | | |
| Net results before tax | […] | […] | […] | […] | […] | […] |
| Core Tier 1 ratio | […] | […] | […] | […] | […] | […] |

(65) The Member States concerned also provided three types of stress simulations to establish the group's resilience to external shocks.

(66) The first type of stress test carried out by Dexia aimed to test the group's resilience, until 2011, to the following variables: (i) GDP growth rate in various countries, (ii) three-month and five-year interbank rates and (iii) exchange rates of certain foreign currencies. With regard to the growth rate, hypotheses were drawn up for a baseline scenario and a stress scenario in line with the hypotheses used for other similar exercises recently conducted in Europe. The results of the stress test, as carried out by Dexia, suggest that the group would remain in profit in 2010 and 2011, even in a stress scenario. The pre-tax profit would amount to EUR […] million in 2010 and EUR […] million in 2011.

(67) The second type of stress test carried out by Dexia was designed to test the resilience of the group to a rise in its market funding costs over a year of (i) 100 basis points and (ii) 200 basis points. The results of the stress test, as carried out by Dexia, indicate that the impact on the results of the group can be evaluated at EUR […] million, in the case of its funding costs rising by 100 basis points, and EUR […] million in the case of its funding costs rising by 200 basis points.

(68) The third type of stress test carried out by Dexia was designed to test the group liquidity and more specifically the group liquidity position in exceptional circumstances, by comparing the liquidity potentially required with the liquidity potentially available in such circumstances. The stress test horizon is one month. The scenario applied combines the impact of an idiosyncratic shock linked to Dexia and the consequences of a general liquidity crisis. This liquidity stress test was undertaken both by Dexia and by its supervisory authority (the Banking, Finance and Insurance Commission, 'CBFA'). […] ([11]) […].

4.2. *BEHAVIOURAL COMMITMENTS*

(69) The restructuring plan, notified on 9 February 2010, consists firstly in reducing short-term funding, lengthening the average maturity of long-term funding and increasing the group's stable sources of funding. In this respect, the Member States concerned undertake to ensure that Dexia complies with three quantitative funding ratios.

— Dexia is to maintain the 'short-term funding ([12])/total balance sheet' ratio at 30 % at 31 December 2009, at a level below or equal to 23 % at 31 December 2010, below or equal to 20 % at 31 December 2011, below or equal to 14 % at 31 December 2012, below or equal to 13 % at 31 December 2013 and below or equal to 11 % at 31 December 2014.

— Dexia is to lengthen the maturity of its funding by maintaining the average life of the liabilities of the group ([13]) at a level exceeding or equal to the levels shown in Table 4 below:

*Table 4*

**Trend in the average life of Dexia's liabilities (in years)**

| 31.12.2009 | 31.12.2010 | 31.12.2011 | 31.12.2012 | 31.12.2013 | 31.12.2014 |
|---|---|---|---|---|---|
| […] | […] | […] | […] | […] | […] |

— Dexia is to increase its stable sources of funding: a ratio is calculated, with the numerator equal to the sum of the funding in the form of mortgage bonds and the funding in the form of RCB and PWB commercial deposits and with the denominator equal to the sum of all Dexia's assets. This ratio, equal to 36 % at 31 December 2009, must be above or equal to 40 % at 31 December 2010, above or equal to 45 % at 31 December 2011, above or equal to 53 % at 31 December 2012, above or equal to 55 % at 31 December 2013 and above or equal to 58 % on 31 December 2014.

— An independent expert is to verify compliance with these three funding ratios every six months.

(70) Dexia rules out lending to its PWB customers at a level of risk-adjusted return on capital ('RAROC') below 10 %. The RAROC is calculated as the ratio between the net margin after tax and the economic capital ([14]).

([11]) […]

([12]) The short-term funding consists of: repo operations (sale and repurchase agreements) of all kinds (with the central banks, bilateral or triparty), certificates of deposit and commercial paper, interbank deposits, fiduciary deposits, central bank deposits and other wholesale funding.

([13]) The group's liabilities included in this ratio comprise: (i) the long-term stock of mortgage bonds issued by the group and issues in EMTN format (guaranteed, unguaranteed and placed on the interbank market or via the retail banking network) and (ii) the short-term stock of all the short-term funding included in the balance sheet of the group.

([14]) The economic capital is calculated according to the methodology of the Basel Committee on Banking Supervision (see '*International Convergence of Capital Measurement and Capital Standards: a Revised Framework*' (June 2006)).

— The gross margin is the difference between the margin invoiced to the customer (expressed in basis points above the IBOR reference rate) and Dexia's funding cost (expressed in basis points above the IBOR reference rate) represented by the internal transfer price.

— The internal transfer price reflects the estimated cost of Dexia's new funding, taking account of the characteristics (maturity, eligibility for funding by mortgage bonds, etc.) of the loans to PWB customers.

— The net margin is equal to the gross margin less (i) costs of all kinds (overheads, salary costs, operating costs, amortisation and depreciation, etc.) estimated on the basis of the observation of the costs of lending to PWB customers, (ii) cost of average risk calculated for each transaction in accordance with the Basel II methodology (cost of average risk over a long period) and (iii) a tax charge.

— An independent expert verifies every six months that the RAROC reflects the costs of the PWB division, that the commitment referred to above to comply with a minimum RAROC of 10 % for the PWB activity is observed and that the methodology and calculation of the RAROC and its components are correct.

(71) Dexia is to end the intra-group finance currently made available to its Turkish subsidiary DenizBank by 30 June 2011 at the latest and will not grant it any new financing until 31 December 2014.

(72) By 30 June 2010, Dexia is to set up an LPMD reporting line. The assets assigned to this line are to be placed in run-off or sold. These assets are:

— the credit spread portfolio (CSP) and public sector portfolio (PSP) (estimated at approximately EUR 134 billion at 31 December 2009),

— the financial products portfolio of FSAM assets retained by Dexia (estimated at approximately EUR 10,7 billion at 31 December 2009), and

— the non-core PWB loans portfolio (estimated at approximately EUR 17 billion at 31 December 2009).

All guaranteed funding raised by Dexia will be allocated to this line.

(73) Dexia is to limit new annual PWB turnover to EUR 12 billion in 2009, EUR 15 billion in 2010 and EUR 18 billion from 2011 to 2014.

(74) Dexia is to reduce its operating costs by 15 % by 31 December 2012.

(75) Dexia is to reduce its trading activities (44 % reduction in terms of value of the average annual risk, which amounted to EUR 126 billion in 2008) and to end its proprietary trading activities from the date of this Commission decision.

(76) With immediate effect from the date of the Commission decision, Dexia is to definitively waive the Dexia BIL EUR 376 million convertible bond, which Luxembourg had undertaken to subscribe to in September 2008.

(77) Dexia's recourse to the guarantee on funding by the Member States concerned is limited by the following conditions:

— end of the guarantee for all deposit contracts concluded from 31 March 2010,

— end of the guarantee on funding for all short-term issues (at less than one year) from 31 May 2010,

— end of the guarantee on funding for all (including long-term) issues or contracts concluded from 30 June 2010,

— the total outstanding amounts guaranteed may at no time exceed EUR 100 billion;

— during the period covered by the guarantee, Dexia will pay the Member States concerned additional remuneration on any amount exceeding the following thresholds of outstanding amounts guaranteed:

*Table 5*

**Additional remuneration payable on exceeding the amount of bond liabilities guaranteed**

| Threshold/tranche (outstanding amount guaranteed in EUR billion) | 60-70 | 70-80 | 80-100 |
|---|---|---|---|
| Additional remuneration for excess (in basis points) | + 50 | + 65 | + 80 |

(78) Until 31 October 2014, Dexia will not use its status as a bank with a guarantee by the Member States concerned for commercial advertising purposes and will not use the guarantee for purely arbitrage transactions.

(79) Until 31 December 2011, Dexia SA and the subsidiaries over which it exercises exclusive or joint control will not make any acquisition of more than 5 % of the share capital of other credit institutions or investment firms or insurance companies, unless authorised to do so by the Commission. This commitment does not impede the acquisition by Dexia, subject to the prior agreement of the Commission, of a holding, as remuneration for a contribution of holdings or business activities carried out as part of a divestment or pooling (by merger or contribution) of assets or business activities, provided that, in such a case, this holding does not confer on Dexia the exclusive or joint control of the entity receiving the contribution or resulting from the merger. Dexia will inform the Commission in advance of any acquisition plans, including any plans considered by undertakings over which Dexia exercises joint control.

(80) Until 31 December 2014, Dexia will limit the amount of:

— any form of dividends distributed by Dexia SA in respect of its ordinary shares, and

— any discretionary early repayment or payment of coupons on hybrid Tier 1 instruments or Tier 2 instruments (i) issued by entities over which Dexia has exclusive control (ii) held by persons or entities other than Dexia SA and its subsidiaries and (iii) the payment or exercise of which is discretionary by virtue of the contractual provisions covering these instruments, so that, after the distribution or the payment under consideration (and taking account of any payments which have become mandatory on account of the payment of a dividend in respect of ordinary shares), Dexia's Core Tier 1 (calculated by reference to the latest consolidated annual accounts prepared in accordance with IFRS),

— remains above or equal to the level below:

| 31.12.2009 | 31.12.2010 | 31.12.2011 | 31.12.2012 | 31.12.2013 | 31.12.2014 |
|---|---|---|---|---|---|
| 10,7 % | 10,6 % | […] | […] | […] | […] |

— and remains above or equal to the sum of (i) 12,5 % of the risk-weighted assets of the Legacy Portfolio Management Division and (ii) 9,5 % of the risk-weighted assets of the other activities of the group (the 'Core Division'),

(81) The commitment mentioned under recital 80:

— is without prejudice to the distributable profit requirement (within the meaning of Article 617 of the Belgian Companies Code) at Dexia level,

— is without prejudice to the operations which Dexia will be required to undertake in respect of hybrid Tier 1 or Tier 2 instruments legally or by virtue of contracts concluded before 1 February 2010, and

— may be revised in the event of significant change in the definition of the prudential own funds and accounting standards applicable to Dexia.

(82) Moreover, without prejudice to the operations which Dexia may be legally required to undertake in respect of hybrid Tier 1 or Tier 2 instruments legally or by virtue of contracts concluded before 1 February 2010, Dexia shall refrain until 31 December 2011 from:

— making any payments of coupons on hybrid Tier 1 or Tier 2 instruments held by persons or entities other than Dexia SA and its subsidiaries, the payment of which is discretionary by virtue of the contractual provisions covering these instruments,

— approving or voting in favour of the payment of any form of dividend by any entity over which Dexia SA directly or indirectly exercises exclusive control (including entities which it fully owns) when such a payment would involve an obligation to pay a coupon on hybrid Tier 1 or Tier 2 instruments held by persons other than Dexia SA and its subsidiaries, and

— exercising a discretionary early repayment option for the hybrid Tier 1 or Tier 2 instruments referred to in the first indent above.

(83) Dexia SA will refrain from the distribution of dividends on ordinary shares until 31 December 2011. This prohibition will not apply to distributions of dividends made entirely by the allocation of new shares, provided that the amount of these distributions is (i) in accordance with recital 80 and (ii) below or equal to 40 % of the net result made by Dexia SA for the financial year 2009 as regards the distributions made in 2010 and below or equal to 40 % of the net result made by Dexia SA for the financial year 2010 with regard to the distributions made in 2011 ([15]).

([15]) The Member States concerned communicated to the Commission a letter from Dexia dated 12 February 2010 confirming that there are no hybrid subordinated debt securities issued by the entities of the group with terms and conditions providing for a coupon payment obligation ('coupon pusher'), assuming that Dexia SA would make payment of a dividend in shares, with the sole exception of the issue of EUR 500 million by Dexia Funding Luxembourg SA in 2006 (ISIN code: XS0273230572).

(84) In this respect, it should be recalled that, under commitments entered into by the Member States concerned in the context of the Commission decision of 30 October 2009 extending the guarantee, since the date of that decision and until the date of the present decision, Dexia is required to refrain from:

(i) declaring any interim dividends or proposing to the Dexia SA General Meeting of Shareholders the payment of any form of dividend to Dexia SA shareholders;

(ii) approving or voting in favour of the payment of any form of dividend by entities over which Dexia SA directly or indirectly exercises exclusive control but does not fully own, directly or indirectly;

(iii) approving or voting in favour of the payment of any form of dividend by any entity over which Dexia SA directly or indirectly exercises exclusive control (including entitles which it fully owns) when such a payment would involve an obligation to pay a coupon on hybrid Tier 1 instruments or perpetual Upper Tier 2 instruments held by persons or entities other than Dexia SA and its subsidiaries;

(iv) making any payments of coupons on hybrid Tier 1 instruments or perpetual Upper Tier 2 instruments held by persons or entities other than Dexia SA and its subsidiaries, the payment of which is discretionary by virtue of the contractual provisions covering these instruments. However, if non-payment were likely to lead to suspension of payment of dividends by Dexia SA with respect to the 2009 results, the above prohibition may not apply provided that Dexia has informed the Commission in advance and the Commission has approved the payment of the coupon on an *ad hoc* basis; or

(v) exercising a discretionary early repayment option for the hybrid instruments referred to in points (iii) and (iv) of this recital.

(85) With a view to boosting competition and transparency still further regarding local authorities' bank loans, France undertakes to ensure that the local authorities develop their competitive procurement practices when procuring money or capital. The State will expressly issue recommendations along these lines to the local and regional authorities before the end of 2010, concerning both bank finance and the use of complex financial products. These recommendations will stress the inherent economic interest, in this sector, of implementing competitive procurement measures and will indicate the different practical arrangements under which these measures can be implemented. The good practices advocated will provide for the public nature of the competitive procurement for the largest borrowings. These recommendations will be brought to the attention of the departments responsible for providing the local and regional authorities in particular with assistance and advice. If these recommendations were to prove insufficient to ensure by 2013 the generalisation of transparent, non-discriminatory calls for tender by the local authorities for bank finance, France undertakes to make proposals for legally binding measures to this effect.

(86) With a view to boosting competition and transparency still further regarding local authorities' bank loans, the Belgian Government, in agreement with the Regions, undertakes to monitor the publication by the contracting authorities of contract award notices relating to the financing of the local public authorities.

4.3. *DIVESTMENTS AND RUN-OFFS*

(87) Dexia is undertaking the divestment of assets listed in this recital:

(a) divestment or stock exchange flotation of the 70 % stake held by the group in its Italian subsidiary, Crediop, by 31 October 2012 ([16]);

(b) divestment by 30 June 2010 of DEP, French subsidiary of Dexia Insurance Belgium ('DIB'), which operates in the fields of life assurance and collective insurance. The sales agreement was signed on 9 December 2009 and the sale should be completed during the first half of 2010;

(c) divestment or stock exchange flotation by 31 December 2010 of Dexia's 51 % stake in AdInfo, a subsidiary active in the provision of IT services to local authorities in Belgium;

(d) divestment of Dexia's stake in SPE, a Belgian energy undertaking, by 31 December 2010;

(e) divestment of Dexia's 20 % stake in Crédit du Nord (this divestment took place on 11 December 2009);

(f) closure by 2010 of about 80 branches in Belgium under the new group distribution model;

(g) cessation of the following activities of RCB International:

([16]) Dexia will not be required to dispose of its stake in Crediop at an excessively depressed price (less than […] times the book value in 2010 and 2011 and […] times the book value in 2012).

(i) the divestment of Experta Jersey, the run-off of Dexia 'Private Bank' (PB) Jersey, the cessation of Montevideo's PB activities, the cessation of the PB development project in Singapore, the cessation of the consumer finance project in Russia and the cessation of the activities of Dexia Asset Management ('DAM') in the countries of Central and Eastern Europe and the divestment of the trust activities of Experta in Switzerland were carried out in 2009 and early 2010;

(ii) the divestment of Experta's trust activities in the Bahamas and the divestment of the Danish subsidiary of Dexia BIL by 31 December 2011;

(h) divestment or stock exchange flotation by 31 October 2012 of Dexia's stake in the Slovak subsidiary Dexia Banka Slovensko ('DBS') ([17]);

(i) cessation and run-off of the following PWB international activities:

(i) India: entity sold in 2009;

(ii) Switzerland (Dexia Public Finance Switzerland) and Sweden (Dexia Norden): closure and liquidation by 31 December 2010;

(iii) Mexico, Australia and Japan: run-off of the balance sheet;

(j) divestment of FSA (finalised on 1 July 2009) then divestment of Dexia's holding in Assured Guaranty by 31 December 2011;

(k) divestment of the group's 49 % stake in Kommunalkredit Austria (KA), which took place in the 4th quarter of 2008;

(l) divestment or stock exchange flotation of Deniz Emeklilik, the insurance subsidiary of DenizBank by 31 October 2012;

(m) divestment of the group's 60 % stake in Dexia Sabadell by 31 December 2013;

(n) fast-track divestment of Dexia's bond portfolio at the rate of EUR [10-20] billion per year in 2010 and 2011, EUR [5-15] billion to EUR [10-20] billion in 2012, EUR [0-10] billion to EUR [5-15] billion per year in 2013 and 2014;

(o) run-off of the Standby Bond Purchase Agreements ('SBPA') and Tender Option Bonds ('TOB') activities (USA/Canada).

(88) The restructuring plan leads to a 35 % reduction in Dexia's total balance sheet by 31 December 2014 compared to its size at 31 December 2008. The Member States concerned undertake that Dexia will make the following reductions in the size of its balance sheet shown in Table 6 below.

([17]) Dexia will not be required to sell DBS at an excessively depressed price (less than […] times the book value in 2010 and […] times in 2011).

*Table 6*

**Reduction in the size of the group's balance sheet, the core division and the LPMD**

*(In EUR billion)*

| | 31.12.2008 | 31.12.2009 | 31.12.2010 | 31.12.2011 | 31.12.2012 | 31.12.2013 | 31.12.2014 |
|---|---|---|---|---|---|---|---|
| Total balance sheet of the group | 651 | 580 | [510-550] | [485-545] | [425-490] | [405-465] | 427 |
| Total LPMD | | 162 | [120-140] | [100-120] | [80-110] | [70-100] | 79 |
| Total core division | | 419 | [390-410] | [385-415] | [345-380] | [335-365] | 353 |

4.4. *IMPLEMENTATION OF THE COMMITMENTS*

(89) An independent expert will submit a half-yearly report to the Commission on the implementation of the commitments provided for in the restructuring plan. This report includes in particular a detailed survey on (i) compliance with the reduction in the size of the balance sheet referred to in recital 88, (ii) compliance with the three liquidity and funding ratios referred to in recital 69 and (iii) compliance with the RAROC commitment ([18]) referred to in recital 70. In addition:

— this report will be submitted no more than one month after the presentation of the half-yearly accounts and the approval of the annual accounts and in any event before 1 October and 30 April of each year,

— if, in his report presented before 1 October of each year, the independent expert considers it possible that the annual objectives provided for in the restructuring plan may not be attained at the end of the year in progress, the authorities of the Member States concerned will present to the Commission, within a month of submission of the report, the measures planned with Dexia to enable these objectives to be attained by the appropriate means before the end of the year,

— if, in his report presented before 30 April of each year, the independent expert finds that the annual objectives provided for in the restructuring plan have not been attained, the authorities of the Member States concerned will present to the Commission, within a month following the submission of the report, the measures planned with Dexia to enable these objectives to be attained by the appropriate means before 30 June of the current year,

— if the measures envisaged are not presented within the time limit laid down or if the objectives are not attained by 30 June (concerning the measures presented, where appropriate, after the report to be filed by 30 April), the Commission may, pursuant to Council Regulation (EC) No 659/1999 ([19]), reopen the formal investigation procedure […].

(90) The Belgian, French and Luxembourg authorities will submit to the prior approval of the Commission, and at the latest one month after this decision, a list of one to three persons, chosen in agreement with Dexia, to be appointed as independent expert. The independent expert must have the required skills and may not be exposed to conflicts of interest when performing his task. The Commission may either approve or reject the independent expert(s) proposed. If the Commission rejects the independent expert(s) proposed, Dexia and the Belgian, French and Luxembourg authorities will propose, within one month of communication of the rejection, one to three new candidates who will also have to be approved or rejected by the Commission. If all the candidates proposed are finally rejected by the Commission, the Commission will designate an independent expert. The costs of the services of the independent expert will be paid by Dexia.

([18]) RAROC reflects the costs of the PWB division and the methodology and calculation of the RAROC and its components are correct.

([19]) OJ L 83, 27.3.1999, p. 1.

(91) In the absence of fulfilment of any of the asset divestment commitments referred to under points (a), (c), (d), (h), (l) or (m) of recital 87 within the time limits set, and in the absence of approval of an alternative commitment by the Commission, the French, Belgian and Luxembourg authorities will submit for prior approval by the Commission, no later than one month after the time limit set for the sale, a list of one to three persons, selected in agreement with Dexia, for appointment as agent(s) responsible for carrying out the aforementioned sales. The agent responsible for the sale must be independent, possess the required skills and may not be exposed to conflicts of interest when performing his task. The Commission may either approve or reject the agent(s) proposed. If the Commission rejects the agent(s) responsible for the sale proposed, Dexia and the French, Belgian and Luxembourg authorities will propose, within one month of communication of the rejection, one to three new candidates who will also have to be approved or rejected by the Commission. If all the candidates proposed are finally rejected by the Commission, the latter will designate an agent, whom Dexia will appoint or contribute to appointing, on the basis of a mandate approved by the Commission.

(92) The French, Belgian and Luxembourg authorities undertake that Dexia will grant the necessary and appropriate powers of attorney to the agent responsible for the sale (i) to carry out the sale of the assets referred to in recital 91 (including any necessary powers to ensure satisfactory execution of the documents required to carry out the sale), and (ii) to perform any action or make any declaration necessary or appropriate to carry out the sale, including the appointment of advisers to accompany the sale process. The agent responsible for the sale will include in the contract of purchase and sale the usual, reasonable terms and conditions he considers appropriate to conclude the sale in the year following his appointment. The agent responsible for the sale will organise the sale process in such a way as to ensure a divestment […]. The costs of the services of the agent responsible for the sale will be paid by Dexia.

## V. REASONS FOR THE OPENING OF THE FORMAL PROCEDURE

(93) The Commission recalls that the formal investigation procedure opened by its decision of 13 March 2009 covers both Dexia's initial restructuring plan notified to the Commission by the Member States concerned in February 2009 and the FSA measure.

(94) Firstly, in view of the difficulties experienced by Dexia during the financial crisis and the very large amount of aid received, the Commission expressed doubts about:

— the capacity of the initial restructuring plan to restore the group's long-term viability without State aid and within the shortest possible period of time,

— the nature of the restructuring measures proposed which failed to match up to the requirements under the Commission communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules ([20]) ('Restructuring Communication'),

— the ability of the proposed measures to guarantee that the distortions of competition are limited and that moral hazard is addressed by aid limited to the minimum necessary and appropriate burden-sharing of the costs between the beneficiaries and the Member States concerned.

(95) Then, with regard to the FSA measure, the Commission considered, in its decision of 13 March 2009, that the guarantee as such and its coverage in terms of assets and the burden-sharing of the costs between Dexia and the Member States concerned were compatible with the internal market. However, the valuation of the assets and the remuneration for the guarantee, including that in the form of securities to be issued by Dexia beyond the first tranche of USD 4,5 billion for calls on the put contract, were still to be ascertained. The Commission therefore decided to include these aspects of the FSA measure in the formal investigation procedure opened in respect of the Dexia restructuring plan. The Commission also specified in the same decision that the existence of the guarantee, the portfolio of assets covered and the level of the initial losses incurred by Dexia fell outside the scope of the procedure initiated by this decision.

## VI. OBSERVATIONS OF THE INTERESTED PARTIES

(96) The Commission points out that no comments have been received from interested parties under the formal investigation procedure opened in respect of aid measures in favour of Dexia.

(97) On the other hand, before the procedure was opened, a complaint was formally lodged with the Commission services by one of DBB's competitors against the capital increase of EUR 3 billion subscribed to by the authorities and the Belgian shareholders of Dexia and against the guarantee granted by the Belgian State to cover interbank and assimilated loans in favour of Dexia. The grounds for the complaint are as follows:

([20]) OJ C 195, 19.8.2009, p. 9.

— the aid could not be considered to be proportionate, notably because of the subscription price of the ordinary shares issued by Dexia under the recapitalisation measure: the price of EUR 9,9, based on the average price of the thirty days preceding the operation, exceeds the price which would have been paid by a private market economy investor, given the greatly impaired conditions for financial assets at the time of the issue,

— the aid could not be considered to be confined to the minimum necessary in so far as the amount of recapitalisation boosted Dexia's Tier 1 capital ratio from 11 % to 14 %, making it one of the European banks with the highest capital endowment,

— the aid would lead to significant distortions of competition in so far as it would have enabled Dexia to apply rates on customer deposits above the average of those applied by banks traditionally active in the Belgian market.

## VII. **OBSERVATIONS OF THE MEMBER STATES**

### 7.1. *OBSERVATIONS OF THE BELGIAN GOVERNMENT ON THE COMPLAINT RECEIVED BY THE COMMISSION*

(98) The Belgian authorities drew up their observations on the various grounds for the complaint on the basis of the non-confidential complaint form filed with the Commission services.

(99) With regard to the subscription price for the shares issued by Dexia under the recapitalisation operation, the Belgian authorities emphasise that the price of EUR 9,9 per share, which corresponds to the average price in the thirty days preceding the operation, was set in accordance with the provisions of Article 598 of the Belgian Companies Code. The latter specifies that in the case of a capital increase against cash contribution reserved to one or more specific persons, the issue price of the new shares may be no lower than the average price of the thirty days preceding the operation. The price of the shares issued under the Dexia recapitalisation operation was therefore set in accordance with binding legal obligations for the parties involved.

(100) Secondly, the Belgian authorities stress that the complainant calls into question the need for recapitalisation on the grounds that Dexia was experiencing a liquidity crisis, and not a solvency crisis, and that the recapitalisation would result only in increasing Dexia's Tier 1 capital to a level in excess of that of comparable European banks. However, according to the Belgian authorities, these allegations do not take account of Dexia's solvency requirements at the end of September 2008, as resulted from the higher risks and foreseeable losses in the 3rd and 4th quarters of 2008 imputable to the group's exposures to various institutions which were bankrupt or in difficulties (Lehman Brothers, Depfa, Bradford & Bingley, Irish and Icelandic banks), expected losses from FSA exposures and a large number of asset impairments linked to the downgrading of the ratings of various credit enhancement institutions which had guaranteed securities held by Dexia.

(101) Finally, with regard to the distortions of competition caused by the aid measures in favour of Dexia, the Belgian authorities stress that the *ad hoc* interventions by the Belgian State in favour of Dexia were justified to avoid a systemic crisis and do not differ, in this respect, from interventions by other Member States authorised by the Commission under Article 107(3)(b) TFEU. Moreover, as regards rates applied by Dexia to customer deposits, the Belgian authorities provided a note by Dexia comparing the rates applied by Dexia with those applied by its competitors for the same type of services offered on the Belgian market (ING, Deutsche Bank, Fortis, Axa, Citibank, Rabobank and KBC). This means that the rates applied by Dexia seem to be line with those of its competitors. In the same note, Dexia also stresses that these rates, referred to in the complaint, cover only the deposits received by Internet, which represent only a small proportion ([10-15] %) of customer deposits as a whole.

(102) In this way, the Belgian authorities consider, contrary to the arguments set out in the complaint, that the aid measures in favour of Dexia are compatible with the internal market on the basis of Article 107(3)(b) TFEU.

### 7.2. *OBSERVATIONS BY THE MEMBER STATES ON THE OPENING OF THE PROCEDURE*

(103) The Member States concerned submitted their joint observations to the Commission on the formal investigation procedure opened by the decision of 13 March 2009. The observations of the Member States concerned relate to both the classification of the measures notified as aid and the compatibility of these measures with the internal market.

#### 7.2.1. CLASSIFICATION OF THE MEASURES NOTIFIED AS AID

##### 7.2.1.1. ***The capital increase***

(104) In their observations, the Member States concerned consider, firstly, that the Dexia shares subscribed to by its historic shareholders (Caisse des Dépôts et Consignations, 'CDC', CNP Assurances, Holding Communal, Ethias and Arcofin) under the recapitalisation operation do not contain any State aid elements. The Member States concerned recall that these institutions jointly

committed to Dexia via a shareholders' pact concluded in the form of an agreement under private law on 28 August 2007. In order to safeguard the interests of this block of shareholders, it was essential for each of them to participate in the capital increase. Moreover, in view of the urgency of the recapitalisation operation, it was logical for Dexia to turn to its reference shareholders as a priority to undertake this operation. The Member States concerned emphasised that they had played no part in the decision by CDC, CNP Assurances, Holding Communal, Ethias and Arcofin to participate in the capital increase which, furthermore, in the case of Arcofin and Ethias, was not financed through State resources.

7.2.1.2. ***The LA operation***

(105) Moreover, the Belgian authorities consider that the LA provided to Dexia by the BNB, in cooperation with the Banque de France, is not State aid within the meaning of Article 107(1) TFEU on the grounds that LA operations come under the normal tasks of national central banks and, in particular, their role to contribute to the stability of the financial system as lender of last resort in the case of temporary liquidity problems of an otherwise solvent bank. In fact:

— at the time when the LA operation was put into place, the financial authorities confirmed that they had no reason to think that Dexia was insolvent,

— the granting of LA was guaranteed by adequate collateral supplied by Dexia, to which the BNB and the Banque de France applied substantial safety margins ('haircuts'), depending on the quality of this collateral,

— the LA was granted at penalising, and even prohibitive, interest rates,

— the BNB and the Banque de France at all times took totally autonomous and discretionary decisions on granting LA, on extending it and on the sums lent in this context,

— granting LA is a temporary measure: the credits granted under the LA operation are limited to one day ('overnight'), renewable in accordance with a decision taken by the lending central bank.

(106) In addition, the Belgian authorities stress that the LA provided to Dexia was approved by the Governing Council of the European Central Bank ('ECB') (up to a maximum amount of EUR […] billion). Classifying the LA operation as State aid would make it incompatible with the principle of the prohibition of monetary financing enshrined in Article 123 TFEU. In fact, by virtue of this principle, it is legally impossible to attribute to a Member State the actions laid down by a national central bank when performing its tasks, provided that the central bank in question respects the conditions laid down for the performance of this task by the ECB. The LA provided to Dexia fulfils all the conditions imposed by the ECB. In particular, it meets the requirement that decisions by the national central bank(s) concerned on the provision of LA must be entirely independent and discretionary.

(107) According to the Belgian authorities, the mere fact that any LA provided by the BNB automatically benefits from the guarantee of the Belgian State makes no difference to this conclusion. Firstly, at the time when the BNB Executive Committee, entirely independently, took the decision to provide LA to Dexia, the State guarantee did not exist. Consequently, this could not be taken into account when the decision was taken. Above all, the fact that the Belgian legislator came to provide for an explicit guarantee of the Belgian State for these operations – without any link to the Dexia file – whereas this is not always the case in other Member States, results from the specific nature of the shareholders of the BNB, which is a listed company with private shareholders, whereas the other national central banks generally speaking do not have private shareholders. This guarantee is consequently an integral part of the Statute of the BNB and its purpose is to allow the BNB to perform its task of lender of last resort. Such an explicit guarantee is not necessary in the case of other central banks, which are fully owned by their respective State. Express provision has been made for the automaticity of the State guarantee in order to ensure that the LA operations of the BNB do in fact conform to the principles of prohibition of monetary financing and in this way meet the criteria of the Commission's decision-making practice as set out, in particular, in its Northern Rock decision ([21]).

(108) The Belgian authorities finally emphasise that if the Commission were nevertheless to consider the LA operation to be State aid within the meaning of Article 107(1) TFEU, the amount of aid would have to be calculated on the basis of the difference between the rate applied and the reference rate referred to in the Commission Communication on the revision of the method for setting the reference and discount rates ('Reference Rates Communication') ([22]). In addition, the amount of aid should in any case be limited to half the total amount of the LA, corresponding to the amount in fact granted to Dexia by the BNB, the other half having been granted on behalf and at the risk of the

([21]) Commission decision of 5 December 2007, Northern Rock, case NN 70/07 (OJ C 43, 16.2.2008), and press release IP/08/1557 of 16 February 2008.

([22]) Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

Banque de France. The latter does not benefit from any explicit guarantee on the part of the French State and the guarantee of the Belgian State obviously cannot apply to an operation carried out on behalf and at the risk of a foreign central bank.

7.2.1.3. ***The FSA measure***

(109) The authorities of the Member States concerned consider it to be very unlikely that calls will be made on the guarantee granted by the Belgian and French States on the assets of FSAM: the USD 4,5 billion threshold, which is the cap for the exposure to first losses borne by Dexia, is higher than the most pessimistic scenarios for the economic losses on the portfolio. Consequently, the volume of any aid by the States should be considered to be zero even in a pessimistic scenario.

7.2.2. COMPATIBILITY OF THE MEASURES NOTIFIED

7.2.2.1. ***The FSA measure***

(110) First of all, the Member States concerned pointed out to the Commission that, in their opinion, the FSA measure does not come within the scope of the Commission Communication on the treatment of impaired assets in the Community banking sector ([23]) ('the Impaired Assets Communication') on the grounds that:

— strictly speaking, the FSA measure is not an asset guarantee, but a guarantee of Dexia's obligations towards FSAM under its own guarantee (through the put): it is only if Dexia does not honour its obligations to purchase the assets concerned from FSAM if the put is exercised that a call will be made on the guarantee of the Belgian and French States; consequently, the FSA measure does not entail a transfer or an automatic sale of assets,

— the purpose of the measure is not to guarantee the FSAM portfolio in favour of Dexia, but to enable a sale to be made as a matter of urgency which is necessary for restructuring Dexia,

— this sale was made following an open, transparent process which, by analogy with the cases of privatisation, should lead to the conclusion that it contains no element constituting State aid,

— the measure, notified before the date of adoption of the Impaired Assets Communication (25 February 2009), having been declared compatible with point 16 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty ([24]), there is no need to require it also to be compatible with the Impaired Assets Communication.

([23]) OJ C 72, 26.3.2009 p. 1.
([24]) OJ C 244, 1.10.2004, p. 2.

(111) In addition, the Member States concerned stress that, even if the FSA measure were to be assessed in the light of the Impaired Assets Communication, the Commission is in possession of all the elements enabling it to find that this measure is compatible with the internal market on the grounds, in particular, that:

— the burden-sharing of the costs is in accordance with the Impaired Assets Communication, in particular as the amount of the first losses borne by Dexia, which represents over 36 % of the nominal value of the portfolio of the covered assets, is a threshold which is well above the 10 % minimum laid down in the Impaired Assets Communication; in addition, if a call is made on the guarantee of the Belgian and French States beyond the first tranche of losses, they are reimbursed by Dexia in securities constituting own funds, the issue of which will have a dilution effect on the other shareholders of the group,

— the measure is subject to remuneration at market conditions equal to the median value of the Dexia five-year CDS spreads (over the period from 1 January 2007 to 31 August 2008) plus 70 basis points, i.e. 113 basis points; the Member States concerned stress, in this respect, that the remuneration rate has been increased by 21 basis points compared to the amount initially notified to the Commission,

— the economic loss on the assets covered by the measure, as valued by independent parties, according to a methodology validated by the national supervisory authorities, is borne in full by Dexia in so far as, as mentioned above, the maximum loss remains below the amount of the first losses borne by Dexia.

(112) Consequently, the Member States concerned consider the FSA measure to be compatible with the internal market and the amount of aid contained in the measure to be zero.

7.2.2.2. ***The initial restructuring plan***

(113) The Member States concerned do not share the doubts raised by the Commission concerning the capability of the initial restructuring plan notified to the Commission in February 2009 to restore the long-term viability of the bank, to prevent excessive distortions of competition and to ensure appropriate burden-sharing of the restructuring costs.

(114) In fact, in their observations, the Member States concerned consider that the measures notified to the Commission allow Dexia's long-term viability to be ensured in so far as:

— the planned reduction of Dexia's bond portfolio for 2010 amounts to EUR [15-30] billion (of which EUR […] billion in sales), the same amount as for 2011, which seems credible and even rather conservative in the light of Dexia's recent experience,

— the liquidity recovery scenario, with the aim in particular of reducing Dexia's short-term funding needs by EUR 100 billion at the end of 2010, is realistic, especially on account of the recovery in funding conditions on the bond market and the mortgage bond market,

— the macroeconomic assumptions underlying Dexia's restructuring plan are very conservative,

— the uncertainties referred to by the Commission concerning the future trend in the market for local authority financing have only a limited impact on Dexia's activities, in so far as this market is not very sensitive to macroeconomic conditions and, moreover, a decline in the new turnover in loans to the local authorities has a marginal impact on Dexia's income.

(115) In addition, the Member States concerned emphasise that all the restructuring measures notified in February 2009 concern profitable activities, whether PWB activities or the reduction of the scope of the RCB activities. Consequently, all the measures proposed must be taken into account in the evaluation of the measures designed to reduce excessive distortions of competition.

(116) Finally, the Member States concerned consider that the Commission's evaluation of the aid amount in its decision of 13 March 2009 is inaccurate as it adds together incorrect amounts of different types in order to arrive at total aid in the order of EUR [170-210] billion. This amount, on the basis of which the burden-sharing of the restructuring costs between Dexia and the Member States concerned is to be evaluated, would therefore be an overestimate. Conversely, according to the Member States concerned, Dexia's participation in the restructuring costs is underestimated in so far as it does not take account of the reduction in new turnover in loans foreseen by Dexia and the Member States concerned in the restructuring plan, which must be considered as an own contribution by Dexia to the restructuring costs.

(117) In conclusion, the Member States concerned support the Commission's decision to authorise the FSA measure definitively in order to allow the sale of FSA to Assured Guaranty, which is an essential component of restoring viability and reducing the risk profile of the group. On the other hand, they consider the Commission's doubts concerning the other measures to be unfounded.

### 7.3. *OBSERVATIONS OF THE MEMBER STATES ON THE RESTRUCTURING PLAN*

(118) As a supplement to the observations above, made on the basis of the initial restructuring plan notified to the Commission in February 2009, the Member States concerned informed the Commission of their observations on the complementary restructuring measures notified to the Commission on 9 February 2010.

(119) In this respect, the Member States concerned consider that the restructuring plan would enable the long-term viability of the group to be strengthened, enabling Dexia to speed up the exit from the funding guarantee mechanism, and would address all the other concerns raised by the Commission in its decisions of 13 March 2009 and 30 October 2009. The group of restructuring measures notified between February 2009 and February 2010, considered as a whole, would constitute a plan for restructuring and compensation for any distortions of competition, in accordance with the requirements laid down by the Commission in its decisions and during meetings with the representatives of the Member States concerned and Dexia.

(120) The Member States concerned also emphasise that, to assess the restructuring plan, the Commission will have to take account of the objective differences between Dexia's situation and that of the other banking institutions for which the Commission has approved restructuring plans in recent months. In particular, unlike these other institutions:

— Dexia has already returned to profitability, with a positive net result since the first quarter of 2009 and during the following quarters,

— the execution of the plan ensuring Dexia's return to long-term viability has already made good progress, especially with the sale of FSA and the reduction in the short-term funding need of EUR 100 billion, an objective already 75 % achieved in the third quarter of 2009,

— the risk profile of Dexia's core business activities (PWB and RCB) is intrinsically weak. The remuneration expected by a market investor takes account of this differentiation factor and allows a lower return on equity (ROE) than that of other higher risk institutions,

— Dexia has paid and will continue to pay the Member States concerned remuneration for the aid granted. This remuneration is significant, with the level in certain cases (notably the guarantee on FSA's FP portfolio) exceeding the level laid down in the Commission guidelines.

## VIII. **ASSESSMENT OF THE AID**

### 8.1. *EXISTENCE OF AID*

(121) The Commission must assess whether the measures in question are State aid within the meaning of Article 107(1) TFEU. This Article stipulates that: 'Save as otherwise provided in the Treaties, 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 internal market.' The Commission must therefore examine, for each measure, whether the cumulative criteria set out in Article 107(1) TFEU are met.

#### 8.1.1. THE CAPITAL INCREASE

(122) Regarding the existence of aid relating to the capital increase, the Commission refers to its decision of 13 March 2009, in which it established that the interventions of the Belgian State and regions and of the French and Luxembourg States constitute State aid within the meaning of Article 107(1) TFEU. The Commission considers, moreover, that in the specific circumstances of the case, the behaviour of CDC and Holding Communal can also be attributed to the State.

(123) According to the case-law, the mere fact that an economic operator is under State control is not sufficient for measures taken by that operator to be attributed to the State ([25]). However, it also arises from the Court of Justice case-law that, in so far as it is very difficult for the Commission, on account of the special relations existing between CDC and Holding Communal and their respective State, to show that in this case the decisions to inject capital in Dexia were in fact taken on the instruction of the public authorities, the imputability to the State of these measures may be inferred from a set of indicators arising from the circumstances in which these measures were taken ([26]).

(124) Indicators such as, in particular, 'integration [of the undertaking] into the structures of the public administration, the nature of its activities and the exercise of the latter on the market in normal conditions of competition with private operators, the legal status of the undertaking (in the sense of its being subject to public law or ordinary company law), the intensity of the supervision exercised by the public authorities over the management of the undertaking, or any other indicator showing, in the particular case, an involvement by the public authorities in the adoption of a measure or the unlikelihood of their not being involved, having regard also to the compass of the measure, its content or the conditions which it contains' may be relevant to conclude that an aid measure taken by a public undertaking is imputable to the State ([27]).

(125) In this case, it should be noted on the one hand that:

— CDC is a public undertaking, placed by the French Finance Act of 28 April 1816 under the supervision and guarantee of the legislature, which carries out general interest missions (financing of public services bodies, in particular), is governed by statutory and regulatory rules and its director-general and senior directors are appointed by the President of the French Republic and the French

([25]) See, along these lines, the judgment of 16 May 2002 in case C-482/99 *France* v *Commission* (*Stardust* judgment) [2002] ECR I-4397, paragraphs 52 and 58.

([26]) Case *France* v *Commission*, cited above, paragraphs 52, 55 and 56.

([27]) *Stardust* judgment cited above, paragraphs 56 and 57:

'(56) Other indicators might, in certain circumstances, be relevant in concluding that an aid measure taken by a public undertaking is imputable to the State, such as, in particular, its integration into the structures of the public administration, the nature of its activities and the exercise of the latter on the market in normal conditions of competition with private operators, the legal status of the undertaking (in the sense of its being subject to public law or ordinary company law), the intensity of the supervision exercised by the public authorities over the management of the undertaking, or any other indicator showing, in the particular case, an involvement by the public authorities in the adoption of a measure or the unlikelihood of their not being involved, having regard also to the compass of the measure, its content or the conditions which it contains.

(57) However, the mere fact that a public undertaking has been constituted in the form of a capital company under ordinary law cannot, having regard to the autonomy which that legal form is capable of conferring upon it, be regarded as sufficient to exclude the possibility of an aid measure taken by such a company being imputable to the State (Case C-305/89 *Italy* v *Commission*, cited above, paragraph 13). The existence of a situation of control and the real possibilities of exercising a dominant influence which that situation involves in practice makes it impossible to exclude from the outset any imputability to the State of a measure taken by such a company, and hence the risk of an infringement of the Treaty rules on State aid, notwithstanding the relevance, as such, of the legal form of the public undertaking as one indicator, amongst others, enabling it to be determined in a given case whether or not the State is involved.'

Government ([28]); at the time the events took place and by way of derogation from ordinary law, CDC was not subject to the supervision of the Commission bancaire or the Agence des Participations de l'Etat, or to the company tax law granting a 'voluntary contribution' to the Treasury,

— Holding Communal has as its shareholders 599 Belgian municipalities and provinces and is the local authorities' primary financing vehicle; all the members of its board are municipal councillors, mayors or aldermen; the statutes of Holding Communal stipulate that it is subject to the supervision of the Ministry of Finance and the Ministry of the Interior according to the arrangements laid down by law; in this respect, it should be pointed out that the two Government Commissioners (representing the Minister for Finance and the Minister for the Interior respectively) have the power to oppose decisions of the Holding Communal board; according to case-law ([29]), the existence of a right of veto or power of approval of the State indicates that the conduct of a legal entity is imputable to the State, which applies in the present case to Holding Communal.

On the other hand, it has to be noted that, in the present case, the capital injection by CDC and Holding Communal occurred concomitantly with the other measures taken by the States (direct capital injection by the States and regions, guarantee by the States, FSA measure, LA operation guaranteed by the Belgian State). These injections with the other measures form a consistent whole designed to rescue Dexia at the end of September 2009.

The concomitance of these interventions in combination with the elements referred to above make it unlikely that the public authorities were not involved in the decisions of CDC and Holding Communal to participate in the Dexia capital increase. There is therefore reason to consider that the capital injections granted by CDC and Holding Communal are imputable to their respective Member States.

(126) The Commission considers that the recapitalisation carried out by the 'historic' shareholders does not satisfy the case-law criterion of the private investor in a market economy. In fact, the participation in the recapitalisation of Dexia by shareholders whose behaviour is not imputable to the State, limited to 12,4 % of the total capital increase, is insufficient to conclude that the historic shareholders acted as private investors in a market economy. The principle of the private investor in a market economy applies only under normal market conditions ([30]). The historic shareholders intervened to rescue Dexia at the height of the financial crisis under entirely abnormal market conditions. In addition, this intervention by the 'historic' shareholders was part of a group of measures designed to rescue Dexia, an undertaking in serious difficulties, of systemic importance for the economies of the three Member States concerned. It should be pointed out that public, economic and social policy considerations must be disregarded in the assessment of the principle of the private investor in a market economy ([31]). Then, to satisfy the criterion of the private investor in a market economy, the credibility of the investment must be corroborated by an *ex ante* business plan and, preferably, an *ex ante* business plan validated by independent auditors and stress tests ([32]).

(127) Finally, even where the public investor has owner status (which is the case of the 'historic' shareholders whose conduct is imputable to the State, i.e. CDC and Holding Communal), it is appropriate, when comparing it to a private investor in a market economy, to check that the investor behaves as a well-informed investor who does not take more risks than a private investor in a market economy would take ([33]). The historic characteristic of the investor could not therefore justify 'more flexible' application of the principle of the private investor in a market economy.

(128) Moreover, the Commission considers that the capital increase imputable to the Member States concerned is selective, since it only relates to a single undertaking, the Dexia group. Given the size of Dexia and its

([28]) In the *Air France* judgment, these elements sufficed to justify CDC being considered as a public-sector body whose conduct is imputable to the State (see in particular paragraphs 58 to 61 of the judgment of 12 December 1996 in case T-358/94 *Air France* v *Commission* [1996] ECR II-2019).

([29]) See, in particular, the judgment of the Court of Justice of 2 February 1988 in joined cases 67, 68 and 90/85, *Van der Kooy and others* v *Commission* [1988] ECR 219, paragraph 36.

([30]) Since its letter to the Member States of 17 September 1984 (SG(84) D/11853) on the application of Articles 92 and 93 of the EEC Treaty to public holdings in company capital, the Commission has specified that the principle of the private investor in a market economy applies only under normal market conditions. The Court confirmed this point in its WestLB judgment of 6 March 2003 in joined cases T-228/99 and T-233/99, *Westdeutsche Landesbank Girozentrale* v *Commission* [2003] ECR II-435, paragraph 267.

([31]) See the Meura judgment of 10 July 1986 *Belgium* v *Commission* [1986] ECR 2263, paragraph 14.

([32]) See the Commission decisions of 2005 relating to the recapitalisation of the German 'Landesbanken', such as NN 71/05, HSH Nordbank, and NN 72/05, Bayern LB, not published in the OJ. Also see its decision in the Shetland Shellfish case (Decision 2006/226/CE (OJ L 81, 18.3.2006, p. 36)). The Commission rejected two reports produced by the public authority in Shetland with a view to the investment, which contained a projected profit-and-loss account, a projected balance sheet and a projected cash flow statement for 2000, 2001 and 2002. The United Kingdom contended that the studies were *ex ante* and the assumptions on which they were based were 'conservative and prudent', but the Commission concluded that they would have been considered insufficient by a private investor in the market economy, despite the fact that relatively small amounts were involved.

([33]) *West LB* judgement, cited above, paragraph 255.

importance on the Belgian, French and Luxembourg markets, and the fact that, without the interventions, the group could have found itself insolvent, which would have changed the structure of the banking market significantly in the three territories, the Commission considers that the measures in question affect trade between Member States.

(129) In conclusion, the Commission considers that the capital injection by CDC and Holding Communal therefore constitutes an element of the aid received by Dexia, within the meaning of Article 107(1) TFEU.

(130) On the other hand, the Commission considers that the resources made available to Dexia by virtue of the conduct of Ethias (which was not nationalised at the time of the capital increase), Arcofin (the majority of whose capital is held by private shareholders) and CNP Assurance (the majority of whose capital belongs to private shareholders, i.e. the Banque Populaire Caisses d'Épargne group and the holders of floating capital) are not State resources.

8.1.2. THE GUARANTEE BY THE STATES

(131) The Commission established that the guarantee constituted aid in its decisions of 19 November 2008 (recitals 24 to 27) and 30 October 2009 (recital 13). In this respect, the Commission considers that the reasoning set out in these decisions remains applicable and that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

8.1.3. THE LA OPERATION

(132) With regard to the existence of aid associated with the LA operation, the Commission notes the observations made by the Belgian authorities regarding the LA operation put in place by the BNB in favour of Dexia. The Commission considers, however, that these observations are not of a nature to modify its conclusions concerning the aid element associated with the LA operation, as set out in its decision of 19 November 2008.

(133) In point 51 of its communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis ([34]) ('the Banking Communication'), the Commission indicated that it considered that the provision of funds by a central banks to a financial institution did not constitute aid when a number of conditions are met ([35]).

(134) One of the conditions for the absence of aid defined by the Banking Communication is that 'the measure […] is not backed by any counter-guarantee of the State'. In this case, the Commission noted that the credits granted by the BNB benefit from a guarantee from the Belgian State (with retroactive effect) pursuant to the Act of 15 October 2008 on measures to promote financial stability and introducing in particular a State guarantee on credits granted and other operations conducted in the context of financial stability. Since the LA operation granted by the BNB benefits from a guarantee from the Belgian State, the condition provided for in the Communication is therefore not met.

(135) The conditions defined in the Banking Communication to exclude the presence of aid are therefore not met in full. Consequently, it is a matter of verifying whether the conditions constituting State aid are in fact met. Since the BNB is a Belgian State body, its resources are public resources. This is all the more so in the present case as the counter-guarantee has the effect that any loss will be borne directly by the Belgian State. What is more, the LA is a measure granted selectively to Dexia. Finally, the measure benefits Dexia selectively by granting it the funding that the bank can no longer obtain on the market. Since Dexia operates in several Member States and, in most of its activities, is in competition with other financial institutions, most of which did not receive comparable aid, this advantage distorts competition and affects trade between Member States.

(136) The Commission concludes that the LA operation put in place by the BNB on its own account does indeed constitute State aid within the meaning of Article 107(1) TFEU.

8.1.4. THE FSA MEASURE

(137) The Commission established that the FSA measure constitutes aid in its decision of 13 March 2009 (recitals 53 to 56) and considers that the observations of the Member States concerned are not of a nature to call its conclusions into question.

(138) The Commission concludes that the FSA measure constitutes State aid within the meaning of Article 107(1) TFEU.

8.2. *QUANTIFICATION OF THE AID*

(139) In its decisions of 19 November 2008 and 13 March 2009, the Commission already carried out a first evaluation of the amount of aid associated with the measures in question. On the basis of this first evaluation and additional information communicated by the Member States concerned since 13 March 2009, the Commission calculates an aid amount comprising the following elements:

([34]) OJ C 270, 25.10.2008, p. 8.
([35]) See also Decision Northern Rock and press release IP/08/1557.

8.2.1. THE CAPITAL INCREASE

(140) The capital injection announced on 30 September 2008 comes to a total amount of EUR 6,4 billion, from which should be deducted, for the reasons set out above, the capital injections by Ethias, Arcofin and CNP Assurance, amounting to EUR 150 million, EUR 350 million and EUR 288 million respectively.

(141) The Commission also notes that, under its restructuring plan, Dexia waived the benefit of the EUR 376 million in the form of Dexia BIL convertible bonds, to which the Luxembourg State was to subscribe and which were never subscribed to. Consequently, this amount is also deducted from the amount to be taken into account in the aid elements relating to the capital increase.

(142) In conclusion, the total amount of aid relating to the capital increase amounts to EUR 5,2 billion ([36]).

8.2.2. THE GUARANTEE BY THE STATES

(143) In accordance with the guarantee agreement signed between Dexia and the Member States concerned on 9 October 2008, the guarantee of the Member States concerned covers a maximum amount of EUR 150 billion. This amount was reduced to EUR 100 billion under the guarantee agreement which entered into force on 1 November 2009.

(144) In their observations relating to the decision to open the procedure, the Member States concerned contend that the amount of aid associated with the guarantee should be calculated in accordance with the Commission Communication on the revision of the method for setting the reference and discount rates ('the Reference Rates Communication') ([37]). According to this Communication, the aid elements related to the guarantee would be equal to the difference between the remuneration rate on the guarantee and a reference rate defined as the interbank market reference rate (IBOR) plus 75 basis points.

(145) In response to these observations, the Commission notes that in the case of undertakings in difficulties, the application of a reference rate based on market rates is not relevant as, without a guarantee, Dexia could not have raised any funding on the markets. For this reason, in accordance with constant practice in the cases of restructuring submitted to it, the Commission considers that the aid element to be taken into account in the guarantee may extend up to the amounts in fact covered by the guarantee, i.e. EUR 100 billion, which corresponds to the maximum amount of Dexia's liabilities which may in fact be covered by the guarantee since 1 November 2009 ([38]).

8.2.3. THE LA OPERATION

(146) By way of analogy with the reasoning applied to the guarantee above, the Commission considers that the aid element contained in the guarantee by the Belgian State for the LA operation put in place by the BNB may extend to the amounts in fact covered by the guarantee, i.e. EUR […] billion, which corresponds to the portion of the maximum amount of the LA, as approved by the Governing Council of the ECB, covered by the BNB and guaranteed by the Belgian State.

8.2.4. THE FSA MEASURE

(147) In accordance with the Impaired Assets Communication ([39]), the Commission considers that the amount to be taken into account to assess the amount of aid linked to an impaired assets measure is the difference between the transfer value and the market price of the portfolio considered. According to Commission practice ([40]), the transfer value is defined as the residual nominal value less the first tranche which is payable in full by the bank benefiting from the measure.

(148) The FSA measure presents certain specific characteristics in relation to other measures for the treatment of impaired assets on which the Commission has had to decide:

— the FSAM portfolio (residual nominal value of USD 16,98 billion at 30 September 2008) comprises two sub-portfolios: (i) excluded assets (residual nominal value of USD 4,5 billion), which are the subject of an unguaranteed put contract and (ii) covered assets (residual nominal value of USD 12,48 billion) which are covered by a guaranteed put, in the sense that a guarantee agreement provides that the Belgian and French States undertake to guarantee Dexia's obligations under the put agreement for these covered assets. Nevertheless, the Commission notes that all the calls under the put contract (on both covered assets and excluded assets) are taken into account for the amortisation of the first tranche of USD 4,5 billion retained by Dexia. This first tranche of USD 4,5 billion does not therefore cover only the portfolio of assets covered by the measure, but the entire FSAM portfolio,

([36]) 6,376 – (0,150 + 0,350 + 0,288 + 0,376) = EUR 5,212 billion.
([37]) OJ C 14, 19.1.2008, p. 6.
([38]) The maximum amount of Dexia's liabilities covered by the guarantee has never exceeded EUR 100 billion, even between 9 October 2008 and 1 November 2009, the period during which the maximum amount under the guarantee agreement was EUR 150 billion. The maximum amount of guarantees used by Dexia is EUR 95,6 billion, an amount recorded on 27 May 2009.
([39]) See point 20.
([40]) See in particular the Commission Decision of 15 December 2009, LBBW, case C 17/09 (not yet published), and press release IP/09/1927 of 15 December 2009.

— in addition, the measure provides for intervention if necessary by the Belgian and French States upon first demand even in respect of the first tranche of EUR 4,5 billion, with the Belgian and French States then having recourse against Dexia which must then reimburse this intervention in cash. This mechanism therefore exposes the Belgian and French States to a risk of losses on the covered assets and a risk of default by Dexia, even with regard to the first tranche of USD 4,5 billion. This specific characteristic is not usually to be found in measures relating to impaired assets.

(149) On account of these specific characteristics, the portfolio considered for which the transfer price is calculated is the total FSAM portfolio and not only the portfolio of covered assets. At 31 January 2009, the nominal residual value amounted to USD 16,6 billion. The transfer value is therefore USD 12,1 billion (this being the difference between USD 16,6 billion and 4,5 billion). The market price was USD [7-9] billion, so the amount of aid comes to USD [3,1-5,1] billion or EUR [2,4-4,0] billion ([41]).

8.2.5. TOTAL AMOUNT OF THE VARIOUS AID MEASURES

(150) As emphasised by the Member States concerned in their observations on the decision to open the procedure, the Commission recognises that it is not relevant to add together the amounts of aid corresponding to recapitalisation with guarantees of liabilities as the two types of measures do not have the same effects of distortion of competition. Consequently, the Commission notes that the aid received by Dexia in the form of a capital increase and of aid for the treatment of impaired assets (FSA measure) comes to a total of EUR 8,4 billion and the aid in the form of a guarantee and LA operation may amount to up to EUR [95-135] billion.

8.3. *COMPATIBILITY OF THE AID*

8.3.1. LEGAL BASIS

(151) Under Article 107(3)(b) TFEU, 'The following may be considered to be compatible with the internal market: […] aid […] to remedy a serious disturbance in the economy of a Member State'. In view of the situation on the financial markets since the measures in question were granted, the Commission considers that the measures in question can be assessed on the basis of Article 107(3)(b) TFEU. As regards the Belgian, French and Luxembourg economies, this was confirmed by the various Commission decisions approving the measures taken by the authorities of these Member States to overcome the financial crisis ([42]). Consequently, following the example of the decisions of 19 November 2008, 13 March 2009 and 30 October 2009 relating to Dexia, the legal basis for the assessment of the aid measures in question is still Article 107(3)(b) TFEU.

(152) In the context of the present crisis, the Commission specified the conditions on which the aid for the treatment of impaired assets and the aid for restructuring of firms in difficulty should be applied. These principles are set out in the Impaired Assets Communication and in the Restructuring Communication.

8.3.2. COMPATIBILITY OF THE FSA MEASURE

(153) As mentioned in the decision of 13 March 2009, the FSA measure falls within the scope of the Impaired Assets Communication, even though its primary objective was to allow the operation consisting in the sale of FSA. This measure must therefore be analysed on the basis of the conditions provided for in the Impaired Assets Communication. In this respect, the Commission concluded in its decision of 13 March 2009 that the guarantee as such and its coverage in terms of assets and the burden-sharing of the costs between Dexia and the Belgian and French States were compatible with the internal market. The valuation of the assets, the remuneration for the measure and the remuneration for the securities to be issued by Dexia beyond the first tranche of USD 4,5 billion still had to be ascertained.

8.3.2.1. ***Valuation of the assets***

(154) The Commission analysed whether the valuation method applied for the REV corresponded to the requirements laid down in the Impaired Assets Communication, and in particular whether (i) it was based as far as possible on observable inputs, (ii) it made realistic and prudent assumptions about future cash flows, and (iii) it was based on prudent stress-testing at the time that the valuation was carried out.

([41]) At the exchange rate of EUR 1 for USD 1.2 816 applicable on 30 January 2009.

([42]) See in particular the Commission decisions in State aid cases N 574/08, State guarantee for Fortis (OJ C 38, 17.2.2009, p. 2); NN 42/08, Fortis (OJ C 80, 3.4.2009, p. 7); NN 57/09, Emergency aid for Ethias (OJ C 176, 29.7.2009, p. 1); C 18/09 KBC (OJ C 216, 10.9.2009, p. 10); decision of 18 November 2009, C 18/09, KBC (not yet published); N 548/08, Scheme for refinancing financial institutions – France (OJ C 123, 3.6.2009, p. 1); N 251/09, Extension of the refinancing scheme for financial institutions – France (OJ C 174, 28.7.2009, p. 2); N 613/08, Capital-injection scheme – France (OJ C 106, 8.5.2009, p. 15); N 29/09, Amendment to the capital-injection scheme – France (OJ C 116, 21.5.2009, p. 5); C 123/09, Amendment to the capital-injection scheme – France (OJ C 123, 3.6.2009, p. 3); N 23/09, Temporary scheme for aid in the form of guarantees – France (OJ C 62, 17.3.2009, p. 11); N 128/09, Temporary guarantee scheme with a view to economic recovery – Luxembourg (OJ C 106, 8.5.2009, p. 9).

(155) This analysis of the methods used for the valuation of the assets was carried out with the technical assistance of experts contracted by the Commission. It was carried out for each of the main classes of assets in the FSAM portfolio under review and under a baseline scenario and a stress scenario. Following examination, the Commission assessed the methodology and the assumptions made for the valuation of the REV positively. The Commission therefore finds that the assumptions made are conservative on the whole:

— default rates were projected prudently, using the latest performance trends of these assets, at levels considered to be conservative,

— prudent recovery rates (including the costs of winding-up and recovery) were projected, reflecting the latest trends and not projecting any improvement in the coming years,

— the assumptions relating to early repayments are also conservative and in line with the latest trends observed.

(156) […]

(157) The first tranche of USD 4,5 billion, which must be reimbursed in cash by Dexia, is higher than the level of expected losses, estimated prudently and in line with the Impaired Assets Communication, in both the baseline scenario and the stress scenario, and in respect of both the FSAM portfolio in its entirety and the FSAM portfolio after deduction of the excluded assets. The transfer value, established at USD 12,1 billion is below the REV, in both the baseline scenario (USD [13,6-14,6] billion) and the stress scenario (USD [12-13] billion).

8.3.2.2. ***Remuneration of the FSA measure***

(158) The remuneration on the FSA measure, payable annually by Dexia to the Belgian and French States, is 113 basis points as cover for the risk of default on the put covered by the guarantee, to which is added 32 basis points as cover for the risk of default by Dexia in honouring its liquidity commitments to FSAM.

(159) The Commission takes a positive view of the fact that the first tranche of USD 4,5 billion, which must be reimbursed in cash by Dexia, exceeds the level of expected losses, at 31 January 2009, in both the baseline scenario and the stress scenario, as this reduces the risk borne by the Belgian and French States. More specifically, the Commission views positively the level of remuneration granted to the Belgian and French States for the FSA measure, compared with the level of the residual risk assumed by the Belgian and French States. Moreover, according to the Impaired Assets Communication, reference can be made to the freeing of regulatory capital generated thanks to the measure for the purpose of evaluating the remuneration for the FSA measure. In view of the considerable size of the first tranche and the fact that it is weighted at 1 250 % with a view to calculating the regulatory capital associated with this first tranche, it was shown by the Belgian and French States that the FSA measure does not free any regulatory capital. As indicated in point 21 (footnote 11) of the Impaired Assets Communication, the asset relief measures must be remunerated in a comparable manner to a capital injection. The amount of capital which would be comparable to the FSA measure is zero here since no regulatory capital is freed. On the other hand, the FSA measure covers a wider field of trigger events than just losses on assets covered. Consequently, the Commission considers that the annual remuneration for the FSA measure is appropriate.

8.3.2.3. ***Remuneration for the securities to be issued***

(160) The Commission notes that the compensation received by the Belgian and French States in the case of calls made on the guarantee exceeding the first tranche of USD 4,5 billion exceeds the amount required by the Impaired Assets Communication.

8.3.2.4. ***Conclusion on the compatibility of the FSA measure with the Impaired Assets Communication***

(161) The Commission therefore concludes that the FSA measure is compatible with the principles of the Impaired Assets Communication.

8.3.3. COMPATIBILITY OF THE RESTRUCTURING PLAN

8.3.3.1. ***Degree of restructuring required***

(162) As pointed out above, the total amount of aid associated with the capital increase and the FSA measure comes to EUR 8,4 billion. In accordance with point 4 of the Restructuring Communication, it is this amount which must be taken into account in assessing the obligation to present a restructuring plan. The aid elements associated with the guarantee and the LA operation put in place by the BNB, for their part, must be taken into account in the assessment of the compatibility of the restructuring plan with the internal market ([43]).

([43]) See in particular point 31 of the Restructuring Communication.

(163) As indicated under point 4 (footnote 4) of the Restructuring Communication, the specific criteria and circumstances leading to the obligation to present a restructuring plan refer in particular, but not exclusively, to situations where a distressed bank has been recapitalised by the State, or where a bank benefiting from asset relief has already received State aid in whatever form that contributes to coverage or avoidance of losses which altogether exceeds 2 % of the total bank's risk-weighted assets. The Commission has already shown in its decisions of 19 November 2008, 13 March 2009 and 30 October 2009 that Dexia was an undertaking in difficulty at the time when the aid measures were introduced.

(164) The aid elements associated with the capital increase and the FSA measure represent 5,5 % of the group's risk-weighted assets calculated at 31 December 2008, which is an amount well in excess of that of 2 % of the risk-weighted assets and intended to cover the losses incurred by Dexia. In accordance with these principles, Dexia must therefore present a restructuring plan.

(165) The degree of restructuring required depends on the seriousness of the problems encountered by each bank and the amount of aid received. In this respect, the aid to be taken into account is the total aid resulting from the measures for recapitalisation and treatment of the impaired assets, as well as the guarantees obtained. The compatibility of the restructuring plan must be assessed in the light of the conditions set out in the Restructuring Communication. These conditions are the following:

— the restructuring plan must enable the long-term viability of the institution to be restored,

— the restructuring plan must ensure equitable burden-sharing of the costs of restructuring between the States and the bank,

— the restructuring plan must allow the correction of excessive distortions of competition arising from the aid.

8.3.3.2. ***Restoration of the long-term viability of the institution***

(166) In accordance with section 2 of the Restructuring Communication, the restructuring plan must enable the long-term viability of the institution to be restored, i.e. the restructuring plan should be comprehensive, detailed and based on a coherent concept, demonstrating how the bank will restore long-term viability without State aid as soon as possible (within a maximum of five years). The restructuring plan should include a comparison with alternative options, including a break-up, or absorption by another bank, it should identify the causes of the bank's difficulties, provide information on the business model, provide for withdrawal from activities which would remain structurally loss-making, provide for an appropriate return on equity (under a baseline scenario and a crisis scenario) and consider arrangements for repaying the State aid.

(a) **Evaluation of Dexia's business model**

(167) The Commission first of all welcomes the fact that Dexia has recorded positive results for the first three quarters of 2009. However, in the light of these results, the Commission also notes the following points:

— the group's operational performance has deteriorated relatively during 2009, decreasing by 44 % between the first and the third quarters of 2009,

— a significant proportion of the group's results, estimated at approximately EUR [300-500] million in 2009 by Dexia, come from cash-flow and more specifically transformation activities, which are possible thanks to the sharp steepening of the curve for maturities at less than one year,

— Dexia would probably not have made profits if it had not received quite a large allocation of funding guaranteed by the Member States concerned (the volume of which is among the highest in Europe).

(168) On the basis of the detailed information communicated to it by Dexia and the Member States concerned, the Commission has isolated two main sources of profit for Dexia: the recurring profits linked to Dexia's traditional banking activities, on the one hand, and the less robust profits, on the other. The former mainly comprise the income from loans and the bond portfolio, commission income, the costs of funding, the cost of the risk and operational costs. The latter come from short-term transformation activities, proprietary market activities and extraordinary income drawn, for example, from the sale of assets, write-back of provisions or open positions in derivatives.

(169) According to the information communicated to the Commission by the Member States concerned, […], so that the analysis of the main sources of the group's profit can be conducted in terms of margins in relation to the interbank reference rates. This analysis, carried out for the year 2009, led the Commission to consider that Dexia's traditional banking activities would have yielded very low, and even negative, profitability. Such an analysis is not contradicted by the examination of the positive results recorded in the first three quarters of 2009, which arise from special circumstances, as indicated above.

(170) In addition, the projections which may reasonably be inferred with regard to the future trend in the group's principal sources of profit do not in fact suggest a possible improvement in the results of Dexia's traditional banking activities. In fact:

— the average margin on the PWB lending activities and the bond portfolio would remain low on a long-term basis on account of (i) the low level of income generated from these activities (between […] basis points, according to the information contained in the restructuring plan), (ii) the relatively slow amortisation profile of these assets in view of the (long) average maturity of the PWB loans and the bonds and (iii) Dexia's difficulty in replacing these assets reaching maturity with new loans generating higher income. In this last respect, the Commission notes that Dexia had fixed a new turnover target in the PWB activity of EUR […] billion in 2009, achieved in respect of […] of the amount planned (EUR […] billion), over the first 11 months of the year 2009, on account of keener competition for these activities in Dexia's traditional markets and downward pressure on margins,

— the commission income, of which an important source in the past was the sale of structured products as part of the financial services offered by Dexia to the local authorities, would be liable to fall in the future because this source is expected to dry up (decline in the marketing of structured products on account of the fall in new PWB turnover and the minimal appetite of the local authorities for this type of products in the future) and keener competition for the commission-generating activities,

— the costs of funding would increase because Dexia would need gradually to replace short-term funding and/or funding obtained from the central banks by longer-term funding either (i) on the bond market, at higher costs than those observed before the financial crisis, or (ii) on the mortgage bond market, also at higher costs than before the crisis and within the limits of the absorption capacities of this market, which are likely to diminish in the future on account of the expected tightening up regarding eligible collateral at the ECB, or (iii) by means of commercial and institutional customer deposits, but in a more competitive environment,

— the operational and structural costs (expressed in basis points in relation to total balance sheet) would be liable to remain at the current level, or even increase, despite the plan to reduce costs by 15 % by 31 December 2012, as this reduction has to be considered in the perspective of the reduction in the total balance sheet of the group over the same period, which is greater than 15 %,

— finally, the cost of the risk is an element which could evolve favourably in the years to come, as shown by the write-backs of provisions carried out by Dexia in 2009. However, the fall in the cost of the risk will remain limited on account of the deterioration in the credit standing of certain public sector entities to which Dexia has an exposure.

(171) At the end of this analysis, the Commission therefore considers that the restructuring plan should (i) deleverage Dexia in order, in particular, to enable it to assume higher funding costs and low margins on assets, (ii) improve the quality and composition of its sources of funding and (iii) reduce its fixed cost base.

(172) In this respect, the Commission considers that if the restructuring plan notified on 9 February 2010 is carried out in accordance with the commitments undertaken by the Member States concerned, it will provide satisfactory responses to the question of the long-term viability of the group.

(173) Firstly, the restructuring plan allows a reduction in Dexia's total balance sheet of 35 % by 2014, compared to the amount at 31 December 2008, and a refocusing of the group's activities on its traditional banking business:

— the sale of FSA to Assured Guaranty, which took place on 1 July 2009, significantly improved Dexia's risk profile by reducing its exposure to public sector risks and American structured products. The Assured Guaranty securities received by Dexia under the sale of FSA will also be sold, thereby reducing by the same amount Dexia's exposure to the monoline insurance sector,

— a significant proportion of the bond portfolio management activity and certain PWB activities in Dexia markets which are not its historical markets (in particular in Australia, Japan, Mexico, Sweden and Switzerland) are isolated from the group's traditional banking activity and placed in run-off. These activities ringfenced in the LPMD together totalled EUR 161,7 billion at 31 December 2009, i.e. 27,9 % of Dexia's total balance sheet at that date. The Member States concerned foresee progressive amortisation of the LPMD, as indicated in Table 4. The Commission notes that, despite the accelerated sale of the bond portfolio provided for in the restructuring plan, the pace of amortisation of the LPMD activities is slow on account of the long maturity of

the assets concerned (LPMD would represent 17,9 % of Dexia's total balance sheet by 2014). These activities will therefore continue to burden the profitability of the group in the years to come. Nevertheless, the Commission notes favourably that the application of conservative rules for the capitalisation of LPMD (respect of a core Tier 1 ratio of [10-15] %) restricts the group's distribution capacity and therefore contributes to the capitalisation of the results. In addition, respect of strict funding rules (allocation to LPMD of stable resources: guaranteed or unguaranteed bond issues, mortgage bonds and deposits) must also allow the liquidity and transformation risks associated with LPMD to be contained. Finally, the segregation of the activities of LPMD from the rest of the group's activities will facilitate their monitoring by market observers,

— Dexia's PWB activities outside its historical markets (France, Belgium and Luxembourg) have also been reduced significantly: the Italian subsidiary (Dexia Crediop, with a total balance sheet of EUR 61,2 billion at 30 June 2009) and Spanish subsidiary (Dexia Sabadell, with a total balance sheet of EUR 15,6 billion at 31 December 2008) will be sold by 31 December 2012 and 31 December 2013 respectively, as were Dexia's stake in Kommunalkredit Austria in 2008 and the Indian PWB entity in 2009. The cessation of PWB activities outside Dexia's historical markets should contribute to easing the pressure on the margins of Dexia's PWB activities,

— finally, proprietary trading activities will be halted, from the date of this decision, and market activities will be significantly curtailed, enabling a reduction in Dexia's exposure to market risks and counterparty risks in off-balance-sheet transactions: the SBPO and TOB activities will be placed in run-off and Dexia's value-at-risk limits have been cut by 44 % compared to 2008. The complete cessation of the proprietary trading activities means that Dexia will maintain trading activities only to receive, transmit and execute its customers' orders to buy and sell. Under no circumstances will Dexia retain open positions on its own account, except if such positions result from the incapacity of Dexia to execute certain customer orders and this will be within clearly determined limits so that they do not compromise the solvency and/or liquidity position of the group.

(174) Dexia's deleverage and the refocusing of its activities on traditional banking business will allow the group gradually to restore the equilibrium of its balance sheet by reducing the share of the activities generating low margins (PWB outstandings and bond portfolio, in particular) and by increasing the share of the more profitable activities (new turnover PWB and RCB and project financing, in particular). In this respect, the Commission takes a positive view of the fact that this refocusing of Dexia's activities is accompanied by close supervision of the profitability of these activities and especially PWB. In fact, in so far as Dexia refrains from lending to its PWB customers at a RAROC of under 10 %, from the date of this decision, it will be possible to ensure a minimum level of profitability of the economic capital in the PWB sector until 31 December 2014. The projections of Dexia's results for the period 2009-2014, communicated by the Member States concerned to the Commission ([44]), confirm that the overall profitability of the activities of the group can be ensured during this period and that the foreseeable losses from the activities in run-off (LPMD) can be offset by the profits from the Core division.

(175) Finally, the refocusing of Dexia's activities on its traditional activities and markets is accompanied by a gradual improvement in the group's liquidity profile, by adjusting the maturity of its funding more to the maturity of its assets. This improvement of the liquidity profile results from three main measures:

— the lengthening of the average maturity of the long-term funding and the increase in the sources of stable funding of the group. In this respect, the Commission views favourably the target ratios set by the restructuring plan for the short-term funding in relation to the total balance sheet, the average maturity of the liabilities of the group and the stable sources of funding in relation to the total assets of the group. The Commission considers that, on the strict condition that these ratios are respected at the deadlines set, the reduction in Dexia's exposure to the liquidity and transformation risks will make a positive contribution to restoring its long-term viability. Such a trend is also consistent with the new international standards for liquidity measurement and monitoring, currently under discussion at the Basel Committee on Banking Supervision,

— the gradual early exit from the guarantee mechanism for Dexia's bond liabilities by 30 June 2010. The Commission views an early exit of this kind from the guarantee as a positive factor in the context of restoring Dexia's long-term viability without State support,

— the ending of the funding made available by Dexia to its subsidiary DenizBank. This measure ensures that the planned development in DenizBank's RCB activity is financed from its own funds and does not further burden the financing needs of the group as a whole.

([44]) See recital 64.

(b) **Stress scenarios communicated under the restructuring plan**

(176) In accordance with point 13 of the Restructuring Communication, the Commission asked the Member States concerned to carry out some stress test exercises to test Dexia's resilience to a series of shocks which could arise in the coming years and to draw conclusions on the long-term viability of the group.

(177) It is important to specify that the Commission based its analysis on the results of the tests as submitted by the Member States concerned. […].

(i) *First stress test*

(178) The Commission makes the following observations concerning the first stress test, which was designed to test Dexia's resilience to a change in the main macroeconomic variables (GDP, interest rate and exchange rate):

— firstly, the variation in Dexia's profit seems at first sight to be relatively inelastic to the levels of stress applied to the growth rate. Despite simulating extremely stressed growth rates compared with historic observations, Dexia would still to a large extent remain in profit, although its profit would of course fall because of a rise in the cost of the risk. This could be imputable to (i) the relatively large proportion and good credit quality of the 'Public Finance' portfolio and the bond portfolio in run-off ([45]) and (ii) the fact that Dexia made the justified choice of not really adjusting the group income in the case of stress in its model,

— secondly, it appears that in the Dexia model used for the stress test, no material link is established between the growth rate and Dexia's funding cost and, more generally, the 'funding cost' variable, i.e. the margin above the interbank rate which Dexia would pay for new funding, was not stressed. This would also help to explain the relative inelasticity of Dexia's profit in the case of stress. This element is all the more pertinent when one considers that Dexia depends significantly on market-based and short-term funding, which increases both the extent to which and speed at which such an increase in the financing costs could impact on Dexia. In order to analyse this point, the Commission has asked for a second type of stress test to be carried out separately,

— thirdly, as regards the other two variables, the assumptions in a stress scenario were relatively similar to those used in a baseline scenario. For example, for interest rates, in both the baseline and the stress scenarios, the 3-month EURIBOR rates were projected at […] %, and the 5-year swap rates were projected at […] % and […] % respectively, suggesting negligible flattening of the curve. The exchange rates were also similar in both scenarios. For this reason, the Commission asked for a sensitivity analysis to be conducted separately (see recitals 186 to 195).

([45]) For example, for the EUR 161,7 billion of assets comprising the LPMD division at 31 December 2009, 97 % have an 'investment grade' rating (AAA 32 %, AA 28 %, A 25 %, BBB 12 %).

(179) Consequently, as far as this first stress test is concerned, the Commission concludes that, on account of the relatively large proportion and good credit quality of the 'Public Finance' portfolio and the bond portfolio in run-off, Dexia is capable of withstanding a significant increase in the cost of the risk in the event of a significant deterioration in the macroeconomic climate and consequently passes the stress test.

(ii) *Second stress test*

(180) As regards the second stress test, designed to test Dexia's resilience to an increase in the cost of its market-based funding, it appears that an additional rise of 100 basis points and of 200 basis points in the cost of funding over a period of 3 months would lead to a reduction in its pre-tax profit of EUR […] million and EUR […] million respectively. The impact would probably be materially greater if Dexia had used the assumptions laid down by the Commission in its stress test, […]. The assumptions amended by Dexia are the following,

— the rise in the cost of funding was simulated over a shorter period of […]. In this respect, the Commission notes that certain factors, such as Dexia's CDS or the cost of long-term senior unsecured funding increased by more than […] basis points and for a period exceeding […]. As regards the cost of short-term funding, without the unprecedented interventions by the Member States concerned and the central banks, which are due to disappear, this cost of funding would also have increased sharply,

— Dexia changed its funding mix and assumes, during the period when the cost of funding is stressed, that only short-term funding is carried out. In this respect, the Commission notes that such assumptions are not consistent with Dexia's recent experience, since despite the sustained increase in its cost of funding, Dexia increased the proportion of long-term funding,

— in the stress scenario, Dexia did not use assumptions in line with those used for other similar exercises recently conducted in Europe.

(181) The Commission therefore concludes from this that […]. The Commission also notes that this parameter is not really taken into consideration in the other stress tests carried out by Dexia, i.e. the stress test conducted as part of other similar exercises recently carried out in Europe and the liquidity stress test.

(182) Dexia maintains that (i) the assumptions made in its business plan, before simulation of an increase of […] or […] basis points, are already inherently stressed as they reflect the funding conditions in July 2009, which were admittedly better than those at the end of 2008 or the beginning of 2009, but do not reflect the positive trend in the second half of 2009; (ii) an assumption of no change in the funding mix would not reflect the behaviour of a market operator in such circumstances. The Commission confirms that the projected assumptions of the cost of funding before stress simulation are conservative in view of Dexia's experience in 2009. However, given the exceptional measures granted to the banking sector in 2009 and the uncertain future context, the Commission is not able to pronounce on the future trend in the cost of Dexia's funding. The stress test on this last element is useful, as it allows the conclusion to be drawn that it is important that the restructuring plan (i) reduces Dexia's dependence on market-based financing and (ii) lengthens the average maturity of its funding, with a view to reducing Dexia's sensitivity to an increase in the cost of funding. This is precisely one of the elements which Dexia's management took into account between 30 September 2008 and 30 September 2009 and which the restructuring plan aims to cover. On the basis of a dynamic short-term funding requirement of EUR [200-300] billion at end-2008, this was reduced to EUR [150-200] billion at 30 September 2009, and the restructuring plan provides that the 'short-term funding/total balance sheet' ratio is reduced from 30 % at 31 December 2009 to 11 % at 31 December 2014. Such a level of short-term funding is entirely satisfactory for the Commission, as it significantly reduces Dexia's sensitivity to shocks of prolonged increases in the cost of funding.

(183) Consequently, as regards this second stress test, the Commission concludes that, although Dexia's current funding structure makes it vulnerable to extreme shocks to its cost of funding, the restructuring plan provides a gradual, satisfactory response to Dexia's sensitivity to an increase in its funding cost. Furthermore, the Commission takes a positive view of the fact that Dexia has a large stock of assets (including the assets of the LPMD division), which are of good quality and are eligible to obtain financing at a marginally lower cost in the interbank repo market and, if necessary, from central banks.

(iii) *Third stress test*

(184) As regards the third stress test, which is designed to test the group's liquidity profile, the Commission notes that both the stress test carried out by Dexia and that carried out by the CBFA suggest that the group meets the requirements of the test at a horizon of one month. The Commission notes the following elements:

— the liquidity stress test models, as established by Dexia and by the regulator, do not seem to make assumptions about the cost of this liquidity in exceptional circumstances and without State aid. In this respect, the Commission asked the group to carry out a separate stress test designed to simulate the 'funding cost' variable (see recitals 180 to 183),

— the stress test assumptions made by the CBFA, as set out in the Circular of 8 May 2009, are conservative and reflect the recent experience of the crisis. They include the following assumptions, for example: (i) the institution can no longer obtain unsecured financing on the money and capital markets; (ii) application of conservative haircut levels for repo financing; (iii) withdrawal by the retail customers of 5 % of their sight deposits and savings deposits within the period of one week and 20 % of these deposits within one month; (iv) withdrawal by wholesale customers of 100 % of their deposits repayable on sight (and not secured by liquid financial assets) and their deposits of uncertain maturity within the period of one week; (v) non-rollover of all time deposits of the institution at their next due date,

— the positive results of the liquidity stress test reflect (i) improvements made by Dexia's management during 2009 with a view to reducing the dynamic short-term funding needs, and (ii) financial market conditions which were favourable on the whole. However, passing a liquidity stress test at a given moment is no guarantee that it will be passed in the future. It is therefore important for a certain discipline (in financing policy) to be maintained during the coming months and years in order to be able to meet this stress test continuously. In this respect, the commitments notified in the restructuring plan not only point towards an improvement in the liquidity of the group, but also allow their implementation to be verified periodically.

(185) Consequently, the Commission concludes that Dexia passes this third stress test.

(iv) *Other considerations concerning the stress tests*

(186) Firstly, on the basis of the examination of certain assumptions retained in Dexia's models, it appears that:

— for certain types of sectors or counterparties, the assumptions concerning the probability of default and/or of loss given default ('LGD') are not very prudent when they are compared to certain publicly available information,

— for the portfolio of loans to local authorities, no rating migration assumption is made reflecting the deterioration in the future trend of public finances.

(187) However, it is important to stress that comparison with the publicly available data is difficult, since the scope of Dexia's exposures is not similar to that of the publicly available information. The method used by Dexia to calculate the expected losses is based on internal ratings, integrating average, long-term, conservative and through-the-cycle probability of default and LGD parameters, adjusted to reflect the uncertainty and volatility with regard to certain data. Such parameters are examined and validated by the CBFA, the French Commission bancaire and the CSSF. According to the Member States concerned, the risk parameters used by Dexia display a level of conservatism which is 10 % to 30 % above the minimum requirements under the prudential rules of Basel II.

(188) Secondly, the Commission notes the very large exposure, in both absolute and relative amounts, to the debt of certain countries and certain financial institutions. In particular, as regards the exposure to sovereign risks, the Commission notes the exposure, at the end of 2008, to […]. […].

(189) However, it is important to emphasise that:

— such exposures should not *a priori* have a material impact on the group result, especially if the group does not intend to sell these assets before contractual maturity (they could increase the volatility of the AFS reserve, which is shown in the group balance sheet),

— under Dexia's restructuring plan, these exposures would be reduced as provision is made for a substantial reduction in the bond portfolio.

(190) Thirdly, the Commission takes a favourable view of the trend in the group's need for short-term funding. However, the Commission emphasises that the group has essentially reduced its need for funding between 0 and 1 month. As shown in Table 7 below, as a percentage of the total funding, it appears that the funding between 0 and 1 month has been reduced by […] % to […] % between 31 December 2008 and 30 September 2009. However, the proportions of funding between 1 and 3 months, and between 6 and 12 months have increased from […] % to […] %, and from […] % to […] % respectively. The funding between 1 and 5 years has been increased from […] % to […] %. However, the bulk of the funding in this period is between 1 and 2 years. […].

*Table 7*

**Share of the different sources of funding in Dexia's total funding**

[…]

(191) In this respect, the restructuring plan notified to the Commission provides for (i) a reduction of EUR 83 billion in the bond portfolio of the LPMD division; (ii) an increase in the proportion of more stable sources of financing (such as commercial deposits and mortgage bonds) from 36 % to 58 %; (iii) a gradual lengthening of the average maturity of the liabilities. These factors will probably reduce the risks of refinancing problems for Dexia. Moreover, it is important to stress that the incremental rise in the costs of funding associated with this change in funding policy is integrated in the projections for the group's profit and loss account and confirms that Dexia would remain in profit during its restructuring period.

(192) Fourthly, despite the improvement in market conditions, Dexia's cost of funding remains relatively high in comparison with other banks. The level of 5-year CDS is among the highest in Europe and remains at about 180 basis points; the secondary levels of Dexia's credit spreads of unguaranteed benchmark-size issues remain high and stand at about 140 to 150 basis points for maturities of between 4 and 5 years; the cost of funding in covered bonds also remains high and stands at about 50 to 60 basis points for relatively similar terms to those of the assets financed.

(193) Fifthly, in order to measure Dexia's sensitivity to a variation in interest rates, Dexia communicated a table showing the sensitivity to a rate shock of 1 % for each maturity. This shows that in the event of a uniform rise in the rate curve, Dexia considers it will not lose more than EUR […] million ([46]). This level of sensitivity seems perfectly reasonable and is attributable in part to Dexia's policy of […], thereby reducing the sensitivity to rate variations. However, the Commission notes that in this sensitivity calculation exercise, EUR […] billion of the group's short-term funding is not included, which suggests that Dexia remains relatively sensitive to movements in the rates curve for maturities of less

([46]) At 30 September 2009.

than one year. This was confirmed by Dexia, since the group considers it made about EUR […] million in profit in 2009 merely through the effect of steepening of the curve of the interbank rates for less than one year. The effect of a significant reduction in transformation income was nevertheless considered in Dexia's projections and indicates that the group would remain in profit in the coming years.

(194) Sixthly, both the absolute and the relative level of Dexia's negative AFS reserve remain very high, despite the improvement observed during 2009. The negative AFS reserve improved from EUR 12,7 billion at 31 March 2009 to EUR 7,2 billion at 30 September 2009. Given (i) the level of Dexia's capital (EUR 17,1 billion in Tier 1 capital and EUR 19,6 billion in total regulatory capital at 30 September 2009), (ii) the current non-inclusion of the AFS reserve in the calculation of the regulatory capital, the Commission is concerned that the inclusion of this AFS reserve in the regulatory capital ratios, currently under discussion at the Basel Committee, will penalise Dexia. In this respect, the Commission notes the following factors:

— even if the negative AFS reserve had been included in full in the calculation of the regulatory capital, Dexia would still have satisfied the regulatory capital requirements at 30 September 2009. The Tier 1 capital ratio would have stood at […] and the total capital ratio at […],

— such a change in the regulations would have an impact on a large number of other banks,

— such a change in the regulations would not be applicable, according to the Member States concerned, before 2012. Between now and then, the restructuring plan provides for a reduction of 30 % to 40 % of the portfolio of the LPMD division (which is mainly responsible for the creation of this negative AFS reserve), which, all other things being equal, should reduce the amount of the negative AFS reserve.

(195) Seventhly, despite their reduction during 2009, Dexia still has certain relatively large off-balance-sheet commitments. However, according to Dexia, the latter were taken into consideration in the stress tests.

(c) **Derivatives activities**

(196) Analysis of the Dexia balance sheet shows that, at the end of 2008, the market value of the derivatives is EUR 55 billion on the assets side and EUR 75 billion on the liabilities side of the balance sheet, creating a significant negative difference in the order of EUR 20 billion, which stems mainly from interest rate derivatives. The Commission compared this difference with that reported by other financial institutions. Expressed as a percentage of the total balance sheet and as a percentage of capital, this difference is not only negative, but is also particularly large for Dexia compared to these other institutions.

(197) Dexia justifies this by (i) the almost systematic policy of […], (ii) the fall in interest rates (iii) the considerable difference between the average maturity of the assets and that of the liabilities, (iv) […]. The Commission accepts these explanations, but nevertheless notes that (i) the size of this negative difference really is very large and (ii) the latter probably requires considerable collateral for Dexia, which may reduce its eligible collateral base for financing from the central banks or in the interbank repo market. Nevertheless, as far as this latter point is concerned, such needs were taken into consideration in the stress tests.

(d) **Conclusion concerning viability**

(198) The Commission concludes from the analysis above that the restructuring plan will allow Dexia's long-term viability to be restored. In this respect, the Commission also notes that the restructuring plan will enable Dexia to cope with the expected tightening up of the prudential regulations. On the one hand, the deleveraging resulting from the restructuring is in line with the possible introduction of a maximum leverage ratio. On the other hand, the improvement in and diversification of Dexia's sources of financing are consistent with the introduction of new standards on liquidity risk measurement and monitoring for credit institutions ([47]).

8.3.3.3. ***Own contribution by the institution***

(199) According to section 3 of the Restructuring Communication, the restructuring plan must ensure fair burden-sharing of the costs of restructuring between the Member States concerned and the bank, i.e. the restructuring plan must provide for the highest possible contribution by the bank and its shareholders from their own resources. Such a contribution is necessary to ensure that rescued banks bear adequate responsibility for the consequences of their past behaviour and to create appropriate incentives for their future behaviour.

(200) Dexia, its shareholders and the Member States concerned have already made an own contribution to the restructuring effort in particular through the dilution of the share of the capital stock held by existing shareholders when the bank's capital was increased (the French and Belgian authorities directly subscribed to EUR 3 billion of the EUR 6,4 billion capital increase announced in September 2008).

([47]) See in particular Basel Committee on Banking Supervision, *International framework for liquidity risk measurement, standards and monitoring (Consultative Document)*, December 2009.

(201) The Commission notes, moreover, that a certain number of adverse factors accompany the suspension of the distribution of dividends provided for in the restructuring plan:

— the subsidiaries in which Dexia has a 50 % stake are not concerned by the suspension of distribution of dividends, since this applies only to the entities over which Dexia SA directly or indirectly exercises exclusive control ([48]), and

— under the terms of the restructuring plan, the suspension (until the end of 2011) of the distribution of dividends on hybrid Tier 1 or Tier 2 instruments is without prejudice to the operations which Dexia is required to undertake by virtue of contracts concluded before 1 February 2010.

(202) The Commission also notes that the suspension of payment of a dividend or a coupon on hybrid Tier 1 or Tier 2 instruments applies to the contracts concluded before 1 February 2010, in so far as, by virtue of the decision of 30 October 2009 ([49]), Dexia was required, for a period of four months, not to pay coupons and not to exercise early repayment options on its hybrid capital instruments (Tier 1 and Upper Tier 2). In this respect, the Commission notes that the volume of Dexia's hybrid instruments amounted to EUR 1,4 billion at 31 December 2008.

(203) Therefore, in order to ensure that no payment of coupon will be made on Dexia's hybrid instruments (Tier 1 and Upper Tier 2) contrary to the principles of the Restructuring Communication, the Commission makes its present decision conditional on Dexia, before making any payment of coupons on hybrid Tier 1 or Upper Tier 2 instruments issued before 1 February 2010, and no later than two weeks before the start of the notification period for payment of the coupon to investors, notifying the Commission, until 31 December 2011, of its intention to pay a coupon of this kind and showing that this payment (i) is mandatory, (ii) cannot be deferred, (iii) is not discretionary, and (iv) is not triggered automatically by a dividend payment, whatever the form, by Dexia SA or one of its subsidiaries, with the exception of the Tier 1 issue by DFL. The Commission reserves the right not to authorise such a payment if one of these four cumulative conditions above is not satisfied.

([48]) See point 9 of Annex I to this decision.

([49]) See *State aid: Commission recalls rules concerning Tier 1 and Tier 2 capital transactions for banks subject to a restructuring aid investigation*, MEMO/09/441 of 8 October 2009, available at the Commission Internet site at: http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/441&format=HTML&aged=0&language=FR&guiLanguage=fr

(204) Moreover, the Commission also notes that the suspension of payment of a dividend does not apply to the distributions of dividends undertaken entirely by allocation of new shares. However, it should be noted that the payment of dividends by allocation of new shares, made possible by the generation of profits available for distribution, is not contrary to the Restructuring Communication in so far as such payment would be posted to Dexia's accounts as incorporation in the reserve capital and a distribution of dividends taken from the profit of the last completed financial year and contributed by the shareholders to Dexia's capital. The allocation of shares would therefore have no impact on Dexia's capital.

(205) The Commission also notes that the payment of a dividend in Dexia shares does not involve the payment of a coupon on any of Dexia's hybrid instruments (Tier 1 or Tier 2), with the sole exception of an issue floated by Dexia Funding Luxembourg SA ('DFL') carried out in 2006. However, it should be specified that this exception was approved in the overall context of the restructuring plan. In general, as indicated in recital (204), the Commission is not opposed to a distribution of dividend paid exclusively in the form of shares on condition that this does not entail the obligation to pay a dividend or a coupon on other categories of securities constituting capital. In the present case, Dexia's obligation to pay a coupon on the DFL issue is not liable to change the Commission's approach in view of the fact that the exception comes under the restructuring plan, relates to a single issue which involves the payment of a limited coupon and Dexia forecasts a profit during the restructuring period.

(206) Finally, the Commission notes that the aid is limited to the minimum necessary by:

(a) divestments of assets and subsidiaries, including fairly profitable subsidiaries, such as 'Dexia Sabadell', 'Dexia Banka Slovensko' ('DBS') and 'Deniz Emeklilik' (the insurance subsidiary of its subsidiary DenizBank which operates mainly in the RCB market in Turkey); and

(b) appropriate remuneration for the aid received in the form of a guarantee by the Member States concerned on Dexia's liabilities and its impaired assets (see recitals 158 to 159).

(207) The factors set out above more than offset the many conditions and reservations noted as being adverse by the Commission, which accompany the suspension of the dividend distribution provided for in the restructuring plan. Consequently, the Commission considers that Dexia and its shareholders are making a sufficient contribution to the restructuring from their own resources.

8.3.3.4. ***Measures to correct the distortions of competition***

(208) According to section 4 of the Restructuring Communication, the restructuring plan must permit the limitation of excessive distortions of competition caused by the aid, i.e. the restructuring plan must provide for structural measures (divestment and/or reduction of business activities) and behavioural safeguards. Appropriate measures must be put in place to minimise the distortions of competition and avoid the State aid in favour of Dexia prolonging past distortions caused by excessive risk-taking and an unsustainable business model.

(209) According to point 30 of the Restructuring Communication, the nature and form of measures to limit the distortions of competition will depend on two criteria: first, the amount of the aid and the conditions and circumstances under which it was granted and, second, the characteristics of the market or markets on which the beneficiary bank will operate.

(210) With regard to this latter criterion, the Commission observes that Dexia is a key player on the local authority financing market ('PWB'), especially in France, Belgium and Italy, and has a significant presence in Spain. The PWB market is heavily concentrated in Belgium ([50]), France ([51]) and Italy ([52]) and the entry barriers there are high ([53]).

(211) The Commission notes, moreover, that the restructuring plan guarantees that Dexia will take the necessary steps to open up the local authority financing market and limit the distortions of competition on this market generated by the aid received:

— firstly, the reduction in the scope of the PWB activities on Dexia's core markets, through the limitation, and even the abandonment, of the PWB International turnover will enable competition to be increased on certain markets. In this respect, Dexia undertook to sell Crediop, a key player in local authority financing in Italy, and Dexia Sabadell, which operates in the Spanish market,

— secondly, in the core markets where Dexia still operates, the limitation of the volume of new turnover will also allow the entry of new operators and will promote competition in these markets (Dexia is limiting new annual turnover in PWB to EUR 12 billion in 2009, EUR 15 billion in 2010 and EUR 18 billion from 2011 to 2014, which represents a significant reduction compared to the level of EUR 34 billion recorded in 2008),

— finally, Dexia has undertaken to abandon its majority stake in AdInfo, a subsidiary which provides IT services to the local authorities in Belgium. This subsidiary provides Dexia with access to a large number of public-sector customers throughout Belgium and has enabled it to strengthen its position as reference banker for local operators in Belgium and to develop technological solutions compatible with the financial services it offers the local authorities. In this respect, the Commission considers that the sale of this subsidiary will allow greater competition in the PWB market in Belgium.

(212) Moreover, Dexia has undertaken that the RAROC on each loan granted to PWB customers will remain over 10 %, which will ensure that the rates applied by Dexia to these customers are in line with market rates and prevent Dexia assuming a dominant position in this market in the future by applying rates which are below market rates.

(213) Dexia is less present on the retail banking market than in local authority financing. The group engages in retail banking through its subsidiaries in four main countries: Belgium through DBB, Luxembourg through Dexia BIL, Slovakia through Dexia Banka Slovensko (DBS) and Turkey through DenizBank. Measured in terms of deposits, Dexia has a market share of about [10-15] % in Belgium, [10-15] % in Luxembourg, [0-5] % in Slovakia and [0-5] % in Turkey.

(214) Since the retail banking market is not as concentrated as that of local authority financing in France, Belgium, Italy and Spain, there is less need for measures to limit the distortions of competition. In particular, in Belgium where Dexia has its largest market share, it occupies only third place.

([50]) See in particular the Commission Decision regarding concentrations in case M. 2400 (*Dexia/Artesia*). In this decision, the Commission points out that Dexia is a heavily dominant player in the Belgian market with a market share of 80 % to 85 % of the national 'local authorities' financing market and of 65 % to 70 % if non-local authorities, like regions or communities, are also taken into account.

([51]) In France, according to the information available to the Commission, Dexia Crédit Local accounts for the lion's share, i.e. [40-45] %, of the stock of long-term loans to the local authorities, its main competitors being the savings banks (about 20 %), Crédit Agricole (about 15 %), Société Générale and BNP Paribas.

([52]) In Italy, according to the information available to the Commission, four banking groups share 80 % of the market, with Dexia in second place (about [20-30] %) after Cassa Depositi et Prestiti ('CDP'). The other two players are Intesa SanPaolo (14 %) and BNL (10 %).

([53]) A certain number of factors tend to indicate, inter alia, that the tendering procedures are not always organised transparently and openly and that the costs of transfers are quite high for the local authorities (especially as the historical operating banks offer a whole range of services to the authorities, such as treasury management services, financing being only one aspect).

(215) In any case, the Commission welcomes Dexia's commitment to the following measures in the retail banking sector:

— divestment of Dexia Banka Slovensko,

— abandonment of intra-group financing to DenizBank until end-2014,

— divestment of Dexia Epargne Pension, which operates in the field of collective insurance and life assurance in France,

— divestment of the holding in Crédit du Nord, which operates in the retail market in France; and

— divestment of the insurance business in Turkey.

(216) The restructuring plan will lead to a 35 % reduction in Dexia's total balance sheet in 2014 compared to 2008. This downsizing also results from the run-off of the activities ringfenced in the LPMD, the refocusing of Dexia's activities on its historical markets, the divestment of activities and the limitation of its new PWB turnover.

(217) Dexia is subject to certain behavioural safeguards, such as not making any acquisition (until 30 December 2011) of more than 5 % of the share capital of other credit institutions or investment firms ([54]). This safeguard ensures that in principle Dexia will not make the acquisition of another credit institution or investment firm in order to exercise control over it within the meaning of the merger rules. This principle is consistent, in particular, with point 40 of the Restructuring Communication.

(218) In the light of Dexia's own contribution and the measures in its core markets, the Commission concludes that the structural measures as a whole contained in the restructuring plan are sufficient to limit the excessive distortions of competition arising from the aid in question.

(219) Finally, Dexia will implement the principles of remuneration agreed by the G-20 and the national bodies concerned regarding the remuneration of members of the Management Board and the Executive Committee of Dexia and its main operating entities.

([54]) See point 2 of Annex I to this Decision.

8.3.4. MONITORING OF THE MEASURES

(220) The Commission notes that point 46 of the Restructuring Communication recommends that a detailed report should be submitted regularly by the Member States concerned to the Commission to enable the latter to verify that the restructuring plan is being applied in accordance with the commitments notified. In this respect, half-yearly reports will be addressed to the Commission by the independent expert in charge of monitoring the restructuring plan, before 1 October and 30 April each year.

## IX. **CONCLUSIONS**

(221) The Commission finds that Belgium, France and Luxembourg unlawfully implemented aid in the form of a capital increase, guarantee and guaranteed LA operations, in breach of Article 108(3) TFEU.

(222) On the basis of the information and commitments communicated to the Commission by the Member States concerned, the Commission authorises Dexia's restructuring plan and the conversion of the emergency aid into restructuring aid under the conditions provided for under Article 2. The Commission also considers that the restructuring plan responds to the allegations made in the complaint communicated to it, without prejudice to the complainant asserting his rights for the period when the aid in question was not authorised,

HAS ADOPTED THIS DECISION:

*Article 1*

1. The measures implemented by Belgium, France and Luxembourg in favour of Dexia, for an amount of EUR 8,4 billion, in the form of a capital increase and aid for the treatment of impaired assets, and for an amount of EUR [95-135] billion, in the form of a guarantee and guaranteed liquidity assistance operation ('liquidity assistance' or 'LA'), constitute State aid within the meaning of Article 107(1) TFEU.

2. This aid is compatible with the internal market under the conditions provided for in Article 2.

*Article 2*

1. Belgium, France and Luxembourg shall respect all the commitments and conditions set out in Annex I to this decision within the time limits fixed.

2. Before making any payment of coupons on hybrid Tier 1 or upper Tier 2 instruments issued before 1 February 2010, and at the latest two weeks before the start of the notification period for the payment of the coupon to investors, Dexia shall notify the Commission, until 31 December 2011, of its intention to pay such a coupon and shall demonstrate that this payment:

(i) is mandatory;

(ii) cannot be deferred;

(iii) is not discretionary; and

(iv) is not triggered automatically by a dividend payment, whatever the form, by Dexia SA or one of its subsidiaries, with the exception of the Tier 1 issue by DFL (ISIN code XS0273230572).

The Commission reserves the right not to authorise such a payment if any of the four cumulative conditions set out above is not satisfied.

*Article 3*

Belgium, France and Luxembourg shall inform the Commission, within a period of two months from the date of notification of this decision, of the measures taken to comply therewith.

Belgium, France and Luxembourg shall submit to the Commission, throughout the period of the restructuring plan, on a six-monthly basis, a detailed report on the achievement of the restructuring measures set out in their commitments notified to the Commission on 9 February 2010 (attached as Annex I to this decision). The first report shall be communicated within six months of the date of this decision.

*Article 4*

This decision is addressed to the Kingdom of Belgium, the French Republic and the Grand Duchy of Luxembourg.

Done at Brussels, 26 February 2010.

*For the Commission*

Joaquín ALMUNIA

*Vice-President*

*ANNEX I*

**COMMITMENTS OF THE MEMBER STATES CONCERNED NOTIFIED TO THE COMMISSION ON 9 FEBRUARY 2010**

**Behavioural commitments**

1. Unless otherwise specified, the commitments below, with the exclusion of the commitment under point 7 below, shall apply until 31 December 2014.

2. Until 31 December 2011, Dexia SA and the subsidiaries over which it exercises exclusive or joint control ('Dexia') shall not make any acquisition of more than 5 % of the share capital of other credit institutions or investment firms (within the meaning of Directive 2004/39/EC of 21 April 2004 on markets in financial instruments) or insurance companies, unless authorised to do so by the Commission.

   The commitment above shall not impede the acquisition by Dexia, subject to the prior agreement of the Commission, of a holding, as remuneration for a contribution of holdings or business activities carried out as part of a divestment or pooling (by merger or contribution) of assets or business activities, provided that, in such a case, this holding does not confer on Dexia the exclusive or joint control of the entity receiving the contribution or resulting from the merger.

   Dexia shall inform the Commission in advance of any acquisition plans, including any plans considered by undertakings over which Dexia exercises joint control.

3. (a) Dexia shall refrain from lending to its PWB customers at a level of risk-adjusted return on capital ('RAROC') below 10 %. The RAROC shall be calculated as the ratio between the net margin after tax and the economic capital. Within the meaning of this commitment letter:

   (i) the gross margin is the difference between the margin invoiced to the customer (expressed in basis points above the IBOR reference rate) and Dexia's funding cost (expressed in basis points above the IBOR reference rate) represented by the internal transfer price;

   (ii) the internal transfer price will reflect the estimated cost of Dexia's new funding, taking account of the characteristics (maturity, eligibility for funding by covered bonds, etc.) of the loans to PWB customers;

   (iii) the net margin is equal to the gross margin less (i) costs of all kinds (overheads, salary costs, operating costs, amortisation and depreciation, etc.) estimated on the basis of the observation of the costs of lending to PWB customers, (ii) cost of average risk calculated for each transaction in accordance with the Basel II methodology (cost of average risk over a long period) and (iii) a tax charge. The economic capital is calculated in accordance with the Basel II methodology.

   (b) An independent expert shall be appointed, in accordance with the terms and conditions set out under point 17 below, to verify every six months that:

   (i) the RAROC within the meaning of this commitments letter and its components (costs of new funding, overheads, wage costs, operating expenses, amortisation and depreciation, cost of risk, tax charge, etc.) reflects the contribution of the activity of lending to PWB customers to the profitability of the group;

   (ii) The calculation of the RAROC is correct; and

   (iii) The methodology is respected.

   (c) The independent expert shall verify every six months that the commitment entered into under point 3(a) is respected.

   (d) The independent expert shall have access to Dexia's internal rules of procedure, specifying and generalising the use of the RAROC (within the meaning of this commitments letter) and to the list and conditions of each loan granted by Dexia to its PWB customers.

4. Dexia shall end the intra-group finance currently made available to its Turkish subsidiary DenizBank by 30 June 2011 at the latest and shall not grant it any new financing until 31 December 2014.

5. Dexia shall reduce the proportion of short-term funding in its balance sheet and shall lengthen the average maturity of its long-term funding. Compliance with this commitment shall be assessed overall by means of three quantitative indicators. In this context:

(a) Dexia shall maintain the 'short-term funding/total balance sheet' ratio defined in Annex II to this decision, at 30 % at 31 December 2009, at a level below or equal to 23 % at 31 December 2010, below or equal to 20 % at 31 December 2011, below or equal to 14 % at 31 December 2012, below or equal to 13 % at 31 December 2013 and below or equal to 11 % at 31 December 2014. For the purposes of this commitment, the ratio shall also be monitored as an annual average over the entire reference period.

(b) Dexia shall lengthen the maturity of its funding and shall reduce its duration gap by maintaining the average term of the liabilities of the group as defined in Annex II to this decision, at a level above or equal to the levels below:

*(years)*

| 31.12.2009 | 31.12.2010 | 31.12.2011 | 31.12.2012 | 31.12.2013 | 31.12.2014 |
|---|---|---|---|---|---|
| […] | […] | […] | […] | […] | […] |

(c) Dexia shall increase its stable sources of funding. A ratio shall be calculated, with the numerator equal to the sum of the funding in the form of covered bonds and the funding in the form of RCB and PWB commercial deposits and with the denominator equal to the sum of all the assets of the Dexia group. This ratio, equal to 36 % at 31 December 2009, must be above or equal to 40 % at 31 December 2010, above or equal to 45 % at 31 December 2011, above or equal to 53 % at 31 December 2012, above or equal to 55 % at 31 December 2013 and above or equal to 58 % at 31 December 2014.

6. Until 31 October 2014, Dexia:

(i) shall not use its status as a bank with a guarantee by the States for some of its commitments for commercial advertising purposes in relation to third parties other than third party beneficiaries; and

(ii) shall not use the guarantee for purely arbitrage transactions.

7. By 30 June 2010, Dexia shall establish a reporting line known as '*Legacy Portfolio Management Division*'. The assets allocated to this line shall be placed in run-off or sold under the commitment set out under point 13(n) below. These assets shall be the following: (i) the CSP/PSP portfolios (estimated at approximately EUR 134 billion at 31 December 2009), (ii) the FP portfolio (estimated at approximately EUR 10,7 billion at 31 December 2009) and (iii) the non-core PWB loans portfolio (estimated at approximately EUR 17 billion at 31 December 2009). The funding raised by Dexia with the funding guarantee shall be allocated in full to this line.

8. Dexia shall limit the amount of:

(a) any form of dividends distributed by Dexia SA in respect of its ordinary shares; and

(b) any discretionary early repayment or payment of coupons on hybrid Tier 1 instruments or Tier 2 instruments (i) issued by entities over which Dexia has exclusive control (ii) held by persons or entities other than Dexia SA and its subsidiaries and (iii) the payment or exercise of which is discretionary by virtue of the contractual provisions covering these instruments;

so that, after the distribution or the payment under consideration (and taking account of any payments which have become mandatory on account of the payment of a dividend in respect of ordinary shares), the Dexia group's Core Tier 1 (calculated by reference to the latest consolidated annual accounts prepared in accordance with IFRS).

(i) remains above or equal to the level below:

| 31.12.2009 | 31.12.2010 | 31.12.2011 | 31.12.2012 | 31.12.2013 | 31.12.2014 |
|---|---|---|---|---|---|
| 10,7 % | 10,6 % | […] % | […] % | […] % | […] % |

(ii) and remains above or equal to the sum of:

(i) 12,5 % of the risk-weighted assets of the Legacy Portfolio Management Division, as defined in point 7 above; and

(ii) 9,5 % of the risk-weighted assets of the other activities of the group (the 'Core Division').

The commitment above:

(i) shall be without prejudice to the distributable profit requirement (within the meaning of Article 617 of the Belgian Companies Code) at Dexia level;

(ii) shall be without prejudice to the operations which Dexia shall be legally required to undertake in respect of hybrid Tier 1 or Tier 2 instruments or operations which Dexia shall be required to undertake in relation to such instruments by virtue of contracts concluded before 1 February 2010;

(iii) shall be revised in the event of significant change in the definition of the prudential own funds and accounting standards applicable to Dexia; and

(iv) shall apply to any distribution made up to 31 December 2014.

9. Moreover, without prejudice to the operations which Dexia may be legally required to carry out, or the operations which it may be required to carry out by virtue of contracts concluded before 1 February 2010, relating to hybrid Tier 1 or Tier 2 instruments, Dexia shall refrain until 31 December 2011 from:

(a) making any payments of coupons on hybrid Tier 1 or Tier 2 instruments held by persons or entities other than Dexia SA and its subsidiaries, the payment of which is discretionary by virtue of the contractual provisions covering these instruments;

(b) approving or voting in favour of the payment of any form of dividend by any entity over which Dexia SA directly or indirectly exercises exclusive control (including entities which it fully owns) when such a payment would involve an obligation to pay a coupon on hybrid Tier 1 or Tier 2 instruments held by persons other than Dexia SA and its subsidiaries; and

(c) exercising a discretionary early repayment option for the hybrid Tier 1 or Tier 2 instruments referred to in point (a) above.

Dexia SA shall refrain from the distribution of dividends on its ordinary shares until 31 December 2011. This prohibition shall not apply to distributions of dividends made entirely by the allocation of new shares, provided that the amount of these distributions is (i) in accordance with point 8 above and (ii) below or equal to 40 % of the net result made by Dexia SA for the financial year 2009 as regards the distributions made in 2010 and below or equal to 40 % of the net result made by Dexia SA for the financial year 2010 with regard to the distributions made in 2011.

10. Dexia shall continue to implement the principles of remuneration agreed by the G-20 and the national bodies concerned regarding the remuneration of members of the Management Board and the Executive Committee of Dexia SA and of the main operating entities of the Dexia group.

11. In accordance with the restructuring plan submitted on 17 December 2009, Dexia:

(a) under its new turnover policy, shall limit new PWB turnover to EUR 12 billion in 2009, EUR 15 billion in 2010 and EUR 18 billion from 2011 to 2014;

(b) shall reduce its operating costs by 15 % by 31 December 2012;

(c) in its trading activities, shall ensure that it does not take risks on its own account which would not be in line with the objective of returning to viability on the basis of prudent management. Consequently, Dexia shall reduce its trading activities (44 % reduction in terms of value of average annual risk, which amounted to EUR 126 billion in 2008) and shall cease its proprietary trading activities from the date of the Commission Decision;

(d) shall definitively waive the benefit of the Dexia BIL convertible bond for an amount of EUR 376 million, to which Luxembourg had undertaken to subscribe in September 2008, with immediate effect from the date of the Commission Decision.

**Funding guarantee**

12. Dexia's recourse to the funding guarantee, as extended by the addendum of 14 October 2009 ('the Guarantee') shall be limited under the following conditions:

(a) The possibility for Dexia to make use of the Guarantee shall be ended for all deposit contracts concluded as from 31 March 2010;

(b) The possibility for Dexia to make use of the funding Guarantee shall be ended for all short-term issues (at less than one year) as from 31 May 2010;

(c) The possibility for Dexia to make use of the funding Guarantee shall be ended for all issues floated or contracts concluded as from 30 June 2010;

(d) The total outstanding amounts guaranteed may at no time exceed EUR 100 billion;

(e) During the period covered by the guarantee, Dexia shall pay the States additional remuneration on any amount exceeding the following thresholds of outstanding amounts guaranteed:

| Threshold/tranche (outstandings guaranteed in EUR billion) | [60-70] | [70-80] | [80-100] |
|---|---|---|---|
| Additional remuneration for excess in basis points | + 50 | + 65 | + 80 |

**Divestments and run-offs**

13. Dexia shall undertake the divestments of the assets according to the list and schedule set out below:

(a) Divestment or stock exchange flotation of the group's 70 % stake in its Italian subsidiary, Crediop, by 31 October 2012. Under point 15 of the Bank Restructuring Communication, Dexia shall not be required to sell its stake in Crediop at an excessively depressed price (less than […] times the book value in 2010 and 2011 and […] times the book value in 2012).

(b) Divestment by 30 June 2010 of Dexia Epargne-Pension (DEP), French subsidiary of DIB (Dexia Insurance Belgium), which operates in the fields of life assurance and collective insurance. The sales agreement was signed on 9 December 2009 and the sale should be completed during the first half of 2010.

(c) Divestment or stock exchange flotation by 31 December 2010 of Dexia's 51 % stake in AdInfo, a subsidiary active in the provision of IT services to local authorities in Belgium.

(d) Divestment of Dexia's stake in SPE by 31 December 2010.

(e) Divestment of Dexia's 20 % stake in Crédit du Nord. This divestment took place on 11 December 2009 (actual transfer of the securities and cash).

(f) Closure by 2010 of about 80 branches in Belgium under the new group distribution model.

(g) Cessation of the following activities of RCB International:

(i) the divestment of Experta Jersey, the run-off of Dexia PB Jersey, the cessation of Montevideo's PB activities, the cessation of the PB development project in Singapore, the cessation of the consumer finance project in Russia and the cessation of the activities of Dexia Asset Management (DAM) in the countries of Central and Eastern Europe and the divestment of the trust activities of Experta in Switzerland were carried out in 2009 and early 2010;

(ii) the divestment of Experta's trust activities in the Bahamas and the divestment of the Danish subsidiary of Dexia BIL, which engages in asset management, private banking and market activities/structuring are to be realised by 31 December 2011.

(h) Divestment or stock exchange flotation by 31 October 2012 of Dexia's stake in its Slovak subsidiary Dexia Banka Slovensko (DBS). Under point 15 of the Bank Restructuring Communication, Dexia shall not be required to sell DBS at an excessively depressed price (less than […] times the book value in 2010 and […] times the book value in 2011).

(i) Cessation and run-off of the following PWB international activities:

1. India: sale of the entity carried out in 2009;

2. Switzerland (Dexia Public Finance Switzerland) and Sweden (Dexia Norden): closure and liquidation by 31 December 2010;

3. Mexico, Australia and Japan: run-off of the balance sheet and staff cuts. The Mexican entity was closed in 2009 and its assets were transferred to DCL New York where they are placed in run-off; the workforce in Japan and Australia was halved in 2009 and the related activities will be placed in run-off.

(j) Divestment of FSA (finalised on 1 July 2009) then divestment of Dexia's holdings in Assured Guaranty (AGO) by 31 December 2011.

(k) Divestment of the group's 49 % stake in Kommunalkredit Austria (KA), which took place in the fourth quarter of 2008.

(l) Divestment or stock exchange flotation of Deniz Emeklilik, the insurance subsidiary of DenizBank by 31 October 2012.

(m) Divestment of the group's 60 % stake in Dexia Sabadell by 31 December 2013.

(n) Fast-track divestment of Dexia's bond portfolio at the rate of EUR [10-20] billion per year in 2010 and 2011, EUR [5-15] billion to EUR [10-20] billion in 2012, EUR [0-10] billion to EUR [5-15] billion per year in 2013 and 2014.

(o) In accordance with the restructuring plan submitted on 17 December 2009, run-off of the Standby Bond Purchase Agreements (SBPA) and Tender Option Bonds (TOB) activities (USA/Canada).

The divestment commitments listed in points (a) to (n) above shall be deemed to have been met when Dexia and the purchaser have concluded a binding, definitive agreement (i.e. an agreement which cannot be cancelled unilaterally by Dexia without payment of a penalty) for the divestment of Dexia's entire holding in the entity or asset concerned, even if all the authorisations or declarations of non-objection have not yet been obtained from the competent supervisory authorities when the agreement is signed.

14. The divestments of assets described under point 13 above, and the amortisation of Dexia's assets and liabilities shall lead to the following results:

(a) The 35 % reduction in Dexia's total balance sheet by 31 December 2014 compared to its amount at 31 December 2008, under the conditions and according to the accounting conventions described in the additional measures of Dexia's restructuring plan notified to the Commission on 17 December 2009. In absolute value, the total balance sheet shall be reduced from EUR 651 billion at 31 December 2008, to EUR 580 billion at 31 December 2009, EUR [510-550] billion at 31 December 2010, EUR [485-545] billion at 31 December 2011, EUR [425-490] billion at 31 December 2012, EUR [405-465] billion at 31 December 2013 and EUR 427 billion at 31 December 2014, i.e. a reduction of EUR 224 billion. These amounts will have to be corrected for the trend in the market value of the derivatives recorded in Dexia's balance sheet if this trend differs from that described in Dexia's restructuring plan and provided that such a divergence does not result from a significant rise in the notional amount of these derivatives.

(b) The total balance sheet of the Core Division shall amount to EUR [390-410] billion at 31 December 2010, EUR [385-415] billion at 31 December 2011, EUR [345-380] billion at 31 December 2012, EUR [335-365] billion at 31 December 2013 and EUR 353 billion at 31 December 2014, i.e. a reduction in the order of 45 % in relation to the group's total balance sheet at 31 December 2008. The annual trend in sizes of the balance sheet of the activities of the Core Division and Legacy Portfolio Management Division respectively shall be consistent with the description given in Annex II to this decision.

**Agent responsible for the sale**

15. (a) In the absence of compliance with any of the asset divestment commitments referred to under points 13(a), 13(c), 13(d), 13(h), 13(l) or 13(m) within the time limits set above, and in the absence of approval of an alternative commitment by the Commission, the French, Belgian and Luxembourg authorities shall submit for prior approval by the Commission, no later than one month after the time limit set for the sale, a list of one to three persons, selected in agreement with Dexia, for appointment as agent(s) responsible for carrying out the aforementioned sales.

(b) The agent responsible for the sale must be independent, possess the required skills and may not be exposed to conflicts of interest when performing his task.

(c) The Commission may either approve or reject the agent(s) proposed. If the Commission rejects the agent(s) responsible for the sale proposed, Dexia and the French, Belgian and Luxembourg authorities shall propose, within one month of communication of the rejection, one to three new candidates who shall also have to be approved or rejected by the Commission. If all the candidates proposed are finally rejected by the Commission, the latter shall designate an agent, whom Dexia shall appoint or contribute to appointing, on the basis of a mandate approved by the Commission.

(d) The French, Belgian and Luxembourg authorities undertake that Dexia shall grant the necessary and appropriate powers of attorney to the agent responsible for the sale:

(i) to carry out the sale of the assets referred to in point (a) above (including any necessary powers to ensure satisfactory execution of the documents required to carry out the sale); and

(ii) to perform any action or make any declaration necessary or appropriate to carry out the sale, including the appointment of advisers to accompany the sale process.

(e) The agent responsible for the sale shall include in the contract(s) of purchase and sale the usual, reasonable terms and conditions he considers appropriate to conclude the sale in the year following his appointment. The agent responsible for the sale shall organise the sales process in such a way as to ensure a divestment […].

(f) The costs of the services of the agent responsible for the sale shall be paid by Dexia.

**Implementation**

16. If a change occurs in the control of Dexia, the Commission may decide that some or all of the commitments set out above cease to apply. It shall take account of the effect of the proposed change on the long-term viability and competition and, in particular, shall apply the principle that the sale of the beneficiary of aid to a competitor in itself constitutes a form of compensation for any distortions of competition.

17. (a) The Belgian, French and Luxembourg authorities shall submit to the prior approval of the Commission, and at the latest one month after this final decision, a list of one to three persons, chosen in agreement with Dexia, to be appointed as independent expert responsible for detailed verification of the application of the commitments above (the 'independent expert').

(b) The independent expert must have the required skills and may not be exposed to conflicts of interest when performing his task.

(c) The Commission may either approve or reject the independent expert(s) proposed. If the Commission rejects the independent expert(s) proposed, Dexia and the Belgian, French and Luxembourg authorities shall propose, within one month of communication of the rejection, one to three new candidates who shall also have to be approved or rejected by the Commission.

(d) If all the candidates proposed are finally rejected by the Commission, the Commission shall designate an 'independent expert'.

(e) The costs of the services of the independent expert shall be paid by Dexia.

18. (a) Throughout the restructuring plan, the Commission shall have unrestricted access at all times to the information necessary to implement its decision approving the restructuring plan. With the agreement of the Belgian, French and Luxembourg authorities, it may apply to Dexia directly to obtain the required explanations and specifications. The Belgian, French and Luxembourg authorities and Dexia shall provide full cooperation with regard to all the verifications which the Commission or, where appropriate, the independent expert may request.

(b) The independent expert, in cooperation with Dexia, shall submit a half-yearly report to the Commission on the implementation of the commitments above. This report shall include a detailed account of the progress in the implementation of the restructuring plan and shall cover in particular: (i) the reduction in the size of the balance sheet as provided for in point 14 above, (ii) the liquidity and funding ratios as provided for in point 5 above; (iii) compliance with the RAROC commitment during the previous six months provided for in point 3 above; (iv) the divestments and closures of activities provided for in point 13 above, including the date of the divestment or closure, the book value of the assets at 31 December 2008, the value of the divestment, the capital gains or losses made and the details of the measures still to be implemented under the restructuring plan. This report shall also include the cost components and the calculation of the RAROC (mentioned in point 3 above) applicable for the six months following the submission of the report. This report shall be submitted no more than one month after the presentation of the half-yearly accounts and the approval of the annual accounts and in any event before 1 October and 30 April of each year.

(c) If, in his report presented before 1 October of each year, the independent expert considers it possible that the annual objectives provided for above may not be attained at the end of the year in progress, the Belgian, French and Luxembourg authorities shall present to the Commission, within a month of submission of the report, the measures planned with Dexia to enable these objectives to be attained by the appropriate means before the end of the year.

(d) If, in his report presented before 30 April of each year, the independent expert finds that the annual objectives provided for above have not been attained, the Belgian, French and Luxembourg authorities shall present to the Commission, within a month following the submission of the report, the measures planned with Dexia to enable these objectives to be attained by the appropriate means before 30 June of the current year.

19. If the measures envisaged under points 18(c) and 18(d) above are not presented within the time limit laid down or if the objectives are not attained by 30 June (concerning the measures presented, where appropriate, after the report to be filed by 30 April), the Commission may, pursuant to Regulation (EC) No 659/1999, reopen the formal investigation procedure. […]

**Revision of the commitments**

20. On the basis of a duly substantiated request by France, Belgium and Luxembourg, the Commission may:

(a) authorise Dexia to delay the divestment of one or more assets referred to in point 13 above; or

(b) authorise Dexia to substitute for the divestment of one or more assets referred to in point 13 above a divestment of assets representing an equivalent proportion of Dexia's balance sheet; or

(c) decide that one or more of the commitments set out above no longer applies;

(d) take account of Dexia's ability to cover its short-term funding need by mobilising its asset reserves eligible for repos if one or other of the indicators defined in point 5 is not achieved.

21. The Commission may take one of the decisions mentioned in the previous paragraph if it considers that such a decision is necessary, for example to maintain effective competition in the market or to restore financial stability in the event of a lasting financial or economic crisis, or if the trend in the economic environment, and notably the exchange rates, or accounting and prudential rules, so justify.

**Competition and transparency regarding the bank loans of the local authorities**

22. With a view to boosting competition and transparency still further regarding local authorities' bank loans, France undertakes to ensure that the local authorities develop their competitive procurement practices when procuring money or capital.

The State shall expressly issue recommendations along these lines to the local and regional authorities before the end of 2010, concerning both bank finance and the use of complex financial products.

These recommendations shall stress the inherent economic interest, in this sector, of implementing competitive procurement measures and shall indicate the different practical arrangements under which these measures can be implemented. The good practices advocated shall provide for the public nature of the competitive procurement for the largest borrowings.

These recommendations shall be brought to the attention of the departments responsible for providing the local and regional authorities in particular with assistance and advice. If these recommendations were to prove insufficient to ensure by 2013 the generalisation of transparent, non-discriminatory calls for tender by the local authorities for bank finance, France undertakes to make proposals for legally binding measures to this effect.

23. With a view to boosting competition and transparency still further regarding local authorities' bank loans, the Belgian Government, in agreement with the Regions, undertakes to monitor the publication by the contracting authorities of contract award notices relating to the financing of the local public authorities.

*ANNEX II*

1. Trend in the size of the balance sheet for the Core Division and Non-Core activities, including intra-division financing

*(EUR billion)*

| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
|---|---|---|---|---|---|---|
| Total Core assets | 419 | [390-410] | [385-415] | [345-380] | [335-365] | 353 |
| Total Non-core assets | 162 | [120-140] | [100-120] | [80-110] | [70-100] | 79 |

2. Total size of the group's consolidated balance sheet

*(EUR billion)*

| 31.12.2008 | 31.12.2009 | 31.12.2010 | 31.12.2011 | 31.12.2012 | 31.12.2013 | 31.12.2014 |
|---|---|---|---|---|---|---|
| 651 | 580 | [510-550] | [485-545] | | [405-465] | 427 |

3. Definition of RAROC under point 3(a) of the commitments

The RAROC is calculated using the following formula:

$$EC_{t=0} = \sum_{t=1}^{T} \frac{(Revenues_t - EL_t - Costs_t) \times (1 - taxes) + (EC_{t-1} - EC_t)}{(1 + RAROC)^t}$$

where:

EC = economic capital

EL = expected loss

Costs = costs allocated to the transaction under the business line

4. Definition of the group's short-term funding covered in point 5(a) of the commitments

The short-term funding referred to under point 5(a) comprises: repo operations of all kinds (with the central banks, bilateral or triparty), certificates of deposit and commercial paper, interbank deposits, fiduciary deposits, central bank deposits and other wholesale financing. This group is monitored by the liquidity competence centre within the group and its composition is subject to rules which will be transmitted to the independent expert.

5. Definition of the group's liabilities covered in point 5(b) of the commitments

The liabilities of the group referred to in point 5(b) comprise:

(i) the long-term stock of all the covered bonds issued by the group and issues in EMTN format (guaranteed, unguaranteed and placed on the interbank market or via the retail banking network);

(ii) the short-term stock of all the short-term funding recorded in the group's balance sheet.