Communication of the Commission — Temporary Union framework for State aid measures to support access to finance in the current financial and economic crisis

(Text with EEA relevance)

(2011/C 6/05)

1. The financial and economic crisis, its impact on the real economy and the need for temporary measures

1.1. *The financial and economic crisis and its impact on the real economy*

Since the beginning of the global financial and economic crisis in the autumn of 2008, the Commission has issued a number of Communications which provide detailed guidance on the criteria for the compatibility of Member States' support to banks and non-financial firms with the requirements of Article 107(3)(b) of the Treaty on the Functioning of the European Union (TFEU). In particular, the Communication from the Commission — Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis [1] (the temporary framework) was adopted on 19 January 2009.

The financial and economic crisis caused a serious downturn of the real economy, hitting households, business and jobs. Expectations on growth rapidly dropped and both trade and investments were quickly scaled down. Banks had, on the one hand, to deleverage and absorb losses and, on the other hand, to re-price risks, thereby becoming more risk-adverse. Even creditworthy businesses faced sudden problems in gaining access to finance [2].

The temporary framework was intended to provide Member States with the possibility to adopt additional State aid measures aimed at facilitating companies' access to finance and at the same time encouraging companies to continue investing in the future during these exceptional circumstances. The temporary framework is due to expire on 31 December 2010. By adopting a single framework applicable to all Member States, the Commission encouraged a coordinated action to ensure transparency and a level playing field for firms and Member States in the single market.

The temporary framework was consolidated and amended in February 2009 [3] and amended again in December 2009 [4] to introduce some technical adjustments, in particular as regards aid in the form of guarantees. In October 2009, the Commission introduced another amendment to the temporary framework in order to allow for a compatible limited amount of aid of EUR 15 000 for the agricultural sectors [5].

1.2. *Use of the temporary framework and the need to amend certain measures and replace it*

Since its adoption, Member States have made substantial use of the possibilities under the temporary framework. Evidence collected by the Commission shows that it constituted a useful additional instrument to secure credit flows to firms in times of crisis.

The Commission carried out a first evaluation of the temporary framework in October 2009, with a view to deciding whether it was necessary to maintain it after 31 December 2009. On 17 March 2010, a second public questionnaire was launched focusing on the impact of the temporary framework and its effectiveness in the reactivation of access to finance.

(1) OJ C 16, 22.1.2009, p. 1.
(2) See European Commission, Economic and Financial Affairs: *Interim Forecast 2010*, as well as IMF: *World Economic Outlook*, October 2010; See also ECB: *The Euro Area Bank Lending Survey*, October 2010 and ECB: *Survey on the access to finance of SMEs in the Euro area*, March to September 2010.
(3) Communication from the Commission — Temporary framework for State aid measures to support access to finance in the current financial and economic crisis (OJ C 83, 7.4.2009, p. 1).
(4) Communication from the Commission amending the Temporary Community Framework for State aid measures to support access to finance in the current financial and economic crisis (OJ C 303, 15.12.2009, p. 6).
(5) Communication from the Commission amending the Temporary Community Framework for State aid measures to support access to finance in the current financial and economic crisis (OJ C 261, 31.10.2009, p. 2).

In deciding on 'the phasing-out' of the measures currently set out in the temporary framework, consideration should be given to the following factors: on the one hand, the evolution of the economic situation and the capacity of financial institutions and markets to supply adequate funds to the creditworthy corporate sector; on the other hand, the appropriateness of the temporary framework as an instrument to sustain the economic recovery in the longer term and its effects on competition between firms and across Member States.

The economic recovery, which has slowly taken hold since the beginning of 2010, has been proceeding at a somewhat faster pace than expected earlier this year. While recovery is still fragile and uneven across the Union, some Member States are showing modest or even more robust growth rates. In addition, despite some pockets of vulnerability, in broad terms the health of the banking sector has improved compared with the situation one year ago. Lending activity to the private sector appears to have turned positive in line with past patterns. As the economic recovery gains firmer ground and concerns about fiscal sustainability are addressed, financial-market conditions should continue to gradually improve and provide support to the recovery. However, the uncertainty about the developments in particular market segments and countries remain ([6]). The future evolution of financing remains therefore uncertain and the risk persists that the banking system may not be ready to sustain the recovery when credit demand picks up unless banks fully address their restructuring needs.

In view of high volatility of financial markets and the uncertainty about the economic outlook, the prolongation of certain measures currently set out in the temporary framework until 31 December 2011, targeted at facilitating companies' access to finance is justified by market conditions. This is also the case for temporary aid for the production of green products considering that firms are still finding it difficult to gain access to finance for the production of more environmentally friendly products due to the financial and economic crisis.

However, the continued availability of aid measures pursuant to Article 107(3)(b) TFEU in the face of exceptional market conditions should not obstruct the process of disengagement from temporary extraordinary support measures. With regard to the banking sector, the Economic and Financial Affairs Council of 2 December 2009 concluded on the necessity to design a strategy for the phasing out of support measures which should be transparent and duly coordinated among Member States to avoid negative spill-over effects. Consequently, the Commission already implemented the first step of a gradual exit process for banks in 2010 ([7]).

For the temporary framework measures, no such steps have yet been undertaken. Therefore, the Commission considers that a limited prolongation of certain measures currently set out in the temporary framework, accompanied by the introduction of stricter conditions on the prolonged measures, constitutes a central element of a gradual return to normal State aid rules, while limiting their impact on competition. In particular, by decreasing the applicable reductions and by introducing stricter conditions for large companies in comparison to those for SMEs.

Moreover, aid measures should be targeted to investments which contribute to a long term sustainable economy by providing support to viable firms. Even in periods of financial and economic crisis, a necessary restructuring of ailing firms should take place in order to put them on a sound footing in the long term. This is essential in order not to delay the necessary restructuring of the economy and thus deepen the recession and its long term effects. Therefore, in the future, firms in economic difficulty should not benefit from the temporary framework measures.

([6]) See also European Commission, Economic and Financial Affairs: *Autumn Forecast 2010* (29 November 2010).

([7]) Since 1 July 2010, the Commission has applied tighter conditions for the compatibility of government guarantees under Article 107(3)(b) TFEU. See Directorate General Competition Commission Staff Working Document of 30 April 2010: The application of State aid rules to Government Guarantee schemes covering bank debt to be issued after 30 June 2010.

The provision of a compatible limited amount of aid was introduced in the temporary framework as an extraordinary measure to provide Member States with an additional instrument during the time when the financial and economic crisis hit hardest even if it was not targeted to any particular objective. It is important to indicate that this measure falls within the scope of Article 107(1) TFEU since it exceeds the threshold of EUR 200 000 per company indicated in the Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid [8] (the *de minimis* Regulation).

In the entire period of application of the temporary framework, this measure has been used by most Member States (23 schemes in 23 Member States). However, only a very small percentage of the funds allocated by the Member States and approved by the Commission under this measure have been actually paid out (around 7 %). Furthermore, the bulk of aid disbursed under this measure is concentrated in one Member State, Germany (over 78 % of the funds granted), while Member States like Italy or the United Kingdom have respectively spent 8 % and 1,1 % of the total expenditure on this measure [9].

It follows, therefore, that, if this measure might have been useful as a short-term instrument when the uncertainty of the economic outlook was at the highest, it has also given rise to disparities in the internal market. The Commission therefore believes that, in the context of a phasing-out strategy, we should return to State aid measures which are less distortive and more growth-oriented, in particular by requesting a counterpart from the beneficiaries which aims at a particular common interest objective. Hence, the Commission considers that the compatible limited amount of aid measure should not be continued after 31 December 2010. This will be without prejudice to applications made before the end of that year on the basis of schemes approved by the Commission, which still need to be processed after that date.

The temporary adaptations of the Community guidelines on state aid to promote risk capital investments in small and medium-sized enterprises [10] (the Risk Capital Guidelines) gave a positive signal to Member States and market participants. Data suggest that the financial and economic crisis has left an impact on venture capital markets and that the upper boundary of the SME equity gap has grown. The Commission therefore considers that the increased maximum permitted tranches of finance per SME over a period of twelve months can be applied also outside the context of the financial and economic crisis. The Commission will amend accordingly the Risk Capital Guidelines based on Article 107(3)(c) TFEU.

Finally, concerning access to trade financing instruments, it appears from the data available and the information submitted by the Member States, that market conditions have been slowly improving; nevertheless, companies still find it difficult to find coverage from private insurers in many sectors and many Member States. Consequently, the procedural simplification introduced by the temporary framework on the Communication on short-term export credit insurance [11] is still justified during 2011.

As certain measures set out in the temporary framework have already been amended and now need to be further amended to suit the current economic situation, in the interests of clarity, it is appropriate to replace the existing temporary framework by this Communication.

[8] OJ L 379, 28.12.2006, p. 5.
[9] Based on data submitted by the Member States in reply to the Commission's questionnaire on the application of the Temporary Framework, public consultation held between 18.3.2010 to 26.4.2010. No reply was given by Portugal and Slovakia and no data were submitted by France as regards this measure.
[10] OJ C 194, 18.8.2006, p. 2.
[11] The Communication from the Commission to Member States pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export-credit insurance (OJ C 281, 17.9.1997, p. 4).

2. **Applicability of Article 107(3)(b)**

2.1. *General principles*

Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid 'to remedy a serious disturbance in the economy of a Member State'. In this context, the General Court ruled that the disturbance must affect the whole of the economy of the Member State concerned, and not merely that of one of its regions or parts of its territory. This, moreover, is in line with the need to interpret strictly any derogating provision such as Article 107(3)(b) TFEU ([12]).

This strict interpretation has been consistently applied by the Commission ([13]) in its decision-making.

In this context, the Commission considers that, beyond emergency support for the financial system, the current global crisis may still require exceptional policy responses. As all Member States are affected by this crisis, albeit in different ways and to different degrees, and given the current degree of integration of both national European economies and financial markets, together with their current fragility, there is an increased risk of serious spillovers of an individual crisis into the general system. Therefore, the availability of the recourse to Article 107(3)(b) TFEU should remain a possibility for the Member States when duly justified.

In light of the seriousness of the current financial and economic crisis and its impact on the overall economy of the Member States, the Commission considers that certain categories of State aid may be justified, for a limited period, to remedy those difficulties and that they may be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU.

Therefore, Member States must show that the State aid measures notified to the Commission under this framework are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of the Member State concerned and that all the conditions are fully respected.

2.2. *Compatible limited amount of aid*

The Commission will consider such State aid compatible with the internal market on the basis of Article 107(3)(b) TFEU, provided that all the following conditions are met:

(a) the beneficiary has submitted a complete application no later than 31 December 2010 under a national aid scheme approved by the Commission in accordance with the temporary framework and no later than 31 March 2011 for undertakings active in the primary production of agricultural products ([14]);

(b) the aid does not exceed a cash grant of EUR 500 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charge; where aid is awarded in a form other than a grant, the aid amount is the gross grant equivalent of the aid;

(c) the aid is granted in the form of a scheme;

([12]) Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen, Volkswagen AG and Volkswagen Sachsen GmbH* v *Commission* [1999] ECR II-3663, paragraph 167.

([13]) Commission Decision 98/490/EC in Case C 47/96 *Crédit Lyonnais* (OJ L 221, 8.8.1998, p. 28), point 10.1; Commission Decision 2005/345/EC in Case C 28/02 *Bankgesellschaft Berlin* (OJ L 116, 4.5.2005, p. 1), points 153 *et seq*.; and Commission Decision 2008/263/EC in Case C 50/06 *BAWAG* (OJ L 83, 26.3.2008, p. 7), point 166. See Commission Decision in Case NN 70/07 *Northern Rock* (OJ C 43, 16.2.2008, p. 1), Commission Decision in Case NN 25/08 *Rescue aid to Risikoabschirmung WestLB* (OJ C 189, 26.7.2008, p. 3) and Commission Decision of 4 June 2008 in State aid C 9/08 *SachsenLB* (OJ L 104, 24.4.2009, p. 34).

([14]) As defined in Article 2(3) and (4) of Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products and amending Regulation (EC) No 70/2001 (OJ L 358, 16.12.2006, p. 3).

(d) the aid is granted to firms which were not in difficulty [15] on 1 July 2008; it may be granted to firms that were not in difficulty at that date but entered in difficulty thereafter as a result of the global financial and economic crisis;

(e) the aid scheme does not apply to firms active in the fisheries sector;

(f) the aid is not export aid or aid favouring domestic over imported products;

(g) the aid scheme may apply as such to undertakings active in the processing and marketing of agricultural products [16], unless the aid is conditional on being partly or entirely passed on to primary producers. Where the aid is granted to undertakings active in the primary production of agricultural products [17] (either directly or passed on from undertakings processing and marketing agricultural products), the cash grant (or gross grant equivalent) does not exceed EUR 15 000 per undertaking; aid to undertakings active in the primary production of agricultural products is not fixed on the basis of the price or quantity of products put on the market; aid to undertakings active in the processing and marketing of agricultural products is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned.

(h) the Member State obtains a declaration from the undertaking concerned, in written or electronic form, about any other de minimis aid and aid pursuant to this measure received during the current fiscal year and checks that the aid will not raise the total amount of aid received by the undertaking during the period from 1 January 2008 to 31 December 2011, to a level above the ceiling of EUR 500 000 and of EUR 15 000 respectively in case of aid to undertakings active in the primary production of agricultural products;

(i) the aid is granted no later than 31 December 2011;

(j) the national aid scheme authorising the grant of the aid after 31 December 2010 is notified by the Member State and authorised by the Commission pursuant to Article 108(3) TFEU.

2.3. *Aid in the form of guarantees*

In order further to encourage access to finance and to reduce the current high risk aversion on the part of banks, subsidised loan guarantees for a limited period can be an appropriate and well targeted solution to give firms easier access to finance.

The Commission will consider such State aid compatible with the internal market on the basis of Article 107(3)(b) TFEU, provided that all the following conditions are met:

(a) for SMEs, Member States grant a reduction of up to 15 % of the annual premium to be paid for new guarantees granted in accordance with the safe-harbour provisions asset out in the Annex;

(15) As defined in point 2.1 of Communication from the Commission — the Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 2).
(16) As defined in Article 2(3) and (4) of Regulation (EC) No 1857/2006.
(17) As defined in Article 2(2) of Regulation (EC) No 1857/2006.

(b) for large companies, Member States may calculate the annual premium for new guarantees on the basis of the safe-harbour provisions set out in the Annex;

(c) when the aid element in guarantee schemes is calculated through methodologies already accepted by the Commission following their notification under a regulation adopted by the Commission in the field of State aid ([18]), Member States may also grant a similar reduction of up to 15 % of the annual premium to be paid for new guarantees for SMEs;

(d) the maximum loan does not exceed the total annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the company site but formally in the payroll of subcontractors) for 2010. In the case of companies created on or after 1 January 2010, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; for investments loans, Member States may choose to calculate the maximum loan on the basis of the annual EU 27 average labour costs ([19]);

(e) guarantees are granted until 31 December 2011 at the latest;

(f) the guarantee does not exceed 80 % of the loan for the duration of the loan;

(g) for SMEs, the guarantee may relate to both investment and working capital loans; for large companies, the guarantee may relate to investment loans only;

(h) the reduction of the guarantee premium for SMEs is applied during a maximum period of two years following the granting of the guarantee. If the duration of the underlying loan exceeds two years, Member States may apply for an additional maximum period of eight years the safe-harbour premiums set out in the Annex without reduction; for large companies, Member States may apply the safe-harbour provisions set out in the Annex for a maximum period of 10 years;

(i) firms in difficulty ([20]) are excluded from the scope of application of the measure.

2.4. *Aid in the form of subsidised interest rate*

Companies may have difficulties in finding finance in the current market circumstances. Therefore the Commission will accept that public or private loans are granted at an interest rate which is at least equal to the central bank overnight rate plus a premium equal to the difference between the average one year interbank rate and the average of the central bank overnight rate over the period from 1 January 2007 to 30 June 2008, plus the credit risk premium corresponding to the risk profile of the recipient, as stipulated by the Commission Communication on the revision of the method for setting the reference and discount rates ([21]).

The aid element contained in the difference between this interest rate and the reference rate defined by the Communication from the Commission on the revision of the method for setting the reference and discount rates will be considered, on a temporary basis, to be compatible with the Treaty on the basis of Article 107(3)(b) TFEU, provided that all the following conditions are met:

([18]) Such as Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General Block Exemption Regulation) (OJ L 214, 9.8.2008, p. 3), Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid (OJ L 302, 1.11.2006, p. 29), or Regulation (EC) No 1857/2006, provided that the approved methodology explicitly addresses the type of guarantees and the type of underlying transactions at stake.

([19]) Source: Eurostat. Last information available EU 27 2007. Monthly labour costs: EUR 3 028.

([20]) See footnote 15.

([21]) OJ C 14, 19.1.2008, p. 6.

(a) this method applies to all contracts concluded on 31 December 2011 at the latest; it may cover loans of any duration; the reduced interest rates may be applied for interest payments until 31 December 2013 [22]; an interest rate at least equal to the rate defined in the reference and discount rate Communication must apply to loans after that date;

(b) for SMEs, the reduced interest rates may relate to both investment and working capital loans; for large companies, it may relate to investment loans only;

(c) firms in difficulty [23] are excluded from the scope of application of the measure.

2.5. *Aid for the production of green products*

Because of the current financial and economic crisis, companies are also finding it more difficult to gain access to finance for the production of more environmentally friendly products. Aid in the form of guarantees may not be sufficient to finance costly projects aimed at increasing environmental protection by adapting earlier to future standards not yet in force or by going beyond such standards.

The Commission considers that environmental goals should remain a priority despite the financial and economic crisis. The production of more environmentally friendly, including resource and energy-efficient, products, is in line with the Europe 2020 Strategy, is in the Union's interest and it is important that the crisis should not impede that objective.

Therefore, additional measures in the form of subsidised loans could encourage the production of 'green products'. However, subsidised loans may cause serious distortions of competition and should be strictly limited to specific situations and targeted investment.

The Commission considers that, for a limited period, Member States should be given the possibility of granting aid in the form of an interest-rate reduction.

On the basis of Article 107(3)(b) TFEU, the Commission will consider compatible with the internal market any interest-rate subsidy for investment loans, provided that all the following conditions are met:

(a) the aid relates to investment loans for financing projects consisting of the production of new products which significantly improve environmental protection [24];

(b) the aid is necessary for launching a new project; in the case of existing projects, aid may be granted if it becomes necessary, due to the new economic situation, in order to pursue the project;

(c) the aid is granted only for projects consisting of the production of products involving early adaptation to or going beyond future Union product standards [25] which increase the level of environmental protection and are not yet in force;

(d) for products involving early adaptation to or going beyond future Union environmental standards, the investment starts on 31 December 2011 at the latest with the objective of putting the product on the market at least two years before the standard enters into force;

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(22) Member States who want to use this facility have to publish the daily overnight rates online and have to make them available to the Commission.

(23) See footnote 15.

(24) As defined in point 70.1 of section 2.2 (definitions) of the Community guidelines on State aid for environmental protection (OJ C 82, 1.4.2008, p. 1).

(25) Future Union product standard means a mandatory Union standard setting environmental levels to be attained for products sold in the Union which has been adopted but is not yet in force.

(e) loans may cover the costs of investment in tangible and intangible assets [26] with the exception of loans for investments which account for production capacities of more than 3 % on product markets [27] where the average annual growth rate, over the last five years before the start of the investment, of the apparent consumption on the EEA market, measured in value data, remained below the average annual growth rate of the European Economic Area's GDP over the same five year reference period;

(f) the loans are granted on 31 December 2011 at the latest;

(g) for the calculation of the aid, the starting point should be the individual rate of the beneficiary as calculated on the basis of the methodology contained in point 2.3 of this Communication. On the basis of that methodology, the company may benefit from an interest-rate reduction of:

— 15 % for large companies;

— 25 % for SMEs;

(h) the subsidised interest rate applies during a maximum period of two years following the granting of loan;

(i) the reduction in the interest rate may be applied to loans granted by the State or public finance institutions and to loans granted by private financial institutions. Non-discrimination between public and private entities should be ensured;

(j) firms in difficulty [28] are excluded from the scope of application of the measure;

(k) Member States ensure that the aid is not directly or indirectly transferred to financial entities.

2.6. *Cumulation*

The aid ceilings fixed under this Communication will be applied regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the Union.

The temporary aid measures provided for by this Communication may not be cumulated with aid falling within the scope of the *de minimis* Regulation for the same eligible costs.

The temporary aid measures may be cumulated with other compatible aid or with other forms of Union financing provided that the maximum aid intensities indicated in the relevant guidelines or block exemptions Regulations are respected.

In case of co-financing with the EU Structural Funds and other EU financing instruments, the applicable rules must be respected.

3. Simplification measures

3.1. *Short-term export credit insurance*

The Communication of the Commission to Member States pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export-credit insurance [29] stipulates that marketable risks cannot be covered by export-credit insurance with the support of Member States. Marketable risks are commercial and political risks on public and non-public debtors established in countries listed in the Annex to that Communication, with a maximum risk period of less than two years. Risks concerning debtors established in the Member States and eight further members of the Organisation for Economic Co-operation and Development are considered marketable.

The Commission considers that, as a consequence of the current financial and economic crisis, a lack of insurance or reinsurance capacity does not exist in every Member State, but it cannot be excluded that, in certain countries cover for marketable risks could be temporarily unavailable.

[26] As defined in point 70 of the Community guidelines on State aid for environmental protection.
[27] As defined in point 69 of the Guidelines on national regional aid for 2007-2013.
[28] See footnote 15.
[29] OJ C 281, 17.9.1997, p. 4.

Point 4.4 of the Communication states that: '… In such circumstances, those temporarily non-marketable risks may be taken on to the account of a public or publicly supported export-credit insurer for non-marketable risks insured for the account of or with the guarantee of the State. The insurer should, as far as possible, align its premium rates for such risks with the rates charged elsewhere by private export-credit insurers for the type of risk in question.

Any Member State intending to use that escape clause should immediately notify the Commission of its draft decision. That notification should contain a market report demonstrating the unavailability of cover for the risks in the private insurance market by producing evidence thereof from two large, well-known international private export-credit insurers as well as a national credit insurer, thus justifying the use of the escape clause. It should, moreover, contain a description of the conditions which the public or publicly supported export-credit insurer intends to apply in respect of such risks.

Within two months of the receipt of such notification, the Commission will examine whether the use of the escape clause is in conformity with the above conditions and compatible with the Treaty.

If the Commission finds that the conditions for the use of the escape clause are fulfilled, its decision on compatibility is limited to two years from the date of the decision, provided that the market conditions justifying the use of the escape clause do not change during that period.

Furthermore, the Commission may, in consultation with the other Member States, revise the conditions for the use of the escape clause; it may also decide to discontinue it or replace it with another appropriate system.'

Those provisions, applicable to large companies and SMEs, are an appropriate instrument in the current economic situation if Member States consider that cover is unavailable on the private insurance market for certain marketable credit risks and/or for certain buyers of risk protection.

In this context, in order to speed up the procedure for Member States, the Commission considers that, until 31 December 2011, Member States may demonstrate the lack of a market by providing sufficient evidence of the unavailability of cover for the risk in the private insurance market. Use of the escape clause will in any case be considered justified if:

(a) a large well-known international private export credits insurer and a national credit insurer produce evidence of the unavailability of such cover; or

(b) at least four well-established exporters in the Member State produce evidence of refusal of cover from insurers for specific operations.

The Commission, in close cooperation with the Member States concerned, will ensure swift adoption of decisions concerning the application of the escape clause.

4. Monitoring and reporting

Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([30]) and Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([31]) require Member States to submit annual reports to the Commission.

Member States must ensure that detailed records regarding the granting of aid provided for by this Communication are maintained. Such records, which must contain all information necessary to establish that the necessary conditions have been observed, must be maintained for a period of 10 years and be provided to the Commission upon request.

In addition, a report on the measures put in place on the basis of this Communication should be provided to the Commission by the Member States by 15 September 2011 at the latest.

([30]) OJ L 83, 27.3.1999, p. 1.
([31]) OJ L 140, 30.4.2004, p. 1.

The Commission may request additional information regarding the aid granted, to check whether the conditions laid down in the Commission decision approving the aid measure have been met.

5. Final provisions

This Communication applies from 1 January 2011 to 31 December 2011.

It is justified by the current exceptional and transitory financing problems related to the banking crisis. After consulting Member States, the Commission may review it before 31 December 2011 on the basis of important competition policy or economic considerations. Where this would be helpful, the Commission may also provide further clarifications of its approach to particular issues.

This Communication shall not apply to the following aid:

(a) aid schemes which do not explicitly exclude the payment of individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission Decision declaring an aid illegal and incompatible with the internal market;

(b) *ad hoc* aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission Decision declaring an aid illegal and incompatible with the internal market.

In accordance with the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid [32], the Commission will apply the following in respect of non-notified aid:

(a) this Communication, if the aid was granted after 1 January 2011;

(b) the guidelines applicable when the aid was granted in all other cases.

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[32] OJ C 119, 22.5.2002, p. 22.

ANNEX

Safe-harbour premiums — Temporary Framework in basis points (*)			
Rating category (Standard & Poor's)	Collateralisation		
	High	Normal	Low
AAA	40	40	40
AA + AA AA –	40	40	40
A + A A –	40	55	55
BBB + BBB BBB –	55	80	80
BB + BB	80	200	200
BB – B +	200	380	380
B B –	200	380	630
CCC and below	380	630	980

(*) For companies which do not have a credit history or a rating based on a balance sheet approach (such as certain special purpose companies or start-up companies), Member States may grant a reduction of up to 15 % on the specific safe-harbour premium set at 3,8 % in the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (1). However, the premium can never be lower than the premium which would be applicable to the parent company or companies.
(1) OJ C 155, 20.6.2008, p. 10.