

## II

(Non-legislative acts)

## DECISIONS

## COMMISSION DECISION

of 28 December 2012

**on State aid SA.33760 (12/N-2, 11/C, 11/N); SA.33763 (12/N-2, 11/C, 11/N); SA.33764 (12/N-2, 11/C, 11/N); SA.30521 (MC 2/10); SA.26653 (C9/09); SA.34925 (12/N-2, 12/C, 12/N); SA.34927 (12/N-2, 12/C, 12/N); SA.34928 (12/N-2, 12/C, 12/N) implemented by the Kingdom of Belgium, the French Republic and the Grand Duchy of Luxembourg in favour of Dexia, DBB/Belfius and DMA**

(notified under document C(2012) 9962)

(Only the French text is authentic)

(Text with EEA relevance)

(2014/189/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 <sup>(1)</sup>,

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 said articles <sup>(2)</sup>, and having regard to those comments,

Whereas:

### 1. PROCEDURE

#### 1.1. PROCEDURE PRIOR TO THE CONDITIONAL AUTHORISATION DECISION

- (1) By decision of 19 November 2008 <sup>(3)</sup>, the Commission decided not to raise any objections to the emergency measures concerning a liquidity assistance operation ('the LA operation') and a guarantee for certain of Dexia's liabilities <sup>(4)</sup>. The Commission considered these measures to be rescue aid for an enterprise in difficulty and therefore compatible with the internal market on the basis of Article 107(3)(b) TFEU, 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.
- (2) An initial restructuring plan for Dexia was notified to the Commission by Belgium, France and Luxembourg ('the Member States concerned') on 16, 17 and 18 February 2009 respectively.

<sup>(1)</sup> With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of 'Community' by 'Union', 'common market' by 'internal market' and 'Court of First Instance' by 'General Court'. The terminology of the TFEU will be used throughout this Decision.

<sup>(2)</sup> OJ C 146, 12.5.1998, p. 6 and OJ C 210, 1.9.2006, p. 12.

<sup>(3)</sup> C(2008) 7388 final.

<sup>(4)</sup> In this Decision, 'Dexia' or 'the Group' denotes Dexia SA and all its subsidiaries. Entities disposed of are thus excluded from the Group from the date of their disposal.

- (3) By decision of 13 March 2009, the Commission decided to initiate the procedure laid down in Article 108(2) TFEU in respect of all the aid measures granted to Dexia <sup>(5)</sup>.
- (4) By decision of 30 October 2009 <sup>(6)</sup>, the Commission authorised the prolongation of the guarantee until 28 February 2010 or until the date of the Commission decision concerning the compatibility of the aid measures and the restructuring plan for Dexia.
- (5) On 9 February 2010, the Member States concerned forwarded information to the Commission on the additional measures planned to supplement the initial restructuring plan for Dexia.

#### 1.2. THE CONDITIONAL AUTHORISATION DECISION AND THE MONITORING OF ITS IMPLEMENTATION

- (6) By decision of 26 February 2010 <sup>(7)</sup> ('the conditional authorisation decision'), the Commission approved the restructuring plan for Dexia and the conversion of the emergency aid into restructuring aid subject to compliance with all the commitments and conditions set out in that decision.
- (7) The aid granted to Dexia from September 2008, approved by the Commission in its conditional authorisation decision, comprised:
  1. a recapitalisation of a total of EUR 6 billion, EUR 5,2 billion of which could be imputed to the French and Belgian States and was deemed to be aid (the remaining EUR 0,8 billion did not constitute aid as it could not be imputed to the Member States concerned);
  2. a guarantee by the French and Belgian States in respect of an impaired asset portfolio, the aid component of which was assessed at EUR 3,2 billion;
  3. an emergency liquidity assistance ('ELA') operation by the Banque Nationale de Belgique ('BNB' — National Bank of Belgium) guaranteed by the Belgian State and drawn down in essence between October and November 2008; and
  4. a guarantee by the Belgian, French and Luxembourg States in respect of the refinancing of the Group of a maximum amount of EUR 135 billion <sup>(8)</sup>.
- (8) In order to monitor the proper implementation of the commitments and conditions, an independent trustee acting on behalf of the Commission ('the independent trustee') and able to carry out all the necessary checks, was to submit a detailed report to the Commission every six months.
- (9) In his report of 30 November 2010, the independent trustee considered that three commitments had not been complied with:
  1. the obligation to notify the Commission in advance of any payment of coupons on Tier 1 or Upper Tier 2 hybrid instruments issued before 1 February 2010, as provided in Article 2(2) of the conditional authorisation decision;
  2. the prohibition on Dexia, pursuant to point 3 of its commitments, to lend to its customers in the public or semi-public sector <sup>(9)</sup> at a 'Risk Adjusted Return On Capital' ('RAROC') level of less than a minimum of 10 %; and

<sup>(5)</sup> OJ C 181, 4.8.2009, p. 42.

<sup>(6)</sup> OJ C 305, 16.12.2009, p. 3.

<sup>(7)</sup> OJ L 274, 19.10.2010, p. 54.

<sup>(8)</sup> This amount also included a guarantee by the Belgian State in respect of the ELA operation undertaken by the BNB in favour of Dexia.

<sup>(9)</sup> This commitment was not complied with in [...] of a sample of 299 loans concluded between 31 March 2010 and 30 June 2010.

3. the obligation, pursuant to point 13(c) of the commitments, taken in conjunction with paragraph 8 of the mandate contract, that the purchaser of the subsidiary AdInfo be independent from Dexia and in a position to correct the distortions of competition discussed in Section 4 of 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 ('the Bank Restructuring Communication')<sup>(10)</sup>.
- (10) In his report of 29 April 2011, the independent trustee considered that, in addition to the failures of compliance noted in his report of 30 November 2010, four commitments had not been complied with:
1. Dexia had again failed to comply with the conditions laid down in Article 2(2) of the conditional authorisation decision concerning the obligation to notify the Commission in advance of any payment of coupons on Tier 1 or Upper Tier 2 hybrid instruments issued before 1 February 2010;
  2. of a sample of 2 805 loans, [80-150] (\*) loans concluded between 1 July 2010 and 31 December 2010, of a total value of over EUR [0,5-1,5] billion, had a RAROC of less than 10 %, breaching point 3 of the commitments;
  3. the stable funding ratio at 31 December 2010 was not above the level of 40 % required by point 5(c) of the commitments; and
  4. on 31 December 2010, Dexia's consolidated balance sheet total, adjusted to take account of the change in the market value of the derivatives included in Dexia's balance sheet, was some EUR [10-20] billion greater than the ceiling of EUR [510-550] billion laid down in point 14(a) of the commitments and Annex II to the conditional authorisation decision. On the same date, the balance sheet total of the 'Core Division' was some EUR [10-20] billion greater than the ceiling of EUR [390-410] billion laid down in point 14 of the commitments and Annex II to the conditional authorisation decision.
- (11) In his report of 26 September 2011, the independent trustee considered that, in addition to the failures of compliance noted in his reports of 30 November 2010 and 29 April 2011, two commitments had not been complied with:
1. of a sample of 1 455 loans, [120-170] loans concluded between 1 January 2011 and 30 June 2011, of a total value of over EUR [0,5-1,5] billion, had a RAROC of less than 10 %, breaching point 3 of the commitments;
  2. Dexia Sabadell<sup>(11)</sup> had, on 28 February 2011, called in a discretionary early repayment option on a Tier 2 instrument<sup>(12)</sup>, breaching point 9(c) of the commitments.
- (12) In his report of 22 May 2012, the independent trustee considered that, in addition to the failures of compliance noted in his reports of 30 November 2010, 29 April 2011 and 26 September 2011, three commitments had not been complied with:
1. of a sample of 1 468 loans, [50-100] loans concluded between 1 July 2011 and 31 December 2011, of a total value of over EUR [550-575] million, had a RAROC of less than 10 %, breaching point 3 of the commitments;

<sup>(10)</sup> 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 (OJ C 195, 19.8.2009, p. 9).

(\*) Confidential information

<sup>(11)</sup> Dexia Sabadell is a bank established in Spain, specialising in public sector financing. Dexia Crédit Local had a 60 % holding (and Banco Sabadell a 40 % holding).

<sup>(12)</sup> Namely a loan of EUR [6,5-7] million made to it by Banco Sabadell, which is outside the Dexia fold.

2. the level of the stable funding ratio at 31 December 2011 was [30 - < 45] %. It was not therefore above 45 %, as required by point 5(c) of the commitments; and
  3. on 31 December 2011, the sale of Dexia Bank Denmark A/S, the Danish subsidiary of Dexia BIL, had not taken place, breaching point 13(g)(ii) of the commitments.
- (13) In his report of 5 October 2012 on the implementation of the commitments by Dexia (excluding Dexia Banque Belgique (wholly-owned subsidiary of Dexia SA, 'DBB/Belfius') for the whole of the period covered by this report, namely from 1 January 2012 to 30 June 2012), the independent trustee considered that, in addition to the failures of compliance noted in his reports of 30 November 2010, 29 April 2011, 26 September 2011 and 22 May 2012, the commitment relating to the RAROC had not been complied with, breaching point 3 of the commitments. Of a sample of 218 loans, [15-20] loans concluded between 1 January 2012 and 30 June 2012, of a total value of over EUR [100-125] million, had a RAROC of less than 10 %.
- (14) In accordance with the conditional authorisation decision, Dexia had undertaken to sell or float on the stock exchange its 70 % holding in its Italian subsidiary, Dexia Crediop, by 31 October 2012. The independent trustee noted in his report of 5 October 2012 that Dexia had not provided any information on the implementation of this commitment during the first half of 2012. On the basis of the information provided for preceding reports, however, the independent trustee continued to believe that Crediop had not [...] and was not therefore [...] <sup>(13)</sup>.

### 1.3. PROCEDURES SUBSEQUENT TO THE CONDITIONAL AUTHORISATION DECISION

- (15) Since the summer of 2011 Dexia has encountered further difficulties. The Member States concerned have therefore implemented additional aid measures and are envisaging the adoption of new aid.

#### 1.3.1. Procedure relating to the sale and restructuring of DBB/Belfius

- (16) On 7 October 2011, the Belgian authorities notified to the Commission the planned acquisition of DBB/Belfius by the Belgian State. On 12 October 2011, Belgium notified to the Commission measures additional to the restructuring plan approved by the conditional authorisation decision, consisting in the acquisition of DBB/Belfius by the Belgian State by purchasing 100 % of the shares of DBB/Belfius from Dexia SA for a price of EUR 4 billion.
- (17) By decision of 17 October 2011 ('opening decision on the sale of DBB/Belfius') <sup>(14)</sup>, the Commission opened a formal investigation procedure into the measure involving the sale of DBB/Belfius by Dexia and its acquisition by the Belgian State. This measure concerned the acquisition by the Belgian State of DBB/Belfius and its subsidiaries <sup>(15)</sup>, with the exception of Dexia Asset Management ('DAM'). In the interests of preserving financial stability, the Commission also decided temporarily to approve this measure. It was therefore approved for six months from the opening decision on the sale of DBB/Belfius (namely until and including 16 April 2012) or — if Belgium submitted a restructuring plan for DBB/Belfius within six months of the date of the opening decision on the sale of DBB/Belfius — until such time as the Commission adopted a final decision on the measure. The sale of DBB/Belfius took place on 20 October 2011. On 1 March 2012, the company, known until then as Dexia Banque Belgique, officially announced its new name: Belfius <sup>(16)</sup>. From that date, DBB no longer had any capital links with Dexia.
- (18) The Commission received comments from third parties interested in this matter. It forwarded them to Belgium inviting it to comment on them, and received Belgium's comments by letter dated 19 April 2012.
- (19) On 17 April 2012, Belgium submitted a restructuring plan for DBB/Belfius. Between 17 April 2012 and 23 November 2012 there were many meetings, telephone conferences and submissions of additional information.

<sup>(13)</sup> Paragraph 1.16.1 of the final version of the independent trustee's fifth report on Dexia SA of 5 October 2012.

<sup>(14)</sup> OJ C 38, 11.2.2012, p. 12.

<sup>(15)</sup> Including Dexia Insurance Belgium which brought together the subsidiaries, trade marks and distribution channels for insurance products (DVV, Corona Direct and DLP).

<sup>(16)</sup> In this decision, 'DBB/Belfius' denotes the entity called Dexia Banque Belgique until 29 February 2012 and then Belfius from 1 March 2012, the official date of the bank's change of name.

- (20) On 26 November 2012, Belgium notified to the Commission the final version of the restructuring plan for DBB/Belfius.
- (21) On 21 December 2012, Belgium notified to the Commission a letter of its commitments in relation to DBB/Belfius.

### 1.3.2. Procedure relating to the restructuring/resolution of Dexia and the refinancing guarantee

- (22) On 18 October 2011, the Member States concerned informed the Commission of a set of potential new measures connected with a new plan for the resolution or dismantling of Dexia. As part of this set of new measures, on 21 October 2011 Belgium notified to the Commission an emergency liquidity assistance ('ELA') measure granted to DBB/Belfius by the BNB.
- (23) On 14 December 2011, France, Belgium and Luxembourg also notified to the Commission, as part of this set of new measures, a draft temporary guarantee by the Member States concerned in respect of the refinancing of Dexia SA and Dexia Crédit Local ('DCL').
- (24) By decision of 21 December 2011 ('the temporary approval decision')<sup>(17)</sup>, in the interests of preserving financial stability, the Commission decided temporarily to approve the temporary refinancing guarantee until 31 May 2012. However, in that decision, the Commission opened a formal investigation procedure in relation to all the additional measures for the restructuring of Dexia since the adoption of the conditional authorisation decision (including the temporary refinancing guarantee) in view of the fact that the temporary refinancing guarantee, the acquisition of DBB/Belfius by Belgium and the failures to comply with the commitments and conditions of the conditional authorisation decision represented a substantial modification of Dexia's restructuring conditions.
- (25) On 23 March 2012, Luxembourg notified the Commission of the sale of Dexia Banque Internationale à Luxembourg ('Dexia BIL'). Some assets were excluded from the scope of the sale. Precision Capital SA — a Qatari investment group — was to acquire 90 % of Dexia BIL, and the remaining 10 % was to be acquired by the State of Luxembourg. By decision of 3 April 2012<sup>(18)</sup>, the Commission opened a formal investigation procedure into the sale of Dexia BIL. By decision of 25 July 2012<sup>(19)</sup>, the Commission authorised the sale of Dexia BIL.
- (26) On 21 and 22 March 2012, the Member States concerned notified to the Commission an initial orderly resolution plan for Dexia ('the initial orderly resolution plan for Dexia').
- (27) On 25 May 2012, the Member States concerned notified to the Commission a request to extend the issue window for the temporary refinancing guarantee until 30 September 2012.
- (28) On 31 May 2012, the Commission adopted two decisions.
- (29) In the first decision ('the decision to extend the procedure'), it decided to extend the formal investigation procedure to all the additional measures for the restructuring of Dexia, in order to examine the initial orderly resolution plan for Dexia submitted by the Member States concerned on 21 and 22 March 2012<sup>(20)</sup>. It also invited the Member States concerned to submit their comments and to provide any information on the recapitalisation of Dexia by Arcofin relevant to establishing whether or not the conditional authorisation decision should be revoked (see recitals 41 and 42 below).

<sup>(17)</sup> OJ C 345, 13.11.2012, p. 50.

<sup>(18)</sup> OJ C 137, 12.5.2012, p. 19.

<sup>(19)</sup> Decision of 25 July 2012 in Case SA.34440, sale of Dexia BIL, not yet published in the OJ.

<sup>(20)</sup> OJ C 345, 13.11.2012, p. 4.

- (30) In the second decision ('the decision on the first prolongation of the guarantee') <sup>(21)</sup>, the Commission temporarily approved, until such time as it adopted a final decision on the orderly resolution plan for Dexia, an initial prolongation to 30 September 2012 of the issue window for the temporary guarantee by the Member States concerned in respect of the refinancing of Dexia SA and DCL, and at the same time extended the formal investigation procedure in respect of all the additional measures for the restructuring of Dexia opened by the temporary approval decision to this measure.
- (31) On 5 June 2012, the Member States concerned notified to the Commission an increase in the guarantee ceiling to the maximum amount of EUR 55 billion in principal. In its decision of 6 June 2012 <sup>(22)</sup> ('the decision to increase the guarantee ceiling'), the Commission temporarily approved the increase in the guarantee ceiling, until such time as it adopted a final decision on the orderly resolution plan for Dexia, and extended the formal investigation procedure in respect of all the additional measures for the restructuring of Dexia opened by the temporary approval decision to include this measure.
- (32) On 7 September 2012 the Member States concerned notified to the Commission a request for a second prolongation to 31 January 2013 of the issue window for the temporary refinancing guarantee (with a guarantee ceiling of a maximum amount of EUR 55 billion in principal). In its decision of 26 September 2012 <sup>(23)</sup> ('the decision on the second prolongation of the guarantee'), the Commission temporarily approved, until such time as it adopted a final decision on the orderly resolution plan for Dexia, the second prolongation of the issue window for the temporary guarantee by the Member States concerned in respect of the refinancing of Dexia SA and DCL until 31 January 2013, and extended the formal investigation procedure to include this measure.
- (33) On 26 November 2012, Belgium notified to the Commission the final version of the restructuring plan for DBB/Belfius. On 17 December 2012, Belgium notified a letter of commitments in relation to the restructuring of DBB/Belfius.
- (34) On 14 December 2012, the Member States concerned notified to the Commission a new orderly resolution plan for Dexia ('the revised orderly resolution plan for Dexia'), to replace the initial orderly resolution plan for Dexia.
- (35) On 14 December 2012 the Member States concerned notified to the Commission a memorandum entitled '*Memorandum from the French authorities to the European Commission*' relating to a '*Presentation of the affiliation of DMA to the State, the Caisse des Dépôts et Consignations and La Banque Postale*' ('the memorandum on the disposal of DMA').
- (36) On 17 December 2012 the Member States concerned also notified a letter of commitments relating to the revised orderly resolution plan for Dexia and a letter of commitments relating to the operation to dispose of Dexia Municipal Agency ('DMA').

### 1.3.3. Procedure relating to the revocation of the conditional authorisation decision

- (37) In recital 104 of the conditional authorisation decision, the Commission noted that the Member States concerned considered that the decision by certain historical shareholders of Dexia, such as Arcofin, to participate in the bank's capital increase did not contain any State aid elements. In recital 130 of the decision, the Commission considered that the resources made available to Dexia as a result of the steps taken by Arcofin were not State resources. The Commission therefore concluded that Arcofin's investment in Dexia did not constitute State aid as that operation did not satisfy one of the criteria of Article 107(1) TFEU.

<sup>(21)</sup> OJ C 345, 13.11.2012, p. 50.

<sup>(22)</sup> OJ C 333, 30.10.2012, p. 9.

<sup>(23)</sup> OJ C 352, 16.11.2012, p. 5.

- (38) On 7 November 2011, the Belgian authorities notified the extension of a State guarantee scheme applicable until then to bank deposits and 'branch 21' life insurance. Under this extension, individual member shares in approved financial cooperatives were also to be covered by the State guarantee.
- (39) The Commission subsequently became aware of information suggesting that Arcofin's investment in Dexia could have been made possible by the assurances — at the same time as Arcofin's investment in Dexia — by the Belgian authorities that Arcofin members would be protected against any risk of losses (see Section 3.1.2, recitals 397 to 399 below). This could mean that Arcofin's recapitalisation of Dexia involved State resources and entailed State aid.
- (40) By a letter dated 6 December 2011, the Commission informed the Belgian State that the extension of the guarantee scheme could constitute illegal State aid and asked Belgium to refrain from any further steps to implement this measure. On that occasion, it mentioned the possibility of adopting, pursuant to Article 11 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty <sup>(24)</sup> ('the Procedural Regulation'), a decision requiring the Member State to suspend the guarantee scheme, i.e. to take no further measures to implement the scheme. In this letter, the Commission invited Belgium to submit its comments on this matter, which it did in a letter dated 22 December 2011.
- (41) On 11 April 2012, the Commission sent the Member States concerned a letter informing them of its intention to open a formal investigation procedure with a view to revoking all the parts of the conditional authorisation decision relating to Arcofin's participation in Dexia's capital increase. This letter drew on information suggesting that Arcofin's participation in Dexia's recapitalisation could in practice be attributed to the Belgian State following the assurance that it had given that it would guarantee the individual member shares in approved financial cooperatives such as Arcofin.
- (42) On 16 May 2012, the Member States concerned replied in a letter to the Commission that there were no grounds for opening the formal investigation procedure and/or revoking the conditional authorisation decision, arguing that Arcofin's participation in Dexia's recapitalisation did not involve State resources. In the decision to extend the procedure, the Commission opened the formal investigation procedure into Arcofin's participation in Dexia's capital increase, inviting the Member State concerned to provide any information relevant to establishing whether or not the conditional authorisation decision should be revoked in respect of Dexia's recapitalisation by Arcofin.

#### 1.3.4. Implementation of the conditional decision

- (43) The Commission notes, moreover, that the conditional authorisation decision had not been correctly implemented. As described in further detail in Section 1.2.2 of the decision to extend the procedure, the independent trustee had noted on a number of occasions that Dexia had failed to comply with certain commitments set out in the restructuring plan subject to which the State aid granted to Dexia was deemed to be compatible with the internal market. In his reports of 30 November 2010, 29 April 2011, 26 September 2011 and 22 May 2012, the independent trustee had in particular observed that the following commitments had not been complied with:
- (a) the obligation to notify the Commission in advance of any payment of coupons on Tier 1 or Upper Tier 2 hybrid instruments issued before 1 February 2010, as provided in Article 2(2) of the conditional authorisation decision;
- (b) the prohibition on Dexia, pursuant to point 3 of the commitments, to lend to its public or semi-public sector customers at a Risk Adjusted Return On Capital ('RAROC') level of less than a minimum of 10 %;

<sup>(24)</sup> OJ L 83, 27.3.1999, p. 1.

- (c) the obligation, pursuant to point 13(c) of the commitments, read in conjunction with paragraph 8 of the mandate contract, that the purchaser of the subsidiary AdInfo be independent from Dexia and in a position to correct the distortions of competition discussed in Section 4 of the Bank Restructuring Communication <sup>(25)</sup>.
- (d) the stable funding ratio at 31 December 2010 was not above the level of 40 % required by point 5(c) of the commitments; and the level of the stable funding ratio at 31 December 2011 was [30 - < 45] %. It was not therefore above 45 %, as required by point 5(c) of the commitments;
- (e) on 31 December 2010, Dexia's consolidated balance sheet total, adjusted to take account of the change in the market value of the derivatives included in Dexia's balance sheet, was some EUR 14 billion greater than the ceiling of EUR [510-550] billion laid down in point 14(a) of the commitments and Annex II to the conditional decision. On the same date, the balance sheet total of the 'Core Division' was some EUR [10-20] billion greater than the ceiling of EUR 401 billion laid down in point 14 of the commitments and Annex II to the conditional decision;
- (f) at 31 December 2011, the sale of Dexia Bank Denmark A/S, the Danish subsidiary of Dexia BIL, had not taken place, breaching point 13(g)(ii) of the commitments.
- (46) Following these failures by Dexia to comply with the commitments described above, the Commission, in the decision to extend the procedure, opened the formal investigation procedure. In that decision, the Commission pointed out that it had, because of the failures to comply with these conditions, to re-evaluate the compatibility of all the aid covered by the conditional decision and invited the Member States concerned to submit their comments and provide any information relevant to assessing these aid measures.

### 1.3.5. Final comments on the procedure

- (47) The present Decision closes both the formal investigation procedure opened into the acquisition of DBB/Belfius and the formal investigation procedure opened by the conditional authorisation decision (and extended by the decision to extend the procedure, the decision on the first prolongation of the guarantee, the decision to increase the guarantee ceiling and the decision on the second prolongation of the guarantee, to include the ELA measures, the refinancing guarantee and the underwriting by DBB/Belfius of bonds guaranteed by the Member States concerned and issued by Dexia SA and DCL) on the restructuring and then the revised orderly resolution plan for Dexia, including the DMA sale operation.

## 2. DESCRIPTION

### 2.1. DESCRIPTION OF THE DEXIA GROUP AND ITS DIFFICULTIES

#### 2.1.1. General description

- (48) The Dexia Group ('Dexia') was formed in 1996 by the merger of France's Crédit Local and Belgium's Crédit Communal and was specialised in loans to local authorities, but also had some 5,5 million private customers, mainly in Belgium, Luxembourg and Turkey.
- (49) Dexia was organised around the parent holding company (Dexia SA) and three operational subsidiaries located in France (DCL) <sup>(26)</sup>, Belgium (DBB) and Luxembourg (Dexia BIL). It in particular included a mortgage lending company, DMA, a subsidiary of DCL. It also had other subsidiaries: Deniz Bank, Dexia Habitat, DKB Polska, DAM, Dexia Région Bail, Dexia Flobail, Dexia Bail, Dexia Israel and Dexia LLD. For a more detailed description of Dexia, the Commission refers to the decision to extend the procedure <sup>(27)</sup> and the opening decision on the sale of DBB/Belfius <sup>(28)</sup>.

<sup>(25)</sup> 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 (OJ C 195, 19.8.2009, p. 9).

<sup>(26)</sup> This activity also included the French mortgage lending company DMA.

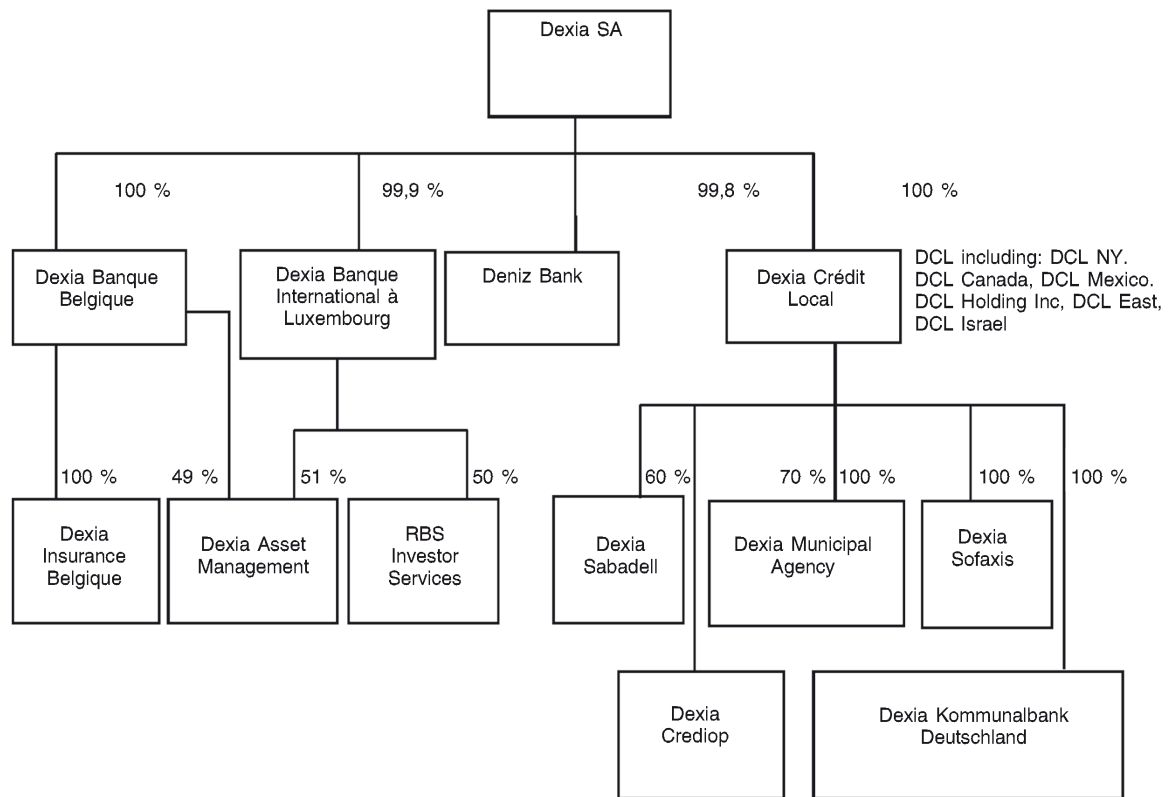
<sup>(27)</sup> See recitals 41 to 46 of the decision to extend the procedure.

<sup>(28)</sup> See recitals 9 to 12 of the opening decision on DBB.



Figure 1

**Simplified organisation chart of the Group on 30 September 2011 (i.e. prior to the sales announced at the meeting of Dexia's Board of Directors on 9 October 2011)**

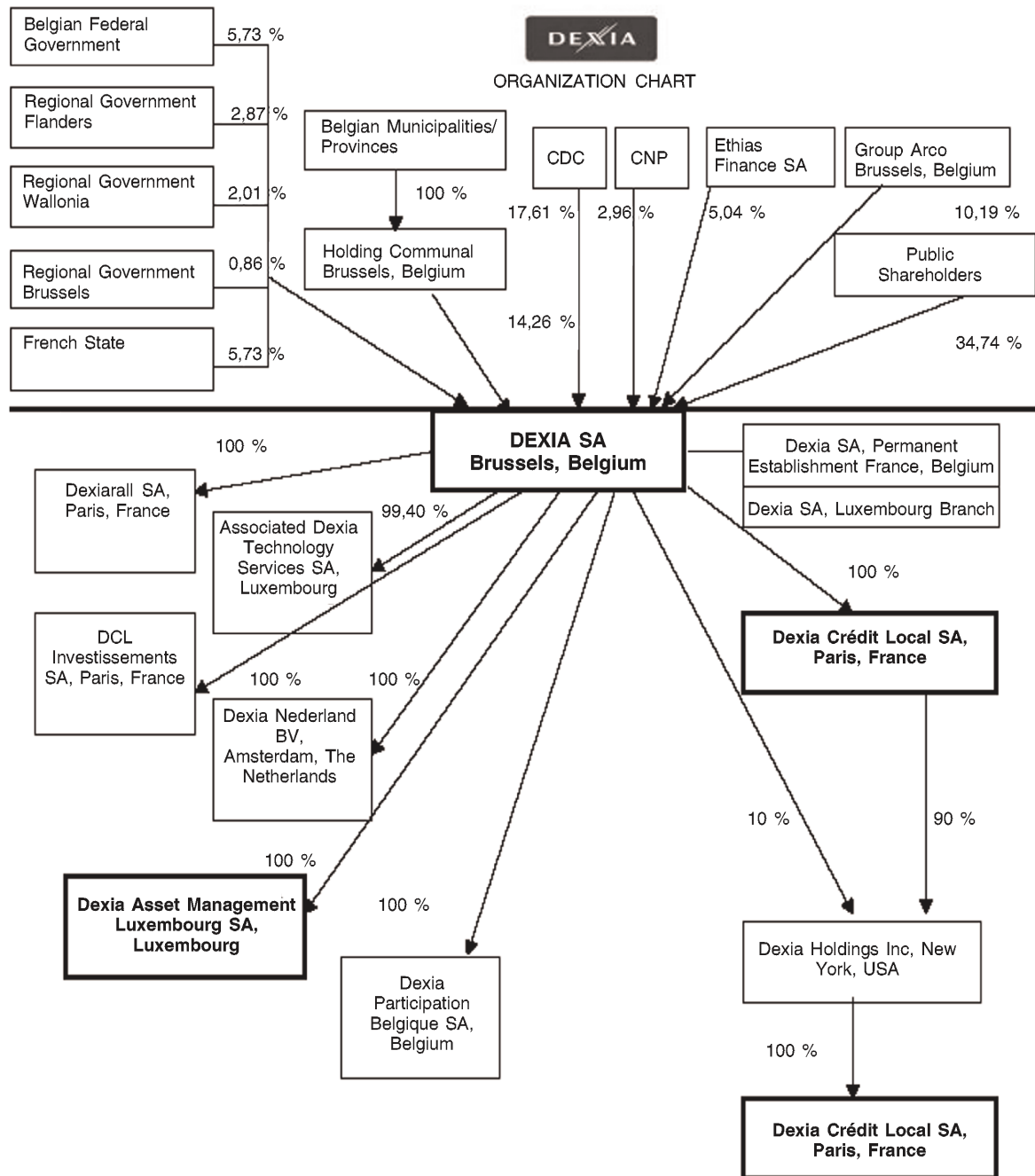


- (50) From the first quarter of 2010, Dexia combined the instruments subject to run-off management ('the legacy portfolio') within a Legacy Portfolio Management Division. On 30 June 2012, the Legacy Portfolio Management Division's commitments totalled EUR 86,3 billion including off-balance-sheet commitments; balance-sheet commitments totalled EUR 83,9 billion.
- (51) The Member States concerned initiated an orderly resolution of Dexia. On 20 October 2011, DBB/Belfius was sold to the Belgian State and, on 31 December 2011, Dexia's consolidated balance sheet (with the deconsolidation of DBB/Belfius on 1 October 2011) totalled EUR 413 billion. As part of its orderly resolution, Dexia also sold RBC Dexia Investor Services ('RBCD') on 27 July 2012, Dexia BIL on 5 October 2012 and Denizbank on 28 September 2012.

(52) In late October 2012, Dexia had the following structure:

Figure 2

Structure of the Dexia Group on 24 October 2012



(53) The difficulties faced by Dexia during the financial crisis in autumn 2008 are described in the conditional authorisation decision. Dexia's more recent difficulties may be summarised as follows.

(54) First, the worsening of the sovereign debt crisis, which many European banks are facing, has increasingly sapped investors' confidence in bank counterparties with the result that the latter are unable to obtain satisfactory volumes of financing on satisfactory terms.

(55) Furthermore, since the Dexia Group has been particularly exposed to sovereign and quasi-sovereign risk, investors have even less confidence. Dexia's assets include many loans and/or bonds in countries and/or local and regional authorities in countries perceived as risky by the market.

- (56) In addition, the sovereign debt crisis hit before Dexia had time to finalise the implementation of its restructuring plan. As a result of this delay in implementing the restructuring plan, the Group's liquidity risk profile worsened. This deterioration made Dexia more vulnerable than other European banks to market mistrust.
- (57) Dexia's financing requirements increased markedly for the following reasons:
1. the sharp fall in interest rates during the summer of 2011 increased by at least EUR [5-20] billion the need for additional collateral to cope with the margin calls linked to the variation in the market value of the interest-rate derivatives used to hedge the balance sheet;
  2. many bond issues (in particular bonds guaranteed by the Member States concerned previously issued by Dexia) matured at a time when market conditions for refinancing these bonds were not optimal;
  3. the substantial fall in market value and decline in the credit quality of the assets that Dexia uses by way of security to obtain financing;
  4. the loss of confidence by many investors following, among other things, the announcement of substantial losses in the second quarter of 2011 (almost EUR 4 billion) and downgrades by some rating agencies;
  5. Dexia's difficulties also led the rating agency Moody's to downgrade DBB/Belfius' rating on 3 October 2011. This announcement triggered massive withdrawals of customers' savings from DBB/Belfius in Belgium and Luxembourg totalling EUR several hundred million between 3 and 10 October 2011.
- (58) DBB/Belfius, the Group's central treasury, was particularly badly hit by Dexia's difficulties from early 2011.
- (59) In these circumstances, the Member States concerned initially decided to take other measures to assist Dexia: a new ELA measure granted by the Belgian and French central banks, the grant of a temporary refinancing guarantee and the drawing up of a resolution plan for the Group.
- (60) The Member States concerned considered that, despite the measures taken since February 2010, there was a risk of 'immediate disappearance' <sup>(29)</sup> of the residual group that could be offset only by an orderly resolution of the Group.

#### 2.1.2. Description of Dexia Municipal Agency ('DMA')

- (61) DMA is one of Europe's leading mortgage lending companies. Its main object is the refinancing of loans or securities via the issue of mortgage bonds, one of the main components of the covered bond market internationally. As a mortgage lending company under the Law of 22 October 2010, DMA issues securitised bonds characterised by the legal privilege pursuant to which sums from its assets are allocated as a priority to payments of bond interest and bond reimbursement.
- (62) DMA's assets exclusively include exposures to eligible public persons such as local authorities or their groupings or public establishments in the European Economic Area, Switzerland, the USA, Canada and Japan. Exposures take the material form of loans or bonds representing receivables from these public persons. DMA's balance sheet can also include shares of special-purpose vehicles or similar 'asset-backed security' (ABS) entities.

<sup>(29)</sup> See the orderly resolution plan for Dexia, Part IV, Section A 'General description of the proposed strategy', p. 97.

- (63) DMA's liabilities include two categories of debt: mortgage bonds and other debts subordinate to those bonds. Assets which are not financed by securitised debt (overcollateralisation) are financed from own funds and from a debt contracted with DCL, DMA's sole shareholder. The overcollateralisation ratio of mortgage credit companies is calculated as all the asset components ('cover pool') related to all privileged debt. DMA undertook to maintain this ratio at a level of 105 % or more in comparison with a statutory minimum of 102 %. Management of DMA operations is entirely the task of its sole shareholder DCL.
- (64) The majority of the assets included in DMA's balance sheet come from the commercial activity of the Dexia Group. The customer portfolio (the 'cover pool') was made up on 30 June 2012 of EUR 54,1 billion of loans and EUR 17,6 billion of securities, i.e. a total of EUR 71,8 billion. In terms of its geographical breakdown, France accounted for 65 % of the asset portfolio and other, mainly European, countries for 35 %. The French local authority portfolio was EUR 37 billion and the public health establishment portfolio was EUR 6,6 billion.

Table 1

**DMA's customer portfolio**

DEXMA CUSTOMER PORTFOLIO AT 30 JUNE 2012 IN EUR MILLION

	<b>Loans</b>	<b>Bonds</b>	<b>Total</b>
<b>Loans/Bonds</b>	<b>54 191</b>	<b>17 650</b>	<b>71 841</b>
<b>France</b>	<b>46 682</b>	<b>372</b>	<b>47 054</b>
State	218		218
Local authorities	36 730	358	37 088
— Regions	2 136	133	2 269
— <i>Départements</i>	6 331		6 331
— Municipalities	18 044	107	18 151
— Groups of municipalities	10 219	118	10 337
Public establishments:	9 734	14	9 748
— health	6 607		6 607
— social housing	2 000		2 000
— other	1 127	14	1 141
<b>Belgium</b>	<b>357</b>	<b>6 499</b>	<b>6 856</b>
<b>Italy</b>	<b>13</b>	<b>7 411</b>	<b>7 424</b>
<b>United Kingdom</b>	<b>1 850</b>	<b>639</b>	<b>2 489</b>
<b>Switzerland</b>	<b>4 087</b>		<b>4 087</b>
<b>Other OECD countries</b>	<b>1 202</b>	<b>2 729</b>	<b>3 931</b>

- (65) Some French loans in DMA's portfolio may be characterised as structured loans. At 31 August 2012, DMA's French loans (in terms of exposures, contracts and customer numbers) broke down as follows by type of loan (non-structured, structured, non-sensitive and sensitive structured) and according to the Gissler charter classification <sup>(30)</sup> (see recital 194) which measures the structure risk.

Table 2

**Classification of loans**

Classification of loans included in DMA's balance sheet (at 31 August 2012)			
	Exposures (EUR million)	Number of contracts (thou- sand)	Number of customers (thou- sand)
Total	45 907	58,8	19,6
Non-structured loans	29 730	54,9	19,3
Non-sensitive structured loans	6 774	2,5	1,8
Sensitive structured loans	9 404	1,5	0,95
Off-charter	4 189	0,5	0,4
5 E	[250-500]	[0-0,75]	[0-0,75]
4 E	[1 000-1 500]	[0-0,75]	[0-0,75]
3 E	[3 000-3 500]	[0-0,75]	[0-0,75]
Other	[500-750]	[0-0,75]	[0-0,75]

- (66) DMA had a portfolio of 1 522 'sensitive loans' whose nominal value was EUR 9,4 billion at 31 August 2012. These loans had a high-leverage structured component. Generally, after an initial period in which the rate to be paid by the customer is fixed and, in most cases, lower than the rate of a vanilla loan maturing at the same time, the structured period of the loan may be triggered. The interest rate to be paid is then directly linked to an underlying index (exchange rate index, exchange parity, etc.) according to a formula whose complexity varies. Many loans are therefore directly indexed to the euro-Swiss franc parity. As a result of the crisis and the very strong progression of the Swiss franc in recent years, the interest rate to be paid is now substantially above the market price.
- (67) As a result of the level of some of the interest rates currently being paid, many customers have decided to take action against DMA, citing the following grounds: 1) the lack or erroneous nature of the Annual Percentage Rate (APR), 2) the failure by DCL/DMA to fulfil its duty of information and advice and 3) the nullity of the contract on the ground of absence of consent. On 30 September 2012, 50 customers (a total nominal exposure of some EUR [0-2,5] billion) had taken action against DCL/DMA. At the same time, a number of loans of a total nominal amount of EUR 250 million were in a default situation.
- (68) As mentioned above in the description of the decision to extend the procedure, the orderly resolution plan notified to the Commission in April 2012 initially made provision for the introduction of two guarantees: (i) a guarantee against litigation granted by Dexia/DCL to the purchasers of DMA on the portfolio of sensitive loans (that guarantee being counter-guaranteed by the French State) and (ii) a stop-loss guarantee to cover the credit risks of DMA's portfolio as a whole.

<sup>(30)</sup> The Gissler charter is a charter of good conduct signed by French banks and associations of elected officers representing local authorities in France. Confirmed by a circular dated 25 June 2010, this charter classified loans by their level of structuring. It is available to the public at the site of the French Ministry of the Economy:  
[http://www.minefe.gouv.fr/fonds\\_documentaire/archives/dossiersdepresse/091207banques\\_collectivites.pdf](http://www.minefe.gouv.fr/fonds_documentaire/archives/dossiersdepresse/091207banques_collectivites.pdf)

- (69) In order to decide whether these guarantees were compatible with State aid rules, the Commission appointed an independent trustee to analyse the sensitive loan portfolio and to assess the losses to be expected. Analysis of these losses (credit risks and risks of litigation-related losses) was based on a number of scenarios of trends in the underlying indices which determine the interest rate payable by the customer. The gap between the interest rate payable and the rate considered to be the 'market rate' then made it possible to determine the likelihood of litigation in respect of existing disputes and to construct different outcome scenarios.
- (70) On the basis of this analysis commissioned by the Commission, total losses (losses from unpaid amounts and litigation-related losses) for DMA were EUR [1,5-4,5] billion in a baseline scenario and EUR [3-8] billion in a stress scenario. The Member States concerned considered that these losses could be reduced by some 70 % to 80 % if the loans were desensitised.

### 2.1.3. Description of Crediop

- (71) The Italian subsidiary Crediop, in which DCL has a 70 % holding, trades in the Italian market for financial services for the public and semi-public sector ('Public and Wholesale Banking' or 'PWB') and has a market share of some 20 %. It also finances private projects in various sectors. On 30 June 2012, its loan portfolio was EUR 29,3 billion. As a result of the downgrading of its credit rating, its financial imbalance has worsened and Crediop is now being financed by EUR 5 billion from DCL.
- (72) Under the conditional authorisation decision of 26 February 2010, Dexia's 70 % holding in Crediop was to be sold or floated on the stock exchange before the end of October 2012. This proved not to be feasible, as the independent trustee confirmed (see recital 55 above).

### 2.1.4. Description of DBB/Belfius

- (73) DBB/Belfius trades mainly in the Belgian market for financial services for the public and semi-public sectors ('Public and Wholesale Banking' or 'PWB'), financial services for individuals ('Retail and Commercial Banking' or 'RCB') and insurance. DBB/Belfius has a market share <sup>(31)</sup> in Belgium of [10-15] % of PWB loans, 13 % of RCB saving, 15 % of RCB mortgage loans, 9,5 % of life insurance and 5 % of non-life insurance. DBB/Belfius has some 3,8 million customers. DBB/Belfius had a balance sheet total of EUR 233 billion at the end of 2011 and a Core Tier 1 Basel II solvency ratio of 11,8 % at the end of 2011. DBB/Belfius recorded a net loss after taxation of EUR 1,37 billion in 2011.

## 2.2. DESCRIPTION OF THE ORDERLY RESOLUTION PLAN FOR DEXIA

- (74) The revised orderly resolution plan for Dexia in particular includes the disposal of the Group's saleable entities and the run-off management of all the Group's other entities and assets.
- (75) Under the revised orderly resolution plan, the bond and loan portfolio will in principle be held until maturity in order to preserve its value and avoid 'fire sales'. Dexia and the Member States concerned will also look into the ways in which the Group could speed up opportunistic deleveraging if market conditions so allow.
- (76) The proposed strategy will significantly reduce the size of Dexia's balance sheet. On 30 June 2012, it had already fallen to EUR 411 billion, i.e. a decrease of over 37 % in comparison with the size of Dexia's balance sheet on 31 December 2008 (EUR 651 billion), when the first State aid was granted. The Group's assets should be EUR [200-250] billion at the end of 2013, after the sale of DMA (impact of EUR [60-80] billion), breaking down into PWB loans (EUR [80-100] billion), legacy assets (EUR [60-80] billion), cash collateral (EUR [20-40] billion) and other assets (EUR [40-60] billion). Assets will then be reduced by some EUR [10-20] billion per annum up to 2017. They will be EUR [100-150] billion in 2020, including EUR [50-70] billion in PWB loans (- [30-50] % in comparison with the end of 2013) and EUR [30-50] billion in legacy assets (- [30-40] %). In comparison with 2008, there will be a balance sheet reduction of [70-80] % by 2020.

<sup>(31)</sup> Market share in 2011 for banking and 2010 for insurance.

Figure 3

**Breakdown of Dexia's assets**

[...]

- (77) The revised orderly resolution plan also includes a comparison with the alternative option of a default by Dexia followed by bankruptcy (immediate liquidation scenario) with no additional State aid and concludes that this scenario is not a viable option given the risks for the Member States concerned raised by the call for guarantees on refinancing granted in the past, its impact on financial stability and the stability of non-securitised debt, derivatives and sovereign bond markets, social costs and the immediate major capital losses.

**2.2.1. Liquidity and financing**

- (78) Dexia drew down EUR 73 billion (peak) of the refinancing guarantee from the Member States concerned in 2012. This drawdown will be reduced to EUR [30-50] billion in 2016 and will gradually be reduced to a level of EUR [20-40] billion in 2020. In a stress scenario, the drawdown of the guarantees could increase by EUR [10-20] billion from 2013 and thus reach EUR [75-85] billion.

Figure 4

**Breakdown of the drawdown of guarantees**

[...]

- (79) Financing needs should fall from EUR [250-300] billion in 2012 to EUR [100-150] billion in 2020. ELA drawdown should be greatly reduced from early 2013 (it was over EUR [10-20] billion at the end of September 2012) and remain at a level close to zero, with the exception of 2016 (EUR [10-20] billion) when it is planned that Dexia will stop using its own guaranteed securities ('own use') in order to be refinanced by the Eurosystem. The use of Central Bank financing (Eurosystem operations) will be gradually reduced and own use of collateral guaranteed securities will be limited to EUR [10-20] billion and will fall to zero from 2016. This reduced use of Central Bank operations will be offset by a greater use of securitised financing (repo operations) and market placement of guaranteed securities. Any additional financing needs will be met in the following order of priority: repo market, market placement of new State-guaranteed securities, Central Bank refinancing (Eurosystem operations) and ELA drawdown.

Figure 5

**Financing mix**

[...]

- (80) The resolution plan is based on a macroeconomic scenario and a set of underlying financial assumptions based on the current level of forward rates. A downgrade of up to two credit rating notches is thus envisaged by 2014 for European sovereigns which should help to maintain the credit spreads at their current levels and monetary interest rates which continue to be low throughout the curve. Then from 2014, the stabilisation of market conditions should lead to a gradual rise in interest rates and a convergence of credit spreads towards their historic mean.

**2.2.2. Solvency**

- (81) Risk-weighted assets (RWAs) should reach EUR 59,6 billion at the end of 2012. An increase of EUR [10-20] billion is forecast in 2013. This is chiefly due to the implementation of the Basel III regulation, but also to the forecast downgrading of the credit rating of several sovereigns to which the Group is exposed. Then, from 2014, the RWAs should gradually decline with balance sheet amortisation. At the end of 2020, they should be EUR [20-40] billion, i.e. a decline of [40-50] % in comparison with 2012.
- (82) Dexia should record losses of up to EUR 2,8 billion in 2012 and EUR [0-2] billion in 2013. There should be a return to profit from the 2018 financial year (EUR [10-20] million). Operating costs will drop significantly from 2013 (EUR 547 million in comparison with EUR 1,23 billion) largely because of the sale of DenizBank (- EUR [400-500] million) and other entities. From 2013, operating costs will fall progressively by some EUR [180-220] million by 2020. The cost of the risk should be EUR [200-250] million in 2013 and should gradually decline before levelling off at EUR [50-100] million from 2017.

### 2.2.3. Disposal of the Group's viable entities

- (83) The following sales took place before the revised orderly resolution plan was notified to the Commission: the acquisition of DBB/Belfius by the Belgian State (October 2011), the sale of RBCD (July 2012), DenizBank (September 2012), BIL (October 2012), Dexia Habitat (June 2012), DKB Polska (transfer signed on 7 November 2012).
- (84) The revised orderly resolution plan also includes:
- the disposal of DMA (January 2013);
  - the disposal of DAM and Dexia's holding in Popular Banca Privada and Sofaxis by 31 December 2013;
  - the disposal (or run-off management) of Dexia Région Bail, Dexia Bail, Dexia LLD and Dexia Flobail by 31 December 2013;
  - the disposal of Dexia's (direct or indirect) holding in Dexia Israel within 12 months of a final, non-actionable decision in the various legal actions brought against Dexia Israel and DCL as a shareholder;
  - the run-off management of Crediop after a period of one year from this Decision.
- (85) Dexia has drawn up an information and valuation methodology for all the planned disposals which is proportionate to the size of each planned disposal, which it has notified to the Commission:
1. for disposals of an amount of more than EUR 50 million (category 1): communication of an information note to the Commission and drawing up of a fairness opinion by an independent expert unconnected with the transaction;
  2. for disposals of an amount of less than EUR 50 million and (a) an amount of more than EUR 25 million or (b) for which the holding sold is valued at an amount of more than EUR 25 million or (c) for which the purchaser has a shareholding link with Dexia (holding of more than 2 % in Dexia) (category 2): communication of an information note to the Commission and valuation by the consultant bank advising Dexia on the transaction;
  3. for other disposals (including all disposals of holdings in financing projects, in particular equity funds) (category 3): in-house valuation by Dexia and notification to the Commission of information on a database shared with the Commission.

### 2.2.4. Run-off management of all other entities and assets

- (86) Run-off management (i.e. with no new production) from the date of entry into force of the revised orderly resolution plan, of all the other entities and assets of the residual Group (subject to the special methods planned for Crediop): Dexia Sabadell, DKD, DKB, DCL America (DCL New York, DRECM, DCL Mexico, Dexia US Securities), DCL Dublin, DLG, Parfipar, DHI (FP, Global Funding), Dexia SA, CLF Banque, DCL Paris, Crediop after a period of one year from this Decision.
- (87) Dexia will also make every effort to speed up the disposal of its bond portfolio, when market conditions have improved, and thus satisfy the regulatory ratios, bearing in mind that such a disposal should take place only if it does not have a substantial negative impact on Dexia's solvency.



### 2.2.5. Final refinancing guarantee

- (88) The Member States concerned have undertaken to grant a final refinancing guarantee to Dexia as summarised below, from the date of entry into force of the guarantee issue agreement, at the latest by 31 January 2013, after signature of the sale of DMA, the final draft of which was notified to the Commission on 14 December 2012 ('the guarantee agreement').
- (89) The Member States concerned will grant Dexia SA and DCL a joint financing guarantee, 51,41 % to be provided by Belgium, 45,59 % by France and 3 % by Luxembourg. The guarantee will be limited to EUR 85 billion in principal in the guarantee agreement. The guarantee covers interest and contingencies.
- (90) The bonds guaranteed may be issued to 31 December 2021, and have a maximum term of 10 years.
- (91) Dexia SA and DCL will not have to provide the Member States concerned with collateral, with the exception of the second-rank pledge granted to the Member States concerned in respect of the assets provided as collateral to the central banks for the ELA, which will be maintained.
- (92) DCL will offer DBB/Belfius the opportunity to purchase the bonds that it has underwritten at DCL under the temporary independent guarantee agreement concluded on 16 December 2011 provided that DBB/Belfius underwrites, at the same time, new bonds having equivalent economic features for DCL which will benefit from the final guarantee scheme and in particular the breakdown key discussed above.
- (93) The setting-up commission is 0,50 % of EUR 85 billion, less the setting-up commission already paid as part of the temporary guarantee <sup>(32)</sup>, to be distributed solely between Belgium and France, in a proportion of 53 % for Belgium and 47 % for France.
- (94) The monthly commission for the financing guarantee has an annual rate of 0,05 %, except for the amount placed with BdF Gestion as long as the ECB accepts the principle of all-in remuneration, for which the commission rate will be identical to what is stated in the 2011 agreement (at present 70 basis points). The commission will be distributed between the Member States concerned, at an annual rate of 0,01 % for Luxembourg and, as regards the remainder, in a proportion of 53 % for Belgium and 47 % for France, from the date of entry into force of the guarantee agreement (after the sale of DMA and by 31 January 2013).
- (95) Moreover, the bonds issued from 21 December 2011 and provided with temporary guarantees as temporarily approved by the Commission decisions of 21 December 2011, 31 May 2012, 6 June 2012 and 26 September 2012 will continue to benefit from the guarantees until their final maturity, provided that the conditions under which these guarantees were granted are respected.

### 2.2.6. Recapitalisation

- (96) On the basis in particular of the new assumptions underpinning the revised orderly resolution plan for the Dexia Group which assumes financing costs likely to have a major impact on the prospects of the Dexia Group and DCL in particular, the Board of Directors of Dexia SA, on 7 November 2012, ordered an integral reduction of the value of its holding in DCL. Following this reduction in value, the own company funds of Dexia's holding became negative.
- (97) According to the notification of the revised orderly resolution plan for Dexia, if Dexia's resolution is to be orderly in nature, the Group's financial situation has to be stabilised and therefore the negative own funds situation of Dexia SA on 30 September 2012 and DCL on 31 December 2012 has to be addressed. To that end, the French and Belgian States have undertaken fully to underwrite a capital increase for Dexia of EUR 5,5 billion, at the latest by 31 December 2012, through a reserved issue of preferential shares with voting rights.

<sup>(32)</sup> Namely a residual commission of EUR 150 million.

- (98) 53 % of the recapitalisation will be underwritten by Belgium, (i.e. EUR 2,915 billion) and 47 % by France (i.e. EUR 2,585 billion).
- (99) Pursuant to Article 598 of the Belgian Companies Code, the subscription price is equal to the mean of the closing rates for Dexia SA shares on the NYSE Euronext Brussels during the 30 calendar days preceding the decision by the Board of Directors of Dexia SA (dated 14 November 2012) to propose that shareholders undertake a capital increase, i.e. EUR 0,19.
- (100) This capital increase reserved to the Belgian and French States will be reflected by the award to those States of preferential shares giving them priority, at a rate of 8 % of the nominal value of the share per annum, in respect of any distribution of dividends that Dexia might make. The total dividend shortfall with respect to the rate of 8 % per annum will constitute a liquidation supplement giving the States a priority claim on the distribution of any net assets that may be distributed in the event of liquidation. The preferential rights attributed to the new shares will be limited and/or suspended in the event of the Group's failure to comply with certain prudential ratio thresholds.
- (101) As a result, any future improvement of Dexia's financial situation will first and foremost benefit the Belgian and French States, having regard to the risk that they are taking. The Member States have indicated that the proposed solution meets the requirement of 'burden-sharing' although it does not comply with the principles applicable to bank recapitalisations set out in the Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis ('the 2011 Prolongation Communication')<sup>(33)</sup>. Under these principles, any recapitalisation should in practice be carried out at a substantial discount with respect to the theoretical price excluding subscription rights. Moreover, the characteristics of the operation, in particular the priority rights attached to the (category B) preference shares, will bring about an economic dilution of existing shareholders as, by application of the rights attached to the preference shares, any capital reductions would be attributed as a priority to ordinary shares so that the proportion of the equity capital represented by ordinary shares would be reduced to an amount close to zero and the capital repayment rights of holders of ordinary shares would be reduced practically to zero.
- (102) Dexia will allocate the product of the capital increase to the repayment of its commitments in respect of DCL and the establishment of liquidity reserves for future losses, and to a capital increase in DCL of EUR 2 billion in order to enhance its own funds in accordance with French company accounting and prudential standards, while retaining a cash-flow reserve of some EUR 700 to 800 million.

#### 2.2.7. Elimination of all links between Dexia and DMA

- (103) All existing links between Dexia and DMA will be eliminated within a maximum of six months from the closing date of the DMA operation, with the exception of IT systems whose links will be closed down within a period of 24 to 30 months from that date.

#### 2.2.8. No new production

- (104) The revised orderly resolution plan makes provision for Dexia's withdrawal from the markets in which it previously traded either by disposing of entities to third parties, or by placing residual entities in run-off management. Under run-off management there is to be no new production, with the exception of Crediop and DCL as specified below in recitals 105 to 108.
- (105) In order to meet the regulatory requirements for Crediop with a view to its run-off management by 31 December 2013, Crediop could offer new financing of up to EUR 200 million to existing customers for a period of one year from the Commission's final decision. The States could also ask the Commission, at the end of this one-year period, for authorisation for a supplementary package of new financing for a period of one year for reasons of financial stability.

<sup>(33)</sup> OJ C 356, 6.12.2011, p. 7. See paragraph 8 thereof.

- (106) DCL could grant new financing, capped at EUR 600 million, between February and July 2013, or June and November 2014, in order to desensitise the outstanding EUR 1,2 billion of sensitive structured loans still lodged with DCL (loans granted to local authorities and classified outside the Gissler Charter or scored as E3, E4 or E5 in the Gissler Charter or with a Cepcor<sup>(34)</sup> score of 11 or more). The improvement of the economic value of the debt stock that this should entail is defined by taking account of the lessening of the litigation risk that desensitisation should bring about. This package should make it possible to reduce the risk (of litigation in particular) connected with the loans concerned and also to reduce collateral volatility and the operational risk on complex derivative coverage transactions.
- (107) The flows linked to operations to desensitise existing loans lodged with DCL (after the sale of DMA) will also be limited according to the following conditions:
- new flows will be solely at a fixed rate;
  - the maturity of new flows will be limited to 30 years;
  - the new flows should bring about an improvement of the Gissler or Cepcor score;
  - during the initial desensitisation period (February-July 2013), the new flows will as a priority concern the most sensitive loans, namely those granted to the [30-50] main customers of DCL which represent [40-60] % of the mark-to-market of the derivatives associated with loans outside the Gissler Charter.
- (108) Only the following operations will be authorised for the purposes of desensitisation: [...]. This possibility of active restructuring (intrinsically in run-off terms — once the sensitive loans on DCL's balance sheet have been restructured, there will be full run-off management of DCL's portfolio) is solely intended to limit, as far as possible and on average, the losses expected on the existing portfolio in a run-off scenario. DCL will not in any case undertake new production in the strict sense (no new production for new customers).

#### 2.2.9. Monitoring of the revised orderly resolution plan

- (109) An independent trustee will be responsible for monitoring the implementation of the revised orderly resolution plan and for reporting to the Commission on a half-yearly basis under the same conditions, *mutatis mutandis*, as those set out in recitals 18 and 19 of Annex I to the conditional authorisation decision.
- (110) The independent trustee will in particular submit a half-yearly report to the Commission on the implementation of the commitments of the orderly resolution plan. This report will include a detailed report on progress with the revised orderly resolution plan and in particular on 1) compliance with the amount and desensitisation conditions of DCL's sensitive loan portfolio; 2) compliance with the cap on new financing granted to Crediop's existing customers; 3) compliance with the timetable of planned disposals, including the date of the disposal, the accounting value of the assets as at 31 December 2011, the value of the disposal, the capital gains or losses achieved and details of remaining measures to be implemented under the revised orderly resolution plan; and 4) the management and ring-fencing of DAM and Dexia Israel.

#### 2.2.10. Commitments

- (111) The revised orderly resolution plan includes commitments, the authentic text of which is attached at Annex 1.
- (112) In the introduction to their letter of commitments, the Member States concerned indicate that they will ensure that the revised orderly resolution plan and the commitments are fully implemented. They will apply until Dexia's assets have been fully written off.

<sup>(34)</sup> Committee of Evaluation and Prevention of Commercial Risks.

(a) Behavioural commitments

- (113) Dexia will not acquire equity capital in other credit institutions, investment firms<sup>(35)</sup> or insurance companies, without the Commission's prior authorisation. Such authorisation will be requested only for Dexia's possible acquisition of a holding in return for an injection of holdings or for activities undertaken as part of an operation to sell or pool assets or activities (by merger or injection) provided that, in such a case, the holding does not give Dexia exclusive or joint control of the entity benefiting from the injection or resulting from the merger. Exceptionally, Dexia may acquire the minority holding of 40 % in Dexia Sabadell (with a view to its run-off management) following the exercise of the Banco Sabadell put option, as that acquisition had not yet taken place on the date of the commitments.
- (114) Subject to the commitments that it has already underwritten in respect of Dexia Région Bail, Dexia Flobail, Dexia Bail and Dexia LLD on the date of this Decision, Dexia undertakes to grant no new intragroup financing (i.e. of an amount greater than the intragroup financing existing on the date of this Decision) to the entities to be disposed of in accordance with recital 122 below ('ring-fencing'). This is without prejudice to the regulatory obligations incumbent upon Dexia as a shareholder of the entities concerned and its obligation to keep Dexia Israel and DAM viable in accordance with recital 129 below. If the implementation of these obligations requires the grant of new financing to the entities concerned, Dexia will inform the Commission in advance thereof.
- (115) Dexia will not use its status as a bank benefiting from a guarantee or other aid from the Member States concerned for some of its commitments for the purposes of commercial publicity to third parties other than the 'Third Party Beneficiaries' as defined in the guarantee agreement, and will not use the guarantee for pure arbitrage transactions.
- (116) As specified in the revised orderly resolution plan:
- (a) The Member States concerned stress that the features of the preferential shares will make it impossible in practice to pay any dividends on ordinary shares, as the forecasts of profits that may be distributed by Dexia during the period of the plan are lower than the amount of the 8 % preferential dividends to be paid to the Belgian and French States.
- (b) The Member States concerned stress that the preferential shares are held by the Belgian and French States alone, and that the limits on the distribution of dividends should relate only to ordinary shares and not to preferential shares as that would deprive the Belgian and French States of their right to a dividend on their investment;
- (c) As regards the participation of preferential shares in losses, as indicated in the revised orderly resolution plan, the preferential shares will lose their preferential rights wholly or partly if Dexia's regulatory ratios fall below certain thresholds. The preferential shares will in practice be considered base capital (Core Tier 1) until 2018 as they will benefit from temporary regulatory treatment ('grandfathering'). They will then be converted into ordinary shares<sup>(36)</sup> depending on the regulatory capital needs of the Group subject to orderly resolution.
- (117) Without prejudice to the operations that Dexia is legally bound to carry out, or operations that it is bound to carry out pursuant to contracts concluded prior to the date of this Decision, in respect of Tier 1 or Tier 2 hybrid instruments, Dexia will refrain from:
- (a) paying coupons on Tier 1 hybrid instruments or Tier 2 instruments held by persons or entities other than Dexia SA and its subsidiaries, the payment of which is discretionary under the contractual terms relating to these instruments;

<sup>(35)</sup> Within the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 45, 30.4.2004, p. 1).

<sup>(36)</sup> Under the orderly resolution plan, EUR 1,9 billion of preferential shares (B1) are to be converted into category B3 shares (rights equivalent to those of ordinary shares) in 2018.

- (b) approving or voting in favour of the payment of any form of dividend by any subsidiary controlled directly or indirectly by Dexia SA (including entities in which it has a 100 % holding), especially when such a payment would entail mandatory payment of a coupon on Tier 1 hybrid instruments or Tier 2 instruments held by persons other than Dexia SA and its subsidiaries;
- (c) exercise a discretionary early repayment option on the Tier 1 hybrid instruments or Tier 2 instruments mentioned in point (a) above;
- (d) and, subject to a bonus not exceeding 10 % of the market price and a purchase rate (including bonus) not exceeding 90 % of the nominal amount, Dexia may, however, after notifying and obtaining prior authorisation from the Commission, launch public offers for the purchase of issues of Tier 1 and Tier 2 hybrid securities. That does not stand in the way of the distribution of dividends linked to the preferential shares held by the Belgian and French States.
- (118) Dexia will continue to implement the remuneration principles decided at G20 level and by the national authorities concerned as regards the remuneration of members of the Boards of Directors and executives of Dexia SA and the main operating entities of the Dexia Group. Dexia will in particular not pay the variable proportion of the remuneration of members of the Board of Directors of Dexia SA and will cap, at 30 % of the fixed proportion of their remuneration, the amount of the variable proportion of the remuneration of other staff of Dexia SA and its banking subsidiaries covered by point 2.5.1.1 of Dexia's remuneration policy as notified on 15 March 2011 to the CBFA <sup>(37)</sup>.
- (119) In accordance with the revised orderly resolution plan, Dexia will not undertake any new production from the date of this Decision, except where the entity in question is subject to a disposal commitment in accordance with recital 122 below. For the purposes of this commitment, 'new production' does not include:
1. operations needed for liquidity management (for instance central bank transactions or management of the cover pools of DLG (Dexia Lettre de Gage) and DKD (Dexia Kommunalbank Deutschland) in order to comply with regulatory, prudential or credit rating agency constraints and significantly to improve the cost of financing;
  2. the extension of the maturity of existing loans provided that such extension significantly improves the net actualised value of the sums loaned to the same customer, the litigation risk being taken into account when calculating value;
  3. the derivative transactions needed to manage the risks linked to the interest/exchange/credit rates of the existing portfolio provided that the effect of such transactions is to reduce the Dexia Group's global risk exposure, in compliance with the guidelines applicable within Dexia and/or the prudential authorities;
  4. all activities required for regulatory or other legal reasons, in particular the extensions of maturity or rescheduling of the timetable imposed on Dexia as a member of a bank syndicate in certain investment projects (the bank syndicate may be asked to accept project structure amendments entailing amendments of maturity and/or timetable) or following decisions by administrative or judicial authorities; and
  5. the disbursement of loan commitments confirmed on the date of the decision, i.e. the disbursement operations that Dexia is contractually liable to carry out in order to respect its commitments to borrowers under contracts concluded prior to 30 September 2012.

<sup>(37)</sup> Commission Bancaire, Financière et des Assurances [Banking, Finance and Insurance Commission].

(120) By way of exception:

1. To prevent the [...] issued by Dexia Crediop and thus satisfy its regulatory requirements with a view to its run-off management, Dexia Crediop may draw down new financing of an amount of EUR 200 million for its existing customers for a period of one year from this Decision. On expiry of this one-year period, the Member States concerned may ask the Commission for an additional annual envelope of new financing. Failing authorisation, Dexia Crediop will be placed in run-off management at the end of the year in question.
2. DCL may issue new financing for flows connected with operations to desensitise existing loans <sup>(38)</sup> lodged with DCL (after the sale of DMA) and deemed sensitive (namely the loans granted to local authorities and classified outside the Gissler Charter, scored as E3, E4 or E5 in the Gissler Charter or having a Cepcor score of 11 or more), provided that the economic value of the debt stock is improved, a substantial reduction of the litigation risk brought about by desensitisation being taken into account when defining this value <sup>(39)</sup>.

Only the following operations will be authorised in this connection: [...].

Dexia undertakes to limit the total amount of new flows connected with the operations referred to in point 6 above to a maximum amount of EUR 600 million of new financing; however, such operations may be concluded only between February and July 2013 or between June and November 2014.

(121) The flows mentioned in point 2 above will, moreover, be limited in accordance with the conditions set out in recital 106 of this Decision.

Dexia will supply the Commission with a periodic review of its plan to amortise and desensitise DCL's sensitive loans on 15 January 2013 and 15 May 2014.

(b) Disposals and run-off management

(122) Dexia has already undertaken the following disposals:

1. Disposal of DBB. This disposal took place on October 2011;
2. Disposal of the 50 % holding in RBCD. This disposal took place on 27 July 2012;
3. Disposal of DenizBank. This disposal took place on 28 September 2012;
4. Disposal of BIL. This disposal took place on 5 October 2012;
5. Disposal of Dexia Habitat. This disposal took place on 29 June 2012;
6. Disposal of DKB Polska. The disposal agreement was signed on 7 November 2012.

(123) Dexia will undertake to dispose of the entities listed below in accordance with the following timetable:

1. Disposal of DMA by 31 January 2013;
2. Disposal of DAM, Dexia's holding in Popular Banca Privada and Sofaxis by 31 December 2013;

<sup>(38)</sup> See recital 106.

<sup>(39)</sup> On the date of these commitments, the loan portfolio concerned had a book value of EUR 1,2 billion.

3. Disposal or run-off management of Dexia Région Bail, Dexia Flobail, Dexia Bail and Dexia LLD by 31 December 2013;
  4. Disposal of Dexia's (direct or indirect) holding in Dexia Israel within 12 months of a final, non-actionable decision in the various legal actions brought against Dexia Israel or DCL as shareholder.
- (124) The disposal commitments listed above will be deemed to have been satisfied when Dexia and the acquirer conclude a final and binding agreement (i.e. an agreement which cannot be terminated unilaterally by Dexia without paying a penalty) for the disposal of the whole of Dexia's holding in the entity or asset concerned, even if all the authorisations or statements of non-objection from the competent surveillance authorities have still to be obtained at the time of signature of the agreement, provided that closing takes place at the latest six months after signature of the disposal agreement.
- (125) If one of the disposal commitments listed above is not met, the Member States will, in the month following the deadline for the disposal, propose the appointment of an independent trustee responsible for the disposal of the entity concerned under the conditions set out in recital 132 below.
- (126) Prior to each disposal <sup>(40)</sup> provided for above and still to be implemented, Dexia will keep the independent trustee informed of parties that have expressed an interest in the acquisition of these assets and will provide the expert with all the information necessary and reasonably available to guarantee the potential purchaser's independence. The Commission will notify the Member States concerned within 15 working days of the names of parties that, in its view, do not satisfy the required conditions of relevance and independence and the reasons for its decision. Dexia will then end any disposal transaction with those parties.
- (127) Dexia will make every effort to speed up the disposal of its bond portfolio, when market conditions have improved, and thus to comply with the regulatory ratios; such disposals should take place, however, only if they have no substantial negative impact on Dexia's solvency. Dexia will provide the Commission with a yearly review of these options.
- (128) From the date of notification of this Decision, the entities not listed in recital 122 above (including Dexia Sabadell once the acquisition mentioned in recital 113 ultimately takes place) will be placed in run-off management, in particular with no new production within the meaning of recital 119 above.
- (129) In keeping with the company interest of Dexia SA and the Dexia Group, until the actual disposal of DAM and Dexia Israel (and from the clarification mentioned in recital 122, point 4, above as regards Dexia Israel), Dexia:
1. will make every effort to preserve the viability, resaleability by their future purchaser and competitiveness of DAM and Dexia Israel in accordance with sound commercial practice;
  2. will make every effort to limit any risk of loss of competitive potential by DAM and Dexia Israel;
  3. will refrain from any initiative which could have a substantial negative effect on the value, management or competitiveness of DAM and Dexia Israel or could alter the nature or the field of activity, the industrial or commercial strategy or the investment policy of DAM and Dexia Israel;
  4. subject to the ring-fencing commitment mentioned in recital 114 above, will as far as possible provide DAM and Dexia Israel with sufficient resources for their operation in accordance with existing business plans and any subsequent plans; and

<sup>(40)</sup> See recital 84 of this Decision for the information and valuation methods for all disposals.

5. will take any reasonable measure, including appropriate incentive mechanisms (in accordance with commercial practice) to encourage all the main staff members of DAM and Dexia Israel.
- (130) Until its disposal within one year of this Decision or its run-off management, it is agreed that Crediop will be managed separately from the Dexia Group. To ensure that all decisions by Crediop's management taken between the date of this Decision and the completion of the disposal [within one year of this Decision or its run-off management] are in Crediop's best interest in terms of its disposal, Dexia will appoint a manager responsible for ensuring that Crediop's activities are separately managed, and will ensure that this manager can work completely independently to comply with the commitments applicable to Crediop. The manager responsible for ensuring that activities are separately managed could be the managing director of Crediop. He will manage Crediop in its best interests, in consultation with Dexia, under the supervision of the independent trustee as set out in recital 138 below.
- (131) It is not necessary to appoint a manager for the separate management of the activities of Dexia Israel and DAM as these two entities are already being separately managed on the date of this Decision for the reasons set out in the resolution plan.
- (c) Divestiture trustee
- (132) If one of the commitments listed in recital 123, points 1 to 4, has not been met by the deadlines specified above, and if no alternative commitment has been approved by the Commission, the French, Belgian and Luxembourg authorities will submit a list of one to three persons for appointment as trustee(s) responsible for implementing disposals for prior approval by the Commission, at the latest one month after the deadline set for the disposal.
- (133) The divestiture trustee must be independent, possess the required competences and must not be subject to any conflict of interest throughout his term of office.
- (134) The Commission may approve or reject the proposed trustee(s). If the Commission rejects the divestiture trustee(s), Dexia and the French, Belgian and Luxembourg authorities will propose, within one month of notification of the rejection, from one to three new candidates who must also be approved or rejected by the Commission. If all the proposed candidates are ultimately rejected by the Commission, it will appoint a trustee on the basis of a mandate approved by the Commission.
- (135) The French, Belgian and Luxembourg authorities undertake that Dexia will grant the divestiture trustee the necessary and appropriate powers of representation:
1. to dispose of the assets mentioned in point (a) above (including any power needed to ensure the proper execution of the documents required to implement the disposal), and
  2. to take any step or make any declaration necessary or appropriate for the disposal, including the appointment of consultants to supervise the disposal process.
- (136) The divestiture trustee will include in the disposal and purchase contract(s) the normal and reasonable terms that he deems appropriate to conclude the disposal in the year following his appointment. The divestiture trustee will organise the disposal process in order to ensure a disposal [...]. The disposal or liquidation must be effective within a maximum of one year from expiry of the disposal deadline.
- (137) The costs of the services of the divestiture trustee will be borne by Dexia.



(d) Implementation of commitments

- (138) The Belgian, French and Luxembourg authorities will submit for prior approval by the Commission, at the latest one month after this Decision, a list of one to three persons for appointment as an independent trustee responsible for detailed monitoring of the above commitments ('the independent trustee') for a period of five years, which period may be extended at the request of the Commission. The independent trustee must possess the required competences and must not be subject to any conflict of interest during his term of office. The Commission may either approve or reject the independent trustee(s) proposed. If the Commission rejects the independent trustee(s) proposed, the Belgian, French and Luxembourg authorities will propose, within one month of notification of the rejection, from one to three new candidates who must also be approved or rejected by the Commission. If all the candidates are ultimately rejected by the Commission, the Commission will appoint an independent trustee. The costs of the independent trustee's services will be borne by Dexia and will not exceed the hourly rates normally charged for this type of service.
- (139) Throughout the period of the revised orderly resolution plan, the Commission will have permanent unrestricted access to the information needed to implement this Decision approving the revised orderly resolution plan. It may contact Dexia directly to obtain any explanations and details. The Belgian, French and Luxembourg authorities and Dexia will cooperate fully in any verifications that may be requested by the Commission or, where appropriate, by the independent trustee.
- (140) The independent trustee will submit a half-yearly report to the Commission on the implementation of the above commitments. This report will include a detailed report on progress with the implementation of the revised orderly resolution plan, in particular: 1) compliance with the amount and desensitisation conditions of DCL's sensitive loan portfolio referred to in recitals 120 and 121 above; 2) compliance with the caps on the grant of new financing to Dexia Crediop's existing customers as referred to in recital 120 above; 3) compliance with the planned disposal timetable referred to in recital 122 above, including the date of the disposal, the book value of assets as at 31 December 2011, the value of the disposal, the capital gains or losses made and details of the measures remaining to be implemented under the revised orderly resolution plan; 4) the management and ring-fencing of the entities to be disposed of, in particular DAM and Dexia Israel, as set out in recitals 114 and 129 above.
- (141) This report will be submitted at the latest one month after the presentation of the half-yearly accounts and the approval of the annual accounts and in any case by 1 October and 30 April of each year.
- (142) On expiry of the independent trustee's term of office and until Dexia's assets are fully written off, the Member States will submit an annual report to the Commission describing the stage reached with the orderly resolution procedure.

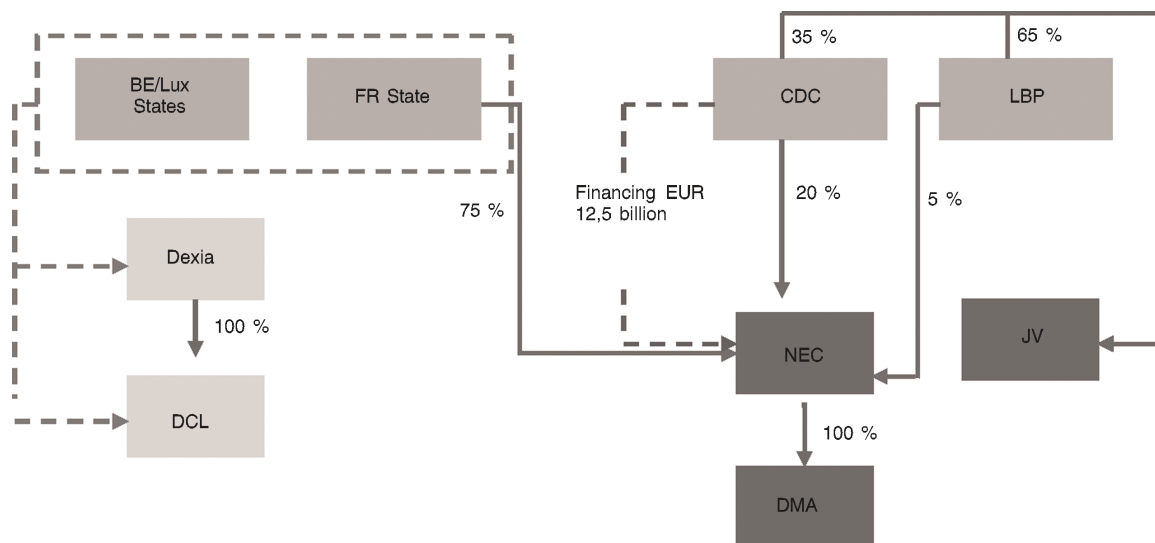
### 2.3. DESCRIPTION OF THE DMA DISPOSAL OPERATION AND ITS POST-DISPOSAL ACTIVITIES

#### 2.3.1. Description of the disposal operation

- (143) DMA is to be disposed of at the latest by 31 January 2013.
- (144) A new credit institution ('the NEC') will be created and DMA will be its wholly-owned subsidiary. The NEC will be directly owned by the French State (75 %), the CDC (20 % in preferential shares) and La Banque Postale (5 %). DMA will therefore no longer be controlled by the Dexia Group but by the French State, the CDC and La Banque Postale.
- (145) A joint venture ('JV') will also be created and will have the status of banking transaction intermediary between the CDC (35 %) and La Banque Postale (65 %), marketing new loans solely to French local authorities and public health establishments and using DMA as a refinancing vehicle. DMA will also provide the refinancing needed for existing outstanding loans.

Figure 6

## Structure of the future development bank incorporating DMA



- (146) La Banque Postale will gradually acquire more of the NEC's capital. The price to be paid by La Banque Postale will be a market price, determined by a fairness opinion, and may be verified by the Commission. La Banque Postale will have a progressive call option on a quota of the shares held by the French State such that its holding in the NEC, after the call has been exercised in full, is raised in line with the increase in the share of outstanding loans for which new production accounts in all DMA's asset components ('cover pool'). The call may be exercised only from the time at which the share of new production 'originated' by La Banque Postale or the JV exceeds [...] % of DMA's cover pool. Each year, La Banque Postale may exercise the call for a minimum quota of [...] % of the NEC's capital, although 1) La Banque Postale's holding in DMA may not be greater than the share of new production originated by La Banque Postale or the JV in DMA's cover pool and 2) La Banque Postale may not be the NEC's main shareholder.
- (147) The legal procedures for the disposal of DMA will follow the following overall scheme: DCL will supply the NEC with DMA's shares, and the tools, personnel and resources needed to manage DMA, and will then sell 100 % of the NEC's capital to the State, the CDC and La Banque Postale. The sale price will be EUR 1.
- (148) In respect of this price, the Commission notes the following points, raised by an audit consultancy and the Member States concerned.
- (149) A fairness opinion of 10 October 2012 from a financial analysis consultancy commissioned by the French authorities and the CDC states that 'a price of EUR 380 million for 100 % of the NEC (itself holding 100 % of Dexia Municipal Agency 'DMA') is an acceptable price for an informed investor'. It is specified that this price assessment takes account of the fact that 'Purchasers will benefit from general and specific asset and liability guarantees in particular including a guarantee of the validity of loans granted and their contracts' and reflects:

- the provision of resources and expertise needed for the activity;
- the disposal of an existing debt stock;
- the marketing of new loans by LBP and the [JV];
- the neutralisation of sensitive loans.

This valuation is valid only if combined with the general and specific guarantees and the overall sensitive loan disposal mechanism. [...] <sup>(41)</sup>.

<sup>(41)</sup> Emphasis added.

- (150) The fairness opinion also states that *'the value of NEC/DMA, as the progressive recovery of value adjustments has been taken into account, is indicatively EUR [...] in a value run-off scenario'*.
- (151) In their memorandum on the DMA sale operation ('the memorandum on the DMA sale operation'), the Member States concerned also note that, initially, *'it was agreed that the purchase price of DMA and the tools, personnel and resources transferred by DCL would be EUR 380 million'* [footnote: and that *'the parties had planned for [Dexia] and DCL to grant a number of purchaser guarantees in connection with the disposal of DMA: a performance and litigation guarantee on [...] of sensitive loans, a 'stop-loss' guarantee above an annual threshold of 10 basis points on mean outstanding loans, and other general and specific guarantees'* <sup>(42)</sup>].
- (152) They also indicated that they subsequently agreed to abandon the 'stop-loss' guarantee, and, then, *'the synthetic transfer of sensitive loans to DCL's balance sheet. France's guarantee covering DCL's commitments in this respect has also been abandoned'* <sup>(43)</sup>.
- (153) According to the Member States concerned, it was *'in order to take account of these two significant changes to the DMA disposal procedure and preserve its market character [that] the sale price was revised downwards and set at EUR 1. This new price (which no longer depends on DMA's net situation) also takes account of the abandonment of the price adjustment clause'* <sup>(44)</sup>.
- (154) After noting that the fairness opinion states that the price of DMA and the tools, personnel and resources needed for DMA's management would be EUR 380 million in the initial disposal procedure (which included the guarantees and the price adjustment clause), the Member States concerned specified that *'as the guarantees and the price adjustment clause included in the procedure have been abandoned and in view of DMA's balance sheet situation in the first three quarters of 2012, the adjusted price of EUR 1 fully preserves its market character'* <sup>(45)</sup>.
- (155) The French authorities consider that there is a market shortfall as regards the financing of French public health establishments and local authorities. The French authorities, and the CDC and La Banque Postale, were therefore planning to purchase DMA (by purchasing the NEC which was DMA's 100 % shareholder) in order to convert it into a 'development bank'. The scope of action of this development bank would be limited to correcting the market shortfall for the financing of French public health establishments and local authorities, as that shortfall could not be corrected by the available market supply. The French authorities adduced the following arguments in support of this market shortfall and the need to set up a development bank.

#### *Financing of public health establishments in France*

- (156) According to the French authorities, hospital investment totalled EUR 6,5 billion in 2010 (a 4,5 % drop in comparison with 2009) after continuing to rise since the beginning of the 2000s. Most of this investment was financed by self-financing and subsidies. The level of coverage of investment by medium- to long-term debt was 36 % in 2010.
- (157) The annual medium- to long-term financing need of public health establishments in France thus varies between EUR 2 and 4 billion in different years. It covers the financing of investment and the repayment of loans reaching maturity.

<sup>(42)</sup> Paragraph 24 of the memorandum entitled 'Note des autorités françaises à la Commission européenne' [Memorandum from the French authorities to the European Commission] relating to a 'Présentation de l'adossement de DMA à l'État, à la Caisse des Dépôts et Consignations et à La Banque Postale' [Presentation of the affiliation of DMA to the Caisse des Dépôts et Consignations and La Banque Postale] communicated initially by the French authorities alone, then on 14 December 2012 jointly by the three Member States concerned.

<sup>(43)</sup> Paragraph 25 of the memorandum on the DMA disposal operation.

<sup>(44)</sup> Paragraph 26 of the memorandum on the DMA disposal operation.

<sup>(45)</sup> Paragraph 27 of the memorandum on the DMA disposal operation.

- (158) Moreover, this financing need covers heavy, in particular property-related, investment projects, in a context in which the obsolescence rate (which relates accumulated depreciation to the gross value of property and which reached a historically high level in 2002) required major investment to preserve the building stock: the obsolescence rate increased from 50 % to 55 % between 1997 and 2002. Compared with the 2002 breakdown, the breakdown of direct investment by type in 2010 thus showed a shift towards property and away from 'equipment'.
- (159) In future years, investment needs will be at two main levels. Essential safety issues will have to be tackled as a priority (compliance with earthquake-related standards, risks of flooding, asbestos removal, priority fire risks); investment projects in the quality of healthcare supply will also be needed. These will also chiefly involve property operations (construction, reconstruction, refitting, etc.) which generally represent heavy investment and for which at least some borrowing is unavoidable.
- (160) In parallel, public health establishments have a major short-term financing need of some EUR 3 billion per annum (with a mean drawdown of 50 %), because of their need for substantial working capital. This need is chiefly explained by the time lag between payments by sickness insurance to public health establishments and their tight expenditure timetable.
- (161) On the supply side, French banks are not in a position to take up Dexia's market share. The total outstanding debt of health establishments was EUR 22,8 billion at 31 December 2012. Historically, and as in the case of local authorities, this debt has been largely supported by the banking sector. Unbrokered financing is in practice marginal (only 5,7 % of outstanding debt is in the form of bond issues), largely because there are so many small establishments: France had 1 034 public health establishments on 31 December 2010. The university hospital centres, which are the largest establishments, account for 99,1 % of all bond issues.
- (162) Dexia held by far the largest market share: in recent years the bank covered some [40-45] % of medium- to long-term financing needs and provided around one third of cash flow lines. As stock, Dexia continued to hold [30-35] % of total outstanding debt at the end of 2010 (see graph below).
- (163) According to the French authorities, the other French banks would also not be in a position to take up the market shares left by Dexia for various reasons:
- (a) knowledge of this market continues to be limited, largely because of the small volumes in play, whereas Dexia had a very good knowledge of the market;
- (b) the forthcoming application of the new Basel III prudential ratios, especially the liquidity ratios and the leverage ratio, is deterring banks from pursuing activities involving the grant of long-term loans, especially when these loans are not being offset by the collection of deposits through which banks can stabilise their financing sources. Like local authorities, it is mandatory for public health establishments to deposit their available funds in a treasury account. There is also an issue specific to public health establishments since they have a structural need not just for medium- to long-term bank loans, but also for cash flow lines. The new Basel III regulations penalise cash flow lines as a counterpart for which banks will have to create more own funds as well as a substantial liquidity buffer. In this context, French banks have undertaken to maintain their outstanding loans to the local public sector (including both local authorities and public health establishments) in 2012 (i.e. loan production of the order of EUR 9 to 10 billion). In France's view, this rules out any take up of the market shares left by Dexia. The general balance-sheet size objective of French banks is thus affecting not just the financing of local authorities, but also the financing of public health establishments.
- (164) For these various short-term and long-term reasons, the French authorities fear that it is unlikely that the margin improvements and the small volumes in play will be enough to bring about a natural rise in the private supply that is able to make up for Dexia and satisfy the demand from French public health establishments.

*Financing of local authorities*

- (165) The local public sector in France is made up primarily of local authorities, i.e. municipalities and their groupings, regions and *départements*. The economic scale of these entities corresponds to an annual expenditure flow of the order of EUR 220 billion (total management and investment expenses). Investment expenses were EUR 50,4 billion in 2010 and EUR 52 billion in 2011, i.e. three quarters of public investment in France. Local authorities are therefore the main players in maintaining and developing infrastructure in France.
- (166) To finance these expenses, local authorities have various resources:
- (a) savings from the current expenditure surplus left after paying management expenses and debt interest: self-financing, although this finance has to be channelled as a priority into the repayment of debt reaching maturity in the budget year;
- (b) investment funds chiefly from other public sector entities (State, European funds);
- (c) borrowing (EUR 18,6 billion in 2010 and EUR 16,7 billion in 2011).
- (167) As the amount of new borrowing to finance investment has been higher than the repayment of loans reaching maturity, local authorities have thus amassed, over time, an outstanding debt totalling EUR 152 billion in 2011.

Table 3

**Outstanding debt of French local authorities as at 1 January 2011 (in EUR billions)**

<b>Outstanding debt as at 1 January</b>											
<b>Total</b>	<b>103,4</b>	<b>102,3</b>	<b>102,9</b>	<b>105,0</b>	<b>108,8</b>	<b>114,2</b>	<b>120,6</b>	<b>128,6</b>	<b>138,1</b>	<b>145,7</b>	<b>151,9</b>
Municipalities + separately taxed groupings ***	58,9	59,4	59,4	59,9	60,9	63,2	66,1	69,6	73,1	75,2	76,5
<i>Départements</i>	17,1	16,4	16,5	17,0	17,8	18,9	20,0	21,4	24,4	27,9	29,7
Regions	7,8	7,5	7,6	8,2	9,5	10,2	11,1	12,7	14,2	15,7	16,8

- (168) The French authorities consider that forecasts of new borrowing volumes in future years have to take account of a number of parameters such as: (i) trends in the revenue and management expenditure of local authorities likely to determine self-financing; (ii) the investment needs of local authorities which are to some extent linked to the electoral cycle. The time needed to examine and implement projects and the desire to finalise them before the end of the French municipal elections tends to be reflected by a drop in investment at the beginning of terms of office and an increase at the end of these terms.
- (169) Moreover, a simulation was conducted on the basis of the data available at the end of 2011 to try to anticipate the public-sector borrowing need according to two different scenarios of the capacity of local authorities to release self-financing margins in their operational section <sup>(46)</sup>. These problems may have many causes: low fiscal revenue, freezes by a central State itself facing grant cuts or increases in certain expenditure lines such as social welfare.

<sup>(46)</sup> This information was notified by the French authorities and draws on the work of the Research Directorate of Dexia Crédit Local.

Table 4

**Capacity of local authorities to release self-financing margins in their operational section**

Scenarios:	Scenario 1-a	Scenario 1-b
<b>Investment levels</b>	No constraint — linked to electoral cycle	
<b>Management revenue</b>	+ 2,6 % due to: — taxation bases: + 3 % — stable property sale taxes — freeze on State contributions	Scenario 1-a with the following changes: — property sale taxes 5 % lower — drop of 1 % per annum in State contributions
<b>Management expenses</b>	+ 3 % due to — increased financial costs — increased welfare benefits — personnel expenditure growing by 2,5 %.	

- (170) The new borrowing need is EUR 19,5 billion on average in scenario 1-a and EUR 21,5 billion in scenario 1-b. Outstanding debt would reach EUR 175 billion and EUR 185 billion respectively by the end of 2016.
- (171) There may be a further scenario: a cap on the debt capacity of authorities due: (i) either to a resolve on the part of the public authorities to limit debt, (ii) or an inadequate supply of financing. Whatever the cause, investment would be substantially slowed down if borrowing capacity were to be limited.
- (172) In the view of the French State, therefore, keeping outstanding debt constant in value would limit new borrowing over the period to amounts of between EUR 12 and 14 billion. Investment levels would then be limited. In this case, investment would fall by EUR 51,9 billion in 2011 to EUR 43,2 billion on average between 2012 and 2016, i.e. a level comparable to that of 2004/05 and a reduction of the investment levels in the previous two scenarios by an average of 16 %.
- (173) Such a reduction would have an adverse impact on the development and maintenance of public service infrastructure (transport, education, environment, energy) and on the level of activity of the construction and public works sector (as a reminder, local investment accounts for close on 75 % of construction and public works activity).
- (174) In summary, the borrowing need of local authorities is forecast to be constant or even to grow in future years. Only external constraints could limit this need and would entail a substantial reduction of public investment as local authorities have few alternative sources of financing.
- (175) Moreover, other public sector entities may also have borrowing needs and be financed by mortgage lending companies: (i) public hospital centres whose outstanding debt is estimated at EUR 24 billion and whose annual borrowing need is estimated at EUR 3 billion; (ii) social housing bodies whose outstanding debt is estimated at EUR 100 billion (a large proportion of which is guaranteed by local authorities) and whose annual borrowing need is estimated at approximately EUR 15 billion; (iii) other public establishments run by the State and local authorities.
- (176) The total market, at the local public sector level in the broad sense, can therefore be estimated at EUR 40 billion per annum. The new development bank will, however, finance only local authorities and health establishments (and not the French public sector as a whole).

*On the supply side: volume and price competition*

- (177) Against a background of sustained demand, the supply of financing for the public sector has declined sharply because of:
- (a) the withdrawal of the market leader, Dexia, which met 40 % of the sector's needs up to 2008;
  - (b) the lack of appetite on the part of French banks which are keen to spread their financing capacity among all their customers and in particular customers with banking access;
  - (c) the withdrawal of foreign banks which, because of the crisis, have less financing capacity.
- (178) The authorities concerned point out that these various factors led the Caisse des Dépôts et Consignations to renew in 2012, as in 2011, an emergency package of EUR 5 billion offset against savings funds and offered at a price of EURIBOR + 3,20 %.
- (179) The following table estimates the amount of the supply from the various banks for the local public sector in the broad sense, i.e. local authorities, hospital centres and social housing bodies. The need which is not covered is in the order of EUR 7 to 8 billion. If social housing bodies are not covered by the new development bank, the bank's objective will be to rectify the financing need of local authorities and public health establishments which is not covered, i.e. an amount of as much as EUR 8 billion.

Table 5

**Estimation of the amount of the supply available from the various banks for the local public sector in the broad sense**

EUR billion	2008	2009	2010	2011	2012	2013
Crédit Agricole (including BFT, CA CIB)	[...]	[...]	[...]	[...]	[...]	[...]
BPCE	[...]	[...]	[...]	[...]	[...]	[...]
Dexia Crédit Local	[...]	[...]	[...]	[...]	[...]	[...]
Société Générale	[...]	[...]	[...]	[...]	[...]	[...]
Other (foreign banks, EIB, CM, etc.)	[...]	[...]	[...]	[...]	[...]	[...]
CDC (direct PRCT and savings fund packages)	[...]	[...]	[...]	[...]	[...]	[...]
Not covered					7	8,5
Total	40,3	40,4	39	38	40	40

(estimations drawn up by Dexia)

(\*) Yc distribution of the share of the PRCT awarded to Dexia, BPCE, CM and Depfa, i.e. EUR 1,5 billion

(\*\*) Yc distribution of the share of the 2012 PRCT awarded to Dexia, BPCE, CASA, CM, SG and Depfa, i.e. EUR 1 billion

- (180) This restriction of the supply has gone together with a structural increase in prices since the 2008 financial crisis. Whereas prices were around 100 basis points above EURIBOR in the first half of 2011, they rose to above 200 basis points in the second half of 2011.
- (181) The demand for the CDC package is more than three times higher than its volume: the EURIBOR + 320 basis points price is thus lower than the price that would balance supply and demand if the market were operating conventionally.
- (182) In a more structural way, two factors are making this market unattractive to general banks: (i) the lack of certain revenue additional to loans, especially because funds must be deposited with the Treasury; and (ii) the very long maturity of the financing requested (15 years or more) which is in line with the technical depreciation of investment but makes it necessary for financiers to raise liquidity for similar periods.

- (183) The French authorities also point out that it is common in the other countries of Europe for public establishments to be part of this market and that they meet over half the needs of local authorities. By way of example, the Cassa Depositi e Prestiti (CDP) in Italy, the regional public banks in Germany, the PWLB (Public Works Loan Board) in the United Kingdom and the public financing companies in the Nordic countries (Denmark, Norway, Sweden).
- (184) On the basis of the factors discussed above, the French authorities conclude that the establishment of the development bank would supplement the supply from private banks, which is inadequate in the long term. The effect of this new entry into the market would be to bring supply into line with demand, without driving existing players out of the market.

*The DMA, NEC and JV consolidated business plan*

- (185) The DMA, NEC and JV consolidated business plan notified to the Commission contains the following main elements:
- (a) New loan production should be EUR [2-5] billion in 2013 and then EUR [3-6] billion annually from 2014.
  - (b) Covered bonds will be issued for refinancing purposes. Overcollateralisation will be financed at market price by the supply of liquidity from the CDC to the NEC.
  - (c) The net banking product should be EUR [75-125] million in 2013 and will increase progressively to EUR [175-225] million in 2017. Operating costs should be approximately EUR [75-125] million and the risk cost will be limited to EUR [0-5] million. The net result should be negative until 2014. The cumulative net result should be EUR [100-150] million over the next five years.
  - (d) DMA's balance sheet should decrease by some [5-15] % by 2017. On that date, the new 'book' should represent some [25-50] % of the cover pool assets and the risk-weighted assets ('RWAs') should be EUR [5-10] billion. The core capital ratio (Basel 3 Tier 1 Capital) should be [20-30] %.
- (186) The NEC will be responsible for the current management of the outstanding assets held by DMA, carried out up to now by DCL. These management functions will in particular cover:
1. the management and recovery of the loans included in DMA's balance sheet at the time of closing, and the management and recovery of the new production acquired by DMA;
  2. the 'desensitisation' process for DMA's 'sensitive' loans (see recital 62) subject to a risk of litigation. The desensitisation process is intended to reduce the risk of litigation connected with a sensitive structured loan by restructuring the customer's outstanding loans (and possibly other non-sensitive loans). Under the desensitisation process, the new commercial establishment will renegotiate the outstanding loans of DMA's existing French local authority and public hospital establishment customers holding sensitive loans. Additional financing estimated at EUR 1 billion<sup>(47)</sup> per annum will be provided for some of these desensitisation operations. The revenue from this additional financing will at least offset the management costs and losses of revenue connected with the renegotiated loans;
  3. management of the security portfolio;
  4. management of cash flow and long-term refinancing by covered bonds;
  5. management and coverage of risks through market operations;
  6. management of DMA's balance sheet;
  7. maintenance of in-house scoring tools and methods.

<sup>(47)</sup> On the basis of desensitisation needs and the margin levels applied to new production, the bank calculated that a production of EUR 1 billion per annum for five years was needed to be able to desensitise 80 % of sensitive loans.



- (187) In addition, the NEC will provide certain services for the JV in order to support lending solely for French local authorities and public hospital establishments. This service provision will in particular include services to assist with the marketing and management of loans, assistance with the active management of non-sensitive loans, and services connected with finance and risks.
- (188) The JV will market loans solely to French local authorities and public health establishments. These loans will be recorded in the balance sheet of La Banque Postale then assigned to DMA which may refinance them by issuing new covered bonds when these loans meet the eligibility criteria for inclusion in DMA's cover pool and satisfy DMA's commitment policy.
- (189) The French State undertakes that the JV will not offer more attractive financing conditions than those offered by other commercial banks. The JV may not, in its commercial advertising, feature offers that are more attractive than market practice. Loans to public health establishments must be marketed under conditions that ensure that these loans are compatible with the internal market in accordance with the provisions on State aid.
- (190) These commitments show that the JV's new production activity will be limited to 'plain vanilla' loans. In substance, the JV's offer will be 1) limited to medium- to long-term loans; 2) simple and transparent; 3) based on the existing recommendations (Interministerial Circular of 25 June 2010, charter of good conduct (Gissler charter) and the report by the Bartolone Parliamentary Committee).
- (191) The French authorities contend that restricting the JV's loans to plain vanilla loans will make it possible to cover customers' identified needs, namely simplicity, diversification and protection against adverse market trends. This offer will exclude leverage-effect products, sloped products, currency products, complex structured products with a cumulative structured effect and any product exposing customers to capital risks.
- (192) In all cases, the offer will be in line with customers' characteristics and size and all new products will be discussed with the Prudential Control Authority.
- (193) The JV will provide customers with clear documentation presenting products in accordance with the Gissler classification.
- (194) The Gissler charter is an analysis grid structured around two criteria: the underlying index and the structure applied. It formulates a growing classification of risks accessible to local authorities.

Table 6

Table of Gissler charter risks

Underlying indices		Structures	
1	Eurozone indices	A	Simple fixed rate. Simple floating rate. Swap of fixed rate for floating rate or vice versa. Swap of structured rate for floating rate or fixed rate (one way). Simple floating rate with cap or tunnel
2	French inflation or Eurozone inflation indices or difference between these indices	B	Simple barrier. No leverage
3	Eurozone index differences	C	Swaption
4	Non-Eurozone indices. Differences between indices one of which is a non-Eurozone index	D	Multiplying factor of up to 3; Multiplying factor of up to 5 (cap)
5	Non-Eurozone index differences	E	Multiplying factor of up to 5

- (195) The JV will limit the range of products offered to the following products:
1. products of category 1A;
  2. French inflation-linked products and prospectus A of category 2A; and
  3. category 1C swaption purchase.
- (196) The French authorities have stressed that differences between Eurozone inflation indices, or inflation indices of other Eurozone countries, cannot be used in category 2.
- (197) These products are not, moreover, available to all customers. They depend on the size of authorities as shown in the following table:

Table 7

**Category of product available by customer segmentation**

Customer segmentation	Number	Product
Local authorities < 5 000 inhabitants Public hospitals	47 614	1A
Local authorities > 5 000 and < 20 000 inhabitants	2 612	1A + inflation index and prospectus A
Local authorities > 20 000 inhabitants	1 244	1A, 1C (excluding option sale) + inflation index and prospectus A

- (198) The term of the loans offered will not exceed 15 years, unless it can be linked to a longer refinancing resource, in particular through the issue of covered bonds having a corresponding maturity.
- (199) In all cases the term of customer loans is subject to DMA's capacity to refinance itself for similar terms.
- (200) In order to facilitate desensitisation, the JV will not offer financing to customers in litigation or default in respect of current items in DMA's balance sheet. There will also be prior consultation between the JV and the NEC before any finance is granted to customers holding sensitive loans.
- (201) The French authorities will appoint an independent expert in order to verify, for a period of two years, compliance with these conditions. After that period, the French authorities will forward any information relevant to proving compliance with these conditions to the Commission which may, if it deems necessary, request the appointment of the independent expert for a longer period.
- (202) The contractual service provision links between the Dexia Group and DMA, the NEC and the JV will be terminated. These links will in principle be terminated after a transitional period during which particular contractual links, limited to those needed to enable the NEC, DMA and the JV themselves to provide the services in question, may be maintained.
- (203) As far as non-IT services are concerned, Dexia will supply certain services to the NEC (namely monitoring of the bond portfolio <sup>(48)</sup>, commercial monitoring of non-French loans <sup>(49)</sup>, credit risk analysis <sup>(48)</sup>, the in-house scoring system <sup>(48)</sup>, valuation of securities <sup>(48)</sup> and audit <sup>(49)</sup>) for a limited transitional period of three to six months depending on the services concerned. In return, the NEC will provide Dexia with services (namely credit risk analysis and services connected with the in-house scoring system) for a maximum of six months.

<sup>(48)</sup> For a maximum of six months from closing.

<sup>(49)</sup> For a maximum of three months from closing.

- (204) As far as IT systems are concerned, the transitional period will be 24 to 30 months because of the complexity of duplicating and migrating a large number of different applications and their related databases.
- (205) According to the French authorities, the main financing needs of the NEC and DMA will be connected with:
1. the financing of DMA's overcollateralisation <sup>(50)</sup>;
  2. the cash collateral needs raised by the DMA cover instruments in respect of which the NEC may be required to intervene concerning:
    - (a) the 'swaps' currently concluded between DMA and DCL and its subsidiaries ('internal swaps') and
    - (b) where necessary, swaps with market counterparties ('external swaps').
  3. any need for prefinancing to load the new production marketed by the JV.
- (206) The financing need connected with the collateral posted by DCL on the internal swaps (swaps between DMA and DCL) to market counterparties (and not received by DCL on behalf of DMA) now stands at some EUR [2-5] billion. In the context of the NEC (and therefore DMA) purchase operation, the parties have agreed that the NEC will, post-closing, broker the internal swaps, in other words it will bear the burden of financing the cash collateral need connected with these swaps. The liquidity will be provided at market price (to be calculated by a method to which the French authorities have subscribed) to the NEC by its shareholders. DCL will compensate the NEC by paying a balancing payment of EUR 130 million for this intervention.
- (207) DCL will also undertake to cooperate with the NEC so that the '*Dexia Crediop per la cartolarizzazione*' ('DCC') securitisations can be stripped in 2013 in order to replace the securitisation elements in DMA's asset pool by the underlying assets which will then be directly held. Swaps between DMA and Crediop will need to be set up for the purposes of this stripping. These swaps will then be brokered by the NEC and this brokerage will entail compensation by Dexia, to be calculated using the same methods as those used for the internal swaps brokered when the DMA disposal is closed.
- (208) If swaps (or other derivatives) are used, they will be carried out directly by the NEC and/or DMA, without intervention by DCL.
- (209) The French authorities undertake that DMA's final shareholders will keep its capitalisation at a level sufficient to absorb any losses on its existing portfolio resulting from any materialisation of the risk of litigation connected with sensitive loans. Any future recapitalisation will be subject to the prior approval of the Commission.
- (210) DMA's final shareholders will contribute, in accordance with the following principles, to the financing needs of the NEC and DMA:
1. The needs connected with the existing pool, both for overcollateralisation and for the cash collateral linked to swaps, will be met, when the transaction is finalised, by the CDC, via the NEC. Dexia and DCL, which will lose any direct or indirect holding in DMA's capital as soon as the disposal of DMA is completed, will stop providing liquidity to DMA from that date;
  2. The needs connected with the new production of loans will be met by the JV's shareholders;

<sup>(50)</sup> According to the regulatory provisions, an overcollateralisation ratio of mortgage lending companies is to be calculated as the ratio between all asset components ('cover pool') and debts benefiting from legal privilege. This ratio must be at least 102 %. However, the rating agencies may require a level of overcollateralisation greater than the regulatory requirements. This requirement depends on the methods used by each agency (quality of the cover pool, rating of the sponsor, asset and liability term differences, etc.) and may vary over time. DMA has undertaken to maintain this ratio at a level of 105 % or more.

3. The CDC's contribution is capped, for the scheme as a whole, at EUR 12,5 billion. Any contributions by the CDC to the liquidity needs of the JV will in particular be included in this cap;
4. The French authorities stress that all shareholder contributions to the financing needs of the NEC and DMA will take place *'at market price'* and with maturities that take account of uses. The methods used to calculate the market price of the liquidity contribution to DMA will comply with the following principles:
  - (a) For each issue, the cost of the long-term financing provided for the NEC by its shareholders at market price will be calculated from the financing costs, for the same maturities and currencies, recorded for a panel of credit institutions agreed by the NEC and its shareholders.
  - (b) The panel of credit institutions will be decided from the list of French banks contributing to the calculation of the Euribor, excluding institutions considered by the NEC and its shareholders (unanimously) to be non-comparable with the NEC/DMA in terms of their long-term ratings (and prospects) and risk profiles (type of activity, geographical exposure, prudential ratios, etc.). The panel will be formed by a minimum of three banks.
  - (c) The cost of financing the NEC/DMA will be equal to the mean costs of financing the institutions forming the panel.
  - (d) Similarly, the cost of the short-term financing contributed to the NEC by its shareholders at market price will be equal to the average financing costs of the institutions forming the panel.
- (211) The part of DMA's balance sheet not involving existing loans to French local authorities and public health establishments, estimated at EUR [20-40] billion as at 30 September 2012, will be placed in run-off management.
- (212) In practice, as is evident from what has been said in the preceding recitals, the activities of the NEC, DMA and the JV will be limited to financing activities for French local authorities and public health establishments. Part of the existing portfolio on DMA's balance sheet lies outside those activities. That part of the portfolio, which no longer corresponds to the activities to be pursued by DMA after disposal of the company, will be placed in run-off management and the JV will not be able to grant any loans to customers other than French local authority and public hospital establishment customers.
- (213) In contrast to what the French authorities planned in their initial plan for DMA's disposal described in Section 2.3.5 of the conditional authorisation decision, and as presented in a memorandum from the French authorities dated April 2012, the parties to the DMA disposal operation have abandoned the 'stop-loss' guarantee to be granted by Dexia SA and DCL to DMA in the event of losses on the mean outstanding debts in DMA's balance sheet, and the 'sensitive loan' guarantee on a portfolio of 'sensitive' loans of some EUR 10 billion covering both losses resulting from potential litigation and capital losses resulting from renegotiation or restructuring.
- (214) The Member States concerned have also abandoned two State guarantees that were initially planned as part of the DMA operation: a counter-guarantee by the French State on the commitments of Dexia SA and DCL in respect of the sensitive loans in DMA's assets <sup>(51)</sup> and an extension of the refinancing guarantee by the Member States concerned in respect of the medium-term obligations of DCL on a programme of obligations [...], in order to avoid early repayment clauses being applied in the event of a substantial disposal of assets.

<sup>(51)</sup> Law No 2011-1416 of 2 November 2011 on amended finance for 2011 (OJ of the French Republic No 0255 of 3 November 2011) in practice authorises the French minister for the economy to grant the companies disposing of DMA — Dexia SA and DCL — a guarantee on *'the commitments entered into by these companies with his agreement in respect of assets recorded in the balance sheet of the company Dexia Municipal Agency on the date of disposal by Dexia Crédit Local SA of more than the majority of that company's capital'*. This guarantee would have been granted for outstanding assets of a maximum of EUR 10 billion and would have been exercised after applying a deduction of EUR 500 million, up to a limit of 70 % of the amounts due in respect of those commitments and a total amount of EUR 6,65 billion. The remuneration by DCL of the State counter-guarantee would have been EUR 10 million per annum.

- (215) It is also planned that, at the time of disposal of the NEC, 'no guarantee is granted by DCL and [Dexia] on the loans (i) concluded by DCL and transferred to DMA or (ii) concluded by DCL on behalf of DMA or (iii) concluded directly by DMA' <sup>(52)</sup>. The NEC and DMA will thus bear the losses connected with these three types of loan, especially losses arising from an irregularity or non-conformity in respect of these loans, their existence or their validity. However, 'DCL will remain liable for damage awards that DCL is ordered to pay to a borrower under the terms of a loan (i) because of the prejudice suffered by this borrower and caused directly by DCL's failure to meet its contractual, legal or regulatory obligations and (ii) which are not the result of an annulment of the loan in question, an amendment of one or more of its terms or conditions or which are not intended to place the borrower in a situation similar to that in which he would have been if the loan or one or more of its terms or conditions had been the subject matter of a judicial annulment or amendment decision' <sup>(53)</sup>.
- (216) According to the French authorities, 'DMA, the NEC and the JV, whose activities will be limited to the financing of French local authorities and public hospitals, will together form a 'development bank'' <sup>(54)</sup>.
- (217) The French authorities have pointed out that a development bank was needed to make up for the market shortfall in financing for French local authorities and public hospitals. The authorities have also submitted analyses that show that the annual demand for financing from the latter is in the order of EUR 20-24 billion, while the supply from banks is limited to approximately EUR 10 billion.
- (218) This imbalance is largely due to the withdrawal of Dexia which had a market share of some [40-50] %.

### 2.3.2. Commitments

- (219) The commitments connected with the DMA disposal operation and the establishment of the new bank are as follows, the authentic text being attached at Annex III:
- (a) Capital holding
- (220) At the latest by 31 January 2013, DCL will dispose of 100 % of the NEC's capital to the French State, the CDC and La Banque Postale at a price of EUR 1 described by the Member States concerned as a 'market price' corresponding to the purchase price of DMA and the price of the equipment and resources transferred by DCL, or made available to the NEC, at the latest on the date of the disposal of DMA.
- (221) La Banque Postale may increase its holding in the capital of NEC at a market price determined by independent experts using methods commonly accepted in comparable cases so that its holding in the capital of the NEC is ultimately equal to the proportion of new production-related outstanding debt in DMA's cover pool.
- (b) Activities of the new development bank
- (222) The JV's scope of activity will be limited to the financing of French local authorities and French public health establishments. The loans marketed will initially be recorded on the balance sheet of La Banque Postale then assigned to DMA provided that they comply with DMA's commitment policy <sup>(55)</sup>. Loans not complying with the criteria of this commitment may not be assigned to DMA.
- (223) The JV's product offer will be simple and made up of 'plain vanilla' products with simple and transparent tariff methods. It will comply with the conditions set out in the approved memorandum notified to the Commission on 8 October 2012 (Annex IV(b) to this Decision).

<sup>(52)</sup> Term sheet of the declarations and guarantees to be agreed, version of 13 October 2012, p. 11.

<sup>(53)</sup> *Idem*.

<sup>(54)</sup> See paragraph 112 of the memorandum on the DMA disposal operation, p. 25.

<sup>(55)</sup> DMA's commitment policy is intended to limit the risk represented by the loans on its balance sheet. By way of example, a loan complying with the commitments mentioned in recitals 223 and 224 might nevertheless not comply with DMA's commitment policy if DMA's total exposure to the customer concerned was considered to be too substantial, or if the global debt of the customer concerned exceeded a given proportion of this customer's revenue.

- (224) Financing will be offered to French local authorities and public health establishments under market conditions that are not more attractive than those offered by other commercial banks. In particular, the JV will not feature offers that are more attractive than market practice in its commercial advertising. It will be up to the monitoring trustee to decide how compliance with this commitment can be monitored.
- (225) The activities of the NEC, DMA and the JV are authorised for a period of 15 years, with the proviso that, at the end of this period and without prejudice to the commitment in recital 227 below: 1) for local authority financing activities, this authorisation will be renewed under the same conditions provided that there is still a market shortfall; 2) for French public health establishment financing, the renewal of this authorisation will be conditional on proof of a market shortfall.
- (226) After three years from the final decision, the French authorities may ask the Commission to verify that the global business plan of the NEC, DMA and the JV complies with the profitability standards of a commercial bank with a view to their conversion, subject to authorisation by the Commission, into a commercial bank.
- (227) The contractual service provision links between the Dexia Group and DMA, the NEC and the JV, will be restricted to those set out in the memoranda of 8 and 11 October 2012 annexed to this Decision (Annexes IV(c) and IV(d) to this Decision) and will be invoiced at market prices.
- (228) For five years from the final decision, DMA, the NEC and the JV will not acquire or take holdings in an enterprise. This applies both to enterprises which have the legal status of a company and to packages of assets forming an enterprise.
- (229) With the exception of the dividends paid by DMA to the NEC, DMA, the NEC and the JV will not distribute any form of dividend on their shares up to 31 December 2015. DMA, the NEC and the JV will not pay coupons, unless contractually obliged to do so under a commitment entered into prior to 14 December 2012.
- (230) The State will ensure that DMA, the NEC and the JV comply with the legislation in force on wages and remuneration, and in particular with the remuneration ceilings applicable to banking institutions and with the restrictions directly linked to the direct or indirect holding by the State of control of DMA, the NEC and the JV. The State undertakes to ensure that DMA, the NEC and the JV scrupulously respect the conditions that the Commission imposes in this respect when implementing the rules on State aid.
- (231) In this respect, the French authorities will make the best possible use of public funds as regards the wages and remuneration paid to employees of banking institutions subject to a restructuring plan. The State will in particular ensure that the business plan notified to the Commission<sup>(56)</sup> is scrupulously implemented. The State will also notify the Commission of proposals to reduce the general and staff costs of DMA, the NEC and the JV if, at the end of the accounting year in question: (i) the margin is over 20 % lower than the objective set in the business plan<sup>(57)</sup>; (ii) the net profit (excluding provisions) is more than 25 % lower than the set objective; (iii) losses are to be recorded in the profit and loss account; or (iv) DMA, the NEC or the JV no longer comply with the minimum regulatory ratios in force. This commitment will take effect from the 2013 annual consolidated accounts.
- (c) Management of the existing outstanding debts on DMA's balance sheet
- (232) Loans recorded on DMA's balance sheet which have not been granted to French public health establishments or French local authorities will be placed in run-off management: no new loans will in particular be granted to customers outside the scope of activity defined above (recital 222).

<sup>(56)</sup> Annex VII to the notification of 14 December 2012.

<sup>(57)</sup> Provided in Annex VII to the notification of 14 December 2012.

(233) Loans granted to French local authorities or French public health establishments classified outside the Gissler charter or rated as E3, E4 or E5 in the Gissler charter or having a score of 11 or more in Dexia's internal scoring ('sensitive loans') will be subject to desensitisation by the NEC, financed by DMA. This desensitisation is intended to reduce the allied risk and may go together with new production.

(234) The JV will not market financing to customers holding sensitive loans or in litigation or default in respect of outstanding loans on DMA's balance sheet.

(235) DMA will refinance the loans granted by the JV and will refinance existing outstanding amounts. From the date on which the disposal of DMA is implemented, DMA's balance sheet will be subject to special management in connection first with the sensitive loans whose global volume is estimated at EUR 9,4 billion and second with the run-off management of loans falling outside the activities of the development bank defined in recital 222 of these commitments, whose global volume was estimated at EUR [20-40] billion on 30 September 2012.

(d) Provision of liquidity for the NEC and DMA

(236) The French State, the CDC and La Banque Postale undertake to provide the necessary liquidity for the NEC and DMA. This liquidity will be provided under the conditions set out in the approved memorandum notified to the Commission on 8 October 2012 and annexed hereto (Annex IV(a) to this Decision). In the case of the CDC, these contributions will be capped at EUR 12,5 billion.

(237) Dexia SA and DCL will cease to provide any liquidity to DMA and the NEC as soon as DMA's disposal is finalised.

(e) Capital level of the NEC and DMA

(238) The French State, the CDC and La Banque Postale undertake to maintain the level of capital needed to cover any losses that may take place in respect of DMA's existing portfolio. Any increase of DMA's capital must be notified to the Commission in compliance with the rules on the implementation of Articles 107 and 108 of the Treaty.

(f) Monitoring and implementation trustee

(239) A trustee responsible for monitoring the commitments will act for and on behalf of the Commission and may for that purpose put any question to the French State, the CDC, La Banque Postale, DMA, the NEC or the JV and obtain any document from them. He will be appointed as follows:

— the State will submit a list of one to three persons, selected by agreement with the CDC and La Banque Postale, for appointment as monitoring trustee(s) responsible for verifying the application of the commitments listed in this Section 2.3.2 (authentic text in Annex III), at the latest one month after the Commission's final decision, for prior approval by the Commission;

— the monitoring trustee must possess the required competences and must not be subject to a conflict of interest during his or term of office;

— the Commission may either approve or reject the proposed candidate(s). If the Commission rejects the proposed candidate(s), the State will propose, within one month of notification of the rejection, from one to three new candidates who must also be approved or rejected by the Commission;

— if all the candidates are ultimately rejected by the Commission, it will appoint a monitoring trustee;

— the costs of the services of the monitoring trustee will be borne by the NEC and the JV.

- (240) The remit of the monitoring trustee will be as defined below:
- his term of office will last two years from the final decision, and may be renewed if the Commission deems it necessary;
  - during the term of office of the monitoring trustee, the Commission will have permanent unrestricted access to the information needed to implement its decision. It may directly contact the NEC, the JV, the French State, the CDC or La Banque Postale to obtain explanations and clarifications. The NEC, the JV, the French State, the CDC and La Banque Postale will cooperate fully with any verifications that the Commission or, where appropriate, the monitoring trustee may request;
  - as regards compliance with the commitment in recital 224 above, the State will inform the monitoring trustee every six months of the information available to the Banque de France on the terms and conditions offered by the main commercial banks for the financing of French local authorities and French public health establishments. The monitoring trustee may check that, in respect of a sample of loans granted by the JV, it has not offered financing terms and conditions that are much lower on average than those offered by all the other commercial banks. If it were to prove that the financing terms and conditions offered by the JV were, in a given six-monthly period, much lower than those offered by all the other commercial banks, the JV will amend its financing conditions in the following six months in order to comply with the commitment in recital 224 above;
  - the monitoring trustee will provide the Commission with a yearly report on the implementation of the above commitments.
- (241) For the whole period of authorisation of the development bank activities as set out in these commitments, the State will provide the Commission with any information that it may require in order to monitor compliance with these commitments. At the end of the term of office of the monitoring trustee, the State will also submit to the Commission a final annual report on compliance with these commitments.

#### 2.4. DESCRIPTION OF THE OPERATION TO SELL DBB/BELFIUS TO THE BELGIAN STATE AND OF THE DBB/BELFIUS RESTRUCTURING PLAN

##### 2.4.1. The DBB/Belfius sale operation

- (242) On 9 October 2011, via the Société Fédérale de Participations et d'Investissements (SFPI), Belgium offered to buy 100 % of Dexia SA's holding in DBB/Belfius and its subsidiaries, with the exception of DAM, for a fixed price component of EUR 4 billion. The purchase also included legacy portfolio instruments of a value of approximately EUR 18 billion.
- (243) This offer was accepted by the Board of Directors of Dexia SA on 10 October 2011.
- (244) The sale agreement also included a price supplement mechanism in favour of Dexia SA in the event of resale at a profit within a period of five years (the 'variable price component'). Under the variable price mechanism if, within a period of five years from the date of purchase of the shares of DBB/Belfius, those shares were resold to a third party (apart from the Belgian Federal State, Belgian regions or any public company or company controlled by the latter), Dexia would receive a proportion of any capital gains made by Belgium above an amount of 10,5 %. The proportion of the capital gains payable to Dexia SA would be 100 % if the sale took place in the first 18 months from the date of purchase. The proportion of the capital gains payable to Dexia SA would then be progressively reduced by 6,25 % per six-month period.
- (245) According to the notification of the DBB/Belfius purchase operation, it was also planned to reduce as far as possible the intragroup financing from DBB/Belfius to DCL, which was EUR 53 billion at that time, including EUR 33 billion which was not securitised<sup>(58)</sup>. Consequently, prior to the signature of the Dexia and DCL

<sup>(58)</sup> According to the Belgian authorities.



temporary refinancing guarantee agreement, agreement had to be reached on a timetable for a gradual reduction of the financing supplied by DBB/Belfius to the Dexia Group. As soon as the temporary guarantee was in place, DCL and Dexia would issue instruments guaranteed by the Member States concerned, part of which would be used to reimburse the intragroup financing supplied by DBB/Belfius to DCL and its subsidiaries<sup>(59)</sup>. According to a letter dated 16 December 2011, DBB/Belfius undertook to underwrite bonds guaranteed by the Member States concerned and issued by DCL as part of the temporary guarantee for a value equivalent in European Central Bank eligible collateral to EUR 12 billion, while DCL undertook to use these funds to reimburse the non-securitised financing of DBB/Belfius for a nominal amount of EUR 12 billion.

- (246) Lastly, the Belgian State undertook to immunise Dexia against any risk of losses in respect of debts outstanding from Arco, Ethias and Holding Communal (shareholders of Dexia SA), in relation in particular to 1) a holding or any other form of interest by those shareholders in the capital or results of DBB/Belfius; or 2) any restructuring, rescaling or writing off of debt by DBB/Belfius in relation to the loans granted by DBB/Belfius or its subsidiaries to one or more of those shareholders; or 3) the consequences of any competitive situation involving the entities of the Arco Group, Holding Communal or Ethias.
- (247) The Belgian authorities also forwarded an evaluation of the value of DBB/Belfius drawn up by an independent expert who, on the basis of the accounts of DBB/Belfius as at 30 June 2011, estimated its value to be between EUR 3,4 and 4,2 billion using the price/earnings multiple method and the price/total book value multiple method and between EUR 2,8 and 7,2 billion using the *Gordon Growth* method.

#### 2.4.2. The DBB/Belfius restructuring plan

- (248) On 17 April 2012, the Belgian authorities notified information on the DBB/Belfius business model to the Commission. This information was supplemented by a series of letters and meetings between 17 April 2012 and 23 November 2012, then by a final plan notified on 26 November 2012. This information in particular included:

1. a business plan for the DBB/Belfius Group and projections of certain balance sheet and profit and loss account data to 2016;
2. the volumes and margins of outstanding debt and new production by main lines of activity (PWB, RCB and insurance); and
3. the volumes and average costs of financing of the Group.

- (249) The following table summarises the projections of results, profitability and solvency of DBB/Belfius in a baseline scenario for each year from 2012 to 2016.

Table 8

#### Baseline scenario for DBB/Belfius — projections of results, profitability and solvency

EUR million	2012	2013	2014	2015	2016
<b>Net results after taxation</b>	408	[...]	[...]	[...]	[...]
Of which: banking	64	[...]	[...]	[...]	[...]
Of which: insurance	36	[...]	[...]	[...]	[...]

<sup>(59)</sup> The reimbursement of non-securitised financing would take priority over the reimbursement of securitised financing.

EUR million	2012	2013	2014	2015	2016
Of which: exceptional	308 <sup>(60)</sup>	[...]	[...]	[...]	[...]
Cost/earnings ratio for banking activities	82	[...]	[...]	[...]	[...]
Return on equity	15,4 %	[...]	[...]	[...]	[...]
Core Tier1 Basel III ratio	n/a	[...]	[...]	[...]	[...]

## (a) General background

- (250) DBB/Belfius operates chiefly in the Belgian market for financial services for the public and semi-public sector ('Public and Wholesale Banking' or 'PWB'), financial services for individuals ('Retail and Commercial Banking' or 'RCB') and insurance. DBB/Belfius has a market share <sup>(61)</sup> in Belgium of [10-15] % of PWB loans, 13 % of RCB deposits, 15 % of RCB mortgage loans, 9,5 % of life insurance and 5 % of non-life insurance. DBB/Belfius has approximately 3,8 million customers. DBB/Belfius had a balance sheet total of EUR 233 billion at the end of 2011 and a Core Tier 1 Basel II solvency ratio of 11,8 % at the end of 2011. DBB/Belfius recorded a net loss after taxation of EUR 1,37 billion in 2011.
- (251) Under the restructuring plan for DBB/Belfius, it is planned to refocus the bank on its key PWB, RCB and insurance service markets by maintaining its ranking as the third most important player in banking and insurance in Belgium. No international development is planned. According to the Belgian authorities, the restructuring plan should reduce the total size of DBB/Belfius' balance sheet at 31 December 2016 by 20 % in comparison with 31 December 2011. The balance sheet total of DBB/Belfius should be EUR 185 billion at the end of 2016 in comparison with EUR 233 billion at the end of 2011.
- (252) Over the restructuring period from 2012 to 2016, the DBB/Belfius Group estimates that it can generate non-distributed profits of EUR [0,5-3] billion <sup>(62)</sup> which will step up its regulatory capital. These profits will be distributed [...] between the PWB, RCB and insurance business lines.
- (253) Under the restructuring plan, a major deleveraging and de-risking of the Group's assets is planned. Non-securitised exposure to Dexia has been cut to a level close to zero since March 2012. The guaranteed bank securities issued by DCL which it holds will mature by 2015. Sovereign and para-sovereign exposures will be reduced. EUR [200-500] million of the (banking and insurance) budget have been allocated to the de-risking of portfolios.
- (254) The cost/earnings ratio should reach a level of 69 % (banking) as a result of major productivity gains and ongoing cost control. The main savings are to be achieved by renegotiating service contracts with external suppliers, improving branch productivity and adjusting personnel costs.
- (255) The aim of the restructuring plan is to preserve the current market share of DBB/Belfius in its key markets.

## (b) The PWB segment

- (256) Between 2012 and 2016, the Group is planning, as regards the PWB segment, to maintain its market share (7,4 % in 2011) of deposits, with an annual growth in line with market growth (3-4 %). The Group's outstanding loans should not increase as new loans will offset those reaching maturity. As annual market growth is estimated at 3-4 %, DBB/Belfius' market share should thus fall from [10-15] % at the end of 2011 to [10-15] % at the end of 2016. The loan to deposit ratio should thus automatically improve and be less than [...] from 2013 as against [...] in 2012 and [...] in 2011.

<sup>(60)</sup> Exceptional gain of EUR 308 million including capital gains on acquisitions of subordinated bonds and the cost of de-risking.

<sup>(61)</sup> Market share in 2011 for banking and 2010 for insurance.

<sup>(62)</sup> No dividend will be paid to shareholders up to 2016.

(257) The Group is planning new public banking loan production of some EUR [2,5-5] billion in 2013 and a maximum of EUR [2,5-6] billion in the following years. Total outstanding loans should remain stable at EUR [25-50] billion. As regards the price offered to customers for loans, DBB/Belfius has started to take a more conservative approach than in the past which takes better account of the price of liquidity in particular. This price was set beforehand as a flat rate depending on the term of the loan. The price offered to customers was therefore on average Euribor + [100-200] basis points in the first quarter of 2012 in comparison with Euribor + [50-150] basis points in the first quarter of 2011. This new pricing is making it possible to release a gross margin of [0-50] basis points. For that reason, because of the long term of investment loans, the average margin on outstanding debt should only increase more slowly, reaching [0-50] basis points in 2016.

(258) Current deposits should increase by some [0-5] % per annum to reach EUR [15-25] billion at the end of 2016 in comparison with EUR [15-25] billion at the end of 2012. The margin released on deposits should decline to [20-60] basis points at the end of 2016 as against [30-70] basis points in 2012 and [50-100] basis points in 2011.

(c) The RCB segment

(259) Retail banking customers' deposits (current accounts, savings accounts and term deposits) totalled EUR 60 billion at the end of 2011. DBB/Belfius is forecasting an increase of some EUR [0-5] billion per annum to reach a total of EUR [50-100] billion at the end of 2016.

(260) The annual growth of current deposits with no fixed maturity (current accounts and saving accounts) should be some [0-5] %, which is in line with annual market growth. The market share of DBB/Belfius should remain stable between 2011 and 2016. Apart from the 2012/13 year during which DBB/Belfius is envisaging margins [...] (like the other products offered to its RCB customers), the margin on term deposits should level off at around [25-80] basis points in 2015/16, a level slightly higher than the level from 2008 to 2011.

(261) DBB/Belfius is planning an annual real estate loan production of EUR [0-5] billion with an initial margin [...] of [0-25] basis points in 2012 and then [5-30] basis points in 2013, a level comparable to the level in 2010/11. From 2014, the margin should be [10-35] basis points. Margins on other products (consumer loans, business loans, etc.) are set to be much lower than in 2010/11. Margins on consumer loans should for instance be [150-300] basis points, whereas they were between [300-450] basis points and [450-600] basis points in 2010/11.

(262) Outstanding loans should total EUR [25-50] billion in 2016 as against EUR [5-15] billion at the end of 2011, i.e. an increase of some 10 %.

(263) DBB/Belfius is planning to close 41 branches, with a target of 777 branches at the end of 2013 in comparison with 818 in 2011. Altogether 500 branches will be converted into 'open branches' by the end of 2013 in order to reduce costs while refocusing on commercial relationship management and high added value services. The stress will be placed on customer satisfaction and its regular measurement should help to change individual perceptions. DBB/Belfius will endeavour to keep its operating costs (for all banking activities) at a level below EUR [1 300-1 450] million in 2013 and EUR [1 250-1 400] million in 2014.

(d) The insurance segment

(264) In the insurance segment DBB/Belfius is to focus on the Belgian market and to retain its market share of 9,5 % of life insurance and 5 % of non-life insurance. The life insurance segment accounts for 80 % of the insurance segment and EUR 2,1 billion of life insurance premiums were collected in 2011 in comparison with EUR 509 million in the non-life segment. The bank will continue to be a leading collector of insurance premiums.

(265) The heavy losses suffered in 2011 following the introduction of the PSI <sup>(63)</sup> in Greece played a part in downgrading the regulatory solvency ratio (Solvency I). It was 102 in 2011. It should return to 135 from 2012 and gradually increase to reach a level of [...] in 2016.

<sup>(63)</sup> Private Sector Involvement.

- (266) DBB/Belfius is forecasting a reduction of its operating cost ratio by [0-5] points to [25-50] for the life segment and [10-30] for the non-life segment in 2016. This reduction will be achieved in particular by rationalising IT procedures. Similarly, as a result of the introduction of a new pricing policy and a rationalisation of loss management, DBB/Belfius is forecasting a reduction of its loss ratio by [5-15] points by 2016.
- (267) In the life segment, DBB/Belfius chiefly offered guaranteed capital products (B21) up to 2011 accounting for [70-80] % of amounts outstanding at the end of 2011 in comparison with [20-30] % for its alternative B26 and B23 products (without guaranteed capital). DBB/Belfius is envisaging a [...] of premiums underwritten in connection with its B21 products (EUR [...] million annually as against EUR [...] billion in 2011) and a [...] of premiums underwritten for its other products. Total premiums underwritten for life insurance products will be less than EUR [0-2,5] billion in 2013 and EUR [0-3] billion in 2014, assuming that market growth is less than 4 %.
- (268) The investment portfolio of DBB/Belfius Insurance had a nominal value of EUR 17 billion at 31 December 2011, 95 % of which was invested in investment grade securities. The new asset allocation policy drawn up for 2012 requires a minimum rating of AA for sovereign bonds ([70-80] % of the portfolio) and A for corporate bonds ([20-30] % of the portfolio).

(e) Investment portfolio

- (269) On 31 December 2011, DBB/Belfius had three investment portfolios (PMG, ALM, DIS) <sup>(64)</sup> of a total nominal value of EUR 43 billion and a derivative portfolio of a value of EUR 12,8 billion. Investment grade bonds made up 95 % of the investment portfolio. The investment bank consultant recruited by the bank estimated, on the basis of an analysis of 63 % of the portfolio (sovereign exposures to Belgium and France, small-scale exposures and those reaching maturity in 2012 were excluded from the analysis) that the expected loss on this portfolio by 2012-16 was EUR [350-550] million and EUR [800-1 000] million in the baseline scenario and the stress scenario respectively. In the period 2012-16, as a result of existing provisions and the impact of the de-risking programme, these expected losses would have a net impact of EUR [200-400] million on the profit and loss account.
- (270) [25-50] % of the portfolio assets would reach maturity by 2016. On that date, [75-100] % of the bonds held would have an 'investment grade' or better rating.

(f) Derivative portfolio

- (271) The derivative portfolio had a marked-to-market position of EUR – [4-10] billion on 31 March 2012, over [75-100] % for interest rate derivatives.
- (272) The collateral posted by DBB/Belfius to cover this negative marked-to-market position was EUR [10-20] billion on 31 March 2012, including EUR [0-5] billion not in the form of cash collateral. The difference between the amount of cash collateral paid and the marked-to-market position is explained in particular by the one-way collateral agreements concluded between DBB/Belfius and some of its counterparties and by clearing house requirements.
- (273) [40-50] % of the portfolio derivatives would reach maturity by 2016.

(g) Financing and liquidity

- (274) On 31 March 2012, DBB/Belfius had a liquidity buffer of EUR [5-15] billion. The implementation of several measures (increase in deposits, issue of covered bonds, increased use of securitised and non-securitised financing) should help to enhance this liquidity buffer by EUR [30-45] billion by 2016.

<sup>(64)</sup> PMG: Portfolio Management Group, DIS: Dexia Insurance Services, ALM: Asset Liability Management.

(275) Between 26 October 2011 and 25 January 2012, DBB/Belfius reduced its net credit exposure to Dexia SA by EUR [25-50] billion to EUR [10-30] billion. This exposure had been reduced to EUR [5-10] billion at 2 March 2012 <sup>(65)</sup>. On 2 March 2012, non-securitised cash exposure to the Dexia Group was EUR [600-700] million. This exposure was subsequently reduced to almost zero on 7 March 2012.

(h) Governance

(276) DBB/Belfius has set up various risk committees which rule on each transaction. There are three hierarchical levels of committees whose composition and competence depend on various factors including the rating of the counterparty, the status of the counterparty (enterprise, local authority, etc.) and the amount of the transaction.

(i) Stress scenario

(277) The Belgian authorities have also provided a stress scenario in order to determine the Group's ability to withstand external shocks. This stress test is based largely on the EBA method and measures the Group's ability to withstand worsening macroeconomic and financial conditions. The bank business model, its liquidity and financing risk, the credit risk and the market risk of the assets held are in particular affected.

(278) The stress scenario would downgrade the cumulative net result prior to taxation by EUR [400-750] million between 2012 and 2016. The result would be EUR [0-3] billion as against EUR [0-3] billion in the baseline scenario. The 2016 return on equity would be only marginally affected.

(279) In the stress scenario, by 2016, the Core Tier 1 Basel III ratio would be [7,5-15] % (as against [7,5-15] % in the baseline scenario). The CAD ratio would be [7,5-15] % as against [7,5-15] % in the baseline scenario. The safety buffer would be EUR [20-30] billion as against EUR [30-45] billion in the baseline scenario.

### 2.4.3. Commitments

(280) For the restructuring of DBB/Belfius, subject to any other duration mentioned in the individual commitments, Belgium undertakes to ensure that DBB/Belfius complies, up to 31 December 2014, with the following commitments <sup>(66)</sup>.

(a) Reducing operating costs

(281) DBB/Belfius undertakes to limit the absolute level of its operating expenses and costs — i.e. its personnel costs and other expenses:

— to a maximum of EUR [1 300-1 450] million in 2013; and

— to a maximum of EUR [1 250-1 400] million in 2014.

(282) DBB/Belfius aims to reduce the absolute level of its operating expenses and costs — i.e. its personnel costs and other expenses — from EUR [1 350-1 500] million in 2012 to EUR [1 200-1 350] million in 2016.

(b) Reducing trading activities

(283) DBB/Belfius will cease its proprietary trading activities. This means that DBB/Belfius will only carry out transactions that either (i) are necessary to receive, transmit and carry out its customers' orders to buy and sell, or (ii) help Belfius perform liquidity or asset and liability management. DBB/Belfius will not create positions on its own

<sup>(65)</sup> On 2 March 2012, DBB's gross exposure to the Dexia group was EUR [10-30] billion, including EUR [10-20] billion of State-guaranteed bonds issued by DCL and EUR [10-20] billion of securitised and non-securitised loans to different entities of the Dexia group. After the securities provided and lending operations had been taken into account, the residual net credit exposure was some EUR [5-10] billion.

<sup>(66)</sup> The detailed commitments are annexed to this decision at Annex II.

account, unless they arise because DBB/Belfius, for example, does not carry out certain customer orders straight away. Positions of this kind and liquidity or asset and liability management positions will be taken only if they do not jeopardise the bank's own viability and/or liquidity. This is fully in line with the recommendations in the report of the 'High-level Expert Group on reforming the structure of the EU Banking sector'.

(c) Governance and risk-management measures

- (284) DBB/Belfius will (i) pursue a prudent and sound business policy focusing on the principle of sustainability and (ii) examine the appropriateness of its internal incentive systems in the context of the legal and regulatory requirements and work towards ensuring that they do not provide any temptation to take unacceptable risks and are transparent and focused on long-term and sustainable goals.
- (285) DBB/Belfius will further enhance its risk and liquidity management governance. Belfius has already drawn up new guidelines to ensure prudent liquidity management in the future, including: (i) clear targets for business lines regarding balance sheet utilisation, deposit gathering, and quality of collateral generated; (ii) implementation of clear incentives (liquidity cost or bonus) for business lines. Belfius will further improve processes and governance for a centrally steered treasury with clear targets and guidelines.

(d) Dividend payment ban

- (286) DBB/Belfius will not distribute any form of dividend in respect of its shares.

(e) Coupon payment ban

- (287) DBB/Belfius will not make any discretionary early repayment or payment of coupons on instruments (i) issued by DBB/Belfius before 20 October 2011, (ii) held by persons or entities other than DBB/Belfius and (iii) the payment or exercise of which is discretionary by virtue of the contractual provisions covering these instruments.
- (288) This commitment:

— is without prejudice to the operations which DBB/Belfius is legally required to undertake; and

— will be revised in the event of significant changes in the definition of the prudential own funds and accounting standards applicable to DBB/Belfius, subject to the prior agreement of the Commission.

(f) Acquisition ban

- (289) DBB/Belfius will not acquire any stake in any enterprise up to 31 December 2014. This covers both enterprises which have the legal form of a company and packages of assets which form a business. Despite the ban, DBB/Belfius may acquire stakes in enterprises provided that the purchase price paid for any acquisition is less than 0,01 % of DBB/Belfius' balance sheet at the date of this Decision and that the cumulative price paid for all such acquisitions over the whole restructuring period is less than 0,025 % of its balance sheet size at the date of this Decision. The ban does not cover acquisitions that (i) take place in the ordinary course of banking business in the management of existing claims in respect of ailing firms or (ii) that are made in the context of private equity business.

(g) Advertising ban

- (290) DBB/Belfius will refrain from mass marketing campaigns invoking the historic State aid measures as an advantage in competitive terms and DBB/Belfius will not advertise the fact that it is State-owned nor make any reference to any State support received in its communications with existing or potential customers and/or investors. Notwithstanding that ban, DBB/Belfius may refer to the fact that it is State-owned and to any other State support it has received whenever such reference is required under applicable legislative or regulatory provisions.

(h) Remuneration of essential bodies, employees and agents

- (291) Belfius will comply with the legislation in force on wage and remuneration, in particular the caps on remuneration applicable to banks. Belfius will respect the conditions that the Commission imposes on this point when applying the rules on State aid.
- (292) Belfius will also endeavour to make the best possible use of public funds in so far as personnel wages and remuneration are concerned. Belfius will in particular endeavour to limit the amount of severance allowances to the legal minimum, while retaining the flexibility needed to achieve the objectives of the Strategic Plan.
- (293) Belfius will forward proposals to the Commission in respect of a reduction of the Group's general and personnel costs if, at the end of the accounting year in question, (i) the net banking profit is more than 20 % lower than the target set; or (ii) the gross operating result is more than 25 % lower than the target set; and in all cases if (i) the profit and loss account records losses; or (ii) the entity no longer complies with the minimum regulatory requirements in force in respect of solvency. This commitment will apply only to the annual accounts for 2013 and 2014.

(i) Cap on public banking loans

- (294) DBB/Belfius undertakes to limit its new production of public banking loans to a maximum of EUR [2,5-5] billion for 2013 and EUR [2,5-5] billion for 2014. If market growth exceeds the normal annual growth rate of 4 % in the market for public banking loans in Belgium in 2013, this amount may be reviewed subject to prior agreement of the Commission. For each 0,1 % of additional market growth in 2013, above the normal annual growth rate of 4 %, the cap on new production will be increased by EUR [25-75] million in 2014.

(j) Cap on life insurance production

- (295) DBB/Belfius undertakes to limit its new production in gross earned premiums for life insurance products to a maximum of EUR [0-2,5] billion for 2013 and to a maximum of EUR [0-3] billion for 2014. If market growth exceeds the normal annual growth rate of 4 % in the market for life insurance products in Belgium and Luxembourg in 2013, this amount may be reviewed subject to prior agreement of the Commission. For each 0,1 % of additional market growth in 2013, above the normal annual growth rate of 4 %, the cap on new production will be increased by EUR [0-50] million in 2014.

(k) Independent trustee

*Reporting*

- (296) Within 30 working days of the end of each year and half year or as otherwise agreed with the Commission, the independent trustee will submit a draft written report in English or French to the Commission and the Belgian authorities, giving each the opportunity to submit comments within 10 working days. Within 10 working days of receipt of the comments, the independent trustee will prepare a final report and submit it to the Commission, taking into account, if possible and at his sole discretion, the comments submitted. The independent trustee will also send a copy of the final report to the Belgian authorities. The independent trustee may ask the Commission for authorisation to use other timings if operational workload renders the timely delivery of reports unworkable.
- (297) The report will cover the independent trustee's fulfilment of his obligations under his mandate and compliance with the above commitments.

*Appointment procedure for the independent trustee*

- (298) An independent trustee will be appointed who is to report on a six-monthly basis to the Commission on compliance with the commitments listed in recitals 281 to 295. The independent trustee will be independent, possess the necessary qualifications and shall not be subject to a conflict of interests throughout the exercise of his mandate.

- (299) No later than one month after the adoption of this Decision, the Belgian authorities will submit a list of one or more persons whom they propose to appoint as independent trustee to the Commission for approval. The Commission will have discretion to approve or reject the proposed trustee(s) who must be independent from Belfius. If the Commission rejects all proposed trustees, the Belgian authorities will, within one month of being informed of the rejection, propose new candidates who again need to be approved or rejected by the Commission. If all the further proposed trustees are rejected by the Commission, the Commission will nominate an independent trustee, whom the Belgian authorities will appoint in accordance with a mandate approved by the Commission.

*Functions of the independent trustee*

- (300) The independent trustee will undertake the duties incumbent upon him in order to ensure compliance with the commitments. The Commission may, at its own initiative or at the request of the independent trustee, give any orders or instructions to the independent trustee in order to ensure compliance with the conditions and obligations attached to this Decision.
- (301) The independent trustee:
1. will propose in his first report to the Commission a detailed work plan describing how he intends to monitor compliance with the obligations and conditions attached to this Decision;
  2. will monitor compliance with the conditions and obligations attached to this Decision;
  3. will provide the Commission and the Belgian authorities with the written report within 50 working days from the end of each year and half-year.

*Replacement, discharge and reappointment*

- (302) If the independent trustee ceases to perform his functions pursuant to the commitments, or for any other good cause, including the exposure of the independent trustee to a conflict of interest:
1. the Commission may, after hearing the independent trustee, require the Belgian authorities to replace the independent trustee, or
  2. the Belgian authorities, with the prior approval of the Commission, may replace the independent trustee.
- (303) If the independent trustee is removed pursuant to recital 302, he may be required to continue in his function until a new independent trustee is in place to whom the independent trustee removed has effected a full handover of all relevant information. The new independent trustee will be appointed in accordance with the procedure referred to in recital 298.
- (304) Over and above the removal according to recital 302, the independent trustee will cease to act as independent trustee only after the Commission has discharged him from his duties after all the commitments with which the independent trustee has been entrusted have been complied with.

2.5. THE ELAS GRANTED BY THE FRENCH AND BELGIAN CENTRAL BANKS TO DBB/BELFIUS AND DCL

- (305) On 21 October 2011, Belgium notified to the Commission a measure under which DBB/Belfius could draw on the ELA guaranteed by the Belgian State in order to enable DBB/Belfius to grant financing to DCL.
- (306) From 5 October 2011, the BNB made funds available to DBB/Belfius in the form of ELA. In accordance with the Law of 22 February 1998 establishing the Statute of the National Bank of Belgium ('BNB'), the Belgian State guarantees to repay to the BNB any financing granted as part of its contribution to the stability of the financial system and guarantees the BNB against any loss incurred following any operation necessary for that purpose. That guarantee is enforceable.



- (307) On 6 October 2011, the Governing Council of the ECB raised no objections to the ELA measure in favour of DBB/Belfius and DCL by the BNB and the Banque de France ('BdF'), capped at an amount of EUR [...].
- (308) According to the Belgian authorities, the BNB and the BdF had agreed equally to share the risks and the net revenue of the ELA granted to the Dexia Group. This ELA would benefit from a pledge by the BNB on the ineligible debts of DBB/Belfius and by the BdF on the ineligible debts and securities of DCL to which 'appropriate' haircuts would be made. The Commission was not informed of the extent of these haircuts.
- (309) The following table, taken from the notification of the initial resolution plan (forming the subject matter of the decision to extend the procedure), gives information on the date of grant, the amount and the maturity of the ELA granted by the BNB to DBB/Belfius up to 17 October 2011. A detailed description of the ELA conditions is included in Belgium's notification of 21 October 2011.
- (310) A document from the Belgian authorities of 29 June 2012 responding to the Commission's questions of April, May and June 2012 on the business plan for Belfius includes a table setting out the ELA in favour of DBB/Belfius, including during a period subsequent to its purchase by the Belgian State.

Figure 7

**Level of ELA in favour of DBB/Belfius from 5 October to 1 February 2012**

[...]

- (311) The maximum amounts granted by the BNB to DBB/Belfius were close to EUR [...] billion in late November/early December 2012. They fell from early 2012 and ended on 1 February 2012 <sup>(67)</sup>.
- (312) It should be noted that the Dexia Group no longer received ELA via DBB/Belfius after that entity had been sold to the Belgian State on 20 October 2011.
- (313) In their notification of 21 October 2011 concerning the ELA granted to DCL by the BNB under the 'ELA Framework Agreement' of 5 October 2011 between the BNB and DBB, the Belgian authorities referred to a provisional agreement on the sharing of the ELA-related income and losses:

*'(25) BNB and BdF have provisionally agreed (but have not yet signed the relevant agreement) to share the risk as well as the net income of the ELA provision to the Dexia Group on a 50/50 basis.'*

- (314) Following an e-mail question of 19 April 2012 from the Commission's services to the Belgian authorities in relation to the equal sharing of the ELA-related risks and income between the Belgian and French central banks, the Belgian authorities said that a guarantee agreement had been signed by both central banks on 2 February 2012.
- (315) Following a letter dated 14 May 2012 from the Commission's services to the Belgian and French authorities, Belgium and France notified a copy of the agreement of 2 February 2012 to the Commission's services on 16 May 2012. According to this agreement:

*'Whereas the BdF and the BNB have agreed, where necessary, to grant loans to Dexia Crédit Local (DCL) and Dexia Banque Belgique (DBB) in order to provide emergency liquidity to those credit institutions and to share any income and losses arising therefrom on a 50/50 basis;*

[...]

<sup>(67)</sup> ELA was exceptionally granted on 20 February 2012.

*The Banque de France:*

[...]

4. *undertakes to repay to the BNB, 50 % of any loss arising, after provision of the securities and other guarantees set out in paragraphs 3, 6 and 7, from a default by DBB in respect of the ELA provision to DBB;*

[...]

*The Banque nationale de Belgique:*

[...]

4. *undertakes to repay to the BdF, 50 % of any loss arising, after provision of the securities and other guarantees set out in paragraphs 3, 6 and 7, from a default by DCL in respect of the ELA provision to DCL; [...]*

(316) The Member States concerned indicated that the maximum amounts granted by the BdF to DCL were close to EUR [...] billion at the end of December 2011. The maximum amounts granted by the BdF from 2 February 2012 were EUR [...] billion (early February 2012).

### 3. GROUNDS FOR INITIATING FORMAL INVESTIGATION PROCEDURES

#### 3.1. GROUNDS FOR INITIATING A FORMAL INVESTIGATION PROCEDURE INTO THE SALE AND RESTRUCTURING OF DBB/BELFIUS

- (317) The Commission initiated a procedure in respect of the purchase of DBB/Belfius by the Belgian State as it considered that this operation could contain State aid incompatible with the internal market.
- (318) The Commission observed that the purchase price paid by the Belgian State to acquire all the shares of DBB/Belfius had been evaluated on the basis of balance sheet and profit and loss account data as at 30 June 2011 which did not therefore include the negative impact of the most recent developments in the financial situation of DBB/Belfius (withdrawals of deposits and the latest increase in the intragroup financing needed to constitute the cash collateral to cover derivative-related transactions). The evaluation was also based on the financial forecasts for DBB/Belfius which Dexia had supplied without undertaking the due diligence generally carried out for this kind of operation. The Commission also stressed that the purchase was coupled with a set of parameters which could mean that the price paid was not in line with the market investor economy principle, especially the fact that a profit-sharing mechanism would be initiated if DBB/Belfius was sold at a profit to another investor within five years and the fact that the Belgian State was immunising Dexia against any loss arising from the problems that certain of its shareholders (Arco, Ethias and Holding Communal) could encounter. The Commission was not therefore convinced that the price paid by the Belgian State, combined with the other measures in favour of Dexia under discussion with the latter (especially the refinancing guarantee), was appropriate and ensured adequate burden-sharing.
- (319) The Commission also observed that, even if the purchase of DBB/Belfius helped to restore its viability, the measure included continued financing from DBB/Belfius to Dexia and its subsidiaries, which had been 'intragroup' until then, for amounts representing some 24 % of the balance sheet of DBB/Belfius. These provisions could have a substantial impact on the future profitability and long-term viability of DBB/Belfius if the remainder of the Group were to record losses in the future. For Dexia, moreover, the purchase of DBB/Belfius was not enough on its own to restore the long-term viability of the Dexia Group as a whole, hence the other measures that the Member States concerned were envisaging at that time.
- (320) The Commission also observed that the purchase of DBB by the Belgian State was taking place in a broader framework of new measures in favour of Dexia SA in respect of which it had not, at the time of initiating the investigation procedure into the sale of DBB, received any detailed information.

- (321) Lastly, the Belgian authorities had asked the Commission to release DBB/Belfius (post-sale) as far as possible from the commitments included in the restructuring plan for Dexia approved by the Commission in its conditional authorisation decision. The Commission pointed out that, if the purchase of DBB/Belfius was found to include elements of State aid, the distortions of competition caused by this aid could not then be remedied as the Belgian authorities had not proposed any measures in this respect. Concerning Dexia and its subsidiaries, the Commission had pointed out in its opening decision on the sale of DBB that it was unable to determine whether any distortion of competition caused by the potential aid elements of the measure could be duly remedied.

### 3.2. GROUNDS FOR INITIATING AND EXTENDING A FORMAL INVESTIGATION PROCEDURE CONCERNING DEXIA AFTER THE CONDITIONAL DECISION

- (322) In its temporary approval decision in respect of a new temporary refinancing guarantee in favour of Dexia SA and DCL, the Commission initiated a new investigation procedure, considering that *'the temporary refinancing guarantee, like the purchase of DBB and other future aid measures, is additional aid substantially modifying the restructuring conditions'* approved by the conditional authorisation decision.
- (323) One of the key elements of this plan was the sale of DMA to a new entity approved as a credit institution in which the CDC, DCL and the French State were to be shareholders.
- (324) The Commission was also aware of information suggesting that Arcofin's contribution to the recapitalisation of Dexia, approved by the conditional authorisation decision, had been decided on the basis of a scheme by the Belgian State to guarantee the individual members of financial cooperatives, including those of Arcofin. In the light of this information, the Commission considered that its finding that Arcofin's contribution did not constitute State aid because it did not involve State resources, could well be based on incorrect information.
- (325) In the decision to extend the procedure, the Commission initiated a formal investigation procedure following a number of failures by Dexia to comply with certain commitments in the conditional decision (see recital 47 of this Decision).
- (326) On 21 and 22 March 2012, the Member States concerned notified to the Commission an initial version of the orderly resolution plan for the Dexia Group. The decision to extend the procedure provided for in Article 108(2) TFEU concerned this initial version of the orderly resolution plan for the Dexia Group.
- (327) In the view of the Commission, the initial version of the orderly resolution plan included the following potential State aid:
- the ELA granted by the BNB to DBB/Belfius and 50 % of the ELA granted by the BdF to DCL;
  - the future 'final' refinancing guarantee by the Member States concerned in favour of Dexia SA and DCL, for a maximum amount in principal of EUR 90 billion;
  - the underwriting by DBB/Belfius of bonds guaranteed by the Member States concerned and issued by Dexia SA and/or DCL;
  - the future sale price of DMA;
  - a future guarantee by Dexia SA and DCL in respect of DMA's 'sensitive loans' covering a total loan amount of some EUR 10 billion;
  - a future counter-guarantee by France of the 'sensitive loans' guarantee;
  - coverage of the cash flow needs of DMA by its purchasers (of an amount of up to EUR 12,5 billion in the case of the CDC); and
  - a 'stop-loss' guarantee in respect of losses on any Dexia SA and DCL security portfolio.

The Commission notes that some of these measures were abandoned and are not included in the final version of the resolution plan.

- (328) The procedure was extended to the resolution plan because the Commission had serious doubts as to the compatibility with the internal market of this aid under the orderly resolution plan for Dexia. In practice, it had doubts as to whether the orderly resolution plan was appropriate, limited aid to the minimum necessary and contained adequate measures to compensate the resulting distortion of competition. In the case of the operation concerning DMA, structural links would be maintained between the Dexia Group and the new structure of DMA for a period that could extend as far as 2020, while DCL would continue to refinance the additional mortgage loans generated by the new structure.
- (329) Instead of being placed in actual resolution with aid limited to the minimum necessary, Dexia would therefore continue to participate in the production of new loans and to issue new bonds.
- (330) Moreover, the initial version of the orderly resolution plan was based on a 'permanent' guarantee by the Member States concerned whose cost appeared to be too low given that the Dexia Group would produce new loans and issue new debt for a substantial period of time.

#### 4. COMMENTS BY INTERESTED THIRD PARTIES

##### 4.1. COMMENTS BY DEXIA ON THE TEMPORARY APPROVAL DECISION, THE DECISION TO EXTEND THE PROCEDURE, THE DECISION ON THE FIRST PROLONGATION OF THE GUARANTEE, THE DECISION TO INCREASE THE GUARANTEE CEILING AND THE DECISION ON THE SECOND PROLONGATION OF THE GUARANTEE

- (331) Dexia denies that it failed to comply with the commitments set out in the conditional authorisation decision.
- (332) Dexia points out in particular that it made the planned sales 'in advance of the timetable' and that the deleveraging of the bond portfolio was much faster than planned<sup>(68)</sup>. Dexia also points out that its new loan production was below the limits set by the restructuring plan<sup>(69)</sup>.
- (333) The fact that Dexia's balance sheet reduction target had not been met by 31 December 2010 was due to variations in the (euro/dollar) exchange parity and was rectified from 31 March 2011, i.e. three months in advance of the deadline permitted by point 18(d) of the commitments.
- (334) Dexia contends that any failures to comply with the commitments observed by the independent trustee after October 2011 have to be put down to the problems that it encountered in October 2011 (which had in turn to be put down to the worsening sovereign debt crisis which increased investors' mistrust of bank counterparties) and its vulnerable liquidity profile.
- (335) It states that, after October 2011, the targets of the Dexia restructuring plan of February 2010 were no longer achievable and that Dexia cannot therefore be accused of failing to comply, after October 2011, with the commitments set out in the conditional authorisation decision.
- (336) Dexia stresses, moreover, that the revised orderly resolution plan responded to all the Commission's questions in its decisions to open and extend the procedure and was in line with the 'provisional framework'.

<sup>(68)</sup> In Dexia's view, as at 30 June 2011, it had disposed of a bond portfolio of EUR 51,5 billion since the beginning of the restructuring plan, exceeding the target of EUR 30 billion to be achieved in 2010/11 under point 13(n) of the commitments. All in all, in 2010-11, Dexia had met the minimum target for bond portfolio disposals to which it had committed itself in accordance with the commitments in the conditional authorisation decision for the period 2010-14.

<sup>(69)</sup> EUR 10 billion in 2010, in comparison with EUR 15 billion authorised, and EUR 7,6 billion in 2011, in comparison with EUR 18 billion authorised.

- (337) In response to the Commission's comment in recital 275 of its decision to extend the procedure that the information communicated on the 'final' refinancing guarantee in the notification of the orderly resolution plan was inadequate and too vague to be able to assess the appropriateness of the guarantee, Dexia points out that the terms and conditions of the guarantee were specified in the document of 8 November 2012 attached as Annex 18 to the revised orderly resolution plan, and were summarised in Section IV.B.2(b) of the revised orderly resolution plan.
- (338) In Dexia's view, the lack of new production by the entities placed in run-off management (in particular DCL, Dexia Sabadell and, in the event that disposal to a third party proved impossible, Crediop) in the revised orderly resolution plan for Dexia is enough to counter the Commission's doubts in recital 281 of the decision to extend the procedure as to whether a lower remuneration than prescribed in the Annex to the 2011 Prolongation Communication was justified.
- (339) The bank stresses that the Commission no longer needs to be concerned <sup>(70)</sup> that it was initially planned for the final guarantee to cover existing loans (Crediop's EMTNs and EIB loans), contrary to the principle that aid is to be limited to the minimum necessary and that beneficiaries must make their own contribution, since the bank has been relieved of the risk raised by prior financing. These concerns no longer stand as the final guarantee as planned in the revised orderly resolution plan does not cover the EMTNs or other existing instruments.
- (340) In Dexia's view, the EUR 85 billion ceiling of the final guarantee is justified because this level was necessary to meet Dexia's peak financing needs in a stress scenario. Explanations were provided in this respect in part IV.C.1 of the revised orderly resolution plan.
- (341) It refers to a memorandum from the French authorities <sup>(71)</sup> responding to the Commission's questions about the new mortgage lending structure (now the development bank for the financing of French local authorities and French public health establishments, following the disposal of DMA) <sup>(72)</sup>.
- (342) Dexia points out that the disposal of DenizBank has taken place and that the methods of disposal of DMA, Sofaxis, Domiserve, Exterimmo, LLD and DCL were outlined in the revised orderly resolution plan and will be specified at the time of their notification to the Commission.
- (343) As regards the financing plan, Dexia notes <sup>(73)</sup> that a faster reduction of its legacy portfolio in order to limit financing needs would have come up against the fact that the fair ('marked-to-market') value of the bond portfolio covering a nominal amount of EUR [70-80] billion was only EUR [50-60] billion, which would have entailed a potential loss of EUR [10-20] billion. In response to the Commission's questions about the liquidity of the legacy portfolio bonds and in particular why a fair value based on market prices or a price estimated by means of a model was not considered to be a good indication of future losses, Dexia refers to its memorandum on the different deleveraging options discussed in Annex 25 to the revised orderly resolution plan and to commitment 10(c) accompanying that plan.
- (344) Dexia contends that its recapitalisation of EUR 5,5 billion by the French and Belgian States would make it possible to maintain the regulatory ratios of the entities of the Dexia Group <sup>(74)</sup>.

<sup>(70)</sup> See recital 283 of the decision to extend the procedure.

<sup>(71)</sup> Memorandum from the French authorities to the European Commission of 4 December 2012 concerning the DMA operation. This memorandum was subsequently notified (on 14 December 2012) by the three Member States concerned (see recital 151 and footnotes 42 to 45 above).

<sup>(72)</sup> Questions included in recitals 198, 223, 297 and 298, 299, 305 and 306, and 307 of the decision to extend the procedure.

<sup>(73)</sup> In response to the Commission's question in recital 257 of the decision to extend the procedure.

<sup>(74)</sup> In response to the Commission's question in recital 259 of the decision to extend the procedure as to whether Dexia would have faced, in the baseline scenario, a regulatory capital shortfall of some EUR 0,5 billion. The bank refers to Sections IV.B.3 and V.B.2(d) of the revised orderly resolution plan as regards the limitation of Dexia's recapitalisation to the amount strictly needed to maintain the regulatory ratios of the Dexia Group entities.

- (345) Dexia refers, moreover, to the Group's governance reform measures set out in Section I.F.2 of the revised orderly resolution plan which, in its view, responded to the comments in the report by the consultants [...] (supported by the Commission) as to the operational risks [...] inherent in the measures proposed in the orderly resolution plan. In this respect, the Commission stressed in recitals 264 and 265 of the decision to extend the procedure that it was essential to address these risks in a systematic way, in particular by identifying key personnel so that steps could if necessary be taken to prevent their departure or the adverse consequences of such a departure on the Group.
- (346) Lastly, Dexia refers to certain documents which responded to the Commission's other comments <sup>(75)</sup>.

#### 4.2. COMMENTS BY THIRD PARTIES ON THE PURCHASE OF DBB/BELFIUS

- (347) Following publication of the formal investigation procedure on 11 February 2012, the Commission received comments from two interested third parties.
- (348) One of the comments received ('comment A') drew the Commission's attention to the recent strategy by DBB/Belfius to offer aggressive increasing interest rates on the 'Treasury Plus' and 'Treasury Plus Special' deposit accounts offered to medium-sized and large enterprises in Belgium and to institutional customers. This third party considered that this aggressive pricing strategy created price imbalances between assets and liabilities requiring maturity conversion and was unsustainable in the long term. Such a pricing policy would be impossible without State aid.
- (349) According to the other comment ('comment B'), the costs of marketing, sports and cultural sponsorship and the change of name were excessive. This third party also considered that the commercial strategy of DBB/Belfius was creating distortions of competition by aggressive pricing in particular in relation to property loans, savings bonds, internet savings accounts and their loyalty bonuses.

### 5. COMMENTS BY THE MEMBER STATES CONCERNED

#### 5.1. COMMENTS ON THE PURCHASE OF DBB/BELFIUS

- (350) The Member States made the following comments.

##### 5.1.1. Comments in response to the decision to initiate the procedure in respect of the sale of DBB/Belfius

- (351) In October 2012, Belgium stressed that the purchase of DBB/Belfius by the Belgian State was becoming urgent for reasons of financial stability. In this respect, the BNB sent a letter to the Commission on 12 October 2011 reporting the serious difficulties that DBB/Belfius had experienced in early 2011 because of withdrawals of deposits and a substantial reduction of non-securitised financing. In view of the systemic importance of DBB/Belfius for the Belgian and European financial sector, and the disturbances taking place in the financial markets, a measure to safeguard DBB/Belfius was necessary. The purchase of DBB/Belfius would make it possible to prevent a serious loss of public confidence, with the attendant risk of a run on the bank, which would in turn trigger a serious disturbance of the banking system as a whole both in Belgium and throughout Europe.
- (352) Belgium considers that the purchase of DBB/Belfius did not contain State aid and that DBB/Belfius did not therefore have to be subject to commitments or measures to remedy distortions of competition. Belgium also requested that DBB/Belfius be released from all the commitments and conditions set out in the conditional authorisation decision.
- (353) Belgium recalls the principle of parity between public or private holdings in an enterprise set out in Article 345 TFEU. Purchase by the Belgian State cannot in itself be considered a component of State aid in favour of DBB/Belfius. The transaction also took place in market conditions as is confirmed by independent experts and offered Belgium a reasonable return that would be acceptable to a private investor in similar circumstances.

<sup>(75)</sup> In response to the Commission's questions (recital 261 of the decision to extend the procedure) as to the reasons for Dexia's choice of short-term debt placement, the bank refers to the debt placement forecasts amended by agreement with the central banks (Section V.B.2(a) of the revised orderly resolution plan). As to the Commission's comments on Dexia's strategy on the reduction of derivative positions following the reduction of the Group's size and the disposal of entities (recital 262 of the decision to extend the procedure), Dexia refers to the derivative presentation notified to the Commission in September 2012.

- (354) DBB/Belfius has always been a net provider of liquidity to the remainder of the Group. Belgium stresses that DBB/Belfius did not benefit from the aid received by the Dexia Group in the past. For instance, the aid in the form of guarantees and ELA approved by the conditional authorisation decision was clearly used to meet the liquidity needs of other Dexia Group entities.
- (355) Most of the conditions and commitments in the conditional authorisation decision did not relate specifically to DBB/Belfius. DBB/Belfius has also taken a range of restructuring measures since February 2010, including the closure of branches and reductions of its public financing activity, its bond portfolio, the size of its balance sheet and its costs.
- (356) According to the case law <sup>(76)</sup>, the Commission cannot simply conclude that the aid granted to a group has automatically benefited all the entities of that group. The transfer mechanisms within the Dexia Group were to the detriment of DBB/Belfius. DBB/Belfius cannot be considered to be an entity continuing Dexia's economic activity because of a range of elements which, in accordance with settled case law <sup>(77)</sup>, have to be taken into account when making such an assessment and which in particular concern the purpose of the transfer, the transfer price, the identity of the shareholders or owners of the acquiring firm or the acquired firm, the time of the transfer and the economic logic of the transfer.
- (357) The DBB/Belfius operation acquired by Belgium is significantly smaller than the size of the former Group and DBB/Belfius changed its name in order to rule out any perception of a link between it and the former Group. DBB/Belfius was not, moreover, acquired below market price and the acquirer would thus be paying appropriately for any aid from which DBB/Belfius benefited as a Dexia Group entity. The criterion of independence between Dexia and the new owners and new management of DBB/Belfius has also been met. It is planned, moreover, to cut all financial links between DBB/Belfius and Dexia. The purchase of DBB/Belfius by Belgium contains no transfer of capital or other State resources to DBB/Belfius.
- (358) Lastly, the restructuring plan for DBB/Belfius contains sufficient elements that may be characterised as viability restoration, own contribution and compensatory measures, precluding any additional measure or commitment on the part of DBB/Belfius.

#### **5.1.2. Comments by the Belgian authorities on the comments of interested third parties in respect of the purchase of DBB/Belfius**

- (359) As regards comment A, the Belgian authorities consider that DBB/Belfius is not profiting from the fact that it has been purchased by the State. DBB/Belfius has not received any favourable regulatory treatment as a result of its acquisition by the Belgian State, its customers' deposits benefit from exactly the same State guarantee threshold as all other banks in Belgium and its rating has not been revised upwards since then. Its acquisition by the State has not, moreover, given it any preferential access to the liquidity provided by the ECB.
- (360) The pricing strategies of the Treasury Plus and Treasury Plus Special accounts comply with the regulatory framework in force in Belgium and do not create a risk of excessive liquidity. Rather than imposing pricing policy obligations by product, the regulatory framework oversees the overall liquidity situation of a bank. DBB/Belfius takes account, moreover, of the behavioural maturity profile of its customers which the bank considers to be more realistic than the contractual maturity profile.
- (361) The prices offered on these products have not, moreover, changed since summer 2011 and appear to be in line with the market. Overall, the volumes of these two products have remained stable since late 2009, demonstrating the lack of distortions of competition in this respect.

<sup>(76)</sup> Judgment in Case T-324/00 *CDA v Commission* [2005] ECR II-4309, paragraph 93.

<sup>(77)</sup> Judgment in Case C-328/99 and C-399/00 *Italy and SIM 2 v Commission* [2003] ECR I-4035. See also the Commission decision in respect of BIL: Commission Decision of 25 July 2012 in Case SA.34440, recitals 44, 71 and 86 *et seq.*

- (362) As regards comment B, the Belgian authorities do not consider that DBB/Belfius incurred excessive marketing expenditure or expenditure connected with its change of name from DBB/Belfius to Belfius. These costs were unavoidable if the bank was to continue in the future as it had suffered greatly from its association with the Dexia name. These costs amounted to some EUR [25 000-50 000] per bank branch and are in line with other similar market players in Belgium and in Europe. Sports and cultural sponsorship was already taking place prior to the acquisition of DBB/Belfius by the Belgian State and is a current practice by other banks in Belgium and in Europe. Moreover, DBB/Belfius' share of the Belgian bank advertising market fell between January 2010 and October 2011 and between November 2011 and February 2012.
- (363) The commercial policy of DBB/Belfius is not, moreover, creating distortions of competition in the Belgian market. DBB/Belfius prices for mortgage loans, internet accounts and savings bonds are in line with its main Belgian competitors. Since October 2011, the market shares of DBB/Belfius have been [...] for mortgage loans, and [...] for internet accounts and savings accounts. This demonstrates the lack of distortions of competition by DBB/Belfius in these areas.

## 5.2. COMMENTS BY THE MEMBER STATES CONCERNED ON THE DECISION TO EXTEND THE PROCEDURE AND THE DECISION TO INCREASE THE GUARANTEE CEILING

- (364) On 2 July 2012, the authorities of the three Member States concerned provided the Commission with their joint comments on the decision to extend the procedure and the temporary approval decision.
- (365) The Member States concerned contend that the restructuring plan approved by the conditional authorisation decision has been properly implemented and that the few possible failures to comply with the commitments are due to external factors (reference is made to the presentation of the arguments put forward on this point by Dexia, in recitals 332 to 334 above).

### 5.2.1. Comments on the characterisation of the measures contained in the orderly resolution plan as aid

- (366) First, the Member States concerned dispute the characterisation of the ELAs decided by the BNB and BdF as aid. The Belgian authorities point out that the BNB decides autonomously and at its own discretion on the grant, prolongation and amount of ELA, as part of its task of keeping the financial situation stable. ELA operations are temporary measures that are part and parcel of the conventional tasks of national central banks and are endorsed by the Governing Council of the ECB. According to the Member States concerned, the ELA was granted to Dexia at penalising, even prohibitive, interest rates and was guaranteed by adequate securities to which safety margins that were substantial and depended on their quality were applied. According to the Belgian authorities, moreover, the guarantee granted by Belgium was not granted specifically for the ELAs, but covered all the loans granted by the BNB as part of its contribution to the stability of the financial system. Lastly, the Belgian authorities point out that Belgium's guarantee on the loans granted by the BNB cannot be construed as a 'counter-guarantee' as referred to in the Communication from the Commission — The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis <sup>(78)</sup> ('the Banking Communication'). Belgium's specific guarantee does not cover the ELAs alone, but guarantees all the BNB's loans provided that they are granted as part of its contribution to maintaining the stability of the financial system which, in the view of the Belgian authorities, goes well beyond measures to tackle the crisis. The Member States concerned also point out that such an interpretation is ultimately in line with the Commission's decision-making practice and cite the 2007 *Northern Rock* decision <sup>(79)</sup> by way of example.
- (367) As regards the agreement between the BNB and BdF <sup>(80)</sup>, the Belgian authorities point out that the Commission observed in recital 108 of the conditional authorisation decision that '*the Banque de France ... does not benefit from any explicit guarantee on the part of the French State and the guarantee by the Belgian State obviously cannot apply to an operation carried out on behalf of and at the risk of a foreign central bank*' and consider that the guarantee by the Belgian State in favour of the BNB <sup>(81)</sup> cannot be applied to an operation carried out on behalf of and at the risk of a foreign bank. The Member States concerned consider that 1) the BNB, and not the State, is party to the guarantee

<sup>(78)</sup> OJ C 270, 25.10.2008, p. 8.

<sup>(79)</sup> Commission Decision of 5 December 2007, Case NN 70/07, OJ C 43, 16.2.2008, p. 1.

<sup>(80)</sup> See recital 314 above.

<sup>(81)</sup> See recitals 415 and 418 below.



contract; 2) the guarantee contract clearly assigns the risks of/the debt incurred by the relevant operations by the BNB and the BdF; and 3) in any case only the share of the losses that the BNB could suffer following the application of the guarantee contract is guaranteed by the State, i.e. the Belgian State is not guaranteeing any risks or debts on the part of the BdF.

- (368) Moreover, concerning the beneficiaries of potential aid in the context of Dexia's restructuring, the Member States point out that there is no structure that can be considered to be a 'new mortgage lending structure' and that the economic activities of the NEC, the JV and DMA should be differentiated. These entities, which have different shareholders and pursue their own business interest, are vertically integrated by service links.
- (369) Concerning the guarantees planned in the orderly resolution plan for Dexia, the Member States concerned consider that only the guarantee by the French State of DCL's commitment in relation to the sensitive loans constitutes State aid and not the other guarantees (the 'stop-loss' guarantee, the other vendor guarantees non counter-guaranteed by the State and the 'sensitive loans' guarantee) <sup>(82)</sup>.
- (370) The guarantee by the French State in respect of DCL's commitment confers an advantage, in the view of the Member States concerned, only for the residual group and not for DMA or a hypothetical 'new mortgage lending structure'. Without substantial downward value adjustments, it could not be characterised, however, as a measure to treat impaired assets.
- (371) The other guarantees (the 'stop-loss' guarantee, the other vendor guarantees not counter-guaranteed by the State and the 'sensitive loans' guarantee) were granted, in the view of the Member States concerned, by a private enterprise whose resources are not under State control and whose decisions cannot be imputed to the State. In the view of the Member States concerned, Dexia's decisions cannot be imputed to the State as the public authorities could not exercise a dominant influence over Dexia SA. First, because it is not a public enterprise (and the Member States concerned cannot, in particular, control its resources, in an ongoing manner, via their holdings in the capital of other shareholders) and, second, because there is no controlling holding by an individual Member State in Dexia's capital. Only decisions in the company interest of Dexia SA and in keeping with the applicable regulations may be adopted by its managing organs. Moreover, the criteria of the *Stardust Marine* judgment <sup>(83)</sup> are not met: Dexia is not integrated into the public administration, its activities take place in the market in normal conditions of competition, its status is subject to ordinary company law and no public entity supervises Dexia. Lastly, the authorities concerned strongly dispute that the vendor guarantee in respect of the 'sensitive loans' can be considered to contain elements of State aid as a result of the counter-guarantee by the State. The *Hellenic Shipyard* <sup>(84)</sup> case that the Commission invoked in support of its preliminary assessment in its decision to extend the procedure is factually very different from the present case.
- (372) The Member States concerned consider, moreover, that the vendor guarantees were granted under market conditions and do not therefore confer any selective advantage. They observe that the risk covered is particularly low in relation to the constitutional and legislative framework for local authority finances. This type of guarantee is conventional in business sale contracts. Even though there is no ceiling, the grant of these guarantees is entirely pertinent for a private market economy investor because of the particular nature of the risk covered which cannot be attributed to DMA and its acquirers, but to the vendors of DMA. Characterisation as impaired assets is not applicable and in any case cannot concern all of DMA's assets. DMA's assets are not exposed to substantial impairments or substantial downward value adjustments. It is not, moreover, the quality of DMA's assets that gave rise to the scepticism about Dexia's viability, but a business model combining long-term assets and short-term refinancing.
- (373) Concerning the sale of DMA, the Member States concerned contend that the decisions of the CDC and La Banque Postale in relation to their investment in DMA cannot be imputed to the State and that the sale price of DMA is in keeping with the market price, whereas placing DMA in run-off would have been more costly for Dexia than its disposal under the planned conditions.

<sup>(82)</sup> The Commission notes that the parties to the DMA disposal operation subsequently abandoned 1) the 'stop-loss' guarantee, 2) the 'sensitive loans' guarantee by Dexia SA and DCL in favour of DMA, 3) the counter-guarantee by the French State in respect of the commitments of Dexia SA and DCL regarding the sensitive loans in DMA's assets, and 4) an extension of the refinancing guarantee by the Member States concerned in respect of the medium-term bonds of DCL in a bond programme [...] (see recital 213 above).

<sup>(83)</sup> Judgment in Case C-482/99 *France v Commission* [2002] ECR I-4397, paragraph 37.

<sup>(84)</sup> Decision SA.15526 of 2 July 2008 — Hellenic Shipyard.

- (374) The Member States concerned point out, as to whether or not the decisions of the CDC and La Banque Postale can be imputed to the State, that the CDC's decision to acquire a holding in the capital of the NEC is a strategic choice to seize a market opportunity. They maintain that the Commission's position upheld by the Court of First Instance in the 1996 *Air France* judgment is no longer relevant in view of the subsequent case law (*Stardust Marine*) and the changes in the status of the CDC. While there is no doubt that the CDC is a public establishment, its status gives it considerable autonomy from the State and its decision-making process is the same as that of any other private bank. Its indirect investment in the NEC comes within the competitive activities that the CDC Group can undertake in relation to subsidiaries. The CDC's decisions concerning its competitive activities are taken with greater autonomy from the State. Similarly, account has to be taken of the organisational and decision-making autonomy of La Poste, and La Banque Postale. The criteria of the *Stardust Marine* judgment are not met in this case and the presence of the Government Commissioner and the Economic and Financial Comptroller General, and the participation of a member of the management board of La Poste, in the proceedings before the Commission are not relevant arguments.
- (375) Moreover, the liquidity line provided by the CDC to DMA after its sale is, in the view of the Member States concerned, normal market practice and enables the CDC and La Banque Postale to enter the local authority financing market in an optimum way, i.e. benefiting, at market price, from access to a mortgage lending company providing refinancing under market conditions to the JV.
- (376) Lastly, the Member States concerned contend that the disposals of viable assets benefited only Dexia and not the entity sold, as the price paid was a market price and the disposals took place under market conditions.

#### 5.2.2. On the revocation of the conditional authorisation decision

- (377) The Member States concerned observe that the recapitalisation of Dexia by Arcofin cannot be imputed to the Belgian State as, at the time of the decision to take part in the recapitalisation, in 2008, Arcofin's shareholders had no guarantee that their investment would be supported by the Belgian State. There was therefore no causal link between the decision and the political discussions to which the Commission refers, or the guarantee granted in October 2011 to the individual members of financial cooperatives. The Member States concerned adduce economic and historic reasons to explain Arcofin's decision to take part in the capital increase. Arcofin's holding of 18 % of Dexia's capital has always been its largest investment. Arcofin, which has always had close links with Dexia, wished to avoid any dilution of its holding.
- (378) The Member States concerned also stress that, even if the Commission were to conclude that Arcofin's participation in the recapitalisation of Dexia represents State aid, under the proportionality principle the restructuring plan initially approved on 26 February 2010 should be only marginally amended. Moreover, the implementation of the restructuring plan according to a faster timetable than originally planned offsets any additional aid contained in this recapitalisation. The authorities concerned point out that the orderly resolution plan notified on 24 March 2012 makes any amendment of the restructuring plan unnecessary.

#### 5.2.3. Comments on the compatibility of the measures contained in the orderly resolution plan

- (379) The authorities of the Member States concerned consider that the aid measures contained in the orderly resolution plan are compatible with the Bank Restructuring Communication. First, the aid contained in the refinancing guarantee is appropriate as it enables a full resolution of Dexia. Second, the aid is limited to the minimum necessary. The guarantee in respect of Crediop's EMTNs and EIB loans, which is a State guarantee covering the existing liabilities of a bank facing difficulties already accepted by the Commission in other cases, is essential in order to prevent any significant increase in liquidity needs and the risk of a disorderly resolution of the Dexia Group. The final guarantee ceiling of EUR 90 billion meets the need to offset the risks of a significant impact on the envelope of amounts guaranteed in a stress scenario (which is not taken into account in the net financing need estimated in the baseline scenario of Dexia's business plan) by providing a margin of security. Dexia SA is contributing, moreover, to the orderly resolution effort via 1) the proceeds of disposals (all the Dexia Group's assets can be disposed of or placed in run-off management and the proceeds are to be channelled back in full into Dexia's orderly resolution), 2) the reduction of costs by introducing a simplified and more centralised business model and 3) the remuneration of the aid which is proportionate to the financial capacity of the entity in the light of the level of restructuring planned. The Member States concerned also point out that Dexia shareholders and

security-holders are already contributing (and will continue to contribute in future) to the cost of the restructuring. Lastly, they stress that the only exception to Dexia's exit from the market is a strand of new production whose sole aim is to meet the regulatory requirements and ensure that certain entities can continue to be disposed of. This strand's market shares will be minimal and will not be likely to entail a significant distortion of competition.

- (380) The Member States concerned consider that the remuneration of the temporary refinancing guarantee is above the threshold set out in the 2011 Prolongation Communication if account is taken of the commission of 0,5 % of EUR 45 billion, i.e. EUR 225 million, paid by Dexia. If, however, the Commission were to rule that the temporary refinancing guarantees, temporarily authorised by the temporary authorisation decision and the decision on the first prolongation of the guarantee, were incompatible, the Member States concerned ask the Commission to confirm, in order to respect the rights acquired by third parties and holders of guaranteed securities, that the bonds already issued prior to 30 September 2012 with a guarantee of State refinancing authorised by the above-mentioned decisions, may continue to benefit from that guarantee until they are fully reimbursed.
- (381) The aid resulting from the guarantee by the French State is limited to the minimum necessary and includes an own contribution by the beneficiary. The threshold and the user charge to be applied if there is a drawdown from the guarantee means that a significant proportion of the risk connected with the 'sensitive loans' lies with DCL and Dexia, providing an incentive for these two players to manage these loans properly and thus to minimise the risk of drawdown of the guarantee. The Member States concerned also point out that the risk lying with DCL and Dexia, and the obligation incumbent upon them to continue the desensitisation process, ensures that the State guarantee will not give rise to any moral hazard. The authorities concerned lastly stress that the aid measure is subject to remuneration of EUR 10 million by DCL.
- (382) The Member States concerned consider that the measures linked to the disposal of DMA are compatible with the State aid rules. First, the disposal is appropriate. It makes it possible to preserve the orderly nature of Dexia's resolution over time, while entailing a loss of control by DCL over DMA when DMA, the NEC and the JV are not pursuing Dexia's economic activity. The remaining contractual service provision links will contribute to the orderly nature of Dexia's resolution. The disposal of DMA will enable its activity to return to viability in the long term. Second, the measures concerning DMA or the 'new mortgage lending structure' will be limited to the minimum necessary. They will enable a new player to emerge in the local authority financing market and in the covered bond issue market where competition has been weakened by the withdrawal of the leading players. Third, the CDC and La Banque Postale will play a significant part in the restructuring of DMA, especially by providing it with the liquidity needed for this affiliation. Any moral hazard will also be prevented by the fact that Dexia and DCL are taking on the whole risk, however small it may be, arising from their former market activities, both through the 'stop-loss' guarantee and the vendor guarantee in respect of the 'sensitive loans'. Fourth, the authorities concerned add that DMA's continued presence in the market will not entail any distortion of competition, as the main feature of the market in which the hypothetical aid is provided is a diminution of the supply. The Member States concerned also contend that, while the lack of any distortion of competition makes it unnecessary to impose compensatory measures, such measures are in practice already part and parcel of the disposal of DMA and the creation of the NEC and the JV.

#### 5.2.4. Comment on monitoring

- (383) Bearing in mind the large number of disposals planned, the Member States concerned point out that systematically notifying each operation, and producing a fairness opinion drawn up by an independent expert, could be overly costly and onerous for Dexia. In order therefore to lighten the administrative burden, Dexia has proposed to introduce a method which, in its opinion, will make it possible to ensure that the procedure used is in keeping with the scale of each planned disposal.

## 6. ASSESSMENT OF AID

### 6.1. EXISTENCE OF AID AND BENEFICIARIES

- (384) Article 107(1) TFEU lays down 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.

- (385) The Commission already established in its conditional authorisation decision that the aid received by Dexia in the form of capital, financing guarantees, ELA backed by a sovereign guarantee and support for impaired assets (FSA measure) constituted State aid. Apart from the investment made by Arcofin, the Commission is not aware of any evidence to suggest that its assessment of the existence of State aid in the measures considered in recitals 122-129 of the conditional authorisation decision was flawed. The Group's subsidiaries, particularly DBB/Belfius and DMA, and not just the holding company Dexia SA, benefited from all of these measures, without which the Group would not have been able to pursue its activities.
- (386) At present the Commission is not examining the question of how to recover the State aid contained in the aid measures identified in the conditional authorisation decision, which would involve identifying the companies that should repay the incompatible aid. Instead, the Commission is ascertaining whether those measures constituted aid for the activities carried out by DBB/Belfius or DMA, among others. Other measures were granted subsequently: a refinancing guarantee for Dexia SA and DCL, new ELA from the BNB (and ELA from the BdF backed by a guarantee from the BNB), and the sale and restructuring of DBB/Belfius. New measures are to be taken, particularly in connection with the orderly resolution of Dexia and the sale of DMA resulting in the creation of a development bank to finance local authorities in France and French public health establishments.

#### 6.1.1. Measures covered by the conditional authorisation decision

- (a) Implementation of the commitments and conditions to which approval of the aid covered by the conditional authorisation decision was subject
- (387) As described in recital 7, the Commission authorised the following measures in its conditional authorisation decision, subject to compliance with all the commitments and conditions laid down in that decision:
1. a recapitalisation of EUR 6 billion, EUR 5,2 billion of which was State aid;
  2. a guarantee from the Belgian and French States in respect of an impaired asset portfolio, including EUR 3,2 billion in State aid;
  3. ELA from the BNB guaranteed by the Belgian State, largely drawn down between October and November 2008; and
  4. a guarantee by the Belgian, French and Luxembourg States in respect of the refinancing of the Group of a maximum amount of EUR 135 billion (this amount also includes a guarantee by the Belgian State in respect of ELA operations granted to Dexia by the BNB).
- (388) On the failure to comply with the commitments and conditions in the conditional authorisation decision, the Dexia Group and the Member States concerned contend that the Commission infringed the principle that the trustee must be independent, and that it was mistaken in its assessment of the implementation of the February 2010 restructuring plan. They also claim that *'even if the small number of failings alleged by the independent trustee in his third report were established, it cannot reasonably be argued that they [...] the implementation of the February 2010 restructuring plan were the source of the very serious problems encountered by the Group in October 2011'*, which were justified by the sovereign debt crisis <sup>(85)</sup>.
- (389) Throughout the period following the adoption of the conditional authorisation decision, many of the commitments on which the authorisation of the aid was contingent were not complied with, in particular the prohibition on lending to PWB customers at a RAROC level of less than 10 %, observance of a minimum stable funding ratio, the prohibition on exercising a discretionary early repayment option on Tier 2 instruments, the requirement to notify the Commission in advance of any payment of coupons on Tier 1 or Upper Tier 2 hybrid instruments, and the rate of the Group's deleveraging <sup>(86)</sup>.

<sup>(85)</sup> Comments of the Belgian, French and Luxembourg authorities on the decisions of 31 May 2012 and 6 June 2012 to extend the formal investigation procedure.

<sup>(86)</sup> See recitals 6-12 above.

- (390) According to the Commission, the fact that the bond portfolio was deleveraged by more than the minimum planned, that new loan production was less than the maximum set, and that most of the entities were sold before the deadline authorised by the commitments in the conditional authorisation decision is nothing more than the normal execution of that decision and cannot make up for or excuse, as the Member States concerned and Dexia suggest in their comments, the significant failings identified. After all, although some entities were sold in good time, two of the largest entities to be sold, Crediop and Sabadell, remain subsidiaries of Dexia even though the time-limit set for their sale has expired, and they do not appear likely to be sold in the immediate future.
- (391) The deleveraging target for 2010 was 'met' on 31 March 2011 rather than by 31 December 2010, as the Member States concerned had committed to. Point 18d of the commitments requires the Member States concerned, where annual targets are not met, to submit to the Commission measures to enable the targets to be met by 30 June of the following year. The deleveraging target for the end of 2010 was, admittedly, met by 30 June the following year, but the fact remains that the commitment was not fulfilled for 2010. Furthermore, the Commission points out that the annual deleveraging commitment was calculated when the conditional authorisation decision was adopted, on the basis of a Dexia Group that included DBB/Belfius. If Dexia met its annual deleveraging target at the end of 2011, it was because the balance sheet no longer included the assets and liabilities of DBB/Belfius, which was sold in October 2011, whereas the target was set on the assumption that this major subsidiary of the Group would still belong to Dexia. While noting that the target for 2011 was officially met, the Commission considers that the deleveraging achieved at the end of 2011 by a Dexia Group without DBB/Belfius was well below the rate required by the conditional authorisation decision for a Dexia Group with DBB/Belfius.
- (392) Lastly, in reply to the comments of the Member States concerned, the Commission notes that although the sovereign debt crisis may indeed be seen as having hampered the implementation of the conditional authorisation decision, the sovereign debt crisis may not, however, be relied on as a reason for failing to comply with certain commitments such as the minimum RAROC.
- (393) For the reasons set out above, the doubts expressed by the Commission in its temporary approval decision<sup>(87)</sup> and in its decision to extend the procedure<sup>(88)</sup> have not been allayed by the comments from the Member States concerned claiming that the commitments and conditions set out in the conditional authorisation decision have been complied with<sup>(89)</sup>. The Commission therefore concludes that the conditions and commitments in the conditional authorisation decision have not been complied with, and that the Member States concerned have misused, within the meaning of Article 108(2) TFEU, the aid which was the subject of the conditional authorisation decision.

(b) Presence of additional aid to Dexia in the form of Arcofin's participation in Dexia's recapitalisation

- (394) When the Commission examined Dexia's recapitalisation in the context of its conditional authorisation decision, it concluded that the measure fulfilled all the conditions of Article 107(1) TFEU, except as regards the participation of Arcofin, Ethias and CNP Assurances in the capital increase. It concluded in recital 130 of that decision that the participation of these companies in Dexia's recapitalisation did not satisfy the condition that it should be financed through State resources.
- (395) As described in recital 31 of the decision to extend the procedure, on 3 April 2012 the Commission opened a formal investigation procedure in case SA.33927<sup>(90)</sup> 'guarantee scheme protecting the shares of individual

<sup>(87)</sup> See recital 80.

<sup>(88)</sup> See Section 3.2.3, recitals 314-317.

<sup>(89)</sup> According to recital 80 of the temporary approval decision: '*Such a change to the restructuring conditions, added to the fact that the bank is having difficulty in executing the restructuring plan (see Section 1.2.2, recitals 10-12 above on failings identified in the proper execution of the commitments laid down in the conditional decision), warrants the opening of a new investigation procedure ....*'

According to recitals 317 and 318 of the decision to extend the procedure:

*'In examining the aid which the Member States concerned are contemplating providing for Dexia's orderly resolution, account must therefore be taken of the measures already granted, classified as aid by the conditional decision of 26 February 2010, whose compatibility with the internal market is called into question.'*

<sup>(90)</sup> On 3 April 2012, the Commission sent Belgium a decision ('the decision of 3 April 2012') initiating a formal investigation procedure under Article 108(2) TFEU concerning possible aid to recognised financial cooperatives, as a result of the Belgian State's guarantee (case SA.33927 'guarantee scheme protecting the shares of individual members of financial cooperatives'). That decision ordered Belgium, under Article 11 of the Rules of Procedure, to suspend the operation of the guarantee scheme protecting the shares of individual members of recognised financial cooperatives.

members of financial cooperatives', considering, on a preliminary view, that the guarantee scheme might constitute aid incompatible with the internal market for financial cooperatives whose individual members were covered by the scheme, and therefore in particular for Arcofin.

- (396) Among other things, according to the decision of 3 April 2012, the guarantee scheme might have helped cooperatives to obtain more capital or, at least, to preserve their existing capital by persuading their existing individual members not to leave their cooperative. This was particularly relevant during the period from autumn 2008 to the date when the royal decree was adopted (10 October 2011), when the fragile state of the markets in general and financial institutions in particular would otherwise have encouraged investors to leave cooperatives <sup>(91)</sup>.
- (397) As stated in the decision of 3 April 2012 and in the decision to extend the procedure, the Commission pointed out that:
- on 10 October 2008, the Belgian Government issued a press release announcing its decision to extend the protection provided by the deposits and financial instrument protection fund, which covers the assets of customers of the banking institutions <sup>(92)</sup>. This guarantee was to be extended to other financial sector institutions, *'in particular insurance companies [‘branch 21’ life insurance] or recognised cooperatives ... upon request’* <sup>(93)</sup>. The press release stated that *'some organisations have already submitted requests'*;
  - on 15 October 2008, the Belgian Federal Parliament adopted a law to promote financial stability, under which the State may introduce by decree *'a system for granting a State guarantee for commitments given by the institutions under supervision'*, i.e. insurance companies, credit institutions, investment firms and stockbrokers;
  - on 14 November 2008, a royal decree implemented the Law of 15 October 2008 by extending the State guarantee to holders of 'branch 21' life insurance products. A new 'special' fund to protect deposits and life insurance was set up in the Belgian Caisse des Dépôts et Consignations. In the case of deposits, the special fund guarantees a second tranche of EUR 50 000-100 000 on top of the first tranche of EUR 50 000 already guaranteed by the deposit and financial instrument protection fund. In the case of 'branch 21' life insurance products, the special fund guarantees these products for the sum of EUR 100 000 <sup>(94)</sup>;
  - on 21 January 2009, the Belgian Government issued a press release confirming its commitment to offer a guarantee scheme *'to [individual] members of existing recognised cooperatives at least half of whose assets are invested in one or more companies active in the financial sector or which are authorised to operate as credit institutions'*. On the same date the Arco Group informed its members of this confirmation by the Government <sup>(95)</sup>;
  - on 14 April 2009 <sup>(96)</sup>, a royal decree instructed the Minister of Finance to draft a law introducing a system for granting a State guarantee for the repayment to individual members of their share of the capital of recognised cooperatives;
  - on 9 September 2011, the Belgian Federal Government confirmed that a draft regulation on the State guarantee for individual members of recognised cooperatives had been finalised <sup>(97)</sup>;
  - the royal decree of 10 October 2011 extended the guarantee introduced by the royal decree of 14 November 2008 to cover recognised cooperatives, so that the special fund also protected their capital. It stated that the protection offered by the special fund protecting deposits, life insurance and the capital of recognised cooperatives was effective from receipt of payment of the annual contribution and the entrance fee by the insurance company or cooperative applying to participate in the fund;

<sup>(91)</sup> See recital 45 of the decision of 3 April 2012.

<sup>(92)</sup> <http://www.minfin.fgov.be/portail2/fr/downloads/composition/mp-fonds.pdf>.

<sup>(93)</sup> Emphasis added.

<sup>(94)</sup> <http://www.fondsspecialdeprotection.be/fr/Intro.htm>

<sup>(95)</sup> <http://www.groeparco.be/news/be-nl/150/detail/item/1615/navigationcats/544>

<sup>(96)</sup> Belgian Official Gazette, 21.4.2009, Ed.2, N.2009 — 1426 [2009/03147  
[http://www.ejustice.just.fgov.be/mopdf/2009/04/21\\_1.pdf](http://www.ejustice.just.fgov.be/mopdf/2009/04/21_1.pdf)

<sup>(97)</sup> See Arco Group press release of 6 October 2011,

<http://actua.groeparco.be/news/be-fr/0/detail/14>

— by a royal decree of 7 November 2011, Belgium announced that, pursuant to the royal decree of 14 November 2008, the application for capital protection from the recognised cooperatives ARCOPAR SCRL, ARCOFIN SCRL and ARCOPLUS SCRL had been approved. That approval had been granted *'Having regard to the fact that ... there is justification ... for granting [to shares in recognised cooperatives] a guarantee scheme equivalent to the one that exists for substitute savings products, in other words bank deposits and 'branch 21' insurance [and] for extending deposit protection to the capital of recognised cooperatives, in the near future, in accordance with the earlier announcement on the subject'*. As far as the Commission is aware, the Arco Group — or more accurately its three subsidiaries Arcofin, Arcopar and Arcoplus — was the first recognised financial cooperative to have applied for the scheme for its individual members and remains, to date, the only financial cooperative covered by the guarantee scheme.

(398) According to the report by the Special Commission of the Belgian House of Representatives tasked with examining the circumstances which led to the break-up of Dexia SA, there was no particular financial interest for Arcofin in participating in the recapitalisation of Dexia, and the operation was carried out under pressure from the authorities:

*The events occurred in a context where the private shareholders in question were already in a weak position. ... Holding Communal and the Arco Group relied on income from the portfolio which they held in Dexia, and their own resources were extremely limited.*

...

*On 30 September 2008, Arcofin (Arco Group) and Holding Communal subscribed to a capital increase of EUR 350 million and EUR 500 million respectively in order to rescue Dexia SA. Although these shareholders did not themselves have the resources necessary to participate in this capital increase, first of all, they obviously wanted to avoid an excessive dilution of their shareholding, and second, it appears that they also came under pressure from the authorities to go ahead with the subscription.*

...

*In order to understand the situation facing Arco and Holding Communal, we need to look at the 2008 recapitalisation operation, which was where their shared problem really started. At that time Arco was actively diversifying its portfolio, following a diagnosis that its main position was too heavily concentrated in Dexia. ... There was no economic interest in further concentrating its portfolio, beyond considerations relating purely to funding, which was also causing problems — see the section analysing this.*

*However, when the emergency recapitalisation was to be decided in October 2008, these two shareholders decided to do whatever was needed to avoid diluting their holding too much. The result of this decision ... was that their portfolio of holdings was much more concentrated, with a major focus on the Dexia Group, which de facto became their biggest problem. This capital increase, which was financially beneficial for the Group [Dexia], thus placed these two shareholders in particular in a much weaker position, since they were not financially strong enough to absorb the operation in the systematic risk of their portfolio; for them, the Dexia risk became a specific, non-diversified risk' <sup>(98)</sup>.*

(399) According to the Belgian press, the Minister of Finance in the previous government had stated on 25 January 2012, at a hearing before the Special Commission of the Belgian House of Representatives tasked with examining the circumstances which led to the break-up of Dexia SA, that the State guarantee for the shares of Arcofin's members was the result of a political compromise dating back to 2008 and the first Dexia rescue plan:

<sup>(98)</sup> Emphasis added. See pages 116, 216 and 217, and 318 of the report of 23 March 2012 by the Special Commission of the Belgian House of Representatives tasked with examining the circumstances which led to the break-up of Dexia SA, available at: [http://www.dekamer.be/kvvcr/pdf\\_sections/comm/dexia/53K1862002.pdf](http://www.dekamer.be/kvvcr/pdf_sections/comm/dexia/53K1862002.pdf).

*'He [the Belgian Finance Minister] also confided [on Wednesday, 25 January 2012, during his hearing before the Parliamentary Commission on the break-up of Dexia] that he had not been entirely sure about the Arco guarantees, particularly because he rather feared that Europe would not agree to them. The fact that the guarantees were still set up was the result, according to the Deputy Prime Minister [the Belgian Finance Minister], of a political compromise dating from 2008 and the first Dexia rescue plan. This is the first time that anyone involved has admitted that such a compromise existed, even though it was by no means a secret.*

*According to [the Minister], the question of protection ... for Arco's members had already been raised in late September 2008 at the Egmont Palace, on the night of the first Dexia rescue.*

*'... Regarding Arco, the question had come from the inner Cabinet ('Kernkabinet') itself', declared the [Finance Minister], who did not give any further details.*

*[The Minister] said that the political compromise had been necessary at that point to be able to save Dexia. ...' <sup>(99)</sup>*

*'Before the Dexia Commission [the Belgian Finance Minister] also confided that he had not initially been in favour of this guarantee, which was the result of a political compromise reached in 2008, the former Finance Minister confirmed. He recalled that around the time of the first Dexia rescue in September 2008, the idea had been to extend the guarantee for savers to branch 21 products, ..., and to Arco members. '... On Arco, the question was raised in the inner Cabinet itself' <sup>(100)</sup>.*

- (400) According to a statement by an MP during the debate on the report by the Special Commission of the Belgian House of Representatives tasked with examining the circumstances which led to the break-up of Dexia SA, the State had given Arco Group members access to the guarantee scheme in return for Arcofin's participation, under government pressure, in Dexia's capital increase:

*'In 2008, the ARCO Group and Holding Communal participated in the Group's capital increase for a huge amount that would be impossible to raise. For this loan [the loan granted by DBB to ARCO and Holding Communal to enable them to participate in the capital increase], they could only apply to Banque Dexia Belgique, so it was actually circular financing. The capital increase was designed to safeguard dividends and was carried out under government pressure.*

*In return, ARCO was given access to the guarantee fund, with savers having to be paid compensation for management errors. In order to join, ARCO only had to pay if this was necessary. So once again the government explicitly rewarded ARCO by handing it EUR 1,5 billion on a plate' <sup>(101)</sup>.*

- (401) For the reasons set out in recitals 397-400, the doubts expressed by the Commission in the decision to extend the procedure have not been allayed by the comments received from the Member States concerned. The Commission therefore considers that the State guarantee for members of Arcofin was planned by the Belgian authorities in order to persuade Arcofin to participate in Dexia's recapitalisation.

<sup>(99)</sup> Article entitled 'Europa schorst federale Arco-steun' in *De Tijd* newspaper of 26 January 2012:

*'Hij [de Belgisch minister van Financiën] gaf ook mee [op woensdag 25 januari 2012, tijdens zijn hoorzitting op de ontmanteling van Dexia door de parlementaire commissie] eerst niet gewonnen geweest te zijn voor de Arco-waarborgen, onder meer uit vrees dat die het niet zouden halen bij Europa. Dat ze er toch kwamen was volgens de MR-vicepremier [Belgisch minister van Financiën] het gevolg van een politiek compromis uit 2008, ten tijde van de eerste Dexia-redding. Het is voor het eerst dat een betrokkene dat compromis, waarvan het bestaan al bekend was, toegeeft.*

*Volgens [de minister] dook eind september 2008, in de nacht van de eerste Dexia-redding in het Egmontpaleis, de vraag op om ook een bescherming te geven aan [...] de Arco-coöperanten.*

*'[...] Voor Arco kwam de vraag vanuit de kern zelf, aldus [de minister van financiën], die geen details gaf.*

*[De minister] zei dat het politieke compromis toen nodig was om Dexia te kunnen redden. [...].*

Article available at:

[http://www.tijd.be/nieuws/ondernemingen\\_financien/Europa\\_schorst\\_federale\\_Arco\\_steun.9152552-3095.art](http://www.tijd.be/nieuws/ondernemingen_financien/Europa_schorst_federale_Arco_steun.9152552-3095.art).

Emphasis added.

<sup>(100)</sup> Article entitled 'La garantie aux coopérateurs d'Arco suspendue' in 'L'Echo', 27 January 2012, available at:

[http://www.lecho.be/actualite/entreprises\\_finance/La\\_garantie\\_aux\\_cooperateurs\\_d'\\_Arco\\_suspendue.9152559-3031.art?ckc=1](http://www.lecho.be/actualite/entreprises_finance/La_garantie_aux_cooperateurs_d'_Arco_suspendue.9152559-3031.art?ckc=1)

<sup>(101)</sup> Summary record, plenary sitting of the morning of Wednesday, 28 March 2012, p. 20 (speech by Mr Dedecker). See the website of the Belgian House of Representatives:

<http://lachambre.be/doc/pkra/pdf/53/ap079.pdf>

Emphasis added.



- (402) In reply to Belgium's comments (see recital 377), the Commission points out that the announcement and the guarantee came from the Belgian Government. It notes that the guarantee operation did not occur until the point at which, without the guarantee, Arcofin would have faced a major risk that its shareholders would incur losses linked to Arcofin's participation in the recapitalisation of Dexia. It points to the fact that the announcement of the guarantee plan (on 10 October 2008) was concomitant with the preparations for Dexia's recapitalisation (which became definitive on 3 October 2008, and was thus prepared before that date), and it considers, in the light of the evidence set out above <sup>(102)</sup>, that Arcofin would not have participated in the recapitalisation of Dexia if it had not been able to count on the guarantee scheme protecting the investment of individual members in cooperatives, disclosure of the plans for which encouraged it to go ahead with the injection of capital. The measure is thus imputable to the State.
- (403) The EUR 350 million recapitalisation of Dexia by the Arcofin financial cooperative as part of the first Dexia rescue plan is thus imputable to the State. The other conditions required for it to be classified as State aid are met for the reasons already set out in the opening decision of 13 March 2009 <sup>(103)</sup> and the conditional authorisation decision <sup>(104)</sup>: the Commission considers that without the guarantee from the Belgian State, Arcofin would not have subscribed to this capital increase, which gave the Dexia Group a major advantage by reducing its risk of insolvency; the capital increase was selective since it involved only one undertaking, the Dexia Group; given Dexia's size and importance in the Belgian, French and Luxembourg markets, and the fact that, without the measures taken, the Group might have become insolvent, which would have significantly changed the structure of the banking market in those three countries, the Commission considers that the measures in question affect trade between Member States and distort or threaten to distort competition.
- (404) The Commission points out that the fact that Arcofin's participation in the recapitalisation of Dexia was imputable to the State would not be called into question even if it were concluded in case SA.33927 'guarantee scheme protecting the shares of individual members of financial cooperatives' that the guarantee scheme does not constitute State aid for Arcofin. Arcofin might not itself have benefited from State aid under the guarantee scheme while still, as the Commission has found in this Decision, taking a measure imputable to the State and constituting aid.
- (405) The Commission was not kept informed by the Belgian authorities, during the procedure which led up to the conditional authorisation decision, of details of the guarantee scheme protecting the shares of individual members of financial cooperatives. Not having full details of the conditions surrounding Arcofin's participation in the recapitalisation was decisive in persuading the Commission that there was no aid involved in this investment and that the other aid elements identified in the conditional authorisation decision were compatible. Dexia actually received a larger amount of aid than that noted by the Commission in the conditional authorisation decision, and the error about the amount of aid which the Commission was led to make may have had a decisive influence on the Commission's analysis. The Commission therefore sent letters to the Member States concerned announcing its intention to initiate a procedure with a view to revoking all the sections of the conditional authorisation decision relating to Arcofin's participation in the recapitalisation of Dexia. It also warned the Member States concerned that, if it turned out that Arcofin's participation in the recapitalisation of Dexia was additional aid, if new aid had been granted or might be granted in the restructuring period covered by the conditional authorisation decision, or if certain commitments and conditions arising from that decision were not complied with, it would have to review the compatibility of all the aid dealt with in the conditional decision. Then, in the decision to extend the procedure, the Commission invited the Member States concerned to submit their comments and supply any relevant information on this point, in order to establish whether the conditional authorisation decision should be revoked. For the reasons set out above, after examining the comments submitted by the Member States concerned, the Commission considers that the conditional authorisation decision should be revoked. The Commission nevertheless considers that the analysis of the existence of the aid measures already identified in the conditional authorisation decision (see recitals 121-138 of the conditional authorisation decision) remains entirely valid.

<sup>(102)</sup> See recitals 397-402 above.

<sup>(103)</sup> See recitals 46-51.

<sup>(104)</sup> See recital 128.

### 6.1.2. Additional aid paid (after the conditional authorisation decision)

(a) Temporary refinancing guarantees for Dexia SA, DCL and their subsidiaries (initially for EUR 45 billion, increased to EUR 55 billion)

- (406) The temporary guarantee from the Member States concerned for the refinancing of Dexia SA and DCL was classified as aid (and approved temporarily) by the temporary approval decision<sup>(105)</sup>, the decision on the first prolongation of the guarantee<sup>(106)</sup>, the decision to increase the guarantee ceiling<sup>(107)</sup> and the decision on the second prolongation of the guarantee<sup>(108)</sup> for EUR 45 billion initially, then EUR 55 billion.
- (407) In its decisions of 19 April 2008<sup>(109)</sup> and 30 October 2009<sup>(110)</sup>, the Commission had already established that the guarantee mechanism provided by the Member States concerned for the finance raised by Dexia under an agreement of October 2008 constituted State aid.
- (408) The Commission reiterates the reasons already given in the above decisions for classifying the refinancing guarantee for Dexia SA and DCL as State aid.
- (409) The Commission observes that the Member States concerned cited Dexia's inability to refinance itself on the markets as grounds for the temporary refinancing guarantee. That being so, the Commission is entitled to consider that the interest charged on the guarantee is not at the market rate, thus conferring an advantage on the beneficiary.
- (410) The measure is selective in that it relates to only one undertaking, Dexia (Dexia SA and DCL being the legal persons which directly benefit).
- (411) The temporary refinancing guarantee granted by the Member States concerned clearly involves State resources.
- (412) Given Dexia's considerable size and the fact that, without the temporary refinancing guarantee, the bank would have risked immediate and disorderly winding-up as a result of the problems it faced with liquidity, asset quality, profitability and solvency, which would have affected the structure of the banking market in a number of Member States, the Commission considers that the measure affects trade between Member States and distorts or threatens to distort competition.

(b) ELA granted by the Belgian and French central banks to DBB/Belfius and DCL respectively

- (413) The Commission considers that the ELA granted since 5 October 2011 is one of a series of new measures to help the Dexia Group and DBB/Belfius after the sale of DBB/Belfius, adopted (or to be adopted) after approval on 26 February 2010 of the first restructuring plan for Dexia, and in the same vein as the temporary refinancing guarantee, the acquisition of DBB/Belfius by the State, the sale of Dexia BIL and the measures provided for in the orderly resolution plan for Dexia.
- (414) In reply to the comments of the Member States concerned about the ELA, the Commission points out that, according to point 51 of the Banking Communication<sup>(111)</sup>, one of the conditions for a finding that funding provided does not constitute aid is that *'the measure ... is not backed by any counter-guarantee of the State'*.
- (415) It notes that the State guarantee for the ELA granted to DBB/Belfius came under a Belgian State guarantee for the BNB, in accordance with the Law of 22 February 1998 establishing the Statute of the BNB.

<sup>(105)</sup> See recital 69.

<sup>(106)</sup> See recital 46.

<sup>(107)</sup> See recital 53.

<sup>(108)</sup> See recital 45.

<sup>(109)</sup> See recitals 24-27.

<sup>(110)</sup> See recital 13.

<sup>(111)</sup> Communication from the Commission on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis, OJ C 270, 25.10.2008, p. 8.

- (416) It does not share the Belgian authorities' opinion that Belgium's guarantee for the BNB did not come under the Banking Communication<sup>(112)</sup> because the guarantee was not an 'anti-crisis' measure specifically granted for ELAs, but 'guarantees all [sic] loans issued by the BNB, provided that they are granted as part of the BNB's contribution to the stability of the financial system, which goes far beyond anti-crisis measures'.
- (417) The Commission points out that the requirement that there should be no counter-guarantee of the State, laid down in the Banking Communication as one of the cumulative criteria if funding is not to be classified as aid, is not defined in any further detail. The Communication does not state anywhere, even by implication, that such a counter-guarantee must have specifically been provided in order to combat the current financial crisis. The criteria laid down in point 51 of the Banking Communication merely reproduce the analysis given by the Commission in recitals 32 and 33 of its *Northern Rock* decision of 5 December 2007<sup>(113)</sup>, well before any legal framework relating to the financial crisis was introduced. It is therefore enough that the counter-guarantee of the State covers the provision of funds by the central bank, without any need, as the Belgian authorities suggest, for the counter-guarantee to be specifically granted for ELAs.
- (418) The second paragraph of Article 9 of the Law of 22 February 1998 establishing the Statute of the BNB provides as follows: *'The State shall guarantee the Bank against any loss and shall guarantee repayment of any loan granted by the Bank as a result of the execution of the agreements referred to in the previous paragraph [international monetary cooperation agreements binding on Belgium] or as a result of its participation in international monetary cooperation agreements or operations to which the Bank, subject to the agreement of the Council of Ministers, is party. The State shall also guarantee the Bank repayment of any loan granted as part of its contribution to the stability of the financial system, and shall guarantee the Bank against any loss incurred as a result of any transaction necessary in that regard'*<sup>(114)</sup>.
- (419) In the Commission's view, it follows that, for the activities referred to in that paragraph, the BNB is guaranteed by the State 'against any loss'. Furthermore, the Belgian authorities have continually cited the need to avoid destabilising the financial system as justification for the ELAs for Dexia.
- (420) The fact that, in their notification of 21 October 2011 concerning the new ELA measure, the Belgian authorities felt the need to mention the presence of a State counter-guarantee for the BNB almost immediately after mentioning that the ELA was necessary to preserve Belgium's financial stability confirms that this counter-guarantee does indeed cover the ELA:
- (22) *In these circumstances, the BNB and the Belgian Government, each within the ambit of their relevant roles and their respective competences, had started considering available options to preserve DBB's viability and the financial stability in Belgium. ...*
- (26) *Pursuant to the organic law of the BNB of 22 February 1998 the Belgian State automatically guarantees the repayment of any credit granted in the context of the BNB's contribution to the stability of the financial system as well as any loss incurred as a result of any transaction necessary in this regard. This guarantee is legally enforceable.*
- ...
- (28) *The BNB has recognised that these operations have been undertaken in view of the systemic importance of Dexia Group ...'*<sup>(115)</sup>.
- (421) The conditions laid down in the Banking Communication in order for funding not to constitute aid are therefore not all satisfied as regards the BNB's ELA for DBB/Belfius.

<sup>(112)</sup> See footnote 78.

<sup>(113)</sup> See footnote 79.

<sup>(114)</sup> Emphasis added.

<sup>(115)</sup> Emphasis added.

- (422) The same applies for the half of the ELA which the BdF granted to DCL, for the reasons set out in recitals 414-429.
- (423) Since the agreement of 2 February 2012 <sup>(116)</sup> between the Belgian and French central banks became binding, the BNB has been required to provide compensation of 50 % for any losses which the BdF might sustain as a result of a possible default by DCL. This BNB guarantee for the BdF is itself covered by the Belgian State guarantee provided for in the Law of 22 February 1998 establishing the Statute of the BNB.
- (424) In the absence of adequate evidence that the provisional agreement between the two central banks which preceded the agreement of 2 February 2012 <sup>(117)</sup> was legally binding, the Commission regards 2 February 2012 as the date from which the BdF's ELA for DCL may have begun to constitute aid.
- (425) [...].
- (426) [...].
- (427) [...].
- (428) [...].
- (429) In conclusion, the condition which requires that, for ELA not to constitute aid under the Banking Communication, that ELA must not be backed by a counter guarantee of the State <sup>(118)</sup> is also not satisfied as regards the BdF's ELA for DCL.
- (430) The conditions laid down in the Banking Communication if funding is not to constitute aid are therefore not all satisfied either as regards the BNB's ELA for DBB/Belfius or as regards the BdF's ELA for DCL. Consequently, it must be ascertained whether the conditions constituting State aid are indeed met.
- (431) The BNB is a public institution and the measures it takes involve State resources within the meaning of Article 107(1) of the Treaty. According to the BNB itself, 'When the National Bank was established, the fact that the general interest takes priority in its management was given shape in a legal system that differs from the normal statutory provisions regarding public limited liability companies' <sup>(119)</sup>. It performs State functions such as maintaining price stability for society as a whole. It is governed by an organic law and its Statute is approved by royal decree. The Governor and Directors are appointed by the King. The ELA thus constitutes a measure of the State granted through State resources within the meaning of Article 107(1) TFEU.
- (432) The BdF is an institution whose capital belongs to the State. Subject to the main objective of price stability, the BdF supports the government's general economic policy and provides services requested by the State or carried out for third parties with the State's agreement. The ELA thus constitutes a measure of the State granted through State resources within the meaning of Article 107(1) TFEU.
- (433) The ELA paid to DCL and that paid to DBB/Belfius until Dexia sold it to the Belgian State is a measure selectively granted to Dexia, which gives it an advantage in that it provides funding which Dexia is no longer able to obtain on the market because of the serious problems it faces, particularly as regards liquidity.

<sup>(116)</sup> See recital 315 above.

<sup>(117)</sup> See recital 313 above and 426 below.

<sup>(118)</sup> See recital 414 above.

<sup>(119)</sup> See the BNB website: <http://www.nbb.be>

- (434) Similarly, the ELA paid to DBB/Belfius after Dexia sold it to the Belgian State is a measure selectively granted to DBB/Belfius, which has given it an advantage by providing it with funding no longer available to it on the market. Moreover, in the context of the Dexia Group's serious liquidity problems, DBB/Belfius continued, after it was sold, to subscribe to the bonds issued by DCL. The ELA enabled it to make this investment, whereas that facility was not available to its competitors.
- (435) As Dexia is active in a number of Member States and in competition, for most of its activities, with other financial institutions operating across the European Union, the ELA granted to it distorted competition and affected trade between Member States.
- (436) Similarly, the ELA gave DBB/Belfius, after it was sold, a source of funding without which it could not have continued its activities (particularly subscribing to financial instruments issued by DCL), and which thus gave it an advantage that distorted competition. It is a major bank in Belgium and is in competition with other financial institutions operating across the European Union. This advantage has thus affected trade between Member States.
- (437) Consequently, and notwithstanding the debt portfolios provided as security by DBB/Belfius and DCL, the Commission considers that the ELAs contain State aid.

(c) Aid from the sale of DBB/Belfius to the Belgian State

- (438) In its opening decision on the sale of DBB/Belfius, the Commission expressed its doubts that the sale of DBB/Belfius to the Belgian State did not involve aid. Any positive deviation between the price paid by the Belgian authorities and the market value of DBB/Belfius at the time of the transaction would be regarded as the equivalent amount of State aid to the vendor (Dexia SA). Furthermore, the transaction may also prove to involve aid for the entity sold (DBB/Belfius). This aid is on top of the aid — in question here — which was the subject of the conditional authorisation decision and from which DBB/Belfius has already benefited as an entity of the Dexia Group (see Section 6.1.1, recitals 387-405), and the ELA received by DBB/Belfius (see point (b) in the current section).

— Aid for the vendor

- (439) The transaction by which the Belgian State acquired shares in DBB/Belfius was financed by State resources (from the SFPI).
- (440) The Belgian State intervened to help Dexia and/or its subsidiaries under terms and conditions which would not be acceptable to a private investor operating under normal market conditions. The vendor, Dexia, received State resources as a result of the excessively high price paid by Belgium to acquire DBB/Belfius. The Commission notes that the price valuation supplied by the Belgian authorities shows a value of between EUR 2,8 billion and EUR 7,2 billion. After taking account of unrealised losses resulting from market conditions in summer 2011 (deterioration of some EUR [0-2] billion in unrealised losses), and of the profit outlooks announced (EUR 408 million and EUR [...] million for 2012 and 2013 respectively), and on the basis of the various ways of valuing European banking groups similar to Belfius (P/E ratio <sup>(120)</sup> of [5-10] for 2012 and 2013 and P/TBV <sup>(121)</sup> of [0,6-0,8] at the end of 2011), it appears that the value of the part of DBB/Belfius that was sold may be estimated at between EUR [0-5] billion and EUR [0-5] billion.
- (441) The Commission further observes that the conditions for the DBB/Belfius transaction involved contractual obligations for DBB/Belfius and/or the Belgian State which were advantageous for Dexia/DCL and which, under normal market conditions, would have reduced the transaction price. These obligations are the price supplement mechanism, the finance agreement between DBB/Belfius and DCL/Dexia, and the Belgian State's immunisation of the Dexia Group against any risk of loss associated with outstanding loans to Arco, Ethias and Holding Communal.

<sup>(120)</sup> 'P/E' means 'price/earnings'.

<sup>(121)</sup> 'P/TBV' means 'price/tangible book value'.

- (442) First of all, as regards the price supplement mechanism, the Commission recognises that it is usual in bank sales for there to be price adjustment mechanisms depending on the future performance of the activity sold. The Commission points out, however, that in this particular case the mechanism is disproportionate. In particular, the fact that the Belgian State undertook to repay 100 % of the capital gains means that it agreed to take a very large risk (acquisition for EUR 4 billion) while waiving any remuneration for that risk (and without reimbursement of its financing costs). A private investor would never have agreed to repay the capital gains without a significant reduction in the sale price. According to the information provided by Belgium and its consultant bank, and on the basis of market figures, the price supplement mechanism can be valued at between EUR 40 million and EUR 150 million.
- (443) Second, the bid formulated by the Belgian State to the Dexia Group includes a gradual reduction in the funding provided by DBB/Belfius for the rest of the Group, particularly Dexia SA and DCL. However, no clear and binding timetable is given for this reduction. The Commission considers that no private investor would have agreed to buy under these conditions a bank that retained such a substantial exposure to Dexia and its subsidiaries, a group in major difficulties, without a reduction in the sale price.
- (444) Third, the Belgian State's immunisation of the Dexia Group against any risk of loss associated with outstanding loans to Arco, Ethias and Holding Communal, as shown in the Belgian State's bid to Dexia published on 10 October 2011, would not have been acceptable to an informed investor.
- (445) As stated in the opening decision on the sale of DBB/Belfius<sup>(122)</sup> and confirmed by the temporary approval decision<sup>(123)</sup> and the decision to extend the procedure<sup>(124)</sup>, the sale of DBB/Belfius to the Belgian State under conditions that were advantageous to Dexia is an aid measure which forms part of the introduction by the Member States concerned of a series of additional structural measures to help Dexia (about which the Commission did not yet have enough accurate information when it adopted the opening decision on the sale of DBB/Belfius, but which subsequently turned out to be the refinancing guarantee, the ELA and the measures provided for in the revised orderly resolution plan for Dexia), which would not have been acceptable to an informed investor. It follows that the purchase of DBB/Belfius cannot be seen in isolation from the other support measures provided for Dexia<sup>(125)</sup>.
- (446) The price of DBB should therefore have been adjusted downwards to take account of the obligations described in recitals 441-445 which benefited Dexia/DCL. The Commission thus considers that the sale price of DBB/Belfius was overvalued and higher than a private investor would have accepted. The aid for DCL/Dexia can thus be estimated at somewhere between EUR 1 billion and EUR 2 billion.
- (447) Dexia is in competition with foreign groups, so that trade between Member States has been affected and the sale at too high a price has distorted competition.

— *Aid for DBB/Belfius*

- (448) The Commission considers that it has been established that the Belgian State did not behave like an informed market economy investor when it acquired DBB/Belfius since the sale price was higher than the market value and the Belgian State acquired DBB/Belfius to prevent the financial situation of the Group and therefore of the Belgian financial system from deteriorating.
- (449) The Commission already noted in its opening decision that it was highly unlikely that a private investor would take the banking group over because of the asking price and because of its exposure to DCL/Dexia, which would be only gradually reduced. The Commission also notes that a market investor would not have made such an acquisition in such a short space of time and without the appropriate due diligence. The formal investigation confirmed these doubts.

<sup>(122)</sup> See recital 65 of the opening decision on the sale of DBB/Belfius.

<sup>(123)</sup> See recitals 16 and 98 of the temporary approval decision.

<sup>(124)</sup> See recital 151 of the decision to extend the procedure.

<sup>(125)</sup> Judgment in Case T-11/95 *BP Chemicals v Commission* [1998] ECR II-3235, paragraphs 170 and 171.

- (450) The Commission also notes that DBB/Belfius directly benefits from the fact of being separate from the Dexia Group, which is an advantage in itself. Membership of the Dexia Group led to a substantial run on deposits from DBB/Belfius and jeopardised its viability. The Belgian authorities placed great emphasis on this aspect of the transaction in order to reassure depositors.
- (451) The advantages conferred on DBB/Belfius by the measure distort competition by allowing DBB/Belfius to present a better picture to its creditors and depositors. DBB/Belfius is in competition with foreign groups, so that trade between Member States is affected.
- (452) The Commission consequently concludes that the purchase of shares in DBB/Belfius by the Belgian State under the conditions described above constitutes State aid for DBB/Belfius.
- (453) However, in the case of DBB/Belfius' subscription to bonds guaranteed by the Member States concerned and issued by Dexia SA and/or DCL, the Commission has not found sufficiently conclusive evidence proving satisfactorily that DBB/Belfius derived a specific competitive advantage from subscribing to these bonds, in other words a benefit which other subscribers to DCL bonds placed in a similar position would not have derived. On the basis of the evidence available to it, therefore, the Commission cannot conclude that this constitutes aid.

#### **6.1.3. Supplementary aid to be paid in connection with the revised orderly resolution plan and the sale of DMA (with the introduction of a development bank)**

##### **(a) Definitive refinancing guarantee for Dexia SA, DCL and their subsidiaries**

- (454) Like the temporary refinancing guarantee provisionally authorised by the temporary approval decision, the decision on the first prolongation of the guarantee, the decision to increase the guarantee ceiling and the decision on the second prolongation of the guarantee, the final refinancing guarantee for EUR 85 billion constitutes State aid. The final refinancing guarantee involves State resources. Without a State guarantee Dexia would not have been able to raise any finance on the markets, so the guarantee gives Dexia an advantage. There is nothing to suggest that this measure, taken in order to preserve financial stability, would meet the requirements of a private market economy investor. It relates selectively to Dexia alone. It is designed to avoid an immediate and disorderly resolution of Dexia, which, because of the bank's considerable size, would affect the structure of the banking market in the Union. The Commission therefore considers that this measure affects trade between Member States and distorts or threatens to distort competition.

##### **(b) EUR 5,5 billion recapitalisation of Dexia SA**

- (455) As for whether there is aid associated with the capital increase, the Commission refers to its decision of 13 March 2009 and its conditional authorisation decision, which established that the interventions of the Belgian and French States constitute State aid within the meaning of Article 107(1) TFEU.
- (456) The Commission considers it evident that the measure is selective and imputable to the two Member States given that it relates to one single enterprise, the Dexia Group, and that it was taken directly by the Belgian and French States.
- (457) As explained earlier <sup>(126)</sup>, the recapitalisation of Dexia SA is necessary in order to ensure that Dexia's resolution is orderly in nature. In order to stabilise the Group's financial position, the negative own funds situation of Dexia SA on 30 September 2012 and DCL on 31 December 2012 has to be addressed. No private owner who knew anything about market economics would carry out such a recapitalisation in a group in difficulties while at the same time undertaking to place it in resolution. The undertaking thus derives an advantage from a recapitalisation which it would not have obtained from an informed private investor.

<sup>(126)</sup> See Section 2.2.6 'Recapitalisation', recitals 96-102 above.

- (458) The recapitalisation is helping to avoid the immediate and disorderly break-up of Dexia. Without the measure the bank would be placed in liquidation and would leave the banking industry sooner. Its assets would be redistributed more rapidly. Because of the bank's considerable size, therefore, the measure affects the structure of the banking market in the Union and thus affects trade between Member States and distorts competition.
- (459) The Commission consequently concludes that the recapitalisation of Dexia SA involves State aid for Dexia.
- (c) Aid for the development bank
- (460) The Commission considers that aid is being provided for the development bank through which DMA is to carry out its activities:
- (a) because of the capital which the shareholders have undertaken to inject; and
- (b) because of the liquidity which those same shareholders have undertaken to provide for the NEC.
- (461) This aid is on top of the aid — at issue here — which DMA has already received as an entity of the Dexia Group.
- (462) In its decision to extend the procedure, the Commission considered that the aid identified in the DMA sale operation was intended for the benefit of DMA's activities and the 'new mortgage lending structure' <sup>(127)</sup>, in other words the undertaking resulting from the DMA sale operation, which would also include the NEC and the JV as legal entities. In response, the Member States concerned <sup>(128)</sup> and Dexia <sup>(129)</sup> respectively stated in their comments in response to the opening decision, and the French authorities in their memorandum of 4 December 2012 on the DMA operation <sup>(130)</sup>, that there was no 'new mortgage lending structure' as an economic entity and that in any event such a structure would not receive any aid.
- (463) In support of their argument, the Member States concerned merely state in their joint comments on the decision to extend the procedure and the decision to increase the guarantee ceiling that 'the different legal persons making up this 'lending structure' have different shareholders and, in any case, are each pursuing their own business interest' and that 'the different sections of the 'new mortgage lending structure' [i.e. DMA, the NEC and the JV] will always have different interests'. The only argument advanced for the existence of these different interests is that '... these entities [DMA, the NEC and the JV] are connected to each other by service links which vertically integrate a number of services. At each level of this value chain operators will seek to extract maximum profit in pursuit of their own interests. These entities will have to divide between them the margin resulting from local authority financing operations' <sup>(131)</sup>.
- (464) On this point, in their memorandum of 4 December 2012 on the DMA operation of 4 December 2012, the French authorities allude to the existence of 'different economic activities' carried out by the NEC and DMA on the one hand, and by the JV on the other' <sup>(132)</sup>.
- (465) As a preliminary point, the Commission would recall that the competition rules set out in the Treaty on the Functioning of the European Union, particularly those relating to State aid, concern undertakings and not companies or other legal entities in the form of natural or legal persons.

<sup>(127)</sup> See recitals 177, 212, 215, 218, 219, 222 and 225 of the decision to extend the procedure.

<sup>(128)</sup> See paragraphs 51-54 of their comments of 2 July 2012.

<sup>(129)</sup> See Section III-2, p. 5, of its comments.

<sup>(130)</sup> See paragraph 66 of the memorandum.

<sup>(131)</sup> See paragraphs 51-54 of their comments of 2 July 2012.

<sup>(132)</sup> See paragraph 66 of the memorandum. In Section III-2, p. 5, of Dexia's comments on the temporary approval decision, the decision to extend the procedure, the decision on the first prolongation of the guarantee, the decision to increase the guarantee ceiling and the decision on the second prolongation of the guarantee, Dexia refers, as regards 'the Commission's questions on the new mortgage lending structure', to the authorities' memorandum of 4 December 2012 concerning the DMA operation.



- (466) It is clear from the case law of the Court of Justice that the rules of competition law in the European Union apply to undertakings and that an undertaking corresponds, for the purpose of those rules, to a coherent, unified economic entity incorporating different personal, tangible and intangible elements, and pursuing the same given long-term economic objective, regardless of the legal status of that economic unit <sup>(133)</sup>.
- (467) Two or more separate legal entities may be regarded as forming a single economic unit for the purpose of applying the rules on State aid. That economic unit is then deemed to be the undertaking at issue. In order to do this, the Court of Justice looks at whether one of the entities has a controlling shareholding in the other and whether there are functional, economic and organic links between them <sup>(134)</sup>.
- (468) The Commission believes, for the reasons set out below, that DMA, the NEC and the JV constitute one and the same undertaking. They are pursuing the same given long-term economic objective (remedying a market shortfall identified in the financing of French local authorities and public hospitals), even though each company plays an individual and complementary role in the pursuit of that shared objective.
- (469) Under French law (Article L.515-22 of the Monetary and Financial Code), the administration and recovery of loans and similar receivables, securities and bonds held by a mortgage lending company, together with bonds or other resources which it receives, must be carried out by a separate credit institution bound to the mortgage lending company by contract. The justification for making this distinction between legal persons is not economic, but essentially legal. In French law, employees are given preferred status if their company is put into administration or wound up. Under Article L.515-19 of the Monetary and Financial Code, bonds issued by the mortgage lending company also have preferred status. Under the terms of that preferred status, all of the mortgage lending company's assets must be allocated first to the payment of its mortgage bonds.
- (470) There would be a conflict of privileged statuses if there were no legislation requiring a credit institution (with employees) to manage a mortgage lending company (with no staff). Thus, DMA, as a mortgage lending company, could not function without the NEC. DMA does not in itself constitute an undertaking because French law does not allow it to manage itself. The French authorities themselves point out in point 78 of their notification of the DMA sale operation that '*the regulatory framework applicable to mortgage lending companies prohibits them from employing staff*'. They also state in the same document that the day-to-day management of DMA's assets will be carried out by NEC and will include in particular the administration and recovery of loans, the desensitisation of DMA's 'sensitive loans', management of the securities portfolio, treasury management and management of long-term refinancing through mortgage bonds, risk management and cover through market operations, management of DMA's balance sheet, tool maintenance and in-house scoring methods <sup>(135)</sup>.
- (471) Furthermore, under Article L.515-13-I of the Monetary and Financial Code, the sole objective of mortgage lending companies is to grant or acquire guaranteed loans, exposures on public legal entities and securities and bonds with preferred status, and to issue mortgage bonds with preferred status under Article L.515-19 to finance those assets.
- (472) According to the notification of the DMA sale operation by the French authorities, it is the JV which is to market the eligible loans in DMA's cover pool, refinanced by the mortgage bonds issued by DMA. The JV will merely have the status of banking transaction intermediary and will not be able to enter in its balance sheet loans which it will 'originate' and will then be 'charged' to DMA's balance sheet.
- (473) The JV will thus act simply as an intermediary enabling DMA, as a mortgage lending company, to satisfy the legal definition laid down in Article L.515-13-I of the Monetary and Financial Code. Without the JV, DMA would not meet its objective of 'granting or acquiring loans' in line with the conditions laid down in that article.

<sup>(133)</sup> Judgment in Case C-41/90 *Höfner and Elser v Macrotron* [1991] ECR I-1979, paragraph 21; judgment in Case C-159/91 *Poucet and Pistre v AGF and Cancava* [1993] ECR I-637, paragraph 17.

<sup>(134)</sup> Judgment in Case C-480/09 P *AceaElectrabel Produzione SpA v Commission* [2010] ECR I-13355, paragraphs 47-55; judgment in Case C-222/04 *Ministero dell'Economia e delle Finanze v Cassa di Risparmio di Firenze SpA and Others* [2006] ECR I-289, paragraph 112.

<sup>(135)</sup> See point 28 of the notification of the DMA sale operation.

- (474) The Commission would also point out that the NEC is to act as a service provider for the JV for the production of loans to the local public sector, including loans for public health establishments. These services will cover, in particular, loan marketing and management assistance, assistance with the active management of non-sensitive loans, and financial and risk services.
- (475) Furthermore, the way in which the French authorities worded their commitments suggests that they regard the NEC and DMA as belonging to the same undertaking. Point 16 of the commitments relating to DMA states that the level of liquidity which the shareholders (the State, the CDC and La Banque Postale) undertake to supply to the NEC is what is necessary 'for the NEC and DMA'. Point 18 of the same commitments, entitled 'Capital level of the NEC and DMA' states that the capital level which the shareholders undertake to maintain is what is needed to cover any losses that may take place in respect of DMA's existing portfolio. This means that the level of any recapitalisation of the NEC will be determined by DMA's needs.
- (476) DMA, the NEC and the JV have the same ultimate shareholders (the State, the CDC and La Banque Postale), albeit with different sizes of holdings.
- (477) Furthermore, although the French authorities stated in their notification of the DMA sale operation that '*they will use the term 'development bank' to refer to the various economic activities carried out by the NEC and DMA on the one hand and by the JV on the other*'<sup>(136)</sup>, the Commission notes that they claim that the operation — and particularly the reduced profitability of the financing activities for French local authorities — complies with the rules on State aid because '*DMA, the NEC and the JV ... will together constitute a development bank*'<sup>(137)</sup>, and they endorse their 'classification' as a development bank<sup>(138)</sup>.
- (478) In the Commission's view, the Member States concerned cannot try to dispute that aid is being provided for DMA's activities and the new 'mortgage lending structure' (referred to as '*development bank*' in this Decision and the notifications) by claiming that such an undertaking will not exist, while at the same time<sup>(139)</sup> using the term new mortgage lending structure or development bank, which corresponds to an undertaking, in order to persuade the Commission that the operation relating to DMA complies with the rules on State aid.
- (479) In the Commission's view, the numerous references to the term '*development bank*'<sup>(140)</sup> — covering DMA, the NEC and the JV — in the French authorities' notification of the DMA sale operation show that these three legal entities represent three sides of the same economic unit or undertaking. If that were not the case, the Member States concerned could have described and explained the reasons for the DMA sale operation without having to use an umbrella term covering three separate legal entities.
- (480) Likewise, the French authorities' notification of the DMA sale operation frequently uses the expression '*DMA, the NEC and the JV*', which suggests involvement in a common undertaking and economic activity<sup>(141)</sup>.
- (481) The commitments linked to the DMA sale operation also refer to '*DMA, the NEC and the JV*'<sup>(142)</sup>, particularly '*NEC, DMA and JV's global business plan*'<sup>(143)</sup>.

<sup>(136)</sup> Point 66 of the memorandum on the DMA sale operation.

<sup>(137)</sup> See point 111 of the memorandum on the DMA sale operation.

<sup>(138)</sup> Point 110, second sentence, of the memorandum on the DMA sale operation and the title of Section 4.3 which it introduces read as follows: '*In any event, classification as a development bank allows reduced profitability. 4.3. Classification as a development bank allows reduced profitability*'.

<sup>(139)</sup> In their comments in response to the decision to extend the procedure and the decision to increase the guarantee ceiling.

<sup>(140)</sup> See points 32, 42, 58, 79, 92, 95, 100, 110, 111, 113, 122 and 125, and footnote 38 of the memorandum on the DMA sale operation.

<sup>(141)</sup> See points 82, 88, 92, 113, 114 ('... *the overall profitability of DMA, the NEC and the JV ...*'), 118, 122 and 125 ('... *the activities to be carried out by DMA, the NEC and the JV*'), and the titles of Sections 3.3 and 4.2 of the memorandum on the DMA sale operation.

<sup>(142)</sup> See points 6, 7 and 8 of the commitments.

<sup>(143)</sup> See point 7 of the commitments.

(482) Alternatively, even if there were no ‘development bank’ undertaking to which DMA, the NEC and the JV belonged, the Commission considers that DMA will benefit from the aid described below (commitment to provide capital) because it will gain an advantage from these measures involving State resources, in that it will not be able to operate without this aid or independently from the NEC (see recitals 470-471). This selective advantage would distort competition at European level for the same reasons as the development bank.

— *Commitment to provide capital for the NEC and DMA*

(483) The State, the CDC and La Banque Postale, as DMA’s shareholders, undertake to maintain the NEC’s and DMA’s capital at the level needed to cover any losses that take place in respect of DMA’s existing portfolio (the legacy portfolio), which includes around EUR 10 billion in ‘sensitive loans’. In that respect, the French authorities have undertaken to notify any future DMA capital increase, which will then be assessed by the Commission on the basis of the European Union rules on State aid.

(484) Recapitalisation by the French State clearly entails the allocation of public resources. The same is true of injections of capital by the CDC or La Banque Postale.

(485) In accordance with the case law<sup>(144)</sup>, the mere fact that an economic operator is under State control is not sufficient for measures taken by that operator to be imputed to the State. However, it also follows from the case law that, since it is very difficult for the Commission, because of the privileged relationship that exists between the CDC and La Banque Postale on the one hand and the French State on the other, to prove that in the present case the decisions to acquire DMA under the conditions notified (measure 1) and to cover the financing requirements of the new credit institution and DMA (measure 4) were indeed taken on the instructions 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 the measures were taken.

(486) Indicators such as, in particular, ‘[the] 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 also be relevant to concluding that an aid measure taken by a public undertaking is imputable to the State<sup>(145)</sup>.

(487) In the present case, it should be noted that the CDC is a public establishment placed by the French Finance Law of 28 April 1816 under the supervision and guarantee of the legislature, which performs tasks in the public interest (financing of public service bodies, in particular), is governed by statutory and regulatory rules, and its Director-General and other directors are appointed by the President of the French Republic and the French Government<sup>(146)</sup>.

<sup>(144)</sup> Judgment in Case C-482/99 *France v Commission* [2002] ECR I-4397, paragraphs 52, 55 and 56 (the ‘Stardust Marine’ judgment).

<sup>(145)</sup> *Stardust Marine* 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) [T]he 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.’

<sup>(146)</sup> In the ‘*Air France*’ judgment, these factors were sufficient for it to be held that the CDC belongs to the public sector, whose conduct is imputable to the State (see in particular paragraphs 58-61 of the judgment in Case T 358/94 *Air France v Commission* [1996] ECR II-2019).

- (488) As for the argument of the Member States concerned that the Commission's position, confirmed by the Court of First Instance in the *Air France* judgment of 1996, is no longer relevant in the light of subsequent case law (*Stardust Marine*) and changes to the CDC's status, the Commission notes first of all that, according to Articles L.518-2 *et seq.* of the French Monetary and Financial Code as amended by the Law on the modernisation of the economy <sup>(147)</sup>, the CDC still constitutes 'a public group in the service of the country's general interest' which is 'placed, in a most exceptional manner, under the supervision and guarantee of the legislative authorities'. The Commission also notes that, in the light of the subsequent case law cited, these factors must nevertheless be taken into account when examining whether the measures concerned are imputable to the State, and that they are, moreover, corroborated by a set of additional indicators described in recitals 490-493.
- (489) La Banque Postale is wholly owned by La Poste. In addition to controlling La Banque Postale, La Poste acts as a service provider by providing it with staff who act 'for and on behalf of La Banque Postale. The French State and the CDC <sup>(148)</sup> hold all the capital and voting rights for La Poste. Under the law <sup>(149)</sup>, the chairman of the Board of Directors of La Poste is appointed by decree from among the directors; eight members of the Board of Directors of La Poste are proposed by the State, three by the CDC, and one jointly by the State and the CDC; the Board of Directors of La Poste includes one local government representative. A government commissioner and the head of the State economic and financial supervisory task-force at La Poste attend meetings of the Board of Directors. One of the La Poste directors appointed on a proposal from the State is also a director of Dexia SA and has taken part (since the period before the adoption of the conditional decision of 26 February 2010 up to April 2012), as a member of a department representing the French authorities <sup>(150)</sup>, in [...] concerning Dexia.
- (490) The fact remains that the commitment to recapitalise the NEC and DMA if necessary happened at the same time as notification by the Member States concerned of the revised orderly resolution plan for Dexia, which includes measures which the Member States concerned themselves classify as aid, such as the new final refinancing guarantee and the recapitalisation of Dexia SA.
- (491) The revised orderly resolution plan for Dexia is based in particular on the execution of the DMA sale operation, of which the commitment to recapitalise the NEC and DMA is a substantial component that enabled agreement to be reached on the operation.
- (492) On the subject of the orderly resolution of Dexia, the Member States concerned contend that without it (and without the aid it involves) DCL and/or Dexia would default and Dexia would immediately be wound up, 'which would undoubtedly cause serious disruption to the Belgian, French and Luxembourg economies and the eurozone in general' <sup>(151)</sup>.
- (493) Lastly, the Commission notes that the CDC, La Banque Postale and the French State have decided to create a development bank whose main purpose is not to maximise profitability, but to correct a market shortfall. The development bank aims to grant funding to French local authorities and public hospitals in order to serve the public interest. Furthermore, the CDC and La Banque Postale, as well as the French State, will have to meet their commitments concerning the range of products (vanilla loans) to be offered.
- (494) These factors make it unlikely that the French public authorities have had no decisive influence on the CDC and La Banque Postale in their agreement to participate in the operation to dispose of DMA and set up a development bank, including the commitment to recapitalise the NEC and DMA if necessary.
- (495) The measure in question is thus imputable to the French State and grants public resources.
- (496) The commitment to provide capital for the NEC and DMA is clearly selective.

<sup>(147)</sup> Law No 2008-776 of 4 August 2008, OJ of the French Republic of 5 August 2008.

<sup>(148)</sup> 77,1 % of La Poste's capital and voting rights are held by the State and 22,9 % by the CDC, as at 6 April 2012.

<sup>(149)</sup> Law No 83-675 of 26 July 1983 on the democratisation of the public sector, as amended by Law No 2010-123 of 9 February 2010 on La Poste public undertaking and postal activities, OJ of the French Republic No 0034 of 10 February 2010, page 2321.

<sup>(150)</sup> i.e. as [...].

<sup>(151)</sup> Page 150 of the revised orderly resolution plan for Dexia.

(497) This commitment confers an advantage on the NEC and DMA. First of all, it covers potential losses from the sensitive loans portfolio. Given that these losses could prove sizeable, perhaps around EUR [1,5-4,5] billion according to an analysis conducted by an external auditor for the Commission, the long-term viability of DMA could be under threat without this commitment. Second, the shareholders' actual commitment (which already exists under this Decision and the attached commitments concerning the DMA sale operation) to go ahead with this recapitalisation also confers an advantage on the development bank, since the market's awareness of this information works in the development bank's favour. Third, financial projections for the global business plan of the development bank (DMA, the NEC and the JV) indicate a return on equity such that an informed market economy investor would not commit himself to going ahead with such a capital increase.

(498) The commitment distorts competition because, although the supply of finance for French local authorities and French public health establishments is inadequate as a result of the market shortfall, the fact remains that some institutions are already operating on or may enter this market and will be affected by the arrival of a public development bank receiving State support and State aid.

(499) Trade between Member States is affected because the finance markets for French local authorities and French health establishments are open to operators established in the European Union.

(500) The commitment to provide capital for the NEC and DMA thus constitutes State aid.

— *Commitment to provide liquidity*

(501) According to point 16 of France's commitments concerning the DMA sale operation, the French State, the CDC and La Banque Postale, as shareholders in DMA, undertake to supply the liquidity which the NEC and DMA need.

(502) Under point 16 of the commitments relating to DMA, the liquidity will be provided under the conditions set out in the memorandum sent to the Commission on 8 October 2012, which is attached to this Decision (Annex IV(a)) and annexed to those commitments.

(503) According to the memorandum, for each issue, the cost of the long-term financing provided for the NEC by its shareholders at market price will be calculated from the financing costs, for the same maturities and currencies, recorded for a panel of credit institutions agreed by the NEC and its shareholders.

(504) The panel will be decided from the list of French banks contributing to the calculation of the Euribor, excluding institutions regarded as non-comparable to the NEC and DMA in terms of their long-term ratings and prospects and their risk profiles (type of activity, geographical exposure, prudential ratios, etc.). As far as possible, the panel will be made up of at least three banks.

(505) The cost of financing the NEC and DMA will be equal to the mean costs of financing the institutions forming the panel.

(506) Similarly, the cost of the short-term financing contributed to the NEC by its shareholders at market price will be equal to the average financing costs of the institutions forming the panel.

(507) In the light of the commitment to comply with the conditions laid down in the memorandum of 8 October 2012 attached to this Decision (Annex IV(a)), the Commission concludes that the liquidity which the NEC is to provide for the development bank will be supplied under market conditions.

(508) Consequently, the provision of liquidity under the conditions described to the Commission (and the commitment to provide that liquidity) do not bring any competitive advantage. This measure thus does not constitute aid.

(d) Aid to Dexia resulting from the DMA sale price

- (509) In the decision to extend the procedure, the Commission described its doubts as to whether the purchase price of EUR 380 million (with a price adjustment mechanism) for DMA corresponded to a market price<sup>(152)</sup>.
- (510) The price of EUR 380 million was subsequently confirmed as '*acceptable for an informed investor*' by a financial analysis consultancy commissioned by the French authorities and the CDC, but taking account of '*stop-loss*' guarantees and a '*synthetic selling mechanism for sensitive loans*' with an equivalent effect to the sensitive loans guarantee.
- (511) In a run-off management scenario (with no new production), according to this consultancy, the value of the NEC/DMA would be EUR [...] million.
- (512) According to the memorandum on the DMA sale operation, the sale price of EUR 1 corresponds to a market price taking account of the abandonment of the guarantees and the price adjustment clause, and the development of DMA's balance sheet in the first three quarters of 2012.
- (513) On the basis of the analysis produced for the Commission by an independent trustee, DMA's total losses arising from unpaid amounts and litigation-related losses were EUR [1,5-4,5] billion in a baseline scenario and EUR [3-8] billion in a stress scenario.
- (514) Even if, as the Member States concerned contend and in the view of the financial analysis consultancy commissioned by the French authorities and the CDC, the market price for DMA with guarantees is EUR 380 million, it is mathematically impossible, in the Commission's view, for the market price for the NEC (which owns 100 % of DMA, plus the equipment and resources transferred by DCL or made available to the NEC), without guarantees and with a risk of losses of between EUR [1,5-4,5] and [3-8] billion, to be EUR 1. The abandonment of the price adjustment clause cannot account for this positive price, which is excessive in the light of DMA's loss risk.
- (515) The reasons why the capital provided for the NEC and DMA by the French State, the CDC and La Banque Postale is imputable to the State and constitutes public resources, as explained in recitals 484-495 above, also apply as regards payment of the purchase price for the NEC by the same parties.
- (516) The price of EUR 1 benefits Dexia, the vendor, because it is overvalued, given that it means that it no longer has to bear the risks attached to the asset portfolio of its subsidiary DMA. This competitive advantage is clearly selective given that it benefits Dexia alone.
- (517) Dexia is in competition with foreign groups, so that trade between Member States is affected by the acquisition, which also threatens to distort competition. It may therefore be concluded that the acquisition of the NEC and DMA by the French State, the CDC and la Banque Postale under the terms described earlier was at a higher price than their real value and thus clearly constitutes an advantage for the vendor. This over-payment thus constitutes further aid for Dexia.

(e) Aid for DMA

- (518) The Commission also considers that the sale of the NEC/DMA constitutes an advantage for the entity sold.
- (519) The Commission considers that it has been established that the French State, the CDC and La Banque Postale did not behave as informed market economy investors when they acquired the NEC/DMA because 1) the sale price was higher than the market value, and 2) the purchase was made in order to remedy a market shortfall and not to make a profitable investment.

<sup>(152)</sup> See recitals 188 *et seq.* of the decision to extend the procedure.

- (520) The Commission also notes that DMA directly benefits from being separated from the Dexia Group, which constitutes an advantage in itself.
- (521) The advantages conferred on DMA by the measure distort competition by enabling DMA to present a better picture to its creditors and depositors. DMA is in competition with foreign groups, so that trade between Member States is affected.
- (522) Consequently, the Commission concludes that the acquisition of shares in the NEC/DMA by the French State, the CDC and La Banque Postale under the conditions described above constitutes State aid for DMA.
- (f) Abandoned guarantees (no aid)
- (523) In the decision to extend the procedure, the Commission considered that the following guarantees, initially provided for in connection with the DMA sale operation, might constitute aid: a guarantee from Dexia SA and DCL on DMA's 'sensitive loans' (covering total loans of some EUR 10 billion), a counter-guarantee by France on the 'sensitive loans' guarantee, and a 'stop-loss' guarantee on losses in any securities portfolio of Dexia SA and DCL.
- (524) Since the Member States concerned have withdrawn those guarantees, the Commission no longer needs to make any assessment of them.

#### 6.1.4. Conclusion

- (525) In conclusion, the Commission considers that the following measures involve elements of State aid: the aid that was the subject of the conditional authorisation decision, Arcofin's participation in the recapitalisation of Dexia on 30 September 2008, the refinancing guarantee provided by the Member States concerned for Dexia SA and DCL (the temporary guarantee, to be replaced by a final guarantee), the sale of DBB/Belfius, the ELA granted since 5 October 2011 (from the BNB, which has ended, and from BdF, which is still running), the recapitalisation of Dexia SA, the commitment to recapitalise the NEC and DMA, and the sale of DMA.

#### 6.2. QUANTIFICATION OF AID

- (526) The aid which was the subject of the conditional authorisation decision has already been quantified:
- of the EUR 6 billion recapitalisation in October 2008, the conditional authorisation decision deemed EUR 5,2 billion to be imputable to the Belgian and French States. Arcofin's EUR 350 million participation must be added to this;
  - the aid element in the guarantee from the Belgian and French States on a portfolio of impaired assets was valued at EUR 3,2 billion;
  - of the maximum amount of ELA payable by the BNB, the portion guaranteed by the Belgian State was EUR 35 billion;
  - the guarantee from the Belgian, French and Luxembourg States on the refinancing of the Group was for a maximum of EUR 135 billion.
- (527) The temporary refinancing guarantee from the Member States concerned for Dexia SA and DCL provisionally approved by the temporary approval decision increased from EUR 45 billion to EUR 55 billion and is to be replaced by a final guarantee for EUR 85 billion.

- (528) As regards the amount of aid provided in the ELAs, the Member States concerned pointed out that *'the amount of aid in the ELA measures should, in any event, be deemed to be no more than half the total amount of ELA, corresponding to the amount actually granted to Dexia by the BNB, the other half having been granted on behalf of and at the risk of the Banque de France'* <sup>(153)</sup>.
- (529) This is not correct: it is clear both from the notification of the new ELA by the Belgian authorities and from the terms of the agreement of 2 February 2012 that each central bank was granting ELA to the bank 'under its authority', i.e. the BNB to DBB/Belfius and the BdF to DCL.
- (530) Thus, even if the BdF did not meet its commitment to compensate the BNB for 50 % of the loss resulting from a default of DBB in connection with the ELA to DBB/Belfius, the BNB would still continue to be covered by a Belgian State guarantee for its total exposure to a default of DBB/Belfius.
- (531) However, only half of the ELA granted by the BdF to DCL is covered by a State counter-guarantee, i.e. Belgium's counter-guarantee for the BNB, which itself undertook to contribute to only half of the BdF's losses. As far as the Commission is aware there is no French State guarantee for the BdF.
- (532) All of the ELA granted by the BNB constitutes aid. However, only 50 % of the ELA granted by the BdF constitutes aid.
- (533) The amount of aid in the ELA granted by the BNB corresponds to the maximum granted, that is to say EUR [...] billion. The amount of aid granted by the BdF corresponds to half of the maximum granted since 2 February 2012, that is to say EUR [...] billion.
- (534) The recapitalisation of Dexia by Belgium and France will be for EUR 5,5 billion.
- (535) Regarding the advantage to Dexia resulting from the sale of DBB/Belfius to the Belgian State, as described earlier, this is estimated at between EUR 1 billion and EUR 2 billion. The advantage to DBB/Belfius resulting from the sale cannot be quantified.
- (536) As for the advantage to either Dexia or DMA resulting from the sale of DMA, it is impossible to quantify the aid.
- (537) Regarding the advantage to DMA resulting from the new shareholders' commitment to provide capital for DMA if necessary, it is impossible to quantify the aid.

### 6.3. COMPATIBILITY OF THE AID

- (538) 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'*.
- (539) Since the financial crisis in the autumn of 2008, the Commission has authorised State aid for financial institutions under Article 107(3)(b) TFEU if the compatibility criteria laid down in the applicable communications are satisfied. In the Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis <sup>(154)</sup>, the Commission states that it considers that the requirements for State aid to be approved for the financial sector pursuant to Article 107(3)(b) TFEU are still satisfied in all Member States. The various Commission decisions approving measures taken by the Belgian, French and Luxembourg authorities to combat the financial crisis confirm that aid measures in the financial sector can be assessed on the basis of that provision. Consequently, as with the decisions of 19 November 2008, the decision of 13 March 2009 and 30 October 2009 concerning Dexia, the conditional authorisation decision, the opening decision on the sale of DBB/Belfius, the temporary approval decision, the decision of 3 April 2012 opening the procedure on the sale of Dexia BIL, the decision to extend the procedure, the decision on the first prolongation of the guarantee, the decision to increase the guarantee ceiling, the decision on the second prolongation of the guarantee and the closing decision on the sale of Dexia BIL, the legal basis for assessing the aid measures in question remains Article 107(3)(b) TFEU.

<sup>(153)</sup> See point 42 of the comments from the Member States concerned on the decision to extend the procedure and the decision to increase the guarantee ceiling.

<sup>(154)</sup> OJ C 356, 6.12.2011, p. 7, see paragraph 3.



- (540) That being so, the Commission considers that the revised orderly resolution plan for Dexia and the restructuring plan for DBB/Belfius may be assessed on the basis of Article 107(3)(b) TFEU, in the light of 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 <sup>(155)</sup>.
- (541) As regards the aid identified in the conditional authorisation decision, as well as the additional aid linked to Arcofin's recapitalisation of Dexia, on which the Commission reaches a conclusion in this Decision, the Commission notes that the aid granted to Dexia prior to the conditional authorisation decision was actually greater than the amount identified in that decision, because of the additional aid resulting from the recapitalisation by Arcofin, in respect of which the Commission had not received full details before it adopted the conditional authorisation decision. The Commission is nevertheless able to regard that aid, as well as the aid resulting from Arcofin's recapitalisation of Dexia, as compatible with the internal market under Article 107(3)(b) TFEU. The compatibility of the aid granted to Dexia prior to the conditional authorisation decision must be examined in the light of the new orderly resolution plan for Dexia, as well as the plans for the restructuring of Belfius and the sale of DMA, which replace the restructuring plan for Dexia notified to the Commission for the purpose of the conditional authorisation decision.

### 6.3.1. Compatibility of the restructuring plan for DBB/Belfius

- (542) The degree of restructuring required depends on the seriousness of the problems facing each bank and the scale of the aid received. The aid to be taken into account here results from the measures to recapitalise and to treat impaired assets, as well the guarantees obtained by the Dexia Group in the past, and from which DBB/Belfius also benefited. There is also the ELA granted by the BNB to DBB/Belfius because it could not access the market. The Commission also notes that DBB/Belfius was acquired by the Belgian State and was *de facto* split off from its parent company DCL/Dexia, which was facing major problems as described earlier, resulting in its being placed in orderly resolution.
- (543) In the notification of the BNB's ELA for DBB/Belfius on 21 October 2011, the Belgian authorities made two contradictory statements, first, that the measure '*does not relate to the restructuring plan for Dexia*' <sup>(156)</sup>, but also that the Commission should consider it as a revised version of the restructuring plan authorised on 26 February 2010 <sup>(157)</sup>. Moreover, in the notification of the first orderly resolution plan for Dexia, this ELA was the first of the measures mentioned by the Member States concerned as possibly being classified by the Commission as aid for Dexia '*in the context of the orderly resolution plan*' <sup>(158)</sup>.
- (544) In the comments from the Member States concerned of 2 July 2012 in response to the decision to extend the procedure and the decision to increase the guarantee ceiling, although the Belgian authorities state that the ELAs '*do not directly*' relate to the restructuring plan because the BNB is quite free to decide to grant ELA <sup>(159)</sup>, they add that ELAs '*may influence the restructuring plan*' <sup>(160)</sup>.
- (545) In any event, the Belgian authorities consider, first, that '*there is ... no reason for the Commission to change its mind about [the fact that] the ELA measures granted in 2011 were necessary to help to rescue Dexia*' <sup>(161)</sup>. They also accept that if the Commission classified the ELAs as State aid, this would be a '*reason to regard the ELAs as forming part of the orderly resolution plan for Dexia*' <sup>(162)</sup>.

<sup>(155)</sup> OJ C 195, 19.8.2009, p. 9.

<sup>(156)</sup> Point 7 of the ELA notification: '*Moreover, the Belgian authorities' position is that the ELA from the BNB to DBB does not relate to the Dexia restructuring plan as such and that in any event, no commitments should be imposed or maintained on DBB*' (emphasis added).

<sup>(157)</sup> See Title E, point 30, p. 8 of the ELA notification by Belgium on 21 October 2011:

*E. The BNB's ELA to DBB is in line with the 2010 restructuring plan.*

30. *Given that the ELA operation is necessary, ... in order to preserve financial stability, to secure DBB's viability and to maintain effective competition in the markets, it is within the Commission's powers, pursuant to the Commitments annexed to the Commission's decision of 26 February 2010, to authorise any relevant amendments ... to the restructuring plan, caused by the ELA provided by the BNB to DBB.* (emphasis added).

<sup>(158)</sup> See Title B and sub-title 1 on page 83 of the notification of the orderly resolution plan for Dexia, entitled respectively '*Description of aid granted to Dexia under the orderly resolution plan*' and '*Emergency Liquidity Assistance (ELA) granted by the BNB*'.

<sup>(159)</sup> See point 32 of the comments, p. 11.

<sup>(160)</sup> See point 33 of the comments, p. 11.

<sup>(161)</sup> See point 39 of the comments, p. 13.

<sup>(162)</sup> See point 34 of the comments, p. 12 '*The only reason to regard the ELAs as forming part of the orderly resolution plan for Dexia would be if they were classified as State aid*'.

- (546) The Commission believes that, like all the aid measures that benefited Dexia, the ELA for DCL is now helping an entity which is part of an undertaking in controlled liquidation, whereas the ELA for DBB/Belfius came to an end shortly after DBB/Belfius was sold to the Belgian State <sup>(163)</sup>.
- (547) The compatibility of the restructuring plan must be assessed in the light of the conditions set out in the Bank Restructuring Communication, which are as follows:
- the restructuring plan must enable the institution to return to long-term viability;
  - the restructuring plan must ensure that restructuring costs are shared fairly between States and the bank;
  - the restructuring plan must enable excessive distortions of competition resulting from the aid to be corrected.
- (a) The institution's return to long-term viability
- (548) As regards the comments from interested third parties (see recitals 348 and 349), the Commission considers, in response to comments A and B, that DBB/Belfius has not offered abnormally low price conditions either on its short-term financing products (fixed-term accounts) or long-term products (mortgages) capable of jeopardising its viability and distorting competition. It also considers, in response to comment B, that although the institution's change of name inevitably caused extra costs, they were not disproportionate and should help the Group in the long term.
- (549) The Commission notes the commercial and marketing initiatives with approval, particularly the bank's change of name, which should enable the Group to limit the negative impact of the Dexia Group's financial problems on its image and enable it to consolidate its deposit base.
- (550) The Group has a strong franchise and substantial customer base in Belgium in its three core business lines. Cutting costs and rationalising certain processes should reduce the cost-income ratio to 69 %, in line with its competitors. The strategy for the subsidiaries ('open-branch concept') could keep costs down and develop activities and services with a high added value.
- (551) The main risks 'inherited' from the Dexia era have been identified and action to correct them has been or is going to be taken, in particular: de-risking strategy, review of asset allocation policies, strengthening deposit base and liquidity, limiting use of short-term market financing, changes to the pricing policy practised (taking liquidity costs into account), reducing balance sheet size.
- (552) The Commission notes that the expected losses on its retail banking activity over the 2012-16 period should remain small. They amount to some EUR [350-450] million, representing an annual cost of risk of [15-35] basis points. The historical cost of DBB/Belfius' risk on its RCB activity was between [5 and 25] basis points between 2007 and 2011.
- (553) The Commission notes that the balance of structured products offered by the insurance arm of the Group is marginal. The Group should offer its customers only plain vanilla products, except for a new structured product like [...] (without guaranteed capital) for which the risks are confined to its syndication and related operational costs.

*Expected losses on the investment portfolio*

- (554) On 31 December 2011 DBB/Belfius held a number of exposures <sup>(164)</sup> (in the form of securities, loans or others) on entities regarded as non-investment grade or which had already defaulted, and for which specific provisions had already been recorded.

<sup>(163)</sup> DBB/Belfius was sold on 20 October 2011, whereas the ELA to DBB/Belfius fell in early 2012 and came to an end on 1 February 2012.

<sup>(164)</sup> These exposures included EUR [2,5-7,5] billion in securities; EUR [2,5-7,5] billion in PWB loans; and EUR [10-15] billion of other exposures (particularly loans to retail customers).

- (555) Expected losses over the period 2012-16 (including on the portfolios of PWB and RCB loans) amount to EUR [700-1 000] million and EUR [1 000-1 350] million for the baseline and stress scenarios respectively. Related to the total balance of loans to customers and investment portfolios, these losses represent an annual cost of [10-25] basis points. Expected losses (EUR [250-550] million) over the period 2012-16 on the investment portfolio represent [100-150] basis points of the nominal value of the portfolio on 31 December 2011. The Commission has viewed these expected losses as realistic and unlikely to threaten the bank's long-term viability.
- (556) The Commission notes with approval the de-risking strategy that has been effectively applied since early 2012. This is likely to reduce the long-term risks to the Group's viability, even if it has resulted in sizeable losses (around EUR [275-350] million for a nominal exposure from securities sold of around EUR [0-5] billion).
- (557) On 31 March 2012 DBB/Belfius also held positions in credit derivatives. The vast majority of these positions are covered and do not present any credit risk apart from one residual open position of EUR [0-5] billion. The Commission notes that some of these positions do, however, present a minor residual correlation risk which is unlikely to threaten the Group's viability.

#### *Funding and liquidity*

- (558) DBB/Belfius plans to strengthen its stable funding through increased deposit-taking from retail customers and public authorities. These should account for [50-75] % of funding in 2016, a level which is in line with other banks operating in the retail banking market in Belgium, compared with [50-75] % in 2012. Long-term financing will also be strengthened through the issuing of covered bonds, among other measures. Less use will be made of short-term financing (unsecured or repo borrowing). Central Bank refinancing will provide [0-5 % of the funding] in 2016, whereas it accounted for [0-25] % in 2012. DBB/Belfius has not used ELA since February 2012.

Figure 8

#### **Sources of financing for DBB/Belfius**

[...]

- (559) Since 7 March 2012 DBB/Belfius' unsecured exposure to Dexia has come down to almost zero.
- (560) The Commission therefore concludes that the liquidity ratios should improve considerably by the end of the restructuring period. The creation of a liquidity buffer of EUR [30-45] billion by 2016 should strengthen the Group's liquidity position.

#### *Governance*

- (561) The Commission notes that the lowest committees in the hierarchy cannot actually approve high-value transactions (EUR 25 million is the threshold for Committee No 3 for a transaction with a local authority rated below investment grade, for instance), which is likely to improve risk control.

#### *Potential risks*

- (562) The Commission notes that a number of factors are likely to affect the Group's profitability if market conditions are unfavourable: 1) the PMG investment portfolio had a book value of EUR 17,35 billion and a marked-to-market value of only EUR [10-20] billion on 31 December 2011, giving a marked-to-market loss of EUR [0-5] billion ([15-35] % of the book value); 2) as regards the methods used by the investment bank consultant, no loss is expected in the next five years on EUR 5 billion of exposures to securitised products (ABS and MBS) either in the baseline scenario or in the stress scenario; (3) DBB/Belfius held a EUR [150-200] million position on Greek RMBS<sup>(165)</sup> on 31 December 2011. That position was reduced to EUR [100-150] millions in May 2012. The expected loss on this exposure is EUR [15-35] million in the baseline scenario and EUR [50-100] million in the stress scenario. According to calculations by an investment bank in a comparable macroeconomic situation to the baseline scenario used by DBB/Belfius, the expected loss is around EUR [50-100] million.

<sup>(165)</sup> Residential Mortgage-Backed Securities.

*Conclusion on the viability of the baseline scenario*

- (563) The Commission notes that DBB/Belfius has refocused its activities on its core business line. The solid franchise which the Group has in Belgium should enable it to ensure its long-term viability. The principal risks (financial imbalance and vulnerability of the liquidity profit, for example) inherited from its membership of the Dexia Group should be reduced. The overall de-risking and deleveraging strategy that has begun to be applied should also help to ensure the Group's long-term future.
- (564) However, DBB/Belfius has still inherited a large asset portfolio and particularly a bond portfolio legacy from the Dexia era, which includes a number of sovereign and quasi-sovereign exposures with a negative marked-to-market value, on which losses might be greater than expected if market conditions deteriorate. An examination of the projections above shows that the DBB/Belfius Group should be able to absorb these losses without jeopardising its viability.
- (565) The Commission therefore considers, in line with the findings of the independent trustee, that the financial projections for DBB/Belfius indicate that the bank will be able to absorb the expected losses. The Commission takes a positive view of the fact that the cumulative impact of a 20 % reduction in the size of the balance sheet and the absence of any distribution of profits expected over the restructuring period should strengthen the regulatory solvency ratios (Core Tier 1 Basel III ratio of 10,7 % in 2016).

*Stress scenario communicated in connection with the restructuring plan*

- (566) The stress scenario provided by the Belgian authorities meets the Commission's criteria. It is based on the EBA method<sup>(166)</sup> and measures the bank's viability when faced with a series of exogenous shocks that would affect the quality of its assets, the business model and the financing conditions, among other things.
- (567) The scenario shows an impact on the cumulative pre-tax result of around EUR [650-750] million, or around [10-40] % of the result expected in the baseline scenario. This impact would mainly affect the banking section (EUR -[650-750] million). The increase in the credit risk and the related losses expected on the asset portfolios would account for [25-75] % of the total impact. The 2013 and 2014 financial years would be the worst affected, while the economic and financial stabilisation anticipated for the following years would preserve the Group's profitability up to 2016. The five-year return on own funds would thus be almost identical. DBB/Belfius' solvency would not be threatened because its Core Tier 1 ratio would be [7,5-15] %, higher than the Basel III regulations require.
- (568) It is clear from the above projections that the DBB/Belfius Group is capable of facing impaired market conditions without its viability coming under threat.

**6.3.2. The institution's own contribution***Limitation of restructuring costs*

- (569) The Bank Restructuring Communication states (point 23) that restructuring aid should be limited to covering costs which are necessary for the restoration of viability.
- (570) The Commission considers that this condition is satisfied in the present case, for the following reasons. DBB/Belfius is to refocus its activity on its core business lines and has sold its shares in DAM. These decisions are thus helping to limit costs and to concentrate resources on core activities.
- (571) The Commission also takes a favourable view of the Belgian authorities' commitment that DBB/Belfius will not make any acquisitions, including of other financial institutions, and will not extend its activities before the end of 2014. The Commission notes that this commitment will be limited to two years after this Decision is adopted, whereas the Bank Restructuring Communication states that the prohibition on acquisition 'should apply for at least three years'. However, given that DBB/Belfius, when the bank still belonged to the Dexia Group, was already subject

<sup>(166)</sup> European Banking Authority.

to a prohibition on acquisition as a result of the conditional authorisation decision of 26 February 2010, the Commission considers that this commitment has therefore already lasted for almost four years. That being so, the Commission concludes that this commitment complies with the Bank Restructuring Communication. The commitment is an extra assurance that the restructuring costs will be limited to restoring the viability of the core activities and will not be used to develop diversification or to generate external growth.

*Limitation of the amount of aid and own contribution*

- (572) The Bank Restructuring Communication states that banks must use their own resources in order to keep the amount of State aid received to a minimum. This means, for example, that investors (shareholders, bond holders) should participate in absorbing losses and an adequate remuneration should be paid for State interventions.
- (573) The Commission must thus make sure that the State aid is limited to the minimum necessary. This is why the Commission takes a positive view of the following points.
- (574) The Commission notes that in 2012 DBB/Belfius repurchased its own debt on several occasions at substantial discounts ([50-100] % of the nominal value), which enabled it to generate a profit after tax of EUR [250-750] million. This profit corresponds to the losses sustained by bond holders and thus helps to share the burden.
- (575) The Commission also notes that the distribution of dividends, coupons and discretionary early repayments are suspended until 31 December 2014, which are all favourable elements. The Belgian authorities have given a commitment concerning these elements. The Commission further notes that Belfius is not planning, in its restructuring plan, to distribute dividends to shareholders until the end of 2016 in order to step up its regulatory capital.
- (576) Lastly, the Commission notes that adequate remuneration has been paid for the historical State aid from which DBB/Belfius benefited when it belonged to the Dexia Group, which means that the beneficiary bank is contributing to the restructuring costs.
- (577) Consequently, the Commission considers that DBB/Belfius and its shareholders are contributing enough to the restructuring through their own resources.

**6.3.3. Measures to correct distortions of competition**

- (578) According to the Bank Restructuring Communication, the restructuring plan should limit excessive distortions of competition resulting from the aid, in other words, the restructuring plan should include structural measures (sale and/or reduction of activities) and behavioural safeguards. Appropriate measures must be taken to minimise the distortions of competition caused by the State aid for DBB/Belfius.
- (579) According to the Bank Restructuring Communication, the nature and form of the measures to limit 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 in which the beneficiary bank will operate.
- (580) The sale of DBB/Belfius formed part of the orderly resolution of the Dexia Group. Even when it was in the Dexia Group DBB/Belfius was a major player on the PWB market in Belgium and in insurance in Belgium. As explained earlier, DBB/Belfius benefited from the aid given to DCL/Dexia when DBB/Belfius still belonged to the Group. The Commission acknowledges that the distortion of competition created by the aid to the Dexia Group was minimised thanks to the Group's orderly resolution and removal from the market.

- (581) As far as the new aid for DBB/Belfius is concerned, the Commission recognises that there has been no new capital injection or measure to treat impaired assets. Separating DBB/Belfius off from the Dexia Group has been the only new structural aid measure, in the sense that it confers a certain advantage, but one that is unquantifiable. DBB/Belfius has undoubtedly benefited from temporary emergency liquidity assistance (ELA) from the Banque Nationale de Belgique
- (582) As regards its position on the Belgian market, the Commission recognises that DBB/Belfius holds the following market shares: 13 % of commercial deposits (third-largest), 15,1 % of real estate loans (third-largest), 9,5 % of underwritten life insurance premiums (fourth-largest), and it is in sixth place in non-life insurance products. DBB/Belfius is thus one of the biggest banking/insurance groups in Belgium. The Commission notes that DBB/Belfius has undertaken to limit new loan production by its 'public and social banking distribution' division to EUR [2,5-5] billion in 2013 and EUR [2,5-5] billion in 2014. This will prevent any increase in DBB/Belfius' market share in that activity.
- (583) The Commission further notes that DBB/Belfius has undertaken to limit the collection of new life insurance premiums to EUR [0-2,5] billion in 2013 and EUR [0-3] billion in 2014. This will prevent any increase in DBB/Belfius' market share in that activity.
- (584) Furthermore, the Commission notes that the restructuring plan does not provide for any increase in DBB/Belfius' market share in any of its key RCB, PWB and insurance activities.
- (585) The restructuring plan will lead to a 20 % reduction in DBB/Belfius' balance sheet total between 2011 and 2016.
- (586) DBB/Belfius is subject to certain behavioural 'safeguards', such as the fact that it will not make any acquisition of the share capital of other companies until 31 December 2014, so that the State aid and related aid measures cannot be used to generate external growth to the detriment of its competitors. This principle is in line with point 40 of the Bank Restructuring Communication in particular.
- (587) Lastly, the Belgian authorities have given an undertaking that DBB/Belfius will not benefit commercially from the fact that it has received support from the Belgian State.
- (588) In the light of Dexia's own contribution and the measures taken on its principal markets, the Commission concludes that all of the structural measures in the restructuring plan are enough to limit excessive distortions of competition resulting from the aid in question.

#### 6.3.4. Monitoring of measures

- (589) The Commission notes that the Bank Restructuring Communication recommends that the Member States concerned should submit regular detailed reports to the Commission to enable it to verify that the restructuring plan is being implemented in accordance with the commitments notified. In that respect, the Commission will be sent six-monthly and end-of-year reports by the independent trustee responsible for monitoring the restructuring plan, at the latest 30 working days after each six-month period throughout the duration of the plan.

#### 6.4. COMPATIBILITY OF DEXIA'S RESOLUTION PLAN

- (590) The Commission must assess the compatibility with the internal market of all the aid measures concerned in the light of the guidelines it adopted for the banking sector against the background of the financial crisis, and in particular in the light of the Bank Restructuring Communication and the Banking Communication.

- (591) Under the terms of point 21 of the Bank Restructuring Communication, an orderly winding-up or the auctioning-off of a failed bank should always be considered where a bank cannot credibly return to long-term viability. The Banking Communication defines the general principles of controlled winding-up<sup>(167)</sup>. It states that controlled liquidation may be applied in individual cases, where restructuring aid has been granted to a financial institution and it becomes clear that it cannot be restructured successfully.
- (592) In order to be compatible with the internal market as provided for in Article 107(3)(b) TFEU, liquidation aid must, according to the Commission's practice in its decisions<sup>(168)</sup>, satisfy the following three general conditions:
1. it must be shown that the aid will allow an orderly winding-up and that it is kept to the minimum necessary in view of the objective pursued<sup>(169)</sup>;
  2. there must be appropriate burden-sharing, in particular by excluding shareholders from receiving the benefit of any aid in the context of the controlled winding-up procedure<sup>(170)</sup>;
  3. to avoid undue distortions of competition, the liquidation phase should be limited to the period strictly necessary for the orderly winding-up. As long as the beneficiary financial institution continues to operate it should not pursue any new activities, but merely continue the ongoing ones. The banking licence should be withdrawn as soon as possible<sup>(171)</sup>.
- (593) The Commission will therefore examine all the aid in question for Dexia, both past and future, as aid for a financial institution in controlled liquidation.

#### 6.4.1. Evidence of an orderly winding-up

- (594) The Commission considers that the scenario provided for in the revised orderly resolution plan will enable an orderly winding-up of Dexia. The plan takes account of the fact that the alternative way of restructuring the bank to enable it to return to viability, as provided for in the February 2010 restructuring plan, has not been possible. Furthermore, an uncontrolled winding-up of Dexia would threaten financial stability, while an orderly winding-up will make it easier to deal with that risk. The revised orderly resolution plan enables the Commission to assess the liquidation procedure and the potential impact on competition of the State measures which that procedure involves.
- (595) The fundamental requirement which allows the planned scenario to be classified as a winding-up measure is for the institution to cease all banking activity.
- (596) The revised orderly resolution plan provides for Dexia to exit the markets in which it previously traded either by disposing of entities to a third party, or by placing residual entities and activities in run-off management. Run-off management is based on the absence of any new production, with an exception for Crediop and DCL in order to allow a genuinely controlled resolution.

<sup>(167)</sup> See points 43-50 of the Banking Communication. In order to enable such an orderly exit, liquidation aid may be considered compatible, when for instance needed for a temporary recapitalisation of a bridge bank or structure or for satisfying claims of certain creditor classes if justified by reasons of financial stability. For examples of such aid and conditions under which it was found compatible, see the Commission Decision of 1 October 2008 in case NN 41/08 UK, Rescue aid to Bradford & Bingley (OJ C 290, 13.11.2008, p. 2) and the Commission Decision of 5 November 2008 in case NN 39/08 DK, Aid for liquidation of Roskilde Bank (OJ C 12, 17.1.2009, p. 3).

<sup>(168)</sup> See the Commission Decision of 1 October 2008 in case NN 41/08 UK, Rescue aid to Bradford & Bingley (OJ C 290, 13.11.2008, p. 2) and the Commission Decision of 6 June 2011 in case SA.32634, Rescue aid to Amagerbanken, (OJ C 225, 30.7.2011, p. 2), recital 52.7.

<sup>(169)</sup> See point 48 of the Banking Communication.

<sup>(170)</sup> See point 46 of the Banking Communication.

<sup>(171)</sup> See point 47 of the Banking Communication.

- (597) In order to comply with Crediop's regulatory obligations so that it can keep its banking licence with a view to being wound up by 31 December 2013, Crediop will be able to provide EUR 200 million in new finance for existing customers for a period of one year from the Commission's final decision. The Commission notes that a total cessation of production, in other words immediate run-off management, would trigger the activation of [...] and therefore a risk of [...] for an amount of almost [...]. The Commission also notes that the new production is small compared with Crediop's production before the crisis (around EUR 3 billion per year).
- (598) DCL will be able to grant new finance, capped at EUR 600 million, between February and July 2013 and June and November 2014 with a view to desensitising a portfolio with a marked-to-market book value of EUR [0-2] billion of sensitive structured loans that are still lodged with DCL (local authority loans classified outside the Gissler Charter, scoring E3, E4 or E5 in the Gissler Charter or with a Cepcor score of 11 or more). The improvement in the economic value of the debt stock that this should entail is defined by taking account of the lessening of the litigation risk that desensitisation should bring about. This package will make it possible to reduce the risk (particularly of litigation) connected with the loans concerned by over 50 %, and to reduce collateral volatility and the operational risk on complex derivative cover transactions.
- (599) The flows linked to the desensitisation of these loans will also be limited according to the following conditions:
- new flows will be solely at a fixed rate;
  - the maturity of new flows will be limited to 30 years;
  - the new flows should bring about an improvement in the Gissler or Cepcor score;
  - during the initial desensitisation period (February-July 2013), the new flows will as a priority concern the most sensitive loans, namely those granted to the [30-50] of DCL's main customers which account for [40-60] % of the marked-to-market of the derivatives associated with loans outside the Gissler Charter.
- (600) The flows associated with operations to desensitise these loans will also be limited by the following requirements. Only the following operations will be authorised for desensitisation: [...].
- (601) The Commission notes that the sole purpose of this active restructuring option is to limit the expected losses on the existing portfolio in a run-off scenario. DCL will not in any event carry out any new activities in the strict sense, or any new production for new customers. The EUR 600 million envelope is no more than [0-5] % of the total amount of DCL's loan stock.
- (602) Secondly, the winding-up phase is to be limited to the successful completion of the orderly liquidation. In that respect the Commission notes that the resolution plan provides for the rapid disposal of all the Group's saleable entities. In addition, a number of sales had already been made before the resolution plan was submitted <sup>(172)</sup>. The sale of DMA, which accounts for around 20 % of the Group's balance sheet, is planned for January 2013. Other disposals of saleable entities are planned shortly <sup>(173)</sup>. If the time-limits for disposal are not met, the entities will be placed in run-off management in the month following failure to comply with the commitment, or else an independent trustee will be appointed, again in the month following failure to comply with the commitment, to sell them [...] within a maximum period of one year. All the other residual entities will be placed in run-off management. The resolution plan provides, moreover, for DAM, Dexia Israel and Crediop to be managed separately from the rest of the Dexia Group.

<sup>(172)</sup> DBB, RBCD, Dexia BIL, Dexia Habitat and DKB Polska.

<sup>(173)</sup> These are

- the sale of DAM, of Dexia's holding in Popular Banca Privada and Sofaxis by 31 December 2013,
- the sale (or placing in run-off management) of Dexia Région Bail, Dexia Bail, Dexia LLD and Dexia Flobail by 31 December 2014,
- the sale of Dexia's holding (direct or indirect) in Dexia Israel at the latest 12 months after a final, non-actionable decision in the various legal actions brought against Dexia Israel and DCL as shareholder,
- the run-off management of Crediop by 31 December 2013.



- (603) In view of the time it will take to liquidate the portfolios, the revised orderly resolution plan provides for them to be held, in principle, until they mature, in order to preserve their value and avoid fire sales. Dexia and the Member States concerned are also to look into the ways in which the Group could speed up opportunistic deleveraging if market conditions allow.
- (604) In addition, the Member States concerned have given a commitment that Dexia and its subsidiaries will not make any new acquisitions.
- (605) As a third criterion, the bank is to end its commercial activities, apart from those associated with the sale of its assets. Some of Dexia's commercial activities are to be sold to third parties as part of the disposal of saleable entities. The proposed strategy will significantly reduce the size of Dexia's balance sheet. On 30 June 2012 this had already fallen to EUR 411 billion, a decrease of over 37 % on the size of its balance sheet on 31 December 2008 (EUR 651 billion), when the first State aid was granted. The Group's assets should be EUR [200-250] billion by the end of 2013. The assets will then be reduced by some EUR [10-20] billion a year up to 2017 and will be EUR [100-150] billion in 2020. In comparison with 2008, there will be a balance sheet reduction of [70-80] %.
- (606) On 31 December 2010 the Dexia Group employed 35 185 staff in 34 countries. As a result of the sale of DBB/Belfius in October 2011, the Dexia Group employed 22 720 staff on 30 June 2012. Since the disposal of DenizBank, BIL and RBCD, the number of staff has gone down to around 3 650.
- (607) Dexia has also drawn up a methodology for informing the Commission and valuing all the planned disposals (see recital 125).
- (608) Lastly, the revised orderly resolution plan also means that aid will be limited to the minimum necessary. In particular, only the entities which cannot be sold to third parties will remain in the residual bank. The extra EUR 5,5 billion in capital to be provided for the residual bank is necessary in order to comply with the minimum prudential rules to prevent an uncontrolled liquidation of Dexia. Finally, the reserve liquidity and cash buffer of EUR 700-800 million resulting from the planned EUR 5,5 billion recapitalisation of Dexia may be regarded as forming an integral part of the orderly winding-up scenario, given that it will serve to protect expected disbursements.
- (609) The EUR 85 billion final refinancing guarantee has been calibrated to meet Dexia's refinancing needs in order to ensure its orderly resolution in both the baseline and the stress scenarios. In the baseline scenario, the maximum drawdown of the guarantees should be EUR [70-80] billion in 2013. The stress scenarios, on the other hand, show that the guarantee drawdown could be EUR [10-20] million more if the cumulative impact of the following factors materialised: an increase in the cash collateral to be paid (EUR + [0-5] billion) if interest rates change unfavourably; a deterioration in the quality of the reserves (EUR + 2,3 billion); the exercise of options by investors or major drawings on off-balance-sheet commitments (EUR [2,5-7,5] billion); the negative impact of a serious downgrading of the Group's credit rating (EUR + [0-5] billion). The Commission also notes that the very low remuneration of this guarantee and its long duration compared with guarantees granted to banks in the process of restructuring is acceptable only in the case of an orderly resolution with no new production, thus minimising potential distortions of competition.
- (610) Without any extra aid Dexia would go into immediate liquidation, which would create a serious risk for the Member States concerned. A default by Dexia could result in a call on the guarantees granted by the Member States concerned in 2008, 2011 and 2012 for the total current balance of EUR 67,7 billion. Immediate liquidation of Dexia would also trigger a systemic shock on the European markets.
- (611) The aid in the form of recapitalisation and the final refinancing guarantee granted to Dexia prevents the orderly winding-up from becoming uncontrolled liquidation.

#### 6.4.2. The institution's own contribution

- (612) Under point 46 of the Banking Communication, particular care must be taken to minimise moral hazard, notably by excluding shareholders and possibly certain types of creditors from receiving the benefit of any aid in the context of the controlled winding-up procedure.

- (613) The Commission notes a number of favourable elements, with the suspension, for the entire duration of the resolution plan and therefore until Dexia's assets are fully written off, of any distribution of dividends, coupons or discretionary early repayments. As an exception, Dexia is authorised to distribute dividends relating to voting preference shares subscribed by the Belgian and French States in connection with and under the conditions of the EUR 5,5 billion capital increase.
- (614) Dexia's shareholders and security-holders have already contributed to the cost of restructuring. Since October 2008, the share price has fallen by over 95 %. Since the initial restructuring plan, Dexia has waived the payment of dividends and the payment or early repayment of discretionary coupons on its hybrid Tier 1 and Tier 2 instruments.
- (615) The EUR 5,5 billion dilution of existing shareholdings planned by the recapitalisation by the Belgian and French States will be considerable. Existing shareholders, other than the Belgian and French States, will see their holdings drastically diluted from 88,54 % before the capital increase to 5,58 % thereafter. The shareholders' positions will change as follows:

Table 9

**Dexia shareholders after recapitalisation**

	(in %)	
	Holding before the proposed capital increase	Holding after the proposed capital increase
Caisse des dépôts et consignations	17,61	1,11
Holding Communal	14,26	0,90
Arco Group	10,19	0,64
Belgian Federal Government via SFPI	5,73	50,02
French State	5,73	44,40
Ethias Group	5,04	0,32
CNP Assurances	2,96	0,19
Flemish Region via Vlaams Toekomstfonds	2,87	0,18
Walloon Region	2,01	0,13
Brussels-Capital Region	0,86	0,05
Employees	0,57	0,04
Other	32,17	2,03

- (616) The Bank Restructuring Communication states that the use by banks of their own resources to finance their restructuring may involve the sale of assets, for instance. In the present case, Dexia Group's own contribution to its restructuring is maximised in that all its assets are earmarked for sale or run-off management, and profits from the sales will all go into Dexia's orderly resolution. Dexia's operating costs are also set to fall considerably during its orderly resolution, from EUR 1,1 billion in 2012 to EUR [0-1] billion in 2020.
- (617) Since the run-off management or orderly resolution of the aid beneficiary constitutes the most extreme form of restructuring, the Commission accepts, in such circumstances, a lower remuneration of the aid than that required by its communications on State aid to banks.
- (618) In the present case, Dexia has already paid 1) EUR 225 million in commission for the setting up of the temporary guarantee, and 2) additional commission of EUR 50 million following the increase in the temporary guarantee ceiling, and 3) is paying remuneration for the temporary guarantee according to the terms of the Commission's decisions of 21 December 2011, 31 May 2012, 7 June 2012 and 26 September 2012 (i.e. EUR 273 million by 30 September 2012).

- (619) The amount of remuneration for the final guarantee will be 5 basis points from the entry into force of the agreement. Dexia will also pay the Member States concerned an additional setting-up commission of 0,50 % of EUR 30 billion, to be paid to each of the Member States according to their respective contributions to the guarantee. Given the scale of the orderly resolution scenario submitted by Dexia, the Commission considers that these levels of remuneration of the aid may be regarded as compatible.
- (620) As regards remuneration of the recapitalisation, the issue of new shares to the Belgian and French States giving them preferential rights to distributions (dividends and liquidation surplus <sup>(174)</sup>) will enable those States (but not existing shareholders) to reap the full benefit of any future profits <sup>(175)</sup> if the situation improves, and will thus ensure that shareholders contribute fully to the resolution, as the Commission requires, in that existing shareholders have no prospect of a return on their investment and the situation is equivalent to a complete financial expropriation of the shareholders.
- (621) Dexia will also continue to implement the remuneration principles agreed at G20 level and by the national bodies concerned as regards the remuneration of members of the Board of Directors and executives. In particular Dexia will not pay the variable proportion of the remuneration of members of the Board of Directors of Dexia SA, and will cap, at 30 % of the fixed proportion of their remuneration, the amount of the variable proportion of the remuneration of other staff of Dexia and its banking subsidiaries.
- (622) Because there is absolutely no prospect of Dexia returning to viability, these arrangements may in practice be deemed to ensure that existing shareholders share the full burden of the resolution.
- (623) Consequently, the Commission considers that Dexia and its shareholders are making a sufficient contribution to the restructuring through their own resources.

#### 6.4.3. Measures to correct distortions of competition

- (624) The revised orderly resolution plan provides for Dexia to exit the markets on which it trades either by disposing of saleable entities to a third party, or by placing residual entities in run-off management with no new production. In the present case, for the residual entities to be placed in run-off management, the Dexia Group will cease production not just for new customers but also for existing customers.
- (625) Dexia will, however, be authorised to continue very limited production in connection with the desensitisation of some existing structured loans with DCL in a portfolio with a marked-to-market book value of EUR [0-2] billion, between February and July 2013 and June and November 2014, strictly on condition that this improves their economic value taking account of the reduction in the litigation risk generated by the desensitisation. The total envelope for this production will be EUR 600 million.
- (626) The level of origination envisaged for DCL represents less than [0-5] % of the total amount of DCL's outstanding loans. This way of linking the restructuring of certain existing loans with a very limited envelope for granting new loans for the sole purpose of minimising expected losses on the existing portfolio (and thus the cost of the orderly resolution for States) is therefore not likely to result in excessive distortions of competition.
- (627) Crediop too will be allowed to originate loans, for existing customers only, for a total of EUR 200 million for a period of one year from this Decision.

<sup>(174)</sup> Financial projections show that the liquidation surplus should be EUR [0-5] billion in 2020. Given that winding-up distributions would be allocated as a priority to States in line with the subscription price (EUR [5-10] billion up to 2018; EUR [0-5] billion thereafter, according to the conversion plan), over and above the liquidation surplus, the net book value of the Group as shown in the forecasts (EUR [5-10] billion in 2020) would not therefore be enough for ordinary shareholders to be able to receive any remaining balance.

<sup>(175)</sup> Financial projections show that ordinary shareholders would only be paid dividends if the annual distributable dividend was over EUR [400-500]million (and EUR [200-300] million after 2018 if B1 or B2 shares are actually converted into B3 shares). The orderly resolution plan for the Group does not anticipate any profit before 2018, and at best the profit is likely to be EUR [50-100] million in 2020.

- (628) The level of origination will, in practice, be strictly limited to Crediop's regulatory obligations in order to avoid [...] (i.e. less than [0-5] % of the outstanding loans) and prevent Crediop from otherwise going into immediate liquidation. The origination capacity will also be strictly in line with Crediop's ability to finance itself from commercial deposits. The Commission notes that the volume of new loan finance for existing customers is very small and is strictly necessary to avoid a costly immediate liquidation and to keep options for selling Crediop open for a period of one year from this Decision, when market conditions and the natural depreciation of EMTNs will once again allow it. Without authorisation, Crediop would be placed in run-off management at the end of the current year.
- (629) Dexia is also not to grant any new financing for Dexia Israel and DAM from the adoption of this Decision.

#### 6.4.4. Monitoring of measures

- (630) The Commission notes that the Bank Restructuring Communication recommends that the Member States concerned should send regular detailed reports to the Commission to enable it to verify whether the plan is being implemented in accordance with the commitments notified, until the assets reach the end of their term.
- (631) The Commission is to receive six-monthly and end-of-year reports from the independent trustee responsible for monitoring the revised orderly resolution plan, throughout the duration of the plan. The reports will include a detailed account of progress in implementing the revised orderly resolution plan, and in particular (i) compliance with the amount of and conditions for desensitising DCL's portfolio of sensitive loans; (ii) compliance with the cap on new financing for Crediop's existing customers; (iii) compliance with the timetable of scheduled disposals, including the date of sale, the book value of the assets on 31 December 2011, the sale value, the gains or losses made, and details of the measures still to be applied under the revised orderly resolution plan; and (iv) the management and ring-fencing of DAM and Dexia Israel.

#### 6.4.5. Risks arising from the implementation of the revised orderly resolution plan

- (632) The Commission notes that Dexia's carry is likely to remain negative in 2013 despite the reduction in the guarantee costs to 5 basis points. The assets held by Dexia should produce a weighted average margin of some [25-75] basis points above the 3-month Euribor rate. This margin should settle at [25-75] basis points from 2016, largely as a result of the small issuing margins, but also because of the negative remuneration<sup>(176)</sup> of the cash collateral posted by the bank, which was EUR [30-40] billion in 2013, an amount set to shrink by [25-75] % by 2020 if interest rates do in fact increase.
- (633) The Group's financing costs should be halved between 2012 and 2013 because of the reduction of the guarantee costs to 5 basis points from 2013 compared with 90 basis points in 2012, representing a saving of over EUR [250-750] million for 2013. This saving will go down as the guarantee drawdown is reduced. However, it will only be from 2014 that the financing cost will be lower than the interest generated by the assets, because more expensive financing methods (ELA, some long-term guaranteed issues held by Belfius) will no longer be used, while greater use will be made of short-term finance (from the Central Bank and via the repo market) at a level close to the Euribor.
- (634) Interest from securities used as remuneration for capital should have a growing impact on the profit and loss account, at over EUR [100-300] million from 2019 compared with less than EUR [50-250] million before 2015.
- (635) The Commission notes that the Dexia Group is unlikely to generate a profit before 2018, since operating costs should consistently remain higher than net banking income. The Commission also notes that between 2013 and 2020 the annual cost of risk will stand at less than [0-20] basis points of the balance of loans and securities. Moreover, the annual provisions of EUR [50-200] million for risks and charges that is to be set aside by DCL to address the risk of litigation on sensitive loans could prove inadequate.

<sup>(176)</sup> The cash collateral posted by the bank is remunerated at the Eonia rate. As the Eonia rate is lower than the 3-month Euribor, the margin on this asset is negative.

- (636) As the Member States concerned have stressed, one of Dexia's main problems stems from its large portfolio of interest rate hedging derivatives linked to its production of long-term, fixed-rate loans to the public sector. The fall in rates in the summer of 2011 was accompanied by an increase in calls with a margin over EUR [0-25] billion<sup>(177)</sup>. The cash collateral paid to swap counterparties was around EUR [25-75] billion at the end of 2012. Being remunerated at the Eonia rate, it produces a negative margin compared with the 3-month Euribor. As the financing rate for Dexia should be close to Euribor + [25-75] basis points in 2013, the cash collateral would represent an annual cost of EUR [100-300] million. The cost should then gradually fall (reaching a level below EUR [25-75] million in 2017) because of the conjunction of four factors: (i) the increase in long-term rates, which should reduce the amount of cash collateral to be paid, (ii) lower and better financing conditions, reducing costs for Dexia, (iii) stabilisation of short-term rate spreads, particularly between the Eonia rate and the 3-month Euribor rate, and (iv) the writing off of its loan portfolio and of the notional balance of the associated derivatives portfolio. If one of the first three factors does not happen, the extra cost to the Group could be more than EUR [...] million over the period 2014-20.
- (637) The Group expects market conditions to stabilise from 2014 and credit spreads to converge towards their historic mean. For example, the bank expects Italy's sovereign spread, which was 350 basis points in 2012, to converge towards a level of [25-75] basis points by 2018, and credit derivative indices to [...]. The opposite scenario could have major repercussions on unrealised losses between 2016 and 2020.
- (638) The Group's financing plan provides for greater investment in the State-guaranteed securities market (EUR [5-20] billion long term and EUR [10-40] billion short term) with a parallel reduction in the use of those securities as collateral against refinancing from the Eurosystem. Hitherto the Group has only been able to place limited volumes in the market<sup>(178)</sup> and there is nothing to indicate that investors' interest will be any different in future. In particular, the credit rating of the guarantor States, the liquidity of the markets and their capacity to absorb guaranteed bank securities are all uncertain factors which could threaten the 'financing mix' envisaged. Any less favourable scenario would mean greater reliance on ELA, which in turn would mean higher financing costs. For example, if the target of placing EUR [10-40] billion of short-term securities was not achievable and the finance was raised from ELA, this could generate additional costs of around EUR [150-400] million per year.
- (639) The Commission concludes, however, that these risks are inherent in the orderly resolution of a group like Dexia, and that, without underestimating them, the Commission considers that they are not likely to threaten the plan as presented and approved.

## 6.5. COMPATIBILITY OF THE DMA SALE OPERATION

### 6.5.1. Scope of the compatibility assessment

- (640) As regards operations to set up development banks, the Commission considers that aid may distort competition on two levels: upstream, in competition between financial institutions for the aid to the development bank (level I), and downstream, between beneficiaries of the finance provided by DMA and any competitors they may have (level II).
- (641) As described earlier, the Commission found that the memorandum on the DMA sale operation contained an aid measure to help the future development bank, in that France gave a commitment that the State, the CDC and La Banque Postale would recapitalise the NEC and DMA if necessary.
- (642) At this stage, solely on the basis of the memorandum on the DMA sale operation, the Commission has not been able to identify specific level II aid measures. However, the Commission notes that France has given certain commitments to cooperate with it in identifying and assessing any aid at that level, without prejudice to the Commission's powers and duty to assess all potential aid.

<sup>(177)</sup> The sensitivity of the derivatives portfolio is around EUR [50-250] million per basis point. The reduction of 100 basis points in the 10-year swap rate between June 2011 and October 2011 thus resulted in an increase of over EUR [0-25] billion in the cash collateral to be paid to counterparties. Sensitivity is not stable, however, and is also influenced by other factors such as movements in the rates curve.

<sup>(178)</sup> EUR [0-5] billion on 1 March 2012.

- (643) As regards competition at level I, the Commission considers that DMA will, in some ways, be the successor to the Dexia Group and that as a subsidiary of Dexia it has benefited at least partially from the aid granted to the Group in the past. Furthermore, it is still today, as a subsidiary of Dexia, benefiting from aid still being paid to Dexia (ELA and refinancing guarantee), and this will continue until it is sold, on 31 January 2013 at the latest.
- (644) As the Commission stated earlier, DMA belongs to an undertaking receiving new aid in connection with its sale operation and the setting-up of a development bank to finance French local authorities and French public health establishments.
- (645) DMA has a portfolio of 'sensitive loans' with a nominal value of EUR [5-15] billion on 30 June 2012, and although it belongs to an undertaking operating in a market in which there is a shortfall, it is still a market in which competition can be distorted.
- (646) The Commission will therefore base its assessment of the compatibility of the aid to DMA on the Bank Restructuring Communication, point 17 of which states:

*'The sale of an ailing bank to another financial institution can contribute to the restoration of long-term viability, if the purchaser is viable and capable of absorbing the transfer of the ailing bank, and may help to restore market confidence. It may also contribute to the consolidation of the financial sector. To this end, the purchaser should demonstrate that the integrated entity will be viable. In the case of a sale, the requirements of viability, own contribution and limitations of distortions of competition also need to be respected.'*

- (647) However, the Commission takes a positive view of the fact that the French authorities wish to set up a development bank based on the DMA entity, whose activity will be strictly limited to providing simple funding (vanilla loans) to French local authorities and French public health establishments, for which the financing market is in shortfall.
- (648) The Commission will therefore also initially assess the compatibility with the internal market of the State aid which the development bank is set to receive, in the light of the merits of setting up such a development bank, of which DMA is to form part (Section 6.5.2 below). The financing provided by DMA likely to contain aid (level II) will be assessed separately.
- (649) When it comes to the classification of hospitals, the Commission takes the view that these, whether public or private, must be regarded as undertakings<sup>(179)</sup>. In its 2002 decision on Irish hospitals<sup>(180)</sup>, the Commission expressly deemed them to be undertakings on the basis of the judgment in *Höffner*. It is thus clear that support for hospitals may contain State aid.
- (650) This Decision will confine itself to assessing the aid provided at level I (aid to the development bank). This is without prejudice to the Commission's position on the existence of level II aid and its compatibility with the internal market.

#### 6.5.2. Assessment of DMA as a development bank

- (651) The Commission must establish whether the aid for the development bank is compatible with the internal market. Article 107(3) TFEU lays down certain exceptions from the general principle of incompatibility set out in Article 107(1) TFEU.

<sup>(179)</sup> See point 24 of the *Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest*. OJ C 8, 11.1.2012, p. 4: 'In many other Member States, hospitals and other health care providers offer their services for remuneration, be it directly from patients or from their insurance. In such systems, there is a certain degree of competition between hospitals concerning the provision of health care services. Where this is the case, the fact that a health service is provided by a public hospital is not sufficient for the activity to be classified as non-economic.'

<sup>(180)</sup> Decision of 27.2.2002 in case No 543/2001 Capital Allowances for Hospitals — Ireland [http://ec.europa.eu/competition/state\\_aid/cases/135870/135870\\_435761\\_20\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/135870/135870_435761_20_2.pdf) (recitals 10, 17 and 19).

- (652) In particular, Article 107(3)(c) TFEU states that *'The following may be considered to be compatible with the internal market: ... aid to facilitate the development of certain ... activities ... where such aid does not adversely affect trading conditions to an extent contrary to the common interest'*.
- (653) The setting-up of a development bank does not come under any specific Commission communication setting out in detail for that purpose the rules laid down in Article 107(3) TFEU.
- (654) The Commission must therefore assess the compatibility of the measure directly on the basis of Article 107(3) TFEU. As none of the other objectives referred to in that provision is relevant, nor was any relied on by France, the Commission will examine the measure in the light of Article 107(3)(c) TFEU.
- (655) In order to examine the compatibility of the measure on that basis, it must be assessed whether the measure is appropriate for achieving the intended aim. To that end, it must be examined whether the measure 1) aims to achieve an objective of common interest, 2) makes an appropriate contribution to responding to the market shortfall, 3) is likely to have a knock-on effect, and 4) remains proportionate by minimising unwanted effects on trade and competition.

#### 6.5.2.1. Implementation of a clearly defined objective of common interest

- (656) The Commission must determine whether the creation and capitalisation of DMA are designed to meet an objective of common interest, which is one of the essential conditions laid down in Article 107(3)(c) TFEU. In addition, the Commission must determine whether the measure notified is appropriate for that objective.
- (657) The Commission notes that DMA is to operate in clearly defined sectors where France has shown that there is a market shortfall: the provision of financing for French local authorities and French public health establishments. The Commission recognises that the financing market in these two sectors is not currently operating satisfactorily because of a market shortfall ('credit crunch'). The Commission considers that it has been shown that the existing private players (private banks) are not in a position to be able to make up this funding shortfall, in particular 1) because of the new regulatory constraints (introduction of the 'Basel 3' rules) which will penalise the provision of long-term liquidities unless backed up by deposits, but also 2) because of the financial crisis, which is encouraging banks to reduce their balance sheet and their supply of financing. The Commission therefore notes that the dominant market share<sup>(181)</sup> in financing for these sectors which the Dexia Group used to hold before it went into orderly resolution (new production of which will not, in principle, be authorised) is unlikely to be entirely taken up by other banking institutions.
- (658) It has also been shown that the medium- and long-term financing needs of local authorities and public health establishments in France may amount to EUR 18-20 billion and EUR 2-4 billion per year respectively. The banking institutions are likely to keep their supply at around EUR 10 billion (2013). The shortfall in local public sector financing in France thus stands at around EUR 10 billion, since the exceptional envelope provided by the CDC is unlikely to be renewed. The creation of DMA is designed to meet 20-25 % of the total demand, i.e. annual financing of around EUR 5 billion.
- (659) It should also be noted that the beneficiaries' financing needs are generally long-term, which will hit the banking institutions' new liquidity ratios even harder. The Commission notes that this factor is likely to place significant structural constraints on the banks' appetite for this type of financing.

#### 6.5.2.2. Appropriateness of the measure

- (660) The Commission must make sure that the creation of DMA is an appropriate response to the existing market shortfall (financing deficit).

<sup>(181)</sup> Around 30 % before the crisis began.

- (661) The Commission notes that the sector in which DMA will be operating is precisely defined and restricted to two classes of beneficiaries which have been shown to face a market shortfall. Financing will be supplied to local authorities and public health establishments in France at market conditions not more attractive than those offered by other commercial banks. The Commission notes that the commitment to impose a price leadership ban is designed to place strict limits on DMA's operation on the financing market for French local authorities and public hospitals without restricting other competitors' access to the market. This commitment is not time-limited.

#### 6.5.2.3. Knock-on effect

- (662) The Commission must examine whether the creation of DMA is likely to have a knock-on effect, by making French local public sector financing more attractive so that the private sector will gradually take over from DMA.
- (663) The Commission notes that DMA will provide simple vanilla products. The commercial banks will be able to provide both similar and different products which could meet the demand from local authorities and public hospitals in France.

#### 6.5.2.4. Proportionality

- (664) The Commission must determine whether the aid provided by the measure is proportionate to the aim pursued (in other words, whether the aim could be achieved with fewer resources) and limited to the minimum necessary.
- (665) The Commission notes first of all that the level of capitalisation of DMA (EUR [0-5] billion) is small in comparison with the financing shortfall identified (EUR [5-10] billion).
- (666) The Commission then notes that, as a matter of principle, DMA will not, on average, be supplying financing at preferential rates compared to its competitors. This will mean that the existing competition is not penalised.

#### 6.5.3. Assessment of DMA as a development bank receiving restructuring aid

- (667) The degree of restructuring required depends on how serious the problems encountered by each bank are and how much aid they have received. In that respect, the aid to be taken into account here stems from the recapitalisation measures and measures to treat impaired assets, as well as the guarantees obtained in the past by the Dexia Group, from which DMA also benefited.
- (668) The compatibility of the restructuring plan must be assessed in the light of the conditions set out in the Bank Restructuring Communication. These are as follows:
1. the restructuring plan must enable the institution to return to long-term viability;
  2. the restructuring plan must ensure that the costs of restructuring are shared fairly between States and the bank;
  3. the restructuring plan must enable excessive distortions of competition resulting from the aid to be corrected.

##### (a) Returning the institution to long-term viability

- (669) The Commission notes that DMA will retain until maturity a substantial portfolio of 'legacy' assets which could have an impact on its financial results. The portfolio is likely to be amortised by [25-75] % by 2020.
- (670) The Commission notes that the size of the existing assets portfolio is very large in the light of the new production envisaged. The very poor yield on the existing portfolio will thus have a significant negative impact on the structure's profitability (return on own funds). The projections forwarded by the French authorities show that it is primarily the (slow) rate of amortisation of the existing portfolio, rather than any increase in profitability of the activities envisaged, that will lead to an eventual improvement in the return on own funds. The indications of prices and margins to be applied are seen as realistic even though they are at the high end.



- (671) As far as prices and margins are concerned, the Commission notes that DMA is likely to calibrate the first year's financing offered at Euribor + [200-300] basis points. This level is seen as realistic and comparable to what competitors are offering <sup>(182)</sup>.
- (672) The Commission notes that the creation of the JV linking the development bank to La Banque Postale should allow DMA to benefit from a geographical and commercial network that will be a major asset for providing financing for a large number of local authorities scattered throughout France.
- (673) The Commission notes that the levels of return on own funds communicated would not be enough to satisfy a private investor. The return on own funds is expected to reach just [2-6] % in 2017.
- (674) The Commission recognises, however, that DMA is a structure which has a capital surplus over the regulatory requirements <sup>(183)</sup>, impacting on its profitability.
- (675) The Commission notes that this level of profitability is what might be expected of a development bank whose aim is to remedy a market shortfall. Consequently, DMA's business model is considered to be in line with the Commission's requirements in terms of expected profitability.
- (676) The Commission notes that the financial projections for DMA show a cost of risk of just a few basis points. France regarded this level as reasonable and stressed that the historical cost of the risk of the portfolio was less than [0-5] basis points. Furthermore, the projections do not include any specific provisions for the risk of litigation on the sensitive loans held. The Commission considers that these hypotheses are only acceptable if future DMA shareholders undertake to cover any losses through adequate recapitalisation of the structure. Any losses will thus not be likely to threaten the existence of the structure and its ability to continue operating as a development bank.
- (677) Moreover, the French State has given a commitment that the business plan submitted to the Commission <sup>(184)</sup> will be implemented rigorously and that proposals will be made to reduce the general and staff costs of DMA or the NEC if (i) the profits made are [20-30] % less than the stated target; or if (ii) losses are recorded in the profit and loss account; or if (iii) DMA, the NEC or the JV are no longer keeping to the minimum regulatory ratios applicable.
- (678) On the basis of the above, the Commission therefore considers that the structure of DMA should be viable in the long term as a development bank.
- (b) Institution's own contribution
- (679) According to the Bank Restructuring Communication, the restructuring plan must ensure that the costs of restructuring are shared fairly between the Member States concerned and the bank, in other words the restructuring plan must provide for the bank and its shareholders to make as great a contribution as possible through their own resources. That contribution is necessary to persuade banks benefiting from rescue measures to take appropriate consequences for their previous behaviour, and to create suitable incentives for their future conduct.
- (680) Regarding the commitment to recapitalise the NEC and DMA if necessary, the Commission notes the advantages of the change to the shareholder structure and the cover for any futures that arise on the portfolio of sensitive loans, as long as this new aid is limited to the minimum necessary to offset losses and thus enable the bank to remedy the market shortfall.
- (681) The Commission takes a favourable view of the fact that DMA, the NEC and the JV will not acquire or take holdings in any undertaking for a period of five years from the final decision.

<sup>(182)</sup> An envelope of EUR 5 billion was put in place by the CDC in 2012 to remedy the financing shortfall. This envelope was offered at a price of around Euribor + 320 basis points, and estimates show that the offer was 3-5 times oversubscribed. The Member State thus indicated that the equilibrium price was higher.

<sup>(183)</sup> Its Basel 3 Core Tier 1 ratio is expected to be [20-30] % in 2017.

<sup>(184)</sup> Annex VII to the notification.

- (682) The Commission takes a favourable view of the fact that DMA, the NEC and the JV will not distribute any form of dividend on their shares until 31 December 2015 (except for dividends paid by DMA to the NEC) and that DMA, the NEC and the JV will not pay coupons, except if contractually obliged to do so as a result of a commitment given before 14 December 2012.
- (683) The Commission takes a favourable view of the fact that the French State is to make sure that DMA, the NEC and the JV comply with the legislation in force on wages and remuneration, particularly the pay ceilings applicable to banking institutions and the restrictions directly arising from the fact that the French State directly or indirectly controls DMA, the NEC and the JV.
- (684) The Commission therefore concludes that the institution's own contribution is sufficient.

(c) Measures to limit distortions of competition

- (685) The Commission notes that DMA's activities are to be strictly limited in terms of sectors of activity and products. DMA is to offer simple financial products (vanilla loans) to French local authorities and French public health establishments. The Commission notes that DMA will not supply any other type of product to any other type of customer.
- (686) The Commission points out that the legacy portfolio of loans to customers not belonging to the sectors defined above is large, with a nominal value of EUR [20-40] billion on 30 September 2012. All of this portfolio is to be placed in run-off management.
- (687) The Commission also notes that DMA has undertaken to comply with a price leadership ban. This is designed to limit the negative impact on DMA's competitors who have not received State aid.
- (688) On the basis of the above information, the Commission considers that the measures to limit distortions of competition are adequate and meet the requirements of the Bank Restructuring Communication.

## 7. CONCLUSION

- (689) The Commission finds that Belgium and France unlawfully implemented aid in the form of ELA granted by the BNB to DBB/Belfius since 5 October 2011 and ELA granted by the BdF to Dexia/DCL since 2 February 2012, in breach of Article 108(3) TFEU.
- (690) On the basis of the information and commitments communicated to the Commission by the Belgian, French and Luxembourg authorities, the Commission authorises Dexia's revised orderly resolution plan, including the sale of DMA to create a development bank for financing French local authorities and French public health establishments, as well as the operation to sell DBB/Belfius to the Belgian State and the DBB/Belfius restructuring plan.
- (691) The Commission considers the aid elements contained in Dexia's revised orderly resolution plan and DBB/Belfius' restructuring plan, as well as the restructuring aid measures which were the subject of the conditional authorisation decision, Arcofin's participation in the recapitalisation of Dexia in 2008, the ELA to DBB/Belfius since 5 October 2011 and half of the ELA granted by the BdF to Dexia/DCL since 2 February 2012, the temporary refinancing guarantee and the final refinancing guarantee for Dexia SA and DCL, the recapitalisation of Dexia, the commitment to recapitalise DMA, the sale of DMA in favour of Dexia and DMA, and the sale of DBB/Belfius in favour of Dexia and DBB/Belfius, to be compatible with the internal market, provided that Belgium, France and Luxembourg ensure that Dexia's revised orderly resolution plan is implemented in full (and particularly, for the French authorities, that the memorandum on the DMA sale operation is implemented in full), and that Belgium ensures that DBB/Belfius' restructuring plan is implemented in full, including all the commitments mentioned in Annexes I, II and III to this Decision,

HAS ADOPTED THIS DECISION:

*Article 1*

1. The aid measures approved in the Commission's conditional decision of 26 February 2010 on State aid C 9/09 have been unlawfully applied by Belgium, France and Luxembourg.
2. The Commission's decision of 26 February 2010 on State aid C 9/09 implemented by Belgium, France and Luxembourg is revoked.

*Article 2*

1. The measures implemented by Belgium, France and Luxembourg, before the decision of 26 February 2010, to provide EUR 8,75 billion in aid for Dexia in the form of a capital increase (including Arcofin's participation) and aid for the treatment of impaired assets, and EUR 135 billion in the form of a guarantee and a guaranteed liquidity assistance operation ('emergency liquidity' or ELA), constitute State aid within the meaning of Article 107(1) TFEU.
2. The following measures implemented or contemplated by Belgium, France and Luxembourg to assist Dexia since the decision of 26 February 2010 constitute State aid within the meaning of Article 107(1) TFEU:
  - (a) the temporary refinancing guarantee (EUR 55 billion) and the final refinancing guarantee (EUR 85 billion) for Dexia SA and DCL;
  - (b) the sale of DBB/Belfius on 20 October 2011, which benefited Dexia SA and DBB/Belfius;
  - (c) the EUR 5,5 billion recapitalisation of Dexia SA;
  - (d) the emergency liquidity (ELA) granted by the BNB to DBB/Belfius (between 5 October 2011 and 31 January 2012, the maximum amount granted being EUR [...] billion);
  - (e) half of the emergency liquidity (ELA) granted by the Banque de France to DCL (since 2 February 2012, the maximum amount granted has been EUR [...] billion);
  - (f) the commitment to recapitalise the NEC and DMA (to assist these entities of the new development bank);
  - (g) the sale of DMA in favour of Dexia SA and DMA.

3. The aid referred to in paragraphs 1 and 2 is compatible with the internal market provided that the commitments referred to in Article 3 are met.

*Article 3*

1. Belgium, France and Luxembourg shall respect all the commitments set out in Annex I to this Decision within the time limits fixed.
2. Belgium shall respect all the commitments set out in Annex II to this Decision within the time limits fixed.
3. France shall respect all the commitments set out in Annex III to this Decision within the time limits fixed.

*Article 4*

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.

*Article 5*

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

Done at Brussels, 28 December 2012.

*For the Commission*

Joaquín ALMUNIA

*Vice-President*

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## ANNEX I

**ORDERLY RESOLUTION PLAN FOR DEXIA. COMMITMENTS OF THE MEMBER STATES CONCERNED****Introduction**

1. The Kingdom of Belgium, the French Republic and the Grand Duchy of Luxembourg ('the States') will ensure that the present orderly resolution plan of 14 December 2012 for Dexia SA and the subsidiaries over which, and for as long as, it exercises joint or exclusive control ('the Subsidiaries' and, together with Dexia SA, 'Dexia')<sup>(1)</sup>, together with the present commitments ('the Commitments'), are implemented in full. Except where otherwise provided, the commitments below will apply until Dexia's assets have been fully written off. If there is any contradiction between the provisions of the orderly resolution plan and these Commitments, the Commitments will take precedence.
2. This letter of Commitments is sent at the Commission's request, on the basis of discussions held and documents exchanged between the Commission and the States, with the sole purpose of enabling the Commission to adopt a decision (the 'Decision') approving the aid granted to Dexia in cases SA.33760, SA.33763, SA.33764, SA.30521, SA.26653, SA.34928, SA.34925 and SA.34927.

**Behavioural commitments**

3. Dexia will not acquire equity capital in other credit institutions, investment firms (within the meaning of Directive 2004/39/EC on markets in financial instruments) or insurance companies, unless authorised to do so by the Commission.

The above commitment will not prevent Dexia from acquiring, subject to the prior agreement of the Commission, a holding in return for an injection of holdings or for activities undertaken as part of an operation to sell or pool assets or activities (by merger or injection) provided that, in such a case, the holding does not give Dexia exclusive or joint control of the entity benefiting from the injection or resulting from the merger.

By way of exception to the previous paragraphs, Dexia may acquire a minority holding of 40 % in Dexia Sabadell (with a view to its run-off management) following the exercise of the Banco Sabadell put option, as that acquisition has not yet taken place on the date of these Commitments.

4. Subject to the commitments it has already underwritten in respect of Dexia Région Bail, Dexia Flobail, Dexia Bail and Dexia LLD on the date of the Decision, Dexia will undertake to grant no new intragroup financing (i.e. of an amount greater than the intragroup financing existing on the date of this Decision) to the entities to be disposed of in accordance with point 10(a)(i)-(x) below ('ring-fencing'). This Commitment is without prejudice to the regulatory obligations incumbent upon Dexia as a shareholder of the entities concerned and its obligation to keep Dexia Israel and DAM viable in accordance with point 10(d) below. If the implementation of these obligations requires the grant of new financing to the entities concerned, Dexia will inform the Commission in advance thereof.
5. Dexia will not use its status as a bank benefiting from a guarantee or other State aid for some of its commitments for the purposes of commercial publicity to third parties other than the Third Party Beneficiaries as defined in the guarantee agreement, and shall not use the guarantee for pure arbitrage transactions.
6. As specified in the revised orderly resolution plan:
  - (a) the States concerned stress that the features of the preferential shares will make it impossible in practice to pay any dividends on ordinary shares, as the forecasts of profits that may be distributed by Dexia during the period of the plan are lower than the amount of the 8 % preferential dividends to be paid to the Belgian and French States;
  - (b) the States concerned stress that the preferential shares are held by the Belgian and French States alone, and that the limits on the distribution of dividends should relate only to ordinary shares and not to preferential shares as that would deprive the Belgian and French States of their right to a dividend on their investment; and

<sup>(1)</sup> A list of Dexia's subsidiaries and holdings is given in Annex 1.

- (c) as regards the participation of preferential shares in losses, as indicated in the revised orderly resolution plan, the preferential shares will lose their preferential rights wholly or partly if Dexia's regulatory ratios fall below certain thresholds.
7. Without prejudice to the operations that Dexia is legally bound to carry out, or operations that it is bound to carry out pursuant to contracts concluded prior to the date of the Decision, in respect of Tier 1 or Tier 2 hybrid instruments, Dexia will not:
- (a) pay coupons on Tier 1 hybrid instruments or Tier 2 instruments held by persons or entities other than Dexia SA and its Subsidiaries, whose payment is discretionary under the contractual terms relating to those instruments;
  - (b) approve or vote in favour of the payment of any form of dividend by any Subsidiary exclusively controlled directly or indirectly by Dexia SA (including entities in which it has a 100 % holding), where such a payment would entail mandatory payment of a coupon on Tier 1 hybrid instruments or Tier 2 instruments held by persons other than Dexia SA and its Subsidiaries; or
  - (c) exercise a discretionary early repayment option on the Tier 1 hybrid instruments or Tier 2 instruments mentioned in point (a) above.

Subject to a bonus not exceeding 10 % of the market price and a purchase rate (including bonus) not exceeding 90 % of the nominal amount, Dexia may, however, after notifying and obtaining prior authorisation from the Commission, launch public offers for the purchase of issues of Tier 1 and Tier 2 hybrid securities.

The commitments set out in the previous paragraphs do not prevent the distribution of dividends linked to the preferential shares held by the Belgian and French States.

8. Dexia will continue to implement the remuneration principles decided at G20 level and by the national authorities concerned as regards the remuneration of members of the Boards of Directors and executives of Dexia SA and the main operating entities of the Dexia Group.

Dexia will in particular not pay the variable proportion of the remuneration of members of the Board of Directors of Dexia SA and will cap, at 30 % of the fixed proportion of their remuneration, the amount of the variable proportion of the remuneration of other staff of Dexia SA and its banking Subsidiaries covered by point 2.5.1.1 of Dexia's remuneration policy as notified on 15 March 2011 to the CBFA.

The Member States concerned will further ensure that the Dexia Group complies with the legislation in force on wages and remuneration, in particular with the caps on remuneration applicable to banks.

The Member States concerned undertake to ensure that Dexia strictly complies with the conditions set out down below, imposed by the Commission in connection with the application of the rules on State aid.

The Member States concerned will also ensure that the best possible use is made of public funds as regards the wages and remuneration paid to staff of the banking institutions placed in orderly resolution. In particular, the Member States concerned will ensure that the amount of severance allowances is limited to the legal minimum, while retaining the flexibility needed to avoid delaying the outcome of the Dexia Group's orderly resolution.

The Member States concerned will also forward proposals to the Commission in respect of a reduction of the Dexia Group's general and personnel costs if, at the end of the accounting year in question, (i) the net banking profit is more than 20 % lower than the target set; (ii) the net profit (excluding provisions) is more than 25 % lower than the target set; (iii) the profit and loss account records losses; or (iv) the Dexia Group no longer complies with the minimum regulatory ratios in force. This commitment will be effective only for the annual accounts after 2012.

9. (a) In accordance with the revised orderly resolution plan submitted on 14 December 2012, Dexia will not undertake any new production from the date of this Decision, except where the entity in question is subject to a disposal commitment in accordance with point 10(a)(i)-(x) below.

(b) For the purposes of this Commitment, 'new production' does not include:

- (i) operations needed for liquidity management (for instance central bank transactions or management of the cover pools of DLG and DKD in order to comply with regulatory, prudential or credit rating agency constraints and significantly to improve the cost of financing);
- (ii) the extension of the maturity of existing loans provided that such extension significantly improves the net actualised value of the sums loaned to the same customer, the litigation risk being taken into account when calculating value;
- (iii) the derivative transactions needed to manage the risks linked to the interest/exchange/credit rates of the existing portfolio provided that the effect of such transactions is to reduce the Dexia Group's global risk exposure, in compliance with the limits and procedures laid down by the guidelines applicable within Dexia and/or the prudential authorities<sup>(1)</sup>;
- (iv) all activities required for regulatory or other legal reasons, in particular the extensions of maturity or rescheduling of the timetable imposed on Dexia as a member of a bank syndicate in certain investment projects (the bank syndicate may be asked to accept project structure amendments entailing amendments of maturity and/or timetable) or following decisions by administrative or judicial authorities; and
- (v) the disbursement of loan commitments confirmed on the date of the Decision, i.e. the disbursement operations that Dexia is contractually liable to carry out in order to respect its commitments to borrowers under contracts concluded prior to 30 September 2012.

(c) By way of exception to point (a):

- (i) To prevent the [...] and thus satisfy its regulatory requirements with a view to its possible disposal within one year of this Decision, Dexia Crediop may draw down new financing of an amount of EUR 200 million for its existing customers for a period of one year from this Decision. On expiry of this one-year period, the States may ask the Commission to authorise an additional annual envelope of new financing for as long as necessary to avoid the [...] and thus satisfy its regulatory requirements. Failing authorisation, Dexia Crediop will be placed in run-off management at the end of the year in question.
- (ii) DCL may issue new financing for flows connected with the operations to desensitise existing loans lodged with DCL (after the sale of DMA) and deemed sensitive (namely the loans granted to local authorities and classified outside the Gissler Charter, scored as E3, E4 or E5 in the Gissler Charter or having a Cepcor score of 11 or more), provided that the economic value of the debt stock is improved, a substantial reduction of the litigation risk brought about by desensitisation being taken into account when defining this value<sup>(2)</sup>.

Only the following operations will be authorised in this connection: [...]

Dexia undertakes to limit the total amount of new flows connected with the operations referred to in point 6 above to a maximum amount of EUR 600 million of new financing; however, such operations may be concluded only between February and July 2013 or between June and November 2014.

<sup>(1)</sup> For example, when restructuring loans, it is necessary not just to cancel the derivative which covered the risk associated with the existing loan, but also to contract a new derivative to cover the risk created by the modified loan. Another example is management of the fixings of the ALM portfolio, which needs cover provided by derivative products in order to reduce risk.

<sup>(2)</sup> On the date of these Commitments, the loan portfolio concerned had a book value of EUR 1,2 billion.

- (d) The flows mentioned in point (c)(ii) above will, moreover, be limited in accordance with the following conditions:
1. The new flows will be solely at a fixed rate.
  2. The maturity of new flows will be limited to 30 years.
  3. The new flows should bring about an improvement of the Gissler or Cepercor score.
  4. During the initial desensitisation period (February-July 2013), the new flows will as a priority concern the most sensitive loans, namely those granted to the [30-50] main customers of DCL which represent [40-60] % of the marked-to-market of the derivatives associated with loans outside the Gissler Charter.
- (e) Dexia will supply the Commission with a periodic review of its plan to amortise and desensitise DCL's sensitive loans on 15 January 2013 and 15 May 2014.

#### **Disposals and run-off management**

10. (a) Dexia will dispose of the entities on the following list and according to the following timetable:
- (i) Disposal of DBB. This disposal took place on 20 October 2011.
  - (ii) Disposal of the 50 % holding in RBCD. This disposal took place on 27 July 2012.
  - (iii) Disposal of DenizBank. This disposal took place on 28 September 2012.
  - (iv) Disposal of BIL. This disposal took place on 5 October 2012.
  - (v) Disposal of Dexia Habitat. This disposal took place on 29 June 2012.
  - (vi) Disposal of DKB Polska. The disposal agreement was signed on 7 November 2012.
  - (vii) Disposal of DMA by 31 January 2013.
  - (viii) Disposal of DAM, Dexia's holding in Popular Banca Privada and Sofaxis by 31 December 2013.
  - (ix) Disposal or run-off management of Dexia Région Bail, Dexia Flobail, Dexia Bail and Dexia LLD by 31 December 2013.
  - (x) Disposal of Dexia's (direct or indirect) holding in Dexia Israel within 12 months of a final, non-actionable decision in the various legal actions brought against DIL or DCL as shareholder.

The disposal commitments listed above will be deemed to have been satisfied when Dexia and the acquirer conclude a final and binding agreement (i.e. an agreement which cannot be terminated unilaterally by Dexia without paying a penalty) for the disposal of the whole of Dexia's holding in the entity or asset concerned, even if all the authorisations or statements of non-objection from the competent surveillance authorities have still to be obtained at the time of signature of the agreement, provided that closing takes place at the latest six months after signature of the disposal agreement.

If one of the disposal commitments listed above is not met, the States will, in the month following the deadline for the disposal, propose the appointment of a trustee responsible for the disposal of the entity concerned under the conditions set out in point 12 below.



Prior to each disposal provided for above and still to be implemented, Dexia will keep the independent trustee informed of parties that have expressed an interest in the acquisition of these assets and will provide the expert with all the information necessary and reasonably available to guarantee the potential purchaser's independence. The Commission will notify the States within 15 days of the names of parties that, in its view, do not satisfy the required conditions of relevance and independence and the reasons for its decision. Dexia will then end any disposal transaction with those parties (without prejudice to the possibility of bringing a legal challenge to the Commission's decision).

The methodology applicable to disposals of entities or holdings in entities carried out by Dexia is as follows:

- (i) for disposals of an amount of more than EUR 50 million (category 1): communication of an information note to the Commission and drawing up of a fairness opinion by an independent expert unconnected with the transaction;
  - (ii) for disposals of an amount of less than EUR 50 million and (i) an amount of more than EUR 25 million or (ii) for which the holding sold is valued at an amount of more than EUR 25 million or (iii) for which the purchaser has a shareholding link with Dexia (holding of more than 2 % in Dexia) (category 2): communication of an information note to the Commission and valuation by the consultant bank advising Dexia on the transaction;
  - (iii) for other disposals (including all disposals of holdings in financing projects, in particular GPF equity funds) (category 3): in-house valuation by Dexia and notification to the Commission of information on a database shared with the Commission.
- (b) Dexia will make every effort to speed up the disposal of its bond portfolio, when market conditions have improved, and thus satisfy the regulatory ratios, bearing in mind that such a disposal should take place only if it does not have a substantial negative impact on Dexia's solvency. Dexia will send the Commission a review of these options every year.
- (c) From the date of notification of the Decision, the entities not listed in point 10(a) above (including Dexia Sabadell once the acquisition referred to in point 3 above has taken place) will be placed in run-off management, in particular with no new production within the meaning of point 9 above.
- (d) In keeping with the company interest of Dexia SA and the Dexia Group, until the actual disposal of DAM and Dexia Israel (and from the clarification mentioned in point 10(a)(x) above as regards Dexia Israel), Dexia:
- (i) will make every effort to preserve the viability, resaleability by their future purchaser and competitiveness of DAM and Dexia Israel, in accordance with sound commercial practice;
  - (ii) will make every effort to limit any risk of loss of competitive potential by DAM and Dexia Israel;
  - (iii) will refrain from any initiative which could have a substantial negative effect on the value, management or competitiveness of DAM and Dexia Israel or could alter the nature or the field of activity, the industrial or commercial strategy or the investment policy of DAM and Dexia Israel;
  - (iv) subject to commitment 4. above, will as far as possible provide DAM and Dexia Israel with sufficient resources for their operation in accordance with existing business plans and any subsequent plans; and
  - (v) will take any reasonable measure, including appropriate incentive mechanisms (in accordance with commercial practice) to encourage all the main staff members of DAM and Dexia Israel.

11. (a) Up to its disposal within one year of this Decision or its run-off management, it is agreed that Crediop will be managed separately from the Dexia Group. To ensure that all decisions by Crediop's management taken between the date of this Decision and the completion of the disposal [within one year of this Decision or its run-off management] are in Crediop's best interests in terms of its disposal or run-off management, Dexia will appoint a manager responsible for ensuring that Crediop's activities are separately managed, and will ensure that this manager can work completely independently to comply with the commitments applicable to Crediop. This manager responsible for ensuring that activities are separately managed could be the managing director of Crediop. He will manage Crediop in its best interests, in consultation with Dexia, under the supervision of the independent trustee, as set out in point 13 below.
- (b) It is not necessary to appoint a manager for the separate management of the activities of Dexia Israel and DAM, as these two entities are already being separately managed on the date of this Decision for the reasons set out in the resolution plan.

#### **Divestiture trustee**

12. (a) If one of the commitments listed in point 10(a)(i)-(x) has not been met by the deadlines specified above, and if no alternative commitment has been approved by the Commission, the French, Belgian and Luxembourg authorities will submit a list of one to three persons for appointment as trustee(s) responsible for implementing disposals for prior approval by the Commission, at the latest by one month after the deadline set for the disposal.
- (b) The divestiture trustee must be independent, possess the required competences and must not be subject to any conflict of interest throughout his term of office.
- (c) The Commission may approve or reject the proposed trustee(s). If the Commission rejects the divestiture trustee(s), the French, Belgian and Luxembourg authorities will propose, within one month of notification of the rejection, from one to three new candidates who must also be approved or rejected by the Commission. If all the proposed candidates are ultimately rejected by the Commission, it will appoint a trustee on the basis of a mandate approved by the Commission.
- (d) The French, Belgian and Luxembourg authorities undertake that Dexia will grant the divestiture trustee the necessary and appropriate powers of representation:
  - (i) to dispose of the assets mentioned in point (a) above (including any power needed to ensure the proper execution of the documents required to implement the disposal), and
  - (ii) to take any step or make any declaration necessary or appropriate for the disposal, including the appointment of consultants to supervise the disposal process.
- (e) The divestiture trustee will include in the disposal and purchase contract(s) the normal and reasonable terms that he deems appropriate to conclude the disposal in the year following his appointment. The divestiture trustee will organise the disposal process in order to ensure a disposal [...]. The divestiture or liquidation must be effective within a maximum of one year from expiry of the disposal deadline.
- (f) The costs of the services of the divestiture trustee will be borne by Dexia.

#### **Implementation and independent trustee**

13. (a) The Belgian, French and Luxembourg authorities will submit for prior approval by the Commission, at the latest one month after this Decision, a list of one to three persons for appointment as an independent trustee responsible for detailed monitoring of the above commitments ('the independent trustee'). The independent trustee will be appointed for a period of five years, which period may be extended at the request of the Commission.

- (b) The independent trustee must possess the required competences and must not be subject to any conflict of interest during his term of office.
  - (c) The Commission may either approve or reject the independent trustee(s) proposed. If the Commission rejects the independent trustee(s) proposed, the Belgian, French and Luxembourg authorities will propose, within one month of notification of the rejection, from one to three new candidates who must also be approved or rejected by the Commission.
  - (d) If all the candidates are ultimately rejected by the Commission, the Commission will appoint an independent trustee.
  - (e) The costs of the independent trustee's services will be borne by Dexia and will not exceed the hourly rates normally charged for this type of service.
14. (a) Throughout the period of the orderly resolution plan, the Commission will have permanent unrestricted access to the information needed to implement its Decision approving the orderly resolution plan. It may contact Dexia directly to obtain any explanations and details. The Belgian, French and Luxembourg authorities and Dexia will cooperate fully in any verifications that may be requested by the Commission or, where appropriate, by the independent trustee.
- (b) The independent trustee will submit a half-yearly report to the Commission, the States and Dexia on the implementation of the above commitments. This report will include a detailed report on progress with the implementation of the orderly resolution plan, in particular: (i) compliance with the amount and desensitisation conditions of DCL's sensitive loan portfolio referred to point 9(c) and (d) above; (ii) compliance with the caps on the grant of new financing to Dexia Crediop's existing customers as referred to in point 9(c) above; (iii) compliance with the planned disposal timetable referred to in point 10(a) above, including the date of the disposal, the book value of assets as at 31 December 2011, the value of the disposal, the capital gains or losses made and details of the measures remaining to be implemented under the orderly resolution plan; (iv) the management and ring-fencing of the entities to be disposed of, in particular DAM and Dexia Israel, as set out in point 4 and point 10(d) above. This report will be submitted at the latest one month after the presentation of the half-yearly accounts and the approval of the annual accounts and in any case by 1 October and 30 April of each year.
  - (c) On expiry of the independent trustee's term of office and until Dexia's assets are fully written off, the States will submit an annual report to the Commission describing the stage reached with the orderly resolution procedure.
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## ANNEX II

## DBB/BELFIUS — COMMITMENTS BY BELGIUM

1. Pursuant to Article 4(3) of Regulation (EC) No 659/99 as amended (the 'Procedural Regulation'), the Kingdom of Belgium will ensure that the following Commitments (the '**Commitments**') made by Belfius will be fully respected in order to enable the European Commission (the '**Commission**') to find the State aid awarded to Dexia Banque Belgique/Belfius compatible with the internal market and the EEA Agreement by a decision pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union (the '**Decision**').
2. The Commitments shall take effect upon the date of adoption of the Decision ('**the Effective Date**').

**Definitions**

3. In these Commitments terms and expressions that are not defined elsewhere in these Commitments, shall have the following meaning, except if the context requires otherwise:

Belfius: Belfius Banque SA and Belfius Assurance SA and each of the Belfius subsidiaries.

Belfius Banque SA: Incorporated under the laws of Belgium, with its registered office at Boulevard Pacheco 44, 1000 Brussels, and registered with the Belgian Legal Entities Register under number 0403.201.185.

Belfius Assurance SA: Incorporated under the laws of Belgium, with its registered office at avenue Galilée 5, 1210 Saint-Josse-ten-Node and registered with the Belgian Legal Entities Register under number 0405.764.064.

Effective Date: The date of adoption of this Decision.

Independent Trustee: One or more natural or legal person(s), independent from Belfius, who is/are approved by the Commission and appointed by the Belgian authorities, and who has/have the duty to monitor Belfius' compliance with the conditions and obligations attached to the Decision.

Public Banking: Any credit agreement or loan granted by the Public and Social Banking Distribution division of Belfius Banque SA, being

— those granted to public authorities pursuant to Article 4(1) and (2) of the Law of 24 December 1993 'on public procurement and certain works, supply and service contracts';

— those granted to social utility or non-profit organisations active in the following sectors: healthcare, care for the elderly, education, reception and guidance care for the physically disabled, sheltered workshops, public health insurance mutual organisations and homecare services linked to them in the form of an ASBL [non-profit organisation], recognized credit societies, [...], trade unions and allied organisations, NGOs, employers' federations, joint social funds and pension funds taking the form of an ASBL, other large organisations undertaking social activities at national or regional level (for example: [...]).

Strategic Plan: The Belfius financial plan, as notified to the European Commission on 26 November 2012 and any subsequent changes notified before the Effective Date.

Subsidiary: Any corporate entity as defined, in respect of a specified person or entity, in Article 6 of the Belgian Companies Code, over which Belfius exercises exclusive or joint control ('*subsidiary*' and '*parent company*' respectively).

**Commitments***Duration*

4. Subject to any other duration mentioned in individual commitments, the Commitments listed below apply until 31 December 2014.

*Reducing operating costs*

5. In accordance with the Belfius Strategic Plan, Belfius Banque SA undertakes to limit its absolute level of operating expenses and costs — i.e. its personnel and other expenses —

— for 2013 to a maximum of EUR [1 300-1 450] million; and

— for 2014 to a maximum of EUR [1 250-1 400] million.

Belfius Banque SA aims to reduce its absolute level of operating expenses and costs — i.e. its personnel and other expenses — from EUR [1 350-1 500] million in 2012 to EUR [1 200-1 350] million by 2016.

*Reducing trading activities*

6. Belfius will cease its proprietary trading activities. This means that Belfius will only carry out transactions that either (i) are necessary to receive, transmit and carry out its customers' orders to buy and sell, or (ii) help Belfius perform liquidity or asset and liability management. Belfius will not create positions on its own account, unless they arise because Belfius, for example, does not carry out certain customer orders straight away. Positions of this kind and the liquidity or asset and liability management positions will only be taken if they do not jeopardise the bank's own viability and/or liquidity. This is fully in line with the recommendations in the report of the 'High-level Expert Group on reforming the structure of the EU Banking sector'.

*Governance and risk-management measures*

7. Belfius will (i) pursue a prudent and sound business policy focusing on the principle of sustainability and (ii) examine the appropriateness of its internal incentive systems in the context of the legal and regulatory requirements and work towards ensuring that they do not offer any temptation to take unacceptable risks and are transparent and focused on long-term, sustainable goals.
8. Belfius will further enhance its risk and liquidity management governance. Belfius has already drawn up new guidelines to ensure prudent liquidity management in the future, including: (i) clear targets for business lines regarding balance sheet utilisation, deposit gathering, and quality of collateral generated; (ii) implementation of clear incentives (liquidity cost or bonus) for business lines. Belfius will further improve processes and governance for a centrally steered treasury with clear targets and guidelines.

*Dividend payment ban*

9. Belfius will not distribute any form of dividend in respect of its shares.

*Coupon payment ban*

10. Belfius will not make any discretionary early repayment or payment of coupons on instruments (i) issued by Belfius before 20 October 2011, (ii) held by persons or entities other than Belfius and (iii) the payment or exercise of which is discretionary by virtue of the contractual provisions covering these instruments.

This commitment:

(i) is without prejudice to the operations which Belfius is legally required to undertake;

(ii) will be revised in the event of significant changes in the definition of the prudential own funds and accounting standards applicable to Belfius, subject to prior agreement of the Commission.

*Acquisition ban*

11. Belfius will not acquire any stake in any enterprise. This covers both enterprises which have the legal form of a company and packages of assets which form a business. Despite this ban, Belfius may acquire stakes in enterprises provided that the purchase price paid for any acquisition is 0,01 % or less of Belfius' balance sheet at the date of the Decision and that the cumulative price paid for all such acquisitions over the whole restructuring period is 0,025 % or less of its balance sheet size at the date of the Decision. The ban does not cover acquisitions that (i) take place in the ordinary course of banking business in the management of existing claims in respect of ailing firms or (ii) that are made in the context of private equity business.

*Advertising ban*

12. Belfius will refrain from mass marketing campaigns invoking the historic State aid measures as an advantage in competitive terms and Belfius will not advertise the fact that it is State-owned nor make any reference to any State support received in its communications with existing or potential customers and/or investors. Notwithstanding that ban, Belfius may refer to the fact that it is State-owned and to any other State support it has received whenever such reference is required under applicable legislative or regulatory provisions.

*Remuneration of essential bodies, employees and agents*

13. Belfius will comply with the legislation in force on wages and remuneration, in particular the caps on remuneration applicable to banks. Belfius will respect the conditions that the Commission imposes on this point in its implementation of the State aid rules.

Belfius will also endeavour to make the best possible use of public funds in so far as personnel wages and remuneration are concerned. Belfius will in particular endeavour to limit the amount of severance allowances to the legal minimum, while retaining the flexibility needed to achieve the objectives of the Strategic Plan.

Belfius will forward proposals to the Commission in respect of a reduction of the group's general and personnel costs if, at the end of the accounting year in question, (i) the net banking profit is more than 20 % lower than the target set; or (ii) the gross operating result is more than 25 % lower than the target set; and in all cases if (i) the profit and loss account records losses; or (ii) the entity no longer complies with the minimum regulatory requirements in force in respect of solvency. This commitment will be effective only for the annual accounts for 2013 and 2014.

*Cap on Public Banking loans*

14. Belfius undertakes to limit its new production of Public Banking loans to a maximum of EUR [2,5-5] billion for 2013 and EUR [2,5-5] billion for 2014. If market growth exceeds the normal annual growth rate of 4 % in the market for Public Banking loans in Belgium in 2013, this amount may be reviewed subject to the prior agreement of the Commission. For each 0,1 % of additional market growth in 2013, above the normal annual growth rate of 4 %, the cap on new production will be increased by EUR [25-75] million in 2014.

*Cap on life insurance production*

15. Belfius Assurance SA undertakes to limit its new production in gross earned premiums for life insurance products to a maximum of EUR [0-2,5] billion in 2013 and a maximum of EUR [0-3] billion in 2014. If market growth exceeds the normal annual growth rate of 4 % in the market for life insurance products in Belgium and Luxembourg in 2013, this amount may be reviewed subject to the prior agreement of the Commission. Per each 0,1 % of additional market growth in 2013, above the normal annual growth rate of 4 %, the cap on new production will be increased by EUR [0-50] million in 2014.

**Independent trustee***Reporting*

16. Within 30 working days of the end of each year and half year or as otherwise agreed with the Commission, the independent trustee will submit a draft written report in English or French to the Commission and the Belgian authorities, giving each the opportunity to submit comments within 10 working days. Within 10 working days of receipt of the comments, the independent trustee will prepare a final report and submit it to the Commission, taking into account, if possible and at his sole discretion, the comments submitted. The independent trustee will also send a copy of the final report to the Belgian authorities. The independent trustee may ask the Commission for authorisation to use other timings if operational workload renders timely delivery of reports unworkable.

17. The report will cover the independent trustee's fulfilment of his obligations under his mandate and compliance with the above Commitments.

*Appointment procedure for the independent trustee*

18. An independent trustee will be appointed who is to report on a six monthly basis to the Commission on compliance with the Commitments listed in points 4 to 14. The independent trustee will be independent, possess the necessary qualifications and will not be subject to a conflict of interests throughout the exercise of his mandate.
19. No later than one month after the adoption of this Decision, the Belgian authorities will submit a list of one or more persons whom they propose to appoint as independent trustee(s) to the Commission for approval. The Commission will have discretion to approve or reject the proposed trustee(s) on the basis of the criteria listed in point 3. If the Commission rejects all the proposed trustees, the Belgian authorities will, within one month of being informed of the rejection, propose new candidates who again need to be approved or rejected by the Commission. If all the further proposed trustees are rejected by the Commission, the Commission will nominate an independent trustee, whom the Belgian authorities will appoint in accordance with a mandate approved by the Commission.

*Functions of the independent trustee*

20. The independent trustee will undertake the duties incumbent upon him in order to ensure compliance with the Commitments. The Commission may, at its own initiative or at the request of the independent trustee, give any orders or instructions to the independent trustee in order to ensure compliance with the conditions and obligations attached to the Decision.
21. The independent trustee:
  - (i) will propose in his first report to the Commission a detailed work plan describing how he intends to monitor compliance with the obligations and conditions attached to the Decision;
  - (ii) will monitor compliance with the conditions and obligations attached to the Decision;
  - (iii) will provide the Commission and the Belgian authorities with the written report within 50 working days from the end of each year and half-year.

*Replacement, discharge and reappointment*

22. If the independent trustee ceases to perform his functions pursuant to the Commitments, or for any other good cause, including the exposure of the independent trustee to a conflict of interest:
  - (i) the Commission may, after hearing the independent trustee, require the Belgian authorities to replace the independent trustee; or
  - (ii) the Belgian authorities, with the prior approval of the Commission, may replace the independent trustee.
23. If the independent trustee is removed pursuant to point 22, he may be required to continue in his function until a new independent trustee is in place to whom the independent trustee removed has effected a full handover of all relevant information. The new independent trustee will be appointed in accordance with the procedure referred to in point 18.
24. Over and above the removal according to point 22, the independent trustee will cease to act as independent trustee only after the Commission has discharged him from his duties after all the Commitments with which the independent trustee has been entrusted have been complied with.

## ANNEX III

**DMA COMMITMENTS BY THE FRENCH REPUBLIC****Capital holding in the Nouvel Etablissement de Crédit ('NEC') and Dexia Municipal Agency ('DMA')**

1. At the latest by 31 January 2013, Dexia Crédit Local ('DCL') will dispose of 100 % of the capital of the Nouvel établissement de crédit ('NEC') to the State, the Caisse des dépôts et consignations ('CDC') and La Banque Postale ('LBP') (together, 'the Shareholders') at a market price of EUR 1 corresponding to the purchase price of DMA and the price of its equipment and resources transferred by DCL, or made available to the NEC, at the latest on the date of the disposal of DMA.
2. LBP may increase its holding in the capital of the NEC at a market price determined by independent experts using methods commonly accepted in comparable cases so that its holding in the capital of NEC is ultimately equal to the proportion of new production-related outstanding debt in DMA's cover pool.

**Activities of DMA, the NEC and the joint venture constituted by the CDC and LBP ('the JV')**

3. The JV's scope of activity will be limited to the financing of French local authorities and French public health establishments. The loans marketed will initially be recorded on the balance sheet of LBP then assigned to DMA provided that they comply with DMA's commitment policy <sup>(1)</sup>. Loans not complying with the criteria laid down by this commitment may not be assigned to DMA.
4. The JV's product offer will be simple and made up of 'plain vanilla' products with simple and transparent tariff methods; it will comply with the conditions set out in the approved memorandum notified to the Commission on 8 October 2012 (attached as **Annex IV(b)**).
5. Financing will be offered to French local authorities and public health establishments under market conditions that are not more attractive than those offered by other commercial banks; in particular, the JV will not be allowed to feature offers more attractive than market practice in its commercial advertising; it will be up to the monitoring trustee to decide how compliance with this commitment can be monitored.
6. The activities of the NEC, DMA and the JV are authorised for a period of 15 years, with the proviso that, at the end of this period and without prejudice to the commitment in point 7 below: (i) for local authority financing activities, this authorisation will be renewed under the same conditions provided that there is still a market shortfall; the Commission has already noted structural problems on this market which are likely to persist for the medium and long term; (ii) for French public health establishment financing, the renewal of this authorisation will be conditional on proof of a market shortfall.
7. After three years from the final decision, the French authorities may ask the Commission to verify that the global business plan of the NEC, DMA and the JV complies with the profitability standards of a commercial bank with a view to their conversion, subject to authorisation by the Commission, into a commercial bank.
8. The contractual service provision links between the Dexia Group and DMA, the NEC and the JV will be restricted to those set out in the memoranda of 8 and 11 October 2012, annexed to this Decision (**Annexes IV(c) and IV(d)**), and will be invoiced at market prices.
9. For five years from the final decision, DMA, the NEC and the JV will not acquire or take holdings in an enterprise. This also applies to enterprises which have the legal status of a company and to packages of assets forming an enterprise.

<sup>(1)</sup> DMA's commitment policy is intended to limit the risk represented by the loans on its balance sheet. By way of example, a loan complying with commitments 4 and 5 of this Annex might nevertheless not comply with DMA's commitment policy if DMA's total exposure to the customer concerned was considered to be too substantial, or if the global debt of the customer concerned exceeded a given proportion of this customer's revenue.



10. With the exception of the dividends paid by DMA to the NEC, DMA, the NEC and the JV will not distribute any form of dividend on their shares up to 31 December 2015. DMA, the NEC and the JV will not pay coupons, unless contractually obliged to do so under a commitment entered into prior to 14 December 2012.
11. The State will ensure that DMA, the NEC and the JV comply with the legislation in force on wages and remuneration, and in particular with the remuneration ceilings applicable to banking institutions and with the restrictions directly linked to the direct or indirect holding by the State of control of DMA, the NEC and the JV. The State undertakes to ensure that DMA, the NEC and the JV scrupulously respect the conditions that the Commission imposes in this respect when implementing the rules on State aid.

In this respect, the French authorities will make the best possible use of public funds as regards the wages and remuneration paid to employees of banking institutions subject to a restructuring plan. The State will in particular ensure that the business plan provided in **Annex VII** is scrupulously implemented. The State will also notify the Commission of proposals to reduce the general and staff costs of DMA, the NEC and the JV if, at the end of the accounting year in question: (i) the margin is over 20 % lower than the objective set in the business plan provided in **Annex VII**; (ii) the net profit (excluding provisions) is more than 25 % lower than the set objective; (iii) losses are to be recorded in the profit and loss account; or (iv) DMA, the NEC or the JV no longer comply with the minimum regulatory ratios in force. This commitment will take effect from the 2013 annual consolidated accounts.

#### **Management of the existing outstanding debts on DMA's balance sheet**

12. Loans recorded on DMA's balance sheet which have not been granted to French public health establishments or French local authorities will be placed in run-off management: no new loans will in particular be granted to customers outside the scope of activity defined above (point 3).
13. Loans granted to French local authorities or French public health establishments classified outside the Gissler Charter or rated as E3, E4 or E5 in the Gissler Charter or having a score of 11 or more in Dexia's internal scoring ('**Sensitive Loans**') will be subject to desensitisation by the NEC, financed by DMA. This desensitisation is intended to reduce the allied risk and may go together with new production.
14. The JV will not market financing to customers holding Sensitive Loans or in litigation or default in respect of outstanding loans on DMA's balance sheet.
15. DMA will refinance the loans granted by the JV and will refinance existing outstanding amounts. From the date on which the disposal of DMA is implemented, DMA's balance sheet will be subject to special management in connection first with the Sensitive Loans, whose global volume is estimated at EUR 9,4 billion, and second with the run-off management of loans falling outside the activities of the development bank defined in point 3 of these commitments, whose global volume is estimated at EUR [20-40] billion on 30 September 2012.

#### **Provision of liquidity for the NEC and DMA**

16. The Shareholders undertake to provide the NEC with the necessary liquidity for the NEC and DMA. This liquidity will be provided under the conditions set out in the approved memorandum notified to the Commission on 8 October 2012 and annexed hereto (**Annexe IV(a)**). In the case of the CDC, these contributions will be capped at EUR 12,5 billion.
17. Dexia SA and DCL will cease to provide any liquidity to DMA and the NEC as soon as DMA's disposal is finalised.

#### **Capital level of the NEC and DMA**

18. The Shareholders undertake to maintain the level of capital needed to cover any losses that may take place in respect of DMA's existing portfolio. Any increase of DMA's capital must be notified to the Commission in compliance with the rules on the implementation of Articles 107 and 108 of the Treaty on the Functioning of the European Union.

**Appointment of a monitoring and implementation trustee**

19. A trustee responsible for monitoring the commitments will act for and on behalf of the Commission and may for that purpose put any question to the Shareholders, DMA, the NEC or the JV and obtain any document from them. He will be appointed as follows:
- the State will submit a list of one to three persons, selected by agreement with the CDC and LBP, for appointment as monitoring trustee(s) responsible for verifying the application of the commitments listed in this Annex, at the latest one month after the Commission's final decision, for prior approval by the Commission;
  - the monitoring trustee must possess the required competences and must not be subject to a conflict of interest during his term of office;
  - the Commission may either approve or reject the proposed candidate(s). If the Commission rejects the proposed candidate(s), the State will propose, within one month of notification of the rejection, from one to three new candidates who must also be approved or rejected by the Commission;
  - if all the candidates are ultimately rejected by the Commission, it will appoint a monitoring trustee;
  - the costs of the services of the monitoring trustee will be borne by the NEC and the JV.
20. The remit of the monitoring trustee will be as defined below:
- his term of office will last two years from the final decision, and may be renewed if the Commission deems it necessary;
  - during the term of office of the monitoring trustee, the Commission will have permanent unrestricted access to the information needed to implement its decision. It may directly contact the NEC, the JV or the Shareholders to obtain explanations and clarifications. The NEC, the JV and the Shareholders will cooperate fully in any verifications that the Commission or, where appropriate, the monitoring trustee may request;
  - as regards compliance with commitment 5 above, the State will inform the monitoring trustee every six months of the information available to the Banque de France on the terms and conditions offered by the main commercial banks for the financing of French local authorities and French public health establishments. The monitoring trustee may check that, in respect of a sample of loans granted by the JV, it has not offered financing terms and conditions that are much lower on average than those offered by all the other commercial banks. If it were to prove that the financing terms and conditions offered by the JV were, in a given six-monthly period, much lower than those offered by all the other commercial banks, the JV will amend its financing conditions in the following six months in order to comply with commitment 5 above.
  - the monitoring trustee will provide the Commission with a yearly report on the implementation of the above commitments.
21. For the whole period of authorisation of the development bank activities as set out in these commitments, the State will provide the Commission with any information that it may require in order to monitor compliance with these commitments. At the end of the term of office of the monitoring trustee, the State will also submit to the Commission a final annual report on compliance with these commitments.
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## ANNEX IV(A)

**MECHANISM FOR DETERMINING THE FINANCING COST OF THE NEC/DMA**

For each issue, the costs of the long-term financing provided to the NEC by its shareholders at market price will be calculated from the financing costs, for identical maturities and currencies, recorded for a panel of credit institutions agreed by the NEC and its shareholders (the '**Parties**') (the '**Panel**').

The Panel will be decided from the list of French banks contributing to the calculation of the Euribor, excluding institutions considered by the NEC and its shareholders (unanimously) to be non-comparable with the NEC/DMA in terms of their long-term ratings (and prospects) and risk profiles (type of activity, geographical exposure, prudential ratios, etc.). The panel will as far as possible be formed by a minimum of three banks.

The cost of financing the NEC/DMA will be equal to the mean costs of financing the institutions forming the panel.

Similarly, the cost of the short-term financing contributed to the NEC by its shareholders at market price will be equal to the average financing costs of the institutions forming the panel.

This mechanism makes it possible to ensure that DMA does not benefit from financing at privileged rates because of its public shareholding, for two reasons:

- DMA's financing, as far as covered bonds are concerned, comes directly from the market and the financing provided by DMA's direct shareholding (like other mortgage lending companies) will be limited to overcollateralisation;
- All mortgage lending companies are necessarily attached to credit institutions benefiting from large-scale access to liquidity (customer deposits or far-reaching market access). They are therefore financed at the refinancing cost of their direct shareholders. The rating of a 'stand-alone' NEC cannot be calculated as it necessarily has to be attached to a credit institution able to draw on significant financial resources, and therefore in all likelihood a major French bank.
- Interposing the NEC between DMA and its final shareholders provides a rating equivalent to that of the major French banks. The mechanism adopted therefore makes it possible to reproduce DMA's financing conditions as though it were affiliated to a bank and does not benefit from privileged rates.

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## ANNEX IV(B)

**THE PRODUCT OFFER BY THE LBP/CDC JV****1. Nature of the loans marketed by the JV**

The medium- to long-term credit offered by the joint LBP/CDC subsidiary to French local authorities will be in keeping with the principles on which LBP bases the marketing of its products and services to all its customers, namely:

- a simple offer,
- a transparent offer,
- an offer meeting its customers' needs.

The product offer will also fall within the regulatory framework and will be based on the existing recommendations, namely:

- the Interministerial Circular of 25 June 2010;
- the Charter of Good Conduct (or 'Gissler Charter');
- the report by the Bartolone Parliamentary Committee.

The joint LBP/CDC subsidiary will therefore give priority to 'plain vanilla' loans in order to meet customers' identified needs, namely simplicity, diversification and protection against adverse market trends. This offer will exclude leverage-effect products, sloped products, currency products, complex structured products with a cumulative structured effect and any product exposing customers to capital risks.

In all cases, the offer will be in line with customers' characteristics and size and all new products will be discussed with the Prudential Control Authority.

Steps will also be taken to provide customers with clear documentation presenting products in accordance with the Gissler Charter classification.

**Table of Gissler Charter risks**

Underlying indices		Structures	
1	Eurozone indices	A	Simple fixed rate. Simple floating rate. Swap of fixed rate for floating rate or vice versa. Swap of structured rate for floating rate or fixed rate (one way). Simple floating rate with cap or tunnel
2	French inflation or Eurozone inflation indices or difference between these indices	B	Simple barrier. No leverage
3	Eurozone index differences	C	Swaption
4	Non-Eurozone indices. Differences between indices one of which is a non-Eurozone index	D	Multiplying factor of up to 3; Multiplying factor of up to 5 (cap)
5	Non-Eurozone index differences	E	Multiplying factor of up to 5

The Gissler charter is an analysis grid structured around two criteria: the underlying index and the structure applied. It formulates a growing classification of risks accessible to local authorities.

The JV will limit the range of products offered within the Gissler classification. This offer will be limited, depending on the customer segments in question, to the following products:

- products of category 1A,
- French inflation-linked products and prospectus A of category 2A,
- category 1C swaption purchase.

For information, the Conseil de normalisation des comptes publics [Public Sector Accounting Standards Council], in its opinion of 3 July 2012 on the supply of structured products, asked local authorities to make a clear distinction in their accounts between simple and complex products. Borrowing or swaps ranked below 3 or C in the Gissler Charter are assumed to be complex. The JV is therefore more restrictive as it also excludes 1B products, swaptions (1C), and products of category 2 (excluding French inflation-linked products or prospectus A) and 3.

On the underlying index:

The JV will limit its offer to categories 1 and 2 of the Gissler Charter, i.e. the Eurozone and French inflation indices. These are products that are normally accepted and understood by those involved.

- The Euribor is the reference index for interbank transactions,
- French inflation and prospectus A (whose calculation formula depends on the Euribor and inflation) are commonly used by the French State under both the fungible Treasury bond programme and distributed prospectus A indexed regulatory loans.

These indices are tools for simplifying and diversifying risks and are useful in controlled risk management. Differences between the inflation indices of the Eurozone or the inflation indices of other countries of the Eurozone cannot be used in category 2.

On the structure:

The JV will limit its offer to categories A and C representing limited risks, with no multiplying effect.

- Category A includes unconditional fixed or floating rate products with no multiplying effect. These are simple fixed or revisable rates.
  - Category A also includes simple options purchased and sold (cap or tunnel) by customers in order to provide them with protection against an adverse market rise.
  - Within category A, therefore, the profile of the rate paid by the customer is known in advance. It may be either a fixed rate known at set up, or a floating rate fully replicating trends in the underlying index, or a cap or tunnel variable rate.
- Category C involves the set up of swaptions. This entitles the borrower to choose to set up a rate known in advance on a specific date. Only swaption purchase by the customer will be allowed. Swaption sale by customers is not part of the offer.
  - Example: the customer borrows at a revisable rate up to a date T. On date T, the customer may convert his floating rate into a rate X (known when setting up the contract) if he finds the terms attractive. Otherwise, he gives up his right and continues with indexing at a revisable rate. (the customer has purchased the option).

By limiting the products offered to the categories mentioned above, the JV intends to limit the range of products marketed while offering protection, simplicity and transparency to local authority borrowers.

These products will not, moreover, be available to all customers. They depend on the size of authorities as shown in the following table:

Customer segmentation	Number	Product
Local authorities < 5 000 inhabitants Public hospitals	47 614	1A
Local authorities > 5 000 and < 20 000 inhabitants	2 612	1A + inflation index and prospectus A
Local authorities > 20 000 habitants	1 244	1A, 1C (excluding option sale) + inflation index and prospectus A

## 2. Term of the loans granted by the JV

The term of the loans offered will not exceed 15 years, unless it can be linked to a longer refinancing resource, in particular through the issue of covered bonds having a corresponding maturity.

In all cases the term of customer loans is subject to DMA's capacity to refinance itself for similar terms.

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## ANNEX IV(C)

**TERMINATION OF RESIDUAL LINKS BETWEEN DEXIA AND THE NEC (APART FROM IT PRODUCTION)**

This memorandum is intended to detail the practical methods to be used to terminate operational links between Dexia and the new NEC/DMA structure. It examines all the residual links initially planned and summarises how they are to be terminated.

Terminating these links with no major operational risk may take up to six months from the closing date of the DMA disposal operation, bearing in mind all the projects taking place for the orderly resolution of the Dexia Group, and the fact that Dexia and the NEC will need time to recruit and train new teams before implementing these provisions. This recruitment process will be particularly problematic and will take time to implement given the specific nature of the profiles sought and the situation in which Dexia finds itself.

**1. Services from Dexia to the NEC**

It is planned to terminate all of Dexia's services to the new NEC/DMA structure. These include the bond portfolio, commercial monitoring of non-French loans, risks and audits:

- **Bond portfolio** — Dexia's market teams are no longer to offer consultancy to DMA in relation to DMA's bond portfolio. The NEC will be directly responsible for this monitoring and may, if necessary, call on the services of another market player to oversee the bond portfolio and advise DMA on the operations to be carried out. — **These services will be terminated within six months. The teams likely to be located within the NEC do not at present possess this competence. Time for recruitment (selection and appointment) and training therefore needs to be factored in.**
- **Commercial monitoring of non-French loans** — there are no longer any plans for non-proactive management by Dexia of DMA's non-French loans. The NEC will directly manage these assets in run-off. — **These services will be terminated within three months.**
- **Credit risk analysis** — the new NEC/DMA structure will no longer call upon Dexia's services for credit risk analysis in respect of its non-French debt. The NEC's credit risk teams will have to be supplemented in order to include these competences. The net dyssynergy is zero for the NEC Credit Risk Team (the creation of two full-time equivalents (FTEs) to manage foreign assets is to be offset by cutting two FTEs managing French assets) — **These services will be terminated within six months.**
- **In-house scoring systems** — the few US corporate and project counterparties in DMA, which were to be scored by Dexia's in-house scoring systems, will be brought within the standard method and monitored directly by the NEC's credit analysts. Most of DMA's foreign assets are formed by Italian public sector assets. One additional FTE will be needed for the NEC's Model Management team in order to follow up Italian scores. — **These services will be terminated within six months.**
- **Valuation of securities** — the new NEC/DMA structure will not call upon Dexia's teams to value the securities on its balance sheet but will draw on its own competences which are to be set in place. — **These services will be terminated within six months.**
- **Audit** — there is no longer to be any resource sharing in respect of the audit recommendation follow-up tool. Each structure will have its own resources. — **These services will be terminated within three months.**

**2. Services from the NEC to Dexia**

Similarly, it is planned to terminate services from the NEC to Dexia (apart from IT production). The links initially planned and ultimately abandoned include credit risk analysis and the in-house scoring system for French local authorities. Dexia will set up its own resources for these matters and will supplement its teams and organisation.

- **Credit risk analysis** — Dexia will no longer call upon the NEC's teams of French local authority credit risk analysts. Two separate teams will be set up with an overall dyssynergy of nine posts (see details in Annex 1).

- **In-house scoring system** — the French local authority in-house scoring system will not be pooled, as initially planned, but duplicated. Dexia and the NEC will therefore have separate and independent in-house scoring systems. This should make it possible to prevent the expected worsening of Dexia's in-house scoring system calibration from affecting production by the new NEC/DMA structure and resolves the operational and regulatory problems raised by the use and updating of the same system by two banks with no capital link. A dyssynergy of 13 FTEs is forecast (11 FTEs at Dexia and two FTEs at the NEC — see details in Annex 1).

**These services will be terminated within six months.**

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## ANNEX 1

**IN-HOUSE SCORING SYSTEMS****— Principles on which the planned organisation is based**

In view of the recent decision and guidelines on the positioning of desensitisation, Dexia's responsibility for all risks on this portfolio and the lack of capital links between Dexia and the NEC, there are no longer any plans for the in-house scoring systems (ISS) for the local public sector to be pooled by the new NEC/DMA structure and Dexia, and services in connection with this process supplied by Dexia to the NEC and vice versa are to be terminated.

Dexia and the NEC will then have their own fully independent credit analysis, model management, modelling and validation teams covering all of each entity's own activities.

This proposed organisation is based on the following observations:

- Risk of worsening of the ISS calibration in view of the increase in defaults within Dexia, which would also have an impact on DMA's new production; it does not seem logical to make DMA bear the consequences of any downgrading of Dexia's portfolio.
- Operational difficulty of maintaining joint ISS in view of the lack of any capital link:
  - If Dexia and the new NEC/DMA structure were to keep joint ISS, both entities would have to provide all the information needed to maintain these models (defaults, loss, etc.).
  - The lack of any capital link or joint policy would increase the operational problems raised by the maintenance of a joint database. Unless there were a very high-quality joint database, it would be impossible to maintain the ISS and they would not then be accepted by the regulators.
- Need for a team of analysts specific to Dexia. Dexia is bearing the whole credit risk on the sensitive portfolio and it is therefore impossible to keep a joint Dexia and NEC team using two different types of ISS for the same counterparties.

**— Main consequences for Dexia and the NEC****— HR impact**

Two French public sector credit analyst teams will be set up, one for the NEC and the other for Dexia. As a result, the work of the current analyst team may well be greatly circumscribed: the NEC team will in practice focus on French local authorities (and will, to a lesser extent, manage certain international local authorities) but will analyse fewer 'specialist market' players which are the most interesting cases to analyse. In these circumstances, there could well be resignations.

It will not be possible to draw to any significant extent on current in-house competences to cover the increase in the number of analysts needed to fill the NEC and Dexia teams. These competences are also difficult to find on the market.

**— Risk dyssynergies**

These are at three levels:

- As Dexia and the NEC are not pooling the ISS and therefore the user teams (analysts), each entity will have to have its own teams responsible for developing and maintaining models (model management, modelling and default centre), validating them (validation of methods as well as operational validation and quality control) and using them (credit analysts). Dexia's Model Management team therefore requires a further six FTEs, the Validation and Quality Control team a further two FTEs, the Modelling team a further one FTE and the Defaults team a further two FTEs, i.e. 11 additional FTEs for Dexia. In the case of the NEC, one additional FTE should be allocated to Model Management and one additional FTE to Validation and Quality Control, i.e. two additional FTEs.

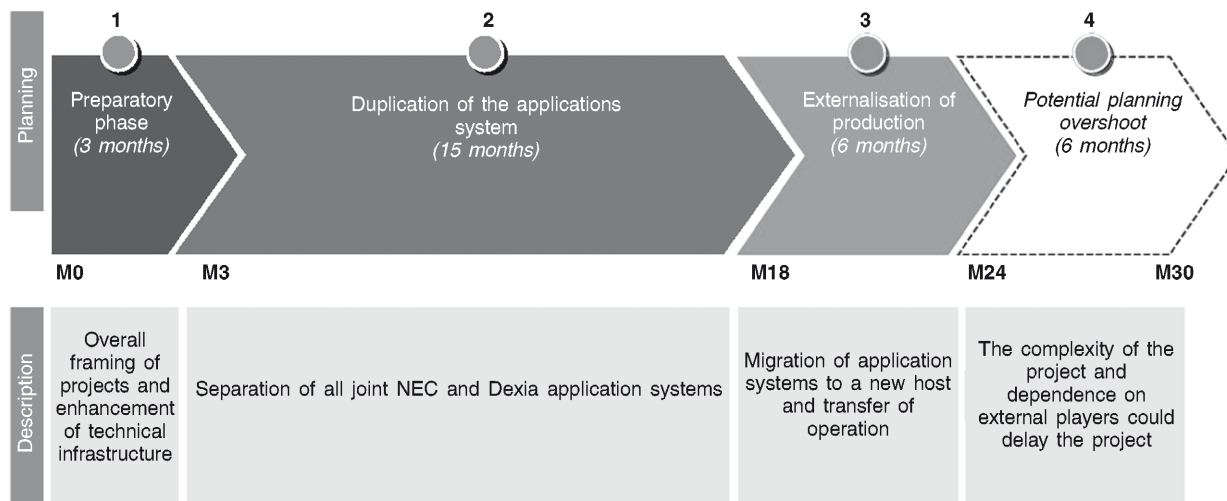
- The termination of mutual credit risk analysis services between Dexia and the NEC (French public sector credit risk analysis by the NEC for Dexia and international counterparty credit risk analysis by Dexia for the NEC) will entail a staff increase of nine FTEs at the NEC).
  
  - Lastly, the termination of the bond valuation service by Dexia means that the NEC requires one additional FTE.
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ANNEX IV(D)

SEPARATION OF THE IT SYSTEMS OF DEXIA AND THE NEC

This memorandum provides the details requested to justify the period of 24 to 30 months considered necessary for the complete separation of the IT systems of the NEC and Dexia. As a reminder, when the works described are completed, the NEC's applications system will be completely independent from Dexia. The same goes for application operation and technical infrastructure.

The four main stages needed for the separation of the IT systems of the NEC and Dexia were described in the memorandum of 26 September and are as follows:



1. Preparatory phase

As specified in the memorandum of 23 September 2012, this phase will have two separate objectives: to draw up a very detailed strategic timetable for the works to be carried out and to enhance technical infrastructure so that duplicate applications can be hosted.

The comments set out in this memorandum are in advance of the separation plan which will have to be drawn up during this preparatory phase. They have yet to be confirmed by a detailed study.

2. Duplication of the application system

The information given below helps to explain why a minimum of 15 months (excluding any other project) is needed successfully to separate the application systems of Dexia and the NEC. This is an initial analysis which will have to be confirmed, supplemented and specified when the duplication process is being decided upon in the **first three months** of 2013.

According to an initial survey, the duplication process concerned **169 applications**, of the 248 applications making up Dexia's current IT system (see Annex 2). In order to assess the likely workload, the applications to be duplicated can be grouped into three categories depending on their level of functional and technical complexity:

- (i) Dexia's 12 core IT systems applications
  - Commercial: CRM tool (Reflex), offer management (Phoenix), financial analysis (Safir).
  - Operations: industrial credit management (SAB) and credit infocentre (Edouard).
  - Market: market operations management (OpenLink) and monitoring of margin calls/collateral management (Algorithmics).

- Finance: accounting system (ROC), ALM management (RiskPro and centralised asset management) and reconciliation (Intellimatch).
  - Risks: credit risk analysis (Fermat Basel II).
- (ii) 14 major applications because of their wealth of functions, their very specific nature and their links with other applications:
- Commercial: commercial infocentre (EDC), customer profiling (Profil).
  - Operations: credit management (Bamaco), purchasing tool (OASYS), directory and clearances (Habilis), project management (Clarity).
  - Markets: cash and liquidity management (Cahors), management of pools and BdF remittances (A3G).
  - Finance: accounting spreads (Image), regulatory statements (Evolan).
  - Risks: in-house scoring systems (Cléo, SatPub and DirCor), rate/currency database (SmartCo).
- (iii) 143 minor applications, a list of which is annexed.

For each of the 169 applications, the duplication process needs to be broken down into the following stages:

- (a) Assessing needs and collecting specifications for each application (duplication, deletion and archiving rules, review of rights and profiles, etc.).
- (b) Developing duplication programs and creating the necessary environments, in tandem with the publisher of each software package.
- (c) Unitary technical and functional testing of the proper operation of each of the two systems set up in this way.

The workload that this unitary process entails may be assessed as an average flat-rate that depends on the complexity involved. On the basis of experience with the Dexia/Belfius separation programme, it seems realistic to plan for 750 man-days for the core IT system applications, 250 man-days for the major applications and 30 man-days for the 'minor' applications. The **overall duplication workload can therefore be assessed at 16 790 man-days**. In addition to this unitary work and taking a batch delivery approach, it is crucial to include, for each of the four batches planned:

- (a) The development of temporary interfaces which must make it possible for own applications and shared applications to coexist within each of the IT systems being built,
- (b) The conduct of a phase of global integration testing of the proper overall operation and stability of each IT system at this interim stage.

For each batch, these works represent an estimated workload of 500 man-days for the creation of the interfaces and 500 man-days for the global testing, i.e. **a total of 4 000 man-days for all batches**.

In view of the overall work to be carried out, which we estimate at this stage to be around 20 800 man-days, and the IT capacity which can be mobilised for the successful completion of this stage of duplication of applications, a period of 15 months would seem to be an absolute minimum if the whole capacity of the IT systems division is channelled into this programme.

As a reminder, the total capacity of the IT teams that can be mobilised for these projects is around 18 000 man-days per year, a significant proportion of which continues to be taken up by the Belfius separation projects (7 000 man-days are still needed up to June 2013) and LBP servicing (a minimum of 2 000 man-days to be provided over this period). As a result, it would appear difficult fully to duplicate the IT system in less than 20 to 21 months.

### 3. Production migration phase

The time needed for this phase of migration of Dexia's production to an external partner is very dependent on the resources that this partner can mobilise and the methods used for its successful completion (hosting, transfer of infrastructure, training of operators, potential pooling, etc.).

It should also be borne in mind that the very wide-ranging nature of Dexia's IT system (see the number of applications discussed above) and the various players (Thalès, DTS and IT Production DCL) to be coordinated mean that this operation is particularly complex. The period of six months decided for this purpose therefore seems very ambitious.

In conclusion, on the basis of the information presented in this memorandum, we estimate that, in total, **a period of 30 months is needed** to make the IT systems of Dexia and the NEC fully independent of one another.

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