



## **Freedom of Investment Process**

### **INVENTORY OF INVESTMENT MEASURES TAKEN BETWEEN 15 NOVEMBER 2008 AND 31 AUGUST 2009**

*7 October 2009*

The "Freedom of Investment" (FOI) process hosted by the OECD Investment Committee has stepped up monitoring of investment policy developments and will be issuing reports on investment measures throughout 2010.

This report was prepared for the 11<sup>th</sup> Freedom of Investment Roundtable held in October 2009.

Earlier findings were presented at the OECD Ministerial Meeting in June 2009 and fed into a joint WTO-OECD-UNCTAD report to the G20 Summit in Pittsburgh in September 2009. More information about the FOI process is available at [www.oecd.org/daf/investment/foi](http://www.oecd.org/daf/investment/foi).

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## INTRODUCTION

1. The *Tour d'horizon* is a permanent feature of Freedom of Investment (FOI) Roundtables. It provides an opportunity for Roundtable participants to monitor, share information, express views and make recommendations on recent investment policy developments.
2. These discussions are based on a variety of information sources:
  - The participating countries themselves provide information in the form of written submissions or during presentations to the Roundtables.
  - The Secretariat of the OECD Investment Committee has been mandated to track investment policy changes in order to inform discussions at the FOI Roundtables. The present inventory of investment measures provides descriptions of recent investment or investment-related actions by 47 countries and the European Union. These actions are of three types: 'investment measures'; 'investment measures relating to national security' and 'emergency and related measures with potential impacts on international investment'. The Inventory also provides a brief summary of the findings. The inventory uses the same methodology as the report sent by the Roundtable to the 2009 Meeting of the OECD Council at Ministerial Level and the joint WTO-OECD-UNCTAD report to the G20 Leaders' Meeting in Pittsburgh in September 2009.

## INVENTORY OF INVESTMENT MEASURES TAKEN BETWEEN 15 NOVEMBER 2008 AND 31 AUGUST 2009

3. By adhering to the OECD investment instruments, governments have committed themselves to open, non-discriminatory investment policies. At the London summit on 2 April 2009, G20 leaders reaffirmed their “commitment made in Washington: to refrain from raising new barriers to investment or to trade in goods and services,” and pledged to “minimise any negative impact on trade and investment of [their] domestic policy actions including fiscal policy and action in support of the financial sector.” They also committed to “not retreat into financial protectionism, particularly measures that constrain worldwide capital flows, especially to developing countries” and asked for quarterly reporting on their “adherence to these undertakings.”

4. Under its mandate to track investment policy developments, the Secretariat of the OECD Investment Committee prepared a status report for consideration by Ministers at the June Council Meeting at Ministerial Level (MCM).<sup>1</sup> Building on this work, the OECD developed, jointly with WTO and UNCTAD, a report to the G20 Summit in Pittsburgh on 24-25 September 2009.<sup>2</sup>

5. The present inventory of investment measures draws on the information gathered in these exercises and covers the period from 15 November 2008 to 31 August 2009. It comprises all economies that participate in the Freedom of Investment process of the OECD Investment Committee. The report uses broad definitions of international investment and of investment measures and includes: investment policy measures (involving removal or imposition of discrimination against foreign or non-resident investors); investment measures relating to national security; and emergency and related measures with potential impacts on international investment. More detailed information on the methodology is available in the section “Methodology—Coverage, definitions and sources” on p. 84 in this document.

### Summary of Findings

*The thrust of investment policy changes is, for the most part, toward greater openness and clarity.*

6. During the reporting period, 44 of the 48 economies—47 countries and the European Union— included in the present survey took some sort of policy action that will or may affect international investment (investment measures, investment measures related to national security, emergency and related measures). Table 1 summarises the information on the individual measures that are described in detail in part II of the present report. Many of the governments taking these measures indicated that the purpose was to reduce barriers to investment and improve the clarity of existing policies.

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<sup>1</sup> “Status Report: Inventory of Investment Measures taken between 15 November 2008 and 15 June 2009”, C/MIN(2009)12.

<sup>2</sup> “Report on G20 Trade and Investment Measures”, WTO, OECD, UNCTAD, September 2009.

**Table 1: Investment Measures taken between 15 November 2008 and 31 August 2009**

	Investment policy measures	Investment measures related to national security	Emergency and related measures with potential impacts on international investment		
			Financial sector	Automotive sector	Cross-sectoral measures
Argentina	•				•
Australia	•		•		
Austria			•		•
Belgium			•		•
Brazil			•		
Canada	•	•	•	•	•
Chile					•
P.R. China	•			•	
Czech Republic			•		•
Denmark			•		
Egypt					
Estonia					•
Finland			•		•
France	•		•	•	•
Germany		•	•	•	•
Greece			•		•
Hungary			•		•
Iceland			•		•
India	•		•		•
Indonesia	•				
Ireland			•		•
Israel			•		•
Italy			•		
Japan	•		•		•
Korea	•		•		•
Latvia			•		•
Lithuania					•
Luxembourg			•		•
Mexico	•		•		
Netherlands			•		•
New Zealand	•		•		
Norway			•		•
Peru					
Poland			•		•
Portugal			•		•
Romania			•		•
Russian Federation	•		•	•	•
Saudi Arabia					
Slovak Republic					•
Slovenia			•		•
South Africa					
Spain			•		•
Sweden			•	•	

	Investment policy measures	Investment measures related to national security	Emergency and related measures with potential impacts on international investment		
			Financial sector	Automotive sector	Cross-sectoral measures
Switzerland			•		
Turkey					•
United Kingdom	•		•	•	•
United States			•	•	•
European Union	•		•		•

### *Investment policy measures*

7. During the reporting period, 14 economies—13 countries and the European Union—changed policies governing inward and/or outward investment, not including policy changes related to national security (treated below). Measures include the following:

- Argentina relaxed capital controls it had introduced in 2005.
- Australia relaxed restrictions on residential real estate investment. Also, Australia liberalised screening requirements for the Foreign Investment Review Board to lower compliance costs on foreign investors. An annual indexing of investment screening thresholds seeks to ensure that the thresholds do not capture lower value foreign investment proposals over time.
- Canada changed its investment review procedure in ways that, by its own assessment, will lower the number of investments it reviews. Canada also released for public comment draft regulations amending the existing *Investment Canada Act Regulations*. These follow amendments to the *Investment Canada Act*, which changed the monetary threshold for reviews of investments to determine whether they are of net benefit to Canada. The draft regulations: define the "enterprise value" which is the basis for determining whether the monetary threshold for review has been met; eliminate lower monetary review thresholds for investments in the uranium production, financial services, and transportation sectors; and modify the information requirements for investors. Canada also concluded a series of open skies agreements.
- The People’s Republic of China: streamlined its foreign investment review process; eased restrictions on provision of financial information services by foreign institutions; and authorised two foreign banks to issue Yuan bonds in China. In the area of outward investment, it simplified approval processes for such investment and allowed Chinese companies to lend up to 30% of their equity to their overseas subsidiaries.
- France established a state-controlled Strategic Investment Fund to aid national businesses and to invest in companies that are considered of strategic value for the French or European economies.
- India relaxed restrictions in some sectors (including by changing the way it calculates the amount of foreign investment in Indian companies), but replaced automatic approval of investments in several “capped” sectors with a requirement for prior approval. India has also taken steps to facilitate investment in Indian depository receipts by foreign institutional investors and mutual funds.
- Indonesia facilitated foreign investment in residential real estate.

- Japan's amendments of the *Cabinet Order on Inward Direct Investment* and the *Ministerial Order on Inward Direct Investment* entered into force. These introduce leaner notification and reporting procedures for inward foreign direct investment.
- The Republic of Korea allows foreign-invested companies in Korea to make non-bid contracts with local governments for the use of land included in the urban development projects.
- Mexico eased the conditions under which foreign investors can apply for trusts on real estate in restricted areas.
- New Zealand amended its overseas investment rules; changes include a streamline of procedures and relaxing certain transactions from review requirements.
- The Russian Federation amended legislation in order to facilitate issuance of foreign securities on Russian exchanges and offering these securities to Russian investors.
- The United Kingdom was preparing the introduction of a requirement that UK branches of foreign banks be self-sufficient for liquidity purposes unless they obtained an exemption.
- The European Union conclude an open skies agreement with Canada.

***Decisions to not approve specific investment projects and the public debate surrounding these decisions suggest that suspicions remain about certain foreign investors.***

8. Australia's Foreign Investment Review Board accepted a number of proposals to invest in the extractive industry sector from the People's Republic of China, but imposed conditions relating to competition and corporate governance practices on three of the proposals. In a decision citing concerns about market dominance under its Anti-Monopoly Law, the People's Republic of China blocked an acquisition of a beverage company by a large foreign-controlled multinational enterprise. However, some observers questioned whether protectionist motives played a role in the decision. Dialogue on investment matters in international fora allows governments to explain their policies, air concerns about international investment, find mutually beneficial solutions to problems and enhance benefits for both home and recipient societies.

***Two countries introduced or amended investment policies relating to national security and one cited national security concerns when it imposed conditions on an investment.***

9. During the reporting period, two countries introduced or amended investment policies relating to national security:

- Canada added national security as a consideration for its investment reviews. Canada also released for public comment draft National Security Review of Investments Regulations. These follow amendments to the Investment Canada Act, which authorized the government to review investments on national security grounds. The draft regulations specify the time periods governing the national security review process and list the investigative bodies with which information can be shared.
- Germany extended the scope of its security-related investment reviews.

10. Australia's Foreign Investment Review Board (FIRB) approved a large number of investment proposals in the resource sector, three of which were subjected to conditions; one proposed acquisition did not proceed on advice from the Government that the proposal raised national security concerns.

***Emergency responses to the crisis may open possibilities for discrimination against foreign investors.***

11. In response to the crisis, 43 of the 48 economies covered by the present report took emergency measures that could influence worldwide capital movements. These include firm-specific, sector-specific and cross sectoral measures. Public expenditure commitments related to the measures covered in this report exceeds USD 3 trillion. The sheer size of these measures and their effects on competitive conditions (e.g. on firm entry and exit) in globalised sectors such as finance and automobiles create a strong presumption that they influence worldwide capital flows. Moreover, akin to subsidies, emergency measures may effectively create advantages for domestic sectors and put foreign players at a disadvantage. It is for this reason that these measures are included in this inventory.

12. Some crisis response schemes are non-discriminatory, as they are *de jure* open to participation by foreign-controlled companies established in the country (e.g., for the banking sector, those of European Union members and the Republic of Korea). At least four countries are known to have provided support to foreign-controlled companies (France and the Republic of Korea in finance, and Australia and Canada in automobiles). Some schemes in the banking sector (e.g. in Finland and New Zealand) have been made available to branches of foreign banks. In other schemes, however, foreign companies are not always eligible.

13. Programmes also take different approaches with respect to outward capital flows originating in firms benefiting from emergency measures. Many of the support schemes for financial institutions oblige participating companies to be particularly attentive to the financing needs of domestic businesses. Public comments by high ranking public officials in several countries have urged the domestic business sector to focus on domestic capital needs; such statements may act as an informal barrier to outward investment flows.

14. Many recent policies give new powers and considerable discretion to governments in their application. In many instances, governments have entered into direct negotiations with companies and at times have become deeply involved in their management. Governments took control of a number of banks during the reporting period. Germany and the United States participated in negotiations leading up to the sale of assets of GME and Chrysler, respectively. Belgium and France provided guarantees to a troubled financial institution in order to facilitate *inter alia* the sale of a foreign subsidiary. The UK Government participated in negotiations with an Indian automaker about the provision of a commercial bridging loan in return for the right to veto significant amendments to the company's business plan. Depending on how they are handled, direct interventions in the management of companies—and the considerable discretion that this gives governments in influencing business decisions—can undermine competition and open up possibilities for discrimination against foreign investors.

15. Governments appear to be concerned about this and some have taken steps to limit or monitor their use of discretion. The European Commission has a long tradition of monitoring of state aid and has been actively involved in reviewing EU member states' crisis response measures. New Zealand has published guidelines on the use of discretion in the choice of beneficiaries of some of its financial sector programmes and other countries have also issued detailed guidelines. Extensive public reporting on crisis measures and results (e.g. Canada, the United Kingdom and United States) and oversight commissions (e.g. France and United States) are also used to enhance transparency and accountability.

***Disposal by governments of assets acquired during the crisis may also pose challenges for non-discrimination of investors.***

16. In the course of their response to the crisis, governments have acquired stakes in companies. During the reporting period, some governments (e.g., Switzerland, the United Kingdom and the United States) began disposing of these assets acquired during the crisis. Divestiture almost always involves case-by-case arrangements and discretion in structuring deals. Such processes could create further scope to favour certain firms over others and, more specifically, to discriminate against foreign investors.

## Reports on individual economies: Recent investment policy measures

### *Argentina*

#### *Investment policy measures*

In May, June and July 009, Argentina issued norms that exempt certain operations from the temporary requirement to place 30% of fund-inflow purchases of Argentine pesos in a noninterest bearing account in a commercial bank for a 365-day period.<sup>3</sup>

#### *Investment measures relating to national security*

None during reporting period.

#### *Emergency and related measures with potential impacts on international investment*

##### *Financial sector*

None during reporting period.

##### *Automotive sector*

None during reporting period.

##### *Cross-sectoral measures*

On 4 December 2008, the President announced a plan to allocate ARS 13.2 billion to support the Argentinean economy. Among others, the plan allocates loans worth a total of ARS 1.7 million for the agricultural sector.<sup>4</sup>

Argentina has a programme of credits to small and medium enterprises and various sectors, which includes credits for working capital and pre-financing of exports.

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<sup>3</sup> Resolución MECON 332/2009 26-6-09; Resolución MECON 263/2009 21-5-09; Resolución MECON 354/2009 6-7-09.

<sup>4</sup> “El Gobierno destinará 13.200 millones de pesos para mantener e incentivar la actividad económica”. Release of the President of Argentina, 4 December 2008.

## *Australia*

### *Investment policy measures*

In March 2009, Australia relaxed reviews of foreign investment in residential real estate.<sup>5</sup>

On 4 August 2009, the Treasurer announced reforms to Australia's foreign investment screening framework that it intends to implement later in 2009. The measure will ensure that private foreign investment proposals to acquire interests in Australian companies and businesses valued below AUD 219 million will be exempt from foreign investment screening (the previous lowest threshold was AUD 100 million). The new threshold will be indexed on 1 January each year to keep pace with inflation. The measure also removes the need for foreign investors to notify the Treasurer when they establish a new business in Australia. The proposed reforms do not change the notification requirements for investing in Australia's media sector or for foreign government investment into Australia. The special threshold for investors from the United States in non-sensitive sectors, currently AUD 953 million (indexed annually), will remain. All private new business proposals will also be exempted from foreign investment screening.

Australia also considers clarifying the operation of its screening regime in order to ensure that it works as intended by addressing "compliance issues" and closing "avenues for avoidance." In particular, the proposed new measure seeks to ensure that investment reviews capture foreign investments made through more complex investment structures, such as convertible bonds that, while not strictly equity, give investors a degree of influence over the management of the target business.

In the reporting period, Australia's Foreign Investment Review Board (FIRB) approved a large number of investment proposals in the resource sector, three of which were subjected to conditions. These related mainly to competition and corporate governance (in one, national security was also cited; see below).

### *Investment measures relating to national security*

The proposed acquisition of Prominent Hill mine property—part of an acquisition of Oz Minerals by a Chinese company—did not proceed, on advice from the Government that the proposal raised national security concerns arising from its proximity to a weapons testing site. The Chinese investors submitted a revised proposal to which no objection was taken provided certain conditions were complied with.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Australia has continued to implement its car dealership financing special purpose vehicle (SPV) that was legally established as a financing trust on 2 January 2009.<sup>6</sup> The implementation of the SPV followed the announcement in October 2008 by GE Money Motor Solutions and GMAC that they intended to depart the Australian wholesale floorplan finance market.

On 13 May 2009, the Government announced that Ford Credit would be able to participate in the SPV, allowing it to continue to support its existing dealerships. With funding from the four major

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<sup>5</sup> The amendment to the regulations is available at [www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/DCA23A691114D52FCA25758400154E0C?OpenDocument](http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/DCA23A691114D52FCA25758400154E0C?OpenDocument).

<sup>6</sup> "Car Dealer Financing: Establishment of a Special Purpose Vehicle", Treasurer's press release No. 136, 5 December 2008; "Treasurer Releases Update on Car Dealer Financing and the Special Purpose Vehicle", Treasurer media release no. 145, 19 December 2008.

Australian banks, namely ANZ, Commonwealth Bank of Australia, National Australia Bank, and Westpac, the SPV will provide liquidity support to participating car dealer financiers. The Government will support the SPV by providing a guarantee on the non AAA securities issued by the trust so that banks can provide the necessary funding. The Government guarantee is supported by the Car Dealership Financing Guarantee Appropriation Act 2009 the received the Royal Assent on 6 July 2009.<sup>7</sup>

*Automotive sector*

None during reporting period.

*Cross-sectoral measures*

None during reporting period.

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<sup>7</sup> “Car Dealer Financing Special Purpose Vehicle: Supporting Legislation and Ford Credit”, Treasurer’s press release no. 71, 13 May 2009. Car Dealership Financing Guarantee Appropriation Act 2009.

## *Austria*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Austria provides assistance to financial institutions under a regulatory regime that was passed into law in October 2008. The Financial Stability Act<sup>8</sup> authorises the Minister of Finance to provide banks and domestic insurance companies with credit and with credit guarantees, and to acquire parts of such institutions. Domestic insurance companies include foreign controlled institutions established in Austria. The law also authorises the Minister of Finance, in accord with the Chancellor, to expropriate the owners of such institutions if this is necessary to prevent serious damage to the Austrian economy. Up to EUR 15 billion are available for these measures.

In order to support the functioning of the interbank money market in Austria, the Österreichische Clearingbank AG (OeCAG) was set up based on the Interbank Market Support Act ("*Interbankmarktstärkungsgesetz*").<sup>9</sup> The OeCAG borrows funds on the interbank market and on-lends them to banks or insurance companies on equal terms for a fee. It will operate until the end of 2009. The federal government granted equity capital for OeCAG, guarantees its liabilities and assumes liabilities for losses related to its operations. Under this act, the government may in addition assume liability for notes issued by banks with a maturity of up to five years in order to facilitate the raising of fresh capital. The government allocated EUR 75 billion for this measure.

Hypo Tirol, an Austrian credit institution fully indirectly owned by the State Tirol, benefitted from a recapitalisation measure in June 2009.<sup>10</sup> The bank that is active in Austria, Italy, Germany and Switzerland, received a guarantee by Tirol on capital subscribed by private investors of EUR 100 million for a period of ten years. Hypo Tirol will pay to Land Tirol a progressively increasing guarantee fee, starting with 3.9% in the first three years, and rising to 6.6% in the tenth year.

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

Austria has also taken a series of measures to support companies' access to finance. Under the *framework for state aid to confront the current financial and economic crisis*,<sup>11</sup> the government introduced five aid measures. Among these figure:

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<sup>8</sup> Finanzmarktstabilitätsgesetz (FinStaG), Federal Law Gazette I No. 136 of 26 October 2008.

<sup>9</sup> *Bundesgesetz zur Stärkung des Interbankmarktes*, Federal Law Gazette I No. 136 of 26 October 2008.

<sup>10</sup> The Decision by the European Commission not to raise objections against this measure will be available under reference N214/2009. The press release regarding this decision has been issued under reference IP/09/928 on 17 June 2009.

<sup>11</sup> "*Rahmenregelung für Beihilfenmaßnahmen zur Bekämpfung der aktuellen Finanz- und Wirtschaftskrise*".

- the regulation on small amounts of aid—“*Kleinbeihilfen*”—which allows the Federal Government or lower levels of Government to provide up to EUR 500 000 per undertaking in 2009 and 2010. The aid can be granted in the form of direct grants, interest rate subsidies, subsidised public loans, and public guarantees. The Austrian authorities estimate that the overall volume for this component would not exceed EUR 150 million;<sup>12</sup> and
- a risk capital scheme that consists of a temporary enhancement of the existing risk capital investment scheme “*Eigenkapitalgarantien*”.<sup>13</sup> The modification lowers the minimum proportion of private risk capital and increases the threshold of investment eligible for the programme to EUR 2.5 million per year per SME. The programme is expected to amount to a total of EUR 25 million until the end of 2010.<sup>14</sup>

In June, the Austrian parliament passed a law to enhance the liquidity of enterprises (*Unternehmensliquiditätsstärkungsgesetz*). It allocates up to EUR 10 billion for public guarantees to the benefit of large enterprises.<sup>15</sup> The law also foresees that conditions apply for companies that benefit from the guarantees; pending these guidelines, the law had not entered into force on 15 August 2009.

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<sup>12</sup> The measure is documented in the decision of the European Commission not to raise objections dated 26 March 2009 under reference N47a/2009.

<sup>13</sup> The risk capital scheme was established in 2007 and was initially approved by the Commission on 18 October 2007.

<sup>14</sup> European Commission decision N47d/2009.

<sup>15</sup> The Decision by the European Commission not to raise objections against this measure will be available under reference N317/2009. The press release regarding this decision has been issued under reference IP/09/972 on 19 June 2009.

## **Belgium**

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Four major financial institutions (Dexia,<sup>16</sup> Fortis,<sup>17</sup> Ethias,<sup>18</sup> and KBC<sup>19</sup>) have received capital injections or debt guarantees as stand-alone measures.

Belgium began disposing off of assets that it acquired in the context of capital injections into Fortis Bank Belgium. In this context, the Government of Belgium was directly involved in negotiations with Fortis Holding, Fortis Bank, and BNP Paribas that led to an agreement on 13 May 2009.<sup>20</sup>

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

A Belgian scheme provides relief to companies in Flanders encountering financing difficulties as a result of the credit squeeze in the current economic crisis. The scheme, put in place by the Flemish Ministry of Economic Affairs, provides aid in the form of subsidised guarantees for investment and working capital loans concluded by 31 December 2010.<sup>21</sup>

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<sup>16</sup> The European Commission has authorised certain urgent measures and opened in-depth investigation into restructuring of Dexia. See European Commission press release IP/09/399 dated 13 March 2009. More information on the guarantee agreement between the Belgian State, the French State, the Luxembourg State and Dexia SA/NV is available on the website of the National Bank of Belgium.

<sup>17</sup> The measure is documented in the decision of the European Commission not to raise objections dated 20 November 2008 under reference N574/2008.

<sup>18</sup> The Decision by the European Commission not to raise objections against this measure will be available under reference NN57/2008. The press release regarding this decision has been issued under reference IP/09/254 on 12 February 2009.

<sup>19</sup> The measure is documented in the decision of the European Commission not to raise objections dated 18 December 2008 under reference N602/2008. The European Commission decided in June 2009 to initiate a formal investigation procedure into this case under reference C18/2009.

<sup>20</sup> The outcome of the negotiations has been published as a press release by Fortis dated 13 May 2009.

<sup>21</sup> The measure is documented in the decision of the European Commission not to raise objections dated 20 March 2009 under reference N117/2009.

## ***Brazil***

### *Investment policy measures*

In early July 2009, Brazil's Civil Aviation Council is reported to have approved a draft law increasing the maximum amount of foreign ownership in Brazilian airlines to 49% from 20%.<sup>22</sup>

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Two state-owned banks (*Banco do Brasil* and the *Caixa Económica Federal*) are authorised to acquire shares in financial institutions established in Brazil, including foreign-owned financial institutions. The temporary measure of 21 October 2008<sup>23</sup> was passed as law in March 2009.<sup>24</sup> Banco do Brasil acquired 50% of Banco Votorantim in early January 2009.

A new state-owned investment bank has authority to acquire shares of real estate and construction enterprises under financial stress.

Expansion of official credit lines and government guarantees for lending to agriculture, construction and other sectors.

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

None during reporting period.

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<sup>22</sup> “Brazil Govt Proposes Foreign Stake Ceiling Hike for Airlines”, Wall Street Journal, 8 July 2009.

<sup>23</sup> Medida Provisória no. 443.

<sup>24</sup> Law no. 11.908.

## Canada

### *Investment policy measures*

On 12 March 2009, the Government of Canada, as part of the Budget Implementation Act, 2009, passed legislation that modifies the *Investment Canada Act* (ICA). The amendments to the Investment Canada Act respond to the core recommendations of the Competition Policy Review Panel, which was created by the Government of Canada in July 2007 to review Canada's investment and competition policies. Under the legislation, the Investment Canada Act is amended to lower obstacles to foreign investment by focussing net benefit reviews on larger transactions; to improve transparency in the administration of the Act; and to authorize the government to review investments on national security grounds. More specifically, the amendments reform the existing net benefit review process by: changing the basis for the general review threshold from the book value of the gross assets to enterprise value; raising the general review threshold to CAD 1 billion over a four-year period, which will come into force once the associated regulations are promulgated. It currently stands at CAD 312 million in gross assets; eliminating the application of the lower review threshold in identified sectors: (i.e., transportation services, financial services and uranium production sectors); requiring the Minister to justify any decisions to disallow an investment and by allowing the Minister to disclose administrative information on the review process; and requiring the publication of an annual report on the operations of the Act.

New draft regulations, released for public comment on 11 July 2009 by the Government of Canada, amending the existing *Investment Canada Regulations* define the concept of "enterprise value" relating to the net benefit review threshold; remove references to uranium, financial services, transportation sector; and modify the information requirements for investors.

As part of the Budget implementation act, Canada also passed an amendment to the Canada Transportation Act that authorises the Governor in Council to increase the foreign ownership limit of Canadian air carriers to up to 49%, up from 25%.<sup>25</sup> At the end of the reporting period, this power had not been used.

On 6 May 2009, Canada concluded an "open skies" agreement with the EU. The agreement, that had yet to be signed and ratified on 15 August 2009—cut-off date for this report—, will allow European Union investors over time to acquire up to 49% of Canadian airline companies, up from 25%. Ultimately, full ownership rights are envisaged.<sup>26</sup> The agreement also allows any "Community air carrier" to fly between any point in the EU to any point in Canada, without any restrictions on the number of flights. In later stages of the implementation of the agreement, cargo operators will be authorized to provide services to third countries from the other party to third countries without connection to their point of origin (so called "7th freedom" rights); investors will be allowed to set up and control new airlines in each others' markets. Also, passenger airlines will then be able to fly onward to third countries.

In the reporting period, Canada also concluded "open skies" agreements with Costa Rica, Turkey, Japan, Korea, New Zealand and South Africa that mainly lower existing restrictions on allowed traffic and expand the choice of routes of these countries' airlines.<sup>27</sup>

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<sup>25</sup> Canada Transportation Act, Section 55.1.

<sup>26</sup> "The EU-Canada aviation agreements – Q&A", EU press release MEMO/09/218, 06 May 2009.

<sup>27</sup> A full list of these agreements and indications on their coverage is on the website "Bilateral Air Negotiations Between Canada and Foreign Countries" of Foreign Affairs and International Trade Canada.

### *Investment measures relating to national security*

The legislation amending the ICA also authorised the government to review investments that impair or threaten to impair national security and, if necessary, take appropriate action. Under these amendments, if national security threats associated with investments in Canada by non-Canadians are identified, they will be brought to the attention of the Minister of Industry. Once identified, the Minister of Industry, after consultation with the Minister of Public Safety and Emergency Preparedness, will be responsible for referring these investments to the Governor in Council (GIC), which will determine whether a review should be ordered. Once the GIC orders a review, the Minister of Industry after consultation with the Minister of Public Safety and Emergency Preparedness will conduct the review and, if required, submit a report to the GIC with recommendations. The GIC will have the authority to take any measures in respect of the investment that it considers advisable to protect national security. National security reviews of investments will be administered separately from net benefit reviews to ensure the focus is on national security and that it is consistent with international obligations.

On 11 July 2009, Industry Canada released for public comment draft revisions of the *National Security Review of Investments Regulations* and to the *Investment Canada Regulations*. The drafts include texts describing procedures for the national security reviews that were authorised by the March 2009 amendment of the Investment Canada Act (ICA).<sup>28</sup> The *draft regulations* also specify the various time periods of the national security review process and list the investigative bodies with which information can be shared.

#### *Emergency and related measures with potential impacts on international investment*

##### *Financial sector*

Canada continued to implement measures established or extended under its “Budget 2009: Canada’s Economic Action Plan”, initially announced on 27 January 2009.<sup>29</sup> The Plan includes the following measures for the financial sector:

Through the *Insured Mortgage Purchase Program* (IMPP), the Government purchases up to a total of CAD 125 billion in insured residential mortgage pools from Canadian financial institutions to help them to continue lending to Canadian consumers and businesses. By 24 February 2009, CAD 51.3 billion had been provided through eight reverse auctions. Two more auctions were scheduled to be completed in March 2009. More than 15 different financial institutions have participated, including banks, non-bank deposit-taking institutions, and life insurance companies.

The Plan also establishes two new temporary facilities—*Canadian Lenders Assurance Facility* and *Canadian Life Insurers Assurance Facility*—, available until end 2009. Under the facilities, the Government provides insurance on commercial terms on the wholesale term borrowing of federally regulated deposit-taking institutions and life insurers to ascertain that they are not put at a competitive disadvantage relative to foreign competitors. Each debt security that is issued by a financial institution using these facilities will be made public on a transaction-by-transaction basis.

*Broadened powers for Minister of Finance.* The powers of the Minister of Finance have been broadened to allow the Ministry to enter into transactions that promote financial stability and maintain efficient and well-functioning markets. It also includes authority to inject capital into federally regulated institutions.

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<sup>28</sup> Canada Gazette, Part I, Vol. 143, No. 28.

<sup>29</sup> Canada’s Economic Action Plan—Budget 2009, Department of Finance, 27 January 2009.

### *Automotive sector*

The Government of Canada and the Government of Ontario provided loans to General Motors of Canada Inc. and Chrysler Canada Inc. and in April 2009, increased the Chrysler Canada loan to CAD 3.7 billion and on 10 June 2009 took on a 2-per-cent ownership stake in the auto maker. The Governments also increased the GM loan to CAD 10.6 billion in April and on 10 July 2009 took on a 12% ownership stake. The loans were given in light of a commitment made in late 2008 to support Canada's automotive industry proportionally to the level of assistance provided by the U.S. Government, based on Canada's share of North American production.<sup>30</sup> The assistance is provided through short- and medium-term loan facilities and debtor-in-possession financing. Disbursements are underway. No further funding is expected to occur.

On 7 April 2009, the Federal Government established the Canadian Warranty Commitment Program for GM and Chrysler.<sup>31</sup> The programme echoes a similar program established in the US. It provides government guarantees for warranties issued by General Motors of Canada Limited (GMCL) and Chrysler Canada to help ensure that the automakers remain competitive while they develop acceptable restructuring plans.

### *Cross-sectoral measures*

The abovementioned "Budget 2009: Canada's Economic Action Plan" also establishes the *Extraordinary Financing Framework* (EFF), which embraces a number of new and existing initiatives totalling CAD 200 billion. The overall aim is to expand the availability of credit and to respond to gaps in credit markets. The Framework includes a number of initiatives to support access to credit for Canadian businesses through the financial Crown corporations. The EFF includes the Business Credit Availability Program that will provide at least CAD 5 billion to Canadian businesses at market rates.

Canada also increased the maximum eligible loan amount small businesses can access under the Canada Small Business Financing Program, a scheme introduced earlier.

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<sup>30</sup> "Ontario Helping To Put Chrysler On Sustainable Footing", press release, Office of the Premier of Ontario, 30 April 2009.

<sup>31</sup> "Canadian Warranty Commitment Program", information by Industry Canada. A similar programme was established in the US, see p. 82 in the present report.

**Chile**

*Investment policy measures*

None during reporting period.

*Investment measures relating to national security*

None during reporting period.

*Emergency and related measures with potential impacts on international investment*

*Financial sector*

None during reporting period.

*Automotive sector*

None during reporting period.

*Cross-sectoral measures*

A programme for state support for credit for small and medium enterprises was adopted in late 2008.

## *People's Republic of China*

### *Investment policy measures*

*Listings on stock exchange.* On 29 April 2009 the State Council announced that foreign companies will be allowed to list on the Shanghai Stock Exchange at an unspecified date as part of the opening up and internationalisation of the exchange.<sup>32</sup>

On 1 June 2009, Decree No. 7 of the State Council Information Office, the Ministry of Commerce, and the State Administration for Industry and Commerce entered into force. The Decree introduces new provisions on the *Administration of Provision of Financial Information Services in China by Foreign Institutions*. These ease restrictions on provision of financial information services by foreign institutions.

*Foreign investment review process.* The Ministry of Commerce, which is responsible for reviews of investment proposals from foreigners, announced in March 2009<sup>33</sup> that it would further delegate authority for these reviews to provincial and quasi-provincial authorities. The measures follow earlier delegation of authority in this matter to lower level governments.<sup>34</sup>

The MOFCOM *Measures for the Administration of Outbound Investments* became effective on 1 May 2009. The measures simplify the approval regime of outward investment by a domestic Chinese enterprise.<sup>35</sup> MOFCOM expects that 85% of outbound investment projects will be reviewed by the agency's provincial counterparts, rather than MOFCOM.

In May 2009, two foreign banks have been authorised by official notice from the Chinese government to issue bonds in China in the domestic currency (Chinese yuan, CNY). Apart from “panda bonds” issued in 2005 by the International Finance Corporation (an offshoot of the World Bank), foreign institutions have hitherto in practice been excluded from issuing bonds in China, though the government is not opposed to such issues in principle.<sup>36</sup>

The *Circular of the State Administration of Foreign Exchange on Issues Concerning Foreign Exchange Administration of Overseas Lending Granted by Domestic Enterprises*<sup>37</sup> became effective on 1 August 2009. Issued by the State Administration of Foreign Exchange (Safe), the new rules broaden the sources for financing of overseas subsidiaries of Chinese companies and thus to invest abroad. They allow Chinese companies to lend up to 30% of their equity to their overseas subsidiaries for use as debt capital.

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<sup>32</sup> State Council announcement related on government website.

<sup>33</sup> Circular on Further Improving the Examination and Approval of Foreign Investment (5 March 2009); Circular of the Ministry of Commerce on Issues Concerning Examination and Verification of Foreign-Invested Venture Investment Enterprises or Foreign-Invested Venture Investment Management Enterprises (5 March 2009); Circular on Delegating to Lower-level authorities the Authority to Examine and Approve the Investment in, and Establishment of, Companies with an Investment Nature by Foreign Investors (6 March 2009); on the Ministry of Commerce website [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>34</sup> Circular of the MOFCOM on Delegating Matters Concerning the Examination and Approval of Foreign-Invested Commercial Enterprises (12 September 2008).

<sup>35</sup> Unofficial commentary on the measures is at [www.freshfields.com/publications/pdfs/2009/mar09/25106.pdf](http://www.freshfields.com/publications/pdfs/2009/mar09/25106.pdf).

<sup>36</sup> “China loosens yuan-bond market—Beijing approves international issues by two foreign banks”, Asia Wall Street Journal, 20 May 2009.

<sup>37</sup> *Circular of the State Administration of Foreign Exchange on Issues Concerning Foreign Exchange Administration of Overseas Lending Granted by Domestic Enterprises*.

In August 2009, the Shanghai municipal government extended the scope of inbound foreign investments that can be cleared by district authorities.<sup>38</sup> The delegation of the power to clear foreign investment projects now includes investments of up to USD 100 million, up from USD 30 million.

*Investment measures relating to national security*

None during reporting period.

*Emergency and related measures with potential impacts on international investment*

*Financial sector*

None during reporting period.

*Automotive sector*

In December 2008, Chery was granted a CNY 10 billion loan plus an open credit line by the Export-Import Bank of China (Exim Bank) to fund its global growth, and in March 2008 the NDRC reportedly approved Chery's acquisition of Volvo from Ford.

*Cross-sectoral measures*

None during reporting period.

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<sup>38</sup> Shanghai Municipal Commission of Commerce website.

## ***Czech Republic***

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

In response to the financial crisis, the Czech Republic increased the capital of the Czech Export Bank, the Export Guarantee and Insurance Corporation and the Czech-Moravian Guarantee and Development Bank, totalling CZK 2 billion.

The Government also increased the capital of the Support and Guarantee Agricultural and Forestry Fund by CZK 300 million. The core activities of this institution consist in subsidizing interests of business credits in the field of agriculture, forestry, water management and industry, and also financial support of insurance in these areas.

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

At the end of February 2009, the government unveiled its National Anti-Crisis Plan. The plan has an overall volume of CZK 41.5 billion. Under the plan, the Czech government has introduced two temporary schemes. One scheme allows government, regional and local authorities to grant aid in the form of reduced interest rates on loans.<sup>39</sup> The second temporary scheme allows granting aid of up to EUR 500,000 per company over the period 2009-10. The aid can be granted in the form of direct grants, reimbursable grants, interest rate subsidies, subsidised public loans and public guarantees.<sup>40</sup>

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<sup>39</sup> European Commission decision N237/2009.

<sup>40</sup> European Commission decision N236/2009.

## *Denmark*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Denmark has passed two schemes in response to the crisis in the financial sector, known as *Bankpakke I* and *Bankpakke II*.

The Governmental Guarantee Scheme on Financial Stability (the “Governmental Guarantee Scheme/*Bankpakke I*”)<sup>41</sup> entered into force on 11 October 2008, following a “Political Agreement on financial stability” between the Government and the Danish financial sector. Based on the Agreement that shares the burden of potential losses from the guarantee programme between the government and banks adhering to the Danish financial sector’s contingency association *Det Private Beredskab*, the measure unconditionally guarantees creditors’ claims on banks in Denmark.

On 4 February 2009, the Act on State-Funded Capital Injections into Credit Institutions (*Bankpakke II*)<sup>42</sup> came into force. In order to increase solvency of domestic banks, mortgage credit institutions and Danish Ship Finance A/S, it establishes a mechanism for government capital injections or credit guarantees. Branches of foreign credit institutions in Denmark are not eligible. The scheme is administered by the Ministry of Economic and Business Affairs. The overall volume of capital injections under this scheme is estimated at approximately DKK 100 billion; about DKK 75 billion would be available to banks, and the remaining DKK 25 billion would be available to mortgage credit institutions.

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

None during reporting period.

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<sup>41</sup> Established by Act no. 1003 of 10 October 2008, entered into force on 11 October 2008 and applied retroactively from takes effect as from 5 October 2008. The Danish Ministry of Economic and Business Affairs has issued a memorandum that contains comments on the Act.

<sup>42</sup> Act on State-Funded Capital Injections into Credit Institutions. The measure is documented in the decision of the European Commission not to raise objections dated 3 February 2009 under reference N31a/2009. Further documentation is available in a press release and documentation by the Ministry of Economic and Business Affairs dated 18 January 2009.

***Egypt***

*Investment policy measures*

None during reporting period.

*Investment measures relating to national security*

None during reporting period.

*Emergency and related measures with potential impacts on international investment*

*Financial sector*

None during reporting period.

*Automotive sector*

None during reporting period.

*Cross-sectoral measures*

None during reporting period.

## ***Estonia***

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

None during reporting period.

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

Estonia established a temporary scheme that allows authorities to grant aid of up to EUR 500,000 per company in the form of grants, loans or guarantees in the period 2009-2010.<sup>43</sup>

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<sup>43</sup> The Decision by the European Commission not to raise objections against this measure will be available under reference N387/2009. The press release regarding this decision has been issued under reference IP/09/1121 on 13 July 2009.

## ***Finland***

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

The Finnish parliament authorised the Government in December 2008 to grant up to EUR 50 billion in state guarantees under the “Finnish Guarantee Scheme for banks' funding”, established under the Act on State Lending and State Guarantees (449/1988) and administered by the State Treasury.<sup>44</sup> All Finnish deposit banks and mortgage banks, including the Finnish subsidiaries of foreign financial institutions are eligible for the State guarantee. The authority to grant government guarantees is limited until the end of 2009.

Finland also took an *ad hoc* measure in relation to the Finnish branch of the Icelandic Kaupthing Bank<sup>45</sup> as it guaranteed deposits of more than 10 000 depositors, worth EUR 113 million.

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

Finland introduced two temporary measures to support companies' access to liquidity and credit. The first measure, a framework scheme for small amounts of aid—up to a total volume of EUR 500 000 per company in 2009 and 2010 combined—<sup>46</sup> allows the Finnish authorities at national, regional or local levels to grant direct grants, loans and interest rate subsidies, guarantees, or risk capital and capital injections. Both SMEs and large firms are eligible for the aid. The Finnish authorities estimate that the overall aid volume available under this scheme is EUR 200-300 million, and that more than 1000 firms will benefit from the aid scheme.

The second temporary aid scheme allows the Finnish authorities to provide subsidised guarantees for investment and working capital loans concluded by 31 December 2010.

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<sup>44</sup> The measure is documented in the decision of the European Commission not to raise objections dated 13 November 2008 under reference N567/2008. Its implementation is announced in the Ministry of Finance press release 10/2009 “Measures to boost financial markets”, dated 27 January 2009.

<sup>45</sup> The measure is documented in the decision of the European Commission not to raise objections dated 21 January 2009 under reference NN2/2009.

<sup>46</sup> The measure is documented in the decision of the European Commission not to raise objections dated 3 June 2009 under reference N224/2009.

## **France**

### *Investment policy measures*

On 19 December 2008 France established a Strategic Investment Fund (*Fonds Stratégique d'Investissement*, FSI) to aid national businesses and to invest in companies that are considered of strategic value for the French or European economy in terms of competencies, technology or employment. The fund that is 100% state-owned (49% held by the State and 51% by the state-owned *Caisse de Dépôts*) is managed by the Caisse de Dépôts and disposed of EUR 20 billion at its inception.<sup>47</sup> Between its inception and 15 August 2009, the fund took minority holdings in Gemalto, Heuliez, Daher, Valeo, 3S Photonics, Mecachrome, Nexans, Meccano, Frey Nouvelles Energies, and Farinia.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

In late 2008, France adopted a scheme to inject capital into certain banks that were considered fundamentally sound, but needed to reinforce their capital base.<sup>48</sup> Under the scheme, eligible banks sell securities to the *Société de prise de participation de l'État* (SPPE), a wholly state-owned investment company. The scheme includes obligations for the beneficiary banks with regard to financing the real economy. These obligations will be monitored locally and nationally. A mediation system is also planned to ensure compliance with the obligations. The beneficiary banks must also undertake to adopt measures concerning the remuneration of senior management and market operators (including traders) and to observe ethical rules consistent with the general interest. The programme is budgeted up to EUR 21 billion, up from EUR 10.5 billion when first introduced. Under this recapitalisation scheme, France provided capital injections to six French banks. Amendments introduced in January and March 2009<sup>49</sup> provide an option to issue preference shares instead of subordinated debt and change the terms governing the remuneration and reimbursement of the preference shares in order to strengthen incentives for the beneficiary banks to buy them back at the earliest opportunity. So far, two French banks and the entity that will emerge from the merger of *Caisse d'Épargne* and *Banque Populaire*, formerly two separate banks,<sup>50</sup> have benefited from the scheme.

Separately, France also contributed to a capital injection of EUR 1 billion into Dexia; the state controlled *Caisse des Dépôts et Consignations* invested an additional EUR 2 billion.<sup>51</sup>

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<sup>47</sup> <http://www.fonds-fsi.fr/>; “Le FSI va être doté par ses deux actionnaires d’un portefeuille de participations de 14Md€”, FSI press release 6 July 2009, and FSI website.

<sup>48</sup> The scheme was initially announced on 20 October 2008 and entered into force upon approval by the European Commission on 8 December 2008. The measure is documented in the decision of the European Commission not to raise objections dated 8 December 2009 under reference N613/2008.

<sup>49</sup> European Commission decisions N29/2009, N164/2009 and N249/2009.

<sup>50</sup> The Decision by the European Commission not to raise objections against this capital injection will be available under reference N249/2009. The press release regarding this decision has been issued under reference IP/09/722 on 8 May 2009.

<sup>51</sup> Belgium and Luxembourg also contributed to the capital injection into Dexia SA. Further information on this measure is available in the section on Belgium in this document.

In May 2009, France extended a scheme for refinancing credit institutions.<sup>52</sup> The scheme, which became law<sup>53</sup> in October 2008<sup>54</sup>, established the wholly state-owned Société de Financement de l'Economie Française (SFEF, previously known as *Société de refinancement des activités des établissements de crédits* (SRAEC)). The scheme authorises SFEF to provide medium and long-term financing to banks that apply for such financing. It benefits from a state guarantee and can extend lending up to EUR 265 billion. Credit institutions that benefit from the scheme have to pay a premium over and above the normal market price and have to make commitments regarding their conduct. Any bank authorised in France, including the subsidiaries of foreign groups, have access to the scheme.

#### *Automotive sector*

The government signed on 9 February 2009 a pact with Renault, Renault Trucks and PSA/Peugeot-Citroën, three French carmakers, providing a 5-year loan of a combined EUR 6.5 billion to the three companies. The French Industry Minister informed the European Commission that the loan agreements “will not contain any condition concerning either the location of their activities or the requirement to prioritise France-based suppliers”.<sup>55</sup> While French carmakers have given undertakings not to shut any plants in France for 5 years and to avoid compulsory redundancies in 2009, there is no longer any insistence on a formal pledge not to do so as a condition of the loan. Instead, the government will rely on a “moral obligation” not to do so.<sup>56</sup> In addition, the pact provides for EUR 2 billion of additional financing from SFEF to the banking arms of the car manufacturers. Further, the pact includes the establishment of a guarantee fund for loans granted to parts suppliers and subcontractors; this fund may have up to EUR 5 billion at its disposal and would be administered by OSEO, a government-controlled entity.

#### *Cross-sectoral measures*

France adopted a scheme that allows state, regional or local authorities and certain public bodies to grant aid up to EUR 500 000 per undertaking in 2009-2010 combined to businesses which find themselves in difficulty as a result of the current economic crisis.<sup>57</sup>

France has also introduced a temporary scheme for granting aid in form of subsidised interest rates.<sup>58</sup> The low rates are available for loans contracted no later than 31 December 2010, but only on interest payments up to 31 December 2012.

France further introduced a temporary scheme that allows granting subsidized guarantees to companies for investment and working capital loans concluded by 31 December 2010.<sup>59</sup>

Moreover, France introduced a scheme of subsidised interest rates for investments that enterprises make to produce “green” products.<sup>60</sup> The scheme is open for companies of any size and any sector,

<sup>52</sup> European Commission decisions N251/2009 and N548/2008.

<sup>53</sup> Loi n° 2008-1061 du 16 Octobre 2008 de finances rectificative pour le financement de l'économie.

<sup>54</sup> The measure is documented in the decision of the European Commission not to raise objections dated 30 October 2008 under reference N548/2008.

<sup>55</sup> “Crisis widens the EU divide”, Wall Street Journal, 2 March 2009.

<sup>56</sup> “Brussels and France resolve auto dispute”, FT.com, 2 March 2009.

<sup>57</sup> European Commission decisions N7/2009, N188/2009, and N278/2009.

<sup>58</sup> The measure is documented in the decision of the European Commission not to raise objections dated 4 February 2009 under reference N15/2009.

<sup>59</sup> The measure is documented in the decision of the European Commission not to raise objections dated 27 February 2009 under reference N23/2009.

<sup>60</sup> The measure is documented in the decision of the European Commission not to raise objections dated 3 February 2009 under reference N11/2009.

including the automotive sector. The scheme will be implemented in a decentralized way by local authorities. The French government estimates that about 500 enterprises may benefit from the scheme. The measure is limited until 31 December 2010.

## **Germany**

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

On 24 April 2009, the amendment of the German Foreign Trade and Payments Act (*Außenwirtschaftsgesetz*) entered into force.<sup>61</sup> The amendment establishes a review procedure, administered by the Federal Ministry of Economic Affairs and Technology, for investments that threaten “public policy” or public security (In the sense of Article 46 para 1 and Article 58 para 1 of the EC Treaty). The Ministry may prohibit acquisitions or subject them to mitigation measures. Reviews may be performed for investments by non-EU/non-EFTA investors that lead to a 25% or greater equity ownership. The procedure complements an existing review procedure that addresses only investments in certain military goods and cryptographic equipment; the new procedure is not limited to specific industries.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

The Financial Market Stabilisation Fund (SoFFin), established in October 2008, continued to operate and was prolonged until the end of 2009.<sup>62</sup> The Fund’s role is to assist certain financial institutions—including German subsidiaries of foreign financial institutions—to overcome temporary liquidity squeezes and strengthens their own funds.<sup>63</sup> The Fund can (1) provide guarantees (total envelope of EUR 400 billion), (2) contribute to recapitalisation, and (3) take on risks from financial sector enterprises. A maximum EUR 70 billion is available for (2) and (3) combined; this amount can be increased to EUR 80 billion if approved by the Parliament finance committee. The decisions on granting support are taken by an inter-ministerial Steering Committee.<sup>64</sup> The decision is discretionary, and must be taken with due consideration of: (1) the systemic importance of the financial institution; (2) the degree of emergency; and (3) the efficient use of the fund’s assets. Support is subject to conditions; recapitalisation measures are linked to the obligation that the beneficiary firm consider, when granting credit or placing capital, the financing needs of domestic enterprises, in particular SMEs. Salaries and incentives of the supported institutions are closely watched, business decisions are scrutinised as to sustainability, and dividend distribution is restricted. As of 9 July 2009, 23 requests for assistance had been received; EUR 167.5 billion had been granted (EUR 143 billion for guarantees and EUR 24.5 billion for capital) at this time.<sup>65</sup> Seventeen additional informal requests had been made.

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<sup>61</sup> “Dreizehtes Gesetz zur Änderung des Außenwirtschaftsgesetzes und der Außenwirtschaftsverordnung.” The amendment entered into force on 24 April 2009.

<sup>62</sup> The Fund is established by a law of 17 October 2008 (Finanzmarktstabilisierungsfondsgesetz—FMStFG), which also regulates its operations. The FMStFG was passed as article 1 of the Finanzmarktstabilisierungsgesetz and entered into force on 17 October 2008. The EC authorised the initial measure on 27 October 2008 reference under N512/2008; the authorization was replaced by a decision N625/2008 for clarity on 12 December 2008 after Germany had notified modifications to the measure. The extension is documented in the European Commission decision N330/2009.

<sup>63</sup> § 2 FMStFG. See some information on the English-language website and see Decision of the European Commission K(2008)8629 (N625/2008), p. 2.

<sup>64</sup> The Federal Ministry of Finance is entrusted with the decision-making, but can delegate it to the administration of the fund. In mid-March 2009, decisions on the granting of support were taken by the Steering Committee (*Lenkungsausschuß*), see § 4 article 1(2) FMStFG.

<sup>65</sup> “Stabilisierungsmaßnahmen des SoFFin”, SoFFin press release, 10 July 2009.

Among the beneficiaries of the SoFFin guarantees was:

- IKB,<sup>66</sup> now owned over 90% by the US holding Lone Star;
- On 22 June 2009, SoFFin took a stake of 25% plus one share in Commerzbank for EUR 18.2 billion.<sup>67</sup> The agreement between the bank and SoFFin includes among others restrictions on acquisitions, on divestments and the sale of parts of the company, and on the payments of dividends. The financial support is linked to financial stress triggered by the acquisition by Commerzbank of Dresdner Bank, a competitor;
- On 2 June 2009, SoFFin increased its stake in Hypo Real Estate Holding AG (HRE) to 90% through a capital increase; it now endeavours a complete takeover of the company through a squeeze-out under German stock corporation law in order to proceed with the restructuring of HRE.<sup>68</sup>

In addition to measures under the scheme set up under the Financial Market Stabilisation Fund, Germany provided relief measures to other banks—e.g. BayernLB<sup>69</sup> and Nord/LB<sup>70</sup>—and to the German deposit guarantee scheme for private banks (*Sicherungseinrichtungsgesellschaft deutscher Banken*).<sup>71</sup> Germany also supported three regional banks in public ownership:

- On 12 May 2009, it prolonged the risk shield of WestLB and took accompanying measures.<sup>72</sup> The aid is conditional upon the approval of the restructuring plan (reorientation of WestLB's business into less risky activities as well as change of the bank's ownership structure through a public tender procedure before the end of 2011) by the statutory bodies of all of WestLB's owners;
- On 29 May 2009, HSH Nordbank received a recapitalization (EUR 3 billion) and risk guarantee (EUR 10 billion) provided by the city of Hamburg and the State of Schleswig Holstein.
- On 30 June 2009, recapitalisation and asset relief for the Landesbank Baden-Württemberg (LBBW).<sup>73</sup>

The *Finanzmarktstabilisierungsergänzungsgesetz* (FMStErgG), a law that complements the measures of the Financial Market Stabilisation Act, entered into force in April 2009.<sup>74</sup> The law changes governance rules so as to facilitate recapitalisation. Among others, the law also introduced the possibility, as a last

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<sup>66</sup> IKB received a guarantee of EUR 5 billion under the SoFFin scheme; the measure was approved by the European Commission on 22 December 2008 under reference N639/2008. The identity of beneficiaries of guarantees is publicly available on the SoFFIN website.

<sup>67</sup> “EU Commission gives go-ahead for injection of equity capital”, Commerzbank Investor Relations release, 7 May 2009.

<sup>68</sup> “SoFFin holds 90 percent stake in Hypo Real Estate Holding AG (HRE) following capital increase. Preparations for complete takeover of the company under way”, SoFFin press release 2 June 2009.

<sup>69</sup> Guarantee of EUR 4.8 billion and recapitalization of EUR 10 million, European Commission decision N615/2008 of 18 December 2008.

<sup>70</sup> Guarantee of EUR 20 billion, European Commission decision N655/2008.

<sup>71</sup> Guarantee of EUR 6.7 billion, European Commission decision N17/2009.

<sup>72</sup> European Commission decision C43/2008.

<sup>73</sup> European Commission decision N265/2009.

<sup>74</sup> *Finanzmarktstabilisierungsergänzungsgesetz*.

resort, to expropriate shareholders of financial institutions that pose a systemic risk. This possibility, which was limited until 30 June 2009, has not been used.<sup>75</sup>

On 23 July 2009, the law on the development of financial market stabilisation entered into force.<sup>76</sup> The law provides for the possibility to deconsolidate structured securities as well as other assets from their balance sheet under a so-called "bad bank" concept. The law offers the use of two different models. The first one, called "SPV-Model", focuses on structured securities. The second, called "consolidation model" allows for the transfer of a broad range of different assets classes. Both models allow the cleanup of the balance sheet and by this way free up regulatory capital. Both models have also in common the ultimate responsibility of the owners of the assets for the losses resulting from the liquidation of the assets.

#### *Automotive sector*

From May 2009 on, members of the federal and regional governments led or participated in negotiations on the sale of the then GM-owned subsidiary Opel to interested investors with a view to secure guarantees that Opel factories located in Germany would be maintained in return for public credit guarantees and interim financing.<sup>77</sup> On 1 June 2009, the Federal Government and the Governments of the regions that are home to Opel factories provided a combined credit of EUR 1.5 billion in order to help finance temporarily a newly established trust company holding the majority of shares of most GM companies in Europe, including Adam Opel GmbH. The trust arrangement prevented a negative impact on the European GM companies by the Chapter 11 procedure that GM underwent in June.<sup>78</sup> The Federal government has been backing the bid of Canadian Magna and Russian bank Sberbank by offering a credit of EUR 4.5 billion, as Magna had committed not to shut down German Opel plants.<sup>79</sup>

#### *Cross-sectoral measures*

Germany passed a number of measures to support the real economy, in particular:

- The Credit and Credit Guarantee Programme<sup>80</sup> (budgeted up to EUR 100 billion and ending 31 December 2010) has a credit component (up to a total of EUR 25 billion), a credit guarantee component (up to EUR 75 billion). Applications for credits in excess of EUR 150 million and credit guarantees in excess of EUR 300 million or in cases of fundamental significance (i.e. increased risks, unusual loan and/or collateral structure, special regional, sectoral, employment significance) are subject to decisions by an inter-ministerial Steering Group<sup>81</sup> which takes into account *inter alia* the long term viability of the firm and whether or not it has access to commercial credit.
- In addition, a loan programme (budgeted at up to EUR 15 billion) was initially introduced on 5 November 2008.<sup>82</sup> Under the programme, the Government subsidises loans to improve credit

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<sup>75</sup> Rettungsübernahmegesetz—RettungsG which forms Article 3 of the FMStErgG.

<sup>76</sup> Gesetz zur Fortentwicklung der Finanzmarktstabilisierung.

<sup>77</sup> "Treuhandvertrag und Konsortialvertrag unterzeichnet—Weg frei für Opel-Sanierung", Federal Ministry of Finance press release, 2 June 2009. "Wie geht es weiter mit Opel", information of the Federal Government, 2 June 2009.

<sup>78</sup> "Wie geht es weiter mit Opel", information of the Federal Government, 2 June 2009.

<sup>79</sup> GM announced its intention to sell Opel to the Magna consortium on 10 September 2009.

<sup>80</sup> "Kredit- und Bürgschaftsprogramm der Bundesregierung/Wirtschaftsfonds Deutschland". Detailed documentation (in German) is provided on the website of the Federal Ministry for Economy and Technology.

<sup>81</sup> "Lenkungsausschuss Unternehmensfinanzierung", assisted by a steering council "Lenkungsrat Unternehmensfinanzierung" with an advisory role.

<sup>82</sup> "KfW Sonderprogramm 2009", European Commission decision N661/2008.

availability. Subsidised loan agreements must be concluded between 1 January 2009 and 31 December 2010.

- A framework for "Small amounts of compatible aid" at the end of December 2008 does not provide new funds but broadens channels for distributing existing funds.<sup>83</sup> It authorises the government to provide businesses with aid in various forms up to a total value of EUR 500 000 each. The measures can be applied between 30 December 2008<sup>84</sup> and 31 December 2010. In June 2009, the forms of aid that can be granted were broadened and henceforth include risk-capital as well.<sup>85</sup>
- On 27 February 2009 a scheme entered into force that allows authorities at federal, regional and local level to grant aid in the form of subsidized guarantees for investment and working capital loans concluded by 31 December 2010.<sup>86</sup>
- Furthermore, on 19 February 2009 a scheme entered into force that allows authorities at federal, regional and local level, including public development banks, to provide loans at reduced interest rates.<sup>87</sup>

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<sup>83</sup> "*Regelung zur vorübergehenden Gewährung geringfügiger Beihilfen im Geltungsbereich der Bundesrepublik Deutschland während der Finanz- und Wirtschaftskrise ("Bundesregelung Kleinbeihilfen")*". The measure is documented in the decision of the European Commission not to raise objections dated 30 December 2008 under reference N668/2008.

<sup>84</sup> Date of approval by the EC, see European Commission document reference N668/2008.

<sup>85</sup> The modification of June 2009 is documented in the European Commission decision N299/2009.

<sup>86</sup> "*Regelung zur vorübergehenden Gewährung von Bürgschaften im Geltungsbereich der Bundesrepublik Deutschland während der Finanz- und Wirtschaftskrise ("Befristete Regelung Bürgschaften")*". European Commission decision N27/2009

<sup>87</sup> "*Regelung zur vorübergehenden Gewährung niedrigverzinslicher Darlehen an Unternehmen im Geltungsbereich der Bundesrepublik Deutschland während der Finanz- und Wirtschaftskrise ("Bundesrahmenregelung Niedrigverzinsliche Darlehen")*". The measure is documented in the decision of the European Commission not to raise objections dated 19 February 2009 under reference N38/2009.

## **Greece**

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Greece established a three part support scheme by the law "*For the enhancement of liquidity of the economy in response to the impact of the international financial crisis*".<sup>88</sup> The scheme includes measures to (1) recapitalise banks (up to a total of EUR 5 billion); (2) guarantees for debt instruments (up to a total of EUR 15 billion); and (3) issue and lend Greek State securities to financial institutions (up to a total of EUR 8 billion). Any credit institution authorised to operate in Greece—including subsidiaries of foreign banks—may benefit from the scheme. Institutions benefiting from recapitalization measures or State guarantees must agree to various conditions, including government appointed director of the board, and behavioural conditions.

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

Greece introduced two temporary aid schemes with a common budgetary ceiling of EUR 2 billion; the schemes include a temporary scheme for loan guarantees,<sup>89</sup> under which aid can be provided in the form of guarantees for working capital loans and investment loans concluded by 31 December 2010; and a temporary scheme for subsidised interest rates on loans taken by 31 December 2010.<sup>90</sup>

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<sup>88</sup> The law came into effect on 24 October 2008 but was not applied until approved by the European Commission on 19 November 2008. The measure is documented in the decision of the European Commission not to raise objections dated 19 November 2008 under reference N560/2008.

<sup>89</sup> The measure is documented in the decision of the European Commission not to raise objections dated 3 June 2009 under reference N308/2009

<sup>90</sup> The measure is documented in the decision of the European Commission not to raise objections dated 3 June 2009 under reference N309/2009

## ***Hungary***

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

The Financial Stability Act was approved by Parliament in December 2008 (Act No. 104). The package includes: 1) recapitalisation measures (budgeted at EUR 1.04 billion) involving government purchases of preferred shares of credit institutions; 2) guarantees for certain categories of new debt (budgeted at EUR 5.22 billion).<sup>91</sup> The schemes are open to all systemically-important credit institutions and contain behavioural safeguards to avoid abusive use of the state support.

The Financial Stability Act, which was amended by the Act XIII of 2009<sup>92</sup>, established 30 December 2009 as a new expiry date of both the recapitalisation and guarantee schemes. Other conditions remain unchanged.

In addition, the government may lend in domestic or foreign currency directly to systemically-important banks. As part of the safeguards for such lending, a subcommittee of the Financial Stability Committee (which includes the Ministry of Finance, the Hungarian Financial Supervisory Authority and the Hungarian Central Bank) was established in March 2009 to monitoring credit institutions that received capital enhancement, guarantee, security-lending or loan from the State. The first meeting was on 12 May. The Committee continually reports on the use of credit by the three banks. The reports are made monthly which was regarded positively by the IMF during its last visit in Hungary when they've checked all reports so far.

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

A temporary aid scheme for granting limited amounts of compatible aid was adopted in February 2009. The aid is provided in the form of direct grants, reimbursable grants, soft loans, interest rate subsidies, tax advantages, reduction of social security contributions, provision of risk capital, equity

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<sup>91</sup> The Decision by the European Commission not to raise objections against this measure will be available under reference N664/2008. The press release regarding this decision has been issued under reference IP/09/253 on 12 February 2009. Prolongation of the scheme was approved in August 2009 (decision by the European Commission N355/2009).

<sup>92</sup> The Act XIII of 2009 on amendments to certain acts regarding the supervision of the financial intermediary system was promulgated on 3 April 2009. The said provision of the Act entered into force on the 30<sup>th</sup> day after the promulgation of the Act.

intervention (increase of capital by public companies where the maximum amount of capital increase in a given company cannot exceed EUR 500 000), debt write-off and public guarantees.<sup>93</sup>

Hungary has also established a temporary scheme for granting aid in the form of loans with subsidised interest rates.<sup>94</sup> The scheme seeks to improve the access of firms of the real economy to external finance. The scheme applies to loan contracts concluded as from the date of Commission approval and before 31 December 2010. The scheme applies to the whole territory of Hungary, and is open to all sectors of the economy; SMEs and large enterprises are eligible. The Hungarian authorities estimate that the total number of beneficiaries will exceed 1000.

Furthermore, Hungary has introduced a scheme that allows the provision of subsidised guarantees for investment and working capital loans.<sup>95</sup> Aid can be granted until 31 December 2010 at central, regional and local level, and is applied in a decentralised way by all relevant economic policy actors. The Hungarian authorities estimate that the guaranteed amount of loans will not exceed HUF 2.315 billion (EUR 7,65 billion).

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<sup>93</sup> The measure is documented in the decision of the European Commission not to raise objections dated 24 February 2009 under reference N77/2009.

<sup>94</sup> The scheme is based on Art. 23/B, Art. 23/C and Art. 23/D of the Government Decree 85/2004. The measure is documented in the decision of the European Commission not to raise objections dated 24 February 2009 under reference N78/2009.

<sup>95</sup> European Commission decisions N203/2009., N114/2009., N341/2009.

## *Iceland*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

In March 2009, the Icelandic Financial Supervisory Authority (FME) took over the operations of three financial undertakings and appointed resolution committees over each of them which took over the authority of the Board of Directors:<sup>96</sup> Straumur–Burdaras Investment Bank hf. on 9 March 2009,<sup>97</sup> and savings banks SPRON<sup>98</sup> and Sparisjóðabanki Íslands hf.<sup>99</sup> on 21 March 2009, following an earlier series of interventions into the operations of Glitnir, Landsbanki and Kaupthing in October 2008. Following the intervention, the FME took a series of subsequent decisions to dispose of assets and liabilities of these institutions.<sup>100</sup>

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

Iceland introduced capital controls in November 2008 as part of a Stand-By Arrangement with the IMF in response to its financial crisis.<sup>101</sup> The controls were initially introduced on 28 November 2008 and amended on 15 December 2008,<sup>102</sup> based on temporary provision in the Act on Foreign Exchange.<sup>103</sup> As scheduled, the Rules were reviewed on 1 March 2009, but the Central Bank considered that the necessary preconditions for lifting the capital controls had not been sufficiently established.<sup>104</sup> The Central Bank of Iceland regularly assesses the effectiveness of the capital controls and explores possibilities for their gradual, systematic easing when conditions permit.

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<sup>96</sup> Act No. 125/2008 on the Authority for Treasury Disbursements due to Unusual Financial Market Circumstances etc.

<sup>97</sup> See the Decision of the Financial Supervisory Authority of 9 March 2009.

<sup>98</sup> See the Decision of the Financial Supervisory Authority of 21 March 2009.

<sup>99</sup> See the Decision of the Financial Supervisory Authority of 21 March 2009.

<sup>100</sup> Detailed information on these measures and the decisions is available on the website of the FME.

<sup>101</sup> The agreement is documented at <http://eng.forsaetisraduneyti.is/news-and-articles/nr/3257>.

<sup>102</sup> The Rules on foreign exchange No. 1130 of 15 December 2008 abrogate the Rules No. 1082 of 28 November. A table of capital controls is available at [www.imf.org/external/pubs/ft/scr/2009/cr0952.pdf](http://www.imf.org/external/pubs/ft/scr/2009/cr0952.pdf), p. 17.

<sup>103</sup> Act No. 134/2008 on Amendment to the Act on Foreign Exchange No 87/1992, as amended. A temporary provision authorising the Central Bank, subject to agreement of the Minister of Business Affairs, to adopt rules restricting certain categories of capital movements until 30 November 2010.

<sup>104</sup> Statement No. 6/2009, 1 March 2009.

## *India*

### *Investment policy measures*

India has introduced five investment policy measures:

- allowing 100% foreign equity ownership in publication of facsimile edition of foreign newspapers;<sup>105</sup>
- new guidelines to calculate total foreign investments in Indian companies, effectively facilitating more foreign investments into restricted sectors;<sup>106</sup>
- guidelines to clarify requirements for downstream investments by foreign-owned companies, in particular removing a requirement of prior government approval;<sup>107</sup>
- new guidelines clarifying what is meant by transfer of ownership or control in sectors with caps from resident Indian citizens to non-resident entities. As a result of these guidelines sectors where investments under the “cap” (ownership threshold) were automatically approved are now subject to prior approval. These sectors include: air transport services, banking, insurance and telecommunications;<sup>108</sup>
- furthermore, on 19 June 2009, the Securities and Exchange Board of India (SEBI) notified an amendment regarding the facilitation of issuance of Indian depository receipts. It allows foreign institutional investors and mutual funds to invest in Indian Depository Receipts.<sup>109</sup>

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

In order to enhance credit availability, some restrictions on capital account have been relaxed. In January 2009, the government raised the ceiling on foreign investments in rupee denominated corporate bonds from USD 6 to 15 billion; removed the interest rate cap on external commercial borrowings (ECBs) by Indian companies until the end of June 2009; and allowed real estate developers to raise ECBs for township development projects.

As part of its second stimulus package, which was announced on 2 January 2009, India established a Stressed Asset Stabilisation Fund of IDBI Bank. It functions as a Special Purpose Vehicle (SPV) to

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<sup>105</sup> Press Note No. 1 (14 February 2009). Previously, the foreign equity ownership cap was 26% in print media dealing with news and current affairs.

<sup>106</sup> Press Note No. 2 (13 February 2009).

<sup>107</sup> Press Note No. 4 (25 February 2009). Before this Press Note, prior approval was required by FIPB on downstream investments by foreign-owned Indian companies except certain cases for foreign-owned Indian holding companies. It is however with conditions such as notification to government agencies within 30 days of downstream investments, support by a resolution of the Board of Directors and a Shareholders Agreement, compliance with SEBI/RBI guidelines and funds raised from abroad not from domestic market.

<sup>108</sup> Press Note No. 3 (14 February 2009).

<sup>109</sup> Gazette of India Extraordinary Part–III–section 4 of 19 June 2009

provide liquidity to non-deposit taking systemically important Non-Banking Financial Corporations.<sup>110</sup> The SPV issues government guaranteed securities up to a total of INR 250 billion.

The second stimulus package also foresees recapitalisation of public sector banks to the value of IDR 200 billion over two years. In turn, the second stimulus package revises credit targets of Public Sector Banks upward to reflect the altered needs of the economy during the crisis.

*Automotive sector*

None during reporting period.

*Cross-sectoral measures*

As part of the second stimulus package, the guarantee cover by the Credit Guarantee Fund Trust has been extended to 85 percent for credit facility up to IDR 500,000 in order to enhance flow of credit to micro enterprises.

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<sup>110</sup> “Framework for addressing the Liquidity Constraints of NBFCs”, RBI Press release dated 18 February 2009, reproduced in RBI Monthly Bulletin, April 2009, p. 668.

## *Indonesia*

### *Investment policy measures*

The National Land Agency, Home Ministry and Public Housing Ministry are revising a 1996 tax on foreign ownership of property to extend the period of foreign ownership of houses, apartments and condominiums in Indonesia from 25 to 90 years.<sup>111</sup>

A new Mining Law, issued in January 2009, alters Indonesia's approach to the management of its mineral resources, but does not discriminate between domestic and foreign operators. It recognises existing "contract of work" agreements between operators and the government.<sup>112</sup>

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

None during reporting period.

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

None during reporting period.

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<sup>111</sup> Prodita Sabarini, "Expats hail ownership plan", The Jakarta Post, 27 February 2009.

<sup>112</sup> "Mining law: Indonesia's changing tide creating industry waves", International Mining, 11 May 2009.

## *Ireland*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Ireland established and implements a guarantee scheme as well as a capital injection programme. The guarantee scheme,<sup>113</sup> initially established on 30 September 2008, provided a guarantee to safeguard all deposits, covered bonds, senior debt and dated subordinated debt, with six banks: Allied Irish Bank, Bank of Ireland, Anglo Irish Bank, Irish Life and Permanent, Irish Nationwide Building Society and the Educational Building Society as well as such specific subsidiaries. The guarantee expires at midnight on 28 September 2010. According to the *Credit Institutions (Financial Support) Scheme 2008*, the scheme is part of the regulatory framework of the guarantee, the Minister specifies by Order which institutions are covered under the Scheme. The scheme may apply to foreign subsidiaries as well as to branches of systemic significance.

The Irish Government decided on 14 December 2008 to establish capital injection programme with a volume of up to EUR 10 billion.<sup>114</sup> The State's investment may take the form of preference or ordinary shares and the State may participate on an underwriting basis. In principle existing shareholders will be expected to have the right to subscribe for new capital on the same terms as the Government.

The government took *Anglo Irish Bank* into public ownership in January 2009<sup>115</sup> and on 15 June 2009, formally notified the Commission of its intention to recapitalize this bank with EUR 4 billion.<sup>116</sup>

In March 2009, Ireland notified the European Commission of its intention to recapitalize *Bank of Ireland* with EUR 4 billion.<sup>117</sup>

#### *Automotive sector*

None during reporting period.

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<sup>113</sup> European Commission decision NN48/2008.

<sup>114</sup> "Statement by the Government on the Recapitalisation of Credit Institutions", Department of Finance, 14 December 2008.

<sup>115</sup> Regarding Anglo Irish Bank, see European Commission decision N61/2009.

<sup>116</sup> The Decision by the European Commission not to raise objections against the measure will be available under reference N356/2009. The press release regarding this decision has been issued under reference IP/09/1045 on 26 June 2009.

<sup>117</sup> The Decision by the European Commission not to raise objections against the measure will be available under reference N149/2009. The press release regarding this decision has been issued under reference IP/09/483 on 26 March 2009.

### *Cross-sectoral measures*

Ireland has adopted a scheme to grant aid of up to EUR 500 000 per firm in 2009 and 2010 to businesses facing funding problems related to the current credit crunch. The aid will be granted in the form of direct grants, reimbursable grants, interest rate subsidies, and subsidised public loans. The scheme is financed by the Enterprise Stabilisation Fund and its overall budget EUR 100 million and will be administered by Enterprise Ireland.<sup>118</sup>

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<sup>118</sup> The measure is documented in the decision of the European Commission not to raise objections dated 14 April 2009 under reference N186/2009.

## *Israel*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

As part of a crisis response package announced on 20 November 2008, the government committed to provide ILS 6 billion of government guarantees for raising capital in the banking sector. These guarantees have been offered to banks for issues of subordinated notes.<sup>119</sup> In April 2009, the Government decided to double the funds available for the bank guarantees plan to ILS 12 billion, if needed.<sup>120</sup> The state has guaranteed holdings of the subordinated notes for principal and interest payments for a period of ten years from the issuance date. The guarantee will be at a rate of 95% for the entire period of 10 years.<sup>121</sup>

As part of the "Containment and Breakthrough economic plan" presented by the Government in the end of April 2009, the state guarantee for Ashra, the Israel Export Insurance Corp. will be increased by USD 250 million to a total of USD 1.25 billion. The Government will also provide a short-term secondary insurance facility for existing credit insurance companies through a one-year state guarantee in the amount of USD 1 billion.

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

The crisis response package that the government announced on 20 November 2008 and that has a total volume of ILS 11 billion include ILS 5 billion for an investment fund, which will extend lending to companies.<sup>122</sup>

In January 2009, Israel launched the ILS 1.3 billion Government Credit Fund for Mid-Sized Businesses, that was doubled to ILS 2.6 billion in April 2009.<sup>123</sup> The Mercantile-Discount Bank, Bank Otsar Hahayal, and Bank Hapoalim have been chosen to operate the new fund. The fund is based on ILS 260 million in state funds, leveraged by the winning banks into a total of ILS 2.6 billion, and helps provide credit to finance the operations of mid-sized businesses with annual turnovers of ILS 15-

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<sup>119</sup> "Finance Ministry Provides Banking System with NIS/[ILS] 6 billion in State Guarantees for Capital Raising", Ministry of Finance press release dated 19 January 2009.

<sup>120</sup> In the end of May 2009, only the project on the first tranche of ILS 6 billion had been submitted to the Knesset for approval.

<sup>121</sup> According to the "Containment and Breakthrough economic plan" presented by the Government in the end of April 2009, an earlier plan to decrease the rate gradually is not pursued.

<sup>122</sup> "Stimulus' booster evaporates from Tel Aviv market in a day", Haareze, 28 November 2008.

<sup>123</sup> The expansion forms part of the "Containment and Breakthrough economic plan" presented by the Government in the end of April 2009.

400 million.<sup>124</sup> The maximum value of loans to be issued will be ILS 16 million. The state will provide collateral for the loan at a rate of 70%, making it easier for the businesses to obtain collateral in order to receive the credit.<sup>125</sup>

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<sup>124</sup> The initial measure only targeted businesses with turnovers of ILS 22-100 million.

<sup>125</sup> “NIS 1.3 Billion Government Credit Fund for Mid-Sized Businesses Launched as Part of Acceleration Plan”, Ministry of Finance press release, 9 January 2009.

## *Italy*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Italy extended and continued to implement a guarantee scheme for the financial sector. The scheme, initially introduced in late 2008,<sup>126</sup> consists of three components: a state guarantee on banks' liabilities; swaps between state securities and liabilities of Italian banks; and a state guarantee in favour of non-banking institutions willing to lend high quality bonds to Italian banks for refinancing operations with the Eurosystem. Solvent Italian banks, including subsidiaries of foreign banks incorporated in Italy, are eligible for the measures.

Italy established and implements a recapitalisation scheme to support the financial sector. The scheme authorises the injection of capital in the form of core Tier 1 special instruments;<sup>127</sup> it was later modified with a view to strengthen incentives in view of an early redemption.<sup>128</sup> Under the scheme, any bank incorporated under Italian law, including subsidiaries of foreign banks, can apply for support under the scheme that is administered by the Ministry of Economy and Finance; Bank of Italy is involved in the evaluation of applicant institutions. Italy committed to communicate once the operation is finalised the main characteristics of the operations and the outcomes of the valuations made by Bank of Italy.

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

None during reporting period.

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<sup>126</sup> The initial scheme, notified to the European Commission under reference N520a/2008 and approved by the Commission on 13 November 2008, was set out in Decree-law No 155 on "Urgent measures to guarantee the stability of the credit system and the continued availability of credit to enterprises and consumers in the current crisis on international financial markets" and Decree-Law No 157 on "Further urgent measures to guarantee the stability of the credit system". The modification is documented in European Commission decision N328/2009.

<sup>127</sup> The scheme is based on article 12 of Decree-Law No 185 of 28 November 2008 and the relating draft implementing decree. The initial measure was approved by the European Commission on 23 December 2008 under reference N648/2008.

<sup>128</sup> The modification were approved by the European Commission on 20 February 2009 under reference N97/2009.

## *Japan*

### *Investment policy measures*

On 23 June 2009 amendments to the Cabinet Order on Inward Direct Investment and the Ministerial Order on Inward Direct Investment relating to the Foreign Exchange and Foreign Trade Law entered into force.<sup>129</sup> The amendments introduce leaner notification and reporting procedures for inward foreign direct investment.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Japan has announced four policy packages<sup>130</sup> in response to the economic crisis. Some are re-statements, elaborations or expansions of measures already adopted. Measures to enhance credit supply to Japanese firms are a feature in all the packages.

The government passed an amendment to the Act on Special Measures for Strengthening Financial Functions in December 2008<sup>131</sup> which was originally enacted in August 2004 and was available until the end of March 2008. The amended Act enables the government to inject capital to regional/local banks with low capital adequacy ratios. The 2008 reform relaxed conditions for applying banks.<sup>132</sup> The application of the law is limited until March 2012, and the government intends to raise capital of regional/local banks which lend mainly to SMEs in each region. Capital injections are limited to JPY 12 trillion.<sup>133</sup>

In March 2009 the government re-activated share purchase operations of the Banks Shareholding Purchase Corporation (BSPC)<sup>134</sup> up to March 2012.<sup>135</sup> The BSPC is a special-purpose association of banks. Foreign banks are eligible to join this association, but currently all members are Japanese-controlled. The BSPC can purchase stocks etc. issued and/or owned by banks (including foreign controlled banks). The amended Act provides a government guarantee up to JPY 20 trillion for the BSPC's operations.<sup>136</sup>

Based on this fourth policy package, the state-backed Japan Bank for International Cooperation (JBIC) invited domestic financial institutions on 26 May 2009 to apply for two-step five-year loans with a total volume of up to USD 3 billion.<sup>137</sup> Financial institutions are required to on-lend these funds to overseas

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<sup>129</sup> Ministry of Finance Press release, 3 June 2009.

<sup>130</sup> The Government announced the first package on 29 August 2008, the second package on 30 October 2008, the third package on 19 December 2008, and the fourth package on 10 April 2009.

<sup>131</sup> [www.fsa.go.jp/news/20/20081216-3.html](http://www.fsa.go.jp/news/20/20081216-3.html)

<sup>132</sup> The amended Act does not impose strict accountability on management and requirement on restructuring of the applying banks provided that the applying banks continue sufficient lending operations to SMEs.

<sup>133</sup> It was JPY 2 trillion before the amendment. This increase by JPY 10 trillion was announced in the third package.

<sup>134</sup> The BSPC was established in 2002 under the Act of No.131 2001. The Act was amended twice in 2002 and 2003.

<sup>135</sup> [www.bspc.jp/pdf/saikai.pdf](http://www.bspc.jp/pdf/saikai.pdf)

<sup>136</sup> The amount was announced in the third package.

<sup>137</sup> "Public Invitation to Domestic Financial Institutions to Apply for Two-Step Loans Based on 'Countermeasures to Address the Economic Crisis'", JBIC news release NR/2009-10, 26 May 2009.

Japanese SMEs, mid-tier firms and second-tier large corporations to further support firms governed by Japanese law by financing their overseas subsidiaries' business activities. Funds will be allocated on a preferential basis to financial institutions that make a commitment to active on-lending to the overseas affiliates of these firms. The measure is set to be in place until the end of March 2010.

*Automotive sector*

None during reporting period.

*Cross-sectoral measures*

On 30 April 2009, an amendment to the Act on Special Measures for Industrial Revitalisation and a related cabinet ordinance entered into force.<sup>138</sup> The new regulatory framework allows the government-owned Japan Finance Corporation (JFC) to cover parts of losses that a designated financial institution suffered as a result of providing financing to business operators that implemented an authorized business restructuring plan.<sup>139</sup> The measure expires at the end of March 2010.

The fourth policy package, announced on 10 April 2009, includes measures to enhance credit supply to firms governed by Japanese law:<sup>140</sup> It increases the funds available for emergency credits for SMEs from JPY 20 trillion to JPY 30 trillion and increases the volume of safety-net loans by government-affiliated financial institutions from JPY 10 trillion to JPY 17 trillion.

The government has enhanced safety net loan of the Japan Finance Corporation (JFC) and Shoko Chukin Bank and emergency guarantee scheme of Credit Guarantee Corporations (CGC) since October 2008. These programmes will last till March 2010 and are expected to help private enterprises which suffer from a temporary loss in demand and credit due to the economic crisis. Any enterprise may apply for these programmes.

On 28 and 29 May 2009, the state-backed Japan Bank for International Cooperation (JBIC) signed Untied Loan agreements for an aggregate amount of up to USD 300 million with the RHB Bank Berhad, and Maybank, two Malaysian commercial banks. The loans aim to provide long-term financing to Japanese companies operating in Malaysia.<sup>141</sup>

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<sup>138</sup> "Cabinet Ordinance to Partially Amend the Enforcement Order for the Act on Special Measures for Industrial Revitalization", Ministry of Economy, Trade and Industry press release, 24 April 2009. The Act on Special Measures for Industrial Revitalisation was originally enacted in 1999 with a fixed term of four years, it was extended twice in 2003 and 2007.

<sup>139</sup> The eligibility criteria are described in a Ministry of Economy, Trade and Industry press release.

<sup>140</sup> "Countermeasures to Address the Economic Crisis", Government media release, 10 April 2009.

<sup>141</sup> "Supporting Improvement of the Financial Environment for Japanese Affiliates in Malaysia", JBIC news releases NR/2009-11 (28 May 2009) and NR/2009-12 (29 May 2009).

## ***Korea***

### *Investment policy measures*

On 2 June 2009, the Korean government amended the *Presidential Decree of the Urban Development Act* to allow foreign-invested companies in Korea to make non-bid contracts with local governments for the use of lands included in the urban development projects. Korean companies are still subject to open bid contracts.<sup>142</sup> This measure is effective for two years from 1 July 2009.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Korea established a KRW 20 trillion (USD 14.3 billion) *Bank Recapitalisation Fund*,<sup>143</sup> which began operations on 31 March 2009.<sup>144</sup> The Fund aims to help eligible local banks strengthen their capital base. The Fund, managed by the *Bank Recapitalisation Fund Oversight Committee* and operated through the state-run Korea Development Bank and Korea Asset Management Corporation, purchases banks' hybrid and subordinate bonds. Commercial banks, holding companies as well as Industrial Bank of Korea, NACF, and NFFC are eligible to apply for the fund. The banks that participate in the scheme<sup>145</sup> have signed a MoU as a prerequisite to the government guarantee on their external debts. They contain commitments to supporting the real economy, notably SMEs,<sup>146</sup> and other preconditions, which are monitored by the government. Performance against the commitments may have an impact on the access to the scheme and on interest rates.<sup>147</sup>

According to an announcement by the Financial Services Commission,<sup>148</sup> a *Financial Stabilisation Fund* will help financial institutions including commercial and mutual savings banks and insurers. The newly established Korea Policy Finance Corporation will support all types of financial institutions capable of normal management, including banks whose capital adequacy ratio exceeds 8%. The fund will be financed via issuance of government bonds by Korea Policy Finance Corporation. The amount of assets at the disposal of the fund has yet to be determined.

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<sup>142</sup> "The Government Takes a Sweeping Regulatory Reform to Overcome Economic Crisis", Invest Korea investment news no. 4007, 2 June 2009.

<sup>143</sup> The National Bank of Korea will contribute KRW 10 trillion, state-owned Korea Development Bank contributes KRW 2 trillion, and institutional and public investors will contribute KRW 8 trillion. "Bank Recapitalisation Fund: Timetable and Operational Plan", Press Release by the Financial Services Commission, 25 February 2009.

<sup>144</sup> "Bank Recapitalisation Fund: Timetable and Operational Plan", Press Release by the Financial Services Commission, 25 February 2009.

<sup>145</sup> Woori, Hana, Shinhan, Kookmin, Kyungnam, KIB, KEB, Daegu, Busan, Kwangju, Jeju, Cheonbuk, NACF, NFFC, among others, according to the Bank Recapitalisation Fund Oversight Committee's Third Execution Blueprint, Financial Oversight Commission press release dated 20 March 2009.

<sup>146</sup> According to the press release of the Financial Services Commission dated 12 May 2009, the loans provided to SMEs have indeed increased.

<sup>147</sup> See Bank Recapitalisation Fund Oversight Committee's Third Execution Blueprint, Financial Services Commission press release dated 20 March 2009.

<sup>148</sup> "Pre-emptive Initiatives to Safeguard the Soundness of Financial Institutions", Financial Services Commission press release dated 13 March 2009.

A *Restructuring Fund* has been established by a law that became effective on 13 May 2009.<sup>149</sup> It is to purchase until 2014 bad loans from financial institutions and companies that will undergo restructuring. The Fund may dispose of up to KRW 40 trillion (USD 27 billion) through government-guaranteed bonds and is expected to be launched in May 2009.<sup>150</sup> The Fund will be administered by the Korea Asset Management Corporation (KAMCO).

Furthermore, a measure foresees that Korea Asset Management Corporation will use up to KRW 20 trillion to purchase bad loans in 2009.

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

Several measures for restructuring the shipping industry were implemented from late April 2009 on. They include:

- Korea Eximbank provides a total of KRW 1 trillion in loans to national shipping lines that build new ships at shipyards both at home and abroad. Korean shipping companies located overseas but owned by Korean shipping companies may apply for the loan, which must be used to purchase ocean-going ships. Loans can cover up to 80% of the shipbuilding contract value and need to be repaid during no later than 12 years after delivery date of the vessel.<sup>151</sup>
- On 23 April 2009, the government initiated a shipping fund to purchase vessels from shipping companies as part of its efforts to facilitate restructuring of the shipping industry.<sup>152</sup> The shipping fund has been established through contributions from private investors and financial institutions as well as from the Restructuring Fund managed by KAMCO. As of 28 August 2009, KRW 191.2 billion has been used for purchase of ships.

In addition, Korea took some measures targeting a wider range of industries. They include the abovementioned *Restructuring Fund* and a separate, smaller *Corporate Restructuring Fund* to fast-track the revamp of nonviable firms. This fund, which disposes of a KRW 100 billion (USD 73 million), was launched in mid April 2009 by the government and the state-owned Korea Development Bank.<sup>153</sup> The Fund acquires controlling stakes in distressed SMEs tries to turn them around in no more than five years to then sell them with profit—preferably to the previous owners or members of existing management. KDB hopes to expand the fund’s assets to KRW 1 trillion through contributions from private investors. The Ministry of Strategy and Finance and the Financial Services Commission (FSC) announced a plan to launch the fund under the Korea Asset Management Corporation (KAMCO).

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<sup>149</sup> Press release of Financial Services Commission dated 4 May 2009. “Corporate Restructuring Progress and Financial Sector’s non-performing loans”, release of Financial Services Commission, 30 June 2009.

<sup>150</sup> The final amount and time of implementation are still to be determined, according to Press release of Financial Services Commission dated 4 May 2009.

<sup>151</sup> Information from “FAQ on Shipping Industry Restructuring”.

<sup>152</sup> “Restructuring Initiatives for Shipping Industry”, Financial Services Commission Press release, 23 April 2009. A bill that will enable the Restructuring Fund to finance the programme was reviewed in Parliament in end of April 2009. “Restructuring Initiatives for Shipping Industry”, Financial Services Commission Press release, 23 April 2009.

<sup>153</sup> “2009 Corporate Restructuring Fund Management Plan” Financial Services Commission Press release, 18 May 2009.

## *Latvia*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Latvia adopted a guarantee scheme for its financial sector under which a state guarantee would be granted to new short and medium term debt issuance as well as existing loans.<sup>154</sup> Banks incorporated in Latvia (including the Latvian subsidiaries of foreign banks) are eligible for the scheme. The Latvian authorities have indicated that they will guarantee an amount of 10% of GDP in the first instance (approximately LVL 1.5 billion as of December 2008). This amount can be increased up to 20% of GDP. About 10 banks were expected to apply for the State guarantee. The Latvian authorities estimate the maximum guarantee of a single bank to be approximately LVL 600 million.

In addition to the scheme, Latvia passed a package of measures in favour of JSC Parex Banka in November 2008 that has since been changed twice.<sup>155</sup> The measures were taken in response to the Bank's severe liquidity difficulties and led to a nationalisation through acquisition of a 84.83% stake by the Government of Latvia in November and December 2008. In order to achieve an 11% capital adequacy ratio, the Latvian Government provided around LVL 191 billion to JSC Parex Banka.

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

As part of a package of measures to support the economy, Latvia established two schemes for which a combined budget of LVL 600 million is available. These include the national guarantee scheme<sup>156</sup> and a schemes that allows the authorities to provide aid of up to EUR 500 000 to companies in the form of guarantees.<sup>157</sup> Latvia estimates the number of beneficiaries of the latter scheme to be between 101 and 500 firms. The State owned limited liability company "Latvian Guarantee Agency" will implement the measure that is estimated to require an overall budget of LVL 20 million.

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<sup>154</sup> European Commission decision N638/2008.

<sup>155</sup> European Commission decisions NN68/2008, NN3/2009 and N189/2009.

<sup>156</sup> European Commission decision N139/2009.

<sup>157</sup> European Commission decision N124/2009.

## *Lithuania*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

None during reporting period.

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

Lithuania introduced a scheme that enables its authorities to provide guarantees to credit institutions for loans taken by SMEs and large enterprises.<sup>158</sup> The scheme will be implemented, until its expiry on 31 December 2010 by the State owned limited liability company INVEGA. INVEGA's guarantee losses resulting from this measure will be covered by the national budget. The Lithuanian authorities estimate an overall budget of LTL 70 million.

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<sup>158</sup> European Commission decision N272/2009.

## ***Luxembourg***

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Luxembourg has provided *ad hoc* support to a number of financial institutions, of which support to Dexia<sup>159</sup> falls in the reporting period.<sup>160</sup>

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

Luxembourg also established two aid schemes to support the real economy: Under the Temporary Aid Scheme for Economic Recovery (*Régime temporaire d'aides au redressement économique*)<sup>161</sup>, it may provide up to EUR 500 000 per undertaking to businesses likely to have a structural impact on the national or regional economy. The measure is limited until 31 December 2010.

Under a second aid scheme, the Temporary Guarantee Scheme for Economic Recovery (*Régime temporaire de garanties en vue du redressement économique*)<sup>162</sup>, the government may extend subsidised credit guarantees to enterprises that are registered and operating in Luxembourg, with the exception of financial sector enterprises. A total sum of EUR 500 million is available for this scheme that is likewise limited until 31 December 2010 and that is expected to benefit no more than 50 enterprises.

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<sup>159</sup> The measure is documented in the section on Belgium in this document.

<sup>160</sup> Recapitalisation measures taken to support Fortis—approved by the European Commission on 3 December 2008 under reference NN46/2008—precede the reporting period.

<sup>161</sup> The Decision by the European Commission not to raise objections against this measure will be available under reference N99/2009. The press release regarding this decision has been issued under reference IP/09/334 on 27 February 2009.

<sup>162</sup> The measure is documented in the decision of the European Commission not to raise objections dated 11 March 2009 under reference N128/2009.

## *Mexico*

### *Investment policy measures*

An amendment of the regulations on foreign investment of 4 May 2009 eases the conditions for foreign investors to apply for trusts on real estate in restricted areas.<sup>163</sup>

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Central bank auctions of dollar financing to provide banks with dollar funds to on-lend to enterprises. The programme was introduced to compensate the shortfalls in the roll-over of external financing to domestic enterprises. The auctions are open to all banks operating in Mexico. The first auction took place on 21 April 2009.

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

None during reporting period.

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<sup>163</sup> Diario Oficial de la Federación el 8 de septiembre de 1998 as amended 4 May 2009

## *Netherlands*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

The Netherlands extended a guarantee scheme for the financial sector that was initially introduced in October 2008.<sup>164</sup> Banks with a seat and substantial operations in the Netherlands, including subsidiaries of foreign banks having substantial operations in the Netherlands, are eligible for guarantees. The Dutch central bank assesses the applications of the individual banks. Participating banks must comply with certain conditions regarding corporate governance. The total volume of the guarantee scheme is EUR 200 billion.

The Netherlands also carried out measures to support individual banks—Aegon<sup>165</sup> and SNS Reaal NV<sup>166</sup>—on 28 October and 12 November, respectively.<sup>167</sup>

On 24 December 2008, the recently state-owned Fortis Bank Nederland (FBN) transferred its 34% stake in ABN AMRO to the State of the Netherlands, thus reducing its balance sheet by EUR 6.5 billion. On 8 April 2009, the European Commission announced that it was investigating whether this transaction at the price of EUR 6.5 billion amounts to aid to FBN, as the price paid may have been above market value, thereby providing a subsidy as it seems that this measure actually had the effect of a recapitalisation of FBN. On 26 January 2009 the Dutch State granted an asset-relief facility to ING Group N.V. (ING). This facility is a guarantee with upwards potential. The facility partially covers the risks of ING's Alt-A portfolio, after its value has been corrected from USD 39 billion down to USD 35.1 billion. The bank remains owner of this portfolio. The State and ING share in the profits and losses on the basis of the ratio

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<sup>164</sup> The initial measure is documented in the decision of the European Commission not to raise objections dated 31 October 2008 under reference N524/2008. The prolongation was subject of the Decision dated 7 July 2009 by the European Commission not to raise objections under reference N379/2009.

<sup>165</sup> Aegon, the Netherlands' second largest supplier of pensions, received via a special type of securities a loan of EUR 3 billion to bolster its liquidity following significant losses from its exposure to Lehman Brothers and Washington Mutual. The measure is documented in the decision of the European Commission not to raise objections dated 27 November 2008 under reference N569/2008.

<sup>166</sup> SNS REAAL N.V. received EUR 750 million via a special type of securities as an emergency recapitalisation from the Dutch Government. The Decision by the European Commission not to raise objections against this measure will be available under reference N611/2008. The press release regarding this decision has been issued under reference IP/08/1951 on 11 December 2008.

<sup>167</sup> A capital injection into ING by the Dutch Government of EUR 10 billion through special securities in October 2008 and approved by the European Commission under reference N528/2008 on 13 November 2008 precedes the reporting period.

80% (State)—20% (ING). The bank pays the State a guarantee fee in compensation for the taken risk; the State pays ING a management and funding fee for the management and financing of the portfolio.<sup>168</sup>

*Automotive sector*

None during reporting period.

*Cross-sectoral measures*

The Dutch government has expanded the credit guarantee scheme for SMEs and the 'guarantee corporate finance' for all firms, to make sure enterprises can attract sufficient capital for investments. For small and medium sized enterprises the maximum business guarantee credit is increased from EUR 1 to 1.5 million and the target group is broadened from enterprises with 100 employees to 250 employees. Moreover, the business guarantee credit for start-ups (SMEs running for a maximum of 5 years) is increased from EUR 100 000 to EUR 200 000. In total, it is expected that an additional EUR 94 million will be reserved for this guarantee scheme expansion. The guarantee corporate finance, accessible for all companies, is expanded to credits up to EUR 50 million, with a maximum government guarantee of 50% of the loan. The bank will pay a cost plus which extends the other half of the loan will pay a cost covering premium. The budget for this temporary facility is set at EUR 1.5 billion. The Dutch government has announced that the maximum amount for the eligible loans will be increased to EUR 150 million and another EUR 500 million will be added to the budget to include parts of the health care sector. In addition the maximum guarantee amount for equity and semi equity will be increased. Financing (share capital and subordinated loans) of EUR 25 million will be eligible (was EUR 5 million).

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<sup>168</sup> On 31 March 2009, the European Commission informed the Dutch Government in a letter under reference C10/2009 about its decision to initiate the procedure laid down in Article 88 (2) of the EC Treaty. The initial decision by the European Commission carried the reference N138/2009.

## *New Zealand*

### *Investment policy measures*

On 23 July 2009 the Government amended the overseas investment rules with immediate effect to make overseas investment in New Zealand simpler and more attractive, while at the same time safeguarding sensitive assets.<sup>169</sup> Previous rules were considered too complex and too difficult to interpret, and the reform endeavours to make the process simpler, faster and cheaper. The new rules delegate greater decision-making powers from the Ministers to the Overseas Investment Office, which will be able to decide all applications barring rural sensitive land or land adjoining waterways. Moreover, several types of transactions have been exempted from the Act. Further review, focusing on changes to the Overseas Investment Act itself, is planned.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

In January 2009, New Zealand issued a new pricing schedule for its Wholesale Funding Guarantee Scheme which is expected to increase uptake in the facility. The facility is available to financial institutions that have an investment grade credit rating (BBB- or better), and have substantial New Zealand borrowing and lending operations (but not to institutions that are simply financing a parent or related company). Branches of foreign banks would be included among the institutions eligible for a wholesale guarantee scheme, but only in respect of their New Zealand dollar issuance (in order to avoid any risk of any New Zealand guarantee supporting the funding of the wider group).

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

None during reporting period.

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<sup>169</sup> “Government simplifies overseas investment”, Government press release dated 23 July 2009.

## *Norway*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Following stabilisation measures for financial institutions in October 2008, the Norwegian Government announced the establishment of the State Finance Fund on 8 February 2009.<sup>170</sup> The State Finance Fund, operational since 15 May 2009<sup>171</sup> seeks to temporarily ease Norwegian banks' access to core capital to enable the banks to maintain normal lending. Banks may apply for injection of capital from the Fund that is equipped with a capital of NOK 50 billion. The specific terms and conditions attached to the recapitalisation measures are determined in individual agreements between the Fund and the individual banks. The scheme is open for a 6 month period starting from 15 May 2009, in line with ESAs state aid guidelines.

On 15 January 2009 the Norwegian State provided Eksportfinans the option to borrow up to NOK 30 billion. Eksportfinans provides export credits and is owned by 26 banks active in Norway and the Norwegian government. The loans must be drawn down before 31 December 2010.<sup>172</sup>

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

Norway also took measures to enhance liquidity of Norwegian companies. In March 2009, it established the State Bond Fund disposing of capital of NOK 50 billion.<sup>173</sup> The State Bond Fund will invest in fixed-income instruments issued by Norwegian companies. It is expected to be wound up after 5 to 10 years. Its operations are carried out by Folketrygdfondet, a state-owned asset management organization. Folketrygdfondet has operational independence and is expected to invest based on financial, market oriented considerations.

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<sup>170</sup> "Norway presents new measures for industry and households", Government press release 17/2009, published 8 February 2009.

<sup>171</sup> "Regulations relating to the Norwegian State Finance Fund" were laid down on 8 May 2009. The EFTA Surveillance Authority approved the measure on 8 May 2009 under Decision No 205/09/COL.

<sup>172</sup> The EFTA Surveillance Authority decided on the measure on 30 January 2009 under Decision No 36/09/COL.

<sup>173</sup> The Fund is based on Act no. 13 of 6 March 2009 relating to the Government Bond Fund Act and the Regulations on the Management of the Government Bond Fund, published 18 March 2009. The EFTA Surveillance Authority approved the measure on 20 May 2009. A press release regarding this decision has been issued under reference PR(09)40.

***Peru***

*Investment policy measures*

None during reporting period.

*Investment measures relating to national security*

None during reporting period.

*Emergency and related measures with potential impacts on international investment*

*Financial sector*

None during reporting period.

*Automotive sector*

None during reporting period.

*Cross-sectoral measures*

None during reporting period.

## *Poland*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

A draft law to guarantee interbank lending has been submitted to Parliament. The government has set aside PLN 40 billion (about USD 12.2 billion) for these guarantees.<sup>174</sup>

The stabilization and development plan the government put forward in late November was supposed to help alleviate the crisis. The most important goal of the PLN 91 billion package was to ensure financial stability and stimulate economic growth.

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

In early June 2009, the Polish Government agreed on an anti-crisis plan that, among other measures, would, among other measures, allow crisis-hit companies of all sizes to apply for state aid.<sup>175</sup> The measures are expected to be passed as a law.

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<sup>174</sup> “Republic of Poland: Arrangement under the Flexible Credit Line—Staff Report; Staff Supplement; Press Release on the Executive Board Discussion; and Statement by the Executive Director for the Republic of Poland”, IMF Country Report No. 09/138, May 2009.

<sup>175</sup> “Polish anti-crisis plan accepted in part”, Warsaw Business Journal, 2 June 2009.

## **Portugal**

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Portugal introduced a guarantee scheme to support the access to liquidity of solvent credit institutions that are incorporated in Portugal, including subsidiaries of foreign banks.<sup>176</sup> Under the scheme, the State may grant guarantees for liabilities resulting from financing agreements and the issuance of non-subordinated debt of credit institutions incorporated in Portugal. The Portuguese government estimates that about 51 to 100 credit institutions are eligible. Up to EUR 20 billion are available for the scheme that is accessible until 31 December 2009. Between the inception of the scheme and 15 June 2009, six Portuguese credit institutions have been granted a State guarantee; some of these guarantees exceed EUR 1 billion.

Portugal introduced a recapitalisation scheme for credit institutions registered in Portugal.<sup>177</sup> The measure, which was initially announced in November 2008, makes new capital available to eligible credit institutions in exchange for instruments eligible as tier 1 capital. It seeks to strengthen the institutions' capital base against potential losses. The size of the scheme is capped at EUR 4 billion.<sup>178</sup> The program is temporary in nature and divestment by the government should be concluded after a period of 3 years, which may be extended in exceptional circumstances to 5 years.

Portugal also assisted individual banks: On 5 December 2008 Portugal issued a guarantee, assisted by collaterals, on a EUR 450 million loan granted by six Portuguese banks to Banco Privado Português.<sup>179</sup> Banco Português de Negócios, S.A. (BPN) was nationalised during November 2008 to contain systemic risks and protect deposits.

A new credit insurance scheme provides government guarantees to the five insurance companies operating in Portugal for credit insurance for exporters. The measure announced on 9 January 2009 includes EUR 2 billion in credit insurance for exports to OECD countries and EUR 2 billion for operations with non-OECD countries for which there is a political risk in addition to ordinary commercial risk.

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<sup>176</sup> The measure is documented in the decision of the European Commission not to raise objections dated 17 December 2008 under reference NN60/2008. The legal basis is law n° 60-A/2008 of 20 October and its implementing provision Portaria n° 1219-A/2008 of 23 October.

<sup>177</sup> The Decision by the European Commission not to raise objections against this measure, dated 20 May 2009 will be available under reference N556/2008. The press release regarding this decision has been issued on under reference IP/09/818.

<sup>178</sup> The maximum overall amount allocated to the guarantee and recapitalisation national schemes is EUR 20 billion, and the latter cannot exceed EUR 4 billion within the total envelope.

<sup>179</sup> The loan has a duration of six months and can only be used by beneficiary to face its liabilities as registered in the balance sheet on 24 November 2008. The Decision by the European Commission not to raise objections against this measure will be available under reference NN71/2008. The press release regarding this decision has been issued under reference IP/09/400 on 13 March 2009.

*Automotive sector*

None during reporting period.

*Cross-sectoral measures*

Portugal introduced an aid scheme that allows the allocation of limited amounts to companies of any size in 2009 and 2010.<sup>180</sup> The aid can be granted in particular in the form of direct grants, reimbursable grants, interest rate subsidies, subsidized public loans and public guarantees. The aid per undertaking may not exceed EUR 500 000 in 2009-2010 combined, allocations of the existing *de minimis* aid scheme included. The scheme is administered by economic policy actors at central, regional and local levels. The total aid amount available under this scheme is estimated at EUR 750 million.

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<sup>180</sup> The measure is documented in the decision of the European Commission not to raise objections dated 19 January 2009 under reference N13/2009.

## ***Romania***

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

On 5 May 2009, Romania notified a public aid scheme involving loan guarantees to the European Commission.<sup>181</sup>

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

Romania introduced an aid scheme that allows soft loans of limited amounts in 2009 and 2010 to be made by AVAS and the Ministry of Economy, to companies in difficulty of small and medium size in which AVAS or the Ministry of Economy holds assets (assets of up to but no more than 25 %).<sup>182</sup> This aid can be granted as subsidized public loans. The allocation per undertaking may not exceed EUR 2.5 million per enterprise over two years; a company may benefit only once from an aid measure for its rescuing or restructuring over a period of ten years. It is expected that 11-50 companies will benefit. The total aid amount available under this scheme is estimated at EUR 15 million for each of 2009 and 2010.

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<sup>181</sup> European Commission decision N286/2009. No information on the features of the measure was available at the time when the present report was issued.

<sup>182</sup> The measure is documented in the decision of the European Commission not to raise objections dated 4 May 2009 under reference N129/2009.

## ***Russian Federation***

### *Investment policy measures*

On 16 May 2009, Federal Law No. 74-FZ came into force.<sup>183</sup> It provides for simplified rules on access of foreign securities to the Russian securities. Previously, securities issued by foreign entities could be placed for circulation on the Russian market on the basis of either an international treaty or a cooperation agreement between the Federal Service for the Securities Market (FSFM) and the respective authority of the country of the foreign issuer.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

The law “On Amending the Federal Law ‘On additional measures to support the financial system of the Russian Federation’”<sup>184</sup> amends the rules governing Vnesheconombank’s (VEB) access and use funds of the National Welfare Fund. Since its entry into force on 17 July 2009, VEB can access up to RUB 410 billion to provide subordinated loans to Russian credit institutions.

On 9 June 2009 the Government of the Russian Federation published its Anti-Crisis Programme of the Government of the Russian Federation for 2009, following consideration by the State Duma on 6 April 2009. Measures include:

- Providing subordinated loans of up to RUB 555 billion in 2009 (RUB 1 trillion, including a possible loan to Sberbank from the central bank)<sup>185</sup> in addition to the RUB 1 trillion extended in late-2008 (central bank loan of RUB 500 billion to Sberbank, placement of RUB 450 billion with the state corporation Vnesheconombank (VEB) for extending subordinated loans to banks other than Sberbank).
- A deposit of USD 50 billion in central bank reserves with VEB to finance the repayment of the external debt of Russian companies. Of this amount only some USD 13 billion has been committed.
- Several troubled private banks were acquired by VEB and other state owned enterprises, including to Globex, Sviaz-Bank, Kit Finance and Sobinbank.
- Capital injections for the agricultural bank Rosselkhozbank (RUB 45 billion) and the state leasing company Rosagroleasing (RUB 25 billion) linked to the purchases and leasing of domestic agricultural machinery.
- The “Anti-Crisis Programme of the Government of the Russian Federation for 2009” contains a blueprint for “enhancement of the stability of the national financial system.” The plan describes

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<sup>183</sup> Federal Law #74-FZ of 28.04.2009 "On amending the Federal Law "On the securities market" and Article 5 of the Federal Law "On protection of the rights and legitimate interests of investors in the securities market".

<sup>184</sup> Федеральный Закон О внесении изменений в Федеральный закон "О дополнительных мерах по поддержке финансовой системы Российской Федерации"

<sup>185</sup> *Anti-Crisis Programme of the Government of the Russian Federation for 2009*, Section 5.

*inter alia* the intention of the Government and the Central Bank to “stimulate the consolidation of the banking system.”

#### *Automotive sector*

In the automobile sector, the government has agreed to assist in the issuance in 2009 of bonds to finance investment projects in the amount of up to RUB 60 billion and a maturity of five years on condition of state guarantees as well as possible refinancing of such securities by the Bank of Russia. Foreign companies that have established assembly plants in the Russian Federation are eligible for industrial support.<sup>186</sup> Furthermore, the government has announced a number of measures to support domestic producers.<sup>187</sup> These include various interest rate subsidies, including loans taken by car manufacturers for modernisation (RUB 2.5 billion).

Russian automaker AvtoVAZ received a RUB 25 billion, one year, interest-free loan on 4 June 2009.<sup>188</sup> Russian Technology, a state-owned shareholder in AvtoVAZ, received the loan from the government to forward it to AvtoVAZ. Carmaker GAZ received state guarantees for credits worth up to RUB 20 billion roubles.

In late May 2009, state-owned Sberbank joined AvtoVAZ’s *Lada Finance: Lada on Credit* programme.<sup>189</sup> The programme, based on a government scheme to subsidise interest rates on loans taken to purchase Russian-made cars, entitles buyers of Ladas, an AvtoVAZ brand, to receive additional discounts from dealers when taking a car loan from Sberbank. The terms of the programme reduce borrowers’ spending on the subsidised interest rate to 0% annually. Only private persons may benefit from this programme.

By resolution of 7 July 2009, the Russian government allocated RUB 1 billion to leasing companies that are majority Russian-owned.<sup>190</sup> The funds are to be used for potential reimbursement of their expenses for reimbursement of expenses for the payment of interest on loans obtained from Russian credit organisations in 2009 for a term not exceeding 5 years for the purchase of vehicles produced in Russia.

#### *Cross-sectoral measures*

In its anti-crisis plan, the government commits to not supporting inefficient enterprises, but describes plans to support efficient companies are in trouble because of limited access to credit. The Plan includes the following elements:<sup>191</sup>

- The Government Commission on Sustained Economic Development has approved a list of 295 “backbone” organisations, i.e. companies that have important impacts on the Russian economy and that are eligible for state support measures.<sup>192</sup> An Interdepartmental Working Group allocates

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<sup>186</sup> On 20 November 2008, the Prime Minister of the Russian Federation, Mr. Putin, stated: “As for the new assembly plants recently established in Russia by major foreign automakers, we also regard them as part of the domestic auto industry. In this sense, I am making no distinction between Volkswagen, Renault, Ford and Toyota plants, and Russian VAZ and GAZ. Foreign assembly plants operating in Russia are entitled to government support as much as local manufacturers—naturally, assuming they comply with the required domestic content agreement.”

<sup>187</sup> “Anti-Crisis Programme of the Government of the Russian Federation for 2009”, Section 3 and Appendix item no. 2.2.2.8.

<sup>188</sup> Prime Minister media review, quoting Vedomosti, 27 April 2009.

<sup>189</sup> FCNovosti, 1 June 2009, referring to Sberbank press communiqué.

<sup>190</sup> Постановление Правительства РФ от 7 июля 2009 г. N 546.

<sup>191</sup> “Anti-Crisis Programme of the Government of the Russian Federation for 2009”, Section 4.1.

<sup>192</sup> *Anti-Crisis Programme of the Government of the Russian Federation for 2009*, Section 3.

support in the form of capital injections, direct state support and state guarantees of loans. The 2009 budget sets aside up to RUB 300 billion for this measure.

- The Working Group will operate under transparency rules designed to rule out lobbying by individual companies.
- Support will be provided only to the enterprises that have committed to a restructuring plan and only if they make commitments relating to executive pay, transparency, legal compliance and corporate development.
- Beneficiary companies are obliged to submit a report on implementation of their commitments. The enterprises receiving large amounts of support must publish their reports.
- In addition to the federal list, there is a list of 1,148 regional backbone companies, which will be monitored by the Ministry of Regional Development and regional authorities.
- As much as RUB 300 billion will be earmarked in the federal budget for state guarantees of loans of these enterprises in 2009.

*Saudi Arabia*

*Investment policy measures*

None during reporting period.

*Investment measures relating to national security*

None during reporting period.

*Emergency and related measures with potential impacts on international investment*

*Financial sector*

None during reporting period.

*Automotive sector*

None during reporting period.

*Cross-sectoral measures*

None during reporting period.

## ***Slovak Republic***

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

None during reporting period.

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

As part of its third package to respond to the crisis, the Slovak Republic took a series of measures in support of the real economy. These measures include revision of the law on investment assistance (passed by the parliament on 11 February 2009). The law provides state aid to support initial investment.<sup>193</sup> Undertakings with a registered office in the Slovak Republic, incorporated in the Commercial Register or the Trade Licence Register, are eligible for the support for an investment in the Slovak Republic.<sup>194</sup> The support is temporary and covers investment plans submitted between 1 April 2009 and 31 December 2010. The measure is estimated to have a gross value of EUR 36.5 million.

The Slovak Republic also introduced a temporary aid scheme to grant compatible aid of up to EUR 500 000 per undertaking.<sup>195</sup> The aid may be granted until 31 December 2010 as grants and remission of penalties for non payment of taxes, among other forms.

The Government also increased the capital of the fully state-owned Slovak Guarantee and Development Bank (SZRB) by SKK 1 billion.

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<sup>193</sup> “Third crisis package launched”, The Slovak Spectator, 16 February 2009.

<sup>194</sup> “Changes in state aid”, Slovak Investment and Trade Development Agency, 10 February 2009.

<sup>195</sup> The Decision by the European Commission not to raise objections against this measure will be available under reference N222/2009. The press release regarding this decision has been issued under reference IP/09/680 on 30 April 2009.

## *Slovenia*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

As part of a first package of measures in response to the crisis, the Government of Slovenia adopted a guarantee scheme for credit institutions in Slovenia under which the Slovenian state would guarantee up to EUR 12 billion of debt issued by financial institutions that are incorporated in Slovenia, including Slovenian subsidiaries of foreign financial institutions.<sup>196</sup> The scheme runs until the end of 2010, which is estimated to cover all banks' foreign refinancing needs for 2009–10. The measure is based on a government regulation adopted on 4 December 2008.

A second crisis-response package was adopted in February 2009. Its measures include:

- Provision of funds to banks: additional foreign borrowing of the Treasury in the amount of EUR 1 billion, additional foreign borrowing of banks with state guarantee, additional foreign borrowing of Slovene Export and Development Bank with state guarantee.<sup>197</sup>
- Reduction in risk exposure of banks when granting loans to enterprises: guarantee scheme provided to banks for general granting of loans to companies, individual state guarantees for enterprises, increase in capital of the Slovene Export and Development Bank.
- A liquidity scheme to the financial sector<sup>198</sup> that complements the guarantee scheme. Under the scheme, the Slovenian state provides short and medium term non-subordinated debt for a duration of one to a maximum of three years. The overall budget of the previously mentioned guarantee scheme and the liquidity scheme is capped at EUR 12 billion. Institutions that participate in the scheme are subject to behavioural commitments, including limitations on expansion and conditions for staff remuneration or bonus payments.

The Slovenian state guarantee schemes for credit institutions provide for non-discriminatory access for all solvent institutions, including Slovenian subsidiaries of foreign banks.

#### *Automotive sector*

None during reporting period.

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<sup>196</sup> The measure is documented in the decision of the European Commission not to raise objections dated 12 December 2008 under reference N531/2008. On 22 June 2009, the European Commission announced its decision not to raise objections against a prolongation of the scheme under reference N331/09. By the middle of March 2009, the government had approved one bank guarantee.

<sup>197</sup> "Slovenia" European Economic and Social Committee.

<sup>198</sup> The measure is documented in the decision of the European Commission not to raise objections dated 20 March 2009 under reference N637/2008. The Press Release under Reference IP/09/452 provides information in English language on this decision.

### *Cross-sectoral measures*

Slovenia took three emergency measures:

- It introduced a national risk capital scheme to respond to the unavailability of risk capital investments into start-ups and small and medium-sized enterprises.<sup>199</sup> The measure will run initially until end 2013 and disposes of a total budget of EUR 35.05 million;
- It further introduced a scheme for subsidised state guarantees for investment and working capital loans concluded by 31 December 2010;<sup>200</sup>
- Moreover, Slovenia established a temporary aid scheme for granting limited amounts of compatible aid.<sup>201</sup>

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<sup>199</sup> The measure is documented in the decision of the European Commission not to raise objections dated 12 December 2008 under reference N201/2008.

<sup>200</sup> European Commission decision NN34/2009.

<sup>201</sup> European Commission decision N228/2009.

***South Africa***

*Investment policy measures*

None during reporting period.

*Investment measures relating to national security*

None during reporting period.

*Emergency and related measures with potential impacts on international investment*

*Financial sector*

None during reporting period.

*Automotive sector*

None during reporting period.

*Cross-sectoral measures*

None during reporting period.

## *Spain*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

In addition to a scheme that provides for capital injections and that predates the reporting period<sup>202</sup> the Government of Spain introduced a temporary guarantee scheme for bank liabilities. Initially announced on 13 October 2008 and approved by the European Commission on 23 December 2008, the guarantee programme for bank liabilities was revised on 31 March 2009.<sup>203</sup> The guarantee scheme is open to credit institutions, including subsidiaries of foreign institutions, that were residents in Spain as of 13 October 2008. The guarantees are available until 31 December 2009. The scheme's overall budget is initially capped at EUR 100 billion but may be increased to EUR 200 billion. The maximum amount of guarantees that may be granted to a bank is set in proportion to the bank's share in total bank lending to residents, in order to fulfil the stated purpose of the programme of supporting lending to the domestic economy. Additional requirements for banks may be established by the Minister of Economy and Finance.

Spain began to acquire financial assets under the *Financial Asset Acquisition Fund (FAAF)*, a scheme established under Royal Decree Law 6/2008 before the reporting period.<sup>204</sup> The FAAF disposes of an initial allocation of EUR 30 billion—which may be increased to EUR 50 billion—to purchase assets issued by credit entities and securitisation funds. FAAF is administered, managed and led by the Spanish Ministry of Economy and Finance. The acquisition of assets is carried out through auctions; by 15 June 2009, four auctions had been held.<sup>205</sup>

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

On 19 April 2009, the Government announced a plan to provide credit guarantees of a total of EUR 3 billion to small and medium enterprises. The guarantees would be provided and administered by the *Instituto de Crédito Oficial*.

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<sup>202</sup> The measure is documented in the decision of the European Commission not to raise objections dated 4 November 2008 under reference NN54a/2008.

<sup>203</sup> The measure is documented in the decision of the European Commission not to raise objections dated 16 April 2009 under reference NN54b/2008. On 25 June 2009, the European Commission announced its decision not to raise objections against a prolongation of the scheme under reference N336/2009.

<sup>204</sup> The Fund is established by the *Royal Decree-Law 6/2008 of 10 October 2008 on the creation of the Financial Assets Acquisition Fund (FAAF)* and the *Order EHA/3118/2008, of 31 October 2008, for the development of the Royal Decree-Law 6/2008, of October 10th, on the creation of the Financial Assets Acquisition Fund (FAAF)*.

<sup>205</sup> The results and beneficiaries of the auctions are documented on the FAAF website.

## *Sweden*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

Sweden established a guarantee scheme and a recapitalisation scheme for the banking sector under the Government Support to Credit Institutions Act (2008:814). The guarantee scheme, initially established on 30 October 2008 through the Government Guarantees to Banks and others Ordinance and extended and broadened on 2 April 2009, authorises the National Debt Office to grant guarantees up to a maximum of SEK 1500 billion until 31 October 2009.<sup>206</sup> Under the scheme, eligible institutions—banks and mortgage institutions incorporated and operating in Sweden, including Swedish subsidiaries of foreign institutions—may enter into an agreement with the state which in turn guarantees the institutions' new issuance of senior debt in exchange for a fee.

The recapitalisation scheme was established by the Capital Contributions to Solvent Banks and others Ordinance that entered into force on 17 February 2009.<sup>207</sup> The scheme authorises the National Debt Office to provide capital contributions to financially sound banks and mortgage institutions incorporated and operating in Sweden, including Swedish subsidiaries of foreign institutions. The conditions for a capital contribution are governed by individual contracts between the institution and the Government, which is negotiated by the National Debt Office on behalf of the Government. Capital contributions under the Ordinance may not be provided after 17 August 2009. The total amount available for the scheme is SEK 50 billion.

#### *Automotive sector*

The Government has put in place a policy to be used if necessary, that would allow it to provide rescue loans of up to SEK 5 billion for companies in the automotive industry that operate in Sweden and have sales in excess of SEK 500 million. The loans conform to the EC rescue and restructuring guidelines and seek to enable financially weakened companies to remain in business until a restructuring or liquidation plan has been developed. The National Debt Office would administer the rescue loans.<sup>208</sup>

#### *Cross-sectoral measures*

None during reporting period.

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<sup>206</sup> See Government press release dated 2 April 2009 the latest modifications came into force on 1 May 2009. The guarantee scheme was approved by the European Commission on 29 October 2008 under reference N533/2008 as amended by the Commission's decision of 29 January 2009 (reference N26/2009) and the decision of 28 April 2009 (reference N154/2009).

<sup>207</sup> The measure is documented in the decision of the European Commission not to raise objections dated 10 February 2009 under reference N69/2009.

<sup>208</sup> Swedish Government statement of 21 March 2009.

## **Switzerland**

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

The Swiss National Bank StabFund, a special purpose vehicle owned by the Swiss National Bank (SNB), acquired illiquid assets amounting to USD 39.1 billion from UBS between in December 2008 and 3 April 2009.

The Swiss Government announced on 19 August 2009<sup>209</sup> that it was selling its stake in UBS to institutional investors, after conversion of its SFR 6 billion convertible loan into shares. The Swiss Government had acquired the convertible loan in October 2008 to support UBS. The sale of the shares was carried out by a consortium of banks that include UBS, Credit Suisse and Morgan Stanley.

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

None during reporting period.

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<sup>209</sup> “La Confédération décide de se désengager intégralement et immédiatement d'UBS”, information note, Département fédéral des finances, 19 August 2009.

## ***Turkey***

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

None during reporting period.

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

In February 2009, the Government provided, as part of a package of support measures, financial support to small and medium enterprises. It allocated TRY 75 million for the Small and Medium Industry Development Organization.

## ***United Kingdom***

### *Investment policy measures*

The UK Financial Services Authority (FSA) continued preparations to amend liquidity requirements. Plans include introducing the requirement that UK branches of foreign banks be self-sufficient for liquidity purposes unless prior permission from the FSA allows otherwise. Public consultation on the plan was ongoing in June 2009.<sup>210</sup>

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*

#### *Financial sector*

The Government introduced a series of measures that directly benefit the financial sector.<sup>211</sup> These measures include:

- A Government Credit Guarantee Scheme (CGS) and a recapitalisation scheme; these schemes initially came into force in October 2008, were modified in December 2008 and were prolonged in April 2009. UK-incorporated financial institutions, including subsidiaries of foreign institutions with substantial business in the UK, are eligible for the schemes.<sup>212</sup>
- A guarantee scheme, established in April 2009, concerning domestic residential asset backed securities. UK incorporated banks, including UK subsidiaries of foreign institutions, that have a substantial business in the UK and building societies are eligible for this scheme.<sup>213</sup>
- Extending the maturity date for the Bank of England's Discount Window Facility which provides liquidity to the banking sector by allowing banks to swap less liquid assets.
- Establishing a new Bank of England facility for purchasing high quality assets.
- Offering capital and asset protection scheme for banks, with proposals for this to be co-ordinated internationally.
- Clarifying the regulatory approach to capital requirements, through an announcement by the Financial Services Authority (FSA).

Eligibility for the credit guarantee and asset protection schemes and the Bank of England's Asset Purchase Facility includes UK subsidiaries of foreign institutions.

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<sup>210</sup> FSA Consultation Paper 08/22 and related procedures; FSA Consultation Paper 09/14.

<sup>211</sup> "Statement on financial intervention to support lending in the economy" HM Treasury News release, 19 January 2009.

<sup>212</sup> These measures are documented in the Decisions by the European Commission under reference N507/2008, N650/2008 and N193/2009.

<sup>213</sup> The measure is documented in the decision of the European Commission not to raise objections dated 21 April 2009 under reference N232/2009.

The Government intends to negotiate with the banks participating in certain facilities lending responsibility agreements that will have specific and quantified lending commitments and that will be binding and externally audited.

The British government also began to dispose of assets of Northern Rock, a bank that received government support, mainly in the form of loans granted by the Bank of England and government guarantees.<sup>214</sup> As a first step, Northern Rock will be split into two new entities – "BankCo" a relatively small bank containing a portion of the mortgage assets, the mortgage writing platform and the retail deposits and "AssetCo", a wind-down operation that will run down the remaining mortgages, pay-off the government loan and hold the non-deposit wholesale funding.<sup>215</sup> The government will support the losses incurred on risky mortgage loans made by Northern Rock in the past.

#### *Automotive sector*

Over several months, the British Government was working closely with the Indian conglomerate Tata which owns Jaguar Land Rover and potential financing banks to develop a long term sustainable capital structure for Jaguar Land Rover. According to press reports of late July, the British government was prepared to offer Jaguar Land Rover a guarantee for a GBP 175 million commercial bridging loan. The negotiations were eventually terminated as Tata found private financing.

#### *Cross-sectoral measures*

The British Government introduced a series of measures to support the real economy. These measures include:

- A scheme under which small amounts of aid can be provided to companies.<sup>216</sup>
- A scheme for granting aid in the form of loans with subsidised interest rate.<sup>217</sup>
- A scheme for temporary aid in the form of loan guarantees.<sup>218</sup>
- A scheme for aid for the development of green products.<sup>219</sup>

All of the above are UK-wide schemes, under which aid can be provided, where necessary and subject to budgetary approval, at country, regional and local level in the form of subsidised guarantees for investment, reduced interest loans for investment or working capital, or subsidised loans for the development of green products. These schemes have been notified to and approved by the European Commission under the terms of the Temporary Framework.

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<sup>214</sup> The measure is documented in the decision of the European Commission not to raise objections dated 5 December 2007 under reference IP/07/1859.

<sup>215</sup> European Commission press release IP/07/1859; European Commission press release IP/09/713.

<sup>216</sup> The measure is documented in the decision of the European Commission not to raise objections dated 4 February 2009 under reference N43/2009.

<sup>217</sup> The measure is documented in the decision of the European Commission not to raise objections dated 14 May 2005 under reference N257/2009.

<sup>218</sup> The measure is documented in the decision of the European Commission not to raise objections dated 27 February 2009 under reference N71/2009.

<sup>219</sup> The Decision by the European Commission not to raise objections against this measure will be available under reference N72/2009. The press release regarding this decision has been issued under reference IP/09/333 on 27 February 2009.

The Commission has agreed a nominal limit of GBP 8 billion for aid provided under the schemes covering guarantees, interest rate subsidies and green loans (although this does not reflect actual budgetary provision at any tier of government in the UK). These three schemes have been used initially for the automotive industry, in particular through an Automotive Assistance Programme that aims to unlock up to GBP 2.3 billion for investment in the sector through a combination of loans and guarantees (including guarantees for loans from the European Investment Bank). The Commission has, however, given clearance for the schemes to be available to all sectors as required. The schemes are available until 31 December 2010.

- A Corporate Bond Secondary Market Scheme, which enables UK incorporated companies, including those with foreign-incorporated parents, with a genuine business in the UK to sell a wide range of high credit quality corporate bonds to the fund to access additional liquidity. The scheme was initially established in early 2009.<sup>220</sup>
- The temporary Working Capital Guarantee Scheme under which the UK will offer banks up to a total of GBP 10 billion of guarantees in respect of portfolios of working capital loans to sound, credit-worthy companies.<sup>221</sup> The guarantees are priced at a level designed to make the scheme self-financing. This scheme has been separately notified to and approved by the European Commission.

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<sup>220</sup> Bank of England information and market notices.

<sup>221</sup> European Commission decision N111/2009.

## *United States*

### *Investment policy measures*

None during reporting period.

### *Investment measures relating to national security*

None during reporting period.

### *Emergency and related measures with potential impacts on international investment*<sup>222</sup>

#### *Financial sector*

The US continued to implement its Emergency Economic Stabilization Act of 2008 (“EESA”) that was signed into law on 3 October 2008. The primary purpose of the EESA was “to immediately provide authority and facilities that the Secretary of the Treasury can use to restore liquidity and stability to the financial system of the United States.” In particular, the EESA authorised the U.S. Treasury Secretary to establish the Troubled Assets Relief Program (“TARP”) and take a variety of actions under the TARP to achieve the purposes of the EESA. Key programmes include:<sup>223</sup>

- The Capital Purchase Program (“CPP”) has provided more than USD 200 billion in capital to more than 600 banking organisations.<sup>224</sup> Institutions that are supervised and regulated on a consolidated basis by a United States supervisor or regulator are eligible; for this reason institutions controlled by a foreign bank or company are not eligible. On 9 June 2009, Treasury announced that 10 of the largest U.S. financial institutions participating in the CPP had met the requirements for repayment. Treasury has notified the institutions that they were consequently eligible to complete the repayment process.
- The Targeted Investment Program (“TIP”) helps stabilize the financial system by making investments in institutions that are critical to the functioning of the financial system.<sup>225</sup>
- The Systemically Significant Failing Institution Program (“SSFI”) was established to provide stability and prevent disruptions to financial markets from the failure of institutions that are critical to the functioning of the U.S. financial system.
- The Asset Guarantee Program (“AGP”) was created to guarantee certain assets held by a qualifying financial institution.<sup>226</sup>

In the first quarter of 2009, the U.S. Department of the Treasury (“Treasury”) announced several new or expanded initiatives under the TARP, many of which were announced or implemented as part of the

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<sup>222</sup> [www.financialstability.gov](http://www.financialstability.gov); see, in particular, “Quarterly Report to Congress pursuant to section 104(g) of the Emergency Economic Stabilization Act of 2008 For the quarter ending 31 March 2009”.

<sup>223</sup> For an overview, see “Financial Stability Oversight Board Issues Report on the Emergency Economic Stabilization Act”, US Department of Treasury release, 20 July 2009 and “Emergency Economic Stabilization Act Programs”, US Department of Treasury, Office of Financial Stability

<sup>224</sup> “Treasury Announces \$68 Billion in Expected CPP Repayments”, U.S. Department of the Treasury press release, 9 June 2009.

<sup>225</sup> “Targeted Investment Program”, US Department of Treasury website.

<sup>226</sup> “Asset Guarantee Program”, US Department of Treasury website.

overall Financial Stability Plan announced on 10 February 2009 by Treasury, with the support of the Federal Reserve and the other Federal banking agencies. The initiatives include, for example:

- The Capital Assistance Program (“CAP”) aims to ensure that U.S. financial institutions have sufficient high quality capital.<sup>227</sup> The CAP has two parts. The first is a supervisory exercise by the Federal banking agencies to produce a more consistent and forward-looking assessment of the risks on banks’ balance sheets and the banks’ potential capital needs. Institutions that are not supervised and regulated on a consolidated basis by a United States supervisor or regulator are not subject to this exercise. The second is a new capital access programme for qualifying financial institutions. Institutions that are supervised and regulated on a consolidated basis by a United States supervisor or regulator are eligible; for this reason institutions controlled by a foreign bank or company are not eligible.
- A Public-Private Investment Program (“PPIP”) was announced to help promote liquidity in the market for legacy loans and securities, promote transparency in the pricing of such assets, and promote new lending by financial institutions by facilitating the cleansing of legacy assets from their balance sheets.<sup>228</sup>
- The Making home Affordable Plan will help facilitate refinancing for existing performing mortgages owned or guaranteed by Fannie Mae or Freddie Mac, use government resources to improve the sustainability of existing mortgages, and strengthen the housing-related government-sponsored enterprises.

#### *Automotive sector*

The Treasury provided working capital, debtor-in-possession financing and exit financing for Chrysler LLC in order to support Chrysler through bankruptcy. On 10 June 2009, a new, restructured Chrysler emerged from bankruptcy under a new ownership structure (which includes partial ownership by FIAT S.p.A.) and entered into an alliance with FIAT.

The Treasury further has made total loans of USD 19.8 billion to General Motors Corporation (GM) in working capital funding and warranty guarantees, and an additional USD 30.1 billion under a debtor-in-possession financing agreement to assist GM in an orderly restructuring. GM filed bankruptcy proceedings on 1 June 2009. The new entity, General Motors Company (New GM), emerged from bankruptcy 10 July 2009, on the completion of the sale of certain GM assets to the New GM. The government converted its loans to 60.8% of the equity in the New GM, loans in the amount of USD 7.1 billion, and USD 2.1 billion in preferred stock. The capital provided to GM was for the benefit of all of GM’s operations, without regard to geographic location, and was not for the sole benefit of U.S. operations. GM had the sole right to allocate such amounts to its operations (including its worldwide operations) as it deemed necessary.

On 19 March 2009, the Treasury established an Auto Supplier Support Program. This program is available to all critical suppliers, regardless of where the part is manufactured or assembled and provides the same benefits to foreign critical suppliers as it does U.S. critical suppliers. The program provides critical suppliers with financial protection on money they are owed (receivables) from any domestic auto companies and the opportunity to access immediate liquidity against those obligations. Specifically, qualified automotive receivables may be sold to a bankruptcy-remote special purpose vehicle established by each of the auto makers with equity capital contributed by the auto maker and financing provided by the Treasury Department. The amount of the commitment to this program was reduced as of 8 July 2009 to a total of USD 3.5 billion.

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<sup>227</sup> “Capital Assistance Program”, US Department of Treasury website.

<sup>228</sup> “Public-Private Investment Program”, US Department of Treasury website.

The Treasury also provided (a) USD 1.5 billion in senior financing to Chrysler Financial to finance the extension of new consumer auto loans and (b) USD 12.5 billion to GMAC LLC to finance the extension of new dealer floor plan loans to Chrysler dealers (who were without Chrysler financing effective as of Chrysler's bankruptcy filing) and to other automobile dealers, and to support GMAC's continuing consumer auto finance programs

The Treasury established the Warranty Commitment Program;<sup>229</sup> the programme was terminated due to the success of the Chrysler and GM restructurings before funds were drawn.<sup>230</sup> The programme was designed to ensure that automakers remain competitive despite the threat of bankruptcy. The U.S. government would have guaranteed for warranties issued by participating domestic auto manufacturers. For this purpose, it established an accounting reserve that contained 125% of projected warranty costs for each new vehicle sold. Automakers would have contributed 15% of the costs, while the government would have covered the remaining 110%. As the auto companies continued to service their own warranties, the funds were never drawn.

#### *Cross-sectoral measures*

The Treasury Department and the Federal Reserve implemented a series of programs and measures to improve liquidity and funding conditions in financial markets, such programs and measures include:

- TALF, described above under "Financial Sector", provides non-recourse funding to any eligible borrower owning eligible asset-backed collateral;
- The Asset Guarantee Program ("AGP") is a program between the Treasury and the Federal Reserve where the Treasury will guarantee certain ring-fenced assets held by the qualifying financial institution;
- The Consumer & Business Lending Initiative ("CBLI") broadens and expands the resources of the TALF to support the consumer and business credit markets by providing the financing to private investors to help unfreeze and lower interest rates for auto, student loan, small business, credit card and other consumer and business credit.

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<sup>229</sup> "Background on the Warrantee Commitment Program", Department of Treasury information.

<sup>230</sup> A parallel programme was established by Canada, see p. 19 in the present report.

## *European Union*

### *Investment policy measures*

On 6 May 2009, Canada concluded an “open skies” agreement with the EU. The agreement, that had yet to be signed and ratified on 15 August 2009—cut-off date for this report—, will allow European Union investors over time to acquire up to 49% of Canadian airline companies, up from 25%. The agreement also allows any "Community air carrier" to fly between any point in the EU to any point in Canada, without any restrictions on the number of flights. In later stages of the implementation of the agreement, cargo operators will be authorized to provide services to third countries from the other party to third countries without connection to their point of origin (so called "7th freedom" rights); investors will be allowed to set up and control new airlines in each others' markets. Also, passenger airlines will then be able to fly onward to third countries.<sup>231</sup>

### *Emergency and related measures with potential impacts on international investment*

The European Union (EU) limits and controls Member States' aid to industries or individual companies under the EU competition policy framework of the Common Market as set out in articles 87-89 EU treaty. This regime seeks to avoid any distortions of competition that could result from State aid intervening in the economy. The specific situation of the financial crisis and its impact on the real economy has led the European Commission (EC) to temporarily adapt the EU State aid policies in order to enhance Member States' flexibility for their response to the crisis. These modifications concerned first the financial sector—from in mid-2008 onwards—and, subsequently, from December 2008 on, the real economy.

#### *Financial sector*

Adaptation measures regarding the financial sector were taken first on 13 October 2008, when the EC passed 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>232</sup> Therein, the Commission considers that Member States may invoke Article 87(3)(b) EU-treaty as a basis for aid measures taken to address the crisis in the financial sector. Simultaneously, however, the EC stressed that national action with a view to ensure the proper functioning of the financial sector would need to be taken within a coordinated framework and on the basis of a number of EU common principles. According to these principles: interventions should in principle be temporary; existing shareholders should bear the due consequences of the intervention; Member States should be in a position to bring about a change of management; management should not retain undue benefits; governments may have inter alia the power to intervene in remuneration; legitimate interest of competitors must be protected, in particular through the state aid rules; and negative spill-over effects should be avoided.

Shortly afterwards, the Commission issued guidance on the design and implementation of State aid in favour of banks and provided a framework for the coherent provision of public guarantees, recapitalisation and impaired asset relief measures by Member States.<sup>233</sup> The latter Communication notably stressed that asset relief should be bound to a non-discriminatory lending policy of banks benefiting from the relief. EU

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<sup>231</sup> “The EU-Canada aviation agreements – Q&A”, EU press release MEMO/09/218, 06 May 2009.

<sup>232</sup> *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*, OJ C270, 25 October 2008, p. 8.

<sup>233</sup> *Communication from the Commission—the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition*, OJ C 10, 15 January 2009, p. 2; *Communication from the Commission on the treatment of impaired assets in the Community banking sector*, OJ C72, 26 March 2009, p. 1.

Member States have used this possibility and adopted a series of measures for state aid.<sup>234</sup> The EC continues to monitor these measures to ensure their compliance with the set principles. The measures that EU Member States have adopted are documented in the sections on individual countries in the present document.

On 23 July 2009, the EC published its *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>235</sup> It complements earlier guidance to member states by explaining how the Commission will assess the compatibility of restructuring aid granted by Member States to financial institutions in the crisis. The Communication stresses that restructuring measures, as preceding rescue measures, must be designed in a way that limits distortion of competition by a rescued bank as well as any disadvantage to other banks.

#### *Automotive sector*

None during reporting period.

#### *Cross-sectoral measures*

As regards the real economy, the European Commission temporarily relaxed State aid restrictions based on Article 87(3)(b) EU-treaty on 17 December 2008 when it issued a *Temporary Community Framework for State aid measures to support access to finance in the current financial and economic crisis*,<sup>236</sup> applicable from 17 December 2008 until 31 December 2010. The framework enhances the scope of State aid that the Commission temporarily considers compatible with the Common Market. It broadens EU Member States' scope to grant aid in response to crisis-induced credit and capital shortages of companies in the non-financial sector. The rules notably enable EU Member States to provide companies with aid in different forms: limited amounts of compatible aid, guarantees, subsidized loans, subsidised loans for green products, and risk capital schemes. Under this framework, EU Member States have adopted a series of measures for state aid<sup>237</sup> that the EC continues to monitor to ensure their compliance with the temporary framework as well its proportionality, and with the regulatory framework of the common market as a whole. The measures that EU Member States have adopted are documented in the sections on individual countries in the present document.

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<sup>234</sup> A comprehensive list of measures that countries have taken until 31 March 2009 to respond to the crisis has been published by the European Commission under the title "State Aid Scoreboard—Spring 2009 Update—Special Edition on State Aid Interventions in the Current Financial and Economic Crisis".

<sup>235</sup> OJ C 195, 19 August 2009, p.9.

<sup>236</sup> Communication from the Commission—*Temporary framework for State aid measures to support access to finance in the current financial and economic crisis* (2009/C16/01), adopted on 17 December 2008, OJ of 22 January 2009. A consolidated version, taking into account amendments adopted on 25 February 2009 (Communication from the Commission—*Amendment of the Temporary framework for State aid measures to support access to finance in the current financial and economic crisis, and applicable from 25 February 2009 onwards*) was published in OJ C83 of 7 April 2009.

<sup>237</sup> A comprehensive list of measures that countries have taken under the temporary framework and that have undergone EC State aid control is documented on the European Commission State Aid Register.

## Methodology—Coverage, definitions and sources

*Country coverage.* The inventory of investment measures contains policy information pertaining to 48 economies, including all economies that participate in the Freedom of Investment process of the OECD Investment Committee.

*Reporting period.* The reporting period is from 15 November 2008 (the date of the G20 Washington Summit Declaration) to 31 August 2009. An investment measure is counted as falling within this period if new policies were prepared, announced, adopted, entered into force or applied during the period. In some cases, policies had been under development well before the financial and economic crisis unfolded.

*Definition of investment.* For the purpose of this report, international investment is understood to include all international capital movements, including foreign direct investment.

*Definition of investment measure.* Investment measures by recipient countries consist of those measures that impose or remove discrimination against foreign or non-resident investors. Investment measures by home countries are those that impose or remove restrictions on investments to other countries (e.g. attaching restrictions on overseas investments as a condition for receiving public support).

*National security.* International investment law, including the OECD investment instruments, recognises that governments may need to take investment measures to safeguard essential security interests and public order. The investment policy community at the OECD monitors these measures to help governments adopt policies that are effective in safeguarding security and to ensure that they are not disguised protectionism. Some countries have taken investment measures within the reporting period whose stated goals are to address security-related concerns. These measures are included as a separate category in this inventory.

*Emergency measures with potential impacts on international capital movements.* International investment law also recognises that countries may need flexibility in designing and implementing policies that respond to crises. For example, the OECD investment instruments provide for derogations to liberalisation commitments “if its economic and financial situation justifies such a course of action” but imposes time limits on such derogations and asks members to “avoid unnecessary damage” to others.<sup>238</sup> The emergency measures, which in practice focus mainly on financial services and automobiles, include: *ad hoc* rescue and restructuring operations for individual firms and various schemes that give rise to capital injections and credit guarantees. Several emergency schemes that provide cross-sectoral aid to companies were adopted and these are included in the inventory.

A large number of crisis related measures was taken during the reporting period and, in order to keep the size of the report manageable, a fairly narrow definition of emergency measure has been used. The report classifies an “*emergency or related measure with potential impacts on international investment*” as: any measure that a government has identified as having been enacted to deal with the crisis and that is designed to discriminate or may be implemented in a way that discriminates against foreign investors, or that raises barriers to outward investment. This includes programs that permit rescues or restructuring of individual firms, or lending, guarantees or other aid schemes for individual companies. In addition, the measures must be expected to have an impact on international capital flows (e.g. schemes that influence the pattern of entry and exit in globalised sectors such as automobiles and financial services).

*Measures not included.* Several types of measures are not included in this inventory:

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<sup>238</sup> See articles 7 paragraphs a., d. and e. of the Codes.

- *Fiscal stimulus.* Fiscal stimulus measures were not accounted for unless these contained provisions that explicitly discriminate against foreign or non-resident investors.
- *Local production requirements* were not included unless they apply *de jure* only to foreign firms. Non-discriminatory local production requirements are taken to be a trade measure, even though they influence the pattern of international investment.
- *Visas.* One country is known to have changed its law for business visas. This was not included because the Secretariat had not systematically reviewed other countries' visa laws and because business visa policy was not deemed likely to be a major issue in subsequent political and economic discussions.
- *Airlines.* A number of countries provided support to state-owned airlines—in the form of capital injections or guarantees—in response to pressures that might be aggravated by the crisis. These measures are not included as “emergency measures” where there was evidence of a long history of state support for these airlines.
- *Central Bank measures.* Many central banks adopted practices to enhance the functioning of credit markets and the stability of the financial system. These measures influence international capital movements in complex ways. In order to focus on measures that are of most relevance for investment policies, measures taken by Central Banks are not included unless they involved negotiations with specific companies or discriminated against non-resident or foreign-controlled enterprises.

*Sources of information and verification.* The sources of the information presented in this report are:

- official notifications made by governments to various OECD processes (e.g. the Freedom of Investment Roundtable or as required under the OECD investment instruments);
- information contained in other international organisations' reports or otherwise made available to the OECD Secretariat;
- other publicly available sources: specialised web sites, press clippings etc.

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