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Research Handbook on State Aid in the Banking Sector

Chapter 11. State aid to banks in France

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The crisis did not affect French banks as much as banks in a number of other countries. French banks' diversified earnings and relatively lower exposure to various structured products meant that their losses were generally manageable – with the notable exception of (partly French) Dexia and *Crédit Immobilier de France* (CIF), which had to be ultimately placed in resolution. In the immediate period following the financial crisis the recession was milder in France than in some other European countries and banks continued to benefit from a strong retail base including on deposits and mortgages. However, in the more recent period French banks were impacted by the still anemic growth in France, uncertainty about European issues, exposure to peripheral Europe, and ongoing market and regulatory pressures to support liquidity and capital.[1]

The impact of the crisis on French banks was, however, significant. Between 2007 and 2010, total write-downs for the five largest banks exceeded € 50 billion. At the EU level, France was pro-active in containing the crisis, initially going as far as to suggest that State aid control should be suspended to allow States to intervene without any limitations to address the crisis. France later adopted a range of State aid measures including financial support schemes – through the creation of the *Société de Financement de l'Économie Française* (SFEF) and the *Société de prise de participation de l'Etat* (SPPE) – as well as individual measures, including the participation, with Belgium and Luxembourg, in the recapitalization and restructuring of the Dexia Group or the support to the creation of the BPCE group from the merger of *Groupe Caisse d'Epargne* and *Groupe Banque Populaire*, with a capital injection of €5 billion by SPPE. These measures amounted in total to around €25 billion in capital injection; €92.7 billion in guarantees; and €1.2 billion in asset relief measures.[2] France also strengthened its oversight framework with the creation of the *Autorité de Contrôle prudentiel* (ACP) and of the *Conseil de Régulation Financière du Risque Systémique* (Corefris). This set of measures contributed to avoiding any major bankruptcy and maintaining funding to the real economy.

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[1] IMF Country Report, France: Financial Sector Assessment Program—Detailed Assessment of Observance of Basel Core Principles for Effective Banking Supervision (June 2013) <https://www.imf.org/external/pubs/ft/scr/2013/cr13180.pdf> accessed 21 September 2016.

[2] Data extracted from DG Competition, State Aid Scoreboard 2014 – Aid in the context of the financial and economic crisis <http://ec.europa.eu/competition/state_aid/scoreboard/financial_economic_crisis_aid_en.html> accessed 21 September 2016.

1. The strength and weakness of the French banking sector

France remains the second-largest banking sector in Europe, with total asset values of €6.3 trillion.[3] While the French banking system has shown resilience during the crisis, severe market pressure contributed to exposing its weaknesses and vulnerability.

a) A diversified banking model

The French banking sector is fairly diversified and encompasses three main bank categories: private commercial banks, cooperative banks and public banks. They are all mainly based on a universal banking model: French banks tend to operate both as commercial banks and investment banks, and provide other kinds of financial services, such as insurance. This model relies on the idea that the French universal banking model, while it faces much criticism, proved somewhat resilient during the crisis.

Commercial banks are usually publicly quoted companies, operating mainly for the benefit of their private shareholders. In 2012, two main commercial banks, BNP Paribas and Société Générale, accounted for more than 40% of total banking assets in France. Aside from retail banking activities, both banks have large corporate and investment banking operations, especially in fixed income currency and commodities (FICC) and equity derivatives. Both are members of the largest 14 derivatives dealers group (G14) and as such are among the most globally interconnected banks. Aside from these two giants, France counts a number of smaller private banks; in 2014, France had 187 commercial banks.

Cooperative banks are owned by their depositors and operate for their benefit. They are structured with regional or local banks that control a central body responsible for funding and group-wide risk management, and various subsidiary operations in France and abroad. Credit support usually exists in some fashion within the group. Cooperative banks tend to rely more on retail deposits than commercial banks. In particular, regulated bank deposits (mostly *Livret A* and *Livret Bleu*), which account for about 9% of households' financial wealth, are mainly deposited in cooperative banks. The cooperative sector comprises three distinct groups: *Banque Populaire*, *Caisse d'Epargne*, *Crédit Mutuel* and *Crédit Agricole*, each consisting of a network of local banks under the umbrella of a central institution. They still play a significant role in the French banking sector and account for approximately half of total banking assets, loans to households and deposits.[4] Although local cooperative banks resisted well during the crisis, their central institutions, by contrast, were as affected by the crisis as commercial banks and had to rely on public support. Banque Populaire and Caisse d'Epargne in particular suffered from the difficulties faced by Natixis, an investment bank in which they both owned 35% of the capital. They finally had to merge in 2010 (c.f. *infra*).

Finally, France has a number of public banks, usually entrusted with public interest missions. The main public bank is *La Banque Postale*, a limited company with public capital, created in 2006 as a fully-owned subsidiary of La Poste. Its main mission is to ensure the

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[3] European Central Bank, Banking Structures Report, October 2014, 8 <https://www.ecb.europa.eu/pub/pdf/other/bankingstructuresreport201410.en.pdf> accessed 21 September 2016.

[4] Dilek Bülbül, Rinhard H. Schmidt and Ulrich Schüwer, 'Savings Banks and Cooperative Banks in Europe', Sustainable Architecture for Finance in Europe, White Paper No 05, 2013, 12 <http://safe-frankfurt.de/uploads/media/Schmidt_Buelbuel_Schuewer_Savings_Banks_and_Cooperative_Banks_in_Europe.pdf> accessed 21 September 2016.

accessibility of banking services: the bank is under a duty to open a savings account (the French Livret A, the annual returns of which are not taxed) to any person who requests it and to accept any deposit, withdrawal, or transfer exceeding € 1.5. In 2011, La Banque Postale, together with the *Caisse des Dépôts et Consignations* (CDC), took in Dexia Credit Local's assets (in particular its loans) through the *Banque Postale de Développement local*. Other public establishments include municipal credit banks. They are linked to the municipality where they have their headquarter. Their main activity is pawning (for which they have a monopoly) and short-term loans. In 2014, there were 18 municipal credit banks in France.

b) Concentration

Although the French banking sector counts a total of 296 banks, it remains highly concentrated at the top; even more so with the creation of BPCE through the merger of Banque Populaire and Caisse d'Epargne in 2009. At the end of 2013, the top five banks (BNP Paribas, Crédit Agricole Group, Société Générale, and Groupe BPCE) accounted for 85 % of total banking assets.[5] Together with La Banque Postale, they collected more than 96% of the French household's deposits and other banking products, 54% of their insurance products, and 70% of their investment in mutual funds (at the end of 2011).[6] These five banks rank amongst the 35 largest banks in the world in terms of Tier 1 capital[7] and amongst the 10 largest banks in the Eurozone.[8] They also appear on the G20 list of major systemic banks in 2014 (by contrast, Germany had only one bank on the list, Deutsche Bank),[9] and are classified as "significant banks" by the European Union; thus falling under the ECB's direct supervision.

c) Regulation

Today's French banking model has been shaped around the Banking Law of 1984, which massively deregulated the banking and financial activities and allowed banks to diversify their activities into investment banking, asset management and insurance. This was the beginning of the French universal banking model that has proved to be resilient throughout the crisis despite many criticisms. The model relies on the idea that the diversification of business activities and risks helps protect the bank from idiosyncratic shocks in any particular banking division.[10] It proved successful at the beginning of the crisis, as margins from retail banking

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5 ACPR – Banque de France Analyses et Synthèses, 'French banks' performance in 2014', No 46, May 2015, 3 <https://acpr.banque-france.fr/fileadmin/user_upload/acp/publications/analyses-syntheses/20151221-AS46-French-banks-performance-in-2014.pdf> accessed 21 September 2016.

6 IMF Country Report, 'France: Selected Issues', January 2013, 4 <http://www.imf.org/external/pubs/ft/scr/2013/cr1303.pdf> accessed 21 September 2016.

7 The Banker, 'Top 1,000 World Banks', July 2014.

8 Banks around the World, 'Top European Banks' <http://www.relbanks.com/top-european-banks/assets> accessed 21 September 2016.

9 Financial Stability Board, 2014 update of list of global systemically important banks, 6 November 2014 <http://www.financialstabilityboard.org/wp-content/uploads/r_141106b.pdf> accessed 21 September 2016.

10 Jérôme Creel, Fabien Labondance, Sandrine Levasseur, 'The French Banking System and the Crisis', in Forum Intereconomics, March 2014, Vol. 49, Issue 2, 64 <http://www.ceps.eu/system/files/IEForum22014.pdf> accessed 21 September 2016.

activities (accounting for 61.2% of French banks' revenues) [11] as well as insurance and asset management activities (11.9%) covered losses on corporate and investment banking activities (26.7%).[12] Over time however, French banks have massively reduced their trading activities and regulations have evolved to ensure the stability of the system as a whole.

In the aftermath of the crisis, French authorities strengthened the regulatory framework but preserved the universal banking model. In particular, the Law of July 26, 2013 on the separation and regulation of banking activities forbids banks and credit institutions from conducting certain speculative activities deemed too risky, such as high frequency trading, but purports to fully preserve market creation. This stems from the idea that market-making activities play a crucial role in providing liquidity to the markets and that their preservation is crucial to preventing unintended consequences of the reform. Banks are thus required to ring-fence trading activities in a separate entity, subject to specific regulation, funded independently, and licensed as investment firms or credit institutions. Market-making activities, however, do not have to be separated. This covers (i) the simultaneous issue of a buy order and a sell order of similar size to provide liquidity to the market on a regular and continued basis, (ii) the execution as counterparty of buy or sell orders issued by clients, or (iii) the hedging of positions taken under (i) or (ii).

The Banking Law of 2013 also requires banks to define a recovery plan in advance, detailing preventive actions to be undertaken in case of significant deterioration, as well as a resolution plan.

In order to address the decrease in lending to the economy by French banks, a recent trend in the regulatory environment has been to loosen the rules on the banking monopoly (under which only licensed or authorized entities may carry on banking activities on a regular basis) by extending the possibility for non-banking institutions to engage in credit and lending activities. In particular:

- In 2013, the possibility for insurance organisms to grant loans to companies, was extended.[13] Insurance organisms benefited from an exemption to the banking monopoly principle from the very beginning: they could grant real estate loans to companies under certain conditions (the loan should be secured with a first mortgage and the loan-to-value ratio should not exceed 65%) . They may now also grant loans to companies directly on their funds (provided that they obtain an extension of their accreditation by the ACPR), or through special funds (the so-called *"fonds de prêts à l'économie"*) which subscribe to companies bonds.
- In 2014, the French government introduced a new legal framework for crowd-funding activities. [14] Crowdfunding platforms may now finance projects and businesses of up to €1 million through loans or the issuance of securities (common shares or fixed rate debt instruments). If the platform

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[11] Fédération Bancaire Française, *French Banks and the European Banking Reforms* (March 8, 2015) <http://www.fbf.fr/en/files/9X3FJN/French-banks-and-European-banking-reforms-30-03-2015.pdf> accessed 21 September 2016.

[12] IMF Country Report, 'France: Financial Sector Assessment Program—Detailed Assessment of Observance of Basel Core Principles for Effective Banking Supervision' (June 2013) <https://www.imf.org/external/pubs/ft/scr/2013/cr13180.pdf> accessed 21 September 2016.

[13] Decree 2013-717 of 2 August 2013 amending specific investment provisions for insurance firms.

[14] Ordinance 2014-559 of 30 May 2014 on crowdfunding, Decree 2014-1053 of 16 September 2014 on crowdfunding, Order of 22 September 2014 approving amendments of the AMF General Regulation concerning crowdfunding, Order of 30 September 2014 on the professional competence of crowdfunding intermediaries.

finances projects through loans, it must register with the *Organisme pour le Registre des Intermédiaires en Assurance* (ORIAS) as a crowdfunding intermediary (*Intermédiaire en Financement Participatif*, or IFP), while equity-based platforms must register as crowdfunding investment advisors (*Conseiller en Investissement Participatif*, or CIP) or hold a license as a financial service provider (*Prestataire de Services d'Investissements*, or PSI).

- The so-called "Macron Law"[15] authorizes companies to grant short-term loans to an SME with which they have economic links under certain conditions. In particular, (i) the maturity of the loan cannot exceed two years; (ii) the lender must be a joint stock company or a limited liability company and its account must be certified by an auditor; and (iii) the decision to enter into the loan agreement is subject to a specific corporate approval process.

The crisis also brought about changes in the French Supervisory structure. In particular, the *Autorité de contrôle prudentiel* (ACP) was created in 2010 from the merger of the former banking and insurance authorities and received the additional task to ensure consumer protection. The Banking Law of 2013 increased the powers of the ACP and granted it banking resolution powers and governance oversight, in anticipation of the BRRD's implementation. The ACP thus became the ACPR (*Autorité de contrôle prudentiel et de résolution*).

d) A significant degree of internationalization

The level of internationalization of the French banking system is quite high, with external assets and liabilities in June 2013 amounting to 102.1% and 70.3% of French GDP respectively. Cross-border banking outflows outpace inflows by more than 30% of GDP. The French banking system remains predominantly owned by domestic investors, with assets under foreign control amounting to only 11% of total banking assets in France (against 16% for the EU 27 average).

The international expansion of French banks was primarily motivated by the need to diversify their business portfolio and take advantage of markets that are not subject to the same cycles as the French market. As a result, French banks went through rapid global expansion, alongside other European banks, partly thanks to the rise of the euro, leading to increased cross-border banking within the Eurozone.[16] France accounts today for 10% of global cross-border claims, which represents more than US$ 2,500 billion.[17] The crisis changed the pace and channels of this expansion. In response to market conditions and regulatory pressures, banks accelerated the pace of deleveraging and reduced cross-border assets by over half a trillion US dollars in the second half of 2011, a trend which continued in 2012, albeit at a slower pace.[18]

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15 Law 2015-990 of 6 August 2015.

16 IMF Country Report, 'France: Selected Issues' (January 2013) <http://www.imf.org/external/pubs/ft/scr/2013/cr1303.pdf> accessed 21 September 2016.

17 BIS Consolidated Statistics, 'Summary of Foreign Claims Immediate Counterparty Basis), by Nationality of Reporting Bank' (2015) <http://www.bis.org/statistics/b2.pdf> accessed 21 September 2016.

18 IMF Country Report, 'France: Financial System Stability Assessment' (December 2012) <http://www.imf.org/external/pubs/ft/scr/2012/cr12341.pdf> accessed 21 September 2016.

The international presence of French banks is relatively concentrated, with the top ten countries in terms of exposure accounting for 72% of the top five banks cross-border claims. French banking capital outflows are, however, relatively well diversified, meaning that France has low exposure to a foreign shock in any particular country or region. Only BNP Paribas can be considered a "European bank" with less than 50% of its business activities on French territory and more than 25% in the rest of Europe (2009 figures).[19]

French banks are primarily exposed to advanced economies, notably Europe (representing 52% of cross-border claims at the end of 2013), and in particular euro area countries (37%). This is the result of an evolution that started with the creation of the euro, when banks focused their international expansion on the single currency area. At the end of 2006, Europe already accounted for around 25% of the top five banks' balance-sheet. European exposures subsequently grew rapidly, reaching 37% of total banking assets at the end of 2010. Simultaneously, French banks made significant acquisitions in neighboring countries, including Germany, Belgium, Spain and Italy. For instance, BNPP bought *Banca Nazionale del Lavoro* in Italy in 2006 and Fortis Bank in Belgium in 2009. As a result, prior to the crisis, the euro area accounted for the lion's share of the French bank's exposure. From 2010 onwards, however, French banks cut their exposure towards these countries (from 42% to 38%), in favor of non-EU OECD countries, thus diversifying their risk.

International activities carried out via local subsidiaries and branches play a significant role, as shown by the high proportion of claims denominated in local currencies (above 50%). This moderates foreign exchange risk, as more than 75% of the top five banks' traded shares or bonds are denominated either in local currency or in euros.

The internationalization of French banking contained an important retail element (15% of foreign claims by the end of 2013), although the vast majority of cross-border claims related to large companies (39%). Most of the exposures consist of loans and advances (67%). In comparison, the internationalization of German and British banking almost exclusively took place through corporate lending and investment banking.

e) French banks and the financial crisis

French banks were initially less affected by the crisis than other European banks. Although they did suffer from the closure of the money market and the depreciation of their share value, like the entire sector, they were less exposed to the most toxic assets that led to the demise of other (North European) banks. One of them – BNP Paribas – was even able to use the crisis as an opportunity to embark on one of the only and largest cross-border deals of the period by acquiring Fortis Bank in Belgium in 2009.

The crisis did, however, reveal some of the weaknesses of French banks and lead to targeted intervention by the State, albeit to a lesser extent than in other European countries. Such weaknesses included:

- The failed business model of French-Belgian bank Dexia, which was faced with a liquidity crisis immediately after the failure of Lehman Brothers in 2008 and, after a three-year attempt at restructuring, finally had to be resolved in the context of the sovereign crisis in 2011-2012; one year later, another

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[19] Franklin Allen, Thorsten Beck, Elena Carletti, Philip R. Lane, Dirk Schoemaker, Wolf Wagner, 'Cross-Border Banking in, Europe: Implication for Financial stability and Macroeconomic Policies, CEPR, 2011 <https://voxeu.org/sites/default/files/file/cross-border_banking_in_Europe.pdf> accessed 21 September 2016.

French credit provider (CIF) whose business model was very close to Dexia's, also had to be resolved;

- The Kerviel affair at Société Générale, which revealed severe weaknesses in the bank's internal controls and led to a loss of approximately €4.9 billion, which the bank ultimately was able to absorb on its own;
- The structural lack of profitability of Natixis, which was ultimately solved by the merger of Banque Populaire and Caisse d'Epargne in 2009; and
- The exposure of a number of French banks to depressed European countries through sovereign bonds and stakes in local banks, in particular Greece – which generated a loss of €6.47 billion at Crédit Agricole in 2012.

2. Aid schemes

The French practice of bank rescues has evolved since 2008. At the beginning of the crisis, France essentially used aid schemes that in practice benefited major universal banks in a context of systemic crisis. France initially implemented general guarantee and recapitalization schemes in 2008 and 2009 and the major French banks, while benefitting from these schemes, did not have to provide individual restructuring plans.[20]

The support package for credit institutions established by France in 2008 was based on two specialized companies created for the occasion: the SFEF, a refinancing mechanism based on a State guarantee, and SPPE, a recapitalization mechanism.[21] More recently, in May 2015, the Commission authorized the extension of the scope of SFIL/CAFFIL's activities to cover the financing of export credit loans and this authorization decision was also considered a scheme.[22] In total, the Commission authorized eight decisions on State aid schemes under Article 107(3)(b) TFEU notified by France between 2009 and 2015.

a) Financial support measures to the banking industry (refinancing)

On October 16, 2008, one month after the demise of Lehman Brothers, the French parliament authorized a State guarantee in the context of a refinancing scheme for the stabilizing of financial markets. For the purpose of this scheme, France created a special structure that benefitted from the State guarantee, the Refinancing Company for the Activities of Credit Institutions (SRAEC), later renamed the Corporation for Financing of the French Economy (SFEF).[23]

The SFEF, owned both by banks (66%) and by the State (34%) was given the task of borrowing on the medium- and long-term markets with the guarantee of the State and providing loans to credit institutions meeting minimal capital requirements, thus constituting an indirect guarantee mechanism for the French banks.

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[20] François-Charles Laprévote, 'The Economic and Financial Crisis in Europe: State Aid and Banks in the European Union – Selected Examples' in Carlos Botelho Moniz and Pedro de Gouveia e Melo (eds), *The Economic and Financial crisis in Europe: On the Road to Recovery* (Bruylant 2015) (Laprévote 2015).

[21] François-Charles Laprévote, '*La crise économique et financière en France et dans l'Union européenne*' [2014] Revue Lamy de la concurrence, 51 (Laprévote 2014a).

[22] Commission Press Release IP/08/1609 of 31 October 2008 (Commission Press Release 2008).

[23] *Ibid*.

In exchange for this support, the banks had to provide collateral, pay SFEF a remuneration that fully covered the cost of the government guarantee, and implement behavioral commitments (such as restrictions on senior management compensation, a cap on the amount of severance payments; using the liquidity provided under the notified scheme for financing "the real economy" and avoiding distortion of competition between beneficiary institutions and others as well as aggressive or unfair commercial practices). The SFEF's operations were limited to five years and the total amount of the government guarantee was limited to around €265 billion.[24] Moreover, the French authorities agreed to notify to the Commission any individual aid if the total amount of refinancing received by a single bank exceeded either 5% of its balance-sheet total or €500 million, or should the guarantee be called directly or indirectly.[25]

By a decision of October 30, 2008,[26] the Commission authorized the SFEF scheme as compatible with the common market under Article 107(3)(b) TFEU, to the extent that it provided for:

- Non-discriminatory access for banks authorized in France;
- A pricing mechanism that covers the financing costs of the plan; and
- Appropriate safeguards against abuse of the scheme, minimizing the risk that any credit institution having serious difficulties after the grant of the measure continued to benefit from the scheme.[27]

The SFEF scheme was active in 2008 before becoming dormant due to improved conditions on the financial market in 2009. It has not been reactivated since but it could be, in the event that credit institutions again encounter exceptional difficulties in accessing funding on the financial markets. In total, the SFEF borrowed and lent the equivalent of €77 billion, principally lending to its own shareholders (Crédit Agricole, BNP Paribas, Société Générale, Banque Populaire, Caisse d'Épargne, Crédit Mutuel) as well as other banks such as CIF, Banque PSA and RCI Banque.

b) Financial support measures to the banking industry (recapitalization)

On December 3, 2008, the French government notified the recapitalization scheme, carried out via a State-owned investment company, the SPPE, which was to invest in securities issued by a number of French banks.[28]

The SPPE, exclusively owned by the State, brought capital to credit institutions holding a banking license in France that satisfied certain capital requirements and could demonstrate their long-term viability. The SPPE subscribed to securities issued by the beneficiary banks in the form of hybrid capital (subordinated debt securities classified as "non-core Tier 1"), to be remunerated at a fixed rate for the first two years and at a fluctuating rate thereafter. The total remuneration of the State reached approximately 8% and reflected the degree of solvency of each beneficiary bank via a credit default swap component, by

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24 Laprévote 2014a.

25 Commission Decision 2008/6617/EC on the aid scheme N548/08 for refinancing financial institutions established by the French Republic [2009] OJ C123.

26 *Ibid*. See also Commission Decision 2009/3809/EC on the aid scheme N251/09 for the prolongation of French bank guarantee scheme [2009] OJ C174.

27 Laprévote 2014a.

28 Commission Press Release 2008.

which remuneration was balanced pursuant to the risk of default. The scheme was later amended to allow beneficiary banks to choose between the issuance of "super-subordinated" debt securities and the issuance of preferred shares (without voting rights for the State).[29] The French authorities could provide fresh capital through the SPPE for a maximum total of €21 billion.

In its decision of December 8, 2008,[30] the Commission considered the SPPE scheme to be compatible with the common market under Article 87(3)(b) EC (now Article 107(3)(b) TFEU) for the following reasons:

- The regime imposed on beneficiary banks behavioral commitments relating to senior management remuneration and financing the real economy;
- The plan provided for an adequate level of remuneration of the State and ensured that the State presence in the banks' capital would be limited to a minimal period of time;
- The scheme was open only to credit institutions that were fundamentally sound and whose sudden and severe reduction of activity would have a serious impact on the French economy.[31]

Six large groups (which became five when Banque Populaire and Caisse d'Épargne created BPCE) benefited from SPPE for the value of €19.75 billion in total.[32] As of July 2009 financing under the SPPE had stopped and by March 2011, the titles obtained under the scheme had been reimbursed in their entirety.[33]

c) Extension of SFIL/CAFFIL activities to financing export credit loans

SFIL/CAFFIL, a French development bank that currently grants loans to French local authorities and French public hospitals, was created following the resolution of Dexia and is the successor of Dexia Municipal Agency (DMA), a former subsidiary of the former French-Belgian bank Dexia. SFIL/CAFFIL currently grants loans to French local authorities and French public hospitals and its activities are subject to constraints laid down in the 2012 Dexia decision.[34]

On May 5, 2015, the Commission authorized the extension of the scope of SFIL/CAFFIL's activities to cover the financing of export credit loans. This new mission, which consists of refinancing credits-buyers contracts insured by Coface, was allocated to SFIL by the French State. SFIL/CAFFIL will raise the required funding on the markets through covered bonds to ensure the financing of those loans, while not receiving new capital from the State. Refinancing will also be available for every bank that works closely with exporters established in France for its loans insured by Coface and with the guarantee of the French State.[35] Moreover, commercial banks will act as intermediaries for the conclusion of new transactions

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29 Commission Decision 2008/8278/EC on the aid scheme N613/08 for the French bank recapitalization scheme [2009] OJ C106.

30 *Ibid*.

31 Laprévote 2014a.

32 Annual Public Report, *Cour des comptes* [2013], 158.

33 *Ibid.*

34 See Section 3(a) below.

35 Commission Press Release IP/15/4914 of 5 May 2015.

and the management of loans and will compete for the provision of these services that will be remunerated at market price.

The Commission found that this measure would not involve new State aid as there is currently a market failure for providing export credit services in France. On the one hand, French banks have significantly reduced their financing of export credit loans in the last couple of years. On the other hand, exporters and importers in France face major difficulties in setting up the financing of their export transactions. The Commission also confirmed that the aid measures granted to SFIL/CAFFIL, which were approved on December 28, 2012 in the Dexia decision, are still compatible with the internal market.[36]

3. Individual aid

France also had to provide individual aid to specialized banks, including Dexia (2008-13), BPCE/Natixis (2009), CIF (2013) and PSA Finance (2013).[37] By contrast, none of the so-called "universal" French banks required individual aid during the crisis. In total, the Commission adopted eleven decisions on individual State aid measures notified by France under Article 107(3)(b) TFEU since 2009.

a) Dexia – DMA

The Dexia case is emblematic of a series of *ad hoc* restructuring and resolution plans leading to the dismantling of a systemic bank for the euro area in a context further complicated by the joint intervention of several Member States (France, Belgium, Luxembourg). Created in 1996 from the merger of *Crédit Communal de Belgique* and *Crédit Local de France*, Dexia was from the start a cross-border bank specializing in the granting of credit lines to local authorities.

In 2008, Dexia had become a giant bank with a balance sheet of more than €651 billion and activities including (among others) retail banking, asset management, insurance and reinsurance. Dexia was one of the first banks affected by the financial crisis of 2008, in particular because, for its refinancing, it relied heavily on the interbank short-term markets, which closed abruptly after the Lehman Brothers bankruptcy. Since 2008, Dexia has received several types of State aid: financing guarantees granted by Belgium, France and Luxembourg from 2008 to 2010 (capped at €100 billion) and from 2011 to date (capped at €85 billion); recapitalizations in 2008 (€6 billion, including €3 billion by the States or regions)[38] and December 2012 (€5.5 billion); cash aid granted by the Belgian and French central banks, and an impaired asset measure in the case of FSA, and the transfer of assets to the Belgian and French States.

The restructuring of Dexia was particularly complex and sensitive and involved three Member States (France, but also Belgium and Luxembourg) and no less than 13 Commission clearance decisions. This complexity arose in part from the wide variety of measures of State aid involved. In addition, the initially envisaged solution and implementation thereof between

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36 *Ibid*.

37 Laprévote 2015.

38 Other Belgium investors: Holding Communal SA (€500 million), Arcofin SC (€350 million), Ethias (€150 million); other French investors: *Caisse des dépôts et consignations* (€1.71 billion), CNP Assurances (€288 million).

October 2008 and October 2011 was a major restructuring on the basis of a plan approved by the Commission in May 2010. However, in October 2011 the sovereign debt crisis led to a new series of State interventions, the dismantling of the group (in particular through the sale of its Belgian and Luxemburg activities, and of most of its French activities through DMA, and to the imposition of an orderly resolution on what remained of the bank, with further recapitalization by the States and a long-term State guarantee to support its financing. On December 28, 2012, the Commission authorized the final resolution plan for the Dexia group, which included the dismantling of the group and the placing into run-off of the remaining activities that could not be sold. [39]

The French business of lending to public authorities and hospitals, which was hosted in DMA, was transferred to a consortium composed of the French State, CDC and La Banque Postale. This included a total balance sheet size of around €71 billion, of which €10 billion were "sensitive structured" loans to French local authorities or hospitals that included a high-leverage structured component (typically with a variable remuneration indexed on the Swiss franc) that were at risk of being contested by the debtors. A new credit institution, the *Etablissement de Crédit Nouvel* (NEC), directly owned by the French state (75%), the CDC (20% in preferential shares) and La Banque Postale (5%) was created. DMA became its wholly-owned subsidiary. A joint venture was also created to have the status of banking transaction intermediary between the CDC (35%) and La Banque Postale (65%), marketing new loans solely in sectors where there was a well-identified market failure, i.e. loans to French local authorities and public hospitals, and using DMA as a refinancing vehicle.

The Commission considered that the sale of DMA involved State aid from the French State (as well as other State-owned entities, CDC, and La Banque Postale) to the seller Dexia Credit Local (DCL) and its parent company Dexia, despite an expert opinion provided by the French authorities showing that the transaction price constituted market price. [40] The Commission noted that the terms of the final transaction (as notified by the Member States) were considerably modified after the expert opinion had been provided: (i) the initial guarantees from DCL proposed by the State (in particular a "stoploss" guarantee and a guarantee – or "synthetic sale" – on litigation losses on a number of so-called "sensitive loans" included in DMA's portfolio) were removed; and (ii) the initial sale price of €380 million was reduced to €1. Under the "stop-loss" and "sensitive loans" guarantees proposed in the initial version of the transaction, DCL would have had to bear most of the potential losses by DMA resulting from litigation and credit defaults on DMA's portfolio. The Commission concluded that even if the initial price of €380 million was the market price (an assumption on which it already had expressed doubts during its investigation), it was mathematically impossible for the market price of DMA without the guarantees to be €1 since the risk value of such guarantees was more than €380 million. According to the Commission, the market price of DMA without the guarantees was negative, and the transaction therefore involved State aid to DCL and Dexia. The Commission, however, left open the exact quantification of the advantage thus granted to Dexia/DCL.[41]

In addition, the Commission considered that (i) the aid element contained in DMA's sale price also benefitted DMA itself, as it allowed the company to extend its operations rather than being wound up as part of the orderly resolution of the Dexia group and (ii) the

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[39] Laprévote 2014a.

[40] Commission Decision 2014/189/EU on the aid schemes N30521/12, N33751/12, N33760/12, N33763/12, N33764/12, N34925/12, N34927/12 and N34928/12 implemented by the Kingdom of Belgium, the French Republic and the Grand Duchy of Luxembourg in favour of Dexia [2014] OJ C110 (Commission Decision on Dexia 2014), paras. 509-17.

[41] François-Charles Laprévote and Mélanie Paron, 'The Commission's Decisional Practice on State Aid to Banks: An Update' [2015] 14 European State Aid Law Quarterly 1, 88.

commitment by the State, CDC and even La Banque Postale to provide capital for the NEC and DMA at the level needed to cover any losses with respect to DMA's existing portfolio, which included around €10 billion of sensitive loans, also constituted State aid to the economic entity composed of DMA, the JV and the NEC. The Commission accepted the French authorities' argument that this new undertaking constituted a "development bank" and that its set-up (and the corresponding subsidies) was necessary to address a market failure in the funding of local authorities and public hospitals in France, in light of the significant mismatch between supply and demand and the serious risk of a credit crunch, with negative consequences for the real economy. As a result, the Commission's clearance of the transaction was also subject to a number of commitments constraining DMA and the JV's future activity. In particular: (i) the JV's scope of activity is limited to the financing of French local authorities and public hospitals; (ii) the JV's product offer will be simple and made up of "plain vanilla" products with simple and transparent methods; (iii) the JV will provide financing under market conditions that are not more attractive than those offered by other commercial banks; (iv) the activities of the JV, NEC and DMA are authorized for a period of 15 years, which may be renewed if the market shortfall persists; (v) the entities are subject to an acquisition ban for a period of five years; (vi) the management of the existing outstanding debts on DMA's balance sheet (in particular with respect to sensitive loans) and the provision of liquidity and capital for NEC and DMA are strictly constrained; and (vii) the appointment of a trustee by the French state, conditional on the Commission's approval, to monitor compliance with the commitments and report to the Commission on a yearly basis.[42]

b) Caisse d'Epargne and Banque Populaire

As a major subsidiary of its parents the Banque Populaire (BP) and Caisse d'Epargne (CE) groups, each owning 35%, the investment bank Natixis found itself in a particularly fragile situation at the beginning of the crisis. In September 2008, the bank had been recapitalized for €3.7 billion, of which €2.5 billion were provided by its parent companies BP and CE. In December of the same year, BP and CE – which had meanwhile explored the possibility of a merger between their two groups – had injected into Natixis an additional amount of €1.9 billion, i.e., almost all of the €2.05 billion that they had received under the first capital injection tranche of the SPPE.

Within the framework of the second capital injection tranche of the SPPE the Commission subsequently approved an additional amount of €2.55 billion for the benefit of BP and CE,[43] taking into account the announced merger of both groups. When in April 2009 the French authorities notified the Commission of their plan to increase the amount of €2.55 billion already approved by the Commission by an additional €2.45 billion (i.e., a total of €5 billion under the second tranche) to be paid to the entity resulting from the merger of BP and CE, the Commission had to examine the compatibility of the aid, knowing full well that the need for additional capital of the new entity resulted from Natixis's financial situation.[44] Indeed, while BP and CE each owned 35% of Natixis, which they incorporated proportionately into their accounts, the new entity would own 70% of Natixis post-merger, which the latter consolidated in full within the new group's accounts, thus increasing its risk-weighted assets

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42 Commission Decision on Dexia 2014.

43 Commission Decision 2008/597/EU on the aid scheme N29/2009 for the amendment of French scheme to inject capital [2009] OJ C116; Commission Decision 2008/8278/EC on the aid scheme N613/2008 for the French bank recapitalization scheme [2009] OJ C106.

44 Commission Decision 2009/3835/EU on the aid scheme N249/2009 for the capital injection of Banque Populaire and Caisse d'Epargne [2009] OJ C186 (Commission Decision on BP and CE 2009).

generating an additional capital shortfall. In total, the assistance provided to the new entity reached €7.05 billion, the major part of which was in fact aimed at Natixis.

For the purpose of assessing the compatibility of the aid, the Commission had to determine whether Natixis constituted a separate group isolated from its parent companies, or whether it had to be considered as an integral part of the new entity resulting from the merger of BP and CE. In the first case, it was likely that the amount of aid received exceeded the threshold of 2% of the risk-weighted assets, which was then applied by the Commission to determine whether a bank was fundamentally sound, and Natixis should have presented a restructuring plan. However, for the purposes of assessing the aid granted, the Commission considered that Natixis was an integral part of the new entity; for the consolidated entity, the total aid of €7.05 billion accounted for only 1.6% of risk-weighted assets, and a restructuring plan was therefore not required. In particular the Commission based its decision on (i) the massive amount of support that BP and CE provided to Natixis, which, according to the Commission, was evidence that Natixis was a subsidiary essential to the activities of the future group; and (ii) the fact that the rating agencies also tended to consider Natixis as a major subsidiary of the future group and analyzed its financial stability taking into account the financial strength of its parent companies.[45]

Finally, the commitments of the French authorities in this case were limited to an obligation to regularly report to the Commission about the evolution of the BPCE group in order to demonstrate that the bank remained "fundamentally sound", which may seem relatively mild considering that, after 2011, this type of intervention would necessarily have required a full-fledged restructuring plan.[46]

c) Crédit Immobilier de France

CIF is a mortgage lender which specializes in loans to French households to promote access to home ownership. CIF's funding relied almost exclusively on the wholesale market and therefore dried up dramatically in 2012-2013. As a result the French State granted the group a €18 billion State guarantee which was temporarily authorized by the Commission subject to the presentation of an orderly resolution plan.[47] This guarantee was divided into two parts: an "internal" guarantee covering the existing debt, and an "external" guarantee in the form of unsecured securities to be issued by the CIF's treasury unit, amounting to debt and expiring a minimum of three months and a maximum of five years after being issued. Among other considerations, the Commission acknowledged the guarantee in favor of CIF to be essential in order to avoid a ripple effect on the French banking system. The authorization of the guarantee granted to CIF was, however, subject to the presentation of an orderly resolution plan of the group, as well as other commitments to be implemented in the meantime (acquisition ban, a coupon and a dividend ban, prohibition of increasing the business volume, limiting the grant of new loans). The final orderly resolution plan was authorized by the Commission on November 27, 2013, for a total guarantee amount of €28 billion.[48]

The CIF case constitutes an interesting implementation of the principle of burden sharing, according to which particular care should be taken to avoid providing any aid to shareholders and subordinated debt holders. This should also ensure that the aided bank and its capital holders bear adequate responsibility of their past behavior and contribute to the

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45 *Ibid*.

46 Laprévote 2014a.

47 François-Charles Laprévote, 'State Aid in Financial Services: An Overview of EU and National Case Law' [2014] e-Competitions, National Competition Laws Bulletin 67707 (Laprévote 2014b).

48 Laprévote 2014a.

restructuration/resolution as much as possible. While the application of this principle can entail the complete wipe out of shareholders, in the CIF case shareholders could receive dividends or liquidation surplus after a period of five years provided that all the amounts owed to the State for the remuneration of the guarantee for the previous years had been paid, and up to a maximum of €650 million in 2013 with a net present value at 8%. The Commission indeed determined that this amount was lower than the amount the shareholders would have received in the counterfactual scenario of an immediate liquidation of the bank. The eventual surplus was to be integrally distributed to the State.[49] The resolution plan also provided for a commitment whereby the CIF would not buy back its own shares or hybrid instruments and would not pay coupons or exercise a call option.[50]

d) Banque PSA

Banque PSA Finance (BPF) finances the business activities of the PSA automobile group which, in turn, fully controls it. In 2012 and 2013 BPF faced difficulties because of its link to the PSA group, which suffered net losses of €819 million during the first half of 2012.

In February 2013, the Commission temporarily authorized, on the basis of Article 107(3)(b) TFEU, rescue aid in the form of a State guarantee covering the beneficiary's market issuance for an amount of €1.2 billion.[51] The aim of the guarantee was to cover new bond issues by Banque PSA Finance. This guarantee was also designed to extend to securities issued by the bank within a period of six months from the date of the decision. The authorization of the guarantee granted to BPF was subject to the submission of a restructuring plan for the PSA group as a whole. Indeed, because of the relationship of interdependence between the activities of BPF and the rest of the group, the bank's ability to access the capital markets had an impact on the industrial activity of the PSA group, and the Commission considered that the PSA group as a whole was a beneficiary of the State guarantee.[52]

The restructuring plan included a State guarantee covering bond issues by BPF up to a maximum of €7 billion, grants and repayable advances of €85.9 million. On May 2, 2013, the Commission opened a formal investigation on the PSA group's restructuring plan. In July 2013, the Commission concluded that the plan, along with the undertakings from the French authorities, was compatible with the internal market on the basis of Article 107(3)(b) TFEU.[53] Among other commitments, the French authorities decided to increase the price of the guarantee paid by PSA based on the penetration rate of BPF, according to the proportion of Peugeot and Citroen vehicles sold with financing from BPF. The PSA group also promised to maintain the margin for loans granted by dealers and not to make major acquisitions during the period covered by the restructuring plan.[54]

This case was the first instance where the Commission requested the restructuration of a whole industrial group because of the difficulties of its financial subsidiary. This decision could create specific issues. In particular, it could result in the whole group being defined as a firm in difficulty, which would have an impact on the ability of other subsidiaries to receive

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[49] Commission Decision 2013/8432/EU on the aid scheme N37029/2013 for the orderly liquidation of Crédit Immobilier de France [2014] OJ C69.

[50] Laprévote 2014b.

[51] Commission Decision 2013/792/EU on the aid scheme N36059/2013 for the rescue operation of the PSA group [2013] OJ C136.

[52] Laprévote 2014a.

[53] Commission Decision 2013/4971/EU on the aid scheme N35611 for the restructuring plan of the PSA group, not yet published.

[54] Commission Press Release IP/13/757 of 30 July 2013.

other forms of aids, such as R&D aids or environmental aid, even though these subsidiaries are themselves profitable and otherwise meet all the criteria to receive such aid.