

# **State aids, central banks and the financial crisis**

**Zurich, 30<sup>th</sup> September 2011**

**Dr. Georgios Psaroudakis, MJur (Oxon)**

Lecturer, University of Thessaloniki / Faculty of Law

Attorney-at-Law, Bank of Greece / Legal Department

Views expressed are the author's own.

**I. State aids to credit institutions in the EC Commission's practice**

**II. State aids to credit institutions and banking policy**

**III. Measures by central banks as state aids?**

# I. State aids to credit institutions in the EC

## Commission's practice

### 1. Legal framework

- (pre-Lehmann) Art. 107(3)(c) TFEU / general R&R-Guidelines
- (post-Lehmann) Art. 107(3)(b) TFEU / particular Communications: Banking, Recapitalization, Restructuring, Impaired Assets
- Shift in view: from single operator to systemic crisis
- Compatibility criteria not fundamentally altered, but rather loosened
- Distinction between fundamentally sound and unsound institutions

## 2. Compatibility criteria

- Remuneration (in particular “remuneration corridor”)
- Own contribution (possibly below 50%): also ban on dividends
- Compensatory measures: divestment, balance sheet reductions, behavioural constraints
- Restructuring / viability plan

## 3. Evaluation

- No finding of incompatibility
- Commission’s influence on terms of aid
- Successful combination of response to crisis and competition policy

## **II. State aids to credit institutions and banking policy**

### 1. Influence on the structure of the banking market

- Commitments on divestments
- Competition policy and industrial policy
- Available supranational authorities

### 2. Preventive measures on the basis of systemic importance?

- Higher capital requirements and/or resolution fund levy on the basis of risk profile and/or systemic importance?

# III. Measures by central banks as state aids?

## 1. Imputability to the State?

- Central banks between public purpose, legal nature and independence

## 2. ELA as a matter of monetary policy

- Monetary policy within and outside the ESCB
- Liquidity, financial stability and competition

## 3. The Northern Rock case

- A (possibly misplaced?) analysis at the level of finding an aid