State aids, central banks and the financial crisis

Zurich, 30th September 2011

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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