Legal aspects of the credit crisis

Duisenberg school of finance seminar

20 February 2009 14:15-16:00 CET

Professor René Smits

Jean Monnet Professor of the Law of Economic and Monetary Union, *Universiteit van Amsterdam*, Amsterdam (NL)

Visiting Professorial Fellow,

Queen Mary, University of London, London (GB)

Chief Legal Counsel, *Nederlandse Mededingingsautoriteit*

(Netherlands Competition Authority), The Hague (NL)

Gratefully acknowledging assistance of

Michał Karasiewicz and Plamen Slavov (paralegals)

Goal of this afternoon

- Giving an overview of legal and institutional elements of the credit crisis
- After a brief introduction into origins & history
- In-depth analysis of legal aspects impossible
- Focus on several areas: competition law, banking supervisory law, law of the Economic and Monetary Union (EMU)
- G20 and IMF necessarily out of focus today

Overview of lecture

1. History of the crisis: some data and terms
2. Causes and origins of the crisis
3. Legal and institutional aspects
   a) Legal
      i. Private law
      ii. State aid law
      iii. Supervisory law
      iv. Competition law (except State aid)
   b) Institutional
      i. Financial sector supervision
      ii. Economic union (EMU)
4. Way out?

History of the credit crisis (2007)

- **9 August 2007** - BNP Paribas suspends redemptions from three investment funds, triggering a massive withdrawal of liquidity from the market of asset-backed securities
- **10 August 2007** – US Fed (US central bank) injects a combined $43bn into the market, the ECB - €156bn and the Bank of Japan – Y1,000bn
- **14 September 2007** - Bank of England bails out Northern Rock
- **30 September 2007** – Swiss bank UBS announces $690m loss for Q3
- **24 October 2007** - Merrill Lynch suffers $8.4bn loss as a consequence of the subprime crisis

History of the credit crisis (2008 part 1)

- **14 March 2008** - US Fed and JP Morgan Chase announce emergency funding deal with Bear Stearns
- **16 March 2008** - JP Morgan Chase buys Bear Stearns for $2 a share, share price and deal particulars changed on 22 March
- **7 September 2008** – US Fed buys out Fannie and Freddie, taking on $12bn debt, after their shares have collapsed
- **14 September 2008** - Bank of America buys out Merrill Lynch for $50bn
- **15 September 2008** - Lehman Brothers files for bankruptcy after it fails to receive backing from Treasury and US fed
- **17 September 2008** - US Fed bails out AIG with $85bn

History of the credit crisis (2008 part 2)

- **25 September 2008** – US Secretary of the Treasury Hank Poulson proposes $700bn bail-out plan to buy up distressed assets
- **3 October 2008** – TARP (Trouble Asset Relief Programme) is introduced by the Bush Administration
- **6 October 2008** – US Fed announces a plan to make $900bn available in short term loans to the banks
- **8 October 2008** - UK Government announces banking bail out. £200bn made available through the special liquidity scheme, £50bn to repair bank balance sheets, £250bn guarantee for banks refinancing
- **19 October 2008** - Dutch government injects €10bn into ING in a exchange for securities and veto rights on major operations and investments
- **21 October 2008** – Belgium, together with Luxemburg and the Netherlands, inject €11.2bn into Fortis Bank
- **26 November 2008** – European Commission launches European Recovery Plan that will cost €200bn

History of the credit crisis (2009)

- **8 January 2009** - German government injects €10bn into Commerzbank in return for a quarter of the company
- **14 January 2009** - Deutsche Bank announces €3.9bn loss
- **14 January 2009** - Anglo-Irish Bank is nationalised
- **16 January 2009** - Bank of America posts $2.4bn loss, while US government agrees to $20bn capital injection and $118bn loss guarantee. Citigroup announces an $8.3bn loss and confirms it will split itself in two
- **27 January 2009** – Dutch government provides a state guarantee to ING to cover €21.6bn of problematic US mortgage-backed securities
- **17 February 2009** – President Obama signs the $787bn fiscal stimulus into law; http://www.recovery.gov

Securitisation

- Securitisation: the process of repackaging banks' assets into bonds sold to investors
- Gives banks option to bear or to transfer risk
- Off-balance sheet items will not carry capital requirements imposed by regulators
- Spreading of risk broadened sources of finance but also infected large segments of economy once risks materialised
- Financial innovation hailed but, when misunderstood or under regulated, became toxic

Some terms explained

- SPV: special purpose vehicles
  – legal entities into which bank's assets are sold and whose bonds are sold to investors
- SIVs: structured investment vehicles
  – legal entities into which assets are 'repackaged' and whose bonds are sold to investors
- MBS: mortgage-backed securities – bonds of which the cash flows are backed by principal and interest payments of mortgages
- CDS: credit default swap – contract under which buyer makes periodic payments to the seller in return for payment if an underlying financial instrument (issued by a corporate or sovereign borrower) defaults - insurance against default on security

Some causes - 1

- Levels of finance unrelated to underlying economic performance – Paul de Grauwe: July 2006 - July 2007: corporate value on stock exchanges increased 30% with GDP growth over the same period 5% - similar: house prices
- Central bank accommodation of the ‘bubble’ in order to prevent crises from erupting - ‘Greenspan put’: US Fed’s pattern of providing ample liquidity leading to investor perception of ‘put’ protection on asset prices, as if there was a built-in put option assuring them the same or a higher price
- George Cooper: the risk management paradigm to prevent crises failed to heed the message of great economist Hyman Minsky who famously warned: 'stability creates instability'

Some causes - 2

- Deregulation: allowing (investment) banks to enter businesses which were not safe
- Popular capitalism: subprime mortgages for those who could not afford them
- Supervisory defects: too many agencies (US, EU), segments unregulated (CRAs, hedge funds, private equity), supervisors lacking expertise in latest innovative products on the market (also within bank boards)
- Globalisation: increased interconnectedness leads to spreading of risks at fast pace

Unregulated markets & players

- **Hedge funds**: investment vehicles for professional investors who invest huge sums
- **Private equity**: buying companies, turning them around (lay-offs, narrower focus of activities and efficiencies) and selling them off for a huge profit
- **Sovereign Wealth Funds**: investment vehicles for excess reserves of (oil rich) States (Norway, Kuwait, China, Singapore) – investments with political overtones?
- **CDS**: credit default swaps – investments insuring buyer against debtor's defaults; CDS's written for many times amount of debts – no central clearing house for settlement – see Banque de France proposal FT 190209

CRA's

- **Credit Rating Agencies** (CRA's)
- few in number (Moody's, Standard & Poor's and Fitch)
- ratings crucial for investment decisions
- debtor's rating status may trigger (cross) default clauses in financial contracts
- double function: advisors on structural investments and raters at the same time
- unregulated

Some causes - 3

Financial sector behaviour steered by:

- Greed (boom time – bullish markets)
- Fear (crunch time – bearish markets)
- Herd behaviour
- Trust

Private law
(including company law)

Private law rules - 1

- Securitisation concerns contracts and securities, governed by private law
- Excellent qualification and references to further reading in *Nederlands Juristenblad*
- But: Dutch law will not often apply
- Private international law (law of conflicts) will decide which law applies
- Choice of law: often English or New York law
- ***Lex rei situ*** applies in respect of real estate

Private law rules - 2

- Corporate law applies to take-overs and recapitalisations
- Issues: competences of company's bodies, shareholders' rights, insolvency law (Lehman Brothers)
- In Europe: State law, harmonised to a certain extent but largely nationally oriented – cf. court decisions on Fortis take-over in Belgium and the Netherlands

State aid law

Assistance to banks

- Emergency Liquidity Assistance (ELA) or Lender of Last Resort (LOLR) function
- Belongs to central bank's core functions
- Further assistance: from the Treasury
- Concerns budgetary powers of States
- Is state aid and therefore subject to Commission authorisation (Art. 87 EC)

ELA under ESCB responsibilities

- “private sector solution is preferable whenever possible”
- “the provision of ELA is within the discretion of the national central bank, which will consider the relevant factors that may justify the access to this lending of last resort” (‘constructive ambiguity’)
- “the Eurosystem also has procedures in place regarding the provision of ELA to individual credit institutions in the euro area, which are under the responsibility of the national central banks (NCBs)”
- ECB Monthly Bulletin, February 2007

Competences and procedures - 1

- Clear that Treaty and Statute give ECB competence to grant LOLR / ELA
- Self-imposed restriction to NCBs only
- Internal procedure for notification and, above a threshold, authorisation of assistance because of impact on monetary policy
- Link with follow-on action: bail-out with taxpayers' money (national Treasuries) – there is no EU Treasury

Competences and procedures - 2

- Intra-ESCB procedures probably based on erroneous interpretation of LOLR competence as being outside ESCB field of activities
- Article 14.4 ESCB Statute:

National central banks may perform functions other than those specified in this Statute unless the Governing Council finds, by a majority of two thirds of the votes cast, that these interfere with the objectives and tasks of the ESCB. Such functions shall be performed on the responsibility and liability of national central banks and shall not be regarded as being part of the functions of the ESCB

- Financial stability and link with monetary policy make LOLR an ESCB function: ECB and NCBs are competent – decentralisation principle applies (Article 12.1 ESCB Statute: recourse to NCBs "to the extent deemed possible and appropriate")
- Thresholds for authorisation probably exceeded in current crisis in view of size of interventions

ELA not available to non CAs

- Restriction as to actors to whom ELA may be granted: ‘credit institutions’
- Compare Fed action in 2009 to widen circle of recipients:

  Term Securities Lending Facility (TSLF),

  11 March (announcement) / 27 March (operational) 2008, Primary Dealer Credit Facility (PDCF), 17 March 2008
- Fed also lends to non-banks: Commercial Paper Funding Facility (CPFF) to provide a liquidity backstop to U.S. issuers of commercial paper (7 October 2008)

Commission's competence - 1

- Article 87 EC – prohibition of State aid:

(1) Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

(2) (…)

(3) The following may be considered to be compatible with the common market:

(b) aid (…) to remedy a serious disturbance in the economy of a Member State

Commission’s competence - 2

- Northern Rock decision (quoted in recent Commission Communication): “dedicated [central bank] support to a specific financial institution” is no state aid “when a number of conditions are met, such as:

- the financial institution is solvent at the moment of the liquidity provision and the latter is not part of a larger aid package,

- the facility is fully secured by collateral to which haircuts are applied, in function of its quality and market value,

- the central bank charges a penal interest rate to the beneficiary,

- the measure is taken at the central bank's own initiative, and in particular is not backed by any counter-guarantee of the State”

From LOLR / ELA to bail-out

- Guarantees of (public's) deposits
- Guarantees of all banking liabilities
- Shareholdings in banks
- Taking over 'toxic assets' of banks
- Establishing a 'bad bank'

- ECOFIN, 7 October
- Eurozone States' Summit, 12 October
- Commission' Communication, 13 October
- European Council, 15-16 October

ECOFIN Conclusions 7 October 2008

- “We agree on EU common principles so as to guide our action:
  - – interventions should be timely and the support should in principle be temporary;
  - – we will be watchful regarding the interests of taxpayers;
  - – existing shareholders should bear the due consequences of the intervention;
  - – the government should be in a position to bring about a change of management;
  - – the 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 aids rules;
  - – negative spillover effects should be avoided”

Eurozone States' Summit Conclusions 12 October 2008 - 1

- commitment to act together in a decisive and comprehensive way in order to restore confidence and the proper functioning of the financial system
- "a coordinated approach aiming at:
  - ensuring appropriate liquidity conditions for financial institutions;
  - facilitating the funding of banks, which is currently constrained;
  - providing financial institutions with additional capital resources so as to continue to ensure the proper financing of the economy;
  - allowing for an efficient recapitalisation of distressed banks;
  - ensuring sufficient flexibility in the implementation of accounting rules given current exceptional market circumstances;
  - enhancing cooperation procedures among European countries."

Eurozone States' Summit Conclusions 12 October 2008 - 2

Facilitating the funding of banks - currently constrained

Actions will be designed in order to avoid any distortion in the level playing field and possible abuse at the expense of non beneficiaries of the arrangements:

- the price of those instruments will reflect at least their true value with respect to normal market conditions;
- all the financial institutions incorporated and operating in our [States] and subsidiaries of foreign institutions with substantial operations will be eligible, provided they meet the regulatory capital requirements + other non discriminatory objective criteria;
- Governments may impose conditions on beneficiaries of these arrangements, including conditions to ensure an adequate support to real economy;
- the scheme will be limited in amount, temporary and will be applied under close scrutiny of financial authorities, until 31 December 2009

Commission’s Communication 13 October 2008 (“Banking Communication”) - 1

- Exceptional circumstances require solutions for individual financial institutions and general schemes
- Guarding against “unnecessary distortions of competitions between financial institutions operating in the market or negative spillover effects on other Member States”
- Article 87(3)(b) EC “necessitates a restrictive interpretation of what can be considered a serious disturbance of a Member State's economy.”
- “In the light of the level of seriousness that the current crisis in the financial markets has reached and of its possible impact on the overall economy of Member States, the Commission considers that Article 87(3)(b) is, in the present circumstances, available as a legal basis for aid measures undertaken to address this systemic crisis.”
- Recourse to Article 87(3)(b) not possible “on an open-ended basis but only as long as the crisis situation justifies its application”
- So: regular review (every 6 months) and termination asap

Commission's Communication 13 October 2008 ("Banking Communication") - 2

- General support measures have to be:

  - well-targeted to achieve effectively objective of remedying a serious disturbance in economy

  - proportionate to the challenge faced and

  - designed such as to minimize negative spill-over effects on competitors, other sectors and other Member States
- Specific criteria for guarantees of liabilities (eligibility, material and temporal scope, maximum, behavioural constraints, follow-up adjustment measures) recapitalisations, controlled winding-up, other forms of liquidity assistance

European Council Conclusions, 15-16 October 2008 - 1

- “welcomes the concerted action plan of the euro area [States] of 12 October, of which it endorses the principles” and “welcomes the measures adopted by the Member States, whether or not they belong to the euro area, in conformity with the principles of that plan and in compliance with the Treaty”
- “calls on the Member States to ensure that their future national measures also respect those principles, and to take account of the possible effect of their decisions on the other Member States”
- “reaffirms its commitment that in all circumstances the necessary measures will be taken to preserve the stability of the financial system, to support the major financial institutions, to avoid bankruptcies and to protect savers' deposits”

European Council Conclusions, 15-16 October 2008 - 2

- “measures to support financial institutions in difficulty should go hand in hand with measures to protect taxpayers, to secure accountability on the part of executives and shareholders and to protect the legitimate interests of other market players”
- “In the current exceptional circumstances, European rules must continue to be implemented in a way that meets the need for speedy and flexible action. The European Council supports the Commission's implementation, in this spirit, of the rules on competition policy, particularly State aids, while continuing to apply the principles of the single market and the system of State aids.”

ECB Opinions on national measures - 1

- Non-discrimination on internal market: CAs with headquarters + subsidiaries with substantive operations
- Individual responses 2 B coordinated: proper consultation
- No uncoordinated decisions to guarantee interbank deposits > fragmentation of € money market > substantial distortion of national segments through cross-border debt issuance activity > impairment of monetary policy, exclusive Eurosystem responsibility
- Pricing of guarantees same across € market

  NB ECB's 'Recommendations on States Guarantees for Banks' – attached to draft Spanish Order and draft Italian Decree – ECB recommends to delete specific reference: no legal act, 2 B revised
- Acquisitions of financial assets: at 'market conditions'
- Expiry date of guarantees (coordinated; specified)

ECB Opinions on national measures - 2

- Influence of measures on State's budgetary position (avoidance of excessive deficits)
- In order not to infringe the prohibition of monetary financing, NCB lending to banks against State guarantees should respect five conditions:

1) full discretion regarding decision whether to extend ELA
2) credit provided by NCB as short-term as possible
3) there must be systemic stability aspects at stake
4) State guarantee legally valid and enforceable
5) economic adequacy of the State guarantee (principal and interest), fully preserving financial independence of the NCB

- Antitrust and banking supervision issues should be clearly distinguished

ECB recommendation 20 October 2008

On government guarantees

- for bank debt – Government guarantees serve to help solvent banks overcome liquidity constraints – appropriate commercial terms – avoidance of distortion of level playing field and abuse at expense of non-beneficiaries – consistency with ESCB management of liquidity – pricing particulars:
- No guarantees on interbank deposits
- Bank debts > 1 year: based on CDS spreads – reflect credit risks associated with individual banks
- Fees for Government guarantees

ECB recommendation 20 November 2008

On pricing of recapitalisations

- Objectives: preserving level playing field, minimising distortions, enhancing fin. system Stability – recapitalisation mainly of ‘fundamentally sound’ financial institutions
- Consistent consideration of market situation of each institution, pricing of capital as under ‘normal market conditions’, minimising risk to taxpayers of losses, no market abuse by recapitalised banks, ‘exit’ (end of State shareholding)
- Specific pricing recommendations

Commission's Communication
5 December 2008

- More detailed guidance on recapitalisations
- Objectives: restoring financial stability & loss absorption in times of recession, restoring lending to real economy, protecting against insolvency threat of certain businesses
- Recapitalised banks: no competitive advantage
- Differentiate between solvent and insolvent banks
- Non-beneficiaries: not more expensive funding
- Risk profile of beneficiaries central to assessment
- Pricing of recapitalisations: Eurosystem recommendation
- State capital redemption when market allows
- Regular reviews of recapitalisations

Commission's Communication 22 January 2009

- Applicable to aid after 17 December 2008
- Specification of aid regime for real economy
- "justified by current exceptional and transitory financing problems related to banking crisis"
- Will not be applied after 31 December 2010

Supervisory law

Supervisory law

- System of harmonised financial sector law: directives establishing common minimum norms
- National rules applied by national authorities
- Home State control: financial institution established and authorised in State A, can carry on business (provision of services and establishment of branches) across Europe (“European passport”)
- Depositor protection rules harmonised but, again, national systems based applied by national agencies – DGS covers branches elsewhere – branches may opt-into local systems if they give better protection than home State’s system
- Protection of investor central plus financial system stability

Home State control at risk

- Applies EEA-wide, i.e. including Iceland
- Assumes adequate prudential supervision at home
- Includes extending deposit protection to branches and out-of-State depositors
- At variance with requirements of supervision at large cross-border banking groups
- ‘Colleges of supervisors’ and extension of national supervisor’s mandate to include EU concerns not sufficient – see Fortis
- Information sharing among supervisors absent (contrary to mandatory law)

Supervisory structure

- Universal regulator model (single supervisor)
- 45 jurisdictions had this system, including UK, Germany, Japan)
- But even in UK, Germany, Japan: several agencies involved: “Tripartite Authorities” – FSA, Bank of England, Treasury – coordination problems (Northern Rock)
- Twin Peaks Model: Australia, Netherlands [DNB, AFM] and USA <?>
- No EU-wide supervisor, only ‘colleges’ and CEBS

EU supervisory agency

- ECB? Article 105 (6) EC:

The Council may, acting unanimously on a proposal from the Commission and after consulting the ECB and after receiving the assent of the European Parliament, confer upon the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

- Other agency? Treaty change? Article 308 EC?
- Report by independent High Level Group on financial supervision headed by Jacques de Larosière expected anytime soon

MoU on Cross-border financial stability, 1 June 2008 - 1

- Financial Supervisory Authorities, Central Banks & Finance Ministries of the EU (114 parties; 99 legal entities; overlap between categories)
- “appropriate instrument for setting out further arrangements, promoting cooperation between them and preparing for management and resolution of a cross-border systemic financial crisis”
- “The *Parties* emphasise that this Memorandum is designed to facilitate the management and resolution of cross-border systemic financial crises and will seek to facilitate private sector solutions, to minimise the economic and social costs, while promoting market discipline and limiting moral hazard. This Memorandum does not create any legal commitment for any of the *Parties* to intervene in favour of anyone affected by a financial crisis”
- Principles, practical guidelines, arrangements, information exchange

See: http://www.ecb.int/pub/pdf/other/mou-financialstability2008en.pdf

MoU on Cross-border financial stability, 1 June 2008 - 2

- Principles:

financial stability, State-specific and EU-wide –
objective is not to prevent bank failures –
private sector solutions should prevail –
public money not guaranteed and use subject to conditions –
fiscal burden sharing – flexibility –
normal supervision and crisis management & resolution consistently
organised (home State control) – involvement of all States concerned – competition & state aid rules to be upheld –
global dimension taken into account

- Common Practical Guidelines
- Examples of Voluntary Specific Cooperation Agreement
- Indicators of critical nature financial system's parts

Interim conclusions

- State actions within loose EU framework
- Commission and ECB try to influence
- Single market & single currency concerns
- Provisions adopted not applied (information exchange among supervisors) or questioned (EU passport)

Competition law
(except State aid)

Competition law applies

- Normal rules apply: no reason to allow cartels or abuse of dominance in times of crisis
- Mergers can be effected even prior to OK (Article 7 (3) MCR; sections 40 and 46 Dutch Competition Act)
- Issue of qualification of State holdings in banks: no merger event
- End of guarantees and privatisation of State-owned banks: non-discriminatory access to out-of-State shareholders – free movement of capital (Articles 56 ff. EC)

Often mentioned

- Crisis cartels: used for coordinated reduction of overcapacity in certain economic sector – subject to strict criteria that excess capacity is reduced and no further agreements are made
- Failing firm defence: company taken over would have exited market except for merger – available pursuant to Joined Cases C-68/94 and C-30/95 (Kali und Salz), [1998] ECR I-01375
- Weighing competition and stability concerns

Main competition challenges

- Governments influencing banks' market behaviour ?
- Governments influencing management remuneration !
- Possibly: collusion between undertakings in respect of interest rates (deposit remuneration in volatile market) or other activities
- State guarantee benefiting weaker banks while stronger banks do not need this: equalisation of conditions for unequal competitors
- Commercials / publicity campaigns mentioning State guarantees
- Level playing field: dispersed measures (IRL was a notoriously bad case, but also generally separate measures are evidence of lack of unity in EU and Euro zone – Commission and ECB scrambling to guide)
- State decisions on commercial merits of banking mergers (e.g., ABN AMRO/Fortis)
- Joint ending of guarantees

George Soros: reflexivity

- **“The new paradigm for financial markets”**
- **social events have a different structure from natural phenomena** and economics doesn’t take this into account
- There is no equilibrium on (financial) markets
- **Summary by Plamen Slavov on Blackboard**

George Cooper

- *The Origin of Financial Crises, Central Banks, Credit Bubbles and the Efficient Market Fallacy*
- **Efficient Market Hypothesis** (EMH) does not explain phenomena of bubbles and busts
- **financial system is inherently unstable**
- Alternative: **Financial Instability Hypothesis (FIH)**
- **More symmetric central bank policy needed: also reining in excessive credit expansion, not only providing liquidity when credit contracts**
- **Summary by Michał Karasiewicz on Blackboard**

Conclusions on approach

- National measures, embedded in EU context
- EU cooperation organised in haphazard way (interim summits)
- No clear allocation of supervisory competences
- Risk of renewed nationalism and protectionism

Economic union

(EMU)

States remain partly sovereign

- Not in monetary union, where their core competences have been attributed to Community level of government, but in economic union, the States remain supreme, only embedding their own economic policies in an EU framework (’limping integration’)
- Procedures, prohibitions, principles
- Prohibition of excessive budget deficits (Article 104 EC) plus Stability & Growth Pact
- Multilateral surveillance among ‘peers’:

  no arbiter nor supranational decision-maker

Dispersed decision-making

- National measures, national instruments
- Limited fiscal authority of EU through special funds and European Investment Bank
- Small scale of EU budget compared to national ones
- Nationalist rhetoric on the rise: “British jobs for British workers”, “Buy Spanish”, “What did London bankers do investing in ABN AMRO?”, “Repatriate French car making when producing for French markets”, ING to channel funding to Dutch companies in consideration of State aid
- Eastern European problems due partially to retreat of capital to within national borders

‘Marktism’ in ‘Maastricht’

- Maastricht Treaty on European Union, introducing EMU into EC Treaty, contains elements of prevalent market thinking
- No bail out clause (Article 103 EC):

  The Community shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. A Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project.
- Spreads on Government bonds Germany/ Greece – Ireland – Portugal - Spain widening – proposal for joint bond issue (George Soros)

“Germany open to bail-out of a eurozone country” euobserver.com 18.02.2009

- “The euro region treaties do not foresee any help for insolvent states, but in reality the others would have to rescue those running into difficulty”, “Ireland is in a very difficult situation” P. Steinbrueck, German finance minister – 16.02.2009
- Shift in Berlin’s thinking, with Germany previously indicating that countries with ailing economies would have to solve their problems themselves
- The budget deficit of Ireland for 2009 is predicted to rise up to 11% of GDP, despite the eurozone limit to 3%
- There are signs of markets nervousness about Ireland’s credit quality such as the rise of CDS of Irish Government
- EU Commission warned Ireland, France, Greece, Malta, Spain and the non-euro member Latvia about their debt

Severest economic slump for EU

- Fall in GDP steep (> 3% annually for several States?) and accelerating since Autumn of 2008
- All parts of the globe affected: no one can act as motor for the rest (globalisation's negative side)
- Beware of comparisons: unemployed now have social security, contrary to 1930s so far less contraction than at the time
- Also: very high level of wealth, so some reduction may not really hurt (us)

Relativity of recession

- 2005 – 1.4 billion people lived on less than US$1.25 a day, revised World Bank standard for extreme poverty, leading to disease, malnutrition, early (infants') death
- Down from 52% of humankind in 1981 to 26% in 2005 but:
- 40% of humankind survive on < US$ 2 a day, still poor by any standards
- About one billion people will still live < US $1.25 a day in 2015, so Millennium Development Goals barely reached if
- Current levels of ODA (Official Development Assistance) not reduced because of crisis
- Proposal to spend 0.7% of economic stimulus packages to LDCs (World Bank President Robert B. Zoellick's "Vulnerability Fund" for developing countries suffering in the global downturn)

Bankers & Politicians

- Bonuses: excesses of financial capitalism
- Jealousy
- Rewarding bad management
- Incentivizing sales of instruments at the expense of the risky customer
- Giving wrong signals: bonus, not selling responsible products becomes banker’s objective

Wolfgang Munchau, Financial Times, February 9th, 2009

- “I can understand why people are angry about top bankers who award themselves bonuses financed by taxpayers' money or who lavishly redecorate their office. But no single group in society, not even credit derivatives dealers, will have caused as much damage to the global economy as the current generation of lethargic global leaders.
- If one dates the onset of the present phase of the crisis to the fall of Lehman Brothers in mid-September, policymakers have wasted almost five months during which most of the debate has been focused on the size and shape of domestic stimulus packages. In several countries these do not even begin to kick in until the second half of this year.”

Challenges ahead

- Multiple crises: ecological (global warming), political (wars in Iraq, Afghanistan, Israel / Palestine, Darfur, Congo), geo-economic/political (Russian gas), developmental (MDGs), to be tackled simultaneously
- See Green growth article by Ban Ki-moon and Al Gore
- Challenge of co-existence in this global village whose people are “a nation of Christians and Muslims, Jews and Hindus - and non-believers” and Buddhists and Bahá’ís, as well: resist xenophobia, racism, anti-Semitism in this crisis