

Banking - Estonia

New Measures to Tackle the Financial Crisis

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Parliament is seeking to adopt measures that will enable the legislative and governmental bodies to react efficiently to the financial crisis. On March 11 2009 legislation amending the State Budget Act, the State Participation in Private Legal Persons Act and the Rules of Procedure of the National Parliament Act was approved. The relevant provisions entered into force on April 6 2009.

The amendments enable Parliament to issue, among other measures, state guarantees for the purpose of tackling the financial crisis. Previously, issuing state guarantees was not an option unless the state owned a majority participation in the company whose obligations it intended to guarantee. Since none of the credit institutions acting in Estonia is state owned, this restriction prevented the state from securing banks' obligations towards their clients or other banks. However, a deposit guarantee scheme has been in force in Estonia since 2002 and the coverage level was recently increased to 100% of the deposit amount (remaining within the limits of €50,000 per depositor per credit institution). Given this, and the absence of an active interbank loan market in Estonia, the state guarantee remains mostly relevant to other bank obligations (eg, in case of bond issues).

Further, the rules on the state's participation in private legal entities have been relaxed. The state can now acquire any number of shares in private legal entities for the purpose of tackling the financial crisis, without being obliged to acquire at least a veto right on major issues (eg, share capital increases or reductions, liquidation and the division or merger), as was the case prior to the adoption of the respective amendments.

From April 6 2009 the government may issue loans, among other things, to credit institutions for the purpose of preventing or alleviating the financial crisis. Such loans are to remain within the limits prescribed by the state budget. Previously, the state's issue of loans was possible only for the purpose of performing public functions. Since the wording of this restriction did not clarify whether tackling the financial crisis may be regarded as the performance of a public function, the scope of this clause has now been extended. In addition, given that the financial market disturbances may require the issue of loans that exceed the amounts prescribed for this purpose in the state budget, the amendments to the State Budget Act allow the issue of such loans based on parliamentary resolution.

Amendments have also been made to the procedure for resolving the issuance of state guarantees and loans, and the acquisition by the state of participations in private legal entities, along with other measures intended to prevent or alleviate the financial crisis. Until July 1 2010 such measures may be adopted by Parliament at a single reading through a simplified procedure. In comparison to the regular legislative process, which takes approximately two weeks, the issuance of state guarantees and loans, and the acquisition by the state of participations in private legal entities may be resolved in the course of one day.

These new measures have been subject to some criticism. It is claimed that the definition of 'the financial crisis' remains vague and therefore may not conform with the principle of rule of law. Namely, it is argued that the wording allows for the adoption of extraordinary measures that may have a significant impact on the prospects of the state, without establishing a clear and unambiguous basis for the adoption of such measures. Indeed, the definition of 'the financial crisis' set forth by the amendments refers more to the consequences of the financial crisis than to its nature. The respective acts state that these measures may be adopted only for the purpose of the "prevention or alleviation of the financial crisis that may cause essential failures or difficulties

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related to the liquidity or solvency of credit institutions acting in Estonia". However, the authors of the draft believe that the definition of 'the financial crisis' needs to be flexible and that a different approach may turn out to be too rigid to allow efficient and quick reactions to changes in the financial environment.

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