EUROPEAN COMMISSION

Brussels, 14.12.2012
C(2012) 9648 final

Subject: **State aid n° SA.35741 (2012/N) – Denmark**
Prolongation of the winding-up scheme and of the guarantee scheme for merging banks

Sir,

1. PROCEDURE

(1) On 21 September 2010 Denmark notified a scheme for the winding-up of financial institutions in distress ("*the original scheme*"). The Commission approved the original scheme on 30 September 2010 under Article 107(3)(b) of the Treaty on the Functioning of the European Union ("*the Treaty*") until 31 December 2010[1].

(2) On 16 November 2010, the Danish authorities notified a request for the prolongation of the original scheme for six months until 30 June 2011. By Commission decision of 7 December 2010[2] the original scheme was prolonged until 30 June 2011. Upon notification by the Danish authorities of 13 May 2011 the original scheme was further prolonged until 31 December 2011 by Commission decision of 28 June 2011[3].

(3) On 13 May 2011 the Danish authorities notified amendments to the original scheme introducing a new mechanism providing for the possibility of an intervention of the Deposit Guarantee Fund in the bail-out of a failing bank. On 1 August 2011 the Commission approved those amendments ("*the compensation scheme*")[4].

(4) On 14 October 2011 Denmark notified an extension to the original scheme consisting of two new mechanisms for the winding-up of banks ("*Model I*" and "*Model II*").

1 N 407/2010, *Danish winding-up scheme for banks*, OJ C 312, 17.11.2010, p. 7.
2 SA.31938 (N 537/2010), OJ C 117, 15.2.2011, p. 2.
3 SA.33001 (2011/N), *Part A, Prolongation and amendment of the winding-up scheme*, OJ C 237, 13.8.2011, p. 2.
4 SA.33001 (2011/N), *Part B, Amendment of the Danish winding-up scheme for credit institutions*, OJ C 271, 14.9.2011, p. 4.

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Furthermore, on 28 October 2011, Denmark notified the prolongation of the original scheme, including the compensation scheme, until 30 June 2012 without any amendments. Both the extension, which amended the original scheme, and the prolongation of the original scheme were approved until 30 June 2012 by Commission decision of 9 December 2011[5].

(5) On 9 January 2012 Denmark notified a guarantee scheme for merging banks in case one bank is distressed or is likely to become distressed ("*the merger scheme*"). The Commission approved the merger scheme on 17 February 2012 under Article 107(3)(b) of the Treaty until 30 June 2012[6].

(6) On 8 June 2012 Denmark notified a request for the prolongation for six months until 31 December 2012 of the original scheme, including the compensation scheme and Model I and Model II without amendments, as well as of the merger scheme subject to one amendment. Both the prolongation of the original scheme, including the compensation scheme, Model I and Model II, and of the merger scheme were approved until 31 December 2012 by Commission decision of 26 June 2012[7].

(7) On 19 November 2012 Denmark notified a request for the prolongation for six months until 30 June 2013 of the original scheme, including the compensation scheme and Model I and Model II, as well as of the merger scheme.

(8) For reasons of urgency, Denmark exceptionally accepts that the present decision is adopted in the English language.

2. FACTS

(9) A detailed description of the original scheme is provided in the original decision on that scheme[8] in recitals 3 to 16.

(10) A detailed description of the compensation scheme is provided in recitals 10 to 22 of the original decision on that scheme[9]. A detailed description of Model I and Model II is provided in recitals 17 to 32 of the decision extending the compensation scheme to those two mechanisms[10].

(11) A detailed description of the merger scheme is provided in the original decision on that scheme[11] in recitals 5 to 7 (objective of the scheme) and recitals 8 to 18 (beneficiaries and measures).

3. DENMARK'S POSITION

(12) Denmark requests a prolongation of the original scheme, including the compensation scheme and Model I and Model II, as well as of the merger scheme for a further period of six months until 30 June 2013.

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5 SA.33757 (2011/N), *Prolongation of the winding up scheme, extension of the compensation scheme to Model I and Model II*, OJ C 22, 27.1.2012, p. 5.

6 SA.34227 (2012/N), *Guarantees for merging banks*, OJ C 128, 3.5.2012, p. 3.

7 Not yet published.

8 See supra footnote 1.

9 See supra footnote 4.

10 See supra footnote 5.

11 See supra footnote 6.

(13) Denmark submits that the schemes constitute State aid within the meaning of Article 107(1) of the Treaty, but is of the view that the prolongation is compatible with the internal market on the basis of Article 107(3)(b) of the Treaty as it is necessary in order to remedy a serious disturbance in the economy of Denmark.

(14) As regards the prolongation of the merger scheme, Denmark submits that, against the background of the renewed turbulence in the global financial markets and the uncertainty about the access of banks to funding, there is a continued risk that a number of Danish banks, in particular small and medium-sized ones, might encounter solvency and liquidity problems in 2013. Denmark stresses that, therefore, the scheme remains of great importance and is necessary to preserve the financial stability in Denmark. That evaluation is confirmed by the Danish Central Bank in its letter of 16 November 2012 and by Finanstilsynet - the Danish Financial Supervisory Authority - in its letter of 16 November 2012, both of which in particular stress that the merger scheme strengthens the possibility of finding market-based solutions for ailing banks.

(15) As regards the original scheme including the compensation scheme and Model I and Model II, Denmark claims, and the letters of 16 November 2012 from the Central Bank and from the Danish FSA confirm, that those schemes remain an important measure as a follow-up to the financial crisis and an important tool to handle banks in distress.

(16) Denmark commits:

- to provide guarantees only on debt instruments with maturities from three months up to five years (or for a maximum of seven years in the case of covered bonds) and to limit the guarantees with a maturity of more than three years to one-third of the scheme's overall budget;

- to impose a ban on advertisements referring to the State support for the beneficiaries of the scheme and to prevent them from employing any aggressive commercial strategies, which would not take place without the State support;

- to submit an individual notification if a restructuring plan has already been submitted that did not provide for the envisaged guarantee or liquidity measure;

- to submit individual restructuring or liquidation plans, within six months, for banks which caused the guarantee to be called upon;

- to communicate to the Commission, within three months following each issuance of guaranteed bonds, the actual fee charged;

- to report on the operation of the scheme and on guaranteed issuances by 15 April 2013 (for the period 1 January 2013 to 31 March 2013) and by 15 July 2013 (for the period 1 January to 30 June 2013) at the latest;

- to complement reports on the operation of the scheme with updated available data on the cost of comparable (nature, volume, rating, currency) non-guaranteed debt issuances;

- to present a viability review for every financial institution that was granted guarantees on new liabilities or renewed liabilities for which at the time of the granting of new guarantee, the total outstanding guaranteed liabilities (including guarantees accorded before the date of this decision) exceed both a ratio of 5% of total liabilities and the total amount of EUR 500 million. The viability review should be presented on the basis of the parameters established in the Restructuring Communication[12] within three months of the granting of the guarantees.

4. ASSESSMENT

Existence of State Aid

(17) According to Article 107(1) of the 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 internal market.

(18) For the reasons indicated in the decision on the original scheme, the Commission considers that the schemes constitute State aid within the meaning of Article 107(1) of the Treaty, for the following reasons. Under the schemes participating financial institutions obtain measures under conditions which would not be available to them under market conditions, and so receive an advantage. The schemes allows for the provision of State resources to a specific – namely the financial – sector, which is open to intense international competition. Therefore, any advantage from State resources to a financial institution affects intra-Union trade and therefore threatens to distort competition. The measures therefore constitute State aid within the meaning of Article 107(1) of the Treaty.

Compatibility

Legal basis for the compatibility assessment

(19) Given the exacerbation of tensions in sovereign debt markets that has taken place since 2011, the Commission considers it appropriate to examine the measure under Article 107(3)(b) of the Treaty.

(20) Article 107(3)(b) of the Treaty enables the Commission to find that aid is compatible with the internal market if it is intended "to remedy a serious disturbance in the economy of a Member State". The Commission has acknowledged that the global financial crisis can create a serious disturbance in the economy of a Member State and that measures supporting banks are apt to remedy that disturbance. That assessment has been confirmed in the Recapitalisation Communication[13] and the Restructuring Communication. The Commission still considers that requirements for State aid to be approved pursuant to Article 107(3)(b) TFEU are fulfilled in view of the reappearance of stress in financial markets. The Commission confirmed that view by adopting the 2010 Prolongation Communication[14], which prolonged until 31 December 2011 the application of State aid rules to support measures in favour of

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[12] Commission Communication on the return to viability and the assessment of the restructuring measures in the financial sector in the current crisis under the State aid rules, OJ C 195, 19.8.2009, p. 9.

[13] Commission Communication - Recapitalisation of financial institutions in the current financial crisis: limitation of the aid to the minimum necessary and safeguards against undue distortions of competition, OJ C 10, 15.1.2009, p. 2.

[14] Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of bank's in the context of the financial crisis, OJ C 329, 7.12.2010, p. 7.

banks in the context of the financial crisis. The Commission has since extended the application of those rules beyond 31 December 2011 under the 2011 Prolongation Communication[15].

(21) The Commission does not dispute the position of the Danish authorities that the schemes for which prolongation is sought remain an important measure as a follow-up to the financial crisis and an important tool to handle banks in distress. Hence, the Commission finds that the schemes aim at remedying a serious disturbance in the Danish economy.

(22) Therefore, the Commission continues to base its assessment of State aid measures in the banking sector on Article 107(3)(b) TFEU.

Appropriateness

(23) The Commission observes that the financial markets have not yet fully returned to normal functioning and that in particular the small and medium-sized banks in Denmark experience difficulties to access market funding.

(24) Given the continuing uncertainty due to the financial crisis the Commission considers the prolongation of the original scheme, including the compensation scheme and Model I and Model II as well as of the merger scheme an appropriate response to the persisting difficulties on the financial markets that Denmark, like most Member States, continues to experience. Since the common objective of those schemes is to find a market-based solution for ailing banks, be it via an orderly winding-down or by keeping a bank on the market by means of a merger, the schemes should remain available.

Necessity

(25) With regard to the scope of the measure, the Commission notes positively that Denmark has limited the size of the merger scheme by determining a maximum budget of DKK 50 billion (EUR 6.7 billion) and that the scheme applies for a limited period until 30 June 2013.

(26) Furthermore, the merger scheme is not a general liquidity scheme but confined to the situation where a merger might fail due to funding problems which are due more to the general situation on the funding markets than to individual problems of the beneficiary bank.

(27) The Commission takes furthermore note that Denmark has chosen a guarantee fee well above the minimum fee set out in the 2011 Prolongation Communication.

(28) The Commission further notes positively that the winding-up scheme including the compensation scheme and Model I and Model II provides for a hierarchy of rescue mechanisms. First, it will be assessed whether a solution under the compensation scheme is possible. If it is not possible, a solution under Model I and then under Model II will be assessed. Should none of the three solutions prove workable, the bank will be resolved under the original winding-up scheme. That hierarchy ensures that the cheapest possible solution is chosen and ensures therefore that the aid is limited to the minimum necessary.

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[15] Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C 356, 6.12.2011, p. 7.

(29) For the above reasons, the Commission considers the prolongation of the schemes to be appropriate and necessary to preserve the confidence of creditors in the financial system and to avoid a serious disturbance in the Danish economy whilst limiting the aid to the minimum necessary.

Proportionality

(30) Denmark committed to present a viability review for any bank that requests new guarantees under the merger scheme which take or keep the total amount of the bank's outstanding guaranteed liabilities above 5% of the bank's total liabilities and above the absolute amount of EUR 500 million. That commitment ensures that the use of the merger scheme will not enable banks with structural weaknesses in their business models to postpone or avoid the necessary adjustments.

(31) Second, the Commission notes that Denmark has committed to a number of behavioural safeguards such as a ban on advertisements referring to the State support and a ban on any aggressive commercial strategies which could not take place without the State support. Such safeguards contribute to ensuring that the participating institutions do not misuse the received State support to expand their activities.

(32) Finally, the Commission welcomes that Denmark undertakes to submit individual restructuring or liquidation plans, within six months, for banks which cause a guarantee to be called upon.

Monitoring

(33) The Commission notes that Denmarks undertakes to present every three months a report on the operation of the schemes and on guaranteed issuances.

Conclusions on the compatibility of the aid measure

(34) The winding-up scheme, including the compensation scheme and Model I and Model II, and the merger scheme remain appropriate, necessary and proportionate measures to remedy a serious distortion of Denmark's economy. On the basis of the above considerations, the Commission's previous assessment of the necessity of the schemes in the original decisions of 30 September 2010, 1 August 2011, 9 December 2011 and 17 February 2012 and in the prolongation decisions of 7 December 2010, 28 June 2011, 9 December 2011 and 26 June 2012 has not altered and the Commission concludes that the schemes meet the conditions for compatibility with the internal market under Article 107(3)(b) of the Treaty until 30 June 2013.

(35) In line with the Commission’s decisional practice the winding-up scheme, including the compensation scheme and Model I and Model II, and the merger scheme can therefore be prolonged until 30 June 2013. Any further prolongation will require the Commission’s approval and will have to be based on a review of the developments in financial markets and the schemes' effectiveness.

5. DECISION

The Commission has accordingly decided:

- to consider the aid to be compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union, until 30 June 2013 and has accordingly decided not to raise objections.

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Your request should be sent by registered letter or fax to :

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Yours faithfully,

For the Commission

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Vice-President