EUROPEAN COMMISSION

Brussels, 14.12.2012
C(2012) 9597 final

Subject: State aid SA.35819 (2012/N) - Ireland
Prolongation of the Credit Union Resolution Scheme H1 2013

Sir,

I. PROCEDURE

(1) On 20 December 2011 the Commission approved the Credit Union Resolution Scheme[1] ("the CUR scheme") by its decision in State aid case SA.33170 ("the original decision").

(2) The Commission approved the prolongation of the CUR scheme in its decision of 3 September 2012 in State aid case SA.35209[2] ("the prolongation decision").

(3) On 30 November 2012, the Irish authorities notified the prolongation of the CUR scheme until 30 June 2013.

II. FACTS

Legal basis and budget

(4) The CUR scheme is based on the provisions of the Central Bank and Credit Institutions (Resolution) Act 2011[3] which sets out the basis for and the nature of State financial support for Credit Unions ("CUs") in a resolution context.

[1] Commission Decision of 20.12.2011 in State Aid N 33170/2011 "*Restructuring scheme for Credit Unions – Ireland*", OJ C 82, 21.03.2012, p. 2.

[2] Commission Decision of 3.9.2012 in State aid case SA.35209 "*Prolongation of the Credit Union Resolution Scheme until 31 December 2012 – Ireland*", not yet published.

[3] http://www.irishstatutebook.ie/2011/en/act/pub/0027/index.html

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(5) The maximum amount of funding provided by the State will be EUR 500 million. At the end of 2011, the Minister for Finance provided EUR 250 million to the Credit Institution Resolution Fund, which supports the resolution of credit institutions covered by the Central Bank and Credit Institutions (Resolution) Act 2011.

(6) The State provides the initial money to fund the resolution of CUs, either through a contribution to the Resolution Fund or to the buyer directly, but intends to levy the financial sector to recoup its costs over time.

Objective and description of the scheme

(7) The main objectives of the CUR scheme are to provide a resolution regime for credit unions that are failing or likely to fail, and to protect the exchequer, the stability of the financial system and the economy. To meet those objectives, the Central Bank of Ireland ("CBI") has been provided with the necessary powers of resolution. The tools available to the CBI to resolve a CU are the following: transfers of assets and liabilities, modified liquidation process, the appointment of special managers and the establishment of bridge banks.

(8) The CUR scheme provides for the transfer of assets and liabilities from weak CUs to stronger ones through transfer orders[4], following a court process under the Central Bank and Credit Institutions (Resolution) Act 2011. Where such an order is used, once the CBI determines a CU is likely to fail in accordance with the criteria established by the Central Bank and Credit Institutions (Resolution) Act 2011, the CBI can order that all the assets and liabilities of the failing CU will be transferred to another credit institution (full transfer), i.e. there will be no rump. It is likely that such transfers require a financial incentive by the Minister for Finance to the transferee.

(9) A detailed description of the scheme has been provided in recitals 10 to 28 of the original decision, and in recitals 3 to 12 of the prolongation decision. The scheme has not changed since the original decision.

(10) The scheme has not been used by the Irish authorities until now.

III. THE POSITION OF IRELAND

(11) Ireland requests a prolongation of the CUR scheme for a further period of six months until 30 June 2013.

(12) Ireland submits that the CUR scheme constitutes State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union ("TFEU"), but is of the view that the proposed prolongation is compatible with the internal market on the basis of Article 107(3)(b) TFEU as it is necessary in order to remedy a serious disturbance in the economy of Ireland.

4 The other tools mentioned in recital (7) do not fall under the scope of the scheme.

(13) Firstly the Irish authorities consider that the CUR scheme is appropriate because funding is only provided where the CBI finds that the CU in question has failed or is likely to fail, where financial stability of the financial system is concerned and where it is not in the public interest to wind-up the CU. The CUR scheme therefore targets the CUs most in need of resolution. In addition, the CUR scheme will only be used if other voluntary resolution actions are not feasible.

(14) Secondly the Irish authorities consider that the CUR scheme is necessary because without resolution funding it would not be possible to successfully transfer the assets and liabilities in a way that ensures the on-going viability of the transferees.

(15) Thirdly the Irish authorities consider that the CUR scheme is proportionate because the impact on competition is limited due to the fact that the assets and liabilities are transferred following a competitive process open to a number of potential credible buyers. That process will in particular serve to limit the distortion of competition and the amount of State aid involved in the transfer.

(16) The Irish authorities furthermore have committed to the following:

a. To submit a separate State aid notification to the Commission in respect of partial transfers of assets and liabilities in the event that resolution through partial transfer is to be used;

b. To submit a separate State aid notification to the Commission if the use of bridge banks for CU resolution is envisaged;

c. To report to the Commission on a six-monthly basis on the operation of the scheme.

IV. ASSESSMENT

1. Existence of State aid

(17) As set out in Article 107(1) TFEU 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, save as otherwise provided.

(18) For the reasons indicated in recitals 34 to 44 of the original decision the Commission considers that the CUR scheme constitutes State aid. The notified prolongation of that scheme does not affect that finding. The CUR scheme remains State aid within the meaning of Article 107(1) TFEU.

2. Compatibility

Legal base

(19) The Commission finds that the circumstances which allowed it to approve the CUR scheme on the basis of Article 107(3)(b) TFEU, as described in recitals 45 to 48 of the original decision, still apply.

(20) The Commission observes that financial markets have not yet returned to normal functioning and the aid scheme envisaged can be considered necessary to preserve the confidence of depositors in CUs and the financial system as a whole to avoid a serious disturbance in the Irish economy. That assessment is confirmed by the role of the CBI in the scheme, whereby the CBI is only mandated to intervene when it has serious concerns about a CU's financial stability or is satisfied that there is a present or imminent serious threat to the financial stability of the CU concerned and where the immediate winding-up of the CU is not in the public interest, having regard to the importance of maintaining public confidence in the financial system of Ireland. The necessity to preserve financial stability in the Irish financial sector was also confirmed in the Commission's decision on the prolongation of the Irish Eligible Liabilities Guarantee scheme until 30 June 2013[5].

(21) For those reasons, the conditions that have been established by the Banking Communication[6] and the Commission's subsequent decisional practice and Communications continue to apply.

Prolongation of the CUR scheme

(22) In recitals 52 to 67 of the original decision and recitals 25 to 33 of the prolongation decision, the Commission has analysed whether the CUR scheme fulfilled the conditions for compatibility of the scheme with the internal market. Given that the CUR scheme has not changed since the initial approval in the original decision and the prolongation decision, and given that there have been no relevant changes in the situation in which it will be implemented, the Commission's assessment remains unchanged.

Appropriateness

(23) The CUR scheme is appropriate as it ensures that financial stability is maintained by resolving the CUs that have failed or likely to fail. Resolution is carried out in a sufficiently short time-frame to reassure depositors by a full transfer of assets and liabilities. The Commission finds that controlled resolution in that case is more likely to safeguard financial stability than an uncontrolled liquidation.

(24) In addition, only the CUs that need to be resolved because of their financial position are targeted by the scheme. In that context the Commission notes

[5] Commission Decision of 12 December 2012 in case SA.35744, *Prolongation of the Irish ELG Scheme H1 2013*, not yet published.

[6] Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis, OJ C 270, 25.10.2008, p. 8.

that before the CUR scheme is used, all other possible voluntary avenues for resolution need to be exhausted. The decision by the CBI to resolve a CU is based on objective criteria as is its assessment of the viability of the buyer.

(25) As in the original decision, the Commission acknowledges that the sale process, which can take different forms, has to be carried out rapidly (thus limiting the amount of potential bidders) and is likely to involve only other CUs due to the similarities of business model which makes it easier to integrate the assets and liabilities. Provided that a competitive process is organised, those limitations do not change the Commission's assessment that the sale process will be equivalent to an open tender.

Necessity

(26) The CUR scheme is necessary to resolve CUs that have failed or are likely to fail. In order to avoid financial stability concerns related to a failed CU, CBI intervention is necessary to ensure that those CUs are resolved in an orderly fashion. As observed in recital (24), intervention by the CBI is based on objective criteria and will only be a measure of last resort.

(27) In order to ensure that all the assets and liabilities of an affected CU are transferred, an incentive for the buyer might be required. In that context the Commission notes that the nature and size of the incentive are determined by the competitive tender run by the CBI. As a result, the aid provided to assist the sale will be kept to the minimum as the sale process will establish a market price for the assets and liabilities. In addition, the impact on the tax payer is minimised in so far as public funds will be recoupable and the Resolution Fund will be financed over the longer term by all licensed banks and registered credit unions in Ireland. Any losses encountered by the Resolution Fund would eventually be covered by the whole banking sector.

Limiting competition distortions to the minimum

(28) The Commission considers that the distortions of competition caused by the aid to assist the complete transfer of assets and liabilities of troubled CUs are limited to the minimum.

(29) The competitive process will ensure that the competitors of the CU whose assets and liabilities are being sold will have an opportunity to acquire it. The competitive process is also intended to achieve market value and minimise the cost of transfers wherever possible.

(30) Furthermore, the affected CU will exit the market, even though its assets and liabilities will be transferred to another CU. In that respect, the Commission considers that the distortions of competition due to the continued market presence of the resolved credit unions are very limited. In general CUs are very small, with only 28 having assets greater than EUR 100 million and 208 holding assets of less than EUR 20 million. CUs offer only limited banking services, e.g., they do not offer current accounts.

(31) Finally the impact on competition is limited by the existence of the common bond, whereby only people who meet the common bond criteria – such as geographic or professional ties – can become members of a credit union. Due to that restriction it is unlikely that CUs have a strong enough basis for competing against other financial institutions.

Conclusion on the compatibility of the aid measure

(32) The prolonged CUR scheme remains an appropriate, necessary and proportionate measure to remedy a serious distortion of Ireland's economy and does not alter the Commission's previous assessment in the original decision of 20 December 2011 and the prolongation decision of 3 September 2012. Therefore, the notified prolongation complies with the requirements set out above and is compatible with the internal market pursuant to Article 107(3)(b) TFEU.

(33) In line with the Commission's decisional practice the CUR scheme can therefore be prolonged until 30 June 2013. Any further prolongation will require the Commission's approval.

V. CONCLUSION

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.

If this letter contains confidential information which should not be published, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to publication of the full text of this letter to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/competition/elojade/isef/index.cfm

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

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State Aid Greffe
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B-1049 Brussels
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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President