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Subject: State aid SA.38985 (2014/N) - Ireland
5th prolongation of the Credit Union Resolution Scheme H2 2014

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

[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 September 2012 in State aid case SA.35209 "*Prolongation of the Credit Union Resolution Scheme until 31 December 2012 – Ireland*", OJ C 23, 25.1.2013, p. 6.

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(3) The Commission approved the second prolongation of the CUR scheme in its decision of 14 December 2012 in State aid case SA.35819[3] ("the second prolongation decision").

(4) The Commission approved the third prolongation of the CUR scheme in its decision of 18 July 2013 in State aid case SA.36944[4] ("the third prolongation decision").[5]

(5) The Commission approved the fourth prolongation of the CUR scheme in its decision of 16 January 2014 in State aid case SA.37984[6] ("the fourth prolongation decision").

(6) On 27 June 2014, the Irish authorities notified a prolongation of the CUR scheme until 31 December 2014. The prolongation does not introduce any new elements as compared to the fourth prolongation decision.

II. FACTS

Legal basis and budget

(7) The CUR scheme is based on the provisions of the Central Bank and Credit Institutions (Resolution) Act 2011[7] which sets out the basis for and the nature of State financial support for credit unions in a resolution context.

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

(9) The State provides the initial money to fund the resolution of credit unions, either through a contribution to the Resolution Fund or by the provision of a financial incentive to the buyer, but intends to levy the financial sector to recoup its costs over time.

Objective and description of the scheme

(10) 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

[3] Commission Decision of 14 December 2012 in State aid case SA.35819 "*Prolongation of the Credit Union Resolution Scheme H1 2013 – Ireland*", OJ C 36, 8.2.2013, p. 5.

[4] Commission Decision of 18 July 2013 in State aid case SA.36944, "*Extension of the Credit Union Resolution Scheme H2 2013 – Ireland*", OJ C 272, 20.09.2013, p. 2.

[5] With the third prolongation, the scheme was slightly amended so that the transferee is no longer obliged to take over the transferor's real estate asset (the premises).

[6] Commission Decision of 16 January 2014 in State aid case SA.37984, "*Prolongation of the Credit Union Resolution Scheme H1 2014 – Ireland*", OJ C 69, 07.03.2014, p. 28.

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

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 credit union are the following: transfers of assets and liabilities, modified liquidation process, the appointment of special managers and the establishment of bridge banks.

(11) The CUR scheme provides for the transfer of assets and liabilities from weak credit unions to stronger ones, or to stronger financial institutions which are not credit unions, through transfer orders[8], 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 credit union 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 credit union, with the possible exception of its premises, will be transferred to another credit institution, i.e. there will be no rump. It is likely that such transfers require a financial incentive to be provided by the Minister for Finance to the transferee.

(12) 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 first prolongation decision. The scheme has not changed since the third prolongation decision, which introduced an exception to the "full transfer" principle.[9]

Use of the scheme

(13) The CBI has only undertaken two resolution actions in relation to a credit union to date: Newbridge Credit Union and Howth Sutton Credit Union.

(14) Newbridge Credit Union was resolved on 10 November 2013. Following a High Court order, all assets (excluding the premises) and liabilities of Newbridge Credit Union were transferred to Permanent TSB ("PTSB"). Under the financial incentives agreement entered into between the Governor of the CBI and PTSB, the Resolution Fund provided an upfront cash incentive of EUR 23 million to PTSB, together with a possible further incentive of up to EUR 30,9 million (to cover restructuring and integration costs and to protect PTSB against transferring liabilities and further loan losses). On 16 December 2013, the CBI went to the High Court seeking approval for a winding up order in relation with the remaining entity that comprises only the former credit union premises and a liquidator is arranging for their disposal, with the proceeds net of costs to be remitted to the Resolution Fund.

(15) Howth Sutton Credit Union ("HSCU") had been in financial difficulties since 2010. The CBI undertook a competitive process involving the examination of possible credit union combinations, which resulted in an approach being made to a number of credit unions. Ultimately, two credit unions submitted

[8] The other tools mentioned in recital (10) do not fall under the scope of the scheme.

[9] See recitals (12) and (13) of the third prolongation decision.

offers to take on the transfer of HSCU´s assets and liabilities, with Progressive Credit Union Limited ("PCU") being selected as the winning bid. On 5 March 2014, the High Court approved a transfer order of the assets and liabilities of HSCU to PCU. The CBI entered into a financial incentive agreement with PCU on 4 March 2014, under which the Resolution Fund provided a cash incentive of EUR 2,15 million to PCU.

III. THE POSITION OF IRELAND

(16) Ireland requests a prolongation until 31 December 2014 of the CUR scheme without any changes as compared to the scheme approved by the fourth prolongation decision.

(17) 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 ("the Treaty"), but is of the view that the proposed prolongation is compatible with the internal market on the basis of Article 107(3)(b) the Treaty as it is necessary in order to remedy a serious disturbance in the economy of Ireland.

(18) Firstly, the Irish authorities consider that the CUR scheme is appropriate because funding is only provided where the CBI finds that the credit union 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 credit union. The CUR scheme therefore targets the credit unions most in need of resolution. In addition, the CUR scheme will only be used if other voluntary resolution actions are not feasible.

(19) 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.

(20) 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.

(21) 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 credit union 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

(22) As set out in 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.

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

2. Compatibility

Legal basis

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

(25) 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 credit unions 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 credit union's financial stability or is satisfied that there is a present or imminent serious threat to the financial stability of the credit union concerned and where the immediate winding-up of the credit union is not in the public interest, having regard to the importance of maintaining public confidence in the financial system of Ireland.

(26) For those reasons, the conditions that were established by the 2008 Banking Communication[10] and the Commission's subsequent decisional practice and Communications continue to apply.

(27) The 2013 Banking Communication[11] confirms that the Commission will continue to encourage the exit of non-viable players in an orderly manner,

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[10] 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.

[11] Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C 216, 30.7.2013, p. 1.

where such institutions cannot credibly return to long-term viability. Therefore, the Commission considers that liquidation aid schemes for credit institutions of limited size[12] can be approved.

Prolongation of the CUR scheme

(28) In recitals (52) to (67) of the original decision and recitals (25) to (33) of the first 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 decisions, with the exception of the new elements described in recitals (12) and (13) of the third 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.

(29) The CUR scheme is in line with the requirements of the 2013 Banking Communication which introduces enhanced requirements for burden-sharing, but does not require a contribution from depositors.[13] In Ireland credit unions are formally owned by their members, who are also creditors of the credit union for the amount of their savings. However, notwithstanding their legal status as shareholders, members do not receive dividends, but only normal interest on their deposits. Their typical profile is the one of ordinary savers placing money into on-demand savings accounts. Imposing burden-sharing on the members would result in them losing part of their savings. The members will not receive any benefits from their role as shareholders in the failed credit union, i.e. they will not receive any residual value from the winding-up. Moreover, as they are individuals who are not undertakings, they do not receive aid. Finally, credit unions do not have subordinated debt.

(30) The Commission also notes that, in line with the 2013 Banking Communication, aid measures under an approved scheme in favour of credit institutions with total assets of more than EUR 3 billion must be notified individually.

Appropriateness

(31) The CUR scheme is appropriate as it ensures that financial stability is maintained by resolving the credit unions 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.

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[12] The Irish credit unions are small in size. Of the 393 credit unions, 28 have assets greater than EUR 100 million while 196 credit unions hold assets of less than EUR 20 million (figures provided by the Irish authorities, based on the September 2013 Prudential Returns reported to the CBI).

[13] See chapter 3.1.2 of the 2013 Banking Communication.

(32) In addition, only the credit unions that need to be resolved because of their financial position are targeted by the scheme. In that context the Commission notes 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 credit union is based on objective criteria as is its assessment of the viability of the buyer.

(33) 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 number of potential bidders) and is likely to involve principally, but not exclusively, other credit unions 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 is appropriate.

(34) As described in recital (29), membership in credit unions is of a dual nature, where members are depositors and have membership rights which are comparable to the rights deriving from shareholding in other firms. The burden-sharing of members is appropriate, as they will not receive any benefit as a result of their membership rights in a resolution context. In particular they will not receive any residual value from the winding-up of the credit union, nor receive any other benefit. Their deposits are however not affected, which is in line with the 2013 Banking Communication.

Necessity

(35) The CUR scheme is necessary to resolve credit unions that have failed or are likely to fail. In order to avoid financial stability concerns related to a failed credit union, CBI intervention is necessary to ensure that those credit unions are resolved in an orderly fashion. As observed in recital (32), intervention by the CBI is based on objective criteria and will only be a measure of last resort.

(36) In order to ensure that all the assets and liabilities of an affected credit union are transferred, with the exception of real estate (where relevant), 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

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

(38) The competitive process will ensure that the competitors of the credit union 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.

(39) Furthermore, the affected credit union will exit the market, even though its assets and liabilities will be transferred to another credit union or financial institution[14]. 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 credit unions are very small, with only 28 having assets greater than EUR 100 million and 196 holding assets of less than EUR 20 million. Credit unions offer only limited banking services, e.g., they do not offer current accounts.

(40) 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 credit unions have a strong enough basis for competing against other financial institutions.

Conclusion on the compatibility of the aid measure

(41) 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 decisions of 3 September and 14 December 2012, 18 July 2013 and 16 January 2014. Therefore, the notified prolongation complies with the requirements set out above and is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty.

(42) The CUR scheme can therefore be extended until 31 December 2014. Any further prolongation or extension will require the Commission's approval.

[14] Where applicable, the credit union's real estate can be sold to other interested buyers.

CONCLUSION

The Commission has accordingly decided to consider the aid to be compatible with the internal market pursuant to Article 107(3)(b) TFEU and not to raise objections to the scheme.

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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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President