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**Subject: State aid SA.42405 (2015/N) – Denmark**
**Prolongation of the winding-up scheme, compensation scheme, Model I and Model II – H2 2015**

Sir,

## 1. PROCEDURE

(1) On 21 September 2010, Denmark notified a scheme for the winding-up of financial institutions in distress ("the original scheme"). On 30 September 2010, the Commission approved the original scheme 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, Denmark notified a request for the prolongation of the original scheme for six months until 30 June 2011, authorised by Commission decision of 7 December 2010[2]. Upon notification by Denmark, the original scheme was further prolonged until 31 December 2011 by Commission decision of 28 June 2011[3].

(3) On 13 May 2011, Denmark notified some 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 ("the compensation

[1] N 407/2010, *Danish winding-up scheme for banks*, OJ C 312, 17.11.2010, p. 7.
[2] SA.31938 (N 537/2010), Prolongation of Danish winding-up fund for banks 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.

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scheme"). By decision of 1 August 2011, the Commission authorised the compensation scheme until 31 December 2011[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"). Furthermore, on 28 October 2011, Denmark notified the prolongation of the original scheme, including the compensation scheme, until 30 June 2012. 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 the basis of subsequent notifications, the Commission approved the prolongation of the original scheme as well as the compensation scheme, Model I and Model II in its decisions of 26 June 2012[6] in State aid case SA.34943, of 14 December 2012[7] in State aid case SA.34741, of 11 July 2013[8] in State aid case SA.36811 and of 29 January 2014[9] in State aid case SA.38216. The most recent prolongation of the original scheme as well as the compensation scheme, Model I and Model II until 30 June 2015 was authorised by Commission decision of 13 February 2015[10] in State aid case SA.40029.

(6) On 1 July 2015, Denmark notified a request for the prolongation until 31 December 2015 of (i) the original scheme for financial institutions in Greenland and the Faroe Islands and branches thereof in Denmark, and (ii) the compensation scheme, Model I and Model II for all financial institutions in Denmark.

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

## 2. DESCRIPTION OF THE MEASURES

(8) A detailed description of the original scheme is provided in recitals 3 to 16 of the Commission decision of 30 September 2010[11]. A detailed description of the compensation scheme is provided in recitals 10 to 22 of the Commission decision of 1 August 2011[12]. A detailed description of Model I and Model II is provided in recitals 17 to 32 of the Commission decision of 9 December 2011[13].

(9) The original scheme, the compensation scheme, Model I and Model II were continuously prolonged every six months until 30 June 2015 except for the period between 1 July 2014 and 31 December 2015. The prolongation of the measures is envisaged under the same terms as approved in the last prolongation decision of 13

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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.
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. 7.
6 OJ C 2, 5.1.2013, p. 3.
7 OJ C 23, 25.1.2013, p. 9.
8 OJ C 256, 5.9.2013, p. 13.
9 OJ C 117, 16.4.2014, p. 69.
10 OJ C 136, 24.4.2015, p. 6.
11 See footnote 1.
12 See footnote 4.
13 See footnote 5.

February 2015[14], when the schemes were reintroduced after having been suspended for the second half of 2014 for lack of a prolongation notification, except that the original scheme will only apply to financial institutions in Greenland and the Faroe Islands and branches thereof in Denmark.

## 3. POSITION OF DENMARK

(10) Denmark requests the prolongation until 31 December 2015 of the original scheme for financial institutions in Greenland and the Faroe Islands and branches thereof in Denmark, as well as of the compensation scheme, Model I and Model II for all financial institutions in Denmark.

(11) Denmark submits that the measures 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 Danish economy.

(12) On 19 December 2014, the Danish parliament was presented with a proposal to amend the Financial Business Act, the Danish Financial Stability Act, the Guarantee fund for Depositors and Investors Act and the Danish Act on Securities Trading as well as Act on Restructuring and Resolution of certain Financial Businesses in order to comply with the provisions of Directive 2014/59/EU on bank recovery and resolution and Directive 2014/49/ EU on deposit guarantee schemes. The Danish parliament adopted the laws on the 26 march 2015 and they entered into force on 1 June 2015 in Denmark but not yet in the autonomous territories of Greenland and the Faroe Islands . As a result, Denmark will apply all schemes in line with all the provisions of Directive 2014/59/EU, and in particular its Articles 32(1) and (5), Article 44(5) and Article 109.

(13) As regards the autonomous territories of Greenland and the Faroe Islands, according to Denmark the Directive 2014/59/EU is likely to be implemented by the end of 2015. Given those circumstances, the National Bank of Denmark is of the opinion that the winding up scheme which allows the Financial Stability Company to take over distressed banks with no other guarantee than the Deposit Guarantee Scheme (which is administered by the Financial Stability Company) is still a very important measure to have in place as regards institutions in the Faroe Islands and Greenland.

(14) With regard to the functioning of the compensation scheme, Model I and Model II, Denmark submits that it will remain unchanged for Greenland and the Faroe Islands. For Denmark the schemes will be applied in the resolution process, and it will be the resolution authority (Finansiel Stabilitet) who will decide on the resolution tools and implicitly on the use of the schemes. Denmark submits that the use of the Deposit Guarantee Scheme funds will be within the limits of Article 109 of Directive 2014/59/EU.

(15) As regards the prolongation of the original scheme (for the autonomous territories of Greenland and the Faroe Islands only) and the compensation scheme, Model I and Model II for all financial institutions in Denmark, Denmark submit that even if confidence in the Danish financial sector is growing, and the larger banks are now

[14] See footnote 10.

more financially solid and more resistant when confronted with the continued uncertainty, there are still some small and medium-sized banks that encounter difficulties in accessing sufficient liquidity. Subsequently, Denmark states that the measures remain the appropriate tools to handle ailing banks and are necessary to preserve financial stability in Denmark. That position was confirmed by the National Bank of Denmark in its letter of 17 July 2015 and by Finanstilsynet – the Danish Financial Supervisory Authority ("FSA") – in its letter of 28 August 2015.

## 4. ASSESSMENT

### 4.1. Existence of State aid

(16) In its decisions of 30 September 2010, 1 August 2011 and 9 December 2011 ("the original decisions"), the Commission concluded that the original scheme, the compensation scheme, Model I and Model II constitute State aid within the meaning of Article 107(1) of the Treaty. That assessment is not changed by the notification of 1 July 2015.

(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 original decisions, the Commission considers that the schemes constitute State aid within the meaning of Article 107(1) of the Treaty because they concern the provision of State resources to a certain sector, i.e. the financial sector, which is open to intense international competition. Under the schemes, participating banks may obtain capital or liquidity support under conditions which would not be available to them under market conditions, and so receive an advantage. Given the characteristics of the financial sector, any advantage from State resources to a bank affects intra-Union trade and therefore threatens to distort competition. The schemes therefore constitute State aid within the meaning of Article 107(1) of the Treaty.

(19) Regarding the Faroe Islands and Greenland, Denmark has requested the prolongation of the winding-up scheme in full, including the compensation scheme, Model I and Model II, based on the fact that Directive 2014/59/EU has not yet been implemented in those autonomous territories.

(20) Although the Faroe Islands and Greenland are autonomous provinces of the Kingdom of Denmark to which the Treaties do not apply, given that the potential beneficiaries of the State aid measures registered in the Faroe Islands and Greenland have activities within the Union through their Danish branches and compete with Union financial institutions, any advantage to their economic activities in Denmark from State resources would have the potential to affect intra-Union trade and to distort competition[15] .

[15] The Commission made a similar assessment in the State Aid decision SA.31945 (2011/NN) Aid for the liquidation of Eik Banki P/F and Eik Bank Denmark A/S OJ C 274, 17.09.2011, p. 5.

(21) Moreover, the measures are provided through the Deposit Guarantee Fund or the Financial Stability Corporation, which is a vehicle set up by the Danish authorities. In addition, as submitted by Denmark, the compensation scheme, Model I and Model II will be applied based on a decision of the resolution authority established in accordance with Directive 2014/59/EU, which is also a State institution. The measures therefore stem from State resources. For the reasons set out in recital 18, the measures also confer an advantage on their beneficiaries.

(22) Thus the measures accessible to financial institutions in the Faroe Islands and Greenland constitute State aid in the meaning of Article 107(1) TFEU insofar as they relate to the branches in Denmark of those financial institutions.

### 4.2. Compatibility of the schemes

#### *4.2.1. Legal basis*

(23) Based on the information provided by Denmark, the Commission finds that the circumstances which allowed it to approve the original scheme, the compensation scheme, Model I and Model II, on the basis of Article 107(3)(b) of the Treaty, as described in the original decisions, still apply fully for Greenland and the Faroe Islands as Directive 2014/59/EU has not been implemented. In Denmark the prolongation will only apply to the compensation scheme, Model I and Model II which remain important measures to complement the resolution framework, with the additional considerations stemming from the transposition of Directive 2014/59/EU, as confirmed by the National Bank of Denmark in its letter of 17 July 2015.

(24) The Commission observes that financial markets have not yet returned to normal functioning and that the measures envisaged can be considered necessary to preserve general confidence in the financial system as a whole, to avoid a serious disturbance in the Danish economy. Since the threat of liquidity problems is still present, mainly for small and medium-sized banks, re-instating the framework in favour of distressed banks is justified. Having in view that the common objective of the measures is to find a market-based solution for ailing financial institutions, the measures should remain available.

(25) For those reasons regarding the persistent difficulties in the Danish banking system, the conditions that were established by the 2008 Banking Communication[16] and the Commission's subsequent decisional practice and Communications (including the 2013 Banking Communication[17]) continue to apply.

#### *4.2.2. Compatibility assessment of the schemes*

*Appropriateness*

(26) The measures should be appropriate to remedy a serious disturbance in the Danish economy. Given the continuing liquidity challenges faced by banks, which may result in a substantial economic disturbance, as presented by Denmark, the Commission considers the prolongation of the original scheme for branches in

[16] 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.

[17] 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).

Denmark of financial institutions established in Greenland and the Faroe Islands .] as well as the compensation scheme, Model I and Model II for all financial institutions in Denmark as an appropriate response to the persisting difficulties that some banks in Denmark continue to experience. Since the common objective of those measures is to find a market-based solution for failing financial institutions through an orderly winding-up, the measures should remain available.

(27) Point 84 of the 2013 Banking Communication provides that the Commission continues to consider approval of liquidation aid schemes for credit institutions of limited size. The existing measures for Denmark envisage covering precisely that type of institutions, since the relatively large number of small banks is a specific characteristic of the Danish banking market.

*Necessity and aid limited to the minimum necessary*

(28) The compensation scheme, Model I and Model II provide appropriate measures to complement and further strengthen the possible resolution actions, by facilitating a private solution based on the acquisition of the distressed bank by a viable financial institution, selected through a competitive sale process – as presented in the decisions of 1 August 2011 and 9 December 2011. Such solutions aim at obtaining the highest price possible for the sold bank (or parts thereof), thus limiting the aid to the minimum necessary, and reducing the impact on State resources below the costs associated with a winding-up of the bank under the winding-up scheme.

(29) The schemes are in line with requirements of the 2013 Banking Communication which introduces enhanced requirements for burden-sharing for shareholders and subordinated bond holders in particular, but does not require a contribution from depositors[18].

(30) Moreover, according to Directive 2014/59, Member States must apply provisions adopted to comply with Section 5 of Chapter IV of Title IV, which includes Article 44(5), from 1 January 2016 at the latest. The Commission notes that Denmark has transposed those provisions so that they apply already from 1 June 2015 on, which further reduces the probability that State resources may be necessary.

*Proportionality*

(31) As regards proportionality, the Commission notes that Denmark has committed, in line with point 59(f) of the 2013 Banking Communication, 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 would not take place without the State support. Such safeguards help ensure that the participating institutions do not misuse the received State support to expand their activities.

(32) In terms of limiting impact on competition, it is also notable that under the compensation scheme, Model I and Model II the failing banks are sold (fully or partially) by means of a competitive process through which the acquiring entity is selected. In light also of the limited size of banks to be subject to those measures (total assets not exceeding EUR 3 billion), it is an appropriate mechanism to control for the potential distortions of competition.

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

*Compatibility with the 2013 Banking Communication*

(33) The Commission notes that the conditions of the scheme approved through the previous decisions of 11 July 2013 and 29 January 2014[19] already include commitments of Denmark in line with the 2013 Banking Communication:

- to impose a ban on advertising referring to the State support on 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 report on the operation of the original scheme, the compensation scheme, Model I and Model II by 15 January 2016 (for the period 30 June 2015 to 31 December 2015) at the latest.

(34) 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.

*Conclusion on the compatibility of the schemes*

(35) The Commission agrees that the prolongation of the original scheme for branches in Denmark of financial institutions established in Greenland and the Faroe Islands, as well as the compensation scheme, Model I and Model II for financial insitutions in Denmark is an appropriate, necessary and proportionate measure to remedy a serious distortion of the Danish economy. Current circumstances do not alter the Commission's previous assessment in the original decisions and the prolongation decisions of 8 June 2012, 19 November 2012, 11 June 2013, 29 January 2014 and 13 February 2015. The notified prolongation of the schemes therefore complies with the requirements set out above and is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty.

(36) In line with the Commission's decisional practice, the original scheme for financial institutions established in Greenland and the Faroe Islands as well as the compensation scheme, Model I and Model II for financial insitutions in Denmark can therefore be prolongued until 31 December 2015. 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 measures' effectiveness.

[19] See footnotes 8 and 9.

## 5. COMPLIANCE OF THE RESOLUTION OF THE BANK WITH THE PROVISIONS OF DIRECTIVE 2014/59/EU ON BANK RECOVERY AND RESOLUTION

(37) The Commission notes that the schemes which will continue to apply in Denmark, namely the compensation scheme, Model I and Model II, do not violate intrinsically linked provisions of Directive 2014/59/EU on bank recovery and resolution, which in this specific case relate to Article 44(5), Article 59(3) and Article 109.

(38) The provisions of the schemes are in line with Article 59(3) of Directive 2014/59, as the schemes' criteria ensure that the capital instruments are fully written-down, since equity holders and subordinated bond holders of a failing bank which benefits from the scheme are fully wiped out and suffer 100% losses.

(39) In addition, according to Directive 2014/59, Member States must apply provisions adopted to comply with Section 5 of Chapter IV of Title IV, which includes Article 44(5), from 1 January 2016 at the latest. The Commission notes that Denmark has transposed those provisions so that they apply already from 1 June 2015 on.

(40) The Commission notes that, as submitted by Denmark, the compensation scheme, Model I and Model II will be applied in the process of resolution under the provisions of Directive 2014/59, based on a decision of the resolution authority established and operating in accordance with that directive, in particular as regards the provisions of Article 44(5), Article 59(3) and Article 109 of Directive 2014/59.

(41) Therefore the Commission concludes that the schemes do not violate the intrinsically linked provisions of Directive 2014/59.

## 6. CONCLUSION

The Commission has accordingly decided to consider the aid to be compatible with the internal market and not to raise objections to the schemes.

For reasons of urgency, Denmark exceptionally accepts that the present decision be adopted in the English language.

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Yours faithfully,
For the Commission

Margrethe VESTAGER
Member of the Commission

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