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WORKING LANGUAGE

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Subject: **State Aid SA. 33007/2011 – Poland**
Prolongation of the Polish bank recapitalisation scheme

Sir,

I. Procedure

1. Poland notified the original scheme (hereinafter "the scheme" or "the recapitalisation scheme") on 18 May 2009. The Commission approved it on 21 December 2009 in State aid case N 302/2009 ("the original decision")[1]. The scheme was prolonged until 31 December 2010 by Commission decision of 5 July 2010 in state aid case N 262/2010[2] and for the second time until 30 June 2011 by Commission decision of 16 December 2010 in State aid case SA.31924/2010 (N 534/2010) ("the prolongation decision")[3]

2. On 5 May 2011 Poland notified a request to prolong the scheme until 31 December 2011.

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[1] OJ C 31, 9.2.2010
[2] OJ C 213, 6.8.2010
[3] OJ C 14, 18.1.2011

Jego Ekscelencja
Pan Radosław SIKORSKI
Minister Spraw Zagranicznych
Al. Szucha 23
PL-00 - 580 Warszawa

3. On 27 May 2011 the Commission requested additional information, which was submitted on 10 and 13 June 2011.

II. Description

4. Poland brought forward a scheme designed to restore stability to the financial system and to remedy a serious disturbance to the economy of Poland. The scheme is based on the Act on the recapitalisation of certain financial institutions[4]. The scheme is open to all banks or insurance companies established in Poland (whether Polish or foreign-owned), which are subject to the remedial procedure due to the threat to their stability. It allows the State to underwrite the issue of preference shares or subordinated debt by financial institutions up to 100% of the capital increase provided for in the institution's remedial plan as approved by the Polish supervisory authority, Komisja Nadzoru Finansowego. The scheme also allows for the nationalisation of institutions endangered by insolvency if it is necessary to prevent a threat to the stability of the financial system.

5. The measure at stake complements the liquidity support granted under the support scheme for banks' funding in Poland[5].

III. Position of Poland

6. In line with the original decision, Poland accepts that the scheme constitutes State aid within the meaning of Article 107(1) TFEU.

7. The Polish authorities seek the prolongation of the scheme for a further six months period until 31 December 2011. Poland confirms that the budget of the extended scheme will remain at the original level.

8. The Polish authorities claim that the prolongation, like the scheme, is compatible with the internal market, because due to the ongoing crisis it is necessary to remedy a serious disturbance in the Polish economy pursuant to Article 107(3)(b) TFEU. Poland undertakes to maintain the commitments made since the introduction of the scheme and confirms that all conditions as defined in the original decision remain unchanged.

9. In particular, Poland undertakes to submit a restructuring plan for any bank which benefits from a recapitalisation, independently of whether the beneficiary pursuant to the rules set in the Recapitalisation Communication[6] is considered to be fundamentally sound or distressed, within six months from the date of granting the aid. Poland undertakes that the restructuring

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[4] The Act of 12 February 2010 on the recapitalisation of certain financial institutions, Journal of Laws of 2010, No. 40, item 226 (ustawa z dnia 12 lutego 2010 r. o rekapitalizacji niektórych instytucji finansowych).

[5] See Commission decision of 25 September 2009 in Case N 208/2009 Support scheme for banks' funding in Poland, OJ C 250, 20.10.2009, p.1 and the prolongation decisions of 9 February 2009 in State aid case N 658/2009, OJ C 57, 9.03.2010, p. 6., of 29 June 2010 in State aid case N 236/2010, OJ C 205, 29.07.2010, p.2. and of 16 December 2010 in State aid case N 533/2010, OJ C 14, 18.1.2011.

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

plan to be submitted shall comply with the principles set out in the Restructuring Communication[7] in order to re-establish the individual bank's long-term viability without reliance on State support, while containing adequate burden-sharing measures and measures to limit distortions of competition.

10. Although the scheme has not been used to date, the Polish authorities submit that precautionary measure should remain in place as it has positive effect on financial institutions and their clients. More specifically, it ensures the stability of Polish financial sector, which still faces increased volatility of global financial markets and uncertainty related to the extent and pace of economic recovery. Therefore, in order to avoid any negative spill-over effects to the financial sector, the scheme continues to be needed. The foregoing justification has been supported by a letter from the Polish Central Bank, Narodowy Bank Polski dated 9 June 2011.

IV. Assessment

11. In the original decision, the Commission concluded that the scheme constitutes State aid within the meaning of Article 107(1) TFEU. However, the Commission also found that the scheme is compatible with the internal market under Article 107(3)(b) TFEU, because it was apt to remedy a serious distortion of the Polish economy. To that end, the Commission assessed the appropriateness, necessity and proportionality of the measure.

12. The Commission observes that the prolongation of the scheme is a response to the continuing financial difficulties that Poland, as most Member States, continues to experience. Since the objective of the measure is to provide underwriting guarantees to financial institutions which are facing a threat to their stability, it is important to ensure the availability of the recapitalisation scheme as long as the global financial crisis continues.

13. As the financial crisis is still ongoing, the Commission considers that the prolongation of the measure for further six months is necessary to ensure financial stability and therefore justified under Article 107(3)(b) TFEU.

14. The Commission notes that the prolongation is limited in time (not exceeding six months), which will limit the potential distortion of competition. Accordingly, the underwriting guarantee agreements can be concluded under the scheme until 31 December 2011[8].

15. The renewed prolongation is in line with the requirements set out in the Commission Communication of 1 December 2010 "on the application, after 1 January 2011, of state aid rules to support measures in favour of banks in the context of the financial crisis"[9]. In particular, it requires the presentation of a restructuring plan whenever recapitalisation measures are granted. The Commission recalls that at the beginning of the crisis it established a distinction between distressed and fundamentally sound financial institutions. That

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

8 In line with the original decision, the factual implementation should be completed no later than three months from the date of the expiry of the scheme.

9 OJ C 329, 7.12.2010, p.7.

distinction was based on the concern in the late 2008 that sound banks, whilst catering for capital needs resulting from significant impairments and temporary difficulties to raise capital in markets, would avoid having recourse to the State when faced with the requirement to restructure and thus decrease their lending to the real economy. At present, banks have reduced capital needs and face fewer difficulties to raise capital on markets. Therefore what matters today seems to be whether they can raise capital in the market.

16. As a result, in 2011 banks which have recourse to State capital or impaired asset relief should be required to submit to the Commission a restructuring plan as described in the Restructuring Communication showing the bank's determination to undertake the necessary restructuring efforts and return to viability without undue delay.

17. The Commission notes that Poland confirms that all the commitments made in relation to the Scheme will continue to apply, including those related to presenting every six months a report on the operation of the Scheme. Furthermore, the Commission notes that Poland committed to submit individual restructuring plans within six months for all beneficiaries.

18. As regards the combination of the recapitalisation scheme with other aid measures, as indicated in the Annex to the Restructuring Communication, any restructuring plan should contain all State aid received as individual aid or under a scheme during the restructuring period and all such aid needs to be justified as satisfying all criteria prescribed by the Restructuring Communication (i.e. return to viability, own contribution by the beneficiary and limitation of competition distortion). Accordingly, once a Member State is under an obligation to submit a restructuring plan for a certain aid beneficiary, the Commission needs to take a view in its final decision as to whether any aid granted during the restructuring period satisfies the criteria required for the authorisation of restructuring aid. To that end an individual *ex ante* notification is necessary.

19. Furthermore, the Commission recalls that, based on paragraph 16 of the Restructuring Communication, should further aid not initially foreseen in a notified restructuring plan be necessary for the restoration of viability, it cannot be granted under an approved scheme but needs to be subject to individual ex ante notification and any such further aid will be taken into account in the Commission's final decision on that bank.

20. On the basis of the above, the notified prolongation of the Polish recapitalisation scheme does not alter the Commission's previous assessment in the decision of 16 December 2010, so that the measures under the scheme remain compatible with the internal market until 31 December 2011.

V. Decision

The Commission concludes that the notified prolongation of the Polish bank recapitalisation scheme does not alter its previous assessments in the decision of 21 December 2009 in State aid case N 302/2009, the decision of 5 July 2010 in State aid case N 262/2010 and the decision of 16 December 2010 in State aid case SA.31924 (N 534/2010), that the scheme is compatible with the internal market. The Commission has accordingly decided not to raise objections.

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

European Commission
Directorate-General for Competition
State Aid Greffe
Rue Joseph II, 70
B-1049 Brussels
Fax No: +32-2-296 12 42

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President of the Commission