EUROPEAN COMMISSION

Brussels, 23.7.2013
C(2013) 4766 final

In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […].		PUBLIC VERSION This document is made available for information purposes only.

Subject: State aid SA.36965 (2013/N) – Poland

Extension of the Polish bank guarantee scheme

Sir,

1. PROCEDURE

(1) On 25 September 2009 the Commission approved the Polish bank guarantee scheme (hereinafter "the scheme") by its decision in State aid case N 208/2009 (hereinafter "the original decision")[1].

(2) On the basis of subsequent notifications, the Commission approved the prolongation of the scheme in its decisions of 9 February 2010 in State aid case N 658/2009[2], 29 June 2010 in State aid case N 236/2010[3], 16 December 2010 in State aid case SA.31923 (N 533/2010)[4],

[1] OJ C 250, 20.10.2009, p. 1.
[2] OJ C 57, 9.03.2010, p. 6.
[3] OJ C 205, 29.07.2010, p. 2.

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28 June 2011 in State aid case SA.33008 and SA.32946[5], on 8 February 2012 in State aid case SA.34081[6], on 9 July 2012 in State aid case SA.34811[7] and on 29 January 2013 in State aid case SA.35944[8].

(3) On 3 July 2013, Poland notified an eighth extension of the scheme until 31 December 2013. On 15 July 2013 Poland complemented the notification with the updated calculation of indicative fees and informed the Commission that for reasons of urgency it exceptionally accepts that this Decision is adopted in the English language.

2. FACTS

2.1. Description of the scheme

(4) A detailed description of the scheme is provided in the original decision, in particular recital (2) concerning the legal basis and the objective of the scheme and recitals (3) to (23) on the general description of the scheme. The original scope of the institutions eligible for the scheme was extended with the Commission's decision of 28 June 2011 in State aid case SA.33008 and SA.32946 (see recitals (11) and (13) of that decision). The original budget of the scheme was increased to PLN 160 billion and approved in the Commission's decision of 9 July 2012 in State aid case SA.34811 (see recitals (13) to (14) of that decision).

2.2. New elements introduced with the last notification

Eligibility

(5) Poland is not requesting a prolongation of its recapitalisation scheme (SA.35943[9]). As regards the guarantee scheme, it has limited the eligibility of that scheme to solvent financial and credit institutions which have no capital shortfall according to the most recent Union-wide capital exercise or other equivalent national exercises by the national supervisory authority[10].

(6) Financial and credit institution which have already received approved rescue aid but by 1 August 2013 have not yet obtained a final approval of the restructuring aid can also receive support under the scheme without individual notification. In such cases an update to the restructuring plan has to be submitted to the Commission, unless the restructuring plan already provided for the envisaged guarantee measure.

Submission of a restructuring plan

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4 OJ C 29, 29.01.2011, p. 5.
5 OJ C 237, 13.8.2011, p. 3.
6 OJ C 177, 20.06.2012, p. 15.
7 OJ C 246, 15.08.2012, p. 2.
8 OJ C 81, 20.03.2013, p. 9.
9 OJ C 77, 15.03.2013, p. 16.
10 In relation to the term "No capital shortfall", it should be pointed out that the 2011 European Banking Authority ("EBA") capital exercise required at least a capitalisation of 9%, as defined by EBA.

(7) If an institution is obliged to submit a restructuring or liquidation plan (pursuant to the commitments set out in Annex II), such plan must be submitted within *two* months of the granting of the measure.

(8) Every financial institution that is granted guarantees on new liabilities or on 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, must present a *restructuring* plan, within two months of the granting of the guarantees.

3. POSITION OF POLAND

(9) Poland requests an extension of the scheme for a further period of six months until 31 December 2013. In relation to the extension Poland submitted the commitments listed in Annex II.

(10) Poland submits that the 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 extension 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 Poland. Although the scheme has not been used to date, the Polish authorities submit that it should remain in place as it has a positive effect on financial and credit institutions and their clients. More specifically, it ensures the stability of the Polish financial sector, which still faces the increased volatility of global financial markets and the uncertainty related to the extent and pace of the economic recovery. Therefore, in order to avoid any negative spill-over effects to the financial sector, the scheme should remain available.

(11) Poland submitted a letter by Narodowy Bank Polski ("NBP", the Polish Central Bank) further supporting the need for the proposed extension to safeguard the stability of the financial system in Poland, because prevailing market conditions do not allow for a termination of the scheme.

(12) In line with the requirements of the 2011 Prolongation Communication[11], Poland provided an indicative fee (estimation) for each financial institution eligible to benefit from those guarantees. The estimation was based on an application of the scheme's remuneration formula and recent market data. The indicative fees are shown in Annex I.

4. ASSESSMENT

(13) In its decision of 29 January 2013, the Commission concluded that the scheme constitutes State aid within the meaning of Article 107(1) TFEU (see recital (10)). However it found that measure compatible with the internal market under Article 107(3)(b) TFEU, because it was apt to remedy a serious distortion of the Polish economy.

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11 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.

(14) The Commission first notes that Article 107(3)(b) TFEU remains in principle applicable in the financial sector.[12] The Commission considers that the exceptional circumstances at the origin of the notified measures still persist and therefore recognises the need for the prolongation of guarantee/liquidity schemes. In particular, the exacerbation of tensions in sovereign debt markets that took place in 2011 and 2012 has put the banking sector under increasing pressure, particularly in terms of access to term funding markets.

(15) The Commission also observes that the extension 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 short- and medium-term financing to financial and credit institutions which might have difficulties to obtain funds on the financial markets, it supports the retention of the scheme as long as the global financial crisis continues. That analysis was confirmed by the Central Bank of Poland. The Commission therefore considers that the extension of the scheme is appropriate to remedy a disturbance of the Polish economy.

(16) That should apply to guarantee and liquidity schemes which might still be required in order to provide liquidity to institutions, independently of the solvency of an institution. The scheme only serves as a means to provide liquidity to institutions without a capital shortfall as defined by the competent supervisory authority, and thus remains apt to tackle market failures in the interbank market that should not normally relate to the institution, as it is in principle solvent.

(17) The Commission notes secondly that all major terms and conditions for the scheme approved in the original decision of 25 September 2009 (see recitals (3) to (23) for the description of the scheme) and the prolongation decisions of 9 February 2010, 29 June 2010, 16 December 2010, 28 June 2011, 8 February 2012, of 9 July 2012 and of 29 January 2013 (Annex II to the decision containing commitments provided by Poland), will remain unchanged except for the provisions set out in section 2.2.

(18) As regards the combination of the scheme with other aid measures, the Commission recalls that, as indicated in the Annex to the Restructuring Communication, the restructuring plans to be submitted should contain all State aid received as individual aid or under a scheme during the restructuring period.

Monitoring

(19) The Commission welcomes that Poland undertakes to present every three months a report on the operation of the scheme and on guaranteed issuances and to complement it with updated available data on the cost of comparable (as regards nature, volume, rating, currency) non-guaranteed debt issuances.

Conclusions on the compatibility of the aid measure

(20) The scheme remains an appropriate, necessary and proportionate measure to remedy a serious distortion of Polish economy and does not alter the Commission's previous

[12] 2011 Prolongation Communication.

assessment in the original decision of 25 September 2009 and the prolongation decisions of 9 February 2010, 29 June 2010, 16 December 2010, 28 June 2011, 8 February 2012 and of 9 July 2012. The notified extension therefore complies with the requirements set out above and is compatible with the internal market pursuant to Article 107(3)(b) TFEU.

(21) In line with the Commission's decisional practice the scheme can therefore be extended until 31 December 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 scheme's effectiveness.

5. CONCLUSION

The Commission has accordingly decided:

- to consider the aid to be compatible with the internal market.

Poland exceptionally accepts that the decision be adopted in the English language, for reasons of urgency.

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President

Annex I

An indicative fee (estimate) for
- guarantees covering debt with a maturity of one year or more
- for financial institutions envisaged, given certain conditions, to be eligible for the scheme,
- based on an application of the formula indicated in 2011 Prolongation Communication
- using recent market data.[13]

A. For the banks with an external rating

Bank name	Guarantee fee (in bp)
Powszechna Kasa Oszczędności Bank Polski SA – PKO BP S.A.	[70-85]*
Pekao Bank Hipoteczny S.A.	[70-85]
ING Bank S.A.	[70-85]
Getin Noble Bank S.A.	[85-100]
Credit Agricole Bank Polska S.A.	[85-100]
BRE Bank Hipoteczny S.A	[70-85]
Bank Zachodni WBK S.A.	[85-100]
Bank Ochrony Środowiska S.A.	[85-100]
Bank Gospodarstwa Krajowego	[70-85]
Bank Gospodarki Żywnosciowej S.A.	[85-100]
Bank BPH S.A.	[85-100]
Bank Millennium	[85-100]
BRE Bank S.A.	[70-85]
Bank Handlowy w Warszawie S.A.	[70-85]
Bank Polska Kasa Opieki SA-Bank Pekao S.A.	[70-85]

B. For the banks without any external rating or CDS data

[13] The reference period is 16/4/2010-15/4/2013. For that period following parameters of the formula were derived:

- (parameter A) The median value of five-year CDS spreads for the rating category of the bank concerned, based on a representative sample of large banks in the Member States in the relevant rating bucket, e.g. sample of A-rated ("A-rating bucket") or BBB-rated or below banks ("BBB-rating or below"). The derived value for the banks of the A-rating bucket is 158.4 bp, for the banks of the BBB-rating and below bucket: 314.7 bp;
- The median iTraxx Europe Senior Financials five-year index (parameter B): 171.8 bp;
- The median five-year senior CDS spread of all Member States (parameter C): 149.6 bp;
- The median five-year senior CDS spread of Poland (parameter D): 147.1 bp.

Based on the above data, the fee applicable for the banks with the reference rating A is [70-85] bp, for the banks rated BBB or below or without any external rating, the fee applicable under the scheme is estimated at [85-100] bp.

* [...] Business secret.

An indicative fee (estimate) for financial institutions, which are not listed in the table above and which do not have any CDS data or an external credit rating, calculated in line with the 2011 Prolongation Communication was determined to be **[85-100] bp.**

Annex II

Poland commits:

- to grant aid measures under the scheme only to solvent credit institutions which have no capital shortfall[14]; banks which have already received approved rescue aid but by 1 August 2013 have not yet obtained a final approval of the restructuring aid, can also receive support under a scheme without individual notification. In such case an update to the restructuring plan has to be submitted to the Commission unless the restructuring plan had already provided for the envisaged guarantee measure.

- to grant the guarantees under the scheme only for the new issuance of senior debt (subordinated debt is excluded);

- to provide guarantees only on debt instruments with maturities from three months up to five years (or a maximum of seven years in the case of covered bonds), where the annual fee payable for guarantees on debt instruments with a maturity longer than three years will by increased by 10% as compared to the fee applicable to guarantees on comparable debt instruments with a maturity of one to three years;

- to provide support related to Treasury bonds only for up to three years;

- 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 issue the State Treasury bonds under the scheme on the same conditions as State Treasury bonds issued at the same time outside the scheme;

- to submit individual restructuring or liquidation plans[15], within two months, for banks which cause the guarantee to be called upon;

- to provide within two months individual restructuring and/or liquidation plans for banks that default on their liabilities from the support agreement on State Treasury bonds-related support;

- to determine the minimum level of State guarantee remuneration in line with the formula set out in the Commission's Communication on the application, from 1 January 2012, of

[14] "No capital shortfall" according to the most recent Union- wide capital exercise (the 2011 EBA capital exercise required at least a capitalisation of 9% as defined by EBA) or other equivalent national exercises by the national supervisory authority.

[15] The plan must be prepared on the basis of the parameters established in the 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 (the "Restructuring Communication"), OJ C 195, 19.8.2009, p. 9.

State aid rules to support measures in favour of banks in the context of the financial crisis[16] ("the 2011 Prolongation Communication");

- to determine the minimum level of State remuneration for support related to Treasury bonds according to the formula set out in the 2011 Prolongation Communication increased by the refinancing costs of Poland;

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

- to present a restructuring plan, within two months of the granting of the guarantees, for every credit institution that is granted guarantees on new liabilities or on 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;

- to report on the operation of the scheme and on guaranteed issuances by 15 October 2013 (for the period 1 July to 30 September 2013) and by 15 January 2014 (for the period 1 October to 31 December 2013) at the latest;

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

[16] OJ C 356, 6.12.2011, p. 7.