EUROPEAN COMMISSION

Brussels, 03.02.2014
C(2014) 569 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.38023 (2013/N) – Poland
Ninth prolongation of the Polish bank guarantee scheme

Sir,

1. PROCEDURE

(1) On 25 September 2009 the Commission approved the measure under 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 prolongations and extensions 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

[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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aid case SA.31923 (N 533/2010)[4], 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], on 29 January 2013 in State aid case SA.35944[8] and on 23 July 2013 in State aid case SA.36965[9].

(3) On 19 December 2013, Poland notified a prolongation of the scheme until 30 June 2014.

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

2. FACTS

2.1. Description of the scheme

(5) 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 to cooperative savings and credit institutions 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) and limited to only solvent credit institutions with no capital shortfall with a decision of 23 July 2013 in State aid case SA.36965 (see recitals (5), (6) and commitments in Annex II 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). An additional obligation to submit a restructuring plan was introduced with the Commission's decision of 23 July 2013 in State aid case SA.36965 (see recitals (7) and (8) of that decision).

3. POSITION OF POLAND

(6) Poland requests a further prolongation of the scheme until 30 June 2014.

(7) 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 prolongation is compatible with the internal market on the basis of Article 107(3)(b) TFEU as it is necessary 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 credit institutions and their clients. More specifically, it ensures stability of the Polish financial sector, which still faces the increased volatility of global

[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 23, 25.01.2014, p. 5.

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.

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

(9) Poland submitted commitments relating to the scheme which are listed in Annex II.

(10) In line with the requirements of the 2011 Prolongation Communication[10], 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

4.1. Existence of State Aid

(11) According to 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.

(12) For the reasons indicated in the original decision, the Commission considers that the scheme constitutes State aid within the meaning of Article 107(1) TFEU because it concerns the provision of State resources to a certain sector, i.e. the financial sector, which is open to intense international competition. Under the scheme, participating credit institutions obtain guarantees 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 credit institutions affects intra-Union trade and therefore threatens to distort competition. The measure therefore constitutes State aid within the meaning of Article 107(1) TFEU.

4.2. Compatibility of the scheme

4.2.1 Legal basis for the compatibility assessment

(13) Under the scheme Poland intends to provide aid in the form of guarantees in favour of credit institutions.

[10] 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, 6.12.2010, p. 7.

(14) Given the exacerbation of tensions in sovereign debt markets that has taken place since 2011 and in light of the persisting circumstances and risks, the Commission considers it appropriate, as confirmed by the 2013 Banking Communication[11], to examine the measure under Article 107(3)(b) TFEU.

(15) Article 107(3)(b) TFEU empowers the Commission to find that aid is compatible with the internal market if it is intended "to remedy a serious disturbance in the economy of a Member State". The Commission has acknowledged that the global financial crisis can create a serious disturbance in the economy of a Member State and that measures supporting banks are apt to remedy that disturbance. That assessment has been confirmed in the Recapitalisation Communication[12] and the Restructuring Communication.[13] The Commission still considers that the conditions for State aid to be approved pursuant to Article 107(3)(b) TFEU are present. The Commission confirmed that view by adopting the 2013 Banking Communication[14].

(16) The Commission does not dispute the position of the Polish authorities, which is also confirmed by the Central Bank, that the scheme is important in enhancing the liquidity of the banking system, thus contributing to financial stability. Hence, the Commission finds that the scheme aims at remedying a serious disturbance in the Polish economy.

(17) Therefore, the Commission continues to base its assessment of State aid measures in the banking sector on Article 107(3)(b) TFEU.

(18) In order for an aid to be compatible under Article 107(3)(b) TFEU, it must comply with the general principles for compatibility under Article 107(3) TFEU, viewed in the light of the general objectives of the Treaty. Therefore, according to the Commission's case practice[15] any aid or scheme must comply with the following conditions: (i) appropriateness (ii) necessity and (iii) proportionality.

(19) The 2013 Banking Communication and the Restructuring Communication formulate assessment criteria which reflect those general principles and their requirements in light of the specific policy context.

4.2.2 Compatibility assessment of the scheme

Appropriateness

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[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.

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

[13] 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, OJ C 195, 19.8.2009, p. 9.

[14] See points 4 to 6.

[15] See Commission decision of 6.9.2013 in State Aid Case SA.37314 "Rescue aid in favour of Probanka", OJ C 314, 29.10.2013, p. 1 and Commission decision of 6.9.2013 in State Aid Case SA.37315 "Rescue aid in favour to Factor Banka", OJ C 314, 29.10.2013, p. 2.

(20) The scheme should be appropriate to remedy a serious disturbance in the Polish economy. The objective of the guarantee scheme is to temporarily offer appropriate measures to establish backstops for the financial system in a timely and efficient manner, where credit institutions face difficulties in obtaining sufficient funding. The Commission observes that the crisis has eroded confidence in the creditworthiness of the banks, which results in difficulties in obtaining necessary funding on the financial markets. Hence, a backstop mechanism by the Member State, which in case of urgency ensures that credit institutions would have access to funding, is an appropriate means to strengthen banks and thus to restore market confidence.

(21) Points 23 and 60(a) of the 2013 Banking Communication explain that guarantee schemes will continue to be available in order to provide liquidity to banks but that such schemes should be limited to banks without a capital shortfall. The Commission observes that Poland has committed to restrict the scheme only to banks without a capital shortfall as certified by the competent supervisory authority.

(22) Moreover, the Commission notes that Poland has committed to grant guarantees only for new issues of banks' senior debt, as prescribed in point 59(a) of the 2013 Banking Communication.

Necessity

(23) With regard to the scope of the measure, the Commission notes positively that Poland has limited the size of the guarantee scheme by setting its maximum budget at PLN 160 billion and that the scheme applies until 30 June 2014.

(24) The Commission notes that Poland has committed to grant guarantees only on debt instruments with maturities from three months to five years (or a maximum of seven years in the case of covered bonds) and limit guarantees with a maturity of more than three years to one-third of the outstanding guarantees granted to the individual credit institution, which complies with the requirements in points 59(b) and 60(b) of the 2013 Banking Communication.

(25) Regarding the remuneration level, the Commission observes that Poland, in line with point 59(c) of the 2013 Banking Communication, has committed to follow the pricing and other conditions for State guarantees laid down in the 2011 Prolongation Communication which requires, in particular, the application of a pricing method based largely on market data.

Proportionality

(26) As regards proportionality, the Commission notes, first, that Poland, in line with point 59(d) of the 2013 Banking Communication, has committed to submit a restructuring plan within two months for any credit institution granted guarantees on new liabilities or on renewed liabilities for which, at the time of the granting of the new guarantee, the total outstanding guaranteed liabilities (including guarantees accorded before the date of the decision) exceed both a ratio of 5% of the credit institution's total liabilities and a total amount of EUR 500 million. That commitment ensures that the use of guarantee scheme will not enable credit

institutions with structural weaknesses in their business models to postpone or avoid the necessary adjustments.

(27) Second, the Commission notes that Poland 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.

(28) Finally, the Commission welcomes that Poland undertakes to submit individual restructuring or liquidation plans, within two months, for credit institutions which cause the guarantee to be called upon, in line with point 59(e) of the 2013 Banking Communication.

(29) 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.

(30) Furthermore, based on point 16 of the Restructuring Communication, the Commission recalls that, should further aid not initially foreseen in a notified restructuring plan be necessary for the restoration of viability, such additional aid cannot be granted under an approved scheme but needs to be subject to individual ex ante notification. All State aid measures received by a bank as individual aid or under the scheme during the restructuring period will be taken into account in the Commission's final decision on that bank.

Monitoring

(31) The Commission welcomes, in line with point 60(c) and (d) of the 2013 Banking Communication, that Poland undertakes to present every three months a report on the operation of the scheme, on guaranteed issuances and on the actual fees charged and to supplement it with updated available data on the cost of comparable non-guaranteed debt issuances (nature, volume, rating and currency).

Conclusions on the compatibility of the aid measure

(32) The prolongation of the Polish bank guarantee scheme remains an appropriate, necessary and proportionate measure to remedy a serious distortion of Polish economy and does not alter the Commission’s previous assessment in the original decision of 25 September 2009 and the prolongation or extension decisions of 9 February 2010, 29 June 2010, 16 December 2010, 28 June 2011, 8 February 2012, 9 July 2012, 29 January 2013 and 23 July 2013. The notified prolongation therefore 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 Polish bank guarantee scheme can therefore be prolonged until 30 June 2014. 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 and not to raise objections to the scheme.

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

If this letter contains confidential information which should not be disclosed to third parties, 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 the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

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

European Commission
Directorate-General for Competition
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MADO 12/059
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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.[16]

A. For the banks with an external rating

Bank name	Guarantee fee (in bp)
Powszechna Kasa Oszczędności Bank Polski SA – PKO BP S.A.	[75-90]*
Pekao Bank Hipoteczny S.A.	[75-90]
ING Bank S.A.	[75-90]
Getin Noble Bank S.A.	[95-110]
Credit Agricole Bank Polska S.A.	[95-110]
mBank Hipoteczny S.A	[75-90]
Bank Zachodni WBK S.A.	[95-110]
Bank Ochrony Środowiska S.A.	[95-110]
Bank Gospodarstwa Krajowego	[75-90]
Bank Gospodarki Żywnosciowej S.A.	[95-110]
Bank BPH S.A.	[95-110]
Bank Millennium	[95-110]
mBank S.A.	[95-110]
Bank Handlowy w Warszawie S.A.	[75-90]
Bank Polska Kasa Opieki SA-Bank Pekao S.A.	[75-90]

[16] The reference period is 18/10/2010-15/10/2013. 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 165.9 bp, for the banks of the BBB-rating and below bucket: 394.2 bp;
- The median iTraxx Europe Senior Financials five-year index (parameter B): 171.2 bp;
- The median five-year senior CDS spread of all Member States (parameter C): 148.6 bp;
- The median five-year senior CDS spread of Poland (parameter D): 145.0 bp.

  Based on the above data, the fee applicable for the banks with the reference rating A is [75-90] bp, for the banks rated BBB or below or without any external rating, the fee applicable under the scheme is estimated at [95-110] bp.

* […] Business secret.

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

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 **[95-110] bp.**

Annex II

Poland commits:

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

- to provide guarantees only on debt instruments with maturities from three months to five years (or a maximum of seven years in the case of covered bonds);

- to limit the guarantees with a maturity of more than three years to one-third of the total outstanding amount of guarantees granted to the individual credit institution;

- 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 State aid rules to support measures in favour of banks in the context of the financial crisis[17] ("the 2011 Prolongation Communication");

- to submit a restructuring plan, within two months of the granting of the guarantees, for every credit institution that is granted guarantees on new liabilities or 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 submit individual restructuring or wind-down plans[18] within two months after the guarantee has been activated for credit institutions which cause the guarantee to be called upon;

- 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 grant aid measures under the support scheme only to credit institutions which have no capital shortfall[19] and, where a credit institution with a capital shortfall is in urgent need of liquidity, to submit an individual notification to the Commission;

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

[18] 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 (Restructuring Communication), OJ C 195, 19.8.2009, p. 9.

[19] "No capital shortfall" is certified by the competent supervisory authority, as it is established, in line with point 28 of the New Banking Communication, in a capital exercise, stress test, asset-quality review or an equivalent exercise at Union, euro area or national level, which has to be confirmed by the competent supervisory authority.

- to report to the Commission on i) the operation of the scheme, ii) the guaranteed debt issues, and iii) the actual fees charged, on a three-monthly basis, meaning by 15 April 2014 (for the period 1 January 2014 to 31 March 2014) and by 15 July 2014 (for the period 1 April 2014 to 30 June 2014) at the latest; and

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