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Subject: State aid SA.38216 (2014/N) – Denmark
Prolongation of the winding-up scheme, compensation scheme, Model I and Model II – H1 2014

Sir,

1. PROCEDURE

(1) On 21 September 2010 Denmark notified a scheme for the winding-up of financial institutions in distress ("the original scheme"). The Commission approved the original scheme on 30 September 2010 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, the Danish authorities notified a request for the prolongation of the original scheme for six months until 30 June 2011. By Commission decision of 7 December 2010[2] the original scheme was prolonged until 30 June 2011. Upon notification by the Danish authorities of 13 May 2011 the original scheme was further prolonged until 31 December 2011 by Commission decision of 28 June 2011[3].

[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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(3) On 13 May 2011 the Danish authorities notified 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. On 1 August 2011 the Commission approved those amendments ("the compensation scheme")[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 without any amendments. 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 8 June 2012 Denmark notified a request for the prolongation for six months until 31 December 2012 of the original scheme, including the compensation scheme and Model I and Model II without amendments. Both the prolongation of the original scheme, including the compensation scheme, Model I and Model II were approved until 31 December 2012 by Commission decision of 26 June 2012[6].

(6) On 19 November 2012 Denmark notified a request for the prolongation for six months until 30 June 2013 of the original scheme, including the compensation scheme and Model I and Model II. The Commission approved the prolongation by Commission decision of 14 December 2012[7].

(7) On 11 June 2013 Denmark notified a request for the prolongation for six months until 31 December 2013 of the original scheme, including the compensation scheme and Model I and Model II. The Commission approved the prolongation by Commission decision of 11 July 2013[8].

(8) On 20 January 2014 Denmark notified a request for the prolongation for six months until 30 June 2014 of the original scheme, including the compensation scheme and Model I and Model II.

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

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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 SA.34943 (2012/N), Prolongation of the winding-up scheme and extension of the guarantee scheme for merging banks, OJ C 2, 5.1.2013, p. 3.

7 SA.35741 (2012/N), Prolongation of the winding-up scheme and of the guarantee scheme for merging banks, OJ C 23, 25.1.2013, p. 9.

8 SA.36811 (2013/N), Prolongation of the winding-up scheme and of the guarantee scheme for merging banks, OJ C 256, 05.9.2013, p. 13.

2. FACTS

(10) A detailed description of the original scheme is provided in the original decision on that scheme[9] in recitals 3 to 16.

(11) A detailed description of the compensation scheme is provided in recitals 10 to 22 of the original decision on that scheme[10]. A detailed description of Model I and Model II is provided in recitals 17 to 32 of the decision extending the compensation scheme to those two mechanisms[11].

3. POSITION OF DENMARK

(12) Denmark requests a prolongation of the original scheme, including the compensation scheme and Model I and Model II, for a further period of six months until 30 June 2014.

(13) 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 economy of Denmark.

(14) As regards the prolongation of the original scheme including the compensation scheme and Model I and Model II, Denmark claims that whilst confidence in the Danish financial sector is growing, and the larger banks are now more financially solid, there are still some small and medium-sized banks that encounter liquidity problems. Considering those circumstances, Denmark stresses that the measures remain important tools to handle banks in distress and are necessary to preserve financial stability in Denmark. That evaluation is confirmed by the Danish Central Bank in its letter of 4 December 2013 and by Finanstilsynet - the Danish Financial Supervisory Authority ("FSA") - in its letter of 17 December 2013.

(15) In line with the 2013 Banking Communication[12], Denmark commits:

- 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 July 2014 (for the period 1 January to 30 June 2014) at the latest.

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[9] See footnote 1.
[10] See footnote 4.
[11] See footnote 5.
[12] 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. 9.

4. ASSESSMENT

4.1. Existence of State aid

(16) In its decisions of 30 September 2010, 1 August 2011 and 9 December 2011 regarding the introduction of the measures, 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. Nothing in the notification of 20 January 2014 alters that assessment.

4.2. Compatibility of the scheme

4.2.1 Legal basis

(17) The Commission finds that the circumstances which allowed it to approve the original scheme, including the compensation scheme and Model I and Model II, on the basis of Article 107(3)(b) of the Treaty, as described in the original decisions, still apply.

(18) The Commission observes that financial markets have not yet returned to normal functioning and 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, the current framework for an appropriate response to distressed banks is still justified. Having in view that the common objective of the measures is to find a market-based solution for failing banks, they should remain available.

(19) For those reasons regarding the persistent difficulties in the Danish banking system, the conditions that were established by the 2008 Banking Communication[13] and the Commission's subsequent decisional practice and Communications (including the 2013 Banking Communication) continue to apply.

4.2.2 Compatibility assessment of the scheme

Appropriateness

(20) 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, the Commission considers the prolongation of the original scheme including the compensation scheme and Model I and Model II 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 banks through an orderly winding-up, the measures should remain available.

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[13] 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.

(21) Point 84 of the 2013 Banking Communication confirms that the Commission will continue to consider approval of liquidation aid schemes for credit institutions of limited size. The existing measures for Denmark envisage cover precisely that type of institution, 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

(22) The compensation scheme, Model I and Model II provide appropriate alternatives to the original winding-up scheme for failing banks, 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 reduce the impact on State resources below the costs associated with a winding-up of the bank under the winding-up scheme.

(23) The Danish scheme is in line with the 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.[14]

Proportionality

(24) 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.

(25) 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.

(26) 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.

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

Conclusions on the compatibility of the aid measures

(27) The prolonged original scheme, including the compensation scheme, Model I and Model II, remain appropriate, necessary and proportionate measures to remedy a serious distortion of Denmark's economy and do not alter the Commission's previous assessment in the original decision of 30 September 2010, 1 August 2011, and 9 December 2011 and the prolongation decisions of 8 June 2012, 19 November 2012 and 11 June 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) of the Treaty.

(28) In line with the Commission's decisional practice, the winding-up scheme, the compensation scheme, Model I and Model II 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 measures' 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.

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

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President