Subject: State aid SA.40029 (2014/N) – Denmark
Reintroduction of the winding-up scheme, compensation scheme, Model I and Model II – H1 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"). 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\(^3\).

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\(^2\) SA.31938 (N 537/2010), Prolongation of Danish winding-up fund for banks OJ C 117, 15.2.2011, p. 2.
(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 2011⁵.

(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 2012⁶.

(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 2012⁷.

(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 2013⁸.

(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. The Commission approved the prolongation by Commission decision of 29 January 2014⁹.

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.
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.
(9) On 11 December 2014 Denmark notified a request for the reintroduction of the original scheme, including the compensation scheme and Model I and Model II until 30 June 2015.

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

2. DESCRIPTION OF THE MEASURES

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

(12) A detailed description of the compensation scheme is provided in recitals 10 to 22 of the original decision on that scheme. 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.

(13) The winding up scheme, the compensation scheme, Model I and Model II were continuously prolonged every six months until 30 June 2014. However, no prolongation was notified for the period between 1 July 2014 and 31 December 2015. The reintroduction of the measures is envisaged under the same terms as approved in the last prolongation decision, of 29 January 2014.

3. POSITION OF DENMARK

(14) Denmark requests the reintroduction of the original scheme, the compensation scheme including Model I and Model II, until 30 June 2015.

(15) 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.

(16) As regards the prolongation of the original scheme including the compensation scheme, Model I and Model II, Denmark submits that even if confidence in the Danish financial sector is growing, and the larger banks are now more financially 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 is confirmed by the Danish Central Bank in its letter of 23 September.

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10 See footnote 1.  
11 See footnote 4.  
12 See footnote 5.  
13 See footnote 9.
2014 and by Finanstilsynet - the Danish Financial Supervisory Authority ("FSA") - in its letter of 26 November 2014.

4. ASSESSMENT

4.1. Existence of State aid

(17) In its decisions of 30 September 2010, 1 August 2011 and 9 December 2011 regarding 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. That assessment is not changed by the notification of 11 December 2014.

(18) 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.

(19) For the reasons indicated in the original decision, the prolongation and the amendment decisions, 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 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 measure therefore constitutes State aid within the meaning of Article 107(1) TFEU.

4.2. Compatibility of the scheme

4.2.1 Legal basis

(20) Based on the information provided by the Danish authorities, 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.

(21) 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, 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.
(22) For those reasons regarding the persistent difficulties in the Danish banking system, the conditions that were established by the 2008 Banking Communication\textsuperscript{14} and the Commission's subsequent decisional practice and Communications (including the 2013 Banking Communication\textsuperscript{15}) continue to apply.

4.2.2 Compatibility assessment of the scheme

Appropriateness

(23) 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 the Danish authorities, the Commission considers the reintroduction of the original scheme including, the compensation scheme, Model I and Model II are 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.

(24) 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 covering precisely that type of institution, since the relatively large number of small banks is a specific characteristic of the Danish banking market.

(25) In addition, the Commission notes that the aid measures do not violate intrinsically linked provisions of Directive 2014/59/EU on bank recovery and resolution\textsuperscript{16}, which in this specific case relate to Article 44(5) and Article 59(3).

(26) In particular, the provisions of the scheme are in line with Article 59(3) of Directive 2014/59, as the scheme's 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.

(27) 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. In the case of Denmark, the relevant legislation transposing the Directive is planned to enter into force from 30

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\textsuperscript{14} 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.

\textsuperscript{15} 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).

June 2015. Therefore, it does not affect the measures subject to the present
decision.

(28) If the schemes’ criteria did not ensure that outcome, the schemes could not be
deemed appropriate since they would violate intrinsically linked provisions of
Directive 2014/59. Therefore the Commission concludes that the aid measure does
not violate the intrinsically linked provisions of Directive 2014/59.

Necessity and aid limited to the minimum necessary

(29) 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 reducing the impact on State resources below the costs
associated with a winding-up of the bank under the winding-up scheme.

(30) The Danish 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.17

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.

17 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 2013 and 2014\(^{18}\) 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 July 2015 (for the period 1 January to 30 June 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.

Conclusions on the compatibility of the aid measures

(35) The Commission agrees that the reintroduction of the original scheme, the compensation scheme, Model I and Model II, is an appropriate, necessary and proportionate measure to remedy a serious distortion of Denmark’s economy. Current circumstances 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, 11 June 2013 and 29 January 2014. The notified reintroduction of the aid measures 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 winding-up scheme, the compensation scheme, Model I and Model II can therefore be reintroduced until 30 June 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.

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.

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

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\(^{18}\) See footnotes 8 and 9.
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Yours faithfully,
For the Commission

Margrethe VESTAGER
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