



Brussels, 19.12.2016  
C(2016) 8760 final

<p>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 [...].</p>		<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**Subject: State aid SA.46871 (2016/N) – Poland  
Fifteenth prolongation of the Polish bank guarantee scheme – H1 2017**

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")<sup>1</sup>.
- (2) On the basis of subsequent notifications, the Commission approved prolongations of the scheme in its decisions of 9 February 2010 in State aid case N 658/2009<sup>2</sup>, 29 June 2010 in State aid case N 236/2010<sup>3</sup>, 16 December 2010 in State aid case SA.31923 (N 533/2010)<sup>4</sup>, 28 June 2011 in State aid cases SA.33008 and SA.32946<sup>5</sup>, 8 February 2012 in State aid case SA.34081<sup>6</sup>, 9 July 2012 in State aid case SA.34811<sup>7</sup>, 29 January 2013 in State aid case SA.35944<sup>8</sup>, 23 July 2013 in

<sup>1</sup> OJ C 250, 20.10.2009, p. 1.

<sup>2</sup> OJ C 57, 9.03.2010, p. 6.

<sup>3</sup> OJ C 205, 29.07.2010, p. 2.

<sup>4</sup> OJ C 29, 29.01.2011, p. 5.

<sup>5</sup> OJ C 237, 13.8.2011, p. 3.

<sup>6</sup> OJ C 177, 20.06.2012, p. 15.

<sup>7</sup> OJ C 246, 15.08.2012, p. 2.

<sup>8</sup> OJ C 81, 20.03.2013, p. 9.

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State aid case SA.36965<sup>9</sup>, 3 February 2014 in State aid case SA.38023<sup>10</sup>, 29 July 2014 in State aid case SA.39015<sup>11</sup>, 27 January 2015 in State aid case SA.40480<sup>12</sup>, 24 August 2015 in State aid case SA.42560<sup>13</sup>, 1 February 2016 in State aid case 43924<sup>14</sup>, and 1 July 2016 in State aid case SA.45575<sup>15</sup>.

- (3) The scheme will end on 31 December 2016; when this prolongation is authorised by the Commission, it will resume.
- (4) On 15 November 2016, Poland notified a prolongation of the scheme until 30 June 2017.
- (5) By letter dated 6 December 2016, Poland agreed exceptionally to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958<sup>16</sup> and to have the present decision adopted and notified in English.

## **2. FACTS**

### **2.1. Description of the scheme**

- (6) 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.
- (7) The extension of the original scope of the financial institutions eligible for the scheme was authorised by the Commission's decision of 28 June 2011 in State aid case SA.32946 (see recitals (11) and (13) of that decision).
- (8) 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) and (14) of that decision).
- (9) The original scope of the scheme has been 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) and (6) and commitments in Annex II to that decision). The same decision introduced an additional obligation to submit a restructuring plan within two months of granting the relevant measure (see recitals (7) and (8) of that decision).

## **3. POSITION OF POLAND**

- (10) Poland requests a prolongation of the scheme until 30 June 2017.
- (11) 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

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<sup>9</sup> OJ C 23, 25.01.2014, p. 5.

<sup>10</sup> OJ C 210, 04.07.2014, p. 1.

<sup>11</sup> OJ C 418, 21.11.2014, p.12.

<sup>12</sup> OJ C 203, 19.06.2015, p.4.

<sup>13</sup> OJ C 426, 18.12.2015, p.6.

<sup>14</sup> OJ C 161, 04.05.2016, p.7.

<sup>15</sup> OJ C 406, 04.11.2016, p.17.

<sup>16</sup> Council Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

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. The Polish authorities submit that the scheme 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 faces uncertainty related to the situation in the segment of credit unions and cooperative banks.

- (12) 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 do not allow for a termination of the scheme.
- (13) In line with the requirements of the 2011 Prolongation Communication<sup>17</sup>, 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 to this decision.
- (14) Poland submitted commitments relating to the scheme which are listed in Annex II to this decision.

#### **4. ASSESSMENT**

##### **4.1. Existence of State Aid**

- (15) 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.
- (16) 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 subject 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**

###### **4.2.1 Legal basis for the compatibility assessment**

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

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<sup>17</sup> 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).

- (18) 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<sup>18</sup>, to examine the measure under Article 107(3)(b) TFEU.
- (19) 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 credit institutions are apt to remedy that disturbance. That assessment has been confirmed in the Recapitalisation Communication<sup>19</sup> and the Restructuring Communication<sup>20</sup>. The Commission still considers that the conditions for State aid to be approved pursuant to Article 107(3)(b) TFEU are present. This view is also confirmed by the 2013 Banking Communication<sup>21</sup>.
- (20) The Commission does not dispute the position of the Polish authorities, which is also confirmed by the NBP, 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.
- (21) Therefore, the Commission continues to base its assessment of State aid measures in the banking sector on Article 107(3)(b) TFEU.
- (22) In order for 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 decisional practice<sup>22</sup> any aid or scheme must comply with the following conditions: (i) appropriateness; (ii) necessity; and (iii) proportionality.
- (23) 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*

- (24) 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 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,

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<sup>18</sup> 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).

<sup>19</sup> 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).

<sup>20</sup> 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).

<sup>21</sup> See points 4 to 6.

<sup>22</sup> 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).

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.

- (25) 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.
- (26) 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*

- (27) 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 2017.
- (28) 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.
- (29) 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*

- (30) 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 which is 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 the guarantee scheme will not enable credit institutions with structural weaknesses in their business models to postpone or avoid the necessary adjustments.
- (31) 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.

- (32) Finally, the Commission welcomes that Poland undertakes to submit individual restructuring or wind-down plans, within two months of the measure, for credit institutions which cause the guarantee to be called upon (see recital 34 of this decision), in line with point 59(e) of the 2013 Banking Communication.
- (33) 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.
- (34) 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*

- (35) The Commission welcomes, in line with point 60(c) and (d) of the 2013 Banking Communication, that Poland undertakes to present a report on the operation of the scheme every three months, on guaranteed issuances and the actual fees charged - this will be supplemented 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*

- (36) On the basis of the above, the Commission finds the notified prolongation to be in line with the 2013 Banking Communication and the Restructuring Communication. The prolongation of the Polish bank guarantee scheme remains an appropriate, necessary and proportionate measure to remedy a serious disturbance 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, 23 July 2013, 3 February 2014, 29 July 2014, 27 January 2015, 24 August 2015, 1 February 2016 and 1 July 2016.
- (37) In line with the Commission's decisional practice, the Polish bank guarantee scheme can therefore be prolonged until 30 June 2017. Any further prolongation will require the Commission's prior approval and will have to be based on a review of the developments in financial markets and the scheme's effectiveness.

## 5. COMPLIANCE WITH THE INTRINSICALLY LINKED PROVISIONS OF DIRECTIVE 2014/59/EU<sup>23</sup>

- (38) The Commission notes that the guarantee scheme does not violate intrinsically linked provisions of Directive 2014/59/EU on bank recovery and resolution and namely Article 32(4)(d)(ii). The criteria of the guarantee scheme ensure that the institutions benefitting from it will not be deemed failing or likely to fail on the sole basis of their participation in the scheme. If the criteria did not ensure that outcome, the guarantee scheme could not be deemed appropriate since it would not be apt to remedy the serious disturbance in the Polish economy.
- (39) The first subparagraph of Article 32(4) of Directive 2014/59/EU establishes that an institution shall be deemed to be failing or likely to fail and placed into resolution, (if all the other pre-conditions for resolution are met), where, *inter alia*, extraordinary public financial support is required, except when, in order to remedy a serious disturbance in the economy of a Member State and preserve financial stability, the extraordinary public financial support takes the form, *inter alia*, of a State guarantee of newly issued liabilities.
- (40) The second subparagraph of Article 32(4) of Directive 2014/59/EU provides that in order not to trigger resolution such State guarantees on newly issued liabilities must be confined to solvent institutions and must be conditional on final approval under the Union State aid framework. Those measures must be of a precautionary and temporary nature and must be proportionate to remedy the consequences of the serious disturbance and must not be used to offset losses that the institution has incurred or is likely to incur in the near future.
- (41) The Commission notes that the Guarantee Scheme is limited to solvent institutions. The guarantees granted under the scheme are of a temporary nature since the window of their issuance is limited to six months and their maturity is limited to three years and are of a precautionary nature since they only cover newly issued liabilities. The guarantees granted are also proportionate to remedy the consequences of the serious disturbance as explained in recitals (30) to (34).
- (42) The Commission therefore concludes that the notified prolongation does not appear to violate any intrinsically linked provisions of Directive 2014/59/EU. The guarantee scheme is in compliance with the requirements of Article 32(4) of Directive 2014/59/EU and, therefore, apt to remedy the consequences of the serious disturbance in the Polish economy.

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<sup>23</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, OJ L 173, 12.6.2014, p. 190.

## 6. CONCLUSION

The Commission has accordingly decided to consider the aid to be compatible with the internal market pursuant to Article 107(3)(b) TFEU and not to raise objections to the scheme.

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

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:

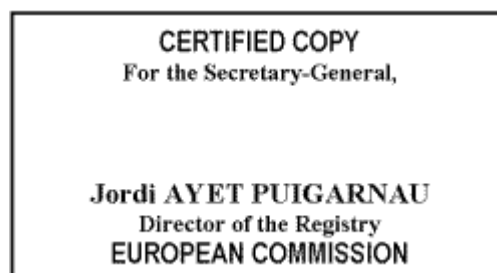
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Yours faithfully  
For the Commission

Margrethe VESTAGER  
Member of the Commission





## Annex I - Indicative fees

The following table provides indicative fees (estimate) of 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 the 2011 Prolongation Communication using updated market data<sup>24</sup>.

### **A. For the banks with an external rating**

<b>Bank name</b>	<b>Guarantee fee (in bp)</b>
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.	[85-100]
Credit Agricole Bank Polska S.A.	[85-100]
mBank Hipoteczny S.A	[85-100]
Bank Zachodni WBK S.A.	[75-90]
Bank Ochrony Środowiska S.A.	[85-100]
Bank Gospodarstwa Krajowego	[75-90]
BGŻ BNP Paribas S.A.	[85-100]
Bank BPH S.A.	[85-100]
Bank Millennium S.A.	[85-100]
mBank S.A.	[85-100]
Bank Handlowy w Warszawie S.A.	[75-90]
Bank Pekao S.A.	[75-90]

### **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 **[85-100] bp**.

<sup>24</sup> The reference period is 10/10/2013-10/10/2016. 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 74,2 bp, for the banks of the BBB-rating and below bucket: 132,4 bp;
- The median iTraxx Europe Senior Financials five-year index (parameter B): 79,4 bp;
- The median five-year senior CDS spread of all Member States (parameter C): 69,5 bp;
- The median five-year senior CDS spread of Poland (parameter D): 73,9 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 [85-100] bp.

\* [...] Business secret.

## Annex II - Commitments

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<sup>25</sup>;
- 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<sup>26</sup> 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<sup>27</sup> and, where a credit institution with a capital shortfall is in urgent need of liquidity, to submit an individual notification to the Commission; also, for banks under resolution and bridge banks, an individual notification will be submitted, and no liquidity support will be provided before the Commission grants an approval;
- 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 2017 (for the period 1 January 2017 to 31 March 2017) and by 15 July 2017 (for the period 1 April 2017 to 30 June 2017) at the latest; and

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<sup>25</sup> OJ C 356, 6.12.2011, p. 7.

<sup>26</sup> 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).

<sup>27</sup> "No capital shortfall" is certified by the competent supervisory authority, as it is established, in line with point 28 of the 2013 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 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).