EUROPEAN COMMISSION

Brussels, 8.6.2020
C(2020) 3605 final

PUBLIC VERSION

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Subject: State Aid SA.56635 (2020/N) – Poland
Tenth prolongation of the Credit Unions Orderly Liquidation Scheme

Excellency,

1. PROCEDURE

(1) On 18 February 2014, the Commission approved the Polish Credit Unions Orderly Liquidation Scheme ("the CUOL scheme" or "the scheme") until 30 June 2014 by its decision in State aid case SA.37425 ("the original decision")[1].

(2) On the basis of subsequent notifications, the Commission approved a series of prolongations[2] of the scheme until the present. The budget of the scheme was raised to PLN 6.9 billion as approved in the decision of 31 August 2018, SA.51482.

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[1] OJ C 210, 4.07.2014, p. 3.

[2] Until 31 December 2014 by its decision of 1 June 2014 in State aid case SA.38747 (OJ C 301, 5.09.2014, p. 2), until 30 June 2015 by its decision of 27 January 2015 in State aid case SA.40096 (OJ C 94, 20.03.2015, p. 9), until 31 December 2015 by its decision of 6 July 2015 in State aid case SA.42078 (OJ C 426, 7.12.2015, p. 9), until 30 June 2016 by its decision of 15 December 2015 in State aid case SA.43650 (OJ C 161, 24.04.2016, p. 1), until 31 December 2016 by its decision of 29 June 2016 in State aid case SA.45517 (OJ C 341, 16.09.2016, p. 11), until 30 June 2017 by its decision of 2 March 2017 in State aid case SA.46982 (OJ C 336, 6.10.2017, p. 9), until 1 August 2018 by its decision of 2 August 2017 in State aid case SA.48256 (OJ C 336, 6.10.2017, p. 13), until 15 July 2019 by its decision of 31 August 2018 in State aid case SA.51482 (OJ C 442, 16.11.2018, p. 6) and until 15 July 2020 by its decision of 13 August 2019 in State aid case SA.54734 (OJ C 381, 8.11.2019, p. 4).

Jego Ekscelencja
Pan Jacek Czaputowicz
Minister Spraw Zagranicznych
Al. Szucha 23
PL-00 - 580 Warszawa

(3) On 9 March 2020, the Polish authorities notified an additional prolongation of the CUOL scheme until 15 July 2021. Further information was provided on 3 April and 14 May 2020. The prolongation does not introduce any new elements as compared to the scheme initially approved by the original decision and modified in the decision of 31 August 2018 (in respect of the budget of the scheme).

(4) By letter dated 13 May 2020, Poland agreed to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ("the Treaty") in conjunction with Article 3 of Regulation 1/1958[3] and to have the present decision adopted and notified in English.

2. FACTS

Objective of the scheme

(5) The aim of the scheme is to liquidate failing credit unions in a way which is effective in protecting the exchequer, the stability of the financial system and the economy.

Description of the scheme

(6) Credit unions incorporated in Poland are the only institutions eligible to benefit from the scheme. Poland will provide up to PLN 6.9 billion to fund the scheme.

(7) The measures towards credit unions under the scheme are based on special national rules for credit unions, which are identical to the ones used in previous credit union orderly liquidation schemes[4].

(8) Under the scheme, the process is managed and administered by the Polish Financial Supervision Authority ("Polish FSA") as the supervisor, with technical support and, if necessary, financial assistance from the national Bank Guarantee Fund ("BGF"), which is the Polish deposit guarantee scheme.

(9) The Polish FSA will assess the restructuring plan of the credit union in difficulty and will implement the measures (as referred to in recital (7) of this decision) under the scheme if the restructuring plan proves that the credit union is deemed non-viable. The assessment will be based on the credit unions' financial reporting and the results of audits and on-site inspection conducted by the Polish FSA.

[3] Council Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

[4] On 9 October 2016, the Bank Guarantee Fund, Deposit Guarantee Scheme and Resolution Action (the BGF Act) entered into force providing two sets of provisions enabling to support orderly liquidation of credit unions: (i) general rules for all credit institutions, and (ii) special rules for credit unions. The first set transposed the resolution in the meaning of Directive 2014/59/EU on bank recovery and resolution, whereas the second is identical (and correspond) to the rules used in the previous credit union orderly liquidation schemes and fulfilled the criteria for compatibility with the internal market as approved in previous Commission decisions (see recital (2) of this decision). This scheme covers only the measures towards credit unions under the (ii) special rules.

(10) The tools available to the Polish authorities to implement the measures under the scheme are threefold, namely: a) the appointment of special managers, b) a transfer agreement, and/or c) a liquidation process. All of the possible aid forms[5] will be available only in the context of the transfer agreement.

(11) The funds that will be used to resolve the credit unions will be provided by the BGF.

(12) The scheme is described in detail in recitals (15) to (38) of the original decision.

Description of the credit union sector

(13) As of 31 March 2020, there were 25 credit unions active in Poland's credit union sector with a balance sheet total of PLN 9.215 billion. 23 out of 25 credit unions had a balance sheet total below PLN 500 million each. 14 credit unions representing 92.68% of the sector's assets are required to draw up and implement recovery plans[6]; four credit unions, whose assets constitute 2.46% of the sector's assets, implement recovery plans already approved by the Polish FSA. The sector's solvency ratio was 6.19% (against the minimum ratio of 5% required by law), however for three credit unions it was below the minimum ratio of 5% required by law.

Use of the scheme

(14) Up until now, the scheme has been used in 10 cases of credit unions exiting the market through a sale to a third party. The total support under the scheme has amounted to approximately PLN 1.64 billion out of which around PLN 690 million to cover differences between acquired liabilities and assets and up to around PLN 945 million in form of guarantees on acquired assets and liabilities.

3. THE POSITION OF POLAND

(15) The Polish authorities seek a prolongation of the scheme until 15 July 2021. There are no changes as compared to the scheme initially approved by the original decision and modified in the decision of 31 August 2018 (in respect of the budget of the scheme).

(16) Poland argues that the current financial situation of the credit unions' sector and the restructuring processes embarked on justify the necessity to prolong the scheme.

(17) On 9 March 2020, Poland submitted a letter by *Narodowy Bank Polski*, the Polish Central Bank, further supporting the need for the proposed prolongation to safeguard the stability of the financial system in Poland and explaining that

[5] For details concerning the available State aid measures, see recitals (28) *et seq.* of the original decision. The Polish authorities confirmed that the scheme does not foresee granting liquidity aid in the context of supporting transfers of the credit unions concerned.

[6] As referred to in Article 72a of the Act of 5 November 2009 on Cooperative Savings and Credit Unions (Journal of Laws of 2019, item 2412, as amended). In accordance with paragraph 1 of that Article, a recovery procedure plan should be drawn up for a credit union when one of the following circumstances occur: (i) a balance-sheet loss or a threat thereof; (ii) a risk of insolvency, and/or (iii) a risk of loss of liquidity.

prevailing market conditions do not allow for a termination of the scheme. The Polish authorities submitted updated information on 14 May 2020. According to the information received, as of 31 March 2020, the majority of the active credit unions, representing over 92% of the sector's total assets, were under recovery as described in recital (13). The entire sector's solvency ratio was quite close to the regulatory minimum (6.19% against 5%), and for three credit unions it was below that regulatory minimum. In addition, the sector's weakness is exacerbated by limited progress for unaided recovery through consolidation. Moreover, any bankruptcy of a credit union leads to a repayment of covered deposits. Given that the deposit guarantee fund for credit unions is small, such repayment would be also made from the deposit guarantee fund for banks. Finally, as highlighted also in Financial Stability Reports, potential contagion of financial stress from the credit unions to the banking sector through the system of deposit guarantees is among potential risks to financial stability.

(18) Poland accepts that the CUOL scheme constitutes State aid within the meaning of Article 107(1) of the Treaty, but is of the view that the proposed prolongation is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty as it is necessary in order to remedy a serious disturbance in the economy of Poland.

(19) Poland reiterates the commitments submitted along with the notification of the initial scheme, including the commitments that:

- in order to limit the aid amount to the minimum necessary, the Polish authorities commit to implement the measures related to burden-sharing contained in the 2013 Banking Communication[7];

- the Polish authorities will carry out an open and competitive process that allows the determination of the market value of the assets and liabilities to be transferred, and expect that international banks, domestic banks, cooperative banks and credit unions will be invited to bid;

- the aggregated amount of aid to a beneficiary will not exceed the amount of the pay-out to depositors which would have been made by the BGF under the deposit guarantee scheme;

- the sale of a credit union under the scheme will fulfil the conditions set out in point 17 of the Restructuring Communication[8], *i.e.*, the purchaser will demonstrate that the integrated entity will be viable;

- the Polish authorities will submit six-monthly reports on the operation of the scheme.

[7] 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.

[8] Communication from the Commission on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules (OJ C 195, 19.8.2009, p. 9).

4. ASSESSMENT

4.1. Existence of State aid

(20) As set out in Article 107(1) of the Treaty 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, save as otherwise provided.

(21) For the reasons indicated in recitals (42) to (53) of the original decision, the Commission considers that the CUOL scheme constitutes State aid. The notified prolongation of that scheme does not affect that finding. The CUOL scheme therefore remains State aid within the meaning of Article 107(1) of the Treaty.

4.2. Compatibility

Legal basis

(22) Article 107(3)(b) of the Treaty 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". In the 2013 Banking Communication, point 6, the Commission noted that in circumstances of persisting stress in financial markets and in the presence of a risk of wider negative spill-over effects, the requirements for the application of Article 107(3)(b) of the Treaty to State aid in the financial sector would continue to be fulfilled.

(23) The Commission observes that the scheme can be considered necessary to preserve the confidence of depositors in credit unions and the financial system as a whole to avoid a serious disturbance in the Polish economy. That assessment is confirmed by the role of the Polish FSA in the scheme, whereby it is only mandated to intervene when:

- it has serious concerns about a credit union's financial stability or is satisfied that there is a present or imminent serious threat to the financial stability of the credit union concerned, or

- it is convinced that the credit union concerned has failed or is likely to fail (e.g. a credit union would be in breach of any regulatory requirement imposed by the competent supervisory authority).

(24) For those reasons, the conditions that were established by the 2013 Banking Communication and the Commission's subsequent decisional practice continue to apply.

(25) The 2013 Banking Communication confirms that the Commission will continue to encourage the exit of non-viable players in an orderly manner, where such institutions cannot credibly return to long-term viability. Therefore, the

Commission considers that liquidation aid schemes for credit institutions of limited size[9] can be approved.

(26) It should be noted that the Bank Recovery and Resolution Directive[10] does not apply to the scheme at hand.

Prolongation of the CUOL scheme

(27) In recitals (57) to (75) of the original decision, the Commission analysed whether the CUOL scheme fulfilled the conditions for compatibility with the internal market. Except for the budget increase approved in the decision of 31 August 2018, the CUOL scheme has not changed since the initial approval in the original decision and there have been no relevant changes in the situation in which it will be implemented. Therefore, the Commission's assessment remains unchanged. In particular, the Commission notes that, as explained in the letter of the Polish Central Bank and the updated information submitted by the Polish authorities on 14 May 2020, *first*, as of 31 March 2020, the majority of the active credit unions, representing over 92% of the sector's total assets, were required to implement recovery plans. *Second*, the entire sector's solvency ratio was quite close to the regulatory minimum (6.19% against 5%), and for three credit unions it was below that regulatory minimum. *Third*, the sector's weakness is exacerbated by limited progress for unaided recovery through consolidation. *Fourth*, any bankruptcy of a credit union leads to a repayment of covered deposits. Given that the deposit guarantee fund for credit unions is small, such repayment would be also made from the deposit guarantee fund for banks. *Finally*, as highlighted also in Financial Stability Reports, potential contagion of financial stress from the credit unions to the banking sector through the system of deposit guarantees is among potential risks to financial stability. This demonstrates that the need for the scheme to be upheld still persists.

(28) As regards the duration of the scheme, the Commission notes that Poland requests the prolongation of the scheme until 15 July 2021. The reference of point 85 of the Banking Communication to the conditions as set out in section 3 of that

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[9] The Polish credit unions are small in size. As of 31 March 2020, the total balance sheet of the entire sector was PLN 9.215 billion, *i.e.*, below the EUR 3 billion ceiling for aid to an individual bank under a liquidation scheme as per point 86 of the 2013 Banking Communication, while 23 out of 25 credit unions had a balance sheet total below PLN 500 million each.

[10] 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. 190–348.

More specifically, reference is made to Article 2(1)(2) of that Directive and Article 2(5)(18) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013, p. 338.

Poland submits that the bank resolution regime was also extended to credit unions even though it was not required under the Bank Recovery and Resolution Directive. However, the scheme at hand does not apply in resolution but only within the credit-union-specific regime as approved in the original decision (see footnote 4).

Communication implies that the maximum six-month period of sub-section 3.3 should in principle apply to the authorisation of liquidation aid schemes for credit institutions of limited size. Nevertheless, concrete circumstances of a case may justify that the Commission exceptionally deviates from that general rule.

(29) In the present case, there are several factors reassuring the Commission that the notified scheme can be authorised for longer than a six-month period. *First*, the scheme is not implemented for the first time but it is already its tenth prolongation. *Second*, the Commission agrees that, as noted by the Polish authorities, negative external and internal conditions persist which can aggravate the situation of the entities in the sector and in order to ensure efficiency and continuity the Polish authorities would need certainty as to the applicability of the scheme during the next year. *Third*, the scheme is only available to small institutions whereby, as of 31 March 2020, all, except for two, credit unions had assets below PLN 500 million, which is significantly below the threshold of EUR 3 billion provided in point 86 of the 2013 Banking Communication. *Finally*, the Commission notes that the objective of the scheme is to allow for the orderly exit from the market of credit unions that would thus cease to exist as stand-alone competitors. Therefore, the Commission considers that it is appropriate to prolong the notified scheme for a period until 15 July 2021.

(30) In addition, schemes for small financial institutions in distress allow Member States to deal in a rapid manner with such cases with limited impact on competition. With this in mind, the Commission considers that upholding a scheme for the resolution of small banks, and extending it for a period longer than six months is in the interest of administrative simplicity and offers a proportionate administrative treatment of the potential State aid granted under the scheme.

Conclusion on the compatibility of the aid measure

(31) The prolonged CUOL scheme remains an appropriate, necessary and proportionate measure to remedy a serious disturbance in Poland's economy and does not alter the Commission's previous assessment in the original decision. Therefore, the notified prolongation is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty.

(32) The CUOL scheme can therefore be prolonged until 15 July 2021. Any further prolongation or extension will require the Commission's approval.

(33) Finally, the Commission notes that Poland agreed to have the present decision adopted and notified in English for reasons of urgency.

5. CONCLUSION

The Commission has accordingly decided: not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

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Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

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