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WORKING LANGUAGE

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Subject: State Aid N 236/2010 – Poland
Second extension of the Support scheme for banks' funding in Poland

Sir,

I. PROCEDURE

1. On 7 of April 2009 Poland notified a support scheme for banks' funding in Poland (hereinafter "the support scheme" or "the scheme"), which was approved by Commission decision of 25 September 2009 in State aid case N 208/2009 (hereinafter "original decision")[1]. On 26 November 2009 Poland notified an extension of the scheme, which was approved by the Commission decision of 9 February 2009 in State aid case N 658/2009[2].
2. On 8 June 2010 Poland notified further extension of the scheme. The Commission requested additional information which was submitted on 18 June 2010.

[1] OJ C 250, 20.10.2009, p. 1.
[2] OJ C 57, 9.03.2010, p. 6.

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II. DESCRIPTION

1. The objective of the scheme

3. On 13 March 2009 the Law on the provision of State Treasury support to financial institutions[3] came into force. It aims at reinforcing stability in the Polish financial markets with a support scheme in order to address the short- and medium-term financing needs of financial institutions.

2. Description of the scheme

4. The support scheme specifies six categories of financial institutions established in Poland that are eligible to benefit from the scheme. These are banks registered in Poland, registered insurance undertakings, brokerage houses, investment funds, pension funds and cooperative savings and credit unions, which are considered as solvent by the Polish authorities.
5. The measures provided under the scheme can be subdivided into two following categories: State Treasury guaranties and State Treasury bonds-related support measures.
6. Under the scheme the Polish authorities make available a Treasury guarantee for the issuance of new short- and medium-term debts. In addition the scheme foresees support through the issuance of Polish Treasury securities to credit institutions. The Polish Government may issue and lend Polish Treasury bonds in order to enable the institutions to obtain immediate liquidity from the markets.
7. The above-mentioned guarantees are accessible to banks only, while the lending and sales of the Treasury bonds are open to all beneficiaries eligible under the scheme.
8. Under the original scheme, the beneficiary of the guarantee must pay a fee based on the Recommendations of the European Central Bank[4].
9. As regards the fees on the lending of the Treasury bonds or sale of the Treasury bonds the fee cannot be lower than Lombard credit interest rate[5] and will be below the level of a doubled Lombard interest rate.
10. The first prolongation of the scheme did not include any amendments to the conditions.

3. Extension of the scheme

11. According to the notification of the extension the scheme has not been used to date. Although at present no measures have been issued under the scheme, the Polish authorities submit that the existence of the scheme contributes to maintaining stability of the financial system since Polish financial institutions continue to be exposed to aggravated risks. The renewed financial market turbulence in some Member States elevated aversion to liquidity risk. The scheme helps to reassure financial markets by announcing the Polish authorities' commitment to support financial institutions.

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[3] Ustawa z dnia 12 lutego 2009 r. o udzielaniu przez Skarb Państwa wsparcia instytucjom finansowym (Journal of Law No 39, item 308 as amended).

[4] Recommendations on Government Guarantees on Bank Debt of the European Central Bank of 20 October 2008.

[5] Lombard interest rate is the rate charged to banks by the central bank for collateralized loan obligations. For detail see the original decision. On 21 June 2010 the Lombard interest rate was 5 %.

12. The foregoing justification has been supported by a letter from the Polish Central Bank, Narodowy Bank Polski dated 28 May 2010.

III. Position of Poland

13. The Polish authorities seek the extension of the scheme for a further six-month period from 1 July 2010 until 31 December 2010. Poland confirms that the budget of the extended scheme will remain at the original level.

14. As regards the guarantee part of the scheme, Poland undertakes to charge beneficiary banks a guarantee fee that is higher than under the pricing formula recommended by the ECB in October 2008 at least by:

    - 20 basis points for banks with a rating of A+ or A (or with the analogical rating),
    - 30 basis points for banks rated A-, and
    - 40 basis points for banks rated below A-. Banks without rating will be considered to belong to the category of banks with a BBB rating.

15. Poland also undertakes to present a viability review for every bank that is granted guarantees on new liabilities as from 1 July 2010 and for which at the time of the granting of new guarantees the total outstanding guaranteed liabilities (including guarantees accorded before 1 July 2010) exceed both a ratio of 5% of total liabilities and the total amount of EUR 500 million[6]. The viability review will be communicated to the Commission within three months of the granting of guarantees and will comply with the principles set out in the Restructuring Communication[7]. In particular, it will cover the solidity of the funding capacity of the bank concerned; where necessary and in any event where requested by the Commission in case of doubt, a liquidity stress test will be carried out. No separate viability review has to be presented for banks that are already in restructuring or obliged to present a restructuring plan or subject to a pending viability review at the time new guarantees are granted.

16. The fees for the lending/sale of bonds will remain unchanged.

17. In addition to the existing commitments concerning reporting obligations, Poland undertakes to submit to the Commission a concise mid-term review on the operation of the support scheme by 15 October 2010 at the latest.

18. Poland undertakes to maintain the commitments made since the introduction of the support scheme and confirms that all other conditions as defined by the Commission decisions of 25 September 2009 and 9 February 2010 remain unchanged.

IV. Assessment

19. In its decision of 25 September 2009, the Commission concluded that the support scheme constitutes State aid within the meaning of Article 107(1) TFEU. However, it found that the measures were compatible with the internal market under Article 107(3)(b) TFEU, because they were apt to remedy a serious distortion of the Polish economy. To this end,

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[6] Currently it corresponds to approx. PLN 2040 million.

[7] The Commission communication 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.

the Commission had assessed the appropriateness, necessity and proportionality of the measure.

20. The Commission observes that the extension of the scheme is a response to the continuing financial difficulties that most Member States continue to experience. Since the objective of the measure is to provide short- and medium-term financing to financial institutions which are unable to obtain funds on the financial markets, it is important to ensure the availability of the support scheme as long as the global financial crisis continues.

21. Although access to funding for banks has gradually improved in most funding markets over the past year and is no longer a systematic and generalized problem, markets have not yet fully returned to entirely normal functioning. Against this background and taking into account the residual fragility of recovery process and the possibility of setbacks in that process, the continuation of a support scheme can be deemed necessary to ensure financial stability as confirmed by the letter from the Polish Central Bank, Narodowy Bank Polski. The Commission therefore considers that the extension of the scheme for a further six months is appropriate and necessary to remedy a disturbance of the Polish economy.

22. On the basis of the above, the notified extension of the support scheme does not alter the Commission's previous assessment in the decision of 25 September 2009 and the extension decision of 9 February 2010.

23. As regards the specific features of the guarantee scheme, in assessing the request for the extension the Commission has to balance its positive effects for financial stability with the distortions of competition and the delay in the return to a normal functioning of the financial markets that the extension entails. Guarantee schemes should contain minimum exit incentives, and a gradual alignment to market conditions should take place in order to minimise negative spill-over effects on competitors and other Member States.

24. The gradual stabilisation of the market situation and the resulting reduction of the risk premium for unguaranteed debt have brought about a first step towards an alignment with market conditions, whilst providing an exit incentive for the sounder institutions. Lower-rated banks for which bond issuances with a government guarantee still hold considerable economic benefits have become the prime users of guarantee schemes.

25. It is necessary to minimise distortions across banks in the internal market and avoid the risk of State aid dependence. There should therefore be an adjustment of the terms on which banks may retain, for the time being, the possibility of accessing government guarantees schemes.

26. On the basis of these considerations, the prerequisites for the compatibility of guarantee schemes with Article 107(3)(b) TFEU that have been established by the Banking Communication[8] and the Commission's subsequent decisional practice continue to apply but need to be complemented by requirements aimed at achieving two objectives.

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[8] Communication from the Commission — 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, p. 8.

27. First, banks should be incentivised to scale down or terminate their recourse to government guarantees by means of pricing rules that bring the funding costs of beneficiary banks closer to market conditions and thereby reduce distortions of competition. This should be achieved by an increase in the guarantee fee[9] in comparison with the ECB recommendations of October 2008 that amounts at least to 20 basis points for banks with a rating of A+ or A[10], 30 basis points for banks rated A-[11], and 40 basis points for banks rated below A-[12].

28. Second, the use of guarantee schemes should not enable banks with structural weaknesses in their business models to postpone or avoid the necessary adjustments. To this end, the Member State concerned should present a viability review for any bank that requests new guarantees under a scheme which take or keep the total amount of the bank's outstanding guaranteed liabilities above 5% of the bank's total liabilities and above the absolute amount of EUR 500 million[13]. The viability review should be presented on the basis of the parameters established in the Restructuring Communication within three months of the granting of the guarantees[14]. The viability review will either confirm the bank's long-term viability without State support or indicate the need to confront the necessity of further-reaching restructuring.

29. The Commission considers that the notified extension until 31 December 2010 of the State support scheme complies with the requirements set out above and is compatible with the internal market. In particular, the Commission notes positively that the Polish scheme remains fully in line with these requirements and Poland provided commitments concerning new pricing conditions (an increase in the guarantee fee) and viability review requirements (see points 14 and 15 above).

30. Regarding the fees on the lending of the Treasury bonds or sale of the Treasury bonds the Commission considers that although the fees remain unchanged (while the guarantee premiums would be increased), the conditions of granting continue to be market-oriented. Financial institutions will pay to the Polish State a remuneration which is above the increased fees on guarantees plus an appropriate base rate covering funding costs.

31. As regards the combination of this guarantee scheme with other aid measures, as indicated in the Annex to the Restructuring Communication, any restructuring plan should contain all State aid received as individual aid or under a scheme during the restructuring period and all such aid needs to be justified as satisfying all criteria prescribed by the Restructuring Communication (i.e. return to viability, own contribution by the beneficiary and limitation of competition distortion). Accordingly, once a Member State is under an obligation to submit a restructuring plan for a certain aid beneficiary, the Commission needs to take a view in its final decision as to whether any aid granted

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9 For liabilities of all eligible maturities.

10 Or A1 and A2, depending on the rating system employed.

11 Or A3, depending on the rating system employed.

12 Banks without rating will be considered as having a BBB rating.

13 See footnote 6.

14 Except where the bank concerned is already in restructuring or subject a pending viability review on the basis of a restructuring or viability plan; in those circumstances the award of additional State aid will be assessed within the framework of the ongoing restructuring/viability review process.

during the restructuring period satisfies the criteria required for the authorisation of restructuring aid. To this end an individual *ex ante* notification is necessary.

32. Furthermore, the Commission recalls that based on point 16 of the Restructuring Communication, if aid not initially foreseen in a notified restructuring plan is necessary for the restoration of viability, this additional aid cannot be granted under an approved scheme but needs to be subject to individual ex ante notification and any such further aid will be taken into account in the Commission's final decision on that bank.

33. In addition to the above, Poland agrees to continue to comply with the pre-existing reporting requirements and to complement its future reports on the operation of the scheme with updated available data on the cost of comparable (nature, volume, rating, currency, etc.) non-guaranteed and guaranteed debt issuances. This will allow the Commission to assess the appropriateness, necessity and proportionality of possible further extension of the scheme beyond 31 December 2010 and the conditions for such extensions. Any further extension 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.

V. DECISION

The Commission concludes that the extension of the scheme until 31 December 2010 does not alter its previous assessment in the original decision of 25 September 2009 (State aid case N 208/2009) and subsequent extension decision of 9 February 2010 (State aid case N 658/2009) that the measures under the scheme are compatible with the internal market. Therefore, since it fulfils the conditions to be considered compatible with internal market under Article 107(3)(b) TFEU the Commission has decided not to raise objections.

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Your request specifying the relevant information should be sent by registered letter or fax to:

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Yours faithfully,

For the Commission

Joaquín ALMUNIA

Vice-president of the Commission