



EUROPEAN COMMISSION

Brussels, 24.5.2011
C (2011) 3639 final

Subject: NN 52/2010 – Denmark
Amendments to liquidation aid to Roskilde Bank

Madam,

I. PROCEDURE

- (1) The Commission approved by its decision of 31 July 2008 in case NN 36/2008¹ (hereinafter "rescue decision") a package of rescue aid measures in favour of Roskilde Bank subject to the submission of a restructuring or liquidation plan within six months of the decision. Liquidation aid was approved by the Commission in its decision of 5 November 2008 in case NN 39/2008² (hereinafter the "liquidation aid decision").
- (2) On 14 January 2009 Denmark informed the Commission about several changes to the terms of the liquidation aid. The Commission requested outstanding information on 27 January 2009 to which Denmark replied by letter dated 20 February 2009, accompanied by a new liquidation plan. Denmark informed the Commission in its submission of 20 February of the first conversion of debt into equity carried out on 30 January 2009. The submission of 20 February 2009 further included the annual report of Roskilde for 2008 and a letter by the Danish Bankers' Association dated 11 February 2009 expressing views regarding refusal of some of its members to take over certain customers from Roskilde Bank, the maintenance of Roskilde Bank's banking license and distortion of competition. Additional documentation was submitted by Denmark on 3 and 17 March 2009. By letter of 3 June 2009, Denmark requested a postponement of the deadline to answer the third series of questions of the Commission dated 27 May 2009 until 5 July 2009. Denmark submitted the answers on 6 July 2009.

¹ OJ C 238, 17.9.2008, p. 5.

² OJ C 12, 17.1.2009, p. 3-4.

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- (3) Further, on 7 January 2010, Denmark informed the Commission about a second conversion of debt into equity carried out on 30 December 2009. On 7 July 2010 it informed the Commission about a third conversion carried out on 30 June 2010.
- (4) On 8 February 2010, Denmark provided initial commitments so as to mitigate distortive effects of the amendments on competition, which were later amended on 25 May 2010 and 25 November 2010. The list of commitments was submitted by Denmark on 17 December 2010.
- (5) By the same letter Denmark accepted that this decision is exceptionally adopted in the English language.
- (6) Further, on 7 January 2011, Denmark submitted information regarding the then ongoing sale of the private customer portfolio.
- (7) On 27 January 2011, Denmark submitted additional information, including an update of the main milestones of the liquidation plan. The submission of 27 January 2011 and a number of commitments submitted on 17 December 2010 were supplemented by Denmark by letters dated 15 February 2011 and 4 April 2011.
- (8) By means of a separate letter dated 15 February 2011, Denmark informed the Commission regarding a possible merger of two or more financial institutions in wind-down mode, managed by the Financial Stability Company (hereinafter "FSC"), so as to generate cost savings and increase efficiency of the process.
- (9) The list of commitments was finalised by Denmark on 6 May 2011, including the changes resulting from a prospective merger of the financial institutions managed by the FSC.
- (10) On 6 May 2011, Denmark submitted additional information regarding the envisaged restructuring of the financial institutions managed by the FSC and the FSC's annual report for 2010, incorporating information regarding the wind-down process of Roskilde Bank.
- (11) Since at least some of the amendment measures were put into effect by Denmark without waiting for the Commission's approval, notably in respect of the timing for handing in the banking licence, the measures were registered as non-notified aid.

II. DESCRIPTION

II. 1. Roskilde Bank

- (12) Roskilde Bank A/S was, before the State intervention, Denmark's eighth-largest bank with a balance sheet total of DKK 42.9 billion (approx. EUR 5.7 billion) as of 31 March 2008. Roskilde Bank failed due in particular to its heavy exposure to the real estate market, particularly in connection with property development projects, and shortcomings in credit risk management³. In the context of the crisis it had to make large write-downs, as a result of which it did not meet regulatory solvency requirements.

³ It is noteworthy that a legal enquiry has been conducted into the matters leading to Roskilde Bank's financial collapse in 2008. The findings of the enquiry were announced in a report dated 5 August 2009. Based on the report prepared, a writ has been filed against members of the former board of directors, management board and auditors.

Hence, in July 2008 it contacted the Danish authorities and the Danish National Bank, requesting emergency support.

II. 2. Liquidation process as per liquidation aid decision of 5 November 2008

- (13) Following rescue measures and a failed attempt to sell the bank, in October 2008 the Danish National Bank together with the private contingency association "Det Private Beredskab" (composed of members of the Danish Bankers' Association, hereinafter "DPB"⁴) took over the assets and liabilities of former Roskilde Bank except for Tier 1 capital and subordinated loans, and transferred them into a newly established bank (hereinafter ""new" Roskilde Bank" or "Roskilde Bank") for the purpose of controlled winding-up of the activities of former Roskilde Bank, i.e., a progressive sale/liquidation of the bank's assets, thus ensuring the best possible financial gain while fully redeeming the senior creditors of the bank⁵.
- (14) In March 2009 the ownership of Roskilde Bank was transferred from the Danish National Bank to the FSC, a State-owned winding-up company approved by Commission decision of 10 October 2008 in case NN51/2008 *Guarantee scheme for banks in Denmark*⁶.
- (15) The liquidation of Roskilde Bank was planned to be carried out in two phases in a relatively short period of time to avoid erosion of the value of assets.
- (16) In the first phase of the liquidation, Roskilde Bank would sell branches and redeem its senior creditors. That phase was intended to last only "a few weeks after 6 October 2008" and to end with the surrender of the banking licence. The bank undertook inter alia not to accept any new customers already in the first phase of the liquidation.
- (17) In the second phase Roskilde Bank had to entirely exit any banking activities and to become a pure winding-down operation, thus, no longer acting in a competitive environment. The Danish authorities initially intended to conclude the liquidation of all the assets within two years, the sole exception being made to claims in respect of clients that would declare bankruptcy (their liquidation would have continued under regular bankruptcy procedure).

II. 3. Liquidation measures approved in Commission's Decision of 5 November 2008

- (18) Roskilde Bank was considered to be a bank of systemic importance in Denmark and thus the designed measures aimed at a controlled liquidation of the bank so as to maintain the stability of the Danish financial system, thus remedying a serious disturbance in the economy of Denmark.
- (19) The measures approved by the Commission as liquidation aid in the liquidation decision were:

⁴ Det Private Beredskab it is an association set up on 13 June 2007 by the 137 members of the Danish Bankers' Association, including Roskilde Bank. The Danish authorities explained that all members of the Danish Bankers' Association are private financial institutions. See recital 28 of the rescue decision.

⁵ For further details regarding the transfer and establishment of the "new" Roskilde Bank, see the liquidation aid decision at recitals 6 and following.

⁶ OJ C 273, 28.10.2008, p. 2.

- i. A credit facility for the amount necessary to effectuate timely repayment of all senior creditors in the bank with an interest rate of DNB's base rate + 2%. As of 6 October 2008 it stood at DKK 36.8 billion.
 - ii. A subordinated loan (Tier 2 capital) of DKK 2 billion at an interest rate of DNB's base rate + risk rate of 4.85% p.a.
 - iii. A capital injection in the form of class-A shares (Tier 1 capital) for the amount of DKK 1.72 billion. The FSC would receive back the capital subscribed together with the interest amounting to DNB's base rate + risk rate of 4.85% p.a. at the end of liquidation process of the "new" Roskilde Bank, to the extent that sufficient assets remain after satisfying the above claims.
- (20) In addition, support was also provided by the DPB (in a junior form of capital compared to the support provided by the State). Capital for the amount of DKK 0.75 billion in the form of class-B shares bearing the same interest of DNB's base rate + risk rate of 4.85% p.a. Pursuant to an agreement between the DPB and the FSC of 21 July 2009, the ownership rights in respect of that capital were transferred from the former to the latter for the price of DKK 0.
- (21) The resulting structure of State measures in the form of (contingent) liquidity assistance and equity at subscription value in the "new" Roskilde Bank was as follows (in order of priority of claims):
- | | |
|---------------------------|---------------------------------------|
| 1) Senior loan | DKK 36.8 billion (base rate + 2%); |
| 2) Tier 2 capital | DKK 2 billion (base rate + 4.85%); |
| 3) A-class Tier 1 capital | DKK 1.72 billion (base rate + 4.85%); |
| 4) B-class Tier 1 capital | DKK 0.75 billion (base rate + 4.85%). |
- (22) The investors in equity and subordinated/hybrid capital of former Roskilde Bank remained with the shell company emptied of all assets and senior liabilities. They were entitled to receive a compensation for the capital invested via a so-called "earn-out" mechanism only after the above claims would be satisfied, which was considered highly unlikely.
- (23) The Commission approved the liquidation aid measures (outlined in recital (19) above) on the basis of the following considerations⁷:
- i. Roskilde Bank had discontinued serving new clients and the banking licence had to be handed in within a few weeks time;
 - ii. the second phase of liquidation of assets, when the bank would continue operating without the licence, was intended to last for only two years. The only outstanding assets that were planned to remain after two years were the loans in respect of clients in bankruptcy proceedings.

II.4. Difficulties to implement the liquidation plan

- (24) Denmark explains that the situation in the financial markets at the end of 2008 and beginning of 2009 deteriorated. That deterioration in turn led to financial institutions being unwilling to accept new commitments, including customers.

⁷ See recitals 84-86 of the liquidation aid decision.

- (25) As described in points 25 to 34 of the liquidation aid decision, a total of DKK 9.3 billion of loans and DKK 4.9 billion of deposits and 21 branches were sold to three buyers (Nordea Bank, Spar Nord Bank and Arbejdernes Landsbank) in the approved liquidation plan. The transfer entailed customer transfer, hence including both relationships with it: deposits being a liability for a bank and loans being an asset for a bank, though in this case those loans were in all likelihood to a certain extent impaired given the creditworthiness of some of Roskilde Bank's customers. No separation between loans and deposits was allowed in the sale transaction. However, according to the transfer agreements the buyers retained the right to return the loans acquired (at book value) during a six-week period, as described in point 36 of the liquidation aid decision. In the worst case scenario, as estimated at the time, 50% of the assets would be returned.
- (26) Notwithstanding the above estimation, more than 50 % of the corporate commitments have been returned by the buyers under the clause described above. A large number of private customers has also been returned.
- (27) The retention of the banking licence is related to the timing of the disposal of deposits. As long as the bank retains deposits it has to hold a banking licence. According to the Danish authorities the large number of private clients returned by the buyers does not allow the banking licence to be surrendered in line with the timing approved in the liquidation aid decision, i.e. within a few weeks from the liquidation aid decision (point 85).
- (28) In the letter by the Danish Bankers' Association submitted to the Commission by Denmark on 20 February 2009, the Danish Bankers' Association takes the view that the retention of the banking licence by Roskilde does not distort competition among banks. Further it considers that the business terms and conditions offered by Roskilde are not competitive.
- (29) In addition, the financial situation of the bank remained dire and, due to substantial loan impairments, it ended 2008 with a loss of DKK 3,501 million. As a result, the company's equity as of 31 December 2008 was significantly negative. The impairment projections were increased for the fourth quarter 2009 to DKK 2.1 billion and for second quarter 2010 to DKK 2.2 billion. Roskilde's capital base had been increased because of the readjustments in the impairments projections in order to continue to comply with regulatory requirements. Those increases of capital took place on 30 January and 30 December 2009 and 30 June 2010 as explained in point (40) below.
- (30) Credit quality continued to deteriorate in 2010, resulting in additional impairment losses on loans, advances and guarantees of DKK 2.7 billion, mainly related to the property sector. At 31 December 2010, Roskilde Bank had total assets of DKK 8.8 billion and net lending (loans and advances after impairment losses) of DKK 6.5 billion. Roskilde Bank has acquired land and buildings valued at DKK 1.5 billion through its subsidiary Rosk Ejendomme.

II.5. Description of amendments to the liquidation aid decision

- (31) Denmark has requested changes to the terms of the liquidation aid decision in respect of (i) an extended time frame of the liquidation process; (ii) conversions of debt into equity in the bank in order to meet regulatory requirements and (iii) the possibility to merge

financial institutions in wind-down in order to achieve efficiencies and cost savings. The requested amendments are described in detail below.

Liquidation plan

- (32) A newly prepared liquidation plan for 2009-2012⁸ has been provided which sets out the following main milestones of the liquidation process as carried out until the end of 2010 and intended thereafter (see Table below).

Table 1: The main milestones of the liquidation process of Roskilde Bank

	<i>Factual</i>					<i>Projected</i>	
	YE 2007	31.10.2008, before sale	YE 2008, After sale	YE 2009	YE 2010⁹	YE 2011	YE 2012
Number of commercial customers¹⁰	14,425	13,617	5,422	4,076	2,714	1,610	1,265
Number of private customers	90,074	83,902	10,505	8,156	5,532	1,700 ¹¹	1,500 ¹¹
Commercial loans and guarantees, in nominal value, DKK million	32,154	30,508	27,924	21,138	17,128	15,200	9,700
Private loans and guarantees, in nominal value, DKK million	12,818	10,594	4,698	3,594	870 ¹²	n.a.	n.a.
Commercial deposits, DKK million	11,484	4,910	1,802	1,025	733	150	0
Private deposits, DKK million	6,406	4,127	363	294	78	n.a.	0
Total assets, DKK million	41,983	54,243	29,366	16,261	8,806		
Number of employees	654	612	234	209	203	150	80
Return before taxes, DKK million		n.a.	-3,501	-3,843	-2,327	-785	-202
Accumulated write-downs and provisions				10,272	10,381	9,700	5,600

- (33) In order to speed up the liquidation process, on 3 December 2010 the FSC made a public announcement that it was willing to sell retail customers (either partly or fully). The information regarding details of the portfolio was sent, upon request, to 11 financial

⁸ As updated by submissions of 8 February 2010 and of 27 January 2011.

⁹ The actual figures for 2010 are based on the submission dated 27 January 2011, thus some of the figures could be subject to change as a result of the finalization of accounts by Roskilde Bank and their audit.

¹⁰ Number of commercial and private customers constitutes individual customers.

¹¹ CPR-customers, who are either subject to debt collection treatment or closely related to/ constitute a commercial customer commitment.

¹² The private customer portfolio with a total book value of around DKK 800 million was sold in the 1st quarter of 2011. That portfolio is made up of ordinary poor quality private customers who are neither subject to debt collection treatment nor closely related to a commercial commitment. After the sale there is no individual budget figures for private customers because the total portfolio is in all material aspects related to commercial customers. Therefore there are only figures for commercial loans etc. and commercial deposits. The figure of DKK 17,128 "2010 end" for "Commercial loans, etc." includes the remaining private customers who are either subject to debt recovery (insolvency) treatment or who are related to/constitute a commercial customer commitment.

institutions. [...]*, Arbejdernes Landsbank, made an offer to assume the private customer portfolio. In the negotiations with Arbejdernes Landsbank, the offer was further improved. According to Denmark, viewed in the context of an open, transparent and non-discriminatory sales process that had been implemented, the offer was considered as expressing the market value of Roskilde Bank's private customer portfolio. The portfolio consisted of approximately 4,000 customers, mostly retail, with a total book value of around DKK 800 million. On 31 March 2011, Denmark closed the sale of the private customer portfolio and had those customers transferred. The private customer portfolio consisted of transactions in respect of ordinary customers, which were neither subject to debt recovery treatment nor closely related to/constitute a commercial commitment.

Time framework for liquidation

- (34) Denmark submitted that the banking licence could not be withdrawn within a short period of time as initially expected, due to outstanding deposits. The outstanding deposits were related, amongst others, to the existence of specific overdraft accounts where the salary of a mortgage subscriber is directly transferred to the overdraft account as credit.
- (35) The timeframe for the second phase of the liquidation had also to be extended. Since the bank still has commercial customers with deposits etc. the bank is not able to surrender its banking license, even though it had sold the private customer portfolio.
- (36) According to the liquidation plan, at 31 December 2012 the bank is anticipated to have only loans left (with a scheduled settlement¹³ or loans in an insolvency process, with collateral, pending realization). It is further expected that those customers will merely have loans and guarantees with the bank, but no deposits or payment management products.
- (37) In respect of outstanding loans, Denmark confirmed that insolvency proceedings will be the preferred option in case of non-performing loans unless the bank considers that another solution for the customer in question will result in a better financial outcome for the bank.

Possibility to merge financial institutions in wind-down

- (38) Denmark is currently considering a possible reorganisation of the FSC, in order to increase efficiency and save costs. That project would result in an internal re-organisation of the different entities held by the FSC and would, amongst others, bundle activities for which a banking licence is needed from different wind-down banks into one entity with a banking licence (FS Bank). That move would allow the FSC to keep only one entity with a banking licence, operating, amongst others, the remaining assets of Roskilde which need such a license.
- (39) However, the run-down of the loan portfolios will not be followed at the level of an individual former bank, but at an aggregate level instead. Under the new group structure,

* Confidential information.

¹³ Customers subject to an agreed settlement plan are customers that comply with an agreed plan on how to settle their debt.

Roskilde Bank will form part of FS Finans¹⁴, which will not have a banking license. The time frame for liquidation of FS Finans is anticipated to be fairly long, a minimum of five years. The settlement will continue to be effected by actual individual settlement of commitments. Alternatively, settlement could be effected by 'pooling' of similar commitments, which FS Finans would then try to transfer as 'a whole'.

Aid measures

- (40) Part of the senior and subordinated debt (outlined in recitals (19).i and (19).ii above) was converted into equity in order to satisfy regulatory solvency requirements which had to be met in view of the retained banking licence. Through the conversions carried out on 30 January and 30 December 2009 and 30 June 2010, DKK 1 billion of the Tier 2 loan and DKK 8.7 billion of the senior loan were converted into A-class equity.
- (41) As a result the bank's liquidation aid consists of a senior loan (reduced to DKK 28.1 billion), Tier 2 capital of DKK 1 billion and Tier 1 capital of DKK 11.423 billion, a large share of which has been written down to cover impairments of assets.
- (42) Given that the State liquidity was provided in order to redeem all senior creditors (see recitals (13) and (19)), whilst the legacy capital-holders remained in the former Roskilde Bank, the form of State measures (i.e. whether in the form of liquidity assistance, or subordinated debt or equity) does not affect the outcome for the State in terms of amount recovered at the end of the liquidation process of Roskilde Bank. Hence, the above debt-to-equity conversions did not change the State funds at risk.
- (43) According to current projections no more conversion of debt to equity will take place.

Commitments provided by Denmark to mitigate the effects of the amendments on competition

- (44) The following commitments have been provided by Denmark in respect of the liquidation of Roskilde Bank so as to mitigate the effects on competition resulting from the above-mentioned amendments, which also take into account the prospective restructuring of the companies managed by the FSC,:
 - i. Pricing. The interest rates offered by the new companies in the new FSC structure (i.e. FS Bank, FS Finans and FS Pantebrevsselskab) for loans and deposits will be placed above the 90%-quantile and below the 10%-quantile respectively in the Danish National Bank's interest rate statistics, which includes reports from the 30 largest Danish banking groups. The Danish government will on a six-monthly basis report to the Commission the interest rates offered by FS Bank, FS Finans and FS Pantebrevsselskab and the Danish National Bank's interest rate statistics.
 - ii. No companies in the new FSC structure will grant any loans to new corporate or private customers. Further, the Danish authorities confirmed that the relationship

¹⁴ According to the information submitted to date, upon restructuring of companies managed by the FSC, customer activities will be allocated according to the following principle. Customers requiring a banker for their continued operation will be served by FS Bank. All other customers will be allocated to FS Finans or FS Pantebrevsselskab (Mortgage company). All mortgage deeds and ready-to-be-sold properties will be transferred to FS Pantebrevsselskab. All investment properties will be transferred to FS Ejendomsselskab (Property company). The group's own portfolio of securities, including listed shares, will be transferred to the FSC. Responsibility for processing all private customer disputes and pending actions/litigation against former managements/boards of directors etc will be transferred to the FSC. The new structure is expected to be in place by 30 June 2011 at the latest.

with customers with ordinary deposits only has already been terminated (the special deposits described in point (34) were included in the transfer of the private customer portfolio). The outstanding security dealer licence is merely held due to legal requirements in respect of custody accounts containing customers' shares in Roskilde Bank (as they are without any real value, they cannot be sold) and its usage will be limited thereto.

- iii. Further advances on existing loans will only be granted in situations where they are necessary to preserve or increase the outlook of repayment to Roskilde Bank or the relevant FSC company of outstanding loans. In addition, the following quantitative limits regarding the amount of further advances on existing loans will apply:
- the level for an individual corporate client will be capped at 20% of the existing loan as of date of this decision;
 - advances for corporate customers as a category at an aggregate level will be capped at 2.5% of the corporate loan portfolio in Roskilde Bank or, in the event that the financial institutions in wind-down mode managed by the FSC are merged, the advances will be capped at 2.5% on an aggregate amount for the merged portfolios in the FSC companies, where relevant.
- iv. The progress of the liquidation process will be reported to the Commission on a yearly basis. The Danish government will include in the yearly report a full description of the running-down process, sold assets, new/continuing and ancillary activities etc. Within the annual reports, Denmark will also report on whether the circumstances in the financial markets remain such that running down the portfolio remains a financially more advantageous solution for the Danish State than selling it in full or in part. Should the monitoring show that that a sale of the portfolio is the economically more advantageous option, a sale will be initiated without delay.

(45) The bank has started complying with some of the commitments and implementing some of those measures ahead of this Commission decision. For instance, it introduced a new interest policy phased in gradually from 1 July 2009. Also, the terms mitigating the competition distortions caused by the aid granted to the companies in wind-down managed by the FSC were set out in the winding-up order (executive order no. 1139 of 28 September 2010), which came into force on 1 October 2010.

III. POSITION OF DENMARK

(46) In respect of the necessity of the amendments, the Danish authorities explained that whilst at the time the liquidation aid decision was taken the government believed that customers could be transferred within a relatively short period of time, shortly after it was adopted the government received indications that credit institutions would not be willing to take over the remaining customers at all. That development was due in particular to the worsened situation on the financial markets.

(47) However, Denmark considered that the changes did not entail any significant detrimental effects on competition. First, other financial institutions were not willing to take over the customers remaining with Roskilde Bank. Second, Roskilde Bank retained only the least creditworthy clients. Third, the amounts involved were trifling.

(48) In relation to the conversion, Denmark claimed that the government's exposure has not increased, since in light of the priority of claims the conversion did not change the prospects for the State to recover the amounts granted.

- (49) In conclusion, the Danish authorities claim that the amendments are of minor importance whilst being necessary to maintain financial stability, and are hence compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union (TFEU).
- (50) In respect of the potential merger, Denmark also submitted that when the structural change has been implemented it will be possible to follow the winding-up of customer relationships in Roskilde Bank in line with the above commitments.

IV. ASSESSMENT

IV.1.State aid character of the amended measures

- (51) As set out in 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.
- (52) In line with the assessment of the measures approved in the liquidation aid decision (set out in recital (19) above), the amended measures constitute aid to the bank pursuant to Article 107(1) TFEU.
- (53) The Commission notes that the participation of the DPB in equity in the form of B shares was not considered to constitute aid in the liquidation aid decision. The transfer of those shares to the State for no remuneration also does not entail State aid.
- (54) It remains to be examined whether the conversion of subordinated and senior debt into Tier 1 capital constitutes an increase in liquidation aid in favour of Roskilde Bank.
- (55) The conversion appears to provide an advantage to Roskilde Bank, since it allowed the bank to avoid imminent bankruptcy proceedings and instead to be liquidated in a solvent and controlled manner. Hence, albeit in a very constrained manner the bank can remain operating on the market.
- (56) However, there are no additional State resources invested in the conversion. As mentioned above, the purpose of the controlled winding-up process is to redeem all senior creditors. To that end, the Danish State has provided sizeable contingent liquidity assistance to Roskilde Bank. The contingency capital holders remained in the former Roskilde Bank and hence are unable to benefit from State measures in any way, which maximises their burden-sharing. As a result, the conversion merely corresponds to a rearrangement between different forms of State measures approved in the liquidation aid decision, and does not lead to a change in the order of claims of the State in relation to other than senior creditors and legacy capital holders. Accordingly, although the type of instrument has changed (debt to equity) the order of claims for the State remained the same. In other words the conversion has neither improved nor worsened the overall risk exposure of the State, while the likelihood that the State will lose part or all of the amounts put at the disposal of Roskilde Bank is also unchanged. Hence, whatever the result of the liquidation, the conversion will not affect the amount the State will be able to recover. Moreover, after the DPB has transferred the B-shares it held to the FSC for no remuneration, any returns of "new" Roskilde Bank liquidation would go to the sole shareholder of "new" Roskilde Bank, the State.

- (57) Moreover, that conversion does not reduce the (theoretical) remuneration to the State. Such remuneration remains theoretical, since the liquidation process is not expected to generate profits in any year (see Table 1 above). Nonetheless, even if a profit is released after the liquidation of Roskilde Bank, the State would be remunerated for the provision of debt as well as for the provision of equity for the amount of its subscription value¹⁵ plus interest rate in priority as compared to the legacy capital-holders in former Roskilde Bank. Indeed, the legacy capital-holders including former owners remained in former Roskilde Bank from which all assets were transferred out, leaving it as a shell company, its only asset being a theoretical possibility to receive extra profits after the State is repaid for all funds invested plus interest via a so-called earn-out mechanism (in line with the terms of the liquidation aid decision). However, given the losses recorded to date and the quality of the outstanding loan portfolio the outcome of any benefit accruing to the legacy capital-holders is highly unlikely.
- (58) As a consequence, the conversion of State debt into equity in this particular case in view of its set-up in terms of order of claims in the context of liquidation and given the objective to redeem all senior creditors and the specificities of the transaction with constitution of a new bank, where the State's claims even in the form of Tier 1 capital are more senior than those of the legacy capital-holders in former Roskilde Bank, does not constitute an increase in aid as compared to the aid approved in liquidation aid decision.
- (59) As regards the sale of the private customer portfolio, the sales process described in recital (33) above, is deemed to comply with the requirements of openness, transparency and being non-discriminatory. Hence, it is concluded that no aid was granted to the buyer.

IV.2. Compatibility of the amended measures

a) Application of Article 107(3)(b) TFEU

- (60) The Commission has already recognized in the rescue decision that a failure of Roskilde Bank would have posed a threat to financial stability.
- (61) Also, in the liquidation aid decision the Commission found the liquidation measures to be compatible with the internal market under Article 107(3)(b) TFEU. Given that the amended measures are very similar to the original ones and also serve the same purpose of allowing a solvent liquidation of Roskilde Bank, whilst the situation on the financial markets has not improved sufficiently to allow an uncontrolled failure or regular bankruptcy of a bank found to be of systemic importance to the Danish banking system, the same legal basis appears to be justified to assess the amendments under consideration¹⁶.
- (62) The Restructuring Communication¹⁷ sets out the State aid rules applicable to the restructuring of financial institutions in the current crisis. According to the Restructuring

¹⁵ As confirmed by Denmark, the State would be reimbursed for its equity at the subscription value of shares (i.e., the amount previously injected in the bank either in the form of cash injection or of debt conversion) and not on the basis of the equity nominal value, which is lesser in amount.

¹⁶ See also Commission decision of 25 October 2010 in case N 560/2009 *Aid for the liquidation of Fionia Bank*, OJ C 76, 10.3.2011, at recitals 66-68.

¹⁷ 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, 19.08.2009, p. 9.

Communication, in order to be compatible with Article 107(3)(b) TFEU, the restructuring of a financial institution in the context of the current financial crisis has to:

- (i) lead to a restoration of the viability of the bank or demonstrate how it can be wound-up in an orderly fashion;
- (ii) include sufficient own contribution by the beneficiary (burden-sharing);
- (iii) contain sufficient measures limiting the distortion of competition.

b) Assessment of the amendments to the measures

Change in liquidation plan: orderly winding-up

- (63) The Commission has already recognised in its previous decisions¹⁸ that in the end of 2008-beginning of 2009 the crisis has worsened significantly, which might require amendments to previously notified measures. The prevailing market circumstances required the Member States, including Denmark, to stress even further the initial business plans of supported banks.
- (64) The Commission notes that in the context of the return clause incorporated in the agreement on the transfer of clients to buyers, more clients have been returned than the worst case assumption of the liquidation plan approved in the liquidation aid decision (see point (25) above). Against such a background, it appears that the market's willingness to accept new assets even if entailing new client relationships has reduced significantly. In addition, the financial projections needed to be revised to stress them further as compared to the level of stress included in the projections on which the liquidation aid decision was based. As a result, the revision of the liquidation plan appears to be justified.
- (65) The plan provides for how the bank will be wound up in an orderly fashion. The Commission notes that Denmark undertook to submit to the Commission yearly monitoring reports containing full descriptions of the running-down process, sold assets, new/continuing and ancillary activities.

Burden-sharing, own contribution by the beneficiary and limitation of the amount of aid

- (66) No changes have been made in respect of burden-sharing by the legacy capital-holders assessed in the liquidation aid decision.
- (67) As regards the limitation of the amount of aid, the Commission takes note of the outstanding amount of the capitalisation of Roskilde Bank resulting after the three debt-to-equity conversions described above. Further, given the projected losses during the liquidation phase, it is possible that additional conversions might be necessary when losses are recorded, as long as the bank needs to comply with the regulatory capital requirements. However, if such additional conversions follow the principles set out in recitals (56) and (57) above, they will not result in an increase of the global amount of aid granted and the risk exposure of the State and insofar they are necessary in order to meet the regulatory capital requirements as formally requested by the Danish Financial Supervisory Authority, whilst keeping the recapitalisation level to the minimum, the

¹⁸ See Commission decision of 7 May 2009 in case C 14/2008 *Restructuring aid to Northern Rock*, OJ C 149, 1.7.2009, p. 16.

Commission finds such recapitalisations to be justified. The Commission considers therefore that the amended aid measures are needed for purposes of liquidating Roskilde Bank in an orderly manner.

- (68) Also, it is noted that Denmark had prompt recourse to a private sector solution by trying to transfer to private market participants the assets and liabilities of Roskilde Bank. Furthermore, Denmark made another attempt to transfer out completely the private customer portfolio and successfully completed the transaction on 31 March 2011. Therefore, it can be concluded that by having recourse to the private sector to the extent possible Denmark respected the minimum necessary principle.

Measures to limit distortion of competition

- (69) The change of the timing of both phases of liquidation (first and second) outlined in recitals (34)-(35) above provided for a change of terms of liquidation, therefore making the aid more distortive in character than the aid initially notified by Denmark and approved in the liquidation aid decision. The amendments to the liquidation plan prolong the distortions of competition resulting from the State intervention.
- (70) In that respect, the Commission accepts that the arguments of Denmark that the amounts involved are trifling or that the other financial institutions were able but unwilling to acquire the remaining customers of Roskilde Bank relativize the importance of the effects of the aid upon competition. However, those arguments do not show the elimination of potential distortions of competition caused by the amendments. Indeed, as a result of the changes to the terms of liquidation Roskilde Bank will – albeit on a small scale and with a running-down objective – hold deposits and offer banking services to its remaining customers. As such activities are also carried out by other operators on the market the bank will potentially compete with them.
- (71) Any distortive effects due to the prolongation of the duration of the controlled liquidation process are adequately addressed through the more extensive measures to limit distortions of competition, which ensure that the continued activities interfering with market operators are limited to the minimum.
- (72) The Commission notes that in accordance with the liquidation aid decision Roskilde Bank will not pursue any new activities but merely phase out the ongoing operations. Denmark has offered commitments restricting the products and services Roskilde bank will offer.
- (73) The main concern with the extension of the first phase of liquidation relates to the effect on the deposits market, in particular given the prevailing market conditions where liquidity is scarce. However, de facto the volume of deposits held by Roskilde Bank is low, representing less than 0.1% of the deposit market. The Danish authorities justified the retention of deposits in Roskilde Bank by the existence of specific overdraft accounts where the salary of a mortgage subscriber is directly transferred to the overdraft account as credit and therefore the probability of payment of the mortgage would be enhanced (thus preserving the value of those assets).
- (74) In that respect, it is noted positively that the relationships with customers with deposit accounts only have already been terminated by the bank. Further, the outstanding private customer portfolio was sold through an open, transparent and non-

discriminatory, i.e. competitive process, in the 1st quarter of 2011. That measure adequately mitigated the distortive effects relating to the outstanding banking relations with the private customers resulting from the prolongation of the liquidation process. As regards the outstanding commercial deposits, due to their linkage with the loans and the small amounts involved, a slower phasing-out of such deposits is considered acceptable. Further, it is noted that those amounts will be closely followed by the Commission in the monitoring process.

- (75) The Commission takes note of the timeframe, milestones and benchmarks set out in the winding-up plan. In particular, the Commission notes that Roskilde Bank will not engage in new business and Denmark's commitments as to the interest rates and to advances on existing loans will further contribute to limit distortions of competition. The Commission notes in that respect that according to the letter by the Danish Bankers' Association the business terms and conditions offered by Roskilde are considered as non-distortive by other market participants.
- (76) As established in other cases¹⁹, further advances on existing loans are allowed for banks benefitting from liquidation aid in so far as it is necessary to preserve the value of loans to allow for minimisation of State resources needed for the winding-down.
- (77) As regards the banking licence, it seems appropriate to allow for its continuation to the extent that the above safeguards are imposed upon Roskilde Bank. Further, it is noted positively that Denmark undertook to provide the Commission on a yearly basis in the context of the monitoring exercise with a report showing that the circumstances in the financial markets remain such that running down the portfolio remains a more financially advantageous solution for the Danish State than selling it in full or in part. Should the monitoring show that that a sale of the portfolio is the economically more advantageous option, a sale will be initiated without delay.
- (78) In view of the prolonged duration of the liquidation, the pricing restrictions committed to by Denmark as described in point (44)(i) above are considered as necessary and appropriate to limit the resulting distortions of competition.
- (79) In view of the above, the Commission considers that distortions of competition are sufficiently limited.
- (80) That conclusion would not be affected by a re-organisation of the FSC, whereby assets from different wind-down entities would be re-arranged in specialised subsidiaries, as described in recitals (38), (39) and (50) insofar as the commitments of the present decision are complied with.
- (81) The Commission concludes that the amended liquidation aid measures described above constitute State aid that can be considered compatible with the internal market pursuant to Article 107(3)(b) TFEU in light of the Restructuring Communication.

¹⁹ See, for example, Commission decisions of 23 April 2010 in case N 194/2009 Liquidation aid to Bradford & Bingley, OJ C 143, 2.6.2010 p. 22, and of 25 October 2010 in case N 560/2009 Aid for the liquidation of Fionia Bank, OJ C 76 of 10.3.2011.

V. DECISION

The Commission regrets that Denmark put the aid in question into effect, in breach of Article 108(3) TFEU.

However, it has decided, on the basis of the foregoing assessment, to consider the amended measures compatible with the internal market on the basis of Article 107(3)(b) TFEU.

The Commission notes that Denmark accepts that the decision exceptionally be adopted in the English language.

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Your request should be sent by registered letter or fax to:

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President