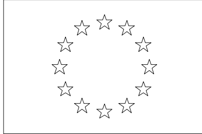

EUROPEAN COMMISSION

Brussels, 08.02.2012

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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 […].	**PUBLIC VERSION** **WORKING LANGUAGE** **This document is made available for information purposes only.**

Subject: State Aid SA.34081(2011/N)– Poland
Fourth prolongation of the Support scheme for banks' funding in Poland

Sir,

I Procedure

1. On 7 April 2009 Poland notified a support scheme for banks' funding in Poland (hereinafter the "scheme"), which was approved by the Commission in its decision of 25 September 2009 in State aid case N 208/2009 (hereinafter "original decision")[1].

2. On the basis of subsequent notifications, the Commission approved the prolongation of the scheme in its decisions of 9 February 2010 in State aid case N 658/2009[2], 29 June 2010 in State aid case N 236/2010[3], 16 December 2010 in State aid case SA.31923 (N 533/2010)[4] and again of 28 June 2011 in State Aid case SA.33008 and SA.32946.[5]

[1] OJ C 250, 20.10.2009, p. 1.
[2] OJ C 57, 9.03.2010, p. 6.
[3] OJ C 205, 29.07.2010, p. 2.

Jego Ekscelencja
Pan Radoslaw SIKORSKI
Minister Spraw Zagranicznych
Al. Szucha 23
PL-00 - 580 Warszawa

3. On 15 December 2011 Poland notified a fourth prolongation of the scheme. The Commission requested additional information on 22 December 2011. On 9 January 2012 additional information was provided by the Polish authorities.

II Description of the scheme

1 General Description of the scheme

4. In response to the exceptional turbulences in the financial markets, Poland brought forward a measure, which aims at reinforcing stability in the Polish financial markets by addressing short- and medium-term financing needs of financial institutions.
5. The scheme specifies six categories of financial institutions established in Poland that are eligible to benefit from the scheme, namely: banks registered in Poland, registered insurance undertakings, brokerage houses, investment funds, pension funds and cooperative savings and credit institutions. To be eligible, beneficiaries must be considered as solvent by the Polish authorities.
6. The scheme, which is described in detail in the original decision, allows essentially for provision of State guarantees for debt issued by banks or by cooperative savings and credit institutions and liquidity measures by way of borrowing or purchasing Treasury bonds on preferential terms. The remuneration for the latter shall remain above the Lombard interest rate[6] and below the level of the doubled Lombard interest rate. The liabilities arising from the State support granted under the scheme are to be collateralised to the level, which would ensure the full repayment of the principal and the interest.
7. Poland committed to communicate to the Commission, within three months following each issue of guaranteed bonds, the actual guarantee fee charged in relation to each issue of guaranteed bonds. The scheme has not been used.
8. The scheme approved has not been modified except for the remuneration of the measures, which is described in detail in recitals 10 to 15.
9. All conditions of the scheme remain unchanged and all the commitments made in relation to the scheme as set out in decisions of 25 September 2009 in State aid case N 208/2009, 9 February 2010 in State aid case N 658/2009, 29 June 2010 in State aid case N 236/2010 and of 16 December 2010 in State aid case SA.31923 (N 533/2010) continue to apply. In summary, those commitments are as follows:
   - to grant aid measures under the support scheme only to solvent financial institutions which meet Polish capital and solvency requirements;
   - to grant the guarantees under the support scheme only for new issues of commercial bank senior debts (subordinated debt is excluded);

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[4] OJ C 29,29.01.2011, p. 5.

[5] OJ C 237, 13.8.2011, p. 3.

[6] Lombard interest rate is the rate charged to banks by the Central Bank for collateralized loan obligations. For detail see the original decision. Since 9 June 2011 the Lombard interest rate has been 6%.

- to provide guarantees on debt instruments with maturities from three months up to five years (for one-third of the debts guaranteed for any participating bank, the maturity can be extended to five years) and to provide support related to Treasury bonds for up to three years;
- to attach to the support agreements a ban on advertisements referring to the support provided by the State Treasury;
- to issue the State Treasury bonds under the scheme on the same conditions as State Treasury bonds issued at the same time outside the scheme;
- to submit an individual notification if a restructuring plan has already been submitted that did not foresee the envisaged liquidity guarantee or liquidity measure;
- to submit individual restructuring/liquidation plans, within six months, for banks that default on their liabilities and/or which cause the guarantee to be called upon;
- to provide within six months individual restructuring/liquidation plans, for banks that default on their liabilities from the support agreement on State Treasury bonds-related support;
- to ensure that fees on the guarantees and reporting obligations are in line with the applicable EU legislation. In addition, Poland committed to complement its 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;
- 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.

2 Remuneration

10. The present scheme envisages a revised remuneration formula for the guarantee fees and the liquidity measures in order to adapt the scheme to the 2011 Prolongation Communication.[7] The scheme foresees two different basis rates, depending on whether the maturity of the guaranteed debt is above or below one year, and which vary from bank to bank. Moreover, it adds a floor for liquidity measures.
11. First, for guarantees covering debt with a maturity of one year or more, the guarantee fee will as a minimum be the sum of:

    i. a basic fee of 40 basis points (bp); and

    ii. a risk-based fee equal to the product of 40 basis points and a risk metric composed of (i) one-half of the ratio of the beneficiary's median five-year senior CDS spread over the three years ending one month before the date of issue of the guaranteed bond to the median level of the iTraxx Europe Senior Financials five-year index over the same three-year period, plus (ii) one-half of the ratio of the median five-year senior CDS spread of all Member States to the median five-year senior CDS spread of the Member State granting the guarantee over the same three-year period[8].

[7] 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.

[8] The formula for the guarantee fee can be written as:

12. For banks without CDS data, or without representative CDS data, but with a credit rating, an equivalent CDS spread will be derived from the median value of five-year CDS spreads during the same sample period for the rating category of the bank concerned, based on a representative sample of large banks in the Member States. The supervisory authority will assess whether the CDS data of a bank are representative.

13. For banks without CDS data and without a credit rating, an equivalent CDS spread will be derived from the median value of five-year CDS spreads during the same sample period for the lowest rating category, based on a representative sample of large banks in the Member States. The calculated CDS spread, for that category of banks, may be adapted on the basis of a supervisory assessment.

14. To enable the Commission to assess the application in practice of the revised pricing to be applied from 1 January 2012, Poland provided an indicative fee (estimate) for financial institutions envisaged, given certain conditions, to be eligible to benefit from those guarantees, based on an application of the above formula using recent market data. Those fees are shown in the Annex.

15. Second, for guarantees covering debt with a maturity of less than one year, as CDS spreads may not provide an adequate measure of credit risk for debt with a maturity of less than one year, the guarantee fee for such debt will as a minimum be the sum of:

    (1) a basic fee of 50 basis points; and

    (2) a risk-based fee equal to 20 basis points for banks with a rating of A+ or A, 30 basis points for banks with a rating of A-, or 40 basis points for banks rated below A- or without a rating.

III Position of Poland

16. The Polish authorities seek the prolongation of the scheme for further six months until 30 June 2012. Poland confirms that the budget of the prolonged scheme will remain at the original level.

17. Although the scheme has not been used to date, the Polish authorities submit that it should remain in place as it has a positive effect on financial institutions and their clients. More specifically, it ensures the stability of the Polish financial sector, which still faces the increased volatility of global financial markets and the uncertainty related to the extent and pace of the economic recovery. Therefore, in order to avoid any negative spill-over effects to the financial sector, the scheme should remain available. The foregoing justification has been supported by a letter of 1 December 2011 from the Polish Central Bank.

Fee = 40bp x (1 + (1/2 x A/B) + (1/2 x C/D))
where A is the beneficiary's median five-year senior CDS spread, B is the median iTraxx Europe Senior Financials five-year index, C is the median five-year senior CDS spread of all Member States and D is the median five-year senior CDS spread of Poland, as the Member State granting the guarantee.
The medians are calculated over the three years ending one month before the date of issue of the guaranteed bond.
In the case of guarantees for covered bonds, the guarantee fee may take into account only one-half of the risk-based fee calculated in accordance with point (2) above.

18. Poland commits 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, 9 February 2010, 29 June 2010, 16 December 2010 and 28 June 2011, with the exception of those described in detail in recitals 10 to 15, remain unchanged.

IV Assessment

19. In its decision of 25 September 2009, the Commission concluded that the scheme constitutes State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union ("TFEU"). However it found that measure compatible with the internal market under Article 107(3)(b) TFEU, because it was apt to remedy a serious distortion of the Polish economy.

20. The Commission first notes that Article 107(3)(b) TFEU remains in principle applicable in the financial sector.[9] The Commission considers that the exceptional circumstances at the origin of the notified measures still persist and therefore recognises the need for the prolongation of schemes. In particular, the exacerbation of tensions in sovereign debt markets that has taken place in 2011 has put the banking sector under increasing pressure, particularly in terms of access to term funding markets.

21. The Commission also observes that the prolongation of the scheme is a response to the continuing financial difficulties that Poland, as most Member States, continues to experience. Since the objective of the measure is to provide short- and medium-term financing to financial institutions which might have difficulties to obtain funds on the financial markets, it supports the retention of the scheme as long as the global financial crisis continues. That analysis was confirmed by the Central Bank of Poland. The Commission therefore considers that the prolongation of the scheme is appropriate to remedy a disturbance of the Polish economy.

22. The Commission notes secondly that all major terms and conditions for the scheme approved on 25 September 2009 and prolonged on 9 February 2010, 29 June 2010, 16 December 2010 and on 28 June 2011, will remain unchanged except for the calculation of the remuneration. However, that change is in line with the Commission's recent guidance provided in the 2011 Prolongation Communication, which adapts in particular the remuneration of the guarantee measures in order to continue to ensure proportionality of the measure.

23. In fact, the pricing formula introduced by Poland follows exactly the method proposed by the 2011 Prolongation Communication. Thereby, the new pricing formula takes into account the greater differentiation by risk of banks' CDS spreads in recent times, by referring to median CDS spreads over a three-year period ending one month before the granting of guarantees. Since increases in CDS spreads in recent years are partially due to influences that are not specific to individual banks, in particular the growing tensions in sovereign debt markets and an overall increase in the perception of risk in the banking sector, the formula isolates the intrinsic risk of individual banks from changes in CDS spreads of sovereigns, albeit that sovereign spread is itself considered as a component of the price determination.

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[9] 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.

24. Also the pricing of the liquidity measures under the scheme meets the increased requirements of the new formula introduced by the 2011 Prolongation Communication. The fee applicable for the liquidity measures under the scheme[10] remains above the level resulting from the new formula plus a liquidity premium[11]. The liquidity measures are hence in line with the remuneration criteria set out in the 2011 Prolongation Communication. The fact that the fee might be set at a level higher than required by the 2011 Prolongation Communication is irrelevant, as that Communication sets minimum requirements. As liquidity measures are clearly more distortive than liquidity guarantees, the Commission takes a favourable view of a pricing formula that takes into account that increased distortive effect and makes those measures more expensive then liquidity guarantees.

25. Moreover, Poland committed to respect the reporting regulation described in point 22 of the 2011 Prolongation Communication and will communicate to the Commission, within three months following each issue of guaranteed bonds, the actual guarantee fee charged in relation to each issue of guaranteed bonds. Those reports will allow the Commission to assess the appropriateness, necessity and proportionality of possible further prolongations of the scheme beyond 30 June 2012 and the conditions for such prolongations.

26. In line with the Commission's decisional practise the scheme should be prolonged for six months. Any further prolongation will require the Commission's approval and will have to be based on a review of the developments in financial markets and the scheme's effectiveness.

27. Therefore, the scheme remains an appropriate, necessary and proportionate measure to remedy a serious distortion of the Polish economy and does not alter the Commission's previous assessment in the decision of 25 September 2009 and the prolongation decisions of 9 February 2010, 29 June 2010, 16 December 2010 and on 28 June 2011.

28. On the basis of those considerations, the prerequisites for the compatibility of guarantee and liquidity schemes that have been established by the Banking Communication[12] and the Commission's subsequent decisional practice are met. The notified prolongation therefore complies with the requirements set out above and is compatible with the internal market pursuant to Article 107(3)(b) TFEU.

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[10] The remuneration remains between the Lombard interest rate (6% since 9.6.2012) and its doubled rate.

[11] Calculated as WIBOR + guarantee fee applicable for collateralised debt as stipulated in the Annex to the 2011 Prolongation Communication. For example on 30 December 2011 for an unrated bank a theoretical fee for a one-year liquidity support would have amounted to 5.34%. (1Y WIBOR was 5.00%).

[12] 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.

Decision

The Commission has decided not to raise objections against the prolongation of the scheme until 30 June 2012 since it is compatible with the internal market pursuant to Article 107(3)(b) TFEU.

If this letter contains confidential information which should not be published, 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:

http://ec.europa.eu/eu_law/state_aids/state_aids_texts_en.htm

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

European Commission
Directorate-General for Competition
State Aid Greffe
Rue Joseph II 70
B-1049 Brussels
Fax No: +32-2-296 12 42

Yours faithfully,

For the Commission

Joaquín ALMUNIA

Vice-President

Annex

An indicative fee (estimate) for
- 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 point 11
- using recent market data.[13]

A. For the banks with an external rating

Bank name	Guarantee fee (in bp)
Powszechna Kasa Oszczędności Bank Polski SA – PKO BP S.A.	[70-90]*
Pekao Bank Hipoteczny S.A.	[70-90]
ING Bank S.A.	[70-90]
Getin Noble Bank S.A.	[90-110]
Credit Agricole Bank Polska S.A.	[90-110]
BRE Bank Hipoteczny S.A	[90-110]
Bank Zachodni WBK S.A.	[70-90]
Bank Ochrony Środowiska S.A.	[90-110]
Bank Gospodarstwa Krajowego	[70-90]
Bank Gospodarki Żywnosciowej S.A.	[90-110]
Bank BPH S.A.	[90-110]
Bank Millennium	[90-110]
Kredyt Bank S.A.	[70-90]
BRE Bank S.A.	[70-90]
Bank Handlowy w Warszawie S.A.	[70-90]
Bank Polska Kasa Opieki SA-Bank Pekao S.A.	[70-90]

B. For the banks without any external rating or CDS data

[13] For the purpose of the estimation of the fees applicable under the scheme, 30 December 2011 was set as the cut-off date. Therefore, the reference period is 30/11/2008-30/11/2011. 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 [125-150] bp, for the banks of the BBB-rating and below bucket: [325-350] bp;
- The median iTraxx Europe Senior Financials five-year index (parameter B): 134.7 bp;
- The median five-year senior CDS spread of all Member States (parameter C): 121.7 bp;
- The median five-year senior CDS spread of Poland (parameter D): 145.4 bp.

Based on the above data, the fee applicable for the banks with the reference rating A is [70-90] bp, for the banks rated BBB or below or without any external rating, the fee applicable under the scheme is estimated at [90-110] bp.

* Confidential information

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 [90-110] **bp.**