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**Subject: State Aid SA.58478 (2020/N) – Denmark
Third prolongation of the winding-up scheme for small banks**

Excellency,

1. PROCEDURE

- (1) On 2 August 2017, the Commission approved the reintroduction of a scheme for granting State aid in the winding-up process of banks with assets below EUR 3 billion ("the scheme")¹ in Denmark (the "original Decision"). The scheme was built on previously approved schemes for the winding-up of small banks that had been set up in 2010 and authorised by the Commission every six months, last time on 18 September 2015² until the end of 2015.
- (2) The reintroduced scheme was prolonged twice, as approved by the Commission in 2018³ and 2019⁴, last time until 30 September 2020.
- (3) On 9 November 2020, Denmark notified a third prolongation of the aid scheme, for a twelve-month period from the adoption date of this decision.

¹ Commission Decision C(2017) 5458 of 2.8.2017 in case SA.44031 – Denmark – Winding-up scheme for small banks, OJ C 336, 6.10.2017.

² Commission decision C(2015) 6452 of 18.9.2015 in case SA.42405 (2015/N) – Denmark – Prolongation of the winding-up scheme, compensation scheme, Model I and Model II – H2 2015, OJ C 46, 5.2.2016.

³ Commission Decision C(2018) 5757 of 31.8.2018 in case SA.51200 (2019/N) – Denmark – Prolongation of the winding-up scheme for small banks, OJ C 379, 19.10.2018, p. 1.

⁴ Commission Decision C(2019) 6146 final of 23.8.2019 in case SA.54807 (2019/N) – Denmark – Prolongation of the winding-up scheme for small banks, OJ C 354, 18.10.2019, p. 1.

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- (4) By letter dated 9 November 2020, Denmark exceptionally agreed to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ("TFEU") in conjunction with Article 3 of Regulation 1/1958⁵ and to have the present decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (5) At the end of the second quarter of 2020, the Danish banking sector comprised 71 credit institutions, amongst them 64 banks and 7 mortgage credit institutions. Out of those 71 credit institutions, 47 would be eligible under the scheme. Since 2008, more than 60 banks in Denmark have ceased to exist, including 15 by use of the approved wind-down schemes.
- (6) Since the reintroduction of the scheme, the aid scheme was used once in September 2018 in the process of the resolution of the very small Københavns Andelskasse.⁶ Furthermore, for two small institutions in difficulty a private solution was found respectively in February 2018⁷ and as recently as in spring 2020⁸.

2.1.1. *The legal basis*

- (7) The scheme continues to be based on the Act on Restructuring and Resolution of Certain Financial Enterprises⁹ (the "DARR") of 31 March 2015, which also forms part of Denmark's transposition of Directive 2014/59/EU¹⁰ (the "BRRD").
- (8) Under the DARR, as of 1 June 2015 the Financial Stability Company ("FS") was appointed as resolution authority in Denmark together with the Danish Financial Supervisory Authority. As resolution authority, FS' responsibilities include preparing resolution plans for all Danish banks, restructuring or winding up distressed businesses and management of the Resolution Fund. The FS also controls the Deposit Guarantee Fund ("the DGF") and its risks and results are included as a separate item in the financial results of FS.

⁵ Council Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

⁶ In September 2018 Københavns Andelskasse – with a pre-resolution balance sheet of DKK 401 million – entered a resolution scheme involving a bridge institution (Broinstitut II A/S), which was capitalised by the Danish Resolution Fund for an amount of DKK 37.9 million. After the write-down of all capital and senior unsecured instruments (bail-in) for the full loss absorption amount, the bridge institution temporarily capitalised Københavns Andelskasse under kontrol for the required minimum capital endowment. An intervention by the Danish Deposit Guarantee Fund was not necessary. No buyer was found for Københavns Andelskasse. In June 2019, Københavns Andelskasse under kontrol deposited its banking licence, and the entity was converted into a financing company (FS Finans VI A/S) from which the winding up of remaining activities will take place.

⁷ In February 2018, a private solution was found for Østjydsk Bank A/S. The failed bank went into liquidation with Sparekassen Vendsyssel buying most of its activities.

⁸ The Danish resolution authority, i.e. the Financial Stability Company, prepared a resolution plan to wind down Østervrå Andelskasse, a small bank which had been struggling to comply with capital requirements for several years. Eventually, the bank's management decided to wind down the bank. The bank is now in solvent liquidation.

⁹ Lov nr. 333 af 31 marts 2015 om restrukturering og afvikling af visse finansielle virksomheder.

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, OJ L 173, 12.6.2014.

2.1.2. *The measure under the scheme*

- (9) The objective of the scheme is to facilitate the orderly market exit of small banks through a sale or wind-down process, whereby they cease to exist as a market competitor. To this end, the measure under the scheme foresees the possibility for the FS to provide State support with funds from the National Resolution Fund to a financial institution if it is put in resolution and in case the capital requirements set by the supervisor are not fully restored by the application of the bail-in tool.
- (10) In its capacity as resolution authority, where necessary FS will provide State funds from the Resolution Fund in accordance with the requirements of Article 101 BRRD as transposed by Sections 26 and 59 DARR, and after the FS has assessed that the conditions for resolution in Article 32 BRRD as transposed by Section 4 DARR are fulfilled.
- (11) The injection of State funds in resolution will only take place after the bail-in of shareholders, subordinated debt holders and other liabilities in accordance with the provisions of Article 44 BRRD as transposed by sections 24 to 28 DARR, and after the full burden-sharing of shareholders and subordinated debt holders in line with point 44 of the 2013 Banking Communication¹¹.
- (12) As to deposit protection, FS, acting as the DGF, will contribute to the loss absorption with the amount by which covered deposits would have been written down in order to absorb the losses in accordance with Article 109 BRRD and Article 11 of Directive 2014/49/EU¹².
- (13) A detailed description of the scheme is provided in the original Decision, in particular in recital (11) describing the objective of the scheme and recitals (16) to (23) providing a general description of the winding-up process.
- (14) Larger banks, i.e. those with total assets above or equal to EUR 3 billion, remain outside the scheme and will therefore require individual prior notification for assessment and authorisation by the Commission before support can be granted.

3. POSITION OF DENMARK

- (15) Denmark requests the approval of the notified prolongation of the scheme for a twelve-month period from the adoption date of this decision.
- (16) Denmark accepts that the injection of State funds constitutes State aid within the meaning of Article 107(1) TFEU but is of the view that the prolongation of the scheme is compatible with the internal market on the basis of Article 107(3)(b) TFEU as it is necessary in order to remedy a potential serious disturbance in the Danish economy.

¹¹ 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, ("Banking Communication"), OJ C 216, 30.7.2013, p. 1.

¹² Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on the deposit guarantee schemes, OJ L 173, 12.6.2014, implemented by the Danish Act on a Depositor and Investor Guarantee Scheme by Law nr. 334 of 31 March 2015.

- (17) Denmark submits that the larger Danish banks are financially solid and resilient and, according to the latest stress test, would be able to withstand even a deep economic downturn.
- (18) However, the Danish authorities note that there still is a group of small and medium-sized banks which are financially less solid, are under intensified supervision¹³ and could encounter difficulties in the coming years in case of bad economic conditions. In particular, Denmark submits that at the end of the second quarter of 2020, this group of banks had a surplus of capital over their capital requirements equal to 5.7% of their risk exposure amount (REA), as opposed to a surplus of 10.6% for the remaining Danish banks. As mentioned in recital (6), in the last two and a half years three small Danish banks faced serious difficulties and needed to be either resolved or to find a private solution (including one in spring 2020), which demonstrates that there is still need for the scheme to be upheld.
- (19) In that context, the Danish authorities consider that prolonging the winding-up scheme for small banks would strengthen the possible resolution actions regarding small banks and enable them to implement the appropriate measures in case of an ailing bank. They therefore take the view that the scheme is of great importance and necessary for sustaining financial stability in Denmark.
- (20) The opinion of the Danish Financial Supervisory Authority ("the DFSA"), dated 30 June 2020 and attached to the notification, underpins the ongoing relevance of the scheme. According to the DFSA, the scheme "*ensures an orderly resolution of small institutions with a balance below EUR 3 billion*" and "*entails a settlement for all simple creditors, with no other guarantee than the statutory depositors' guarantee protection*". The DFSA recalls that the scheme remains relevant for small institutions (see Københavns Andelskasse's resolution), while at the same time not discouraging them from seeking private solutions without support from the scheme (see the private solution reached for Østjysk Bank¹⁴).
- (21) Denmark confirms that the following commitments in respect of the scheme, as listed in recital (34) of the original Decision, continue to apply:
- (a) Applying the bail-in tools as foreseen in the BRRD. In any case, before the use of State aid, in accordance with the provisions of the 2013 Banking Communication, the conversion/write-down of shareholders and subordinated debt holders will always be required.
- (b) Ensuring that the scheme is only applicable to small banks with total assets of less than EUR 3 billion, which through a sale and integration with a purchaser will cease to exist as independent credit institution. The sale process of the institution under resolution or bridge bank will be initiated as soon as possible after the decision date and the sale agreement will be concluded within six months after this date.

¹³ The reason for such intensified supervision can be a bank's weak financial position or other risks and vulnerabilities.

¹⁴ In addition, a private solution was found for a second small institution in difficulty, namely Østervrå Andelskasse which now is in solvent liquidation.

- (c) Ensuring that the sale process is open and competitive, and on market terms, with the aim of maximising the sale price, and at the same time, excluding State aid to the purchaser. Each sale agreement will be subject to approval from the DFSA following the positive assessment of the long-term viability of the combined entity.
- (d) Ensuring that if the institution under resolution or bridge bank are not sold in their entirety within the six-month period from the decision date, all remaining activities will be wound up and no later than two years after the resolution date become subject to ordinary insolvency proceedings and any remaining banking licence shall be revoked.
- (e) Ensuring that the institution under resolution refrains from advertising and/or employing aggressive commercial strategies which refer to State aid support.
- (f) Ensuring that the purchaser of an institution under resolution (or parts of it) will be independent from the bank and will not receive or be allowed to use the banking licence, name, brand name or logo initially held by the failing bank.
- (g) Reporting to the Commission semi-annually on the use of the scheme no later than 45 days after the end of the relevant half year starting from the date of the adoption of the original Decision.

4. ASSESSMENT

4.1. Existence of State aid

- (22) According to Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.
- (23) For the reasons referred to in recitals (36) to (52) of the original Decision, the Commission considers that the scheme constitutes State aid within the meaning of Article 107(1) TFEU. The scheme concerns the provision of State resources to a certain sector, i.e. the financial sector, which is open to intense international competition. Under the scheme, participating banks may obtain capital support under conditions which would not be available to them under market conditions, and so receive an advantage. Given the characteristics of the financial sector, which is a highly competitive market, any advantage from State resources to a bank affects intra-Union trade and threatens to distort competition. The notified prolongation of the scheme, does not affect that finding. The scheme, therefore, continues to constitute State aid within the meaning of Article 107(1) TFEU.

4.2. Compatibility of the winding-up scheme

4.2.1. Legal basis

- (24) Article 107(3)(b) TFEU empowers the Commission to find that an aid measure is compatible with the internal market if it is intended to "remedy a serious disturbance in the economy of a Member State".

- (25) According to Denmark, larger banks are financially more solid and more resistant towards the continuing uncertainty in the financial market after the financial crisis than smaller banks. The scheme provides the possibility for State support to strengthen possible actions to wind down small banks and enable the Danish authorities to implement appropriate measures with respect to such banks that could still encounter difficulties in the coming years in case of bad economic conditions. The Danish government therefore takes the view that the scheme is necessary for preserving financial stability in Denmark (see recital (18)).
- (26) The Commission endorses the Danish authorities' assessment. Regarding the difficulties in the Danish banking system, the conditions that were established by the 2008 Banking Communication¹⁵ and the Commission's subsequent decisional practice and Communications¹⁶ (including the 2013 Banking Communication¹⁷) are still present.
- (27) Furthermore, 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. The notified prolongation will be assessed under section 6 of the 2013 Banking Communication.

4.2.2. *Compatibility assessment*

- (28) Section 6 of the 2013 Banking Communication, notably point (84), provides that the Commission will continue to consider the approval of liquidation aid schemes for credit institutions of limited size. The measures envisaged to be prolonged by Denmark cover precisely this type of institutions and limit the application of the notified scheme to small banks with a total balance sheet below EUR 3 billion.
- (29) Points 71 to 78 of the 2013 Banking Communication set forth the compatibility conditions for aid measures in the context of orderly market exit. Point 70 states that the Commission will assess the compatibility of such aid measures aimed at resolving credit institutions by applying *mutatis mutandis* the rules set out in Sections 2, 3 and 4 of the Restructuring Communication. Finally, points 79 to 82 specify the rules to be complied with in case a credit institution is sold during the winding-up procedure.

¹⁵ Communication on 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.

¹⁶ Communication on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition ("*Recapitalisation Communication*"), OJ C 10, 15.1.2009, p. 2; Communication from the Commission on the treatment of impaired assets in the Community financial sector ("*Impaired Assets Communication*"), OJ C 72, 26.3.2009, p. 1; 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 ("*Restructuring Communication*"), OJ C 195, 19.8.2009, p. 9; Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ("*2010 Prolongation Communication*"), OJ C 329, 7.12.2010, p. 7 and Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ("*2011 Prolongation Communication*"), OJ C 356, 6.12.2011, p. 7.

¹⁷ 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.

- (30) The Commission consequently considers that, in order for the notified measure to be compatible under Article 107(3)(b) TFEU, it must comply with the following criteria:
- (a) *Limitation of costs*: aid amounts should enable the failing bank to be wound up in an orderly fashion, while limiting the amount of aid to the minimum necessary;
 - (b) *Limitation of distortions of competition*: aid should not result in longer-term damage to the level playing field and competitive markets and measures to limit distortions of competition due to State aid have to be taken as long as the beneficiary failing bank continues to operate;
 - (c) *Own contribution (burden-sharing)*: appropriate own contribution to the winding-up costs should be provided by the aid beneficiary, particularly by preventing additional aid from being provided to the benefit of the shareholders and subordinated debt holders. Therefore, the claims of shareholders and subordinated debt holders must not be transferred to any continuing economic activity; and
 - (d) *Restoring long-term viability*: the sale of a failing bank or a bridge bank to another financial institution can contribute to the restoration of long-term viability in the hands of another market participant, provided that the purchaser is viable and capable of absorbing the transfer of the failing bank or bridge bank, and may help to restore market confidence.
- (31) As to the duration of the scheme, the Commission notes that Denmark requests the prolongation of the scheme for a twelve-month period from the date of adoption of this decision. The reference of point 85 of the 2013 Banking Communication to the conditions set out in section 3 of that 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. However, the concrete circumstances of a case may justify that the Commission exceptionally deviates from that general rule, and the Commission has already accepted twice a twelve-month duration for this scheme. As the scheme has not been modified and provides a stable framework for small banks, the Commission considers it appropriate to prolong the scheme for a period of twelve months.

Limitation of costs

- (32) The scheme facilitates the acquisition of the activities of a failing bank or a bridge bank by a viable purchaser, selected through a competitive sale process. The scheme aims at obtaining the highest possible price if the bank can be sold, thus reducing the final cost of the winding-up process.
- (33) The application of burden-sharing, in line with the requirements of the 2013 Banking Communication, and the application of the BRRD also contribute to limit the intervention from State resources, as the losses of the failing bank will be covered from private sources first.

Limitation of distortions of competition

- (34) As regards distortions of competition, the Commission notes that Denmark continues to be committed to a ban on any aggressive commercial strategies (see recital 34(e) of the original Decision). Such safeguards help to ensure that the participating banks do not misuse the received State support to expand their activities.
- (35) Moreover, the activities of the failing bank or the bridge bank will be offered by FS to competitors through an open and competitive sale process providing opportunity to any competitor to acquire the corresponding market share.
- (36) Ultimately, the failing bank will cease to exist as a stand-alone competitor. The acquired activities will be fully integrated into the purchaser and those assets and liabilities not part of a sale during the specified period will be wound-down, meaning that the business stops any market activity. Likewise, in case the sale fails within the committed time period, the banking licence of the bank will eventually be withdrawn within two years after the decision date. If the sale of the bank is not finalised in the committed time period, Denmark can notify individually the envisaged changes to the scheme for assessment and approval by the Commission.
- (37) The Commission also notes that, in line with the 2013 Banking Communication, State support under the scheme is only available to small banks with total assets of less than EUR 3 billion, which is in line with the threshold provided for in the 2013 Banking Communication. Consequently, any aid measures that would be granted for banks with more than EUR 3 billion must be notified individually.
- (38) Denmark will continue to report semi-annually on the operation of the scheme no later than 45 days after the end of the relevant half-year starting from the date of this decision.

Own contribution (burden-sharing)

- (39) For aid to be declared compatible, section 3.1.2 of the 2013 Banking Communication, requires that shareholders and subordinate debt holders have to contribute as much as possible to the cost of the intervention.
- (40) In that respect Denmark continues to comply with the commitment that before the use of the DGF and/or the Resolution Fund, the conversion or a write-down of the shareholders and subordinated debt-holders will always be required, thus complying with the burden-sharing requirements of the 2013 Banking Communication. In addition, Denmark stated that the application of the bail-in tool according to the BRRD is an integral part of the scheme.

Restoring long-term viability

- (41) As the scheme provides for the sale of the failing bank or bridge bank, certain principles of the Restructuring Communication have to be respected in that context. Accordingly, in order to be compatible with Article 107(3)(b) TFEU and point 82 of the 2013 Banking Communication, the sale of a failing bank or a bridge bank should in particular fulfil the conditions set out in point 17 of the Restructuring Communication, i.e. the purchaser should demonstrate that the

integrated entity will be viable and the requirements regarding own contribution and limitations of competition distortions are respected. In this respect, Denmark continues to be committed to perform an assessment of the viability of the resulting institution to be assured that the resulting entity will be viable in the long-term, as it committed to do in the past (see recital 34(c) of the original Decision).

Conclusions on the overall compatibility of the aid measure

- (42) In line with the considerations above, the Commission considers that the notified prolongation of the scheme meets all conditions and requirements of the 2013 Banking Communication, notably the provisions on the conditions laid down in section 6.2 and section 6.4.
- (43) The notified aid measure therefore is compatible with the internal market pursuant to Article 107(3)(b) TFEU.
- (44) Therefore, the scheme can be prolonged for a period of twelve months from the date of this decision. Any further prolongation will require the Commission's approval.

5. COMPLIANCE OF THE WINDING-UP SCHEME WITH THE PROVISIONS OF DIRECTIVE 2014/59/EU ON BANK RECOVERY AND RESOLUTION

- (45) The Commission notes that the aid measure does not appear to violate intrinsically linked provisions of the BRRD, which in this specific case relate to Article 44(5) and Article 59(3).
- (46) When making use of resolution funds under the BRRD, Member States must apply provisions adopted to comply with Section 5 of Chapter IV of Title IV of the BRRD, which includes Article 44(5). In the case of Denmark, the relevant legislation transposing the BRRD has been in force since March 2015.
- (47) The Commission therefore concludes that the notified scheme does not appear to violate any intrinsically linked provisions of Directive 2014/59/EU.

6. 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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Yours faithfully,

For the Commission

Margrethe VESTAGER
Member of the Commission

