6-28-2011

State Aid SA.33008 and SA.32946 – Poland Fourth prolongation and extension in scope of the Support scheme for banks' funding in Poland

European Union: European Commission

EUROPEAN COMMISSION

Brussels, 28.6.2011

C (2011) 4649 final

PUBLIC VERSION

WORKING LANGUAGE

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Subject: State Aid SA.33008 and SA.32946 – Poland
Fourth prolongation and extension in scope 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 support scheme" or "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]. The Commission approved the prolongation of the scheme in its decisions of 9 February 2010 in State aid case N 658/2009[2], on 29 June 2010 in State aid case N 236/2010[3] and on 16 December 2010 in State aid case SA.31923 (N 533/2010)[4].

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

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

2. On 1 May 2011 Poland notified a modification to the scheme, proposing to extend the scope of eligible beneficiaries of the scheme. Additional information in that respect was provided on 10 and 13 June 2011.

3. On 16 May 2011 Poland notified a fourth prolongation of the scheme until 30 June 2011. On 10 June 2011 additional information was provided by the Polish authorities.

II. 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 support 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 measures provided under the scheme can be subdivided into the two following categories: State Treasury guarantees and State Treasury bonds-related support measures.

7. Under the scheme the Polish authorities make available a State Treasury guarantee for the issuance of new short- and medium-term debts. In addition the scheme foresees support through the issuance of Polish Treasury securities to credit institutions. The Polish Government may issue and lend Polish Treasury bonds in order to enable the beneficiary institutions to obtain immediate liquidity from the markets.

8. The above-mentioned guarantees are currently accessible to banks only, while all beneficiaries eligible under the scheme may borrow and purchase l Treasury bonds on preferential terms.

9. As regards fees on the lending or sale of Treasury bonds, they cannot be lower than Lombard credit interest rate[5] and will be below the level of the doubled Lombard interest rate.

10. As for State guarantees, the guarantee fee was initially based on the ECB Recommendations[6], but was subsequently increased at least by 20 basis points for banks with the rating of A+ or A; 30 basis points for banks rated A-; and 40 basis points for banks rated below A-.[7]

III. Position of Poland

11. The Polish authorities seek the prolongation of the scheme for further six months until 31 December 2011. Poland confirms that the budget of the prolonged scheme will remain at the original level. In addition, the Polish authorities would like to make the scheme accessible to the National Cooperative Savings and Credit Institution ("the NCSCI") and to make the guarantees accessible not only to banks, as it has been the case so far, but also to cooperative savings and credit institutions.

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

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

[7] See Commission decision of 29 June 2010.

12. As regards the prolongation of the scheme, 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 from the Polish Central Bank, Narodowy Bank Polski, dated 9 May 2011.

13. The Polish authorities give several reasons for opening the guarantees-related aspects of the scheme to cooperative savings and credit institutions and making the scheme available for the NCSCI. Cooperative savings and credit institutions constitute credit institutions under EU law. They provide services similar to those of banks and measured by the number of customers and volume of assets their significance has been increased in recent times. The proposed change is also a consequence of legislative changes, which increase supervision over such institutions and also allow them to issue bonds. The foregoing justification has been supported by a letter from the Polish Central Bank, Narodowy Bank Polski, dated 9 June 2011.

14. Poland undertakes to maintain the commitments made since the introduction of the support scheme and confirms that all other conditions as defined by the Commission decisions of 25 September 2009, 9 February 2010, 29 June 2010 and 16 December 2010 remain unchanged. In addition to the existing commitments, Poland undertakes to report on the operation of the scheme and on guaranteed and non-guaranteed issuance by 15 October 2011 at the latest.

IV. Assessment

15. In its decision of 25 September 2009, the Commission concluded that the support 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 the measures were compatible with the internal market under Article 107(3)(b) TFEU, because they were apt to remedy a serious distortion of the Polish economy. To that end, the Commission had assessed the appropriateness, necessity and proportionality of the measure.

16. The Commission 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 have difficulties to obtain funds on the financial markets, it is important to ensure the availability of the support scheme as long as the global financial crisis continues.

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

18. The legislative changes in Poland, which increased supervisory powers over cooperative savings and credit institutions and the NCSCI and which allow them to issue bonds, underlie the proposed extension of the scheme. Consequently, the NCSCI should become eligible to receive support under the scheme and cooperative credit and savings institutions require access to the guarantees under the scheme in the same way as banks. That rationale has been confirmed by the Central Bank of Poland, Narodowy Bank Polski. The Commission therefore considers that the extension of the scheme in scope is appropriate and necessary to remedy a disturbance of the Polish economy.

19. On the basis of the above, the notified prolongation and extension of the support scheme 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 and 16 December 2010.

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

21. On the basis of those considerations, the prerequisites for the compatibility of guarantee and liquidity schemes with Article 107(3)(b) TFEU that have been established by the Banking Communication[8] and the Commission's subsequent decisional practice continue to apply. The Commission considers that the notified prolongation until 31 December 2011 and the extension of the State support scheme complies with the requirements set out above and is compatible with the internal market.

22. As regards the combination of the support scheme with other aid measures, as indicated in the Annex to the Restructuring Communication[9], any restructuring plan should contain all State aid received as individual aid or under a scheme during the restructuring period and all such aid needs to be justified as satisfying all criteria prescribed by the Restructuring Communication (i.e. return to viability, own contribution by the beneficiary and limitation of competition distortion). Accordingly, once a Member State is under an obligation to submit a restructuring plan for a certain aid beneficiary, the Commission needs to take a view in its final decision as to whether any aid granted during the restructuring period satisfies the criteria required for the authorisation of restructuring aid. To that end an individual *ex ante* notification is necessary.

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

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[8] Communication from the Commission — The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis, OJ C 270, 25.10.2008, p. 8.

[9] The Commission communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules, OJ C 195, 19.8.2009.19.08.2009, as amended.

24. In addition to the above, Poland agrees to provide the Commission with a concise mid-term review of the operation of the scheme by 15 October 2011, and to complement its future reports on the operation of the scheme with updated data on the cost of comparable (nature, volume, rating, currency, etc.) non-guaranteed and guaranteed debt issuances[10].

V. Decision

The Commission concludes that the prolongation of the scheme until 31 December 2011 and its extension in scope does not alter its previous assessment in the original decision of 25 September 2009 (State aid case N 208/2009) and subsequent prolongation decisions of 9 February 2010 (State aid case N 658/2009), 29 June 2010 (State aid case N 236/2010) and 16 December 2010 (State aid case SA.31923 (N 533/2010)) that the measures under the scheme are compatible with the internal market. Therefore, since it fulfils the conditions to be considered compatible with internal market under Article 107(3)(b) TFEU the Commission has decided not to raise objections.

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

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 of the Commission

[10] See points 29 and 44 of Commission decision of 25 September 2009 and point 23 of the Commission decision of 9 February 2010. Poland undertook to present every six months reports on the operation of the scheme containing the list of all beneficiary companies indicating for each of them the necessary data to understand the full scope of the support measures and complement them with data specified in point 22 of the present decision.