



LIETUVOS NUOLATINĖ ATSTOVYBĖ EUROPOS SAJUNGOJE

LR Finansų ministerijai

2011-06-29 Nr. (2.13.)-2-532

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Konkurencijos tarybai
Vienuolio g. 8
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DĖL EUROPOS KOMISIJOS SPRENDIMO DĖL VALSTYBĖS PAGALBOS PERSIUNTIMO

Siunčiame Jums Europos Komisijos Generalinio sekretoriato sprendimą dėl Valstybės Pagalbos Nr. SA.33135 (2011/N) – Lietuva.

PRIDEDAMA. 8 lapai.

Ambasadorius ypatingiems pavedimams,
Lietuvos nuolatinio atstovo ES pavaduotojas

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EUROPOS KOMISIJA

GENERALINIS SEKRETORIATAS

Lietuvos nuolatinė atstovybė
Europos Sąjungoje

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LIETUVOS RESPUBLIKOS NUOLATINEI
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Dėl: Valstybės Pagalbos Nr. SA.33135 (2011/N) - Lietuva

Generalinis sekretoriatas maloniai Jūsų prašo prie šio lydraščio pridėdamą Komisijos sprendimą, kurio tema nurodyta aukščiau, perduoti Užsienio reikalų ministrui.

Generalinės sekretorės vardu,

Germán MERINERO CORTES

Priedai: C(2011) 4581 final



EUROPEAN COMMISSION

Brussels, 27.6.2011
C(2011) 4581 final

**Subject: State aid SA.33135 (2011/N) - Lithuania
Prolongation of the Lithuanian bank support scheme until end 2011**

Sir,

1. PROCEDURE

- (1) On 6 June 2011, Lithuania notified a request to prolong the bank support scheme by six months until 31 December 2011.
- (2) The original scheme, which consisted of three measures - State guarantees for bank stability enhancement (hereafter "guarantee"), Redemption of bank assets (hereinafter "asset relief") and subordinated loans to banks (hereinafter "recapitalisation") – was approved by the Commission on 5 August 2010 (hereinafter "the original decision")¹. The prolongation of the scheme until 30 June 2011 was approved by the Commission on 21 January 2011 (hereinafter "the prolongation decision")².
- (3) By letter dated 7 June 2011 Lithuania exceptionally accepted that the decision be adopted in the English language.

2. DESCRIPTION OF THE NOTIFIED MEASURE

- (4) In response to the ongoing exceptional turbulence in world financial markets, Lithuania initially brought forward the original scheme consisting of three measures designed to ensure the stability of the Lithuanian financial system and to remedy a serious disturbance in the economy of Lithuania. The first measure, consisting in the guarantee, aims at enhancing the liquidity of a bank or otherwise strengthening its

¹ Commission decision in cases N 47/2010 and N200/2010, OJ C 283, 20.10.2010, p. 1.

² Commission decision in case SA.32188 (2011/N) OJ C 53, 19.2.2011, p. 4.

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stability and credibility. The asset relief measure aims at restoring a bank's solvency. The recapitalisation measure aims at increasing the stability and credibility of a bank's activities by increasing its capital base.

- (5) Beneficiaries of the Scheme are banks whose financial situation poses a threat to the stability and credibility of the banking system, including foreign subsidiaries and branches of foreign banks established in the Republic of Lithuania.
- (6) State aid approval for all three measures was granted in the original decision until 31 December 2010. On 21 January 2011, the Commission approved the prolongation of the scheme until 30 June 2011. The Lithuanian authorities seek to further prolong the entry window of the original Scheme until 31 December 2011.

2.1. The guarantee measure

- (7) The guarantee measure approved by the original decision for a total budget of LTL 3 billion (EUR 869 million), and prolonged on 21 January 2011 until 30 June 2011 with a reduced budget of LTL 1 billion (EUR 290 million), covers newly issued senior loans and other senior financial liabilities, excluding interbank deposits.

2.2. The recapitalisation measure

- (8) The total budget for both asset relief and recapitalisation measures was limited to LTL 3 billion (EUR 869 million). It was reduced for the prolongation of the scheme until 30 June 2011 to LTL 2 billion (EUR 579 million).
- (9) Under the scheme, the recapitalisation measure can be granted in the form of subordinated loans with a two- to five-year term, designed to be classified as Tier 2 or Tier 3 capital, depending on their maturity.

2.3. The asset relief measure

- (10) The Lithuanian State introduced a mechanism for asset relief for banks in order to transfer bank assets to the State-controlled joint stock company AB Turto bankas, in exchange for a payment.
- (11) Pursuant to the commitments of Lithuania to monitor the use of the Scheme, set out in recitals 57, 59 and 60 of the original decision, Lithuania submitted on 4 April 2011 and confirmed in the notification that no bank has used any of the bank support measures to date.

2.4. The changes to the measures

- (12) The budget for the measures has been maintained at LTL 1 billion (EUR 290 million) for the guarantee measure and reduced to LTL 1 billion (EUR 290 million) for the recapitalisation and asset relief measures. All conditions of the scheme, as approved by the Commission in the original decision, and as modified in the prolongation decision, remain unchanged and continue to apply for the scheme.

3. POSITION OF LITHUANIA

- (13) In line with the original decision, Lithuania accepts that the prolonged scheme constitutes State aid within the meaning of Article 107(1) TFEU³.
- (14) Lithuania seeks the authorisation of the prolongation of the recapitalisation, the guarantee and the asset relief measures until 31 December 2011. According to the Lithuanian authorities, the measures are necessary and proportionate to maintain macroeconomic and financial stability in Lithuania and to enhance investors' confidence in the Lithuanian financial market.
- (15) In that context, the Lithuanian authorities submitted that the Lithuanian banking system so far withstood the economic crisis without assistance from the Government and the Bank of Lithuania. Recently, the Lithuanian banking sector has experienced positive changes, such as an increase in the efficiency of operation, the improvement of the quality of the loan portfolio and some banks earning profits. The first quarter of 2011 was the third profitable quarter in succession for the sector as a whole, with profits of LTL 254.6 million.
- (16) Though there are positive changes for the Lithuanian banking sector, the situation within the banking sector remains sensitive. Major risks to the stability of the national banking system and of the entire economy will persist in 2011 due to the slow economic recovery, high unemployment rate and low creditworthiness of enterprises. Against that background, changes in macroeconomic indicators will have an impact on the stability of the banking system. Seeking to ensure national macroeconomic and financial stability, as well as to enhance foreign investors' confidence in the national financial market, the Bank of Lithuania recommended prolonging the support measures for another six months until 31 December 2011 (letter dated 9 May 2011).
- (17) Lithuania undertakes to maintain all commitments made since the introduction of the Scheme, which were taken into account by the Commission in the original decision, as well as the conditions introduced in the prolongation decision.
- (18) The conditions for guarantees approved in the original decision will continue to apply after 30 June 2010. In addition, in line with the commitments in the prolongation decision, Lithuania undertook to provide reporting on the operation of the scheme and on guaranteed and non-guaranteed debt issuance by 15 October 2011.
- (19) Lithuania undertakes to maintain all commitments made since the introduction of the recapitalisation and asset relief measures, which were taken into account by the Commission in the original decision. As regards the asset relief measure, those commitments include, in particular, the obligation to amend the valuation method of the assets or of the haircut where the conditions detailed in the original decision are fulfilled. As regards behavioural constraints, they include the commitment of the Lithuanian authorities to impose upon banks subject to an obligation to submit a restructuring plan a ban on coupon/interest payments on hybrid capital instruments during the restructuring period, where the bank has no legal/contractual obligation to proceed with such payment. As regards buy-backs and the exercise of call options of

³ With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union ("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

Tier 1 or Tier 2 capital instruments – if envisaged by a beneficiary bank subject to restructuring – the Lithuanian authorities have undertaken to consult the Commission beforehand regarding the reasons and the terms of such transactions.

- (20) In addition, Lithuania also undertakes to maintain all commitments made under the prolongation decision. These commitments include the obligation to submit a restructuring plan for any bank which benefits from a recapitalisation and/or asset relief measure after 31 December 2010, independently of whether the beneficiary pursuant to the rules set out in the Recapitalisation Communication⁴ is considered fundamentally sound or distressed, within six months from the date of granting the recapitalisation measure and within three months from granting the asset relief measure⁵. Lithuania also undertakes that the restructuring plan to be submitted shall comply with the conditions set out in the Restructuring Communication⁶ in order to re-establish the individual bank's long-term viability without reliance on State support, while containing adequate burden-sharing measures and measures to limit distortions of competition.
- (21) The Lithuanian authorities claim that the prolonged measures, as the original scheme, are compatible with the internal market, since - due to the ongoing crisis - they are necessary to remedy a serious disturbance in the Lithuanian economy pursuant to Article 107(3)(b) TFEU.

4. ASSESSMENT OF THE MEASURE

4.1 State aid character of the Scheme

- (22) 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.
- (23) For the reasons indicated in the original decision, the Commission considers that the Scheme constitutes State aid within the meaning of Article 107(1) TFEU. Lithuania shares that position.

4.2 Compatibility

- (24) In the original and the prolongation decisions, the Commission considered the notified measures compatible with the internal market under Article 107(3)(b) TFEU. To that end, the Commission had assessed the appropriateness, necessity and proportionality of the aid.
- (25) The Commission considers that the exceptional circumstances at the origin of the initially notified measures persist in Lithuania, as in a number of other Member States,

⁴ 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, OJ C 10, 15.01.2009, p. 2.

⁵ As regards the commitment for the beneficiaries of the asset relief measures to submit a restructuring plan within three months, see recital 51 of the original decision.

⁶ 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; see in particular Annex "Indicators for the assessment of a bank's risk profile".

and therefore recognises the need for the prolongation of the scheme. The letter from the Lithuanian Central Bank endorses that necessity (see point (16) above). In particular, the Central Bank states that though there are positive changes, the situation within the banking sector remains sensitive due to the slow economic recovery, a high unemployment rate and a rather high credit risk of enterprises. The statistical data supports that view. Therefore, the Commission considers that the prolongation of the three types of measures is appropriate and necessary to remedy a serious disturbance of the Lithuanian economy.

- (26) As regards the specific features of the scheme, in assessing the request for the prolongation, the Commission has to balance the scheme's positive effects for financial stability against the distortions of competition that the prolongation entails and the delay in the return to a normal functioning of the financial markets. The prolonged scheme thus should contain minimum exit incentives, and a gradual alignment to market conditions should take place in order to minimise negative spillover effects on competitors and other Member States. The Commission considers that the conditions of the scheme comply with those requirements.
- (27) The prolongation is in line with the requirements set out in the Commission Communication of 1 December 2010 on the application, after 1 January 2011, of State aid rules to support measures in favour of banks in the context of the financial crisis. In particular, this Communication requires the presentation of a restructuring plan whenever recapitalisation or asset relief measures are granted. The Commission recalls that at the beginning of the crisis it has established a distinction between distressed and fundamentally sound financial institutions. That distinction was based on the concern in late 2008 that sound banks, whilst catering for capital needs resulting from significant impairments and temporary difficulties to raise capital on markets, would avoid having recourse to the State when faced with the requirement to restructure and thus decrease their lending to the real economy. Banks had reduced capital needs and currently face fewer difficulties to raise capital on the markets. Therefore, what matters today seems to be whether financial institutions still need State capital injections or whether they can raise capital on the market.
- (28) As a result, banks which have recourse to State capital or impaired assets relief as of the beginning of 2011 should be required to submit to the Commission a restructuring plan as described in the Restructuring Communication, showing the bank's determination to undertake the necessary restructuring efforts and return to viability without undue delay. In that respect, the Commission notes positively the fact that Lithuania committed to submit individual restructuring plans within six and three months for all beneficiaries of recapitalisation and/or asset relief measures respectively, independently of whether the beneficiary, pursuant to the rules set out in the Recapitalisation Communication, is considered fundamentally sound or distressed. The Commission welcomes also the fact that Lithuania undertook that the restructuring plan to be submitted shall comply with the principles set out in the Restructuring Communication in order to re-establish the individual bank's long-term viability without reliance on State support, while containing adequate burden-sharing measures and measures to limit distortions of competition.
- (29) The Commission also notes that Lithuania confirms that all the commitments made in relation to the original scheme will continue to apply, including those related to presenting every six months a report on the operation of the scheme. In particular, the

Commission notes positively the commitment of the Lithuanian authorities to impose a coupon ban on the banks subject to restructuring.

- (30) As regards the combination of the recapitalisation and asset relief measures with other aid measures, including guarantees, as indicated in the Annex to the Restructuring Communication, the Commission notes that Lithuania confirms that it will continue to apply the commitments made in relation to the prolongation decision. According to those commitments, any restructuring plan should contain all State aid received as individual aid or under a scheme during the restructuring period. 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). This means that 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.
- (31) Furthermore, the Commission recalls that, based on paragraph 16 of the Restructuring Communication, should further aid not initially foreseen in a notified restructuring plan be necessary for the restoration of viability, it cannot be granted under an approved scheme and needs to be subject to an individual ex ante notification. Any such further aid will be taken into account in the Commission's final decision on that bank.
- (32) In addition to the above, Lithuania agrees to provide the Commission with a concise mid-term review of the operation of the scheme by 15 October 2011, and to complement such future reports with the data on guaranteed and non-guaranteed debt issuance.

5. DECISION

The Commission finds that the notified measures constitute a State aid scheme within the meaning of Article 107(1) TFEU. Since the above-mentioned aid measures fulfil the conditions under Article 107(3)(b) TFEU, they are compatible with the internal market. The Commission has accordingly decided not to raise objections.

The Commission recalls that, according to the commitment of the Lithuanian authorities, the approval of the scheme is limited in duration until 31 December 2011.

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

The Lithuanian authorities have indicated that the notification does not contain any confidential information. The Commission will therefore disclose this letter to third parties publishing its full text on the Internet site:

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

Yours faithfully,

For the Commission
Joaquín ALMUNIA
Vice-President

